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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FEDERICO CERETTI, *et al.*, Defendants.	Adv. Pro. No. 09-01161 (SMB)

DECLARATION OF ANTHONY M. GRUPPUSO, ESQ.

Anthony M. Gruppuso, Esq. hereby declares as follows:

1. I am a member of the Bar of the State of New York and this Court, and counsel at Baker & Hostetler LLP, attorneys for the Trustee.

2. I am fully familiar with the facts set forth herein based either upon my own personal knowledge or information conveyed to me that I believe to be true. I make this Declaration in support of the Trustee's motion for entry of an Order: (i) compelling the production from defendants Kingate Global Fund, Ltd. ("Kingate Global") and Kingate Euro Fund, Ltd. ("Kingate Euro," and with Kingate Global, the "Funds") and defendants Kingate Management Limited ("KML"), defendants FIM Limited and FIM Advisers LLP (collectively, "FIM"), defendants Federico Ceretti and Carlo Grosso, and defendants First Peninsula Trustees Limited, Port of Hercules Trustees Limited, Alpine Trustees Limited, The Ashby Trust, Ashby Holding Services Limited, Ashby Investment Services Limited, El Prela Trust, El Prela Group Holding Services Limited, and El Prela Trading Investments Limited (collectively, the "Trust Defendants" and with KML, FIM, Ceretti and Grosso, the "Bermuda Non-Fund Defendants") of all documents produced or exchanged in discovery in the Bermuda Action; and (ii) requiring the Bermuda Non-Fund Defendants and defendants Citi Hedge Fund Services Limited ("Citi Hedge") and HSBC Bank Bermuda Limited ("HSBC Bank Bermuda") to confer with the Funds and the Trustee in accordance with Fed. R. Civ. P. 26(f) and participate in party discovery in this proceeding (the "Motion"), as referenced in the Trustee's Memorandum of Law in support of the Motion.

3. For the Court's convenience and ease of reference, a true and correct copy of the following documents are attached:

A. Attached hereto as **Exhibit A** is a true and correct copy of the Order Concerning Further Proceedings on Extraterritoriality Motion and Trustee's Omnibus Motion for Leave to Replead and for Limited Discovery entered by the Court on December 10, 2014, entered in *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, No. 08-01789 (SMB), as ECF Doc. No. 8800.

B. Attached hereto as **Exhibit B** are a true and correct copy of the Trustee's First Set of Requests for Production of Documents and Things to Defendant Kingate Global Fund, Ltd. dated October 7, 2015, and a true and correct copy of the Trustee's First Set of Requests for Production of Documents and Things to Defendant Kingate Euro Fund, Ltd. dated October 7, 2015.

C. Attached hereto as **Exhibit C** are a true and correct copy of Defendant Kingate Global Fund Limited's Responses and Objections to the Trustee's First Requests for Production dated November 6, 2015, and a true and correct copy of Defendant Kingate Euro Fund Limited's Responses and Objections to the Trustee's First Requests for Production dated November 6, 2015.

D. Attached hereto as **Exhibit D** is a true and correct copy of a letter from Lindsay M. Weber, Esq. to Karin S. Jenson, Esq. dated October 13, 2015.

E. Attached hereto as **Exhibit E** is a true and correct copy of a letter from Lindsay M. Weber, Esq. to Geraldine E. Ponto, Esq. dated December 23, 2015, without attachments.

F. Attached hereto as **Exhibit F** is a true and correct copy of the Interim Ruling on Plaintiff's Summons of 13th November 2015 issued by the Bermuda court in the Bermuda Action, as defined and referred to in the Trustee's Memorandum of Law in support of the Motion.

G. Attached hereto as **Exhibit G** are true and correct copies of the cover letter and the Bermuda Action Requests served on Kingate Management Limited, as referenced in the Trustee's Memorandum of Law in support of the Motion.

H. Attached hereto as **Exhibit H** is a true and correct copy of a letter dated February 19, 2016 from respective counsel for the Non-Fund Defendants to Anthony M. Gruppuso, Esq.

I. Attached hereto as **Exhibit I** are true and correct copies of the Agreement between Kingate Global Fund, Ltd. and Kingate Management Limited purportedly dated as of November 1994, and the First Amendment to the

Kingate Global Fund, Ltd. Management Agreement dated as of March 1, 1995.

J. Attached hereto as **Exhibit J** is a true and correct copy of the Manager Agreement dated as of May 1, 2000 between Kingate Management Limited and Kingate Euro Fund, Ltd.

K. Attached hereto as **Exhibit K** is a true and correct copy of the Co-Manager Agreement dated as of July 1, 2004 between Kingate Management Limited and Kingate Global Fund, Ltd.

L. Attached hereto as **Exhibit L** is a true and correct copy of the Management Agreement dated as of January 1, 2006 between Kingate Management Limited and Kingate Global Fund, Ltd.

M. Attached hereto as **Exhibit M** are true and correct copies of the Administration Agreement between Kingate Global Fund, Ltd., Kingate Management Limited and Hemisphere Management Limited purportedly dated as of November 1994 (and as Bates stamped KGFSAC0000593 through KGFSAC0000601), and the First Amendment to the Kingate Global Fund, Ltd. Administration Agreement dated as of March 1, 1995.

N. Attached hereto as **Exhibit N** is a true and correct copy of the Kingate Global Fund, Ltd. and Kingate Management Limited and Hemisphere Management Limited Restated and Amended Administration Agreement dated May 1, 2000.

O. Attached hereto as **Exhibit O** is a true and correct copy of the Kingate Euro Fund, Ltd. and Kingate Management Limited and Hemisphere Management Limited Administration Agreement dated May 1, 2000.

P. Attached hereto as **Exhibit P** is a true and correct copy of the Amended and Restated Administration Agreement between Kingate Global Fund, Ltd. and Kingate Management Limited and BISYS Hedge Fund Services Limited dated June 1, 2007.

Q. Attached hereto as **Exhibit Q** is a true and correct copy of the Amended and Restated Administration Agreement between Kingate Euro Fund, Ltd. and Kingate Management Limited and BISYS Hedge Fund Services Limited dated June 1, 2007.

R. Attached hereto as **Exhibit R** is a true and correct copy of the Registrar Agreement between Kingate Global Fund, Ltd., Kingate Management Limited and Hemisphere Management Limited made as of May 1, 2000.

S. Attached hereto as **Exhibit S** is a true and correct copy of the Registrar Agreement between Kingate Euro Fund, Ltd., Kingate Management Limited and Hemisphere Management Limited made as of May 1, 2000.

T. Attached hereto as **Exhibit T** is a true and correct copy of the Custodian Agreement between Kingate Global Fund, Ltd. and The Bank of Bermuda Limited and Kingate Management Limited made as of March 1, 1994.

U. Attached hereto as **Exhibit U** is a true and correct copy of the Custodian Agreement between Kingate Euro Fund, Ltd. and The Bank of Bermuda Limited made as of May 1, 2000.

V. Attached hereto as **Exhibit V** is a true and correct copy of the Kingate Management Limited and FIM Limited Distribution Agreement relating to Kingate Global Fund, Ltd. dated April 23, 2001.

W. Attached hereto as **Exhibit W** is a true and correct copy of the Kingate Management Limited and FIM Limited Distribution Agreement relating to Kingate Euro Fund, Ltd. dated April 23, 2001.

X. Attached hereto as **Exhibit X** are true and correct copies of the Kingate Management Limited and Kingate Global Fund, Ltd. and FIM Limited Consulting Services Agreement made as of December 1, 1995, and the Amendment to Consulting Services Agreement between Kingate Management Limited and Kingate Global Fund, Ltd. and FIM Limited effective December 1, 1995.

Y. Attached hereto as **Exhibit Y** are true and correct copies of the Kingate Management Limited and FIM Limited Consulting Services Agreement relating to Kingate Global Fund, Ltd. dated April 23, 2001, and the Deed of Novation between Kingate Management Limited, FIM Limited, and FIM Advisers LLP relating to Kingate Global Fund, Ltd. dated July 29, 2005.

Z. Attached hereto as **Exhibit Z** are true and correct copies of the Kingate Management Limited and FIM Limited Consulting Services Agreement relating to Kingate Euro Fund, Ltd. dated April 23, 2001, and the Deed of Novation between Kingate Management Limited, FIM Limited, and FIM Advisers LLP relating to Kingate Euro Fund, Ltd. dated July 29, 2005.

AA. Attached hereto as **Exhibit AA** is a true and correct copy of the Queen's Bench decision dated November 22, 1990, *Prudential Assurance Co. v. Fountain Page, Ltd.* [1991] 1 W.L.R. 756 (QB).

BB. Attached hereto as **Exhibit BB** is a true and correct copy of the Court of Appeal decision dated May 23, 1997, *Mahon v. Rahn & Ors* [1998] Q.B. 424.

CC. Attached hereto as **Exhibit CC** is a true and correct copy of the House of Lords decision dated October 29, 1998, *Taylor v. Director of the Serious Fraud Office* [1999] 2 A.C. 177 (HL).

DD. Attached hereto as **Exhibit DD** is a true and correct copy of a letter dated March 18, 2016, from Lindsay M. Weber, Esq. to Geraldine E. Ponto, Esq.

EE. Attached hereto as **Exhibit EE** is a true and correct copy of a letter dated March 28, 2016, from Geraldine E. Ponto, Esq. to Lindsay M. Weber, Esq.

FF. Attached hereto as **Exhibit FF** is a true and correct copy of a letter dated February 10, 2016, from Anthony M. Gruppuso, Esq. to counsel for the Non-Fund Defendants (as defined in the Trustee's Memorandum of Law in support of the Motion), with enclosure.

4. The attorneys for the Trustee have conferred with the attorneys for the Responding Defendants in a good-faith effort to resolve by agreement the issues raised by the Motion without the intervention of the Court and have been unable to reach an agreement.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing statements made by me are true and correct.

Dated: April 15, 2016
New York, New York

/s/ Anthony M. Gruppuso
Anthony M. Gruppuso

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	:	SIPA Liquidation No. 08-01789 (SMB) (Substantively Consolidated)
In re BERNARD L. MADOFF, Debtor.	:	

ORDER CONCERNING FURTHER PROCEEDINGS ON EXTRATERRITORIALITY MOTION AND TRUSTEE'S OMNIBUS MOTION FOR LEAVE TO REPLEAD AND FOR LIMITED DISCOVERY

WHEREAS:

A. In certain adversary proceedings in this Liquidation pursuant to the Securities Investor Protection Act ("SIPA"), the United States District Court for the Southern District of New York, the Honorable Jed S. Rakoff, entered Orders, items number 97 and 167 on the docket of 12 mc 115 (JSR), in which he withdrew the reference pursuant to 28 U.S.C. § 157(d) to determine whether SIPA and/or the Bankruptcy Code as incorporated by SIPA apply extraterritorially, permitting the Trustee to avoid initial transfers that were received abroad or to recover from initial, immediate or mediate foreign transferees (the "Extraterritoriality Issue").

B. The Order entered as item number 167 on the docket of 12 mc 115 (JSR) (the "Consolidated Briefing Order") provided for a consolidated motion to dismiss related to the Extraterritoriality Issue.

C. The Consolidated Briefing Order directed the defendants that had sought withdrawal of the reference for the District Court to determine the Extraterritoriality Issue (the "Extraterritoriality Defendants") to file a single consolidated motion to dismiss pursuant to Fed. R. Civ. P. 12 (made applicable to the adversary proceedings by Fed. R. Bankr. P. 7012) (the "Extraterritoriality Motion"), and set forth provisions relating to the briefing, argument, and representation of the Extraterritoriality Defendants in connection with the Extraterritoriality Motion.

D. On July 13, 2012, the Extraterritoriality Defendants filed the Extraterritoriality Motion as item number 234 on the docket of 12 mc 115 (JSR).

E. On August 17, 2012, the Trustee filed his Memorandum of Law in Opposition to the Extraterritoriality Motion as item number 310 on the docket of 12 mc 115 (JSR), and the Securities Investor Protection Corporation ("SIPC") filed its Memorandum of Law in Opposition to the Extraterritoriality Motion as item number 309 on the docket of 12 mc 115 (JSR).

F. On August 31, 2012, the Extraterritoriality Defendants filed their Reply Memorandum in Support of the Extraterritoriality Motion as item number 322 on the docket of 12 mc 115 (JSR).

G. On September 21, 2012, oral argument was held before Judge Rakoff on the Extraterritoriality Issue, a transcript of which was entered as item number 357 on the docket of 12 mc 115 (JSR).

H. On July 7, 2014, Judge Rakoff entered an Opinion and Order, item number 551 on the docket of 12 mc 115 (JSR) (the "Extraterritoriality Order"), in which he decided certain matters relating to the Extraterritoriality Motion.

I. The Extraterritoriality Order concluded:

> In sum, the Court finds that section 550(a) [of the Bankruptcy Code] does not apply extraterritorially to allow for the recovery of subsequent transfers received abroad by a foreign transferee from a foreign transferor. Therefore, the Trustee's recovery claims are dismissed to the extent that they seek to recover purely foreign transfers.[4] Except to the extent provided in other orders, the Court directs that the following adversary proceedings be returned to the Bankruptcy Court for further proceedings consistent with this Opinion and Order: (1) those cases listed in Exhibit A of item number 167 on the docket of 12-mc-115; and (2) those cases listed in the schedule attached to item number 468 on the docket of 12-mc-115 that were designated as having been added to the "extraterritoriality" consolidated briefing.
>
> ———————
>
> [4] The Trustee argues that dismissal at this stage is inappropriate because additional fact-gathering is necessary to determine where the transfers took place. However, it is the Trustee's obligation to allege "facts giving rise to the plausible inference that" the transfer occurred "within the United States." Absolute Activist Value Master Fund Ltd. v. Ficeto, 677 F.3d 60, 69 (2d Cir. 2012). Here, to the extent that the Trustee's complaints allege that both the transferor and the transferee reside outside of the United States, there is no plausible inference that the transfer occurred domestically. Therefore, unless the Trustee can put forth specific facts suggesting a domestic transfer, his recovery actions seeking foreign transfers should be dismissed.

J. On July 28, 2014, Judge Rakoff entered a Stipulation and Supplemental Opinion and Order as item number 556 on the docket of 12 mc 115 (JSR) in which he supplemented the Extraterritoriality Order to direct that seven additional adversary proceedings should "also be returned to the Bankruptcy Court for further proceedings consistent with" the Extraterritoriality Order. The adversary proceedings that Judge Rakoff directed to be returned to this Court for

further proceedings consistent with the Extraterritoriality Order are referred to herein as the "Returned Proceedings."

K. Attached as Exhibit A is a schedule agreed to by counsel for the Trustee and counsel for certain of the alleged subsequent transferees listed therein which lists certain defendants in the Returned Proceedings (a) against which the Trustee asserts claims to recover subsequent transfers pursuant to 11 U.S.C. § 550(a)(2) and (b) that contend that some or all of those claims should be dismissed pursuant to the Extraterritoriality Order.

L. Annexed as Exhibit B is a schedule agreed to by counsel for the Trustee and counsel for the defendants listed therein which lists certain defendants that did not move to withdraw the reference to determine the Extraterritoriality Issue (a) against which the Trustee asserts claims to recover subsequent transfers pursuant to 11 U.S.C. § 550(a)(2) and (b) that contend that some or all of those counts should be dismissed based on the legal standards announced in the Extraterritoriality Order.

M. For each alleged transferor and transferee, Exhibits A and B list as the party's "Location" the jurisdiction under whose laws the transferors and transferees that are not natural persons are organized, and the citizenship of the transferors and transferees that are natural persons, in each case as of the time of the transfers, as alleged in the complaints or as agreed by the Trustee and the respective transferees. The parties do not agree, and nothing in this Order shall preclude any party from presenting any argument, concerning the extent to which such jurisdiction of organization or citizenship is conclusive in determining whether a transferor is a "foreign transferor," or a transferee is a "foreign transferee," for purpose of the Extraterritoriality Order or otherwise.

N. For each adversary proceeding and defendant, Exhibits A and B identify the counts, or parts thereof, asserted in the adversary proceeding against that defendant (a) to recover one or more subsequent transfers made by a transferor that is neither a citizen of, nor an entity organized under the laws of, the United States (b) pursuant to 11 U.S.C. § 550(a)(2) (the "Listed Counts").

O. On August 28, 2014, the Trustee filed a motion seeking leave to replead and an order authorizing limited discovery (the "Trustee's Motion") (see items 7826, 7827 and 7828 on the docket of 08-1789 (SMB)). The Trustee's Motion seeks leave to replead in many but not all of the adversary proceedings listed in Exhibits A and B, and in other adversary proceedings not listed in those Exhibits. The Trustee's Motion seeks limited discovery relevant solely to the good faith issue from many but not all of the defendants listed as subsequent transferees in Exhibits A and B, and from other parties not listed as subsequent transferees in those Exhibits. Attached as Exhibit C is a schedule identifying the proceedings in which the Trustee's Motion seeks limited discovery with respect to good faith and/or leave to amend the complaint. The Trustee's Motion was scheduled for a hearing on October 22, 2014.

P. On September 17, 2014, this Court held a conference to discuss further proceedings to be conducted in the Returned Proceedings pursuant to the Extraterritoriality Order and the Trustee's Motion, and directed the parties to confer on a coordinated procedure and briefing schedule with respect to the same.

NOW, THEREFORE, the Court being fully advised, it is hereby

ORDERED:

1. The defendants listed as subsequent transferees in Exhibits A and B (the "Transferee Defendants"), the Trustee, and SIPC shall submit supplemental briefing on the

Extraterritoriality Motion to address, pursuant to the procedures set forth below, the issues of (a) which of the Listed Counts, if any, should be dismissed pursuant to the Extraterritoriality Order or the legal standards announced therein and (b) whether the Trustee shall be permitted to file amended complaints containing allegations relevant to the Extraterritoriality Issue as proffered by the Trustee. The Transferee Defendants listed on Exhibit B shall be deemed to have joined in the Extraterritoriality Motion. If any Transferee Defendant has a separate motion pending to dismiss based on the Extraterritoriality Issue, that motion is adjourned pending the Hearing Date on the Extraterritoriality Motion.

2. On or before 21 days from the date of this Order, the Transferee Defendants shall file a single consolidated supplemental memorandum of law, not to exceed 30 pages in length, in support of the dismissal of the Listed Counts, or any portion thereof, pursuant to the Extraterritoriality Order or the legal standards announced therein (the "Transferee Defendants' Supplemental Memorandum").

3. On or before 81 days from the date of this Order, the Trustee and SIPC may each file a consolidated supplemental memorandum of law opposing the dismissal of the Listed Counts and seeking leave to amend the complaints to add allegations relevant to the Extraterritoriality Issue proffered pursuant to the procedures set forth below (the "Trustee's Consolidated Supplemental Memorandum"). In view of the number of Transferee Defendants involved in the briefing, the Trustee shall have 50 pages for the consolidated supplemental memorandum, plus additional addenda, not to exceed five pages each, detailing the reasons why the Listed Counts against specific Transferee Defendants, or any portion thereof, should not be dismissed.

4. In all proceedings listed in Exhibits A or B in which the Trustee seeks to amend to

add allegations relevant to the Extraterritoriality Issue but does not seek discovery in the Trustee's Motion, as identified on Exhibit C, the Trustee's submission shall include the Trustee's proposed amended complaint and identification of the new allegations that are relevant to the Extraterritoriality Issue.

5. For each proceeding listed in Exhibits A or B in which the Trustee's Motion seeks to amend to add allegations relevant to the Extraterritoriality Issue and also seeks discovery relevant to the good faith issue, as identified on Exhibit C, the Trustee's submission shall include proffered allegations as to the Extraterritoriality Issue that would be included in a proposed amended complaint in such proceeding to be filed pursuant to the schedule set forth below. The proffered allegations will be set forth with enough specificity to permit the Court to determine whether the proposed amendment in each adversary proceeding would be futile.

6. The Trustee's submission shall also include a chart summarizing the Trustee's position as to why the Extraterritoriality Motion should be denied.

7. The Trustee's use of information contained in Confidential Material produced by the Transferee Defendants or their affiliates subject to the Litigation Protective Order (D.I. 4137) or any other applicable Protective Order or other confidentiality agreement to prepare the proffered amended complaints or the proffered allegations as to the Extraterritoriality Issue, as set forth in paragraphs 4-5 above, without publicly identifying the source of such information, shall not constitute a violation of the Litigation Protective Order, *provided*, that this paragraph does not affect the Trustee's obligations with respect to documents provided pursuant to an agreement that they would be used for settlement purposes only, and not in litigation. The provisions of this paragraph 7 shall not apply to information or documents produced by UBS AG, UBS (Luxembourg) SA, UBS Fund Services (Luxembourg) SA, UBS Third Party

Management Company SA, Merrill Lynch International, or any of their respective affiliates.

8. On or before 141 days from the date of this Order, the Transferee Defendants may submit a single consolidated reply memorandum in support of dismissal of the Listed Counts or parts thereof, and in opposition to the Trustee's Consolidated Supplemental Memorandum, not to exceed 40 pages in length (the "Transferee Defendants' Supplemental Reply Memorandum"). In addition, any defendant concerning which the Trustee makes any specific arguments may submit a five-page memorandum (a "Five-Page Memorandum") in response to such arguments. The Transferee Defendants' Supplemental Reply Memorandum and the Five-Page Memoranda need not address the question of whether the Trustee should be permitted to amend the complaints in the proceedings referred to in paragraph 4 to add any allegations other than those that are identified as relevant to the Extraterritoriality Issue, and briefing on the issue of whether the Trustee shall be permitted to amend the complaints in those proceedings to add allegations relevant to the good faith issue shall be deferred and scheduled pursuant to paragraph 14.

9. The papers referred to in paragraphs 1-8 above shall be filed in the main adversary proceeding and each adversary proceeding listed in Exhibits A and B, with a docket entry referring to the "Extraterritoriality Motion," and with copies delivered by hand to the Court, and such filing shall constitute good and sufficient service of such papers on all parties, *provided*, that a Five-Page Memorandum need only be filed in the main adversary proceeding and each adversary proceeding listed in Exhibits A and B in which the defendant to which it relates is a party.

10. The Court will hold oral argument on the issues set forth in paragraph 1 above ~~at ____ o'clock on [date]~~ **on a date to be fixed by the Court** (the "Hearing Date"). **[SMB 12/10/14]**

11. No later than one week after filing the Transferee Defendants' Supplemental Reply Memorandum, the Transferee Defendants shall designate one lead counsel to advocate their position at oral argument on the Hearing Date, but any other attorney who wishes to be heard may appear and so request.

12. The time for all defendants in any of the adversary proceedings listed on Exhibits A or B to respond to the complaints is extended to 30 days after the Court decides whether any counts of the respective complaints or portions thereof should be dismissed pursuant to the Extraterritoriality Motion, subject to the additional extensions specified in paragraphs 13 and 15 below.

13. In any proceeding in which the Trustee seeks permission to amend the complaint solely to add allegations relevant to the Extraterritoriality Issue, the defendants' time to respond to the complaint shall be extended to 30 days after the Court denies the motion or the Trustee files the amended complaint, without prejudice to such further extensions as the Court may allow, on agreement of the parties or otherwise. In any proceeding in which the Trustee seeks to amend the complaint to add allegations relevant to the good faith issue, the defendants' time to respond to the complaint shall be determined in accordance with paragraph 15.

14. Further proceedings on the Trustee's Motion insofar as it seeks (a) limited discovery, (b) leave to amend the complaints in the proceedings listed in Exhibits A and B to add allegations relevant to the good faith issue, and/or (c) leave to amend the complaints to add allegations relevant to the extraterritoriality issue in proceedings listed on Exhibit C but not listed in Exhibits A or B shall be scheduled by the Court following the decision on the Extraterritoriality Motion. In order to avoid requiring the Trustee to file successive amended complaints adding allegations concerning extraterritoriality and good faith, the Trustee shall not

be required to file an amended complaint in a proceeding in which he seeks limited discovery and/or leave to amend the complaints to add allegations relevant to the good faith issue until after the Court has decided the Trustee's Motion insofar as it seeks limited discovery and leave to amend to add allegations relevant to good faith.

15. The time for each defendant to respond to the complaint in the proceedings in which the Trustee's Motion seeks limited discovery and/or leave to amend the complaints to add allegations relevant to issues other than the Extraterritoriality Issue is extended to 30 days after the earlier of the filing of an amended complaint in the proceeding in which the defendant is named or the entry of an order denying the Trustee leave to amend the complaint in that proceeding to add allegations relevant to issues other than the Extraterritoriality Issue, without prejudice to such further extensions as the Court may allow, on agreement of the parties or otherwise.

16. All communications and documents (including drafts) exchanged between and among any of the defendants in any of the adversary proceedings listed in Exhibits A and B, and/or their respective attorneys, shall be deemed to be privileged communications and/or work product, as the case may be, subject to a joint interest privilege.

17. Nothing in this Order, the exhibits hereto, or the proceedings pursuant to this Order shall waive or resolve any issue raised or that could be raised by any party other than the issues set forth in paragraph 14 and, as to the Transferee Defendants and the Trustee, the issues set forth in paragraph 1. Without limitation, nothing in this Order, the exhibits hereto, or the proceedings pursuant to this Order shall limit, restrict, or impair any defense, right, or argument that has been raised or could be raised by any defendant in a motion to dismiss under Fed. R. Civ. P. 12 or Fed. R. Bankr. P. 7012, or any other defense, right, or argument of any nature

available to any defendant not previously waived (including, without limitation, all defenses based on lack of personal jurisdiction or insufficient service of process), or any defense, right, or argument that could be raised by the Trustee or SIPC in response thereto. The proceedings pursuant to this Order shall have no effect on (a) any motion to dismiss any claims other than the Listed Counts, based on arguments relating to the extraterritorial application of any provision of SIPA or the Bankruptcy Code or otherwise, or (b) any motion to dismiss the Listed Counts or any counts of any amended complaint based on matters outside the pleadings that may be considered on a motion to dismiss, or (c) any defense, right, or argument that could be raised by the Trustee or SIPC in response to any motion described in (a) or (b). The Trustee reserves his rights, if any, pursuant to Fed. R. Civ. P. 15.

18. Nothing in this Order shall constitute an agreement or consent by any defendant to pay the fees and expenses of any attorney other than such defendant's own retained attorney. This paragraph shall not affect or compromise any rights of the Trustee or SIPC.

19. This Order may be modified by the Court sua sponte or at the request of any party for good cause shown.

Dated: New York, New York
December 10th, 2014

SO ORDERED.

/s/ STUART M. BERNSTEIN
THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

CONSOLIDATED EXTRATERRITORIALITY MOTION[1, 2]

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	CLAIMS AGAINST FSTs SUBJECT TO MOTION
1	***Picard v. Vizcaya Partners Ltd., Banque Jacob Safra (Gibraltar) Ltd., Siam Capital Management, Asphalia Fund Ltd., and Zeus Partners Ltd.***	09-1154-SMB 12-cv-2588-JSR	Katten Muchin Rosenman LLP	Vizcaya Partners Ltd. (BVI)	Zeus Partners Ltd. (BVI)	Counts 3-6
2a	***Picard v. Federico Ceretti, Carlo Grosso, Kingate Global Fund Ltd., Kingate Euro Fund Ltd., Kingate Management Ltd., FIM Advisers LLP, FIM Ltd., Citi Hedge Fund Services Ltd., First Peninsula Trustees Ltd. (individually and as trustee of the Ashby Trust), The Ashby Trust, Ashby Investment Services Ltd., Alpine Trustees Ltd. (individually and as trustee of El Prela Trust), Port of Hercules Trustees Ltd. (individually, and as trustee of El Prela Trust), El Prela Trust, El Prela Group Holding Services, Ashby Holdings Services Ltd., El Prela Trading Investments Ltd., and HSBC Bank Bermuda Ltd.***	09-1161-SMB 11-cv-7134-JSR	Freshfields Bruckhaus Deringer US LLP	Kingate Management Ltd. (Bermuda) and certain of the foreign subsequent transferees	First Peninsula Trustees Ltd. (Liberia), The Ashby Trust (BVI or Liberia), Ashby Investment Services Ltd. (BVI), Alpine Trustees Ltd. (Liberia), Port of Hercules Trustees Ltd. (BVI), El Prela Trust (BVI or Liberia), El Prela Group Holding Services (BVI), Ashby Holdings Services Ltd. (BVI), El Prela Trading Investments Ltd. (BVI)	Count 9

[1] These Schedules show the jurisdiction under whose laws the transferors and transferees that are not natural persons are organized, and the citizenship of the transferors and transferees that are natural persons, in each case as of the time of the transfers, as alleged in the complaints or as agreed by the Trustee and the transferee. The parties do not agree, and nothing in this Order shall preclude any party from presenting any argument, concerning the extent to which such jurisdiction of organization or citizenship is conclusive in determining whether a transferor is a "foreign transferor," or a transferee is a "foreign transferee," for purpose of the Extraterritoriality Order or otherwise.

[2] In the column furthest to the right, "All Counts" means all counts in the adversary proceeding. An identification of counts that is underlined, as in "Count 9," indicates that the counts subject to the motion include all the claims against the Foreign Subsequent Transferees in the entry, other than counts that were previously dismissed.

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	CLAIMS AGAINST FSTs SUBJECT TO MOTION
2b	***Picard v. Federico Ceretti, et al. (see 2a above)***	09-1161-SMB 11-cv-7134-JSR	Paul Hastings LLP	Kingate Global Fund Ltd. (BVI), Kingate Euro Fund Ltd. (BVI), Kingate Management Ltd. (Bermuda)	FIM Ltd. (UK), FIM Advisers (UK)	Count 9
2c	***Picard v. Federico Ceretti, et al. (see 2a above)***	09-1161-SMB 11-cv-7134-JSR	Paul Hastings LLP	First Peninsula Trustees Ltd. (Liberia), The Ashby Trust (BVI or Liberia), Ashby Investment Services Ltd. (BVI), Alpine Trustees Ltd. (Liberia), Port of Hercules Trustees Ltd. (BVI), El Prela Trust (BVI or Liberia), El Prela Group Holding Services (BVI), Ashby Holdings Services Ltd. (BVI), El Prela Trading Investments Ltd. (BVI), Kingate Global Fund Ltd. (BVI), Kingate Euro Fund Ltd. (BVI), and/or Kingate Management Ltd. (Bermuda), FIM Ltd. (UK), FIM Advisers (UK)	Federico Ceretti (Italy), Carlo Grosso (Italy)	Count 9

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
3a	***Picard v. Fairfield Sentry Ltd., Greenwich Sentry L.P., Greenwich Sentry Partners L.P., Fairfield Sigma Ltd., Fairfield Lambda Ltd., Fairfield Investment Fund Ltd., Fairfield Investors (Euro) Ltd., Stable Fund, Fairfield Greenwich Ltd., Fairfield Greenwich (Bermuda) Ltd., Fairfield Greenwich Advisors LLC, Fairfield International Managers Inc., Walter Noel, Jeffrey Tucker, Andres Piedrahita, Mark McKeefry, Daniel Lipton, Amit Vijayvergiya, Gordon McKenzie, Richard Landsberger, Philip Toub, Charles Murphy, Robert Blum, Andrew Smith, Harold Greisman, Gregory Bowes, Corina Noel Piedrahita, Lourdes Barreneche, Cornelis Boele, Santiago Reyes, Jacqueline Harary***	09-1239-SMB 12-cv-2638-JSR	Simpson Thacher & Bartlett LLP; Dechert LLP	Fairfield Sentry Ltd. (BVI), Fairfield Greenwich Ltd. (Cayman Islands), Fairfield Greenwich (Bermuda) Ltd. (Bermuda) ; Fairfield Greenwich (U.K.) Ltd. (U.K.) Fairfield Sigma Ltd. (BVI), Fairfield Lambda Ltd. (BVI), Chester Global Strategy Fund Ltd. (Cayman Islands), Irongate Global Strategy Fund Ltd. (Cayman Islands), Fairfield Greenwich Fund (Luxembourg) (Lux.), Fairfield Investment Fund Ltd. (BVI), Fairfield Investors (Euro) Ltd. (BVI), Fairfield Investors (Swiss Franc) Ltd. (BVI), Fairfield Investors (Yen) Ltd. (BVI), Fairfield Investment Trust (Cayman Islands), FIF Advanced Ltd. (BVI), Sentry Select Ltd. (BVI), Greenwich Bermuda Ltd. (Bermuda),	Fairfield Greenwich Ltd. (Cayman Islands), Fairfield Greenwich (Bermuda) Ltd. (Bermuda), Andres Piedrahita (Colombia), Amit Vijayvergiya (Canada), Gordon McKenzie (Canada), Corina Piedrahita (Brazil and U.S.), Richard Landsberger (U.S.), Philip Toub (U.S.), Harold Greisman (U.S.), Andrew Smith (U.S.)	Counts 4, 7, 10, 13, 16, 19, 22, 25

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
				Chester Management (Cayman) Ltd. (Cayman Islands).		
3b	***Picard v. Fairfield Sentry Ltd., et al. (see 3a above)***	09-1239-SMB 12-cv-2619-JSR	Wollmuth Maher & Deutsch LLP	Fairfield Sentry Ltd. (BVI)	Fairfield Investment Fund Ltd. (BVI)	Counts 4, 7, 10, 13, 16, 19, 22, 25
				Fairfield Investment Fund Ltd. (BVI)	Fairfield Investors (Euro) Ltd. (BVI)	Counts 4, 7, 10, 13, 16, 19, 22, 25
4a	***Picard v. HSBC Bank, plc, HSBC Securities Services (Luxembourg) S.A., HSBC Institutional Trust Services (Ireland) Ltd., HSBC Securities Services (Ireland) Ltd., HSBC Institutional Trust Services (Bermuda) Ltd., HSBC Bank USA, N.A., HSBC Securities Services (Bermuda) Ltd., HSBC Bank (Cayman) Ltd., HSBC Private Bank Holdings (Suisse) S.A., HSBC Private Bank (Suisse) S.A., HSBC Fund Services (Luxembourg) S.A., HSBC Bank Bermuda Ltd., Herald Fund SPC, Herald (Lux) Sica V, Primeo Fund, Alpha Prime Fund Ltd., Senator Fund SPC, Hermes International Fund Ltd., Lagoon Investment Ltd., Thema Fund Ltd., Thema Wise Investments Ltd., Thema International Fund PLC, GEO Currencies Ltd. S.A., Herald Asset Management Ltd., 20:20 Medici AG, Unicredit Bank Austria AG, BA Worldwide Fund Management Ltd., Eurovaleur, Inc. Pioneer Alternative Investment Management Ltd., Alpha Prime Asset Management Ltd., Regulus Asset Management Ltd., Carruba Asset Management Ltd., Genevalor, Benbassat Et Cie, Hermes Asset Management Ltd., Thema Asset Management (Bermuda)***	09-1364-SMB 11-cv-6524-JSR	Morrison & Foerster LLP	Herald Fund SPC (Cayman Islands), Alpha Prime Fund Ltd. (Bermuda)	Primeo Fund (Cayman Islands)	Counts 2 and 10

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
	Ltd., Thema Asset Management Ltd., Equus Asset Management, Ltd., Equus Asset Management Partners, L.P., Aurelia Fund Management Ltd., Ursula Radel-Leszczynski, Sonja Kohn, Erwin Kohn, Mario Benbassat, Alberto Benbassat, Stephane Benbassat, David T. Smith, Roberto Nespolo, Laurent Mathysen-Gerst, Olivier Ador, Pascal Cattaneo, Vladimir Stepczynski, Jean-Marc Wenger, Lagoon Investment Trust, Unicredit S.p.A., Inter Asset Management, Inc., GTM Management Services Corp. N.V., T+M Trusteeship & Management Services S.A., Aurelia Asset Management Partners, Cape Investment Advisors Ltd., and Tereo Trust Company Ltd.					
4b	***Picard v. HSBC Bank, plc, et al. (see 4a above)***	09-1364-SMB 12-cv-2162-JSR	Sullivan & Worcester LLP	"Feeder Fund Defendants" (Cayman Islands, Lux., Bermuda, BVI, Ireland, and/or Panama)	UniCredit Bank Austria AG (Austria)	Counts 2 and 10
4c	***Picard v. HSBC Bank, plc, et al. (see 4a above)***	09-1364-SMB 12-cv-2239-JSR	Skadden, Arps, Slate, Meagher, & Flom LLP	"Feeder Fund Defendants" (Cayman Islands, Lux., Bermuda, BVI, Ireland, and/or Panama)	Unicredit S.p.A. (Italy), Pioneer Alternative Investment Management Ltd. (Ireland)	Counts 2 and 10

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
4d	***Picard v. HSBC Bank, plc, et al. (see 4a above)***	09-1364-SMB 12-cv-2431-JSR	Cleary Gottlieb Steen & Hamilton LLP	Primeo Fund (Cayman Islands), Herald Fund SPC (Cayman Islands), Herald Lux (Lux.), Alpha Prime Fund Ltd. (Bermuda), Senator Fund (Cayman Islands), Hermes International Fund (BVI), Lagoon Investment Ltd. (BVI), Thema Fund Ltd. (BVI), Thema Wise Investments (BVI), Thema International Fund (Ireland), Geo Currencies Ltd. (Panama), Lagoon Investment Trust (BVI), Harley (Cayman Islands), Thema International (Ireland), Rye Select Broad Market Portfolio Ltd. (Cayman Islands)	HSBC Bank plc (England/Wales), HSBC Holdings plc (England/Wales), HSBC Securities Services (Lux.) S.A., HSBC Institutional Trust Services (Ireland) Ltd., HSBC Securities Services (Ireland) Ltd., HSBC Institutional Trust Services (Bermuda) Ltd., HSBC Securities Services (Bermuda) Ltd., HSBC Bank (Cayman Islands) Ltd., HSBC Private Banking Holdings (Suisse) S.A., HSBC Private Bank (Suisse) S.A., HSBC Fund Services (Luxembourg) S.A., and HSBC Bank Bermuda Ltd. (Bermuda)	Counts 2, 10, 13, 14, 15, 16, 17, 18,19

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
4e	***Picard v. HSBC Bank, plc, et al. (see 4a above)***	09-1364-SMB 12-cv-3401-JSR	Debevoise & Plimpton LLP; Willkie Farr & Gallagher LLP; Bingham McCutchen LLP	Lagoon Investment Limited (BVI), Hermes International Fund Ltd. (BVI), Thema Wise Investments Limited (BVI), Thema Fund Limited (BVI), Thema International Fund plc (Ireland)	Thema International Fund plc (Ireland), Hermes International Fund Ltd. (BVI), Lagoon Investment Ltd. (BVI), Lagoon Investment Trust (BVI), Equus Asset Management Ltd. (Bermuda), Equus Asset Management Partners, L.P. (Bermuda), Genevalor, Benbassat & Cie (Switz.), Cape Investment Advisors Ltd. (Bermuda), Hermes Asset Management Ltd. (Bermuda), Thema Asset Management (Bermuda) Ltd. (Bermuda), Thema Asset Management Ltd. (BVI), Aurelia Fund Management Ltd. (Bermuda), Aurelia Asset Management Partners (Bermuda), Alberto Benbassat (Switz.), Stephane Benbassat (Switz.), Estate of Mario Benbassat (Switz.), Roberto Nespolo (Switz. And Italy), David Smith (UK); Laurent Mathysen-Gerst (Switz.), Wladimir Stepcynski (Switz.), Jean-Marc Wenger (Switz.), Pascal Cattaneo (Switz.), Olivier Ador (Switz.)	Counts 2 and 10

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
5	***Picard v. Plaza Investments International Ltd. and Notz Stucki Management (Bermuda) Ltd.***	10-4284-SMB 12-cv-2646-JSR	Debevoise & Plimpton LLP	Plaza Investments International Ltd. (BVI)	Notz Stucki Management (Bermuda) Ltd. (Bermuda)	Counts 2 and 10
6	***Picard v. Cardinal Management Inc. and Dakota Global Investments Ltd.***	10-4287-SMB 12-cv-2981-JSR	Clifford Chance US LLP	Cardinal Management (St. Lucia)	Dakota Global (BVI)	Counts 2 and 9
7	***Picard v. Square One Fund Ltd., Luc D. Estenne, Square Asset Management Ltd., Partners Advisers S.A., Circle Partners, and Kathryn R. Siggins***	10-4330-SMB 12-cv-2490-JSR	Thompson Hine LLP; Brune & Richard LLP; Bernfeld, DeMatteo & Bernfeld, LLP	Square One (BVI)	Luc Estenne (Belgium/ Switzerland), Square Asset Management (BVI), Partners Advisers (Switz.), Circle Partners (Netherlands), Kathryn Siggins (UK)	Counts 2 and 10
8	***Picard vs. The Estate of Doris lgoin, Laurence Apfelbaum (individually and in her capacities as executor and beneficiary of the Estate (Succession) of Doris Igoin), and Emilie Apfelbaum***	10-4336-SMB 12-cv-2872-JSR	Kelley Drye & Warren LLP	Laurence Apfelbaum (France), Emilie Apfelbaum (France), Doris Igoin/Estate of Doris Igoin (France), Emilie Apfelbaum (France)	Laurence Apfelbaum (France), Estate of Doris Igoin (France)	Count 7
9	***Picard v. Equity Trading Portfolio Ltd., Equity Trading Fund, Ltd., BNP Paribas Arbitrage SNC***	10-4457-SMB 11-cv-7810-JSR	Cleary Gottlieb Steen & Hamilton LLP	Equity Trading (BVI), Equity Trading Fund (Cayman Islands)	BNP Paribas Arbitrage SNC (France)	Counts 8 and 9
10	***Picard v. Radcliff Investments Limited, Rothschild Trust Guernsey Limited, and Robert D. Salem***	10-4517-SMB 12-cv-2982-JSR	Clifford Chance US LLP	Radcliff Investments Ltd. (Cayman Islands)	Rothschild Trust Guernsey Limited (Guernsey)	Count 7
11a	***Picard v. Oreades Sicav, Inter Investissements S.A. (f/k/a Inter Conseil S.A.), BNP Paribas Investment Partners Luxembourg S.A. (f/k/a BNP Paribas Asset Management Luxembourg S.A., f/k/a Parvest Investment Management Company S.A.), BGL BNP Paribas S.A., and BNP Paribas Securities Services, S.A.***	10-5120-SMB 11-cv-7763-JSR	Cleary Gottlieb Steen & Hamilton LLP;	Oreades SICAV (Lux.)	BNP Paribas Investment Partners Luxembourg S.A. (Lux.), BGL BNP Paribas S.A. (Lux.), BNP Paribas Securities Services S.A (France)	Count 5

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
11b	***Picard v. Oreades Sicav, Inter Investissements S.A. (f/k/a Inter Conseil S.A.), BNP Paribas Investment Partners Luxembourg S.A. (f/k/a BNP Paribas Asset Management Luxembourg S.A., f/k/a Parvest Investment Management Company S.A.), BGL BNP Paribas S.A., and BNP Paribas Securities Services, S.A.***	10-5120-SMB 11-cv-7763-JSR	Paul Weiss, Rifkind Wharton & Garrisen LLP;	Oreades SICAV (Lux.)	Inter Investissements (f/k/a Inter Conseil S.A. (Lux.)	Count 5
12	***Picard v. Defender Ltd., Reliance Management (BVI) Ltd., Reliance Management (Gibraltar) Ltd., Reliance International Research LLC, and Tim Brockman***	10-5229-SMB 12-cv-2800-JSR	Morrison & Foerster LLP	Defender Ltd. (BVI)	Reliance Management (BVI) Ltd. (BVI)	Counts 2 and 9
13	***Picard v. Leon Flax, Turret Corporation (f/k/a Woodstock Corporation, f/k/a Lehigh Corporation), Eastside Investment Ltd., The Tower Trust, Investec Trust (Switzerland) S.A. (as Trustee of The Tower Trust), Radcliffes Trustee Company (as Trustee of the Tower Trust), R&H Trust Co. (Jersey) Ltd. (as Trustee of The Tower Trust), and Wellington Trustees (BVI) Ltd. (as Trustee of The Tower Trust)***	10-5267-SMB 12-cv-2928-JSR	Katten Muchin Rosenman LLP; K&L Gates	Leon Flax (London), Turret Corp. (BVI), Eastside Investment Ltd. (Jersey, principal place of business Switzerland), The Tower Trust (Trustees located in BVI, Jersey, and Switzerland), Investec Trust (Switzerland) S.A. (Switzerland), Radcliffes Trustee Co. (Switzerland), R&H Trust Co. (Jersey) Ltd. (Jersey), Wellington Trustees (BVI) Ltd. (BVI)	Leon Flax (London), Tower Trust (Trustees located in BVI, Jersey, and Switzerland)	Count 8
14	[This line intentionally left blank.]					

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
15a	***UBS AG, UBS (Luxembourg) S.A., UBS Fund Services (Luxembourg) S.A., UBS Third Party Management Company S.A., M&B Capital Advisers Sociedad de Valores, S.A., Reliance International Research LLC, Reliance Management (Gibraltar) Ltd., Luxembourg Investment Fund and Luxembourg Investment Fund U.S. Equity Plus, as represented by their Liquidators Maitre Alain Rukavina and Paul Laplume, Maitre Alain Rukavina and Paul Laplume, in their capacities as liquidators and representatives of Luxembourg Investment Fund and Luxembourg Investment Fund U.S. Equity Plus, and Landmark Investment Fund Ireland***	10-5311-SMB 12-cv-2483-JSR	Cravath, Swaine & Moore LLP	Luxembourg Investment Fund U.S. Equity Plus (Lux), Landmark Investment Fund Ireland (Ireland)	M&B Capital Advisers Sociedad de Valores, S.A. (Spain)	Counts 2, 4, 11, 18
15b	***Picard v. UBS AG, et al. (see 15a above)***	10-5311-SMB 12-cv-2802-JSR	Klestadt & Winters LLP	Luxembourg Investment Fund U.S. Equity Plus (Lux.)	Reliance Management (Gibraltar) Ltd. (Gibraltar)	Counts 2 and 11
16	***Picard v. Merrill Lynch International***	10-5346-SMB 12-cv-3486-JSR	Arnold & Porter LLP	Fairfield Sentry Ltd. (BVI), Fairfield Sigma Ltd. (BVI)	Merrill Lynch International (UK)	All counts
17	***Picard v. Nomura International PLC***	10-5348-SMB 12-cv-2446-JSR	Shearman & Sterling LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI)	Nomura International PLC (UK)	All counts
18	***Picard v. Banco Bilbao Vizcaya Argentaria, S.A.***	10-5351-SMB 11-cv-7100-JSR	Shearman & Sterling LLP	Fairfield Sentry (BVI)	Banco Bilbao Vizcaya Argentaria, S.A. (Spain)	All counts
19	***Picard v. Natixis, Natixis Corporate & Investment Bank, Natixis Financial Products, Inc., Bloom Asset Holdings Fund, and Tensyr Limited***	10-5353-SMB 11-cv-9501-JSR	Davis & Gilbert (for Natixis and Bloom Asset Holdings Fund); Freshfields (for Tensyr Ltd.)	Fairfield Sentry (BVI), Fairfield Investment Fund Ltd. (BVI), Groupement Financier Ltd. (BVI), Alpha Prime (Bermuda), and Harley (Cayman Islands)	Natixis (France), Natixis Corporate & Investment Bank (France), Bloom Asset Holdings Fund (Ireland), Tensyr Limited(Jersey)	Counts 1 - 7

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
20	***Picard v. ABN AMRO Bank N.V. (presently known as the Royal Bank of Scotland, N.V.)***	10-5354-SMB 11-cv-6878-JSR	Allen & Overy LLP	Rye Select Broad Market Portfolio Ltd. (Cayman Islands), Rye Select Broad Market XL Portfolio L.P. (Cayman Islands)	ABN AMRO Bank N.V. (Netherlands)	Counts 3 and 5
21	***Picard v. ABN AMRO Bank (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Bank (Ireland) Ltd.) and ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd***	10-5355-SMB 11-cv-6877-JSR	Latham & Watkins LLP	Kingate Global Fund (BVI)	ABN AMRO Bank (Ireland) Ltd. (Ireland) and ABN AMRO Custodial Services (Ireland) Ltd. (Ireland)	Count 4
22a	***Picard v. Sonja Kohn, Erwin Kohn, Netty Blau, Robert Alain Kohn a/k/a Avraham Ze'ev Kahan, Rachel Kohn, Rina Hartstein, Moishe Hartstein, Mordechai Landau, Yvonne Landau, Michael Kohn, Nicole Herzog, Erko Inc., Palladium Capital Advisors LLC, Windsor IBC, Inc., Eurovaleur, Inc., Infovaleur, Inc., Yakov Lantzits-ky, Techno Development and Research S.R.L., I-Tech-nology Solutions, Inc., Renato Florio, Mariadelmar Raule, Tecno Development & Research Ltd., Shlomo (Momy) Amselem, Herald Asset Management Ltd., Franco Mugnai, Paul de Sury, Daniele Cosulich, 20:20 Medici AG f/k/a Bank Medici AG, Absolute Portfolio Management Ltd., Medicifinanz Consulting GMBH, Medici S.R.L., Medici Cayman Island Ltd., Bank Medici AG (Gibraltar), Peter Scheithauer, Robert Reuss, Helmuth Frey, Manfred Kastner, Josef Duregger, Andreas Schindler, Susanne Giefing, Unicredit Bank Austria AG, Gerhard Randa, Stefan Zapotocky, Friedrich***	10-5411-SMB 12-cv-2161-JSR	Sullivan & Worcester LLP	Herald Fund SPC (Cayman Islands)	UniCredit Bank Austria AG (Austria)	Counts 14-19

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
	Kadrnoska, Ursula Radel-Leszczynski, Werner Kretschmer, Wilhelm Hemetsberger, Peter Fischer, Harald Nograsek, Bank Austria Worldwide Fund Management Ltd., Bank Austria Cayman Islands Ltd., Unicredit S.P.A., Alessandro Profumo, Gianfranco Gutty, Pioneer Global Asset Management, S.P.A., Sofipo Austria GMBH, M-Tech Services GMBH, Marketinc Strategies Ltd., Eastview Services Ltd., Systor S.A., IT Resources, Brightlight Trading Ltd., Fintechnology Ltd., Tonga International S.A., Lifetrust AG, Privatlife AG, Starvest Anstalt, New Economy.Tech S.A., RTH AG, Ecoinfo GMBH, Redcrest Investments Inc., Line Group Ltd., Line Management Services Ltd., Line Holdings Ltd., Herald Consult Ltd., Sharei Halacha Jerusalem Inc., John and Jane Doe Defendants 1-100					
22b	***Picard v. Sonja Kohn, et al. (see 22a above)***	10-5411-SMB 12-cv-2240-JSR	Skadden, Arps, Slate, Meagher, & Flom LLP	Herald Fund SPC (Cayman Islands), Herald Asset Management Ltd. (Cayman Islands)	Unicredit S.p.A. (Italy), Pioneer Global Asset Management (Italy)	Counts 5, 14-19

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
22c	***Picard v. Sonja Kohn, et al. (see 22a above)***	10-5411-SMB 12-cv-2639-JSR	Sheldon Eisenberger	Tecno Gibraltar (Gibraltar), Tecno Italy (Italy), UniCredit Bank Austria AG (Austria), and Herald Fund SPC (Cayman Islands)	Starvest Anstalt (Lichtenstein), Lifetrust AG (Lichtenstein), Netty Blau (Austria), Mordechai Landau (Israel), Yvonne Landau (Austria), Rachel Kohn (Israel), Michael Kohn (Austria), Nicole Herzog (Australia), Herald Asset Management (Cayman Islands), Tecno Development & Research (Italy/Gibraltar), Shlomo (Momy) Amselem (Israel), 20:20 Medici (Austria), Medici Cayman Islands (Cayman Islands), MediciFinanz Consulting GmbH (Germany), Medici S.r.l (Italy), Herald Consult Ltd. (Gibraltar)	Counts 4, 5 and 13-19

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
23	***Picard v. Pictet et Cie***	11-1724-SMB 12-cv-3402-JSR	Debevoise & Plimpton LLP	Kingate Global Fund Ltd. (BVI)., Kingate Euro Fund Ltd. (BVI), Asphalia Fund Ltd. (Cayman Islands), Fairfield Sentry Ltd. (BVI), Fairfield Sigma Ltd. (BVI), Fairfield Lambda Ltd. (BVI), Rye Select Broad Market Portfolio Ltd. (Cayman Islands)[3]	Picet et Cie (Switz.)	All counts
24	***Picard v. Banque J. Safra (Suisse) SA***	11-1725-SMB 12-cv-2587-JSR	Sullivan & Cromwell LLP	Kingate Global Fund (BVI), Vizcaya Partners Ltd. (BVI), Rye Select Broad Market Portfolio Ltd. (Cayman Islands),[4] Ariel Fund Ltd. (Cayman Islands)	Banque J. Safra (Suisse) SA (Switz.)	All counts
25	***Picard v. Banque Syz & Co., SA***	11-2149-SMB 12-cv-2489-JSR	Cravath, Swaine & Moore LLP	Kingate Global (BVI), Kingate Euro (BVI), Fairfield Sentry (BVI), Fairfield Sigma (BVI)	Banque Syz & Co., SA (Switz.)	Count 1
26	***Picard v. Abu Dhabi Investment Authority***	11-2493-SMB 12-cv-2616-JSR	Quinn Emanuel Urquhart & Sullivan, LLP	Fairfield Sentry (BVI)	Abu Dhabi Investment Authority (United Arab Emirates)	All counts

[3] The specific Tremont fund is not identified in the complaint, but it was Rye Select Broad Market Portfolio Ltd. (Cayman Islands).

[4] The specific Tremont fund is not identified in the complaint, but it was Rye Select Broad Market Portfolio Ltd. (Cayman Islands).

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
27	***Picard v. Orbita Capital Return Strategy Ltd.***	11-2537-SMB 12-cv-2934-JSR	Dechert LLP	Fairfield Sentry (BVI)	Orbita Capital Return Strategy Ltd. (Cayman Islands)	All counts
28	***Picard v. Quilvest Finance Ltd.***	11-2538-SMB 12-cv-2580-JSR	Jones Day	Fairfield Sentry (BVI)	Quilvest Finance Ltd.(BVI)	All counts
29	***Picard v. Meritz Fire & Marine Insurance Co. Ltd.***	11-2539-SMB 12-cv-2878-JSR	Steptoe & Johnson LLP	Fairfield Sentry (BVI)	Meritz Fire & Marine Insurance Co. Ltd. (Korea)	All counts
30	***Picard v. Lion Global Investors Ltd.***	11-2540-SMB 12-cv-2349-JSR	Proskauer Rose LLP	Fairfield Sentry (BVI)	Lion Global Investors Ltd. (Singapore)	All counts
31	***Picard v. Unifortune Asset Management SGR SPA, and Unifortune Conservative Fund***	11-2553-SMB 12-cv-2485-JSR	Cravath, Swaine & Moore LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI),	Unifortune Conservative Fund (Italy), Unifortune Asset Management (Italy)	All counts
32	***Picard v. Cathay Life Insurance Co. Ltd.***	11-2568-SMB 12-cv-3489-JSR	Baker & McKenzie LLP	Fairfield Sentry (BVI)	Cathay Life Insurance Co. Ltd. (Taiwan)	All counts
33	***Picard v. Barclays Bank (Suisse) S.A., Barclays Bank S.A., and Barclays Private Bank & Trust Ltd.***	11-2569-SMB 12-cv-1882-JSR	Hogan Lovells US LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI)	Barclays Bank Suisse S.A. (Switz.), Barclays Bank S.A. (Spain), Barclays Private Bank & Trust Limited(Jersey)	All counts
34	***Picard v. Banca Carige, S.P.A.***	11-2570-SMB 12-cv-2408-JSR	Kasowitz, Benson, Torres, & Friedman LLP	Fairfield Sentry (BVI)	Banca Carige (Italy)	All counts
35	***Picard v. Banque Privee Espirito Santo S.A.***	11-2571-SMB 12-cv-2442-JSR	Flemming Zulack Williamson Zauderer LLP	Fairfield Sentry (BVI)	Banque Privee Espirito Santo S.A. (Switz.)	All counts
36	***Picard v. The Sumitomo Trust and Banking Co., Ltd.***	11-2573-SMB 12-cv-2481-JSR	Becker, Glynn, Muffly, Chassin & Hosinski LLP	Fairfield Sentry (BVI)	The Sumitomo Trust and Banking Co. Ltd. (Japan)	All counts
37	***Picard v. Atlantic Security Bank***	11-2730-SMB 12-cv-2980-JSR	Arnold & Porter LLP	Fairfield Sentry (BVI)	Atlantic Security Bank (Cayman Islands)	All counts
38	***Picard v. Trincaster Corporation***	11-2731-SMB 12-cv-2486-JSR	Cravath, Swaine & Moore LLP	Fairfield Sentry (BVI)	Trincaster (BVI)	All counts

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
39	***Picard v. Caceis Bank Luxembourg and Caceis Bank***	11-2758-SMB 12-cv-2434-JSR	Kelley Drye & Warren LLP	Fairfield Sentry (BVI), Harley International (Cayman Islands), Fairfield Sigma (BVI)	Caceis Bank Luxembourg (Lux.), Caceis Bank (France)	All counts
40	***Picard v. Nomura International PLC***	11-2759-SMB 12-cv-2443-JSR	Shearman & Sterling LLP	Harley International (Cayman Islands)	Nomura International PLC (UK)	All counts
41	***Picard v. ABN AMRO Bank N.V. (presently known as The Royal Bank of Scotland, N.V.) and ABN AMRO Bank (Switzerland) AG (f/k/a ABN AMRO Bank Schweiz)***	11-2760-SMB 12-cv-1939-JSR	Allen & Overy LLP	Fairfield Sentry (BVI), Harley International (Cayman Islands), Fairfield Sigma (BVI)	ABN AMRO Bank N.V. (Netherlands)	All counts
42	***Picard v. KBC Investments Ltd.***	11-2761-SMB 12-cv-2877-JSR	Sidley Austin LLP	Harley International (Cayman Islands)	KBC Investments Ltd. (UK)	All counts
43	***Picard v. Inteligo Bank Ltd. Panama Branch f/k/a/ Blubank Ltd. Panama Branch***	11-2763-SMB 12-cv-2364-JSR	Shearman & Sterling LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI)	Inteligo Bank Ltd. Panama Branch (Bahamas)	All counts
44	***Picard v. Somers Dublin Ltd. and Somers Nominees (Far East) Ltd.***	11-2784-SMB 12-cv-2430-JSR	Cleary Gottlieb Steen & Hamilton LLP	Fairfield Sentry (BVI), Harley International (Cayman Islands)	Somers Dublin (Ireland), Somers Nominees (Bermuda)	All counts
45	***Picard v. BNP Paribas Arbitrage SNC***	11-2796-SMB 12-cv-641-JSR	Cleary Gottlieb Steen & Hamilton LLP	Harley International (Cayman Islands)	BNP Paribas Arbitrage SNC (France)	All counts
46	***Picard v. Merrill Lynch Bank (Suisse) SA***	11-2910-SMB 12-cv-3487-JSR	Arnold & Porter LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI)	Merrill Lynch Bank (Suisse) S.A. (Switz.)	All counts
47	***Picard v. Bank Julius Baer & Co., Ltd.***	11-2922-SMB 12-cv-2311-JSR	McKool Smith P.C.	Fairfield Sentry (BVI), Fairfield Sigma (BVI), Fairfield Lambda (BVI)	Bank Julius Baer & Co., Ltd. (Switz.)	All counts

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
48	***Picard vs. LGT Bank in Liechtenstein Ltd.***	11-2929-SMB 13-cv-1394-JSR	Milbank, Tweed, Hadley & McCloy LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI)	LGT Bank in Liechtenstein Ltd. (Liechtenstein)	All counts
49	***Picard v. Fullerton Capital PTE Ltd.***	12-1004-SMB 12-cv-3488-JSR	Arnold & Porter LLP	Fairfield Sentry (BVI)	Fullerton Capital PTE (Singapore)	All counts
50	***Picard v. Banco Itau Europa Luxembourg S.A. and Banco Itau Europa International***	12-1019-SMB 12-cv-2432-JSR	Shearman & Sterling LLP	Fairfield Sentry (BVI), Kingate Global (BVI), Fairfield Sigma (BVI)	Banco Itau Europa Luxembourg S.A. (Lux.)	Counts 1 and 2
51	***Picard v. Grosvenor Investment Management Ltd., Grosvenor Private Reserve Fund Limited, Grosvenor Balanced Growth Fund Limited, and Grosvenor Aggressive Growth Fund Limited***	12-1021-SMB 12-cv-2351-JSR	Proskauer Rose LLP	Fairfield Sentry (BVI), Kingate Global (BVI)	Grosvenor Investment Management Ltd. (Bermuda), Grosvenor Private Reserve Fund Limited(Bermuda), Grosvenor Balanced Growth Fund Limited (Bermuda), Grosvenor Aggressive Growth Fund Ltd. (Bermuda)	All counts
52	***Picard v. Credit Agricole (Suisse) S.A. and Credit Agricole S.A. (a/k/a Banque du Credit Agricole)***	12-1022-SMB 12-cv-2494-JSR	Cleary Gottlieb Steen & Hamilton LLP	Fairfield Sentry (BVI), Kingate Global (BVI), Kingate Euro Fund (BVI), Fairfield Sigma Ltd. (BVI)	Crédit Agricole (Suisse) S.A. (Switz.), Crédit Agricole S.A. (France)	All counts
53	***Picard v. Arden Asset Management, Inc., Arden Asset Management LLC, and Arden Endowment Advisers, Ltd.***	12-1023-SMB 12-cv-2581-JSR	Seward & Kissel LLP	Fairfield Sentry (BVI), Kingate Global (BVI)	Arden Endowment Advisers, Ltd. (Cayman Islands)	All counts
54	***Picard v. SNS Bank N.V. and SNS Global Custody B.V.***	12-1046-SMB 12-cv-2509-JSR	Wilmer Cutler Pickering Hale and Dorr LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI), Fairfield Lambda (BVI)	SNS Bank N.V. (Netherlands), SNS Global Custody B.V. (Netherlands)	All counts

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
55	***Picard v. Six Sis AG***	12-1195-SMB 12-cv-5906-JSR	Chaffetz Lindsey LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI), Kingate Global (BVI), Kingate Euro (BVI)	SIX SIS AG (Switz.)	All counts
56	***Picard v. Multi-Strategy Fund Ltd and CDP Capital Tactical Alternative Investments***	12-1205-SMB 12-cv-4840-JSR	Friedman Kaplan Seiler & Adelman LLP	Fairfield Sentry (BVI), Kingate Global (BVI)	Multi-Strategy Fund Ltd. (Canada), CDP Capital Tactical Alternative Investments (Canada)	All counts
57	***Picard v. Lloyds TSB Bank PLC***	12-1207-SMB 12-cv-4722-JSR	Katten Muchin Rosenman LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI)	Lloyds TSB Bank plc (UK)	All counts
58	***Picard v. Schroder & Co. Bank AG***	12-1210-SMB 12-cv-4749-JSR	Ropes & Gray LLP	Fairfield Sentry (BVI), Kingate Global (BVI), Kingate Euro Fund (BVI), Fairfield Sigma (BVI)	Schroder & Co Bank AG (Switz.)	All counts
59	***Picard v. Union Securities Investment Trust Co., Ltd., Union USD Global Arbitrage Fund, Union USD Global Arbitrage A Fund, and Union Arbitrage Strategy Fund***	12-1211-SMB 13-cv-4429 - JSR	Sheppard Mullin Richter & Hampton LLP	Fairfield Sentry (BVI)	Union Securities Investment Trust Co. (Taiwan), Union Global Fund (Taiwan), Union Global A Fund (Taiwan), Union Strategy Fund (Taiwan)	All counts
60	***Picard v. Bank Hapoalim B.M. and Bank Hapoalim (Switzerland) Ltd.***	12-1216-SMB 12-cv-6187-JSR	Herbert Smith Freehills New York LLP	Fairfield Sentry (BVI), Kingate Global Fund (BVI)	Bank Hapoalim B.M. (Israel), Bank Hapoalim (Switzerland) Ltd. (Switz.)	All counts
61	***Picard v. Citivic Nominees Ltd.***	12-1513-SMB 12-cv-7228-JSR	Cleary Gottlieb Steen & Hamilton LLP	Fairfield Sentry (BVI), Kingate Global (BVI)	Citivic Nominees Ltd. (UK)	All counts

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
62	***Picard v. Standard Chartered Financial Services (Luxembourg) S.A. (f/k/a American Express Financial Services (Luxembourg) S.A., and f/k/a American Express Bank (Luxembourg) S.A., as represented by its liquidator Hanspeter Kramer), Standard Chartered Bank International (Americas) Ltd. (f/k/a American Express International), and Standard Chartered International (USA) Ltd. (f/k/a American Express Bank Ltd.) (moving defendants: Standard Chartered Financial Services(Luxembourg) S.A.***	12-1565-SMB 12-cv-6292-JSR	Sullivan & Cromwell LLP	Fairfield Sentry (BVI), Kingate Global (BVI)	Standard Chartered Financial Services (Luxembourg) S.A. (Lux.)	Counts 1and 2
63	***Picard v. BNP Paribas S.A., BNP Paribas (Suisse) S.A. (individually and as Successor in Interest to BNP Paribas Private Bank (Switzerland) S.A. and as Successor in Interest to United European Bank), BNP Paribas Arbitrage SNC, BNP Paribas Bank & Trust (Canada), BNP Paribas Bank & Trust Cayman Ltd., BGL BNP Paribas Luxembourg S.A. (as Successor in Interest to BNP Paribas Luxembourg S.A.), BNP Paribas Securities Services – Succursale de Luxembourg, and BNP Paribas Securities Services S.A.***	12-1576-SMB 12-cv-5796-JSR	Cleary Gottlieb Steen & Hamilton LLP	Fairfield Sentry Ltd. (BVI), Kingate Global Fund Ltd. (BVI), Kingate Euro Fund Ltd. (BVI), Rye Select Broad Market Portfolio Ltd. (Cayman Islands)	BNP Paribas S.A. (France), BNP Paribas Suisse S.A. (Switz.), BNP Paribas Arbitrage SNC (France), BNP Paribas Bank & Trust (Canada), BNP Paribas Bank & Trust Cayman Ltd. (Cayman Islands), BGL BNP Paribas Luxembourg S.A. (Lux.), BNP Paribas Securities Services — Succursale de Luxembourg (France), BNP Paribas Securities Services S.A. (France)	Counts 1, 2, 3 and 5
64a	***Picard v. UBS Deutschland AG (as Successor in Interest to Dresdner Bank LateinAmerika AG), and LGT Bank (Switzerland) Ltd. (as Successor in Interest to Dresdner Bank (Schweiz) AG)***	12-1577-SMB 12-cv-9380-JSR	Gibson, Dunn & Crutcher LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI)	Dresdner Bank LateinAmerika AG (Germany); UBS Deutschland AG (Germany)	Count 1

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
64b	***Picard v. UBS Deutschland AG, UBS Deutschland AG (as Successor in Interest to Dresdner Bank LateinAmerika AG), and LGT Bank (Switzerland) Ltd. (as Successor in Interest to Dresdner Bank (Schweiz) AG)***	12-1577-SMB 12-cv-9380-JSR	Milbank, Tweed, Hadley & McCloy LLP	Fairfield Sentry (BVI), Kingate Euro (BVI)	Dresdner Bank (Schweiz) AG (Switz.)	Counts 1 and 2
65	***Picard v. Barfield Nominees Ltd. and Northern Trust Corporation***	12-1669-SMB 12-cv-5278-JSR	Katten Muchin Rosenman LLP	Fairfield Sentry (BVI), Kingate Global (BVI)	Barfield Nominees Ltd. (Guernsey)	All counts
66	***Picard v. Societe Generale Private Banking (Suisse) S.A. (f/k/a SG Private Banking Suisse S.A.), Societe General Private Banking (Lugano-Svizzera) S.A. (f/k/a SG Private Banking (Lugano-Svizzera) S.A.), Socgen Nominees (UK) Ltd., Lyxor Asset Management S.A. (as Successor in Interest to Barep Asset Management S.A.), Societe Generale Holding de Participations S.A. (as Successor in Interest to Barep Asset Management S.A.), SG AM AI Premium Fund L.P. (f/k/ SG AM Alternative Diversified U.S. L.P.), Lyxor Asset Management Inc. (f/k/a SGAM Asset Management, Inc. and as General Partner of SG AM AI Premium Fund L.P.), SG Audace Alternatif (f/k/a/ SGAM AI Audace Alternatif), SGAM AI Equilibrium Fund (f/k/a SGAM Alternative Multimanager Diversified Fund), Lyxor Premium Fund (f/k/a SGAM Alternative Diversified Premium Fund), Societe Generale S.A. (as Trustee for Lyxor Premium Fund), Societe Generale Bank & Trust S.A., OFI MGA Alpha Palmares (f/k/a Oval Alpha Palmares), Oval Palmares Europlus, UMR Select Alternatif, and Bank Audi S.A.M.- Audi Saradar Group (f/k/a Dresdner Bank Monaco S.A.M)***	12-1677-SMB 12-cv-8860-JSR	Flemming Zulack Williamson Zauderer LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI), Fairfield Lambda (BVI), Kingate Global (BVI)	Societe Generale Private Banking (Suisse) S.A. (Switz.), Societe Generale Private Banking (Lugano-Svizzera) S.A. (Switz.), Socgen Nominees (UK) Ltd. (UK), Lyxor Asset Management S.A. (France), Societe Generale Holding de Participations S.A. (France), SG Audace Alternatif (France), SGAM AI Equilibrium Fund (Lux.), Lyxor Premium Fund (Ireland), Societe Generale S.A (France), Societe Generale Bank & Trust S.A. (Lux.)	Counts 1 - 4

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
67	***Picard v. Intesa Sanpaolo S.p.A. (as Successor in Interest to Banca Intesa SPA), Eurizon Capital SGR SPA (as Successor in Interest to Eurizon Investmenti SGR SPA, f/k/a Nextra Investment Management SGR SPA, and Eurizon Alternative Investments SGR SPA, f/k/a Nextra Alternative Investments SGR SPA), Eurizon Low Volatility (f/k/a Nextra Low Volatility), Eurizon Low Volatility II (f/k/a/ Nextra Low Volatility II), Eurizon Low Volatility PB (f/k/a Nextra Low Volatility PB), Eurizon Medium Volatility (f/k/a Nextra Medium Volatility), Eurizon Medium Volatility II (f/k/a Nextra Medium Volatility II), Eurizon Total Return (f/k/a Nextra Total Return)***	12-1680-SMB 12-cv-7157 and 12-cv-6291-JSR	Davis Polk & Wardwell LLP	Fairfield Sentry (BVI), Kingate Global (BVI), Kingate Euro (BVI)	Eurizon Capital SGR S.p.A. (Italy), Eurizon Low Volatility (Italy), Eurizon Low Volatility II (Italy), Eurizon Low Volatility PB (Italy), Eurizon Medium Volatility (Italy), Eurizon Medium Volatility II (Italy), Eurizon Total Return (Italy)	Counts 1-2

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
68a	***Picard v. Banque Degroof SA/NV (a/k/a Banque Degroof Bruxelles a/k/a Bank Degroof SA/NV), Banque Degroof Luxembourg S.A., Banque Degroof France S.A. (f/k/a Banque Degroof Et Phillipe S.A.), Degroof Gestion Institutionnelle Luxembourg S.A., Elite-Stability Fund SICAV and Elite-Stability Fund SICAV Stablerock Compartment (as represented by their Liquidator Pierre Delandmeter), Pierre Delanmeter (in his capacity as Liquidator of Elite-Stability Fund SICAV and Elite-Stability Fund SICAV Stablerock Compartment), Access International Advisors LLC, Access Management Luxembourg S.A. (f/k/a Access International Advisors (Luxembourg) S.A., and as represented by its Liquidator Fernand Entringer), Fernand Entringer (in his capacity as Liquidator of Access Management Luxembourg S.A. (f/k/a Access International Advisors (Luxembourg) S.A.), Aforge Finance Holding, Aforge Finance, Aforge Capital Management S.A., Aforge Gestion***	12-1691-SMB 12-cv-8709-JSR	Otterbourg, Steindler, Houston & Rosen, P.C.	Fairfield Sentry (BVI), Fairfield Sigma (BVI), Luxalpha SICAV (Lux.), Groupement Financier Ltd. (BVI), Kingate Euro (BVI) (directly or indirectly through Elite-Stability Fund SICAV (Lux.) and/or Elite-Stability Fund SICAV Stablerock Compartment (Lux.))	Banque Degroof SA/NV (Belgium), Banque Degroof Luxembourg S.A. (Lux.), Banque Degroof France S.A. (France), Degroof Gestion Institutionnelle Luxembourg S.A. (Lux.), Aforge Finance Holding S.A. (France), Aforge Finance S.A. (France), Aforge Gestion S.A. (France), Aforge Capital Management S.A. (Switz.)	Counts 1, 2, 3, 4 and 6
68b	***Picard v. Banque Degroof SA/NV (a/k/a Banque Degroof Bruxelles a/k/a Bank Degroof SA/NV) et al. (see 68a above)***	12-1691-SMB 12-cv-8709-JSR	Katten Muchin Rosenman LLP	Groupement Financier Ltd. (BVI), Groupement Financier Levered Ltd. (BVI), Luxalpha SICAV (Lux.), Oreades SICAV (Lux.), Elite-Stability Fund SICAV (Lux.), Elite-Stability Fund SICAV Stablerock Compartment (Lux.)	Elite-Stability Fund SICAV (Lux.), Elite-Stability Fund SICAV Stablerock Compartment (Lux.), Access Management Luxembourg S.A. (Lux.)	Counts 2, 3, 5 and 6

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
69	***Picard v. Lombard Odier Darier Hentsch & Cie***	12-1693-SMB 12-cv-8858-JSR	Flemming Zulack Williamson Zauderer LLP	Fairfield Sentry (BVI), Kingate Global (BVI), Fairfield Sigma (BVI)	Lombard Odier (Switz.)	All counts
70	***Picard v. Banque Cantonale Vaudoise***	12-1694-SMB 12-cv-8816-JSR	Flemming Zulack Williamson Zauderer LLP	Fairfield Sentry (BVI)	Banque Cantonale Vaudoise (Switz.)	All counts
71	***Picard v. Bordier & Cie***	12-1695-SMB 12-cv-8861-JSR	Flemming Zulack Williamson Zauderer LLP	Fairfield Sentry (BVI), Kingate Global (BVI), Kingate Euro (BVI)	Bordier & Cie (Switz.)	All counts
72a	***Picard v. ABN AMRO Fund Services (Isle of Man) Nominees Ltd. (f/k/a Fortis (Isle of Man) Nominees Ltd.), Platinum All Weather Fund Ltd., and Odyssey***	12-1697-SMB 12-cv-6290-JSR	Tannenbaum Helpern Syracuse & Hirschtritt LLP	ABN AMRO Fund Services (Isle of Man) Nominees Ltd. (Isle of Man)	Odyssey (BVI/Isle of Man)	Count 1
72b	***Picard v. ABN AMRO Fund Services (Isle of Man) Nominees Limited. (f/k/a Fortis (Isle of Man) Nominees Ltd.), Platinum All Weather Fund Ltd., and Odyssey***	12-1697-SMB 12-cv-9115-JSR	Latham & Watkins LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI)	ABN AMRO Fund Services (Isle of Man) Nominees Limited (Isle of Man)	Count 1
73	***Picard v. Royal Bank of Canada, Guernroy Ltd., Royal Bank of Canada (Channel Islands) Ltd., Royal Bank of Canada Trust Company (Jersey) Ltd., Royal Bank of Canada (Asia) Ltd., Royal Bank of Canada (Suisse) S.A., RBC Dominion Securities Inc., and RBC Alternative Assets, L.P.***	12-1699-SMB 12-cv-4938-JSR	Katten Muchin Rosenman LLP	Fairfield Sentry (BVI), Kingate Global Fund (BVI), Rye Select Broad Market Portfolio Ltd. (Cayman Islands)	Royal Bank of Canada (Canada), Guernroy Ltd. (Guernsey), Royal Bank of Canada (Channel Islands) Ltd. (Guernsey), Royal Bank of Canada Trust Company (Jersey) Ltd. (Jersey), Royal Bank of Canada (Asia) Ltd. (Singapore), Royal Bank of Canada (Suisse) S.A. (Switz.), RBC Dominion Securities Inc. (Canada)	Counts 1, 2 and 3

	CASE NAME	ADVERSARY/ CIVIL NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES (LOCATION)	COUNTS SUBJECT TO MOTION
74	***Picard v. Caprice International Group, Inc., Citibank (Switzerland) Ltd., Eric Schiffer D/B/A Desert Rose Ltd., Pine Cliffs Investment Ltd., Cenard Investments Ltd., and Advanced Strategies Ltd.***	12-1700-SMB 12-cv-7230-JSR	Cleary Gottlieb Steen & Hamilton LLP	ZCM Asset Holding Company (Bermuda) LLC (Bermuda)	Citibank (Switzerland) AG (Switz.)[5]	Count 1

[5] This transferee is referred to as Citibank (Switzerland) Ltd. in the caption and as both Citibank (Switzerland) Ltd. and Citibank (Switzerland) AG in the body of the complaint.

EXHIBIT B

ADDITIONAL EXTRATERRITORIALITY DEFENDANTS[1, 2]

	CASE NAME	ADVERSARY NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	COUNTS AGAINST FSTs SUBJECT TO MOTION
1a	***Picard v. Federico Ceretti, Carlo Grosso, Kingate Global Fund Ltd., Kingate Euro Fund Ltd., Kingate Management Ltd., FIM Advisers LLP, FIM Ltd., Citi Hedge Fund Services Ltd., First Peninsula Trustees Ltd. (individually and as trustee of the Ashby Trust), The Ashby Trust, Ashby Investment Services Ltd., Alpine Trustees Ltd. (individually and as trustee of El Prela Trust), Port of Hercules Trustees Ltd. (individually, and as trustee of El Prela Trust), El Prela Trust, El Prela Group Holding Services, Ashby Holdings Services Ltd., El Prela Trading Investments Ltd., and HSBC Bank Bermuda Ltd.***	09-1161-SMB	Chaffetz Lindsey LLP	Kingate Global (BVI), Kingate Euro (BVI)	Kingate Management Ltd. (Bermuda)	Count Nine
1b	***Picard v. Federico Ceretti, et al. (see 1a above)***	09-1161-SMB	Cleary Gottlieb Steen & Hamilton LLP	Kingate Global (BVI), Kingate Euro (BVI)	Citi Hedge Fund Services Ltd. (Bermuda)	Count Nine
1c	***Picard v. Federico Ceretti, et al. (see 1a above)***	09-1161-SMB	Cleary Gottlieb Steen & Hamilton LLP	Kingate Global (BVI), Kingate Euro (BVI)	HSBC Bank Bermuda Limited (Bermuda)	Count Nine

[1] These Schedules show the jurisdiction under whose laws the transferors and transferees that are not natural persons are organized, and the citizenship of the transferors and transferees that are natural persons, in each case as of the time of the transfers, as alleged in the complaints or as agreed by the Trustee and the transferee. The parties do not agree, and nothing in this Order shall preclude any party from presenting any argument, concerning the extent to which such jurisdiction of organization or citizenship is conclusive in determining whether a transferor is a "foreign transferor," or a transferee is a "foreign transferee," for purpose of the Extraterritoriality Order or otherwise.

[2] In the column furthest to the right, "All Counts" means all counts in the adversary proceeding. An identification of counts that is underlined, as in "Count Nine," indicates that the counts subject to the motion include all the claims against the Foreign Subsequent Transferees in the entry, other than counts that were previously dismissed.

	CASE NAME	ADVERSARY NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	COUNTS AGAINST FSTs SUBJECT TO MOTION
2a	***Picard v. HSBC Bank PLC, HSBC Holdings PLC, HSBC Services (Luxembourg) S.A., HSBC Institutional Trust Services (Ireland) Ltd., HSBC Institutional Trust Services (Bermuda) Ltd.), HSBC Bank USA, N.A., HSBC Securities Services (Bermuda) Ltd., HSBC Bank (Cayman) Ltd., HSBC Private Bank Holdings (Suisse) S.A., HSBC Private Bank (Suisse) S.A., HSBC Bank Bermuda Ltd., Herald Fund SPC, Herald (LUX) SICAV, Primeo Fund, Alpha Prime Fund Ltd., Senator Fund SPC, Hermes International Fund Ltd., Lagoon Investment Ltd., Thema Fund Ltd., Thema Wise Investments Ltd., Thema International Fund PLC, Geo Currencies Ltd. S.A, Herald Aset Management Ltd., 20:20 Medici AG, Unicredit Bank Austria AG, BA Worldwide Fund Management Ltd., Eurovaleur, Inc., Pioneer Alternative Investment Management Ltd., Eurovaleur, Inc., Pioneer Alternative Investment Management Ltd., Alpha Prime Asset management Ltd., Regulus Asset Management Ltd., Carruba Asset Management Ltd., Genevalor, Benbassat et cie, Hermes Asset Management Ltd., Thema Asset Management (Bermuda) Ltd., Thema Asset Management Ltd., Equus Asset Management Ltd., Equus Asset Management Partners, L.P., Aurella Fund Management Ltd., Ursala Radel-Leszcynski, Sonja Kohn, Erwin Kohn, Mario Benbassat, Alberto Benbasset, Stephane Benbasset, David T. Smith, Roberto Nespolo, Laurent Mathysen-Gerst, Oliveir Ador, Pascal Cattaneo, Vladimir Stepczynski, Jean-Marc Wenger, Lagoon Investment Trust, UniCredit S.p.A., Inter Asset Management, Inc., GTM***	09-1364-SMB	Goodwin Procter LLP	Thema Asset Management Ltd. (BVI)	T+M Trusteeship & Management Services S.A. (Switz.)	Counts Two and Ten

	CASE NAME	ADVERSARY NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	COUNTS AGAINST FSTs SUBJECT TO MOTION
	Management Services Corp. N.V., T+M Trusteeship & Management Services S.A., Aurella Asset Management Partners, Cape Investment Advisors Ltd., and Tereo Trust Company Ltd.					
2b	***Picard v. HSBC Bank PLC, et al. (see above)***	09-1364-SMB	Goodwin Procter LLP	Hermes Asset Management Ltd. (Bermuda)	GTM Management Services Corp. N.V. (Curacao)	Counts Two and Ten
3a	***Picard v. UBS AG, UBS (Luxembourg) S.A., UBS Fund Services (Luxembourg) S.A., UBS Third Party Manage-ment Company S.A., Access International Advisors LLC, Access International Advisors Ltd., Access Management Luxembourg SA (f/k/a Access Internation-al Advisors (Luxembourg) SA) as represented by its Liquidator Maitre Fernand Entringer, Access Partners SA as represented by its Liquidator Maitre Fernand Entringer, Patrick Littaye, Claudine Magon de la Villehuchet (a/k/a Claudine de la Villehuchet) in her capacity as Executrix under the Will of Thierry Magon de la Villehuchet (a/k/a Rene Thierry de la Villehuchet), Claudine Magon de la Villehuchet (a/k/a Claudine de la Villehuchet) individually as the sole beneficiary under the Will of Thierry Magon de la Villehuchet (a/k/a Rene Thierry de la Villehuchet), Pierre Delandmeter, Theodore Dumbauld, Luxalpha SICAV as represented by its Liquidators Maitre Alain Rukavina and Paul Laplume, Maitre Alain Rukavina and Paul Laplume, in their capacities as liquidators and representatives of Luxalpha SICAV, and Groupement Financier Ltd.***	10-4285-SMB	Gibson, Dunn & Crutcher LLP	Luxalpha SICAV (Lux.), Groupement Financier Ltd. (BVI)	UBS AG (Switz.), UBS (Luxembourg) S.A. (Lux.), UBS Fund Services (Luxembourg) S.A. (Lux.), UBS Third Party Management Company S.A. (Lux.)	Counts Two and Nine

	CASE NAME	ADVERSARY NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	COUNTS AGAINST FSTs SUBJECT TO MOTION
3b	***Picard v. UBS AG, et al. (see 3a above)***	10-4285-SMB	Katten Muchin Rosenman LLP	Luxalpha SICAV (Lux.), Groupement Financier Ltd. (BVI)	Access International Advisors Ltd. (Bahamas), Access Management Luxembourg S.A. (Lux.), Access Partners S.A. (Lux.), Patrick Littaye (Belgium)	Counts Two and Nine
3c	***Picard v. UBS AG, et al. (see 3a above)***	10-4285-SMB	Friedman Kaplan Seiler & Adelman LLP	Luxalpha SICAV (Lux.), Groupement Financier Ltd. (BVI)	Pierre Delandmeter (Lux.)	Counts Two and Nine
4	***Picard v. UBS AG, UBS (Luxembourg) S.A., UBS Fund Services (Luxembourg) S.A., UBS Third Party Management Company S.A., M&B Capital Advisers Sociedad de Valores, S.A., M&B Capital Advisers Gestion SGIIC S.A., Reliance Management (BVI) Ltd., Reliance International Research LLC, Reliance Management (Gibraltar) Ltd., Luxembourg Investment Fund and Luxembourg Investment Fund U.S. Equity Plus (as represented by their Liquidators Maitre Alain Rukavina and Paul Laplume), Maitre Alain Rukavina and Paul Laplume (in their capacities as liquidators and representatives of Luxembourg Investment Fund and Luxembourg Investment Fund U.S. Equity Plus), and Landmark Investment Fund Ireland***	10-5311-SMB	Gibson, Dunn & Crutcher LLP	Luxembourg Investment Fund U.S. Equity Plus (Lux.)	UBS AG (Switz.), UBS (Luxembourg) S.A. (Lux.), UBS Fund Services (Luxembourg) S.A. (Lux.), UBS Third Party Management Company S.A. (Lux.)	Counts Two and Eleven
5	***Picard v. National Bank of Kuwait S.A.K.***	11-2554-SMB	King & Spalding LLP	Fairfield Sentry (BVI)	National Bank of Kuwait S.A.K.(Kuwait)	All Counts

	CASE NAME	ADVERSARY NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	COUNTS AGAINST FSTs SUBJECT TO MOTION
6a	***Picard v. Korea Exchange Bank, individually and as Trustee for Korea Global All Asset Trust I-1, and as Trustee for Tams Rainbow Trust III, and Korea Investment Trust Management Company***	11-2572-SMB	King & Spalding LLP	Fairfield Sentry (BVI)	Korea Exchange Bank, as Trustee (South Korea)	All Counts
6b	***Picard v. Korea Exchange Bank, et al. (see 6a above)***	11-02572-SMB	Wollmuth Maher & Deutsch LLP	Fairfield Sentry (BVI)	Korea Investment Trust Management Company (South Korea)	All Counts
7	***Picard v. Falcon Private Bank Ltd. (f/k/a AIG Private Bank AG)***	11-2923-SMB	Pillsbury Winthrop Shaw Pittman LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI)	AIG Privat Bank AG (Switz.)	All Counts

	CASE NAME	ADVERSARY NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	COUNTS AGAINST FSTs SUBJECT TO MOTION
8	***Picard v. Credit Suisse AG, Credit Suisse AG, Nassau Branch, Credit Suisse AG, Nassau Branch Wealth Management, Credit Suisse AG, Nassau Branch LATAM Investment Banking, Credit Suisse Wealth Management Ltd., Credit Suisse (Luxembourg) SA, Credit Suisse International Ltd., Credit Suisse Nominees (Guernsey) Ltd., Credit Suisse London Nominees Ltd., Credit Suisse (UK) Ltd., and Credit Suisse Securities (USA) LLC***	11-2925-SMB	O'Melveny & Myers LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI), Fairfield Lambda (BVI), Kingate Global (BVI), Kingate Euro (BVI)	Credit Suisse AG (Switz.), Credit Suisse AG, Nassau Branch (Bahamas), Credit Suisse AG, Nassau Branch Wealth Management (Bahamas), Credit Suisse AG, Nassau Branch LATAM Investment Banking (Bahamas), Credit Suisse Wealth Management Ltd. (Bahamas), Credit Suisse (Luxembourg) SA (Lux.), Credit Suisse International Ltd. (UK), Credit Suisse Nominees (Guernsey) Ltd. (Guernsey), Credit Suisse London Nominees Ltd. (UK), Credit Suisse (UK) Ltd. (UK)	Counts One through Five
9	***Picard v. Public Institution for Social Security***	12-1002-SMB	Goodwin Procter LLP	Fairfield Sentry (BVI)	Public Institute for Social Security (Kuwait)	All Counts
10	***Picard v. SICO Ltd.***	12-1005-SMB	Cleary Gottlieb Steen & Hamilton LLP	Kingate Global (BVI), Fairfield Sentry (BVI)	SICO Ltd. (BVI)	All Counts
11	***Picard v. Solon Capital Ltd.***	12-1025-SMB	O'Melveny & Myers LLP	Kingate Global (BVI)	Solon Capital (Bermuda)	All Counts

	CASE NAME	ADVERSARY NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	COUNTS AGAINST FSTs SUBJECT TO MOTION
12	***Picard v. Koch Industries, Inc., as successor in interest to Koch Investment (UK) Company***	12-1047-SMB	Orrick, Herrington & Sutcliffe LLP	Fairfield Sentry (BVI)	Koch Investment (UK) Company (UK)	Count One
13	***Picard v. Kookmin Bank***	12-1194-SMB	King & Spalding LLP	Fairfield Sentry (BVI)	Kookmin Bank, as Trustee (South Korea)	All Counts
14	***Picard v. BSI AG, individually and as successor in interest to Banco del Gottardo***	12-1209-SMB	Wilmer Cutler Pickering Hale and Dorr LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI)	BSI AG (Switz.), Banco del Gottardo (Switz.)	All Counts
15	***Picard v. Mistral (SPC)***	12-1273-SMB	O'Melveny & Myers LLP	Kingate Global (BVI), Rye Select Broad Market Portfolio Ltd. (Cayman Islands)	Mistral (SPC) (Cayman Islands)	All Counts
16	***Picard v. Zephyros Ltd.***	12-1278-SMB	O'Melveny & Myers LLP	Kingate Global (BVI), Rye Select Broad Market Portfolio Ltd. (Cayman Islands)	Zephyros Ltd. (Cayman Islands)	All Counts
17	***Picard v. Credit Suisse AG, as successor in interest to Clariden Leu AG and Bank Leu AG***	12-1676-SMB	O'Melveny & Myers LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI), Fairfield Lambda (BVI), Kingate Global (BVI)	Credit Suisse AG (Switz.), Clariden Leu AG (Switz.), Bank Leu AG (Switz.)	All Counts

	CASE NAME	ADVERSARY NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	COUNTS AGAINST FSTs SUBJECT TO MOTION
18a	***Picard v. Societe Generale Private Banking (Suisse) S.A. (f/k/a SG Private Banking Suisse S.A.), Societe General Private Banking (Lugano-Svizzera) S.A. (f/k/a SG Private Banking (Lugano-Svizzera) S.A.), Socgen Nominees (UK) Ltd., Lyxor Asset Management S.A. (as Successor in Interest to Barep Asset Management S.A.), Societe Generale Holding de Participations S.A. (as Successor in Interest to Barep Asset Management S.A.), SG AM AI Premium Fund L.P. (f/k/ SG AM Alternative Diversified U.S. L.P.), Lyxor Asset Management Inc. (f/k/a SGAM Asset Management, Inc. and as General Partner of SG AM AI Premium Fund L.P.), SG Audace Alternatif (f/k/a/ SGAM AI Audace Alternatif), SGAM AI Equilibrium Fund (f/k/a SGAM Alternative Multimanager Diversified Fund), Lyxor Premium Fund (f/k/a SGAM Alternative Diversified Premium Fund), Societe Generale S.A. (as Trustee for Lyxor Premium Fund), Societe Generale Bank & Trust S.A., OFI MGA Alpha Palmares (f/k/a Oval Alpha Palmares), Oval Palmares Europlus, UMR Select Alternatif, and Bank Audi S.A.M.- Audi Saradar Group (f/k/a Dresdner Bank Monaco S.A.M)***	12-1677-SMB	Dechert LLP	Kingate Global (BVI)	Bank Audi S.A.M.- Audi Saradar Group (Monaco)	All Counts
18b	***Picard v. Societe Generale Private Banking (Suisse) S.A., et al. (see 14a above)***	12-1677-SMB	Bond Schoeneck & King, PLLC	Fairfield Sentry (BVI)	OFI MGA Alpha Palmares (France), Oval Palmares Europlus (France), UMR Select Alternatif (France)	All Counts

	CASE NAME	ADVERSARY NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	COUNTS AGAINST FSTs SUBJECT TO MOTION
19	***Picard v. Intesa Sanpaolo S.p.A. (as Successor in Interest to Banca Intesa SPA), Eurizon Capital SGR SPA (as Successor in Interest to Eurizon Investmenti SGR SPA, f/k/a Nextra Investment Management SGR SPA, and Eurizon Alternative Investments SGR SPA, f/k/a Nextra Alternative Investments SGR SPA), Eurizon Low Volatility (f/k/a Nextra Low Volatility), Eurizon Low Volatility II (f/k/a/ Nextra Low Volatility II), Eurizon Low Volatility PB (f/k/a Nextra Low Volatility PB), Eurizon Medium Volatility (f/k/a Nextra Medium Volatility), Eurizon Medium Volatility II (f/k/a Nextra Medium Volatility II), Eurizon Total Return (f/k/a Nextra Total Return)***	12-1680-SMB	Davis Polk & Wardwell LLP	Kingate Global (BVI)	Intesa Sanpaolo S.p.A. (Italy)	Count Two
20	***Picard v. EFG Bank S.A., f/k/a EFG Private Bank S.A., EFG Bank (Monaco) S.A.M., f/k/a EFG Eurofinanciere d'Investissements S.A.M. and EFG Bank & Trust (Bahamas) Ltd., as successor-in-interest to Banco Atlantico (Bahamas) Bank & Trust Ltd.***	12-1690-SMB	Dentons US LLP	Fairfield Sentry (BVI), Fairfield Sigma (BVI), Fairfield Lambda (BVI), Kingate Global (BVI)	EFG Bank S.A. (Switz.), EFG Bank Monaco S.A.M. (Monaco), EFG Bank & Trust Bahamas Ltd. (Bahamas)	All Counts
21	***Picard v. ABN AMRO Fund Services (Isle of Man) Nominees Ltd. (f/k/a Fortis (Isle of Man) Nominees Ltd.), Platinum All Weather Fund Ltd., and Odyssey***	12-1697-SMB	Arnold & Porter LLP	Fortis (Isle of Man) Nominees, Ltd. (Isle of Man)	Platinum All Weather Fund Limited (Cayman Islands)	Count One

	CASE NAME	ADVERSARY NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	COUNTS AGAINST FSTs SUBJECT TO MOTION
22	***Picard v. Banque Internationale à Luxembourg S.A. (f/k/a Dexia Banque Internationale à Luxembourg S.A.), individually and as successor in interest to Dexia Nordic Private Bank S.A., RBC Dexia Investor Services Bank S.A., RBC Dexia Investor Services Trust, RBC Dexia Investor Services España S.A., and Banque Internationale à Luxembourg (Suisse) S.A. (f/k/a Dexia Private Bank (Switz.) Ltd.)***	12-1698-SMB	Clifford Chance US LLP (for Banque Internationale à Luxembourg S.A. and Banque Internationale à Luxembourg (Suisse) S.A.), Wrobel Schatz & Fox LLP (for RBC Dexia Investor Services Bank S.A., RBC Dexia Investor Services Trust, and RBC Dexia Investor Services España S.A.)	Fairfield Sentry (BVI), Fairfield Sigma (BVI), Kingate Global (BVI), Rye Select Broad Market Portfolio Ltd. (Cayman Islands)	Banque Internationale à Luxembourg S.A. (Lux.), RBC Dexia Investor Services Bank S.A. (Lux.), RBC Dexia Investor Services Trust (Canada), RBC Dexia Investor Services España S.A. (Spain), Banque Internationale à Luxembourg (Suisse) S.A. (Switz.)	All Counts
23	***Picard v. Barreneche, Inc., Dove Hill Trust, Fairfield Greenwich Capital Partners, FG Investors Ltd., Fortuna Asset Management Inc., Invercounsel, S.L., Invercounsel USA LLC, Selecta Financial Corporation Inc., and Share Management LLC***	12-1702-SMB	Simpson Thacher & Bartlett LLP (for limited purposes only)	Fairfield Sentry (BVI), Fairfield Sigma (BVI), Fairfield Lambda (BVI), Fairfield Greenwich Ltd. (Cayman Islands), Fairfield Greenwich (Bermuda) Ltd. (Bermuda)	Dove Hill Trust (Singapore), FG Investors Ltd. (Cayman Islands)	All Counts
24	***Picard v. Parson Finance Panama S.A.***	11-02542-SMB	Kellner Herlihy Getty & Friedman LLP	Fairfield Sentry (BVI)	Parson Finance Panama S.A. (Panama)	All counts

	CASE NAME	ADVERSARY NUMBER	ATTORNEYS FOR FOREIGN SUBSEQUENT TRANSFEREES	FOREIGN TRANSFERORS (LOCATION)	FOREIGN SUBSEQUENT TRANSFEREES ("FSTs") (LOCATION)	COUNTS AGAINST FSTs SUBJECT TO MOTION
25	***Picard v. Lighthouse Investment Partners LLC, d/b/a Lighthouse Partners, Lighthouse Supercash Fund Limited, and Lighthouse Diversified Fund Limited***	11-02762-SMB	Loeb & Loeb LLP	Fairfield Sentry (BVI)	Lighthouse Diversified Fund Limited (Cayman)	All counts
26	***Picard v. Vontobel AG f/k/a Bank J. Vontobel & Co. AG, and Vontobel Asset Management Inc.***	12-01202-SMB	Wuersch and Gering LLP	Fairfield Sentry (BVI), Kingate Global (BVI), Kingate Euro (BVI)	Vontobel AG f/k/a Bank J. Vontobel & Co. AG (Switz.)	All counts
27	***Picard v. ZCM Asset Holding Company (Bermuda) LLC***	12-01512-SMB	Boies, Shiller & Flexner LLP and Paul, Weiss, Rifkind, Wharton & Garrison	Kingate Global (BVI), Fairfield Sentry (BVI)	ZCM Asset Holding Company (Bermuda) LLC (Bermuda)	All counts
28	***Picard v. UKFP (Asia) Nominees Ltd.***	12-01566-SMB	Mayer Brown LLP	Fairfield Sentry (BVI)	UKFP (Asia) Nominees Ltd. (BVI)	All counts
29	***Picard v. Safehand Investments, Strongback Holdings Corporation and PF Trustees Limited in its capacity as trustee of RD Trust***	12-01701-SMB	Morrison & Foerster LLP	Fairfield Greenwich Ltd. (Cayman), Fairfield Greenwich (Bermuda) Ltd. (Bermuda)	Safehand Investments (Cayman), Strongback Holdings Corporation (Malta), PF Trustees Limited in its capacity as trustee of RD Trust (Cayman)	All counts
30	***Picard v. First Gulf Bank***	11-02541-SMB	Chalos & Co., P.C.	Fairfield Sentry (BVI)	First Gulf Bank (UAE)	All counts

EXHIBIT C

Adversary Proceeding Number	Case Name	Replead	Discovery
09-01154	Picard v. Vizcaya Partners Limited	X	
09-01239	Picard v. Fairfield Sentry Limited	X	
09-01364	Picard v. HSBC Bank plc	X	
09-01365	Picard v. Thybo Asset Management Limited	X	X
10-04284	Picard v. Plaza Investments International Limited	X	X
10-04285	Picard v. UBS AG	X	
10-04287	Picard v. Cardinal Management	X	X
10-04330	Picard v. Square One Fund Ltd	X	X
10-04457	Picard v. Equity Trading Fund	X	X
10-04471	Picard v. Citrus Investment Holdings Ltd.	X	X
10-05120	Picard v. Oreades SICAV	X	X
10-05229	Picard v. Defender Limited*	X	X
10-05286	Picard v. Legacy Capital Ltd.	X	
10-05311	Picard v. UBS AG	X	
10-05345	Picard v. Citibank, N.A.	X	X
10-05346	Picard v. Merrill Lynch International	X	X
10-05348	Picard v. Nomura Bank International plc	X	X
10-05351	Picard v. Banco Bilbao Vizcaya Argentaria, S.A.	X	X
10-05353	Picard v. Natixis	X	X
10-05354	Picard v. ABN AMRO Bank, N.A.	X	X
10-05355	Picard v. ABN AMRO Bank (Ireland) Ltd.	X	X
10-05415	Picard v. American Securities Management, L.P.	X	
11-01724	Picard v. Pictet et Cie	X	
11-01725	Picard v. Banque J. Safra (Suisse) SA f/k/a Banque Jacob Safra (Suisse) SA	X	
11-01885	Picard v. Safra National Bank of New York	X	
11-02149	Picard v. Banque Syz & Co., SA	X	X
11-02493	Picard v. Abu Dhabi Investment Authority	X	X
11-02537	Picard v. Orbita Capital Return Strategy	X	X
11-02538	Picard v. Quilvest Finance Ltd.	X	X
11-02539	Picard v. Meritz Fire & Insurance Co. Ltd.	X	X
11-02540	Picard v. Lion Global Investors Limited	X	X
11-02541	Picard v. First Gulf Bank	X	X
11-02542	Picard v. Parson Finance Panama S.A.	X	X
11-02551	Picard v. Delta National Bank and Trust Company	X	X
11-02553	Picard v. Unifortune Asset Management SGR SpA	X	X
11-02554	Picard v. National Bank of Kuwait S.A.K.	X	X
11-02568	Picard v. Cathay Life Insurance Co. Ltd.	X	X
11-02569	Picard v. Barclays Bank (Suisse) S.A.	X	X
11-02570	Picard v. Banca Carige S.P.A.	X	X
11-02571	Picard v. Banque Privee Espirito Santo S.A.	X	X
11-02572	Picard v. Korea Exchange Bank	X	X
11-02573	Picard v. Sumitomo Trust and Banking Co., Ltd.	X	X
11-02730	Picard v. Atlantic Security Bank	X	X
11-02733	Picard v. Naidot & Co.	X	X
11-02759	Picard v. Nomura International plc	X	X
11-02760	Picard v. ABN Amro Bank N.V.	X	X
11-02761	Picard v. KBC Investments Limited	X	X
11-02762	Picard v. Lighthouse Investment Partners LLC	X	X

Adversary Proceeding Number	Case Name	Replead	Discovery
11-02763	Picard v. Inteligo Bank Ltd.	X	X
11-02784	Picard v. Somers Dublin Limited	X	X
11-02796	Picard v. BNP Paribas Arbitrage SNC	X	X
11-02910	Picard v. Merrill Lynch Bank (Suisse) SA	X	X
11-02922	Picard v. Bank Julius Baer & Co. Ltd.	X	X
11-02923	Picard v. Falcon Private Bank Ltd.	X	X
11-02929	Picard v. LGT Bank in Liechtenstein Ltd.	X	X
12-01002	Picard v. The Public Institution For Social Security	X	X
12-01004	Picard v. Fullerton Capital PTE Ltd.	X	X
12-01005	Picard v. SICO Limited	X	X
12-01019	Picard v. Banco Itau	X	X
12-01021	Picard v. Grosvenor Investment Management	X	X
12-01023	Picard v. Arden Asset Management	X	X
12-01046	Picard v. SNS Bank N.V.	X	X
12-01047	Picard v. Koch Industries Inc.	X	X
12-01048	Picard v. Banco General S.A.	X	X
12-01194	Picard v. Kookmin Bank	X	X
12-01195	Picard v. Six Sis AG	X	X
12-01202	Picard v. Vontobel AG	X	X
12-01205	Picard v. Multi Strategy Fund Ltd	X	X
12-01207	Picard v. Lloyds TSB Bank plc	X	X
12-01209	Picard v. BSI AG	X	X
12-01210	Picard v. Schroder & Co.	X	X
12-01211	Picard v. Union Securities	X	X
12-01216	Picard v. Bank Hapoalim	X	X
12-01512	Picard v. ZCM Asset Holding Co	X	X
12-01565	Picard v. Standard Chartered Financial Services	X	X
12-01566	Picard v. UKFP (Asia) Nominees Ltd.	X	X
12-01576	Picard v. BNP Paribas S.A.	X	X
12-01577	Picard v. Dresdner Bank	X	X
12-01690	Picard v. EFG Bank S.A.	X	X
12-01691	Picard v. Banque Degroof SA**	X	X
12-01693	Picard v. Lombard Odier Darier Hentsch & Cie	X	X
12-01694	Picard v. Banque Cantonale Vaudoise	X	X
12-01695	Picard v. Bordier & Cie	X	X
12-01697	Picard v. ABN AMRO Fund Services (Isle of Man) Nominees Limited	X	X
12-01700	Picard v. Caprice International Group Inc.	X	X
12-01701	Picard v. RD Trust	X	X
12-01702	Picard v. Barreneche, Inc.	X	X

Adversary Proceeding Number	Case Name	Replead	Discovery
Trustee Represented by Young Conway			
12-01680	Picard v. Intesa Sanpaolo SpA	X	X
12-01670	Picard v. Credit Agricole Corporate and Investment Bank	X	X
12-01669	Picard v. Barfield Nominees Limited	X	X
12-01022	Picard v. Credit Agricole (Suisse) S.A.	X	X
11-02758	Picard v. Caceis Bank Luxembourg	X	X
Trustee Represented by Windels Marx			
11-02731	Picard v. Trincaster Corporation	X	X
11-02925	Picard v. Credit Suisse AG, et al.	X	X
12-01025	Picard v. Solon Capital, Ltd.	X	X
12-01273	Picard v. Mistral (SPC)	X	X
12-01278	Picard v. Zephyros Limited	X	X
12-01676	Picard v. Credit Suisse AG	X	X
12-01677	Picard v. Societe Generale Private Banking (Suisse) S.A.	X	X
12-01698	Picard v. Banque Internationale À Luxembourg S.A.	X	X
12-01699	Picard v. Royal Bank of Canada	X	X

* - The Trustee seeks discovery from only the following specific defendant named in this adversary proceeding, Reliance Management (BVI) Ltd., and from its principal, Tim Brockmann.

** - The Trustee seeks discovery from only the following specific defendants named in this adversary proceeding: (i) Banque Degroof SA/NV (a/k/a Banque Degroof Bruxelles a/k/a Banque Degroof SA/NV); (ii) Banque Degroof Luxembourg SA; (iii) Banque Degroof France SA (a/k/a Banque Degroof et Phillipe SA); (iv) Degroof Gestion Institutionnelle Luxembourg SA; (v) Aforge Finance Holding; (vi) Aforge Finance; (vii) Aforge Capital Management SA; and (viii) Aforge Gestion.

EXHIBIT B

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Attorneys for Irving H. Picard, Trustee for the substantively consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FEDERICO CERETTI, et al., Defendants.	Adv. Pro. No. 09-1161 (SMB)

TRUSTEE'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO DEFENDANT KINGATE GLOBAL FUND, LTD.

PLEASE TAKE NOTICE that in accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to this adversary proceeding under the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the applicable local rules of the United States District Court for the Southern District of New York and this Court (the "Local Rules"), Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa ("SIPA"), and the substantively consolidated estate of Bernard L. Madoff, hereby demands that defendant Kingate Global Fund, Ltd., through the joint liquidators acting on its behalf, produce Documents responsive to the requests set forth herein and deliver the same to the office of Baker & Hostetler LLP, c/o Anthony M. Gruppuso, Esq., 45 Rockefeller Plaza, New York, New York 10111, within thirty (30) days of service.

DEFINITIONS

1. The rules of construction and definitions set forth in Local Rule 26.3, as adopted by Rule 7026-1 of the Bankruptcy Rules, are incorporated in their entirety.

2. "Action" means the civil action captioned *Picard v. Ceretti, et al.,* Adv. Pro. No. 09-01161, pending in the United States Bankruptcy Court for the Southern District of New York.

3. "Alpine Trustees" means Alpine Trustees Limited and anyone acting on behalf of or at the direction of Alpine Trustees Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

4. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope, as defined in Local Rule 26.3.

5. "Applicable Period" means the period beginning January 1, 1993 through December 31, 2009.

6. "Ashby Holdings" means Ashby Holdings Services Limited and anyone acting on behalf of or at the direction of Ashby Holdings Services Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

7. "Ashby Investment" means Ashby Investment Services Limited and anyone acting on behalf of or at the direction of Ashby Investment Services Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

8. "Bank Bermuda" means HSBC Bank Bermuda Limited and anyone acting on behalf of or at the direction of HSBC Bank Bermuda Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

9. "Bermuda Action" means that civil action commenced by Kingate Global Fund Ltd. and Kingate Euro Fund Ltd. against Kingate Management Limited and others in the Supreme Court of Bermuda, Civil Jurisdiction, Commercial List, bearing the caption *Kingate Global Fund Limited (in liquidation), et al. v. Kingate Management Limited, et al*., No. 2010:454.

10. "BLMIS" means Bernard L. Madoff Investment Securities LLC and anyone acting on behalf of or at the direction of Bernard L. Madoff Investment Securities LLC, including, but not limited to, current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers of the above specifically identified Persons, and any and all related entities, including without limitation: Abel Automatics, Inc.; Abel Holdings, LLC; Abtech Industries Inc.; BLM Air Charter LLC; Blumenfeld Development Group; BREA Associates LLC; Cohmad, Cohn, Delaire & Madoff, Inc.; Delta Fund I, L.P.; Madoff Brokerage & Trading Technologies LLC; Madoff Energy Holdings LLC; Madoff Energy III LLC; Madoff Energy IV LLC; Madoff Energy LLC; Madoff Family LLC (a/k/a Madoff Family Fund LLC); Madoff Realty LLC/Madoff Realty Associates/Madoff Realty Trust; Madoff Securities International Ltd.; Madoff Securities International LLC; Madoff Technologies LLC; Primex Holdings LLC; Realty Associates Madoff II; The Madoff Family Foundation (f/k/a Bernard L. and Ruth Madoff Foundation); Yacht Bull Corp (registered by Campbell Corporate Services LTD); Bernard Madoff; Ruth Madoff; Andrew Madoff; Deborah Madoff; Jennifer Madoff; Stephanie Madoff; Mark Madoff; Peter Madoff; Marion Madoff; Ruth Madoff; Shana Madoff; Sondra Madoff-Weiner; Roger Madoff; Marvin Wiener; Charles Wiener; Annette Bongiorno; Jo Ann "Jodi" Crupi; Eric Lipkin; Irwin Lipkin; Frank DiPascali; Erin Reardon; David Kugel; Belle Jones; and Darlene Concepcion.

11. "BLMIS Employee" means any Person employed by BLMIS, including but not limited to the following Persons: Semone Anderson; Annette Bongiorno; Daniel Bonventre; John Bonventre; Elizabeth Buchmueller; Robert Cardile; Darlene Concepcion; Enrica Cotellessa-Pitz; Joann Crupi; Frank DiPascali; Jeffrey Ferraro; Marc Ferraro; Enrique Flores; Diana Guzman; Scott Hendell; Winifer Jackson; Dorothy Khan; David Kugel; Eric Lipkin; Bernard L. Madoff; Ruth Madoff; Andrew Madoff; Mark Madoff; Peter Madoff; Shana Madoff; Dumarsais Magnus; Alethea Mui; William Nasi; Jerome O'Hara; Magdalena Ortiz; Rafael Pagan; Daniel Pennachio; George Perez; Sharda Persaud; Erin Reardon; Lee Sibley; Richard Sobel; Brett Sondike; Eleanor Squillari; Anthony Tiletnick; Robert Weber; Sean-Louis Wharton; Charlene White; Walter Tiletnick; or Charles Wiener.

12. "Board of Directors" means the Board of Directors or individual Directors of KGF (as defined herein).

13. "BVI Proceedings" means those proceedings commenced in The Eastern Caribbean Supreme Court, In The High Court of Justice, British Virgin Islands, captioned *First Peninsula Trustees Limited (as Trustee of the Ashby Trust) v. Irving H. Picard, et al*., BVIHCV 2011/0154 and *Port of Hercules Trustees Limited (as Trustee of the El Prela Trust) v. Irving H. Picard, et al.*, BVIHCV 2011/0155.

14. "Ceretti" means Federico Ceretti.

15. "CITCO" means Citco Fund Services (Europe) B.V. and anyone acting on behalf of or at the direction of Citco Fund Services (Europe) B.V., including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

16. "Citi Hedge" means Citi Hedge Fund Services Limited and anyone acting on behalf of or at the direction of Citi Hedge Fund Services Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

17. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), as defined in Local Rule 26.3.

18. "Company" means any sole proprietorship, corporation, association, joint venture, firm, partnership, limited liability company, limited liability partnership, limited partnership, and business or legal entity in whatever form and wherever formed or located.

19. "Complaint" means the Fourth Amended Complaint filed by the Trustee in the Action on March 17, 2014.

20. "Concerning" means relating to, referring to, describing, evidencing, or constituting, as defined in Local Rule 26.3.

21. "Defendants" means all of the following: KGF, KEF, KML, FIM Limited, FIM Advisers, Ceretti, Grosso, El Prela Trust, El Prela Holding, El Prela Investments, Alpine Trustees, Port of Hercules, Ashby Trust, Ashby Holdings, Ashby Investment, First Peninsula, or Citi Hedge, as each is defined in these Definitions.

22. "DiPascali" means Frank DiPascali.

23. "Document" is defined to be synonymous in meaning and equal in scope to the usage of the term "Documents or electronically stored information" in Fed. R. Civ. P. 34(a)(1)(A), as defined in Local Rule 26.3. A draft or non-identical copy is a separate Document within the meaning of this term. For purposes of these Requests, the meaning and scope of Document captures the meaning and scope of Communication. Accordingly, a Request that demands the production of "all Documents" by definition demands the production of "all Communications" responsive to the Request. That a Request may specifically seek "all Communications" does not in any way limit or alter the definitions given to Document and Communication, respectively.

24. "El Prela Holding" means El Prela Group Holding Services and anyone acting on behalf of or at the direction of El Prela Group Holding Services, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

25. "El Prela Investments" means El Prela Trading Investments Limited and anyone acting on behalf of or at the direction of El Prela Trading Investments Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

26. "Feeder Funds" means all Companies, and all current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers of such Companies, through which investments were made, directly or indirectly, with BLMIS, including, but not limited to, Aurelia Asset Management Partners, Aurelia Fund Management Ltd., Fairfield Sentry Ltd., Fairfield Sigma Limited., Herald Fund SPC, Hermes Asset Management Ltd., Lagoon Investment Ltd., Rafael Partners, Inc., Rye Select Broad Market Fund, LP, Rye Select Broad Market Insurance Fund, L.P., Rye Select Broad Market Insurance Portfolio LDC, Rye Select Broad Market Portfolio Ltd., Rye Select Broad Market Prime Fund, L.P., Rye Select Broad Market XL Fund, LP, Rye Select Broad Market XL Portfolio Ltd., Rye Select Equities Fund, Thema Asset Management Ltd., Thema Fund Ltd., Thema International Fund plc, and Thema Wise Investments Ltd.

27. "FIM" means FIM Limited, FIM Advisers, and FIM (USA).

28. "FIM Advisers" means FIM Advisers LLP and anyone acting on behalf of or at the direction of FIM Advisers LLP, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

29. "FIM Limited" means FIM Limited and anyone acting on behalf of or at the direction of FIM Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

30. "FIM (USA) means FIM (USA), Inc. and anyone acting on behalf of or at the direction of FIM (USA), Inc., including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

31. "First Peninsula" means First Peninsula Trustees Limited and anyone acting on behalf of or at the direction of First Peninsula Trustees Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

32. "Grosso" means Carlo Grosso.

33. "Identify," when referring to a Document, means to give, to the extent known, the (i) type of Document, (ii) general subject matter, (iii) date of the Document, and (iv) author(s), addressee(s) and recipient(s), as defined in Local Rule 26.3. In the alternative, KGF may produce the Document, together with identifying information sufficient to satisfy Fed. R. Civ. P. 33(d).

34. "Identify," when referring to a Person, means to give, to the extent known, the Person's full name, present or last known address, and when referring to a natural Person, additionally, the present or last known place of employment, as defined in Local Rule 26.3. Once a Person has been identified in accordance with this paragraph, only the name of that Person need be listed in response to subsequent discovery requesting the identification of that Person.

35. "Initial Transfer" means any and all Transfers (as defined herein) made by BLMIS or any Person acting on behalf of BLMIS to KGF or to any Person acting on KGF's behalf.

36. "KEF" means Kingate Euro Fund, Ltd. and anyone acting on behalf of or at the direction of Kingate Euro Fund, Ltd., including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, third-party service providers, and the court-appointed liquidators representing KEF's estate in liquidation proceedings commenced in the British Virgin Islands and Bermuda.

37. "KGF," "You," and "Your" mean Kingate Global Fund, Ltd. and anyone acting on behalf of or at the direction of Kingate Global Fund, Ltd., including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, third-party service providers, and the court-appointed liquidators representing KGF's estate in liquidation proceedings commenced in the British Virgin Islands and Bermuda and the liquidators' agents and representatives.

38. "KGF Account" means that certain account with BLMIS designated 1FN061.

39. "KEF Account" means that certain account with BLMIS designated 1FN086.

40. "KML" means Kingate Management Limited and anyone acting on behalf of or at the direction of Kingate Management Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, third-party service providers, and the court-appointed receiver(s) representing KML's estate in receivership proceedings commenced in Bermuda and the receiver's agents and representatives.

41. "Loan(s)" means loans, broker loans, letters of credit, lines of credit, broker lines, or other credit facilities.

42. "Madoff" means Bernard L. Madoff.

43. "Manzke" means Sandra Manzke.

44. "Net Asset Value" or "NAV" means gross assets less gross liabilities attributable to a class or series of shares of any of KGF or KEF as of a particular date of determination.

45. "Person" means any natural person or any legal entity, including, without limitation, any business or governmental entity or association, as defined in Local Rule 26.3.

46. "Port of Hercules" means Port of Hercules Trustees Limited and anyone acting on behalf of or at the direction of Port of Hercules Trustees Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

47. "Regulators" means, and "Regulatory" refers to, all external oversight entities, whether governmental, law enforcement, quasi-governmental, or private, in any jurisdiction in which KGF operated with any power or ability to regulate, censure, fine, or penalize. This includes, but is not limited to, the United States Securities & Exchange Commission, Office of the Comptroller of the Currency, Financial Industry Regulatory Authority and its predecessor the National Association of Securities Dealers, and the United Kingdom's Financial Services Authority, Financial Conduct Authority, and Serious Fraud Office.

48. "Risk Management" means your policies, procedures, or efforts to provide controls and management of the risks inherent to KGF's business activities.

49. "Transfer" shall conform to the meaning set forth under the Bankruptcy Code, 11 U.S.C. § 101(54): (a) the creation of a lien; (b) the retention of title as a security interest; (c) the foreclosure of a debtor's equity redemption; or (d) each mode, direct and indirect, absolute or conditional, voluntary or involuntary, of disposing of or departing with—(i) property; or (ii) an interest in property. For purposes of these Requests, the term "Transfer(s)" shall only apply to amounts in excess of $10,000.

50. "Tremont" means Tremont (Bermuda) Limited and anyone acting on behalf of or at the direction of Tremont (Bermuda) Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, third-party service providers, and directly or indirectly related entities.

51. Reference to any Person that is not a natural Person and is not otherwise defined herein refers to and includes any parent, subsidiary, affiliate, division, branch, representative office, predecessor, successor, principal, member, director, officer, shareholder, manager, employee, attorney-in-fact, attorney, nominee, agent, or representative of such Person.

52. The use of the singular form of any word includes the plural and vice versa.

INSTRUCTIONS

Federal Rules 26 through 37, made applicable to this proceeding by the Bankruptcy Rules, are incorporated by reference and apply to each of the following instructions:

1. Unless otherwise specified, each of these Requests seeks Documents created, modified, or existing during the Applicable Period.

2. All Documents shall be identified by the request(s) to which they are primarily responsive and produced as they are maintained in the usual course of business.

3. Produce all Documents and all other materials described below in KGF's actual or constructive possession, custody, or control, including in the possession, custody, or control of a current or former employee or third-party service provider, wherever those Documents and materials are maintained, including on personal computers, PDAs, wireless devices, or web-based email systems (such as Gmail, Yahoo, etc.).

4. Produce all Documents in KGF's custody or control, whether maintained in electronic or paper form and whether located on hardware owned and maintained by KGF or hardware owned and/or maintained by a third party that stores data on KGF's behalf. KGF must produce all such Documents even if they were deleted or in draft form. Without limitation, hardware where such data may be stored includes: servers; desktop, laptop, or tablet computers; cell and smart phones; PDA devices; scanners, fax machines, and copying machines; and mobile storage devices, such as thumb or external hard drives. Electronically stored Documents include any computerized data or content stored on electromagnetic media. Without limitation, types of electronically stored Documents include email, voicemail, and instant messages, intranet and internet system data, telephone and cellular telephone calling records, data compilations, spreadsheets, word processing Documents, images, databases, digital photocopier memory, and any other information stored in memory storage devices.

5. Produce the original or duplicate, as such terms are defined by Rule 1001 of the Federal Rules of Evidence, of each Document requested together with all non-identical copies and drafts of that Document. If a duplicate is produced, it should be legible and bound or stapled in the same manner as the original.

6. Documents not otherwise responsive to these Requests should be produced: (i) if such Documents mention, discuss, refer to, explain, or concern one or more Documents that are called for by these Requests; (ii) if such Documents are attached to, enclosed with, or accompany Documents called for by these Requests; or (iii) if such Documents constitute routing slips, transmittal memoranda or letters, comments, evaluations, or similar materials.

7. Documents attached to each other should not be separated; separate Documents should not be attached to each other.

8. Documents should include all exhibits, appendices, linked Documents, or otherwise appended Documents that are referenced in, attached to, included with, or are a part of the requested Documents.

9. If a request calls for information concerning a Transfer, Initial Transfer, redemption, or withdrawal from an account, such request includes, but is not limited to, Documents that reflect the account name and number for the account the funds were transferred from and to, method of transfer (*i.e.*, wire, check, etc.), date of, amount and the reason for the Transfer, Initial Transfer, redemption, or withdrawal.

10. If any Document, or any part thereof, is not produced based on a claim of attorney-client privilege, work-product protection, or any other privilege or immunity from disclosure, then in answer to such request or part thereof, for each such Document:

a. Identify the type, title, and subject matter of the Document;

b. State the place, date, and manner of preparation of the Document;

c. Identify all authors, addressees, and recipients of the Document, including information about such Persons to assess the privilege asserted; and

d. Identify the privilege(s) asserted and the factual basis for same.

11. Documents should not contain redactions unless such redactions are made to protect information subject to the attorney-client privilege and/or work-product protection. If Documents are produced with redactions, a log setting forth the information requested in Instruction #10 above must be provided.

12. If a Document sought herein was at one time, but is no longer, in KGF's actual or constructive possession, custody, or control, state whether it: (i) is missing or lost; (ii) has been destroyed; (iii) has been transferred to others; and/or (iv) has been otherwise disposed of. In each instance, Identify the Document, state the time period during which it was maintained, state the circumstance surrounding authorization for such disposition thereof and the date thereof, Identify each Person having knowledge of the circumstances of the disposition thereof, and Identify each Person who had possession, custody, or control of the Document, to whom it was available or who had knowledge of the Document and/or the contents thereof.

13. The Bankruptcy Court entered Orders on September 17, 2013: (I) Establishing Procedures for Third-Party Data Rooms; and (II) Modifying the June 6, 2011 Litigation

Protective Order. Pursuant to those Orders, upon production, Producing Parties shall provide the following information in a production cover letter, to the extent any of the following information is applicable: (i) the Documents (listed in an Excel file Document-by-Document by Beginning Bates and Ending Bates for each Document) that are designated as confidential pursuant to the Litigation Protective Order; (ii) the Documents (listed in an Excel file Document-by-Document by Beginning Bates and Ending Bates for each Document) that are designated confidential pursuant to an Individual Confidentiality Standard, if applicable, pursuant to Paragraph 10 of the Order Establishing Procedures for Third-Party Data Rooms and Paragraph I of the Order Modifying the June 6, 2001 Litigation Protective Order; (iii) the Documents (listed in an Excel file Document-by-Document by Beginning Bates and Ending Bates for each Document) that should be excluded from the Third-Party Data Rooms pursuant to Paragraph 4 of the Order Establishing Procedures for Third-Party Data Rooms and Paragraph C of the Order Modifying the June 6, 2001 Litigation Protective Order; and (iv) the designated representative authorized for that production to provide consent to the disclosure of confidential Documents requested or to object to the disclosure of confidential Documents.[1] Failure to provide such information in a production cover letter shall result in a waiver by the Producing Parties of: (i) any confidential designations; (ii) any objections to inclusion of the Documents in the Third-Party Data Rooms; and/or (iii) notification that Documents have been requested for disclosure. For the avoidance of doubt, notwithstanding Paragraph 13 of the Order Establishing Procedures for Third-Party Data Rooms and Paragraph L of the Order Modifying the June 6, 2011 Litigation Protective Order, Paragraphs 7 and 14 of the Litigation Protective Order will still apply with respect to: (i) inadvertent failure to designate confidential material as confidential or incorrect designations of confidential material (Paragraph 7 of the Litigation Protective Order); and (ii) inadvertent production or disclosure of any Document or other material otherwise protected by the attorney-client privilege, work-product protection or a joint defense/common interest privilege (Paragraph 14 of the Litigation Protective Order).

MANNER OF PRODUCTION

1. All Documents produced to the Trustee shall be provided in either native file ("native") or single-page 300 dpi-resolution group IV TIF format ("tiff") format as specified below, along with appropriately formatted industry-standard database load files, and accompanied by true and correct copies or representations of unaltered attendant metadata. Where Documents are produced in tiff format, each Document shall be produced along with a multi-page, Document-level searchable text file ("searchable text") as rendered by an industry-standard text extraction program in the case of electronic originals, or by an industry-standard Optical Character Recognition ("ocr") program in the case of scanned paper Documents. Searchable text of Documents shall not be produced as fielded data within the ".dat file" as described below.

2. Database load files and production media structure: Database load files shall consist of: (i) a comma-delimited values (".dat") file containing: production Document identifier information, data designed to preserve "parent and child" relationships within Document "families," reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper Documents), custodian or Document source information; and (ii) an Opticon

[1] Electronic productions containing Documents designated as confidential shall also be accompanied by a database load file containing a field identifying if a Document has been designated confidential.

(".opt") file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named "Data," images shall be provided within a root level "Images" folder containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level "Text" folder. If any of the Documents produced in response to these requests are designated as confidential pursuant to the Litigation Protective Order, in addition to marking the Documents with the brand "CONFIDENTIAL" or branding the media with the word "CONFIDENTIAL," also include a confidential field within the load file, with a "yes" or "no" indicating whether the Document has been designated as confidential, as well as native file loading/linking information (where applicable).

3. Electronic Documents and data, generally: Documents and other responsive data or materials created, stored, or displayed on electronic or electro-magnetic media shall be produced in the order in which the Documents are or were stored in the ordinary course of business, including all reasonably accessible metadata, custodian or Document source information, and searchable text as to allow the Trustee, through a reasonable and modest effort, to fairly, accurately, and completely access, search, display, comprehend, and assess the Document's true and original content.

4. Emails and attachments, and other email account-related Documents: All Documents and accompanying metadata created and/or stored in the ordinary course of business within commercial, off-the-shelf email systems including but not limited to Microsoft Exchange™, Lotus Notes™, or Novell Groupwise™ shall be produced in tiff format, accompanying metadata, and searchable text files or, alternately, in a format that fairly, accurately, and completely represents each Document in such a manner as to make the Document(s) reasonably useable, manageable, and comprehendible by the Trustee.

5. Documents and data created or stored in or by structured electronic databases: With the exclusion of email and email account-related Documents and data, all Documents and accompanying metadata created and/or stored in structured electronic databases or files shall be produced in a format that enables the Trustee to reasonably manage and import those Documents into a useable, coherent database. Documents must be accompanied with reasonably detailed documentation explaining each Document's content and format, including but not limited to data dictionaries and diagrams. Some acceptable formats, if and only if provided with definitive file(s), table(s), and field level schemas include:

a. XML format file(s);

b. Microsoft SQL database(s);

c. Access database(s); and/or

d. fixed or variable length ASCII delimited files.

6. Spreadsheets, multimedia, and non-standard file types: All Documents generated or stored in software such as Microsoft Excel or other commercially available spreadsheet programs, as well as any multimedia files such as audio or video, shall be produced in their native format, along with an accompanying placeholder image in tiff format indicating a native file has been produced. A "Nativelink" entry shall be included in the .dat load file indicating the relative file path to each native file on the production media. To the extent the party has other file types that do not readily or easily and accurately convert to tiff and searchable text, the party may elect to produce those files in native format subject to the other requirements listed herein.

Native files may be produced within a separate root-level folder structure on deliverable media entitled "Natives."

7. "Other" electronic Documents: All other Documents and accompanying metadata and embedded data created or stored in unstructured files generated by commercially available software systems (excluding emails, structured electronic databases, spreadsheets, or multimedia) such as, but not limited to, word processing files (such as Microsoft Word), image files (such as Adobe .pdf files and other formats), and text files shall be produced in tiff and searchable text format in the order the files are or were stored in the ordinary course of business.

8. Paper Documents: Documents originally created or stored on paper shall be produced in tiff format. Relationships between Documents shall be identified within the Relativity .dat file utilizing Document identifier numbers to express parent Document/child attachment boundaries, folder boundaries, and other groupings. In addition, the searchable text of each Document shall be provided as a multi-page text file as provided for by these requests.

REQUESTS FOR PRODUCTION

1. All Documents relevant to any claim or defense asserted in the Action.

I. FORMATION AND STRUCTURE

2. All Documents concerning the formation of KGF, including but not limited to articles of incorporation, memoranda of association, articles of association, by-laws, limited or general partnership agreements, limited liability company agreements, trust agreements, and organizational charts, and any other Documents reflecting formation and governance of KGF, as originally constituted and as amended or otherwise modified.

3. All Documents sufficient to identify KGF's principal place(s) of business, business address(es), and the name(s) and address(es) of KGF's registered agent(s).

4. All Documents sufficient to identify all members of KGF's Board of Directors, by year, including but not limited to Documents reflecting their titles, responsibilities, membership on any subcommittees or working groups, tenures, and any changes thereto.

5. All Documents concerning the formation, authority, and acts of KGF's Board of Directors, including but not limited to all Documents concerning: (i) the authority possessed by KGF's Board of Directors; (ii) KGF's Board of Directors' exercise of its authority, including but not limited to any such exercise of authority concerning KGF's investments, KGF's investments with BLMIS, and KGF's selection and engagement of BLMIS and all other service providers; (iii) any and all resolutions, orders, directives, or instructions issued by KGF's Board of Directors; (iv) any and all meetings of KGF's Board of Directors, including but not limited to agendas, notes, minutes, Documents considered by, distributed to, or created by KGF's Board of Directors before, during, or after any and all such meetings, and all drafts of such Documents; (v) all Communications to, from, or among KGF's Board of Directors or any individual Director(s); (vi) the manner in which the Directors were chosen, elected, or appointed to the Board; and (vii) the compensation of Directors.

6. All Documents sufficient to identify all of KGF's personnel, executives, officers, directors, employees, agents, and/or representatives, including but not limited to their position, title, responsibilities, dates of service, and supervisors.

7. All Documents sufficient to show the telephone numbers and email addresses assigned to all KGF's directors, officers, and employees, including but not limited to all employer-issued cell phone numbers.

II. CONTRACTUAL RELATIONSHIPS

8. All Documents concerning any agreement or contract, whether oral or written, to which KGF is a party or a beneficiary, including but not limited to all Documents concerning: (i) Co-Manager Agreement between Tremont (Bermuda) Limited and Kingate Global Fund, Ltd.; (ii) Letter agreement dated January 16, 2006 between Kingate Global Fund, Ltd. and Tremont (Bermuda) Limited terminating Co-Manager Agreement as of December 31, 2005; (iii) First Amendment to the Kingate Global Fund, Ltd. Management Agreement dated as of March 1, 1995 between Kingate Global Fund, Ltd. and Kingate Management Limited; (iv) Kingate Global Fund, Ltd. and Kingate Management Limited and Tremont (Bermuda) Limited Co-Management Agreement; (v) Co-Manager Agreement dated as of July 1, 2004 between Kingate Management Limited and Kingate Global Fund, Ltd.; (vi) Management Agreement dated as of January 1, 2006 between Kingate Management Limited and Kingate Global Fund, Ltd.; (vii) Tremont (Bermuda) Limited and Kingate Management Limited and Kingate Global Fund, Ltd. Consulting Services Agreement made as of February 24, 1994; (viii) Kingate Management Limited and Kingate Global Fund, Ltd. and FIM Limited Consulting Services Agreement made as of December 1, 1995; (ix) Amendment to Consulting Services Agreement between Kingate Management Limited and Kingate Global Fund, Ltd. and FIM Limited effective December 1, 1995; (x) Kingate Management Limited and FIM Limited Consulting Services Agreement relating to Kingate Global Fund, Ltd. dated April 23, 2001; (xi) Kingate Management Limited and FIM Limited Consulting Services Agreement relating to Kingate Global Fund, Ltd. dated April 29, 2001; (xii) Deed of Novation between Kingate Management Limited, FIM Limited, and FIM Advisers LLP relating to Kingate Global Fund, Ltd. dated July 29, 2005; (xiii) Kingate Management Limited and FIM Limited Distribution Agreement relating to Kingate Global Fund, Ltd. dated April 24, 2001; (xiv) Administration Agreement between Kingate Global Fund, Ltd., Kingate Management Limited, and Hemisphere Management Limited; (xv) First Amendment to the Kingate Global Fund, Ltd. Administration Agreement dated as of March 1, 1995; (xvi) Kingate Global Fund, Ltd. and Kingate Management Limited and Hemisphere Management Limited Restated and Amended Administration Agreement dated May 1, 2000; (xvii) Amended and Restated Administration Agreement between Kingate Global Fund, Ltd. and Kingate Management Limited and Bisys Hedge Fund Services Limited dated June 1, 2007; (xviii) Custodian Agreement between Kingate Global Fund, Ltd., The Bank of Bermuda Limited, and Kingate Management Limited; (xix) Custodian Agreement between Kingate Global Fund, Ltd. and The Bank of Bermuda Limited and Kingate Management Limited made as of March 1, 1994; and (xx) Registrar Agreement between Kingate Global Fund, Ltd., Kingate Management Limited and Hemisphere Management Limited made as of May 1, 2000.

9. All Documents concerning any agreement or contract, whether oral or written, by, between, or among any of the Defendants.

III. DUE DILIGENCE AND INVESTMENT ACTIVITY

10. All Documents concerning KGF's operations, requirements, policies, and procedures concerning Risk Management, due diligence, know-your-customer, suspicious activity investigation and reporting, and any other Regulatory compliance policies and

procedures. This Request includes all manuals or guidelines for such operations, requirements, policies, and procedures, as well as all Documents sufficient to determine the date and substance of any changes.

11. All Documents concerning KGF's due diligence processes, including but not limited to the standards and practices employed to investigate, monitor, and oversee the activities and investments of sub-advisers, unaffiliated managers, or third-party funds.

12. All Documents concerning KGF's methods, protocols, practices and procedures for conducting due diligence on any existing investment or any prospective investment opportunity.

13. All Documents concerning any inquiry, investigation, or due diligence conducted by KGF on any existing investment or potential investment, including but not limited to all Documents reviewed or created as part of that inquiry, investigation, or due diligence, due diligence reports or questionnaires, prospectuses, offering memoranda, private placement memoranda, advertisements, brochures, website postings, website addresses, presentations, pamphlets, pitch books, performance records, term sheets, and marketing or executive summaries.

14. All Documents concerning any potential or actual investment with, or related to, BLMIS, including but not limited to all Documents concerning: (i) due diligence conducted on BLMIS; (ii) any opinions, research, or advice concerning any actual or potential investment with BLMIS; (iii) any marketing materials of BLMIS, including but not limited to any private placement memoranda, offering memoranda, tear sheets, or prospectuses; (iv) any monthly, quarterly, or annual performance reports or summaries of BLMIS; (v) any monthly, quarterly, or annual risk or risk management reports of BLMIS; (vi) any portfolio management reports of BLMIS; (vii) any monthly, quarterly, or annual strategy reviews of BLMIS; (viii) SEC Form(s) ADV or 13F, or any amendments thereto, filed or submitted by BLMIS and any other Regulatory filings for BLMIS; (ix) any analysis, discussion, review, simulation, or replication of the split-strike conversion investment strategy purportedly executed by BLMIS or any trade purportedly executed under that strategy, including the volumes of and prices at which BLMIS purportedly purchased or sold securities, the identity of counterparties to trades purportedly executed by BLMIS, and trading activity inconsistent with the split-strike conversion strategy; (x) the management team or management structure of BLMIS; (xi) any investigation, background check, or similar review of the professional experience, education, or other credentials of any BLMIS employee; (xii) the identity or nature of BLMIS's clients or investors; (xiii) the assets under management of BLMIS, including but not limited to the amount of such assets, the growth of such assets, and the percentage of such assets attributable to particular, or groups of, clients or investors; (xiv) any of BLMIS's accountants, auditors, accounting firms, or auditing firms, including but not limited, to David G. Friehling or Friehling & Horowitz, CPAs, P.C.; (xv) fees or commissions charged by BLMIS; (xvi) risk models; (xvii) pricing models; (xviii) qualitative or quantitative analyses; (xix) periodic portfolio analyses; (xx) benchmarking analyses; (xxi) performance attribution analyses; (xxii) peer analyses; (xxiii) systematic v. non-systematic return analyses; (xxiv) regression analyses; (xxv) reverse-engineering analyses; (xxvi) risk-adjusted analyses; (xxvii) style-adjusted analyses; (xxviii) scenario analyses; (xxix) drawdown analyses; (xxx) correlation analyses; (xxxi) alpha analyses; (xxxii) comparisons, reviews, or analyses of performance during periods of market stress or market downturn; (xxxiii) the volatility or expected volatility of BLMIS's performance; (xxxiv) any "scatter diagrams" or histograms

created or used to analyze the performance of BLMIS; (xxxv) the Sharpe ratio for BLMIS; and (xxxvi) the Sortino ratio for BLMIS.

15. All Documents concerning any assessment of, or due diligence conducted on, KGF, KEF, BLMIS, or any Feeder Fund, by any Person, including but not limited to all Documents concerning: (i) due diligence questionnaires; (ii) any opinions, research, or advice concerning any actual or potential investment with KGF; (iii) any KGF marketing materials, including but not limited to any private placement memoranda, offering memoranda, tear sheets, or prospectuses; (iv) any KGF monthly, quarterly, or annual performance reports or summaries; (v) any KGF monthly, quarterly, or annual risk or risk management reports; (vi) any KGF portfolio management reports; (vii) any KGF monthly, quarterly, or annual strategy reviews; (viii) KGF's Regulatory filings; (ix) risk models; (x) pricing models; (xi) qualitative or quantitative analyses; (xii) periodic portfolio analyses; (xiii) benchmarking analyses; (xiv) performance attribution analyses; (xv) peer analyses; (xvi) systematic v. non-systematic return analyses; (xvii) regression analyses; (xviii) reverse-engineering analyses; (xix) risk-adjusted analyses; (xx) style-adjusted analyses; (xxi) scenario analyses; (xxii) drawdown analyses; (xxiii) correlation analyses; (xxiv) alpha analyses; (xxv) comparisons, reviews, or analyses of performance during periods of market stress or market downturn; (xxvi) the volatility or expected volatility of KGF's performance; (xxvii) any "scatter diagrams" or histograms created or used to analyze KGF's performance; (xxviii) KGF's assets under management, including but not limited to the amount of such assets, the growth of such assets, and the percentage of such assets attributable to particular, or groups of, clients or investors; (xxix) the Sharpe ratio for KGF; and (xxx) the Sortino ratio for KGF.

16. All Documents concerning the investment activity of KGF, KEF, BLMIS, or any Feeder Fund that relate to the following subjects: (i) the performance of KGF's investment with BLMIS; (ii) the NAV of KGF, including its calculation; (iii) KGF's assets under management; (iv) KGF's investment strategies, including the development, marketing, or execution of any investment strategy; (v) all account statements issued by KGF to any Person; (vi) trade confirmations or other memorialization of purported trades made by, or on behalf of, KGF; (vii) the identification (or lack thereof) of any counterparty to any trades purportedly executed by, or on behalf of, KGF and any attempts to ascertain any such counterparty's identity; (viii) any review, discussion, or analysis of any options purportedly purchased or sold by, or on behalf of, KGF; (ix) any review, analysis, or statement of prices at which KGF, or any Person acting on behalf of KGF, purportedly purchased or sold securities; and (x) any efforts to verify the securities positions purportedly held by BLMIS for the KGF Account.

IV. FINANCIAL AND ACCOUNTING RECORDS

17. All Documents concerning the accounting or recordation of KGF's financial performance and activity, including but not limited to all general ledgers, journals, trial balances, reconciliations, statements of cash flow, balance sheets, and profit-and-loss statements, and KGF's financial statements, whether audited or unaudited, including but not limited to audited annual statements, unaudited quarterly and other interim statements, and draft statements, including all related work papers, notes, schedules, and exhibits.

18. KGF's foreign and domestic tax returns or other tax reporting Documentation, whether filed, unfiled, or in draft form, and all supporting schedules, work papers, journal entries, and trial balances.

19. All Documents concerning services provided to KGF by PricewaterhouseCoopers, including but not limited to all Documents sent to or received from PricewaterhouseCoopers.

V. SUBSCRIPTIONS & REDEMPTIONS

20. All Documents provided to, received from, or concerning any and all actual or potential investors, subscribers, or shareholders in KGF, including but not limited to information memoranda, offering memoranda, private placement memoranda, and all other Documents of a similar type concerning the solicitation of investment or subscription in KGF; account opening Documents, investment advisory or management contracts, consent forms, trading authorizations, authorizations to purchase and sell securities, investment contracts, option agreements, and subscription agreements; and all Documents concerning that certain (i) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated October 6, 2008, (ii) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated September 22, 2008, (iii) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated August 1, 2007, (iv) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated May 1, 2007, (v) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated May 1, 2006, (vi) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated May 1, 2004, (vii) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated January 15, 2003, (viii) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated January 1, 2002, (ix) Kingate Global Fund, Ltd. Information Memorandum dated May 1, 2000, (x) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum as of January 1, 1999, (xi) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum as of September 20, 1998, (xii) Kingate Global Fund, Ltd. Information Memorandum dated December 1, 1995, (xiii) Kingate Global Fund, Ltd. Restated Information Memorandum as of March 1, 1995, and (xiv) Kingate Global Fund, Ltd. Restated Information Memorandum as of March 1, 1995.

21. All Documents concerning your receipt of funds from any Person for purposes of investment or subscription in KGF.

22. All Documents concerning (i) any and all actual or proposed withdrawals of funds from KGF and (ii) any and all actual or proposed redemption of shares or partnerships interests in KGF.

VI. BANK ACCOUNTS

23. All Documents concerning any and all accounts, whether for deposit, credit, investment or any other purpose, maintained by KGF, in KGF's name, or by any Person on KGF's behalf, with any bank, financial institution, or depository trust corporation during the Applicable Period, including but not limited to all statements of account, signature cards, account-opening Documents, periodic reconciliations, deposit slips, withdrawal slips, check registers, canceled checks, wire transfer requests, and wire transfer confirmations. This Request includes all such Documents concerning account number 010-424174-561 and account number 010-427174-564 maintained with Bank Bermuda.

24. All Documents concerning any and all accounts, whether for deposit, credit, investment or any other purpose, maintained by any Defendant in its own name, or by another on such Defendant's behalf, with any bank, financial institution, or depository trust corporation

during the Applicable Period, including but not limited to: (i) Bank Bermuda; (ii) HSBC-Monaco Bank; (iii) Fortis Bank- Guernsey; (iv) Fortis Bank-Channel Islands; (v) Lombard Odier Darier Hentsch, Geneva; (vi) Bank of NT Butterfield & Sons; (vii) Clariden Leu AG-Zurich; and JPMorgan Chase Bank, N.A. Documents responsive to this Request include, but are not limited to, all statements of account, signature cards, periodic reconciliations, deposit slips, withdrawal slips, check registers, canceled checks, wire transfer requests, wire transfer confirmations, and all other records reflecting cash activity. This Request includes all such Documents concerning (i) account number 010-503324-512 and account number 010-503324-511 maintained in KEF's name, or on its behalf, with Bank Bermuda and (ii) a certain demand deposit account maintained in KML's name, or on its behalf, with Bank Bermuda.

VII. CUSTOMER ACCOUNTS AND TRANSFERS

25. All Documents concerning any and all accounts, including but not limited to the KGF Account or the KEF Account, whether for deposit, credit, investment or any other purpose, maintained by KGF, in KGF's name, or by any Person on KGF's behalf, with BLMIS, including but not limited to all sub-advisory agreements, solicitation agreements, trading authorizations, trading directives, margin agreements, authorizations to purchase and sell securities, investment contracts, option agreements, subscription agreements, and limited partnership agreements, customer account statements, statements of NAV, calculations of NAV, trade confirmations, portfolio statements, deposit records, withdrawal records, and all other records of investment or cash activity.

26. All Documents concerning any and all Initial Transfers, including but not limited to all Documents concerning any of the following: (i) the date of each such Initial Transfer, (ii) the amount of each such Initial Transfer, (iii) the account name and account number for the account from which the funds were transferred, (iv) the account name and account number for the account to which the funds were transferred, (v) the method of transfer, (vi) the reason for each such Initial Transfer, and (vii) the disposition of each such Initial Transfer.

27. All Documents concerning any and all Transfers from, between, or among any and all of the accounts referred to in Requests ##23 through 26.

28. All Documents concerning each and every request made to BLMIS to withdraw moneys from the KGF Account or the KEF Account, including but not limited to consideration of the timing and amount of such request, the decision to make such request, and all Communications concerning such request.

29. All Documents concerning each and every deposit made into the KGF Account or the KEF Account, including but not limited consideration of the timing and amount of such deposit, the decision to make such deposit, and all Communications concerning such deposit.

30. All Documents concerning any review or analysis undertaken to trace monies transferred from any of the accounts referred to in Requests ##23 through 26.

31. All Documents reviewed or relied upon in connection with the analyses attached at Exhibits J & K of the Declaration of Robert S. Loigman in Support of Opposition of Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd. to Trustee's Application for Enforcement of Automatic Stay and Injunction, filed on or about February 8, 2014 in *Picard v. Kingate Global Fund, Ltd.*, Adv. Proc. No. 12-01920 (SMB).

32. All Documents concerning management fees, administrative fees, performance fees, or any other fees or commissions charged by, or paid to, KML, BLMIS, FIM Advisers, FIM Limited, Citi Hedge, and any other Defendant.

VIII. BLMIS

33. All Documents concerning BLMIS, including but not limited to all Documents concerning any of the following: (i) Documents received from or sent to BLMIS; (ii) Documents received from or sent to any Defendant concerning BLMIS or KGF's investments with BLMIS; (iii) any contact, meeting, or attempt to contact or meet with BLMIS or with any BLMIS employee; (iv) all Communications between KGF and BLMIS including but not limited to transcripts or audio recordings of any such telephone calls; (v) all Communications between KGF and any Person concerning BLMIS, including but not limited to transcripts or audio recordings of any such telephone calls; (vi) any agreement or contract, whether oral or written, to which BLMIS is a party; (vii) all Communications with any BLMIS Employee; and (viii) all Documents received from or sent to any Feeder Fund, the Depository Trust & Clearing Corporation, and the Options Clearing Corporation concerning BLMIS.

34. All Documents created on or after December 11, 2008, concerning: (i) the public disclosure that a Ponzi scheme operated out of BLMIS; (ii) the arrest, confession, plea, conviction, or sentencing of either Bernard L. Madoff or of any employee of BLMIS; and (iii) all meetings held by KGF's Board of Directors or KGF's committees, sub-committees or working groups in which BLMIS's Ponzi scheme was a subject or topic or was mentioned or referenced.

35. All Documents created on or after December 11, 2008, concerning: (i) any review or modification of KGF's due diligence process; (ii) any self-critical analysis; (iii) any investigation or review that KGF conducted of itself; and (iv) any Communications with any shareholder or prospective shareholder of KGF concerning (a) subscriptions or redemptions in KGF, (b) the NAV of KGF, (c) the effect on KGF of the arrest of Bernard L. Madoff or the commencement of liquidation proceedings against BLMIS, or (d) KGF's actions subsequent to the arrest of Bernard L. Madoff or the commencement of liquidation proceedings against BLMIS.

36. All Documents concerning: (i) any analysis or discussion of execution prices, performance, or returns of BLMIS; (ii) any analysis or discussion of the feasibility or impossibility of the purported returns and trades of, BLMIS; (iii) Cambridge Associates LLC; (iv) Robert Rosenkranz or Acorn Partners; (v) Oswald Gruebel; (vi) Jim Vos or Aksia, LLC; (vii) David Giampaolo or Pi Capital; (viii) Neil Chelo or Benchmark Plus Partners; (ix) Albourne Partners; (x) Bayou Group, LLC, Bayou Fund, Bayou Hedge Fund Group, Bayou Management, LLC, Samuel Israel III, or any of their respective affiliates; (xi) Michael Ocrant; (xii) Erin Arvedlund; (xiii) Noreen Harrington; (xiv) Michael Markov, (xv) Gil Berman; (xvi) Edward Thorp; (xvii) Harry Markopolos; (xviii) Chris Cutler; (xix) Eric Lazear; (xx) the article in the May 7, 2001 issue of Barron's entitled "Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum"; (xxi) the article in the December 16, 1992 issue of the Wall Street Journal entitled "Wall Street Mystery Features a Big Board Rival"; (xxii) the May 2001 MAR/Hedge newsletter entitled "Madoff Tops Charts; Skeptics Ask How"; and (xxiii) any actual, potential, or suspected fraud, Ponzi scheme, or illegal activity (including front running), at BLMIS.

IX. SPECIFIC INDIVIDUALS AND ENTITIES

37. All Documents concerning any of the following: (i) Manzke; (ii) Fairfield Greenwich (Bermuda), Ltd.; (iii) Fairfield Sentry Ltd.; (iv) Amit Vijayvergia; (v) Andres Piedrahita; (vi) Shazieh Salahuddin; (vii) Eric Lazear; (viii) Tremont (Bermuda) Limited; (ix) Tremont Advisers; (x) Tremont Group Holdings, Inc.; (xi) Tremont Partners, Inc.; (xii) Hemisphere Management Limited; (xiii) Christopher Wetherhill; (xiv) Island Storm, Ltd.; (xv) Phillip A. Evans; (xvi) Frank Walters; (xvii) Michael Tannenbaum; (xviii) the law firm of Tannenbaum Helpern Syracuse & Hirschtritt LLP; (xix) MN Services; (xx) UBP; (xxi) M Invest; (xxii) Robert Johnson; (xxiii) BNP Paribas; (xxiv) Barry E. Breen; (xxv) Moore Stephens International Services (BVI) Limited; (xxvi) Moore Stephens Services SAM; (xxvii) Hamilton Trust Co. Ltd.; (xxviii) Hamilton Nominees Ltd.; (xxix) Fenton Trust; (xxx) FIM Long-Invest Fund EUR & USD; (xxxi) Dancrest Global Equity Fund; (xxxii) Levco Debt Opportunity Fund & Levco Alternative Fund; (xxxiii) FIM Relative Value Fund; (xxxiv) Five Balanced Fund (Bermuda); (xxxv) Five Balanced Fund (Cayman Islands); (xxxvi) Victoria Global Fund; (xxxvii) FDVG Low Volatility Investments & FDVG Equity Investments; (xxxviii) Silver Shield Fund (Bermuda); or (xxxix) Silver Shield Fund (Cayman Islands).

X. INVESTIGATIONS & LITIGATION

38. All Documents concerning any civil, criminal, or other legal proceedings, such as arbitration, including but not limited to the Bermuda Action and the BVI Proceedings, and any criminal investigation, commenced by or against KGF or any other Defendant, in any jurisdiction, whether foreign or domestic, whether threatened or filed, including but not limited to, any pleadings, motions, correspondence, Documents and discovery produced, deposition transcripts (including exhibits), hearing transcripts, witness statements taken or given by any party/witness or produced in discovery, and orders, rulings, and judgments.

39. All Documents concerning any Communications between KGF and any governmental, Regulatory, or law enforcement entity or official in any jurisdiction, whether foreign or domestic, concerning BLMIS, including but not limited to all Documents received from or sent to any such entity or official.

40. All Documents concerning any Communications between KGF and any governmental, Regulatory, or law enforcement entity or official in any jurisdiction, whether foreign or domestic, concerning any Defendant, including but not limited to all Documents received from or sent to any such entity or official.

41. All Documents concerning any and all payments or consideration made by or received by KGF after December 11, 2008, in connection with KGF's investment with BLMIS.

42. All Documents concerning any claims filed or actions taken (whether legal, equitable, or otherwise) to recoup or recover any damages or losses KGF alleges to have sustained as a result of KGF's investment with BLMIS.

43. All Communications with, and all Documents submitted by or on behalf of any investor, subscriber, or shareholder in KGF to, Richard C. Breeden, his attorneys, his accountants, or any other representative of Mr. Breeden or the Madoff Victim Fund created under the Department of Justice Asset Forfeiture Distribution Program.

Date: New York, NY
October 7, 2015

/s/ David J. Sheehan
Baker & Hostetler LLP
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New York, NY 10111
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Attorney for Irving H. Picard, Trustee for the substantively consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 7th day of October, 2015 by electronic mail upon the following:

Counsel for the Joint Liquidators for Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd.

Robert S. Loigman
Rex Lee
Lindsay M. Weber
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/s/ William W. Hellmuth
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Attorneys for Irving H. Picard, Trustee for the substantively consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FEDERICO CERETTI, et al., Defendants.	Adv. Pro. No. 09-1161 (SMB)

TRUSTEE'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO DEFENDANT KINGATE EURO FUND, LTD.

PLEASE TAKE NOTICE that in accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to this adversary proceeding under the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the applicable local rules of the United States District Court for the Southern District of New York and this Court (the "Local Rules"), Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa ("SIPA"), and the substantively consolidated estate of Bernard L. Madoff, hereby demands that defendant Kingate Euro Fund, Ltd., through the joint liquidators acting on its behalf, produce Documents responsive to the requests set forth herein and deliver the same to the office of Baker & Hostetler LLP, c/o Anthony M. Gruppuso, Esq., 45 Rockefeller Plaza, New York, New York 10111, within thirty (30) days of service.

DEFINITIONS

1. The rules of construction and definitions set forth in Local Rule 26.3, as adopted by Rule 7026-1 of the Bankruptcy Rules, are incorporated in their entirety.

2. "Action" means the civil action captioned *Picard v. Ceretti, et al.,* Adv. Pro. No. 09-01161, pending in the United States Bankruptcy Court for the Southern District of New York.

3. "Alpine Trustees" means Alpine Trustees Limited and anyone acting on behalf of or at the direction of Alpine Trustees Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

4. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope, as defined in Local Rule 26.3.

5. "Applicable Period" means the period beginning January 1, 1993 through December 31, 2009.

6. "Ashby Holdings" means Ashby Holdings Services Limited and anyone acting on behalf of or at the direction of Ashby Holdings Services Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

7. "Ashby Investment" means Ashby Investment Services Limited and anyone acting on behalf of or at the direction of Ashby Investment Services Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

8. "Bank Bermuda" means HSBC Bank Bermuda Limited and anyone acting on behalf of or at the direction of HSBC Bank Bermuda Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

9. "Bermuda Action" means that civil action commenced by Kingate Global Fund Ltd. and Kingate Euro Fund Ltd. against Kingate Management Limited and others in the Supreme Court of Bermuda, Civil Jurisdiction, Commercial List, bearing the caption *Kingate Global Fund Limited (in liquidation), et al. v. Kingate Management Limited, et al*., No. 2010:454.

10. "BLMIS" means Bernard L. Madoff Investment Securities LLC and anyone acting on behalf of or at the direction of Bernard L. Madoff Investment Securities LLC, including, but not limited to, current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers of the above specifically identified Persons, and any and all related entities, including without limitation: Abel Automatics, Inc.; Abel Holdings, LLC; Abtech Industries Inc.; BLM Air Charter LLC; Blumenfeld Development Group; BREA Associates LLC; Cohmad, Cohn, Delaire & Madoff, Inc.; Delta Fund I, L.P.; Madoff Brokerage & Trading Technologies LLC; Madoff Energy Holdings LLC; Madoff Energy III LLC; Madoff Energy IV LLC; Madoff Energy LLC; Madoff Family LLC (a/k/a Madoff Family Fund LLC); Madoff Realty LLC/Madoff Realty Associates/Madoff Realty Trust; Madoff Securities International Ltd.; Madoff Securities International LLC; Madoff Technologies LLC; Primex Holdings LLC; Realty Associates Madoff II; The Madoff Family Foundation (f/k/a Bernard L. and Ruth Madoff Foundation); Yacht Bull Corp (registered by Campbell Corporate Services LTD); Bernard Madoff; Ruth Madoff; Andrew Madoff; Deborah Madoff; Jennifer Madoff; Stephanie Madoff; Mark Madoff; Peter Madoff; Marion Madoff; Ruth Madoff; Shana Madoff; Sondra Madoff-Weiner; Roger Madoff; Marvin Wiener; Charles Wiener; Annette Bongiorno; Jo Ann "Jodi" Crupi; Eric Lipkin; Irwin Lipkin; Frank DiPascali; Erin Reardon; David Kugel; Belle Jones; and Darlene Concepcion.

11. "BLMIS Employee" means any Person employed by BLMIS, including but not limited to the following Persons: Semone Anderson; Annette Bongiorno; Daniel Bonventre; John Bonventre; Elizabeth Buchmueller; Robert Cardile; Darlene Concepcion; Enrica Cotellessa-Pitz; Joann Crupi; Frank DiPascali; Jeffrey Ferraro; Marc Ferraro; Enrique Flores; Diana Guzman; Scott Hendell; Winifer Jackson; Dorothy Khan; David Kugel; Eric Lipkin; Bernard L. Madoff; Ruth Madoff; Andrew Madoff; Mark Madoff; Peter Madoff; Shana Madoff; Dumarsais Magnus; Alethea Mui; William Nasi; Jerome O'Hara; Magdalena Ortiz; Rafael Pagan; Daniel Pennachio; George Perez; Sharda Persaud; Erin Reardon; Lee Sibley; Richard Sobel; Brett Sondike; Eleanor Squillari; Anthony Tiletnick; Robert Weber; Sean-Louis Wharton; Charlene White; Walter Tiletnick; or Charles Wiener.

12. "Board of Directors" means the Board of Directors or individual Directors of KEF (as defined herein).

13. "BVI Proceedings" means those proceedings commenced in The Eastern Caribbean Supreme Court, In The High Court of Justice, British Virgin Islands, captioned *First Peninsula Trustees Limited (as Trustee of the Ashby Trust) v. Irving H. Picard, et al*., BVIHCV 2011/0154 and *Port of Hercules Trustees Limited (as Trustee of the El Prela Trust) v. Irving H. Picard, et al.*, BVIHCV 2011/0155.

14. "Ceretti" means Federico Ceretti.

15. "CITCO" means Citco Fund Services (Europe) B.V. and anyone acting on behalf of or at the direction of Citco Fund Services (Europe) B.V., including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

16. "Citi Hedge" means Citi Hedge Fund Services Limited and anyone acting on behalf of or at the direction of Citi Hedge Fund Services Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

17. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), as defined in Local Rule 26.3.

18. "Company" means any sole proprietorship, corporation, association, joint venture, firm, partnership, limited liability company, limited liability partnership, limited partnership, and business or legal entity in whatever form and wherever formed or located.

19. "Complaint" means the Fourth Amended Complaint filed by the Trustee in the Action on March 17, 2014.

20. "Concerning" means relating to, referring to, describing, evidencing, or constituting, as defined in Local Rule 26.3.

21. "Defendants" means all of the following: KGF, KEF, KML, FIM Limited, FIM Advisers, Ceretti, Grosso, El Prela Trust, El Prela Holding, El Prela Investments, Alpine Trustees, Port of Hercules, Ashby Trust, Ashby Holdings, Ashby Investment, First Peninsula, or Citi Hedge, as each is defined in these Definitions.

22. "DiPascali" means Frank DiPascali.

23. "Document" is defined to be synonymous in meaning and equal in scope to the usage of the term "Documents or electronically stored information" in Fed. R. Civ. P. 34(a)(1)(A), as defined in Local Rule 26.3. A draft or non-identical copy is a separate Document within the meaning of this term. For purposes of these Requests, the meaning and scope of Document captures the meaning and scope of Communication. Accordingly, a Request that demands the production of "all Documents" by definition demands the production of "all Communications" responsive to the Request. That a Request may specifically seek "all Communications" does not in any way limit or alter the definitions given to Document and Communication, respectively.

24. "El Prela Holding" means El Prela Group Holding Services and anyone acting on behalf of or at the direction of El Prela Group Holding Services, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

25. "El Prela Investments" means El Prela Trading Investments Limited and anyone acting on behalf of or at the direction of El Prela Trading Investments Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

26. "Feeder Funds" means all Companies, and all current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers of such Companies, through which investments were made, directly or indirectly, with BLMIS, including, but not limited to, Aurelia Asset Management Partners, Aurelia Fund Management Ltd., Fairfield Sentry Ltd., Fairfield Sigma Limited., Herald Fund SPC, Hermes Asset Management Ltd., Lagoon Investment Ltd., Rafael Partners, Inc., Rye Select Broad Market Fund, LP, Rye Select Broad Market Insurance Fund, L.P., Rye Select Broad Market Insurance Portfolio LDC, Rye Select Broad Market Portfolio Ltd., Rye Select Broad Market Prime Fund, L.P., Rye Select Broad Market XL Fund, LP, Rye Select Broad Market XL Portfolio Ltd., Rye Select Equities Fund, Thema Asset Management Ltd., Thema Fund Ltd., Thema International Fund plc, and Thema Wise Investments Ltd.

27. "FIM" means FIM Limited, FIM Advisers, and FIM (USA).

28. "FIM Advisers" means FIM Advisers LLP and anyone acting on behalf of or at the direction of FIM Advisers LLP, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

29. "FIM Limited" means FIM Limited and anyone acting on behalf of or at the direction of FIM Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

30. "FIM (USA) means FIM (USA), Inc. and anyone acting on behalf of or at the direction of FIM (USA), Inc., including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

31. "First Peninsula" means First Peninsula Trustees Limited and anyone acting on behalf of or at the direction of First Peninsula Trustees Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

32. "Grosso" means Carlo Grosso.

33. "Identify," when referring to a Document, means to give, to the extent known, the (i) type of Document, (ii) general subject matter, (iii) date of the Document, and (iv) author(s), addressee(s) and recipient(s), as defined in Local Rule 26.3. In the alternative, KEF may produce the Document, together with identifying information sufficient to satisfy Fed. R. Civ. P. 33(d).

34. "Identify," when referring to a Person, means to give, to the extent known, the Person's full name, present or last known address, and when referring to a natural Person, additionally, the present or last known place of employment, as defined in Local Rule 26.3. Once a Person has been identified in accordance with this paragraph, only the name of that Person need be listed in response to subsequent discovery requesting the identification of that Person.

35. "Initial Transfer" means any and all Transfers (as defined herein) made by BLMIS or any Person acting on behalf of BLMIS to KEF or to any Person acting on KEF's behalf.

36. "KEF," "You" and "Your" mean Kingate Euro Fund, Ltd. and anyone acting on behalf of or at the direction of Kingate Euro Fund, Ltd., including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, third-party service providers, and the court-appointed liquidators representing KEF's estate in liquidation proceedings commenced in the British Virgin Islands and Bermuda.

37. "KGF" means Kingate Global Fund, Ltd. and anyone acting on behalf of or at the direction of Kingate Global Fund, Ltd., including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, third-party service providers, and the court-appointed liquidators representing KGF's estate in liquidation proceedings commenced in the British Virgin Islands and Bermuda and the liquidators' agents and representatives.

38. "KGF Account" means that certain account with BLMIS designated 1FN061.

39. "KEF Account" means that certain account with BLMIS designated 1FN086.

40. "KML" means Kingate Management Limited and anyone acting on behalf of or at the direction of Kingate Management Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, third-party service providers, and the court-appointed receiver(s) representing KML's estate in receivership proceedings commenced in Bermuda and the receiver's agents and representatives.

41. "Loan(s)" means loans, broker loans, letters of credit, lines of credit, broker lines, or other credit facilities.

42. "Madoff" means Bernard L. Madoff.

43. "Manzke" means Sandra Manzke.

44. "Net Asset Value" or "NAV" means gross assets less gross liabilities attributable to a class or series of shares of any of KGF or KEF as of a particular date of determination.

45. "Person" means any natural person or any legal entity, including, without limitation, any business or governmental entity or association, as defined in Local Rule 26.3.

46. "Port of Hercules" means Port of Hercules Trustees Limited and anyone acting on behalf of or at the direction of Port of Hercules Trustees Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers.

47. "Regulators" means, and "Regulatory" refers to, all external oversight entities, whether governmental, law enforcement, quasi-governmental, or private, in any jurisdiction in which KEF operated with any power or ability to regulate, censure, fine, or penalize. This includes, but is not limited to, the United States Securities & Exchange Commission, Office of the Comptroller of the Currency, Financial Industry Regulatory Authority and its predecessor the National Association of Securities Dealers, and the United Kingdom's Financial Services Authority, Financial Conduct Authority, and Serious Fraud Office.

48. "Risk Management" means your policies, procedures, or efforts to provide controls and management of the risks inherent to KEF's business activities.

49. "Transfer" shall conform to the meaning set forth under the Bankruptcy Code, 11 U.S.C. § 101(54): (a) the creation of a lien; (b) the retention of title as a security interest; (c) the foreclosure of a debtor's equity redemption; or (d) each mode, direct and indirect, absolute or conditional, voluntary or involuntary, of disposing of or departing with—(i) property; or (ii) an interest in property. For purposes of these Requests, the term "Transfer(s)" shall only apply to amounts in excess of $10,000.

50. "Tremont" means Tremont (Bermuda) Limited and anyone acting on behalf of or at the direction of Tremont (Bermuda) Limited, including, but not limited to, its current and former agents, representatives, employees, servants, predecessors, successors, third-party service providers, and directly or indirectly related entities.

51. Reference to any Person that is not a natural Person and is not otherwise defined herein refers to and includes any parent, subsidiary, affiliate, division, branch, representative office, predecessor, successor, principal, member, director, officer, shareholder, manager, employee, attorney-in-fact, attorney, nominee, agent, or representative of such Person.

52. The use of the singular form of any word includes the plural and vice versa.

INSTRUCTIONS

Federal Rules 26 through 37, made applicable to this proceeding by the Bankruptcy Rules, are incorporated by reference and apply to each of the following instructions:

1. Unless otherwise specified, each of these Requests seeks Documents created, modified, or existing during the Applicable Period.

2. All Documents shall be identified by the request(s) to which they are primarily responsive and produced as they are maintained in the usual course of business.

3. Produce all Documents and all other materials described below in KEF's actual or constructive possession, custody, or control, including in the possession, custody, or control of a current or former employee or third-party service provider, wherever those Documents and materials are maintained, including on personal computers, PDAs, wireless devices, or web-based email systems (such as Gmail, Yahoo, etc.).

4. Produce all Documents in KEF's custody or control, whether maintained in electronic or paper form and whether located on hardware owned and maintained by KEF or hardware owned and/or maintained by a third party that stores data on KEF's behalf. KEF must produce all such Documents even if they were deleted or in draft form. Without limitation, hardware where such data may be stored includes: servers; desktop, laptop, or tablet computers; cell and smart phones; PDA devices; scanners, fax machines, and copying machines; and mobile storage devices, such as thumb or external hard drives. Electronically stored Documents include any computerized data or content stored on electromagnetic media. Without limitation, types of electronically stored Documents include email, voicemail, and instant messages, intranet and internet system data, telephone and cellular telephone calling records, data compilations, spreadsheets, word processing Documents, images, databases, digital photocopier memory, and any other information stored in memory storage devices.

5. Produce the original or duplicate, as such terms are defined by Rule 1001 of the Federal Rules of Evidence, of each Document requested together with all non-identical copies and drafts of that Document. If a duplicate is produced, it should be legible and bound or stapled in the same manner as the original.

6. Documents not otherwise responsive to these Requests should be produced: (i) if such Documents mention, discuss, refer to, explain, or concern one or more Documents that are called for by these Requests; (ii) if such Documents are attached to, enclosed with, or accompany Documents called for by these Requests; or (iii) if such Documents constitute routing slips, transmittal memoranda or letters, comments, evaluations, or similar materials.

7. Documents attached to each other should not be separated; separate Documents should not be attached to each other.

8. Documents should include all exhibits, appendices, linked Documents, or otherwise appended Documents that are referenced in, attached to, included with, or are a part of the requested Documents.

9. If a request calls for information concerning a Transfer, Initial Transfer, redemption, or withdrawal from an account, such request includes, but is not limited to, Documents that reflect the account name and number for the account the funds were transferred from and to, method of transfer (*i.e.*, wire, check, etc.), date of, amount and the reason for the Transfer, Initial Transfer, redemption, or withdrawal.

10. If any Document, or any part thereof, is not produced based on a claim of attorney-client privilege, work-product protection, or any other privilege or immunity from disclosure, then in answer to such request or part thereof, for each such Document:

a. Identify the type, title, and subject matter of the Document;

b. State the place, date, and manner of preparation of the Document;

c. Identify all authors, addressees, and recipients of the Document, including information about such Persons to assess the privilege asserted; and

d. Identify the privilege(s) asserted and the factual basis for same.

11. Documents should not contain redactions unless such redactions are made to protect information subject to the attorney-client privilege and/or work-product protection. If Documents are produced with redactions, a log setting forth the information requested in Instruction #10 above must be provided.

12. If a Document sought herein was at one time, but is no longer, in KEF's actual or constructive possession, custody, or control, state whether it: (i) is missing or lost; (ii) has been destroyed; (iii) has been transferred to others; and/or (iv) has been otherwise disposed of. In each instance, Identify the Document, state the time period during which it was maintained, state the circumstance surrounding authorization for such disposition thereof and the date thereof, Identify each Person having knowledge of the circumstances of the disposition thereof, and Identify each Person who had possession, custody, or control of the Document, to whom it was available or who had knowledge of the Document and/or the contents thereof.

13. The Bankruptcy Court entered Orders on September 17, 2013: (I) Establishing Procedures for Third-Party Data Rooms; and (II) Modifying the June 6, 2011 Litigation

Protective Order. Pursuant to those Orders, upon production, Producing Parties shall provide the following information in a production cover letter, to the extent any of the following information is applicable: (i) the Documents (listed in an Excel file Document-by-Document by Beginning Bates and Ending Bates for each Document) that are designated as confidential pursuant to the Litigation Protective Order; (ii) the Documents (listed in an Excel file Document-by-Document by Beginning Bates and Ending Bates for each Document) that are designated confidential pursuant to an Individual Confidentiality Standard, if applicable, pursuant to Paragraph 10 of the Order Establishing Procedures for Third-Party Data Rooms and Paragraph I of the Order Modifying the June 6, 2001 Litigation Protective Order; (iii) the Documents (listed in an Excel file Document-by-Document by Beginning Bates and Ending Bates for each Document) that should be excluded from the Third-Party Data Rooms pursuant to Paragraph 4 of the Order Establishing Procedures for Third-Party Data Rooms and Paragraph C of the Order Modifying the June 6, 2001 Litigation Protective Order; and (iv) the designated representative authorized for that production to provide consent to the disclosure of confidential Documents requested or to object to the disclosure of confidential Documents.[1] Failure to provide such information in a production cover letter shall result in a waiver by the Producing Parties of: (i) any confidential designations; (ii) any objections to inclusion of the Documents in the Third-Party Data Rooms; and/or (iii) notification that Documents have been requested for disclosure. For the avoidance of doubt, notwithstanding Paragraph 13 of the Order Establishing Procedures for Third-Party Data Rooms and Paragraph L of the Order Modifying the June 6, 2011 Litigation Protective Order, Paragraphs 7 and 14 of the Litigation Protective Order will still apply with respect to: (i) inadvertent failure to designate confidential material as confidential or incorrect designations of confidential material (Paragraph 7 of the Litigation Protective Order); and (ii) inadvertent production or disclosure of any Document or other material otherwise protected by the attorney-client privilege, work-product protection or a joint defense/common interest privilege (Paragraph 14 of the Litigation Protective Order).

MANNER OF PRODUCTION

1. All Documents produced to the Trustee shall be provided in either native file ("native") or single-page 300 dpi-resolution group IV TIF format ("tiff") format as specified below, along with appropriately formatted industry-standard database load files, and accompanied by true and correct copies or representations of unaltered attendant metadata. Where Documents are produced in tiff format, each Document shall be produced along with a multi-page, Document-level searchable text file ("searchable text") as rendered by an industry-standard text extraction program in the case of electronic originals, or by an industry-standard Optical Character Recognition ("ocr") program in the case of scanned paper Documents. Searchable text of Documents shall not be produced as fielded data within the ".dat file" as described below.

2. Database load files and production media structure: Database load files shall consist of: (i) a comma-delimited values (".dat") file containing: production Document identifier information, data designed to preserve "parent and child" relationships within Document "families," reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper Documents), custodian or Document source information; and (ii) an Opticon

[1] Electronic productions containing Documents designated as confidential shall also be accompanied by a database load file containing a field identifying if a Document has been designated confidential.

(".opt") file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named "Data," images shall be provided within a root level "Images" folder containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level "Text" folder. If any of the Documents produced in response to these requests are designated as confidential pursuant to the Litigation Protective Order, in addition to marking the Documents with the brand "CONFIDENTIAL" or branding the media with the word "CONFIDENTIAL," also include a confidential field within the load file, with a "yes" or "no" indicating whether the Document has been designated as confidential, as well as native file loading/linking information (where applicable).

3. Electronic Documents and data, generally: Documents and other responsive data or materials created, stored, or displayed on electronic or electro-magnetic media shall be produced in the order in which the Documents are or were stored in the ordinary course of business, including all reasonably accessible metadata, custodian or Document source information, and searchable text as to allow the Trustee, through a reasonable and modest effort, to fairly, accurately, and completely access, search, display, comprehend, and assess the Document's true and original content.

4. Emails and attachments, and other email account-related Documents: All Documents and accompanying metadata created and/or stored in the ordinary course of business within commercial, off-the-shelf email systems including but not limited to Microsoft Exchange™, Lotus Notes™, or Novell Groupwise™ shall be produced in tiff format, accompanying metadata, and searchable text files or, alternately, in a format that fairly, accurately, and completely represents each Document in such a manner as to make the Document(s) reasonably useable, manageable, and comprehendible by the Trustee.

5. Documents and data created or stored in or by structured electronic databases: With the exclusion of email and email account-related Documents and data, all Documents and accompanying metadata created and/or stored in structured electronic databases or files shall be produced in a format that enables the Trustee to reasonably manage and import those Documents into a useable, coherent database. Documents must be accompanied with reasonably detailed documentation explaining each Document's content and format, including but not limited to data dictionaries and diagrams. Some acceptable formats, if and only if provided with definitive file(s), table(s), and field level schemas include:

a. XML format file(s);

b. Microsoft SQL database(s);

c. Access database(s); and/or

d. fixed or variable length ASCII delimited files.

6. Spreadsheets, multimedia, and non-standard file types: All Documents generated or stored in software such as Microsoft Excel or other commercially available spreadsheet programs, as well as any multimedia files such as audio or video, shall be produced in their native format, along with an accompanying placeholder image in tiff format indicating a native file has been produced. A "Nativelink" entry shall be included in the .dat load file indicating the relative file path to each native file on the production media. To the extent the party has other file types that do not readily or easily and accurately convert to tiff and searchable text, the party may elect to produce those files in native format subject to the other requirements listed herein.

Native files may be produced within a separate root-level folder structure on deliverable media entitled "Natives."

7. "Other" electronic Documents: All other Documents and accompanying metadata and embedded data created or stored in unstructured files generated by commercially available software systems (excluding emails, structured electronic databases, spreadsheets, or multimedia) such as, but not limited to, word processing files (such as Microsoft Word), image files (such as Adobe .pdf files and other formats), and text files shall be produced in tiff and searchable text format in the order the files are or were stored in the ordinary course of business.

8. Paper Documents: Documents originally created or stored on paper shall be produced in tiff format. Relationships between Documents shall be identified within the Relativity .dat file utilizing Document identifier numbers to express parent Document/child attachment boundaries, folder boundaries, and other groupings. In addition, the searchable text of each Document shall be provided as a multi-page text file as provided for by these requests.

REQUESTS FOR PRODUCTION

1. All Documents relevant to any claim or defense asserted in the Action.

I. FORMATION AND STRUCTURE

2. All Documents concerning the formation of KEF, including but not limited to articles of incorporation, memoranda of association, articles of association, by-laws, limited or general partnership agreements, limited liability company agreements, trust agreements, and organizational charts, and any other Documents reflecting formation and governance of KEF, as originally constituted and as amended or otherwise modified.

3. All Documents sufficient to identify KEF's principal place(s) of business, business address(es), and the name(s) and address(es) of KEF's registered agent(s).

4. All Documents sufficient to identify all members of KEF's Board of Directors, by year, including but not limited to Documents reflecting their titles, responsibilities, membership on any subcommittees or working groups, tenures, and any changes thereto.

5. All Documents concerning the formation, authority, and acts of KEF's Board of Directors, including but not limited to all Documents concerning: (i) the authority possessed by KEF's Board of Directors; (ii) KEF's Board of Directors' exercise of its authority, including but not limited to any such exercise of authority concerning KEF's investments, KEF's investments with BLMIS, and KEF's selection and engagement of BLMIS and all other service providers; (iii) any and all resolutions, orders, directives, or instructions issued by KEF's Board of Directors; (iv) any and all meetings of KEF's Board of Directors, including but not limited to agendas, notes, minutes, Documents considered by, distributed to, or created by KEF's Board of Directors before, during, or after any and all such meetings, and all drafts of such Documents; (v) all Communications to, from, or among KEF's Board of Directors or any individual Director(s); (vi) the manner in which the Directors were chosen, elected, or appointed to the Board; and (vii) the compensation of Directors.

6. All Documents sufficient to identify all of KEF's personnel, executives, officers, directors, employees, agents, and/or representatives, including but not limited to their position, title, responsibilities, dates of service, and supervisors.

7. All Documents sufficient to show the telephone numbers and email addresses assigned to all KEF's directors, officers, and employees, including but not limited to all employer-issued cell phone numbers.

II. CONTRACTUAL RELATIONSHIPS

8. All Documents concerning any agreement or contract, whether oral or written, to which KEF is a party or a beneficiary, including but not limited to all Documents concerning: (i) Manager Agreement dated as of May 1, 2000 between Kingate Management Limited and Kingate Euro Fund, Ltd.; (ii) Kingate Management Limited and FIM Limited Consulting Services Agreement relating to Kingate Euro Fund, Ltd. dated April 23, 2001; (iii) Deed of Novation between Kingate Management Limited, FIM Limited, and FIM Advisers LLP relating to Kingate Euro, Ltd. dated July 29, 2005; (iv) Kingate Management Limited and FIM Limited Distribution Agreement relating to Kingate Euro Fund, Ltd. dated April 23, 2001; (v) Kingate Euro Fund, Ltd. and Kingate Management Limited and Hemisphere Management Limited Administration Agreement dated May 1, 2000; (vi) Amended and Restated Administration Agreement between Kingate Euro Fund, Ltd. and Kingate Management Limited and Bisys Hedge Fund Services Limited dated June 1, 2007; (vii) Custodian Agreement made on May 1, 2000 between Kingate Euro Fund, Ltd. and The Bank of Bermuda Limited; and (viii) Registrar Agreement between Kingate Euro Fund, Ltd., Kingate Management Limited and Hemisphere Management Limited made as of May 1, 2000.

9. All Documents concerning any agreement or contract, whether oral or written, by, between, or among any of the Defendants.

III. DUE DILIGENCE AND INVESTMENT ACTIVITY

10. All Documents concerning KEF's operations, requirements, policies, and procedures concerning Risk Management, due diligence, know-your-customer, suspicious activity investigation and reporting, and any other Regulatory compliance policies and procedures. This Request includes all manuals or guidelines for such operations, requirements, policies, and procedures, as well as all Documents sufficient to determine the date and substance of any changes.

11. All Documents concerning KEF's due diligence processes, including but not limited to the standards and practices employed to investigate, monitor, and oversee the activities and investments of sub-advisers, unaffiliated managers, or third-party funds.

12. All Documents concerning KEF's methods, protocols, practices and procedures for conducting due diligence on any existing investment or any prospective investment opportunity.

13. All Documents concerning any inquiry, investigation, or due diligence conducted by KEF on any existing investment or potential investment, including but not limited to all Documents reviewed or created as part of that inquiry, investigation, or due diligence, due diligence reports or questionnaires, prospectuses, offering memoranda, private placement memoranda, advertisements, brochures, website postings, website addresses, presentations, pamphlets, pitch books, performance records, term sheets, and marketing or executive summaries.

14. All Documents concerning any potential or actual investment with, or related to, BLMIS, including but not limited to all Documents concerning: (i) due diligence conducted on BLMIS; (ii) any opinions, research, or advice concerning any actual or potential investment with BLMIS; (iii) any marketing materials of BLMIS, including but not limited to any private placement memoranda, offering memoranda, tear sheets, or prospectuses; (iv) any monthly, quarterly, or annual performance reports or summaries of BLMIS; (v) any monthly, quarterly, or annual risk or risk management reports of BLMIS; (vi) any portfolio management reports of BLMIS; (vii) any monthly, quarterly, or annual strategy reviews of BLMIS; (viii) SEC Form(s) ADV or 13F, or any amendments thereto, filed or submitted by BLMIS and any other Regulatory filings for BLMIS; (ix) any analysis, discussion, review, simulation, or replication of the split-strike conversion investment strategy purportedly executed by BLMIS or any trade purportedly executed under that strategy, including the volumes of and prices at which BLMIS purportedly purchased or sold securities, the identity of counterparties to trades purportedly executed by BLMIS, and trading activity inconsistent with the split-strike conversion strategy; (x) the management team or management structure of BLMIS; (xi) any investigation, background check, or similar review of the professional experience, education, or other credentials of any BLMIS employee; (xii) the identity or nature of BLMIS's clients or investors; (xiii) the assets under management of BLMIS, including but not limited to the amount of such assets, the growth of such assets, and the percentage of such assets attributable to particular, or groups of, clients or investors; (xiv) any of BLMIS's accountants, auditors, accounting firms, or auditing firms, including but not limited, to David G. Friehling or Friehling & Horowitz, CPAs, P.C.; (xv) fees or commissions charged by BLMIS; (xvi) risk models; (xvii) pricing models; (xviii) qualitative or quantitative analyses; (xix) periodic portfolio analyses; (xx) benchmarking analyses; (xxi) performance attribution analyses; (xxii) peer analyses; (xxiii) systematic v. non-systematic return analyses; (xxiv) regression analyses; (xxv) reverse-engineering analyses; (xxvi) risk-adjusted analyses; (xxvii) style-adjusted analyses; (xxviii) scenario analyses; (xxix) drawdown analyses; (xxx) correlation analyses; (xxxi) alpha analyses; (xxxii) comparisons, reviews, or analyses of performance during periods of market stress or market downturn; (xxxiii) the volatility or expected volatility of BLMIS's performance; (xxxiv) any "scatter diagrams" or histograms created or used to analyze the performance of BLMIS; (xxxv) the Sharpe ratio for BLMIS; and (xxxvi) the Sortino ratio for BLMIS.

15. All Documents concerning any assessment of, or due diligence conducted on, KGF, KEF, BLMIS, or any Feeder Fund, by any Person, including but not limited to all Documents concerning: (i) due diligence questionnaires; (ii) any opinions, research, or advice concerning any actual or potential investment with KEF; (iii) any KEF marketing materials, including but not limited to any private placement memoranda, offering memoranda, tear sheets, or prospectuses; (iv) any KEF monthly, quarterly, or annual performance reports or summaries; (v) any KEF monthly, quarterly, or annual risk or risk management reports; (vi) any KEF portfolio management reports; (vii) any KEF monthly, quarterly, or annual strategy reviews; (viii) KEF's Regulatory filings; (ix) risk models; (x) pricing models; (xi) qualitative or quantitative analyses; (xii) periodic portfolio analyses; (xiii) benchmarking analyses; (xiv) performance attribution analyses; (xv) peer analyses; (xvi) systematic v. non-systematic return analyses; (xvii) regression analyses; (xviii) reverse-engineering analyses; (xix) risk-adjusted analyses; (xx) style-adjusted analyses; (xxi) scenario analyses; (xxii) drawdown analyses; (xxiii) correlation analyses; (xxiv) alpha analyses; (xxv) comparisons, reviews, or analyses of performance during periods of market stress or market downturn; (xxvi) the volatility or

expected volatility of KEF's performance; (xxvii) any "scatter diagrams" or histograms created or used to analyze KEF's performance; (xxviii) KEF's assets under management, including but not limited to the amount of such assets, the growth of such assets, and the percentage of such assets attributable to particular, or groups of, clients or investors; (xxix) the Sharpe ratio for KEF; and (xxx) the Sortino ratio for KEF.

16. All Documents concerning the investment activity of KGF, KEF, BLMIS, or any Feeder Fund that relate to the following subjects: (i) the performance of KEF's investment with BLMIS; (ii) the NAV of KEF, including its calculation; (iii) KEF's assets under management; (iv) KEF's investment strategies, including the development, marketing, or execution of any investment strategy; (v) all account statements issued by KEF to any Person; (vi) trade confirmations or other memorialization of purported trades made by, or on behalf of, KEF; (vii) the identification (or lack thereof) of any counterparty to any trades purportedly executed by, or on behalf of, KEF and any attempts to ascertain any such counterparty's identity; (viii) any review, discussion, or analysis of any options purportedly purchased or sold by, or on behalf of, KEF; (ix) any review, analysis, or statement of prices at which KEF, or any Person acting on behalf of KEF, purportedly purchased or sold securities; and (x) any efforts to verify the securities positions purportedly held by BLMIS for the KEF Account.

IV. FINANCIAL AND ACCOUNTING RECORDS

17. All Documents concerning the accounting or recordation of KEF's financial performance and activity, including but not limited to all general ledgers, journals, trial balances, reconciliations, statements of cash flow, balance sheets, and profit-and-loss statements, and KEF's financial statements, whether audited or unaudited, including but not limited to audited annual statements, unaudited quarterly and other interim statements, and draft statements, including all related work papers, notes, schedules, and exhibits.

18. KEF's foreign and domestic tax returns or other tax reporting Documentation, whether filed, unfiled, or in draft form, and all supporting schedules, work papers, journal entries, and trial balances.

19. All Documents concerning services provided to KEF by PricewaterhouseCoopers, including but not limited to all Documents sent to or received from PricewaterhouseCoopers.

V. SUBSCRIPTIONS & REDEMPTIONS

20. All Documents provided to, received from, or concerning any and all actual or potential investors, subscribers, or shareholders in KEF, including but not limited to information memoranda, offering memoranda, private placement memoranda, and all other Documents of a similar type concerning the solicitation of investment or subscription in KEF; account opening Documents, investment advisory or management contracts, consent forms, trading authorizations, authorizations to purchase and sell securities, investment contracts, option agreements, and subscription agreements; and all Documents concerning that certain (i) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated October 6, 2008, (ii) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated September 22, 2008, (iii) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated August 1, 2007, (iv) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated May 1, 2006, (v) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated May 1, 2004, (vi) Kingate Euro Fund, Ltd. Amended and Restated

Information Memorandum dated January 15, 2003, (vii) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated January 1, 2002, and (viii) Kingate Euro Fund, Ltd. Information Memorandum dated May 1, 2000.

21. All Documents concerning your receipt of funds from any Person for purposes of investment or subscription in KEF.

22. All Documents concerning (i) any and all actual or proposed withdrawals of funds from KEF and (ii) any and all actual or proposed redemption of shares or partnerships interests in KEF.

VI. BANK ACCOUNTS

23. All Documents concerning any and all accounts, whether for deposit, credit, investment or any other purpose, maintained by KEF, in KEF's name, or by any Person on KEF's behalf, with any bank, financial institution, or depository trust corporation during the Applicable Period, including but not limited to all statements of account, signature cards, account-opening Documents, periodic reconciliations, deposit slips, withdrawal slips, check registers, canceled checks, wire transfer requests, and wire transfer confirmations. This Request includes all such Documents concerning account number 010-503324-512 and account number 010-503324-511 maintained in KEF's name, or on its behalf, with Bank Bermuda.

24. All Documents concerning any and all accounts, whether for deposit, credit, investment or any other purpose, maintained by any Defendant in its own name, or by another on such Defendant's behalf, with any bank, financial institution, or depository trust corporation during the Applicable Period, including but not limited to: (i) Bank Bermuda; (ii) HSBC-Monaco Bank; (iii) Fortis Bank- Guernsey; (iv) Fortis Bank-Channel Islands; (v) Lombard Odier Darier Hentsch, Geneva; (vi) Bank of NT Butterfield & Sons; (vii) Clariden Leu AG-Zurich; and JPMorgan Chase Bank, N.A. Documents responsive to this Request include, but are not limited to, all statements of account, signature cards, periodic reconciliations, deposit slips, withdrawal slips, check registers, canceled checks, wire transfer requests, wire transfer confirmations, and all other records reflecting cash activity. This Request includes all such Documents concerning (i) account number 010-424174-561 and account number 010-427174-564 maintained in KGF's name, or on its behalf, with Bank Bermuda and (ii) a certain demand deposit account maintained in KML's name, or on its behalf, with Bank Bermuda.

VII. CUSTOMER ACCOUNTS AND TRANSFERS

25. All Documents concerning any and all accounts, including but not limited to the KGF Account or the KEF Account, whether for deposit, credit, investment or any other purpose, maintained by KEF, in KEF's name, or by any Person on KEF's behalf, with BLMIS, including but not limited to all sub-advisory agreements, solicitation agreements, trading authorizations, trading directives, margin agreements, authorizations to purchase and sell securities, investment contracts, option agreements, subscription agreements, and limited partnership agreements, customer account statements, statements of NAV, calculations of NAV, trade confirmations, portfolio statements, deposit records, withdrawal records, and all other records of investment or cash activity.

26. All Documents concerning any and all Initial Transfers, including but not limited to all Documents concerning any of the following: (i) the date of each such Initial Transfer, (ii) the amount of each such Initial Transfer, (iii) the account name and account number for the

account from which the funds were transferred, (iv) the account name and account number for the account to which the funds were transferred, (v) the method of transfer, (vi) the reason for each such Initial Transfer, and (vii) the disposition of each such Initial Transfer.

27. All Documents concerning any and all Transfers from, between, or among any and all of the accounts referred to in Requests ##23 through 26.

28. All Documents concerning each and every request made to BLMIS to withdraw moneys from the KGF Account or the KEF Account, including but not limited to consideration of the timing and amount of such request, the decision to make such request, and all Communications concerning such request.

29. All Documents concerning each and every deposit made into the KGF Account or the KEF Account, including but not limited consideration of the timing and amount of such deposit, the decision to make such deposit, and all Communications concerning such deposit.

30. All Documents concerning any review or analysis undertaken to trace monies transferred from any of the accounts referred to in Requests ##23 through 26.

31. All Documents reviewed or relied upon in connection with the analyses attached at Exhibits J & K of the Declaration of Robert S. Loigman in Support of Opposition of Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd. to Trustee's Application for Enforcement of Automatic Stay and Injunction, filed on or about February 8, 2014 in *Picard v. Kingate Global Fund, Ltd.*, Adv. Proc. No. 12-01920 (SMB).

32. All Documents concerning management fees, administrative fees, performance fees, or any other fees or commissions charged by, or paid to, KML, BLMIS, FIM Advisers, FIM Limited, Citi Hedge, and any other Defendant.

VIII. BLMIS

33. All Documents concerning BLMIS, including but not limited to all Documents concerning any of the following: (i) Documents received from or sent to BLMIS; (ii) Documents received from or sent to any Defendant concerning BLMIS or KEF's investments with BLMIS; (iii) any contact, meeting, or attempt to contact or meet with BLMIS or with any BLMIS employee; (iv) all Communications between KEF and BLMIS including but not limited to transcripts or audio recordings of any such telephone calls; (v) all Communications between KEF and any Person concerning BLMIS, including but not limited to transcripts or audio recordings of any such telephone calls; (vi) any agreement or contract, whether oral or written, to which BLMIS is a party; (vii) all Communications with any BLMIS Employee; and (viii) all Documents received from or sent to any Feeder Fund, the Depository Trust & Clearing Corporation, and the Options Clearing Corporation concerning BLMIS.

34. All Documents created on or after December 11, 2008, concerning: (i) the public disclosure that a Ponzi scheme operated out of BLMIS; (ii) the arrest, confession, plea, conviction, or sentencing of either Bernard L. Madoff or of any employee of BLMIS; and (iii) all meetings held by KEF's Board of Directors or KEF's committees, sub-committees or working groups in which BLMIS's Ponzi scheme was a subject or topic or was mentioned or referenced.

35. All Documents created on or after December 11, 2008, concerning: (i) any review or modification of KGF's due diligence process; (ii) any self-critical analysis; (iii) any investigation or review that KGF conducted of itself; and (iv) any Communications with any

shareholder or prospective shareholder of KGF concerning (a) subscriptions or redemptions in KGF, (b) the NAV of KGF, (c) the effect on KGF of the arrest of Bernard L. Madoff or the commencement of liquidation proceedings against BLMIS, or (d) KGF's actions subsequent to the arrest of Bernard L. Madoff or the commencement of liquidation proceedings against BLMIS.

36. All Documents concerning: (i) any analysis or discussion of execution prices, performance, or returns of BLMIS; (ii) any analysis or discussion of the feasibility or impossibility of the purported returns and trades of, BLMIS; (iii) Cambridge Associates LLC; (iv) Robert Rosenkranz or Acorn Partners; (v) Oswald Gruebel; (vi) Jim Vos or Aksia, LLC; (vii) David Giampaolo or Pi Capital; (viii) Neil Chelo or Benchmark Plus Partners; (ix) Albourne Partners; (x) Bayou Group, LLC, Bayou Fund, Bayou Hedge Fund Group, Bayou Management, LLC, Samuel Israel III, or any of their respective affiliates; (xi) Michael Ocrant; (xii) Erin Arvedlund; (xiii) Noreen Harrington; (xiv) Michael Markov, (xv) Gil Berman; (xvi) Edward Thorp; (xvii) Harry Markopolos; (xviii) Chris Cutler; (xix) Eric Lazear; (xx) the article in the May 7, 2001 issue of Barron's entitled "Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum"; (xxi) the article in the December 16, 1992 issue of the Wall Street Journal entitled "Wall Street Mystery Features a Big Board Rival"; (xxii) the May 2001 MAR/Hedge newsletter entitled "Madoff Tops Charts; Skeptics Ask How"; and (xxiii) any actual, potential, or suspected fraud, Ponzi scheme, or illegal activity (including front running), at BLMIS.

IX. SPECIFIC INDIVIDUALS AND ENTITIES

37. All Documents concerning any of the following: (i) Manzke; (ii) Fairfield Greenwich (Bermuda), Ltd.; (iii) Fairfield Sentry Ltd.; (iv) Amit Vijayvergia; (v) Andres Piedrahita; (vi) Shazieh Salahuddin; (vii) Eric Lazear; (viii) Tremont (Bermuda) Limited; (ix) Tremont Advisers; (x) Tremont Group Holdings, Inc.; (xi) Tremont Partners, Inc.; (xii) Hemisphere Management Limited; (xiii) Christopher Wetherhill; (xiv) Island Storm, Ltd.; (xv) Phillip A. Evans; (xvi) Frank Walters; (xvii) Michael Tannenbaum; (xviii) the law firm of Tannenbaum Helpern Syracuse & Hirschtritt LLP; (xix) MN Services; (xx) UBP; (xxi) M Invest; (xxii) Robert Johnson; (xxiii) BNP Paribas; (xxiv) Barry E. Breen; (xxv) Moore Stephens International Services (BVI) Limited; (xxvi) Moore Stephens Services SAM; (xxvii) Hamilton Trust Co. Ltd.; (xxviii) Hamilton Nominees Ltd.; (xxix) Fenton Trust; (xxx) FIM Long-Invest Fund EUR & USD; (xxxi) Dancrest Global Equity Fund; (xxxii) Levco Debt Opportunity Fund & Levco Alternative Fund; (xxxiii) FIM Relative Value Fund; (xxxiv) Five Balanced Fund (Bermuda); (xxxv) Five Balanced Fund (Cayman Islands); (xxxvi) Victoria Global Fund; (xxxvii) FDVG Low Volatility Investments & FDVG Equity Investments; (xxxviii) Silver Shield Fund (Bermuda); or (xxxix) Silver Shield Fund (Cayman Islands).

X. INVESTIGATIONS & LITIGATION

38. All Documents concerning any civil, criminal, or other legal proceedings, such as arbitration, including but not limited to the Bermuda Action and the BVI Proceedings, and any criminal investigation, commenced by or against KEF or any other Defendant, in any jurisdiction, whether foreign or domestic, whether threatened or filed, including but not limited to, any pleadings, motions, correspondence, Documents and discovery produced, deposition transcripts (including exhibits), hearing transcripts, witness statements taken or given by any party/witness or produced in discovery, and orders, rulings, and judgments.

39. All Documents concerning any Communications between KEF and any governmental, Regulatory, or law enforcement entity or official in any jurisdiction, whether foreign or domestic, concerning BLMIS, including but not limited to all Documents received from or sent to any such entity or official.

40. All Documents concerning any Communications between KEF and any governmental, Regulatory, or law enforcement entity or official in any jurisdiction, whether foreign or domestic, concerning any Defendant, including but not limited to all Documents received from or sent to any such entity or official.

41. All Documents concerning any and all payments or consideration made by or received by KEF after December 11, 2008, in connection with KEF's investment with BLMIS.

42. All Documents concerning any claims filed or actions taken (whether legal, equitable, or otherwise) to recoup or recover any damages or losses KEF alleges to have sustained as a result of KEF's investment with BLMIS.

43. All Communications with, and all Documents submitted by or on behalf of any investor, subscriber, or shareholder in KEF to, Richard C. Breeden, his attorneys, his accountants, or any other representative of Mr. Breeden or the Madoff Victim Fund created under the Department of Justice Asset Forfeiture Distribution Program.

Date: New York, NY
October 7, 2015

/s/ David J. Sheehan

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New York, NY 10111
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Attorney for Irving H. Picard, Trustee for the substantively consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 7th day of October, 2015 by electronic mail upon the following:

Counsel for the Joint Liquidators for Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd.

Robert S. Loigman
Rex Lee
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/s/ William W. Hellmuth
An Attorney for Irving H. Picard, Trustee for the substantively consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff

EXHIBIT C

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Counsel to Joint Liquidators of Kingate Global Fund Ltd. and Kingate Euro Fund Ltd.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FEDERICO CERETTI, *et al.* Defendants.	Adv. Pro. No. 09-1161 (SMB)

DEFENDANT KINGATE GLOBAL FUND LIMITED'S RESPONSES AND OBJECTIONS TO THE TRUSTEE'S FIRST REQUESTS FOR PRODUCTION

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7034 of the Federal Rules of Bankruptcy Procedure, the Joint Liquidators for defendant Kingate Global Fund Limited ("Kingate Global"), by their undersigned counsel, respond and object as follows to the First Request for the Production of Documents (the "Requests") propounded by plaintiff Irving Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC (the "Trustee" or "Plaintiff") as follows:

GENERAL OBJECTIONS

1. Kingate Global objects to the Requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection from disclosure, including any privacy right afforded to Kingate Global or it investors. The inadvertent disclosure of any information or document that is privileged or otherwise protected from disclosure will not waive such privilege, protection or privacy right.

2. Kingate Global objects to the Requests to the extent they purport to impose on Kingate Global any obligations beyond those set forth in the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the local rules of this Court.

3. Kingate Global objects to the Requests to the extent they seek discovery beyond the limits of or different from that permitted by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the local rules of this Court.

4. To the extent any definition does not comport with the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, the local rules of this Court, or the ordinary meaning of the word itself, Kingate Global will follow the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the local rules of this Court, or apply

the ordinary meaning of the word. References below to terms defined in the Requests do not mean that Kingate Global agrees with the definitions of those terms.

5. Kingate Global objects to the Instructions to the extent they purport to require Kingate Global to do more than produce documents.

6. Kingate Global objects to the Requests to the extent they are so vague, ambiguous or confusing as not to be susceptible to a reasoned interpretation or response.

7. Kingate Global objects to the Requests to the extent they fail to identify with reasonable particularity the information sought.

8. Kingate Global objects to the Requests to the extent they are overly broad, overly expansive, oppressive or unduly burdensome and would thus impose upon Kingate Global an unreasonable burden of inquiry or unreasonable costs.

9. Kingate Global objects to the Requests to the extent they contain legal conclusions or characterize certain information, allegations or ideas as undisputed fact.

10. Kingate Global objects to every Request that is duplicative of other Requests.

11. Kingate Global objects to the Requests to the extent they seek information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Kingate Global's decision to provide any document requested, notwithstanding the objectionable nature of any Request, is not a concession that the produced information is relevant, material or admissible in these or any other proceedings. Kingate Global reserves all objections regarding the relevance and admissibility of these responses and all forthcoming production(s) by Kingate Global as evidence in these or any other proceedings.

12. Kingate Global objects to the Requests to the extent they require the disclosure of trade secrets or confidential or proprietary information or documents.

13. Kingate Global objects to the Requests to the extent they require Kingate Global to provide documents that are not in its possession, custody or control.

14. Kingate Global objects to any form of production of electronically-stored information that imposes obligations beyond those required by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the local rules of this Court.

15. All responses and forthcoming production(s) of documents are made subject to these objections and are based solely on the information known to Kingate Global at the time these responses are served. Kingate Global reserves the right to revise, supplement or clarify any objection, response or production at any time, and to use at trial in this action information or documents later determined to have been responsive to these Requests.

16. Kingate Global reserves the right to object to further discovery into the subject matter of the Requests.

17. Statements below to the effect that records shall be produced does not necessarily mean that any such records actually exist.

18. Kingate Global objects to each and every Request that is subject to the "Applicable Period" on the ground that the time period for production is overbroad and unduly burdensome and seeks information more than one year after the disclosure of the fraud at issue. Kingate Global will not search for documents created on or after May 8, 2009, when orders were issued placing Kingate Global in provisional liquidation.

19. Kingate Global objects to the instructions in the "Manner of Production" to the extent they impose an unreasonable burden. Kingate Global will produce any documents (and available metadata) in formats that are reasonably available and after conferring with the Trustee.

20. Kingate Global objects to the Requests to the extent they seek information regarding specific shareholders in Kingate Global, as production of such information may require the Joint Liquidators of Kingate Global to breach their obligations under BVI law and/or provisions included in agreements with shareholders.

21. Kingate Global objects to the Requests to the extent they seek information provided to Kingate Global by other defendants in this case in connection with Kingate Global's legal proceedings in Bermuda, as production of such information may require the Joint Liquidators of Kingate Global to breach their obligations under Bermuda law and/or agreements with these producing parties. Kingate Global is applying to the Bermuda court to permit production of such documents to the Trustee.

22. Each of the foregoing general objections is incorporated into each and every specific response set forth below. Notwithstanding the specific response to any Request, Kingate Global does not waive any of its general objections. Kingate Global may repeat a general objection below for emphasis or for some other reason, and the failure to repeat a general objection shall not be construed as a waiver of any general objection to the Requests.

RESPONSES TO DOCUMENT REQUEST

REQUEST FOR PRODUCTION NO. 1:

All Documents relevant to any claim or defense asserted in the Action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects on the grounds that the

Request is vague, ambiguous, and fails to identify with reasonable particularity the information sought. Kingate Global also objects to the extent this Request is duplicative of other Requests.

Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

I. FORMATION AND STRUCTURE

REQUEST FOR PRODUCTION NO. 2:

All Documents concerning the formation of KGF, including but not limited to articles of incorporation, memoranda of association, articles of association, by-laws, limited or general partnership agreements, limited liability company agreements, trust agreements, and organizational charts, and any other Documents reflecting formation and governance of KGF, as originally constituted and as amended or otherwise modified.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 3:

All Documents sufficient to identify KGF's principal place(s) of business, business address(es), and the name(s) and address(es) of KGF's registered agent(s).

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Subject to its general objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 4:

All Documents sufficient to identify all members of KGF's Board of Directors, by year, including but not limited to Documents reflecting their titles, responsibilities, membership on any subcommittees or working groups, tenures, and any changes thereto.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Subject to its general objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 5:

All Documents concerning the formation, authority, and acts of KGF's Board of Directors, including but not limited to all Documents concerning: (i) the authority possessed by KGF's Board of Directors; (ii) KGF's Board of Directors' exercise of its authority, including but not limited to any such exercise of authority concerning KGF's investments, KGF's investments with BLMIS, and KGF's selection and engagement of BLMIS and all other service providers; (iii) any and all resolutions, orders, directives, or instructions issued by KGF's Board of Directors; (iv) any and all meetings of KGF's Board of Directors, including but not limited to agendas, notes, minutes, Documents considered by, distributed to, or created by KGF's Board of Directors before, during, or after any and all such meetings, and all drafts of such Documents; (v) all Communications to, from, or among KGF's Board of Directors or any individual Director(s); (vi) the manner in which the Directors were chosen, elected, or appointed to the Board; and (vii) the compensation of Directors.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 6:

All Documents sufficient to identify all of KGF's personnel, executives, officers, directors, employees, agents, and/or representatives, including but not limited to their position, title, responsibilities, dates of service, and supervisors.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 7:

All Documents sufficient to show the telephone numbers and email addresses assigned to all KGF's directors, officers, and employees, including but not limited to all employer-issued cell phone numbers.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

II. CONTRACTUAL RELATIONSHIPS

REQUEST FOR PRODUCTION NO. 8:

All Documents concerning any agreement or contract, whether oral or written, to which KGF is a party or a beneficiary, including but not limited to all Documents concerning: (i) Co-Manager Agreement between Tremont (Bermuda) Limited and Kingate Global Fund, Ltd.; (ii) Letter agreement dated January 16, 2006 between Kingate Global Fund, Ltd. and Tremont (Bermuda) Limited terminating Co-Manager Agreement as of December 31, 2005; (iii) First Amendment to the Kingate Global Fund, Ltd. Management Agreement dated as of March 1, 1995 between Kingate Global Fund, Ltd. and Kingate Management Limited; (iv) Kingate Global Fund, Ltd. and Kingate Management Limited and Tremont (Bermuda) Limited Co-Management Agreement; (v) Co-Manager Agreement dated as of July 1, 2004 between Kingate Management Limited and Kingate Global Fund, Ltd.; (vi) Management Agreement dated as of January 1, 2006 between Kingate Management Limited and Kingate Global Fund, Ltd.; (vii) Tremont (Bermuda) Limited and Kingate Management Limited and Kingate Global Fund, Ltd. Consulting Services Agreement made as of February 24, 1994; (viii) Kingate Management Limited and Kingate Global Fund, Ltd. and FIM Limited Consulting Services Agreement made as of December 1, 1995; (ix) Amendment to Consulting Services Agreement between Kingate Management Limited and Kingate Global Fund, Ltd. and FIM Limited effective December 1, 1995; (x) Kingate Management Limited and FIM Limited Consulting Services Agreement relating to Kingate Global Fund, Ltd. dated April 23, 2001; (xi) Kingate Management Limited and FIM Limited Consulting Services Agreement relating to Kingate Global Fund, Ltd. dated April 29, 2001; (xii) Deed of Novation between Kingate Management Limited, FIM Limited, and FIM Advisers LLP relating to Kingate Global Fund, Ltd. dated July 29, 2005; (xiii) Kingate Management Limited and FIM Limited Distribution Agreement relating to Kingate Global Fund, Ltd. dated April 24, 2001; (xiv) Administration Agreement between Kingate Global Fund, Ltd., Kingate Management Limited, and Hemisphere Management Limited; (xv) First Amendment to the Kingate Global Fund, Ltd. Administration Agreement dated as of March 1, 1995; (xvi) Kingate Global Fund, Ltd. and Kingate Management Limited and Hemisphere Management Limited Restated and Amended Administration Agreement dated May 1, 2000; (xvii) Amended

and Restated Administration Agreement between Kingate Global Fund, Ltd. and Kingate Management Limited and Bisys Hedge Fund Services Limited dated June 1, 2007; (xviii) Custodian Agreement between Kingate Global Fund, Ltd., The Bank of Bermuda Limited, and Kingate Management Limited; (xix) Custodian Agreement between Kingate Global Fund, Ltd. and The Bank of Bermuda Limited and Kingate Management Limited made as of March 1, 1994; and (xx) Registrar Agreement between Kingate Global Fund, Ltd., Kingate Management Limited and Hemisphere Management Limited made as of May 1, 2000.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Global will negotiate in good faith to narrow the scope of this request and produce non-privileged documents responsive to the narrowed request.

REQUEST FOR PRODUCTION NO. 9:

All Documents concerning any agreement or contract, whether oral or written, by, between, or among any of the Defendants.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Kingate Global also objects to this Request to the extent it seeks information that is not in Kingate Global's possession, custody, or control. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

III. DUE DILIGENCE AND INVESTMENT ACTIVITY

REQUEST FOR PRODUCTION NO. 10:

All Documents concerning KGF's operations, requirements, policies, and procedures concerning Risk Management, due diligence, know-your-customer, suspicious activity investigation and reporting, and any other Regulatory compliance policies and procedures. This Request includes all manuals or guidelines for such operations, requirements, policies, and procedures, as well as all Documents sufficient to determine the date and substance of any changes.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 11:

All Documents concerning KGF's due diligence processes, including but not limited to the standards and practices employed to investigate, monitor, and oversee the activities and investments of sub-advisers, unaffiliated managers, or third-party funds.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the ground that it is duplicative of other Requests. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 12:

All Documents concerning KGF's methods, protocols, practices and procedures for conducting due diligence on any existing investment or any prospective investment opportunity.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the ground that it is duplicative of other Requests. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 13:

All Documents concerning any inquiry, investigation, or due diligence conducted by KGF on any existing investment or potential investment, including but not limited to all Documents reviewed or created as part of that inquiry, investigation, or due diligence, due diligence reports or questionnaires, prospectuses, offering memoranda, private placement memoranda, advertisements, brochures, website postings, website addresses, presentations, pamphlets, pitch books, performance records, term sheets, and marketing or executive summaries.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the grounds that it (i) seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence; and (ii) is duplicative of other Requests. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 14:

All Documents concerning any potential or actual investment with, or related to, BLMIS, including but not limited to all Documents concerning: (i) due diligence conducted on BLMIS; (ii) any opinions, research, or advice concerning any actual or potential investment with BLMIS; (iii) any marketing materials of BLMIS, including but not limited to any private placement memoranda, offering memoranda, tear sheets, or prospectuses; (iv) any monthly, quarterly, or annual performance reports or summaries of BLMIS; (v) any monthly, quarterly, or annual risk or risk management reports of BLMIS; (vi) any portfolio management reports of BLMIS; (vii) any monthly, quarterly, or annual strategy reviews of BLMIS; (viii) SEC Form(s) ADV or 13F, or any amendments thereto, filed or submitted by BLMIS and any other Regulatory filings for

BLMIS; (ix) any analysis, discussion, review, simulation, or replication of the split- strike conversion investment strategy purportedly executed by BLMIS or any trade purportedly executed under that strategy, including the volumes of and prices at which BLMIS purportedly purchased or sold securities, the identity of counterparties to trades purportedly executed by BLMIS, and trading activity inconsistent with the split-strike conversion strategy; (x) the management team or management structure of BLMIS; (xi) any investigation, background check, or similar review of the professional experience, education, or other credentials of any BLMIS employee; (xii) the identity or nature of BLMIS's clients or investors; (xiii) the assets under management of BLMIS, including but not limited to the amount of such assets, the growth of such assets, and the percentage of such assets attributable to particular, or groups of, clients or investors; (xiv) any of BLMIS's accountants, auditors, accounting firms, or auditing firms, including but not limited, to David G. Friehling or Friehling & Horowitz, CPAs, P.C.; (xv) fees or commissions charged by BLMIS; (xvi) risk models; (xvii) pricing models; (xviii) qualitative or quantitative analyses; (xix) periodic portfolio analyses; (xx) benchmarking analyses; (xxi) performance attribution analyses; (xxii) peer analyses; (xxiii) systematic v. non-systematic return analyses; (xxiv) regression analyses; (xxv) reverse-engineering analyses; (xxvi) risk-adjusted analyses; (xxvii) style-adjusted analyses; (xxviii) scenario analyses; (xxix) drawdown analyses; (xxx) correlation analyses; (xxxi) alpha analyses; (xxxii) comparisons, reviews, or analyses of performance during periods of market stress or market downturn; (xxxiii) the volatility or expected volatility of BLMIS's performance; (xxxiv) any "scatter diagrams" or histograms created or used to analyze the performance of BLMIS; (xxxv) the Sharpe ratio for BLMIS; and (xxxvi) the Sortino ratio for BLMIS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 15:

All Documents concerning any assessment of, or due diligence conducted on, KGF, KEF, BLMIS, or any Feeder Fund, by any Person, including but not limited to all Documents concerning: (i) due diligence questionnaires; (ii) any opinions, research, or advice concerning any actual or potential investment with KGF; (iii) any KGF marketing materials, including but not limited to any private placement memoranda, offering memoranda, tear sheets, or prospectuses; (iv) any KGF monthly, quarterly, or annual performance reports or summaries; (v) any KGF monthly, quarterly, or annual risk or risk management reports; (vi) any KGF portfolio management reports; (vii) any KGF monthly, quarterly, or annual strategy reviews; (viii) KGF's Regulatory filings; (ix) risk models; (x) pricing models; (xi) qualitative or quantitative analyses; (xii) periodic portfolio analyses; (xiii) benchmarking analyses; (xiv) performance attribution analyses; (xv) peer analyses; (xvi) systematic v. non-systematic return analyses; (xvii) regression analyses; (xviii) reverse-engineering analyses; (xix) risk-adjusted analyses; (xx) style-adjusted

analyses; (xxi) scenario analyses; (xxii) drawdown analyses; (xxiii) correlation analyses; (xxiv) alpha analyses; (xxv) comparisons, reviews, or analyses of performance during periods of market stress or market downturn; (xxvi) the volatility or expected volatility of KGF's performance; (xxvii) any "scatter diagrams" or histograms created or used to analyze KGF's performance; (xxviii) KGF's assets under management, including but not limited to the amount of such assets, the growth of such assets, and the percentage of such assets attributable to particular, or groups of, clients or investors; (xxix) the Sharpe ratio for KGF; and (xxx) the Sortino ratio for KGF.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the grounds that it (i) seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence; and (ii) seeks information that is not in Kingate Global's possession, custody, or control in that it requests information concerning "due diligence" conducted by any one in the world. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 16:

All Documents concerning the investment activity of KGF, KEF, BLMIS, or any Feeder Fund that relate to the following subjects: (i) the performance of KGF's investment with BLMIS; (ii) the NAV of KGF, including its calculation; (iii) KGF's assets under management; (iv) KGF's investment strategies, including the development, marketing, or execution of any investment strategy; (v) all account statements issued by KGF to any Person; (vi) trade confirmations or other memorialization of purported trades made by, or on behalf of, KGF; (vii) the identification (or lack thereof) of any counterparty to any trades purportedly executed by, or on behalf of, KGF and any attempts to ascertain any such counterparty's identity; (viii) any review, discussion, or analysis of any options purportedly purchased or sold by, or on behalf of, KGF; (ix) any review, analysis, or statement of prices at which KGF, or any Person acting on behalf of KGF, purportedly purchased or sold securities; and (x) any efforts to verify the securities positions purportedly held by BLMIS for the KGF Account.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the

grounds that it (i) seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence; and (ii) seeks information that is not in Kingate Global's possession, custody, or control. Subject to the foregoing objections, Kingate Global will negotiate in good faith to narrow the scope of this request and produce non-privileged documents responsive to the narrowed request.

IV. FINANCIAL AND ACCOUNTING RECORDS

REQUEST FOR PRODUCTION NO. 17:

All Documents concerning the accounting or recordation of KGF's financial performance and activity, including but not limited to all general ledgers, journals, trial balances, reconciliations, statements of cash flow, balance sheets, and profit-and-loss statements, and KGF's financial statements, whether audited or unaudited, including but not limited to audited annual statements, unaudited quarterly and other interim statements, and draft statements, including all related work papers, notes, schedules, and exhibits.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request to the extent the inclusion of "work papers" is intended to seek such documents created by Kingate Global's outside auditors. To the extent this Request does so, Kingate Global refers to its response and objections to Request No. 19. Otherwise, subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 18:

KGF's foreign and domestic tax returns or other tax reporting Documentation, whether filed, unfiled, or in draft form, and all supporting schedules, work papers, journal entries, and trial balances.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 19:

All Documents concerning services provided to KGF by PricewaterhouseCoopers, including but not limited to all Documents sent to or received from PricewaterhouseCoopers.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Global will produce its engagement letters with PricewaterhouseCoopers, audited financial statements, and documents sent to or received from PricewaterhouseCoopers, to the extent permitted.

V. SUBSCRIPTIONS & REDEMPTIONS

REQUEST FOR PRODUCTION NO. 20:

All Documents provided to, received from, or concerning any and all actual or potential investors, subscribers, or shareholders in KGF, including but not limited to information memoranda, offering memoranda, private placement memoranda, and all other Documents of a similar type concerning the solicitation of investment or subscription in KGF; account opening Documents, investment advisory or management contracts, consent forms, trading authorizations, authorizations to purchase and sell securities, investment contracts, option agreements, and subscription agreements; and all Documents concerning that certain (i) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated October 6, 2008, (ii)

Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated September 22, 2008, (iii) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated August 1, 2007, (iv) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated May 1, 2007, (v) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated May 1, 2006, (vi) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated May 1, 2004, (vii) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated January 15, 2003, (viii) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum dated January 1, 2002, (ix) Kingate Global Fund, Ltd. Information Memorandum dated May 1, 2000, (x) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum as of January 1, 1999, (xi) Kingate Global Fund, Ltd. Amended and Restated Information Memorandum as of September 20, 1998, (xii) Kingate Global Fund, Ltd. Information Memorandum dated December 1, 1995, (xiii) Kingate Global Fund, Ltd. Restated Information Memorandum as of March 1, 1995, and (xiv) Kingate Global Fund, Ltd. Restated Information Memorandum as of March 1, 1995.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 21:

All Documents concerning your receipt of funds from any Person for purposes of investment or subscription in KGF.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 22:

All Documents concerning (i) any and all actual or proposed withdrawals of funds from KGF and (ii) any and all actual or proposed redemption of shares or partnerships interests in KGF.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

VI. BANK ACCOUNTS

REQUEST FOR PRODUCTION NO. 23:

All Documents concerning any and all accounts, whether for deposit, credit, investment or any other purpose, maintained by KGF, in KGF's name, or by any Person on KGF's behalf, with any bank, financial institution, or depository trust corporation during the Applicable Period, including but not limited to all statements of account, signature cards, account-opening Documents, periodic reconciliations, deposit slips, withdrawal slips, check registers, canceled checks, wire transfer requests, and wire transfer confirmations. This Request includes all such Documents concerning account number 010-424174-561 and account number 010-427174-564 maintained with Bank Bermuda.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 24:

All Documents concerning any and all accounts, whether for deposit, credit, investment or any other purpose, maintained by any Defendant in its own name, or by another on such

Defendant's behalf, with any bank, financial institution, or depository trust corporation during the Applicable Period, including but not limited to: (i) Bank Bermuda; (ii) HSBC- Monaco Bank; (iii) Fortis Bank- Guernsey; (iv) Fortis Bank-Channel Islands; (v) Lombard Odier Darier Hentsch, Geneva; (vi) Bank of NT Butterfield & Sons; (vii) Clariden Leu AG-Zurich; and JPMorgan Chase Bank, N.A. Documents responsive to this Request include, but are not limited to, all statements of account, signature cards, periodic reconciliations, deposit slips, withdrawal slips, check registers, canceled checks, wire transfer requests, wire transfer confirmations, and all other records reflecting cash activity. This Request includes all such Documents concerning (i) account number 010-503324-512 and account number 010-503324-511 maintained in KEF's name, or on its behalf, with Bank Bermuda and (ii) a certain demand deposit account maintained in KML's name, or on its behalf, with Bank Bermuda.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

VII. CUSTOMER ACCOUNTS AND TRANSFERS

REQUEST FOR PRODUCTION NO. 25:

All Documents concerning any and all accounts, including but not limited to the KGF Account or the KEF Account, whether for deposit, credit, investment or any other purpose, maintained by KGF, in KGF's name, or by any Person on KGF's behalf, with BLMIS, including but not limited to all sub-advisory agreements, solicitation agreements, trading authorizations, trading directives, margin agreements, authorizations to purchase and sell securities, investment contracts, option agreements, subscription agreements, and limited partnership agreements, customer account statements, statements of NAV, calculations of NAV, trade confirmations, portfolio statements, deposit records, withdrawal records, and all other records of investment or cash activity.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate

Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 26:

All Documents concerning any and all Initial Transfers, including but not limited to all Documents concerning any of the following: (i) the date of each such Initial Transfer, (ii) the amount of each such Initial Transfer, (iii) the account name and account number for the account from which the funds were transferred, (iv) the account name and account number for the account to which the funds were transferred, (v) the method of transfer, (vi) the reason for each such Initial Transfer, and (vii) the disposition of each such Initial Transfer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 27:

All Documents concerning any and all Transfers from, between, or among any and all of the accounts referred to in Requests ##23 through 26.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request to the extent it seeks confidential information relating to Kingate Global's investors. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 28:

All Documents concerning each and every request made to BLMIS to withdraw moneys from the KGF Account or the KEF Account, including but not limited to consideration of the timing and amount of such request, the decision to make such request, and all Communications concerning such request.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 29:

All Documents concerning each and every deposit made into the KGF Account or the KEF Account, including but not limited consideration of the timing and amount of such deposit, the decision to make such deposit, and all Communications concerning such deposit.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 30:

All Documents concerning any review or analysis undertaken to trace monies transferred from any of the accounts referred to in Requests ##23 through 26.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request to the extent it seeks information that is protected by the attorney-client privilege or any other privilege or protection from disclosure. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 31:

All Documents reviewed or relied upon in connection with the analyses attached at Exhibits J & K of the Declaration of Robert S. Loigman in Support of Opposition of Kingate

Global Fund, Ltd. and Kingate Global Fund, Ltd. to Trustee's Application for Enforcement of Automatic Stay and Injunction, filed on or about February 8, 2014 in *Picard v. Kingate Global Fund, Ltd.*, Adv. Proc. No. 12-01920 (SMB).

RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

In addition to its general objections, Kingate Global objects to this Request on the ground that it seeks information that is protected by the attorney-client privilege and as attorney work product.

REQUEST FOR PRODUCTION NO. 32:

All Documents concerning management fees, administrative fees, performance fees, or any other fees or commissions charged by, or paid to, KML, BLMIS, FIM Advisers, FIM Limited, Citi Hedge, and any other Defendant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request to the extent it seeks information that is protected by the attorney-client privilege or any other privilege or protection from disclosure. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

VIII. BLMIS

REQUEST FOR PRODUCTION NO. 33:

All Documents concerning BLMIS, including but not limited to all Documents concerning any of the following: (i) Documents received from or sent to BLMIS; (ii) Documents received from or sent to any Defendant concerning BLMIS or KGF's investments with BLMIS; (iii) any contact, meeting, or attempt to contact or meet with BLMIS or with any BLMIS employee; (iv) all Communications between KGF and BLMIS including but not limited to transcripts or audio recordings of any such telephone calls; (v) all Communications between KGF and any Person concerning BLMIS, including but not limited to transcripts or audio recordings of any such telephone calls; (vi) any agreement or contract, whether oral or written, to which BLMIS is a party; (vii) all Communications with any BLMIS Employee; and (viii) all Documents received from or sent to any Feeder Fund, the Depository Trust & Clearing Corporation, and the Options Clearing Corporation concerning BLMIS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request to the extent it seeks confidential information relating to Kingate Global's investors. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 34:

All Documents created on or after December 11, 2008, concerning: (i) the public disclosure that a Ponzi scheme operated out of BLMIS; (ii) the arrest, confession, plea, conviction, or sentencing of either Bernard L. Madoff or of any employee of BLMIS; and (iii) all meetings held by KGF's Board of Directors or KGF's committees, sub-committees or working groups in which BLMIS's Ponzi scheme was a subject or topic or was mentioned or referenced.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request to the extent it seeks information that is protected by the attorney client privilege or any other privilege or protection from disclosure. In addition, Kingate Global objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents from December 11, 2008, through June 4, 2009, that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 35:

All Documents created on or after December 11, 2008, concerning: (i) any review or modification of KGF's due diligence process; (ii) any self-critical analysis; (iii) any investigation or review that KGF conducted of itself; and (iv) any Communications with any shareholder or prospective shareholder of KGF concerning (a) subscriptions or redemptions in KGF, (b) the NAV of KGF, (c) the effect on KGF of the arrest of Bernard L. Madoff or the commencement of liquidation proceedings against BLMIS, or (d) KGF's actions subsequent to the arrest of Bernard L. Madoff or the commencement of liquidation proceedings against BLMIS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request to the extent it seeks information that is protected by the attorney client privilege or any other privilege or protection from disclosure. In addition, Kingate Global objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents from December 11, 2008, through June 4, 2009, that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 36:

36. All Documents concerning: (i) any analysis or discussion of execution prices, performance, or returns of BLMIS; (ii) any analysis or discussion of the feasibility or impossibility of the purported returns and trades of, BLMIS; (iii) Cambridge Associates LLC; (iv) Robert Rosenkranz or Acorn Partners; (v) Oswald Gruebel; (vi) Jim Vos or Aksia, LLC; (vii) David Giampaolo or Pi Capital; (viii) Neil Chelo or Benchmark Plus Partners; (ix) Albourne Partners; (x) Bayou Group, LLC, Bayou Fund, Bayou Hedge Fund Group, Bayou Management, LLC, Samuel Israel III, or any of their respective affiliates; (xi) Michael Ocrant; (xii) Erin Arvedlund; (xiii) Noreen Harrington; (xiv) Michael Markov, (xv) Gil Berman; (xvi) Edward Thorp; (xvii) Harry Markopolos; (xviii) Chris Cutler; (xix) Eric Lazear; (xx) the article in the May 7, 2001 issue of Barron's entitled "Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum"; (xxi) the article in the December 16, 1992 issue of the Wall Street Journal entitled "Wall Street Mystery Features a Big Board Rival"; (xxii) the May 2001 MAR/Hedge newsletter entitled "Madoff Tops Charts; Skeptics Ask How"; and (xxiii) any actual, potential, or suspected fraud, Ponzi scheme, or illegal activity (including front running), at BLMIS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 36:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the

foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

IX. SPECIFIC INDIVIDUALS AND ENTITIES

REQUEST FOR PRODUCTION NO. 37:

37. All Documents concerning any of the following: (i) Manzke; (ii) Fairfield Greenwich (Bermuda), Ltd.; (iii) Fairfield Sentry Ltd.; (iv) Amit Vijayvergia; (v) Andres Piedrahita; (vi) Shazieh Salahuddin; (vii) Eric Lazear; (viii) Tremont (Bermuda) Limited; (ix) Tremont Advisers; (x) Tremont Group Holdings, Inc.; (xi) Tremont Partners, Inc.; (xii) Hemisphere Management Limited; (xiii) Christopher Wetherhill; (xiv) Island Storm, Ltd.; (xv) Phillip A. Evans; (xvi) Frank Walters; (xvii) Michael Tannenbaum; (xviii) the law firm of Tannenbaum Helpern Syracuse & Hirschtritt LLP; (xix) MN Services; (xx) UBP; (xxi) M Invest; (xxii) Robert Johnson; (xxiii) BNP Paribas; (xxiv) Barry E. Breen; (xxv) Moore Stephens International Services (BVI) Limited; (xxvi) Moore Stephens Services SAM; (xxvii) Hamilton Trust Co. Ltd.; (xxviii) Hamilton Nominees Ltd.; (xxix) Fenton Trust; (xxx) FIM Long-Invest Fund EUR & USD; (xxxi) Dancrest Global Equity Fund; (xxxii) Levco Debt Opportunity Fund & Levco Alternative Fund; (xxxiii) FIM Relative Value Fund; (xxxiv) Five Balanced Fund (Bermuda); (xxxv) Five Balanced Fund (Cayman Islands); (xxxvi) Victoria Global Fund; (xxxvii) FDVG Low Volatility Investments & FDVG Equity Investments; (xxxviii) Silver Shield Fund (Bermuda); or (xxxix) Silver Shield Fund (Cayman Islands).

RESPONSE TO REQUEST FOR PRODUCTION NO. 37:

In addition to its general objections, Kingate Global objects to this Request on the grounds that it is over broad and unduly burdensome and fails to identify with particularity the information sought. Kingate Global also objects to this Request to the extent it seeks confidential information relating to Kingate Global's investors. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

X. INVESTIGATIONS & LITIGATION

REQUEST FOR PRODUCTION NO. 38:

All Documents concerning any civil, criminal, or other legal proceedings, such as arbitration, including but not limited to the Bermuda Action and the BVI Proceedings, and any criminal investigation, commenced by or against KGF or any other Defendant, in any jurisdiction, whether foreign or domestic, whether threatened or filed, including but not limited to, any pleadings, motions, correspondence, Documents and discovery produced, deposition

transcripts (including exhibits), hearing transcripts, witness statements taken or given by any party/witness or produced in discovery, and orders, rulings, and judgments.

RESPONSE TO REQUEST FOR PRODUCTION NO. 38:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the grounds that it seeks (i) information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence; and (ii) information protected by the attorney client privilege and as attorney work product.

REQUEST FOR PRODUCTION NO. 39:

All Documents concerning any Communications between KGF and any governmental, Regulatory, or law enforcement entity or official in any jurisdiction, whether foreign or domestic, concerning BLMIS, including but not limited to all Documents received from or sent to any such entity or official.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39:

In addition to its general objections, Kingate Global objects to this Request to the extent it seeks information that is protected by any privilege or protection from disclosure, including any confidentiality protections afforded to communications with governmental agencies. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 40:

All Documents concerning any Communications between KGF and any governmental, Regulatory, or law enforcement entity or official in any jurisdiction, whether foreign or domestic, concerning any Defendant, including but not limited to all Documents received from or sent to any such entity or official.

RESPONSE TO REQUEST FOR PRODUCTION NO. 40:

In addition to its general objections, Kingate Global objects to this Request to the extent it seeks information that is protected by any privilege or protection from disclosure, including

any confidentiality protections afforded to communications with governmental agencies. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 41:

All Documents concerning any and all payments or consideration made by or received by KGF after December 11, 2008, in connection with KGF's investment with BLMIS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 41:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the grounds that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Global will produce non-privileged, responsive documents that can be located after a reasonable search and relate to payments or consideration exchanged between Kingate Global and BLMIS.

REQUEST FOR PRODUCTION NO. 42:

All Documents concerning any claims filed or actions taken (whether legal, equitable, or otherwise) to recoup or recover any damages or losses KGF alleges to have sustained as a result of KGF's investment with BLMIS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 42:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the grounds that it seeks (i) information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence; and (ii) information protected by the attorney client privilege and as attorney work product.

REQUEST FOR PRODUCTION NO. 43:

All Communications with, and all Documents submitted by or on behalf of any investor, subscriber, or shareholder in KGF to, Richard C. Breeden, his attorneys, his accountants, or any other representative of Mr. Breeden or the Madoff Victim Fund created under the Department of Justice Asset Forfeiture Distribution Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 43:

In addition to its general objections, Kingate Global objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Global also objects to this Request on the grounds that it seeks (i) information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence; and (ii) confidential information relating to Kingate Global's investors.

Dated: New York, New York
November 6, 2015

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By: /s/ Robert S. Loigman
Susheel Kirpalani
Robert S. Loigman
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Counsel to Joint Liquidators of Kingate Global Fund Ltd. and Kingate Euro Fund Ltd.

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Counsel to Joint Liquidators of Kingate Global Fund Ltd. and Kingate Euro Fund Ltd.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FEDERICO CERETTI, *et al.* Defendants.	Adv. Pro. No. 09-1161 (SMB)

DEFENDANT KINGATE EURO FUND LIMITED'S RESPONSES AND OBJECTIONS TO THE TRUSTEE'S FIRST REQUESTS FOR PRODUCTION

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7034 of the Federal Rules of Bankruptcy Procedure, the Joint Liquidators for defendant Kingate Euro Fund Limited ("Kingate Euro"), by their undersigned counsel, respond and object as follows to the First Request for the Production of Documents (the "Requests") propounded by plaintiff Irving Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC (the "Trustee" or "Plaintiff") as follows:

GENERAL OBJECTIONS

1. Kingate Euro objects to the Requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection from disclosure, including any privacy right afforded to Kingate Euro or it investors. The inadvertent disclosure of any information or document that is privileged or otherwise protected from disclosure will not waive such privilege, protection or privacy right.

2. Kingate Euro objects to the Requests to the extent they purport to impose on Kingate Euro any obligations beyond those set forth in the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the local rules of this Court.

3. Kingate Euro objects to the Requests to the extent they seek discovery beyond the limits of or different from that permitted by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the local rules of this Court.

4. To the extent any definition does not comport with the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, the local rules of this Court, or the ordinary meaning of the word itself, Kingate Euro will follow the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the local rules of this Court, or apply

the ordinary meaning of the word. References below to terms defined in the Requests do not mean that Kingate Euro agrees with the definitions of those terms.

5. Kingate Euro objects to the Instructions to the extent they purport to require Kingate Euro to do more than produce documents.

6. Kingate Euro objects to the Requests to the extent they are so vague, ambiguous or confusing as not to be susceptible to a reasoned interpretation or response.

7. Kingate Euro objects to the Requests to the extent they fail to identify with reasonable particularity the information sought.

8. Kingate Euro objects to the Requests to the extent they are overly broad, overly expansive, oppressive or unduly burdensome and would thus impose upon Kingate Euro an unreasonable burden of inquiry or unreasonable costs.

9. Kingate Euro objects to the Requests to the extent they contain legal conclusions or characterize certain information, allegations or ideas as undisputed fact.

10. Kingate Euro objects to every Request that is duplicative of other Requests.

11. Kingate Euro objects to the Requests to the extent they seek information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Kingate Euro's decision to provide any document requested, notwithstanding the objectionable nature of any Request, is not a concession that the produced information is relevant, material or admissible in these or any other proceedings. Kingate Euro reserves all objections regarding the relevance and admissibility of these responses and all forthcoming production(s) by Kingate Euro as evidence in these or any other proceedings.

12. Kingate Euro objects to the Requests to the extent they require the disclosure of trade secrets or confidential or proprietary information or documents.

13. Kingate Euro objects to the Requests to the extent they require Kingate Euro to provide documents that are not in its possession, custody or control.

14. Kingate Euro objects to any form of production of electronically-stored information that imposes obligations beyond those required by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the local rules of this Court.

15. All responses and forthcoming production(s) of documents are made subject to these objections and are based solely on the information known to Kingate Euro at the time these responses are served. Kingate Euro reserves the right to revise, supplement or clarify any objection, response or production at any time, and to use at trial in this action information or documents later determined to have been responsive to these Requests.

16. Kingate Euro reserves the right to object to further discovery into the subject matter of the Requests.

17. Statements below to the effect that records shall be produced does not necessarily mean that any such records actually exist.

18. Kingate Euro objects to each and every Request that is subject to the "Applicable Period" on the ground that the time period for production is overbroad and unduly burdensome and seeks information more than one year after the disclosure of the fraud at issue. Kingate Euro will not search for documents created on or after May 8, 2009, when orders were issued placing Kingate Euro in provisional liquidation.

19. Kingate Euro objects to the instructions in the "Manner of Production" to the extent they impose an unreasonable burden. Kingate Euro will produce any documents (and available metadata) in formats that are reasonably available and after conferring with the Trustee.

20. Kingate Euro objects to the Requests to the extent they seek information regarding specific shareholders in Kingate Euro, as production of such information may require the Joint Liquidators of Kingate Euro to breach their obligations under BVI law and/or provisions included in agreements with shareholders.

21. Kingate Euro objects to the Requests to the extent they seek information provided to Kingate Euro by other defendants in this case in connection with Kingate Euro's legal proceedings in Bermuda, as production of such information may require the Joint Liquidators of Kingate Euro to breach their obligations under Bermuda law and/or agreements with these producing parties. Kingate Euro is applying to the Bermuda court to permit production of such documents to the Trustee.

22. Each of the foregoing general objections is incorporated into each and every specific response set forth below. Notwithstanding the specific response to any Request, Kingate Euro does not waive any of its general objections. Kingate Euro may repeat a general objection below for emphasis or for some other reason, and the failure to repeat a general objection shall not be construed as a waiver of any general objection to the Requests.

RESPONSES TO DOCUMENT REQUEST

REQUEST FOR PRODUCTION NO. 1:

All Documents relevant to any claim or defense asserted in the Action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects on the grounds that the Request is vague, ambiguous, and fails to identify with reasonable particularity the information sought. Kingate Euro also objects to the extent this Request is duplicative of other Requests.

Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

I. FORMATION AND STRUCTURE

REQUEST FOR PRODUCTION NO. 2:

All Documents concerning the formation of KEF, including but not limited to articles of incorporation, memoranda of association, articles of association, by-laws, limited or general partnership agreements, limited liability company agreements, trust agreements, and organizational charts, and any other Documents reflecting formation and governance of KEF, as originally constituted and as amended or otherwise modified.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 3:

All Documents sufficient to identify KEF's principal place(s) of business, business address(es), and the name(s) and address(es) of KEF's registered agent(s).

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Subject to its general objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 4:

All Documents sufficient to identify all members of KEF's Board of Directors, by year, including but not limited to Documents reflecting their titles, responsibilities, membership on any subcommittees or working groups, tenures, and any changes thereto.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Subject to its general objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 5:

All Documents concerning the formation, authority, and acts of KEF's Board of Directors, including but not limited to all Documents concerning: (i) the authority possessed by KEF's Board of Directors; (ii) KEF's Board of Directors' exercise of its authority, including but not limited to any such exercise of authority concerning KEF's investments, KEF's investments with BLMIS, and KEF's selection and engagement of BLMIS and all other service providers; (iii) any and all resolutions, orders, directives, or instructions issued by KEF's Board of Directors; (iv) any and all meetings of KEF's Board of Directors, including but not limited to agendas, notes, minutes, Documents considered by, distributed to, or created by KEF's Board of Directors before, during, or after any and all such meetings, and all drafts of such Documents; (v) all Communications to, from, or among KEF's Board of Directors or any individual Director(s); (vi) the manner in which the Directors were chosen, elected, or appointed to the Board; and (vii) the compensation of Directors.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 6:

All Documents sufficient to identify all of KEF's personnel, executives, officers, directors, employees, agents, and/or representatives, including but not limited to their position, title, responsibilities, dates of service, and supervisors.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 7:

All Documents sufficient to show the telephone numbers and email addresses assigned to all KEF's directors, officers, and employees, including but not limited to all employer-issued cell phone numbers.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

II. CONTRACTUAL RELATIONSHIPS

REQUEST FOR PRODUCTION NO. 8:

All Documents concerning any agreement or contract, whether oral or written, to which KEF is a party or a beneficiary, including but not limited to all Documents concerning: (i) Manager Agreement dated as of May 1, 2000 between Kingate Management Limited and Kingate Euro Fund, Ltd.; (ii) Kingate Management Limited and FIM Limited Consulting Services Agreement relating to Kingate Euro Fund, Ltd. dated April 23, 2001; (iii) Deed of Novation between Kingate Management Limited, FIM Limited, and FIM Advisers LLP relating to Kingate Euro, Ltd. dated July 29, 2005; (iv) Kingate Management Limited and FIM Limited Distribution Agreement relating to Kingate Euro Fund, Ltd. dated April 23, 2001; (v) Kingate Euro Fund, Ltd. and Kingate Management Limited and Hemisphere Management Limited Administration Agreement dated May 1, 2000; (vi) Amended and Restated Administration Agreement between Kingate Euro Fund, Ltd. and Kingate Management Limited and Bisys Hedge Fund Services Limited dated June 1, 2007; (vii) Custodian Agreement made on May 1, 2000 between Kingate Euro Fund, Ltd. and The Bank of Bermuda Limited; and (viii) Registrar Agreement between Kingate Euro Fund, Ltd., Kingate Management Limited and Hemisphere Management Limited made as of May 1, 2000.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Euro will negotiate in good faith to narrow the scope of this request and produce non-privileged documents responsive to the narrowed request.

REQUEST FOR PRODUCTION NO. 9:

All Documents concerning any agreement or contract, whether oral or written, by, between, or among any of the Defendants.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Kingate Euro also objects to this Request to the extent it seeks information that is not in Kingate Euro's possession, custody, or control. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

III. DUE DILIGENCE AND INVESTMENT ACTIVITY

REQUEST FOR PRODUCTION NO. 10:

All Documents concerning KEF's operations, requirements, policies, and procedures concerning Risk Management, due diligence, know-your-customer, suspicious activity investigation and reporting, and any other Regulatory compliance policies and procedures. This Request includes all manuals or guidelines for such operations, requirements, policies, and procedures, as well as all Documents sufficient to determine the date and substance of any changes.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 11:

All Documents concerning KEF's due diligence processes, including but not limited to the standards and practices employed to investigate, monitor, and oversee the activities and investments of sub-advisers, unaffiliated managers, or third-party funds.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the ground that it is duplicative of other Requests. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 12:

All Documents concerning KEF's methods, protocols, practices and procedures for conducting due diligence on any existing investment or any prospective investment opportunity.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the ground that it is duplicative of other Requests. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 13:

All Documents concerning any inquiry, investigation, or due diligence conducted by KEF on any existing investment or potential investment, including but not limited to all Documents reviewed or created as part of that inquiry, investigation, or due diligence, due diligence reports or questionnaires, prospectuses, offering memoranda, private placement memoranda, advertisements, brochures, website postings, website addresses, presentations, pamphlets, pitch books, performance records, term sheets, and marketing or executive summaries.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the grounds that it (i) seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence; and (ii) is duplicative of other Requests. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 14:

All Documents concerning any potential or actual investment with, or related to, BLMIS, including but not limited to all Documents concerning: (i) due diligence conducted on BLMIS; (ii) any opinions, research, or advice concerning any actual or potential investment with BLMIS; (iii) any marketing materials of BLMIS, including but not limited to any private placement memoranda, offering memoranda, tear sheets, or prospectuses; (iv) any monthly, quarterly, or annual performance reports or summaries of BLMIS; (v) any monthly, quarterly, or annual risk or risk management reports of BLMIS; (vi) any portfolio management reports of BLMIS; (vii) any monthly, quarterly, or annual strategy reviews of BLMIS; (viii) SEC Form(s) ADV or 13F, or any amendments thereto, filed or submitted by BLMIS and any other Regulatory filings for BLMIS; (ix) any analysis, discussion, review, simulation, or replication of the split- strike conversion investment strategy purportedly executed by BLMIS or any trade purportedly executed under that strategy, including the volumes of and prices at which BLMIS purportedly purchased or sold securities, the identity of counterparties to trades purportedly executed by BLMIS, and trading activity inconsistent with the split-strike conversion strategy; (x) the management team or management structure of BLMIS; (xi) any investigation, background check, or similar review of the professional experience, education, or other credentials of any BLMIS employee; (xii) the identity or nature of BLMIS's clients or investors; (xiii) the assets under management of BLMIS, including but not limited to the amount of such assets, the growth of such assets, and the percentage of such assets attributable to particular, or groups of, clients or investors; (xiv) any of BLMIS's accountants, auditors, accounting firms, or auditing firms, including but not limited, to David G. Friehling or Friehling & Horowitz, CPAs, P.C.; (xv) fees or commissions charged by BLMIS; (xvi) risk models; (xvii) pricing models; (xviii) qualitative or quantitative analyses; (xix) periodic portfolio analyses; (xx) benchmarking analyses; (xxi) performance attribution analyses; (xxii) peer analyses; (xxiii) systematic v. non-systematic return analyses; (xxiv) regression analyses; (xxv) reverse-engineering analyses; (xxvi) risk-adjusted analyses; (xxvii) style-adjusted analyses; (xxviii) scenario analyses; (xxix) drawdown analyses; (xxx) correlation analyses; (xxxi) alpha analyses; (xxxii) comparisons, reviews, or analyses of performance during periods of market stress or market downturn; (xxxiii) the volatility or expected volatility of BLMIS's performance; (xxxiv) any "scatter diagrams" or histograms created or used to analyze the performance of BLMIS; (xxxv) the Sharpe ratio for BLMIS; and (xxxvi) the Sortino ratio for BLMIS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 15:

All Documents concerning any assessment of, or due diligence conducted on, KGF, KEF, BLMIS, or any Feeder Fund, by any Person, including but not limited to all Documents concerning: (i) due diligence questionnaires; (ii) any opinions, research, or advice concerning

any actual or potential investment with KEF; (iii) any KEF marketing materials, including but not limited to any private placement memoranda, offering memoranda, tear sheets, or prospectuses; (iv) any KEF monthly, quarterly, or annual performance reports or summaries; (v) any KEF monthly, quarterly, or annual risk or risk management reports; (vi) any KEF portfolio management reports; (vii) any KEF monthly, quarterly, or annual strategy reviews; (viii) KEF's Regulatory filings; (ix) risk models; (x) pricing models; (xi) qualitative or quantitative analyses; (xii) periodic portfolio analyses; (xiii) benchmarking analyses; (xiv) performance attribution analyses; (xv) peer analyses; (xvi) systematic v. non-systematic return analyses; (xvii) regression analyses; (xviii) reverse-engineering analyses; (xix) risk-adjusted analyses; (xx) style-adjusted analyses; (xxi) scenario analyses; (xxii) drawdown analyses; (xxiii) correlation analyses; (xxiv) alpha analyses; (xxv) comparisons, reviews, or analyses of performance during periods of market stress or market downturn; (xxvi) the volatility or expected volatility of KEF's performance; (xxvii) any "scatter diagrams" or histograms created or used to analyze KEF's performance; (xxviii) KEF's assets under management, including but not limited to the amount of such assets, the growth of such assets, and the percentage of such assets attributable to particular, or groups of, clients or investors; (xxix) the Sharpe ratio for KEF; and (xxx) the Sortino ratio for KEF.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the grounds that it (i) seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence; and (ii) seeks information that is not in Kingate Euro's possession, custody, or control in that it requests information concerning "due diligence" conducted by any one in the world. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 16:

All Documents concerning the investment activity of KGF, KEF, BLMIS, or any Feeder Fund that relate to the following subjects: (i) the performance of KEF's investment with BLMIS; (ii) the NAV of KEF, including its calculation; (iii) KEF's assets under management; (iv) KEF's investment strategies, including the development, marketing, or execution of any investment strategy; (v) all account statements issued by KEF to any Person; (vi) trade confirmations or other memorialization of purported trades made by, or on behalf of, KEF; (vii) the identification (or lack thereof) of any counterparty to any trades purportedly executed by, or on behalf of, KEF and any attempts to ascertain any such counterparty's identity; (viii) any review, discussion, or analysis of any options purportedly purchased or sold by, or on behalf of, KEF; (ix) any review, analysis, or statement of prices at which KEF, or any Person acting on

behalf of KEF, purportedly purchased or sold securities; and (x) any efforts to verify the securities positions purportedly held by BLMIS for the KEF Account.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the grounds that it (i) seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence; and (ii) seeks information that is not in Kingate Euro's possession, custody, or control. Subject to the foregoing objections, Kingate Euro will negotiate in good faith to narrow the scope of this request and produce non-privileged documents responsive to the narrowed request.

IV. FINANCIAL AND ACCOUNTING RECORDS

REQUEST FOR PRODUCTION NO. 17:

All Documents concerning the accounting or recordation of KEF's financial performance and activity, including but not limited to all general ledgers, journals, trial balances, reconciliations, statements of cash flow, balance sheets, and profit-and-loss statements, and KEF's financial statements, whether audited or unaudited, including but not limited to audited annual statements, unaudited quarterly and other interim statements, and draft statements, including all related work papers, notes, schedules, and exhibits.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request to the extent the inclusion of "work papers" is intended to seek such documents created by Kingate Euro's outside auditors. To the extent this Request does so, Kingate Euro refers to its response and objections to Request No. 19. Otherwise, subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 18:

KEF's foreign and domestic tax returns or other tax reporting Documentation, whether filed, unfiled, or in draft form, and all supporting schedules, work papers, journal entries, and trial balances.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 19:

All Documents concerning services provided to KEF by PricewaterhouseCoopers, including but not limited to all Documents sent to or received from PricewaterhouseCoopers.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Euro will produce its engagement letters with PricewaterhouseCoopers, audited financial statements, and documents sent to or received from PricewaterhouseCoopers, to the extent permitted.

V. SUBSCRIPTIONS & REDEMPTIONS

REQUEST FOR PRODUCTION NO. 20:

All Documents provided to, received from, or concerning any and all actual or potential investors, subscribers, or shareholders in KEF, including but not limited to information

memoranda, offering memoranda, private placement memoranda, and all other Documents of a similar type concerning the solicitation of investment or subscription in KEF; account opening Documents, investment advisory or management contracts, consent forms, trading authorizations, authorizations to purchase and sell securities, investment contracts, option agreements, and subscription agreements; and all Documents concerning that certain (i) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated October 6, 2008, (ii) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated September 22, 2008, (iii) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated August 1, 2007, (iv) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated May 1, 2006, (v) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated May 1, 2004, (vi) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated January 15, 2003, (vii) Kingate Euro Fund, Ltd. Amended and Restated Information Memorandum dated January 1, 2002, and (viii) Kingate Euro Fund, Ltd. Information Memorandum dated May 1, 2000.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 21:

All Documents concerning your receipt of funds from any Person for purposes of investment or subscription in KEF.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 22:

All Documents concerning (i) any and all actual or proposed withdrawals of funds from KEF and (ii) any and all actual or proposed redemption of shares or partnerships interests in KEF.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

VI. BANK ACCOUNTS

REQUEST FOR PRODUCTION NO. 23:

All Documents concerning any and all accounts, whether for deposit, credit, investment or any other purpose, maintained by KEF, in KEF's name, or by any Person on KEF's behalf, with any bank, financial institution, or depository trust corporation during the Applicable Period, including but not limited to all statements of account, signature cards, account-opening Documents, periodic reconciliations, deposit slips, withdrawal slips, check registers, canceled checks, wire transfer requests, and wire transfer confirmations. This Request includes all such Documents concerning account number 010-503324-512 and account number 010-503324-511 maintained in KEF's name, or on its behalf, with Bank Bermuda.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 24:

All Documents concerning any and all accounts, whether for deposit, credit, investment or any other purpose, maintained by any Defendant in its own name, or by another on such Defendant's behalf, with any bank, financial institution, or depository trust corporation during the Applicable Period, including but not limited to: (i) Bank Bermuda; (ii) HSBC- Monaco

Bank; (iii) Fortis Bank- Guernsey; (iv) Fortis Bank-Channel Islands; (v) Lombard Odier Darier Hentsch, Geneva; (vi) Bank of NT Butterfield & Sons; (vii) Clariden Leu AG-Zurich; and JPMorgan Chase Bank, N.A. Documents responsive to this Request include, but are not limited to, all statements of account, signature cards, periodic reconciliations, deposit slips, withdrawal slips, check registers, canceled checks, wire transfer requests, wire transfer confirmations, and all other records reflecting cash activity. This Request includes all such Documents concerning (i) account number 010-424174-561 and account number 010-427174-564 maintained in KGF's name, or on its behalf, with Bank Bermuda and (ii) a certain demand deposit account maintained in KML's name, or on its behalf, with Bank Bermuda.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

VII. CUSTOMER ACCOUNTS AND TRANSFERS

REQUEST FOR PRODUCTION NO. 25:

All Documents concerning any and all accounts, including but not limited to the KGF Account or the KEF Account, whether for deposit, credit, investment or any other purpose, maintained by KEF, in KEF's name, or by any Person on KEF's behalf, with BLMIS, including but not limited to all sub-advisory agreements, solicitation agreements, trading authorizations, trading directives, margin agreements, authorizations to purchase and sell securities, investment contracts, option agreements, subscription agreements, and limited partnership agreements, customer account statements, statements of NAV, calculations of NAV, trade confirmations, portfolio statements, deposit records, withdrawal records, and all other records of investment or cash activity.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 26:

All Documents concerning any and all Initial Transfers, including but not limited to all Documents concerning any of the following: (i) the date of each such Initial Transfer, (ii) the amount of each such Initial Transfer, (iii) the account name and account number for the account from which the funds were transferred, (iv) the account name and account number for the account to which the funds were transferred, (v) the method of transfer, (vi) the reason for each such Initial Transfer, and (vii) the disposition of each such Initial Transfer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 27:

All Documents concerning any and all Transfers from, between, or among any and all of the accounts referred to in Requests ##23 through 26.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request to the extent it seeks confidential information relating to Kingate Euro's investors. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 28:

All Documents concerning each and every request made to BLMIS to withdraw moneys from the KGF Account or the KEF Account, including but not limited to consideration of the timing and amount of such request, the decision to make such request, and all Communications concerning such request.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 29:

All Documents concerning each and every deposit made into the KGF Account or the KEF Account, including but not limited consideration of the timing and amount of such deposit, the decision to make such deposit, and all Communications concerning such deposit.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 30:

All Documents concerning any review or analysis undertaken to trace monies transferred from any of the accounts referred to in Requests ##23 through 26.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request to the extent it seeks information that is protected by the attorney-client privilege or any other privilege or protection from disclosure. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 31:

All Documents reviewed or relied upon in connection with the analyses attached at Exhibits J & K of the Declaration of Robert S. Loigman in Support of Opposition of Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd. to Trustee's Application for Enforcement of Automatic Stay and Injunction, filed on or about February 8, 2014 in *Picard v. Kingate Global Fund, Ltd.*, Adv. Proc. No. 12-01920 (SMB).

RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it seeks information that is protected by the attorney-client privilege and as attorney work product.

REQUEST FOR PRODUCTION NO. 32:

All Documents concerning management fees, administrative fees, performance fees, or any other fees or commissions charged by, or paid to, KML, BLMIS, FIM Advisers, FIM Limited, Citi Hedge, and any other Defendant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request to the extent it seeks information that is protected by the attorney-client privilege or any other privilege or protection from disclosure. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

VIII. BLMIS

REQUEST FOR PRODUCTION NO. 33:

All Documents concerning BLMIS, including but not limited to all Documents concerning any of the following: (i) Documents received from or sent to BLMIS; (ii) Documents received from or sent to any Defendant concerning BLMIS or KEF's investments with BLMIS; (iii) any contact, meeting, or attempt to contact or meet with BLMIS or with any BLMIS employee; (iv) all Communications between KEF and BLMIS including but not limited to transcripts or audio recordings of any such telephone calls; (v) all Communications between KEF and any Person concerning BLMIS, including but not limited to transcripts or audio recordings of any such telephone calls; (vi) any agreement or contract, whether oral or written, to which BLMIS is a party; (vii) all Communications with any BLMIS Employee; and (viii) all Documents received from or sent to any Feeder Fund, the Depository Trust & Clearing Corporation, and the Options Clearing Corporation concerning BLMIS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request to the

extent it seeks confidential information relating to Kingate Euro's investors. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 34:

All Documents created on or after December 11, 2008, concerning: (i) the public disclosure that a Ponzi scheme operated out of BLMIS; (ii) the arrest, confession, plea, conviction, or sentencing of either Bernard L. Madoff or of any employee of BLMIS; and (iii) all meetings held by KEF's Board of Directors or KEF's committees, sub-committees or working groups in which BLMIS's Ponzi scheme was a subject or topic or was mentioned or referenced.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request to the extent it seeks information that is protected by the attorney client privilege or any other privilege or protection from disclosure. In addition, Kingate Euro objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents from December 11, 2008, through June 4, 2009, that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 35:

All Documents created on or after December 11, 2008, concerning: (i) any review or modification of KGF's due diligence process; (ii) any self-critical analysis; (iii) any investigation or review that KGF conducted of itself; and (iv) any Communications with any shareholder or prospective shareholder of KGF concerning (a) subscriptions or redemptions in KGF, (b) the NAV of KGF, (c) the effect on KGF of the arrest of Bernard L. Madoff or the commencement of liquidation proceedings against BLMIS, or (d) KGF's actions subsequent to the arrest of Bernard L. Madoff or the commencement of liquidation proceedings against BLMIS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request to the

extent it seeks information that is protected by the attorney client privilege or any other privilege or protection from disclosure. In addition, Kingate Euro objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents from December 11, 2008, through June 4, 2009, that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 36:

36. All Documents concerning: (i) any analysis or discussion of execution prices, performance, or returns of BLMIS; (ii) any analysis or discussion of the feasibility or impossibility of the purported returns and trades of, BLMIS; (iii) Cambridge Associates LLC; (iv) Robert Rosenkranz or Acorn Partners; (v) Oswald Gruebel; (vi) Jim Vos or Aksia, LLC; (vii) David Giampaolo or Pi Capital; (viii) Neil Chelo or Benchmark Plus Partners; (ix) Albourne Partners; (x) Bayou Group, LLC, Bayou Fund, Bayou Hedge Fund Group, Bayou Management, LLC, Samuel Israel III, or any of their respective affiliates; (xi) Michael Ocrant; (xii) Erin Arvedlund; (xiii) Noreen Harrington; (xiv) Michael Markov, (xv) Gil Berman; (xvi) Edward Thorp; (xvii) Harry Markopolos; (xviii) Chris Cutler; (xix) Eric Lazear; (xx) the article in the May 7, 2001 issue of Barron's entitled "Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum"; (xxi) the article in the December 16, 1992 issue of the Wall Street Journal entitled "Wall Street Mystery Features a Big Board Rival"; (xxii) the May 2001 MAR/Hedge newsletter entitled "Madoff Tops Charts; Skeptics Ask How"; and (xxiii) any actual, potential, or suspected fraud, Ponzi scheme, or illegal activity (including front running), at BLMIS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 36:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the ground that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

IX. SPECIFIC INDIVIDUALS AND ENTITIES

REQUEST FOR PRODUCTION NO. 37:

37. All Documents concerning any of the following: (i) Manzke; (ii) Fairfield Greenwich (Bermuda), Ltd.; (iii) Fairfield Sentry Ltd.; (iv) Amit Vijayvergia; (v) Andres Piedrahita; (vi) Shazieh Salahuddin; (vii) Eric Lazear; (viii) Tremont (Bermuda) Limited; (ix) Tremont Advisers; (x) Tremont Group Holdings, Inc.; (xi) Tremont Partners, Inc.; (xii) Hemisphere Management Limited; (xiii) Christopher Wetherhill; (xiv) Island Storm, Ltd.; (xv) Phillip A. Evans; (xvi) Frank Walters; (xvii) Michael Tannenbaum; (xviii) the law firm of Tannenbaum Helpern Syracuse & Hirschtritt LLP; (xix) MN Services; (xx) UBP; (xxi) M Invest; (xxii) Robert Johnson; (xxiii) BNP Paribas; (xxiv) Barry E. Breen; (xxv) Moore Stephens International Services (BVI) Limited; (xxvi) Moore Stephens Services SAM; (xxvii) Hamilton Trust Co. Ltd.; (xxviii) Hamilton Nominees Ltd.; (xxix) Fenton Trust; (xxx) FIM Long-Invest Fund EUR & USD; (xxxi) Dancrest Global Equity Fund; (xxxii) Levco Debt Opportunity Fund & Levco Alternative Fund; (xxxiii) FIM Relative Value Fund; (xxxiv) Five Balanced Fund (Bermuda); (xxxv) Five Balanced Fund (Cayman Islands); (xxxvi) Victoria Global Fund; (xxxvii) FDVG Low Volatility Investments & FDVG Equity Investments; (xxxviii) Silver Shield Fund (Bermuda); or (xxxix) Silver Shield Fund (Cayman Islands).

RESPONSE TO REQUEST FOR PRODUCTION NO. 37:

In addition to its general objections, Kingate Euro objects to this Request on the grounds that it is over broad and unduly burdensome and fails to identify with particularity the information sought. Kingate Euro also objects to this Request to the extent it seeks confidential information relating to Kingate Euro's investors. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

X. INVESTIGATIONS & LITIGATION

REQUEST FOR PRODUCTION NO. 38:

All Documents concerning any civil, criminal, or other legal proceedings, such as arbitration, including but not limited to the Bermuda Action and the BVI Proceedings, and any criminal investigation, commenced by or against KEF or any other Defendant, in any jurisdiction, whether foreign or domestic, whether threatened or filed, including but not limited to, any pleadings, motions, correspondence, Documents and discovery produced, deposition transcripts (including exhibits), hearing transcripts, witness statements taken or given by any party/witness or produced in discovery, and orders, rulings, and judgments.

RESPONSE TO REQUEST FOR PRODUCTION NO. 38:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the grounds that it seeks (i) information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence; and (ii) information protected by the attorney client privilege and as attorney work product.

REQUEST FOR PRODUCTION NO. 39:

All Documents concerning any Communications between KEF and any governmental, Regulatory, or law enforcement entity or official in any jurisdiction, whether foreign or domestic, concerning BLMIS, including but not limited to all Documents received from or sent to any such entity or official.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39:

In addition to its general objections, Kingate Euro objects to this Request to the extent it seeks information that is protected by any privilege or protection from disclosure, including any confidentiality protections afforded to communications with governmental agencies. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 40:

All Documents concerning any Communications between KEF and any governmental, Regulatory, or law enforcement entity or official in any jurisdiction, whether foreign or domestic, concerning any Defendant, including but not limited to all Documents received from or sent to any such entity or official.

RESPONSE TO REQUEST FOR PRODUCTION NO. 40:

In addition to its general objections, Kingate Euro objects to this Request to the extent it seeks information that is protected by any privilege or protection from disclosure, including any confidentiality protections afforded to communications with governmental agencies. Subject to

the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search.

REQUEST FOR PRODUCTION NO. 41:

All Documents concerning any and all payments or consideration made by or received by KEF after December 11, 2008, in connection with KEF's investment with BLMIS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 41:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the grounds that it seeks information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Kingate Euro will produce non-privileged, responsive documents that can be located after a reasonable search and relate to payments or consideration exchanged between Kingate Euro and BLMIS.

REQUEST FOR PRODUCTION NO. 42:

All Documents concerning any claims filed or actions taken (whether legal, equitable, or otherwise) to recoup or recover any damages or losses KEF alleges to have sustained as a result of KEF's investment with BLMIS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 42:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the grounds that it seeks (i) information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence; and (ii) information protected by the attorney client privilege and as attorney work product.

REQUEST FOR PRODUCTION NO. 43:

All Communications with, and all Documents submitted by or on behalf of any investor, subscriber, or shareholder in KEF to, Richard C. Breeden, his attorneys, his accountants, or any

other representative of Mr. Breeden or the Madoff Victim Fund created under the Department of Justice Asset Forfeiture Distribution Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 43:

In addition to its general objections, Kingate Euro objects to this Request on the ground that it is over broad and unduly burdensome. Kingate Euro also objects to this Request on the grounds that it seeks (i) information that is neither relevant to any claim or defense in this litigation nor reasonably calculated to lead to the discovery of admissible evidence; and (ii) confidential information relating to Kingate Euro's investors.

Dated: New York, New York
November 6, 2015

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By: /s/ Robert S. Loigman
Susheel Kirpalani
Robert S. Loigman
Rex Lee
Lindsay M. Weber

51 Madison Avenue, 22nd Floor
New York, New York 10010
(212) 849-7000

Counsel to Joint Liquidators of Kingate Global Fund Ltd. and Kingate Euro Fund Ltd.

EXHIBIT D

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October 13, 2015

BY E-MAIL

Karin Jenson, Esq.
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111

Re: *Picard v. Ceretti et al.*
Adv. Pro No. 09-01161 (SMB)

Dear Karin:

We write in furtherance of our October 1, 2015 meet and confer, and in response to your October 5, 2015 letter.

The Funds' Request for Stay of Discovery

During our October 1 meet and confer, we asked whether the Trustee would be willing to agree to a voluntary stay of discovery. We explained first that we thought it made little sense for the parties to engage in discovery while the Funds' motion for leave to appeal is pending. Separately, we noted that until the Extraterritoriality Proceedings are resolved, there can be no party discovery with respect to the Non-Fund Defendants. While we recognized at the meet and confer that the parties may attempt to obtain discovery from the Non-Fund Defendants as foreign third parties, we also specifically discussed the heavy burdens associated with making such requests. In your October 5 letter, you appear to indicate that the Trustee nonetheless intends to "move this proceeding forward, including discovery, promptly." We ask that you confirm the Trustee's position immediately so that we can prepare for motion practice, if necessary.

The Funds' Mediation Proposal

At the meet and confer, we also discussed the Funds' proposal to have a short period of targeted discovery, followed by a mediation. We explained that the Funds—like BLMIS—are currently in liquidation proceedings, and that as such, they have a strong desire to minimize costs. We are encouraged to hear that the Trustee "also wishes to conserve costs in discovery." In that regard, you indicate that the Trustee is willing to consider a "quick peek" agreement

whereby the Trustee would be permitted unfettered access to documents in the Funds' possession, with the Funds reserving all rights. The Funds are also willing to consider such an arrangement, but first require some clarification.

As an initial matter, we are puzzled by your use of the term "quick peek" as we do not recall that term having been used during the parties' discussions. We assume that by "quick peek" you are referring to the Funds' proposal to produce to the Trustee documents in the same form and manner in which the Trustee is producing documents to the Funds. More specifically, the Funds are determining whether it is possible to make available to the Trustee an electronic data room of documents without first conducting a review for responsiveness. The Trustee would then have the ability to run searches in the data room and tag documents for production. The Funds would not be able to view the searches run by the Trustee, but would receive a copy of those documents that the Trustee tags for production out of the data room. The Trustee would bear the costs of hosting the data room, as well as the costs of production. All of these aspects of discovery would mirror the Trustee's use of data rooms available to the Funds. Please confirm that this is the "quick peek" proposal to which the Trustee is referring.

As your letter acknowledges, we also discussed conducting this type of open access discovery for a period of 3-4 months, followed by a mediation. We ask that you clarify whether the Trustee is amenable to entering a mediation following the "quick peek" period. Relatedly, please let us know if the Trustee is agreeable to conducting discovery in the form and manner described above, even in the event this case moves past mediation and into a more extensive discovery period.

Documents in the Funds' Possession or Control

Your October 5 letter asks that the Funds answer a series of questions related to the sources of documents that they have in their possession. In order to facilitate discussions regarding the Trustee's proposed "quick peek" arrangement, we have sought to be as specific as possible with respect to the types of documents the Funds have available. By listing the documents below, we do not concede that they are relevant to the Trustee's claims, and fully reserve our rights with respect to this issue.

As your letter correctly notes, the Funds have two general categories of document collections: (1) documents produced voluntarily by third parties; and (2) documents provided pursuant to court orders. You ask that the Funds provide indices of those productions, including the name of each producing party, the number of documents and/or pages produced, and any available information regarding the types of documents included in each production. You also ask whether the productions are electronically stored or maintained in hard copy form.

With respect to voluntary productions, the Funds are in possession of the following categories of documents. Except where noted, these documents are all stored electronically on the Funds' Ringtail system. The voluntary productions generally include the bank records, board minutes, communications, service provider agreements, and financial statements that your letter notes are missing from the Funds' Rule 2004 productions, but only to the extent the Funds have received such documents in the productions set forth below.

- Directors of the Funds: When BLMIS collapsed in December 2008 there were three directors of the Funds: Graham Cook, John Epps and Christopher Wetherhill. At the outset of the Funds' liquidations, Cook and Epps collectively produced approximately 1,820 documents. As to Wetherhill, it is our understanding that his documents were captured in productions made by KML.

- Bison: Bison produced approximately 15 documents to the Funds, consisting of quarterly reports, resolutions, and versions of the Funds' Offering Memoranda and Articles of Association.

- Citi Hedge: Early on in the liquidations, the Funds received approximately 857 electronic documents from Citi Hedge. In addition, Citi Hedge produced approximately 350 bankers boxes of documents in hard copy form. Citi Hedge included in that production indices of the boxed documents. Approximately 83,000 of those hard copy documents have been scanned and uploaded to the Funds' Ringtail platform. The remaining bankers boxes are held in storage in Bermuda at Bermuda Forwarders Ltd. Earlier this year, Citi Hedge also produced to the Funds approximately 17,100 documents in electronic form. Many of the newly produced documents are duplicative of those documents the Funds received in hard copy form.

- Bank of Bermuda: Bank of Bermuda produced approximately 65 documents to the Funds. We note that some of those documents are hundreds of pages long, as they consist of years of the Funds' bank statements. As a result, the number of documents does not reflect the scope of production from Bank of Bermuda.

- Tremont: Tremont produced approximately 218 documents to the Funds, consisting of a mix of correspondence, shareholder information, fee information, financial statements, fact sheets and various agreements.

- KML: The Funds received approximately 128,000 documents from KML, mostly in electronic form. The production primarily consists of documents retrieved from KML's server. Since our meet and confer, we have confirmed that the Funds did not maintain a standalone server of their own. Instead, they used KML's server to communicate with investors. Those communications were meant to be captured in this voluntary production. As you are aware, KML is itself in a liquidation proceeding. At the outset of that proceeding, the KML server was imaged, and that image is now held in a safe deposit box in Bermuda. Pursuant to an agreement, the server can only be accessed in the joint presence of legal representatives of the Joint Liquidators and KML's Official Receiver.

- FIM: FIM produced approximately 53,000 documents to the Funds, mostly in electronic form. FIM represented that these are the same documents that the Trustee received in connection with his application to the English court for production under the UK Cross Border Insolvency Regulations.

- Privileged Communications: The Funds are in possession of privileged documents obtained by the Joint Liquidators from counsel to the Funds. The Funds do not intend to include these documents in the proposed data room.

The Funds are also in possession of documents provided to them pursuant to the rules of the Supreme Court of Bermuda, supplemented by orders of that court in the Bermuda action. However, as explained during the meet and confer, English common law imposes on the Funds an implied undertaking which prevents them from turning these documents over to the Trustee. In our October 1 meeting, we agreed to explore ways to enable production of these documents, notwithstanding this undertaking, including by obtaining consent from the producing third parties and/or by seeking an order from the Bermuda court. Each of the producing third parties is being asked for their permission to turn the documents over to the Trustee. In the event those parties do not consent, the Funds are also willing to apply to Bermuda court for an order allowing them to produce the documents in the New York proceedings. We outline the categories of documents currently subject to the implied undertaking, below.

- KML: The Funds' received approximately 66,000 documents in electronic form, with approximately 23,000 of those documents duplicative of what was previously provided to the Funds voluntarily.

- FIM: The Funds received approximately 47,000 documents in electronic form from FIM. 22,800 of those documents are duplicative of what FIM provided to the Trustee by order of the English court.

- The Trust Defendants: The Funds' received approximately 26,800 documents in electronic form from the Trust Defendants. We understand that the discovery was compiled by undertaking searches of key personnel's emails and certain servers of Moore Stephens entities.

The Funds are also in possession of three sets of documents received from PricewaterhouseCoopers ("PwC"). The first set was received by the Funds in 2009 at the outset of the Funds' liquidation proceedings and consists primarily of engagement letters, audited financial statements, and representation letters. These documents have been loaded onto the Funds' Ringtail system and would be made available to the Trustee in the data room. The second set of documents was received from PwC under compulsion of a 2012 order issued by the Bermuda court. By and large, these documents are PwC work papers that are not relevant to the Trustee's claims; they will not be included in the data room. Of this production, however, approximately 266 document have been uploaded to the Funds' Ringtail system for electronic production in the Bermuda action, and can be made available to the Trustee in the data room. The Funds received the third set of documents from PwC's US affiliate, PricewaterhouseCoopers LLP, pursuant to a section 1782 action initiated in the Southern District of New York. Those documents are similarly unrelated to the Trustee's claims, and subject to confidentiality restrictions, and therefore would not be included in the data room.

Shareholder Identities

As we explained at the meet and confer, the Funds' subscription agreements with the individual shareholders preclude the sharing of personal data—such as subscriber names and addresses—with "non-affiliated third parties." Moreover, the redaction of such information from the hundreds of thousands of documents now in the Funds' possession could prove unduly burdensome. That said, the Joint Liquidators would like to structure disclosure by providing the Trustee with broad access to the Funds' documents (much like the Trustee's approach with the data rooms). To that end, while we reserve all rights with respect to the document requests recently served by the Trustee, it would help if the Trustee could provide a complete explanation why the following are relevant to the Trustee's claims against the Funds: (a) information regarding individual shareholders in the Funds, and (b) information contained in documents that include shareholder information—such as bank records, communications with managers, etc.—apart from the shareholder information itself. An assessment of relevance is essential to determining the Funds' ability to disclose documents that contain confidential shareholder data.

The Trustee's Data Rooms

We appreciate that you have already agreed, in advance of our specific document requests, to grant us access to the Trustee's data rooms. We intend to submit our non-disclosure agreements shortly (subject to a reservation of rights with respect to our position regarding the commencement of discovery). We understand from the meet and confer that some documents from the BLMIS Collection are not included in E-Data Room 1 and/or the SQL Database; from your letter, it is not clear which documents are included in that group. Please provide us with a description of those BLMIS documents so that we can determine whether they are relevant to the matters at issue in these proceedings and so, when appropriate, we can frame document requests.

* * *

We appreciate and agree that the October 1 meeting was both helpful and productive. We look forward to your responses to the questions set forth above—whether in writing or by telephone—so that the parties can continue to move things forward in advance of the conference scheduled for October 28.

Best regards,

Lindsay M. Weber

cc: David Sheehan
Geraldine E. Ponto
John Burke
Gonzalo Zeballos
James Sherer
Michelle R. Usitalo
Robert S. Loigman
Rex Lee

EXHIBIT E

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December 23, 2015

VIA E-MAIL

Geraldine E. Ponto, Esq.
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111

Re: *Picard v. Ceretti et al.*
Adv. Pro No. 09-01161 (SMB)

Dear Gerry:

We write in response to your letter of December 17, regarding the parties' December 15 meet and confer. For ease of reference, we address each topic below in the order in which it was outlined in your December 17 letter.

Information Provided in the Funds' October 13 Letter

1. *The Bermuda Productions*: Your December 17 letter correctly notes that the Funds have collected approximately 139,800 documents from defendants in the Bermuda action pursuant to an order of the Bermuda court. As you are aware, those documents are subject to an implied undertaking, which prevents the Funds from turning them over to the Trustee. In that regard, you ask whether the Funds have demanded from their agents property to which they are entitled under their statutory rights. As we have explained previously, the Funds did receive extensive discovery in the form of "voluntary productions" from various parties over the course of their liquidation proceedings. Indeed, approximately 45,000 documents produced by defendants in the Bermuda action are duplicative of documents that the Funds received on a voluntary basis. The Funds made their first production of documents from the voluntary productions to the Trustee on December 14, 2015, after conducting a review for confidential shareholder information. The Funds will produce the remainder of relevant documents from the voluntary productions if and when their applications to the BVI court are granted.

2. *The PwC Productions*: As described in our letter dated October 13, the Funds received three separate productions of documents from PricewaterhouseCoopers ("PwC"). In your December 17 letter, you inquire as to why these materials have not yet been produced. We address each set of documents below, in turn.

The Funds received a set of PwC documents in 2009 at the outset of their liquidation proceedings consisting primarily of engagement letters, audited financial statements, and representation letters. These documents have been loaded onto the Funds' electronic Ringtail system and were included in the population of documents searched by the Funds for confidential shareholder information. Documents from this set were not included in the Funds' most recent production, because they were identified by the Funds as risking disclosure of confidential shareholder information to the Trustee pursuant to the search criteria detailed below. As we mentioned at the December 18 Court conference, the Funds were over-inclusive in identifying materials potentially containing shareholder information to avoid any inadvertent disclosures. We recognize that these PwC materials are not likely to contain shareholder information, and are re-reviewing them to determine if they can be produced to the Trustee.

The Funds received a second set of PwC documents in 2012, pursuant to an order of the Bermuda court. Of these documents, approximately 266 have been identified by the Funds as relevant and have been loaded onto the Funds' Ringtail system for review. These documents are similarly being withheld by the Funds pending resolution of the Funds' BVI applications. As described in our October 13 letter, the balance of that production consists of working papers that are not relevant to the Trustee's claims. To the extent the Trustee believes such documents are relevant, please explain the basis for that assertion so that we can consider the issue.

The Funds received a third set of documents from PwC's US affiliate, PricewaterhouseCoopers LLP in 2014, pursuant to a section 1782 action initiated in the Southern District of New York. Those documents were produced to the Funds pursuant to the terms of a confidentiality agreement dated December 2, 2014. That agreement requires that the Funds provide PwC notice that its materials are subject to disclosure in the event such materials are to be produced. However, as noted in our October 13 letter, the Funds believe that these documents are unrelated to the Trustee's claims. As with the second set of PwC documents, please provide an explanation as to why the Trustee believes documents from PwC's US affiliate are relevant.

3. *Productions From the Funds Former Directors*: As noted in your December 17 letter, the Funds' former directors voluntarily produced approximately 1,820 documents to the Funds. Those documents were identified by the Funds as potentially risking the disclosure of confidential shareholder information to the Trustee, and therefore have not been produced.

Information Provided in the Funds' November 23 Letter

1. *The Funds' Searches*: Your December 17 letter requests additional information regarding several aspects of the Funds' efforts with respect to the identification of confidential shareholder information. To identify such information the Funds conducted a targeted search comprised of 899 shareholder names. The searches were run on hard copy documents uploaded into Ringtail, as well as on documents produced in ESI to the Funds. The Funds then reviewed documents that did not hit on the search for accuracy to ensure that they did not disclose confidential shareholder names. The total number of shareholders in Kingate Global is 1,237 and the total number of shareholders in Kingate Euro is 486. Individuals who worked for the Funds, but also invested in the Funds over the years, were excluded from the Funds' search for confidential

shareholder information. This was done to prevent the search from hitting on documents that pertain solely to the business operations of the Funds.

The Funds applied the shareholder search to just over 170,000 documents, constituting the vast majority of documents obtained through the voluntary productions (which totaled approximately 260,000). The documents searched were determined by applying a broad set of search terms, which are attached, and which were used by the Funds to establish the scope of their production in Bermuda. Given the breadth of the search terms used, documents excluded from the search are highly unlikely to relate to the Trustee's claims. We note that in the event the BVI court authorizes the production of shareholder information to the Trustee, the Funds will produce all 170,000 documents that contain the broad search terms, and remain open to discussing additional search terms to be applied to the Funds' document collections. As explained in more detail below, in certain circumstances the Funds identified specific categories of documents where the likelihood of disclosure of shareholder information exceeded fifty percent. Those categories of documents were pulled from the Funds' production in their entirety.

2. *Hard Copy Documents*: In your December 17 letter, you ask whether the Funds have any hard copy documents in their possession. As stated in our October 13 letter, the Funds received approximately 350 bankers boxes of documents in hard copy form from Citi Hedge. Approximately 130 boxes were subsequently uploaded onto the Funds' Ringtail system and have been included in the search for confidential shareholder information. The remaining bankers boxes are being held in storage in Bermuda at Bermuda Forwarders Ltd. Upon resolution of the applications made by Joint Liquidators to the BVI court, the Funds will make those boxes of documents available for inspection to the Trustee. In the meantime, we enclose with this letter an index of the Citi Hedge boxes, redacted to remove reference to identifying shareholder information.

3. *Identification of Shareholder Names*: The Funds know the names of their registered shareholders, but have not identified all instances in which shares are held by nominees (i.e., in street name). Known shareholder names were included in the search regardless of whether those names are also known to the Trustee. As explained above, shareholder names were excluded where the shareholder also had substantial involvement in the operations of the Funds.

<u>Information Provided During the Parties' December 15 Meet and Confer</u>

1. *The Funds Categorization of Documents*: In connection with their review of documents to be produced in the Bermuda action, the Funds created general document categories for purposes of tagging. Following the Court conference on December 18, you informed us that these document categories are included in the metadata of the Funds' initial production of documents to the Trustee. These designations are protected by the work product doctrine and were inadvertently produced. Pursuant to paragraph 14 of the Litigation Protective Order we request that you cease reviewing this material immediately, and delete or destroy that portion of the Funds' production that discloses the Funds' document categories within five days. We will provide you with a replacement production removing reference to this work product shortly.

In any event, in reviewing documents for confidential shareholder information, the Funds identified documents within certain categories that had a high likelihood of containing confidential shareholder information. Given this high probability, these categories of documents were withheld from production in their entirety. Approximately 109,000 categorized documents were not included within the search performed by the Funds for materials subject to immediate production to the Trustee.

2. *Service of the BVI Applications*: In your letter, you ask whether the list of shareholders that received notice of the BVI applications match the list of names searched by the Funds. However, as explained above, certain shareholder names, particularly where the shareholder invested through nominees, remain unknown to the Joint Liquidators. The Joint Liquidators were therefore directed by the BVI court to serve shareholders (1) by email to the extent email addresses are known, (2) by notice on the Funds' website, and (3) by notification in four separate publications. The Funds expect that all steps to complete service of notice of the applications will have been taken by end of this week. Shareholders will then have 14 days to file responses to the Joint Liquidators' BVI applications. We note, however, that the Joint Liquidators expect that the BVI court will consider any objections made to the applications at the time of the hearing, even if those objections have not been formally filed by the objection deadline.

3. *The Trustee's Request for the BVI Applications*: As we previously explained, filings in the BVI court relating to the Funds' liquidations are sealed and confidential. In your letter you ask whether the Funds have asked the BVI court if it will allow disclosure of the Funds' applications to the Trustee in his capacity as a "Foreign Representative." The Trustee, however, has been recognized as a "Foreign Representative" for a different liquidating estate. We therefore do not believe that the Trustee's status as a "Foreign Representative" provides any authority for the Funds to seek permission to share sealed information with him from the BVI court.

4. *The Funds' Discovery in the Event the BVI Court Denies the Funds' Applications*: Finally, you ask us what the Funds intend to do in the event the BVI court denies the Funds request to produce confidential shareholder information to the Trustee. As an initial matter, we are hopeful that the applications will be granted and believe that the Funds have presented the BVI court with strong legal arguments in that respect. If the applications are not granted, we believe there may be other ways to produce information to the Trustee, including, for example, by reviewing all of the documents and redacting identifying shareholder information. In any event, the Funds are not, as you suggest, proposing that they be limited to the production made to the Trustee on December 14. As we have explained repeatedly, the Funds are diligently working towards producing all documents in their possession to the Trustee on a timely basis.

* * *

Although we believe the Funds' prior production, which was the result of extensive searching, encompasses a substantial and useful collection of documents held by the Funds, we will undertake additional searches for materials not at risk of identifying confidential shareholder information. We are hopeful that the Funds' efforts will yield an additional population of responsive

documents for immediate production to the Trustee. We will endeavor to get any such productions to the Trustee in the near future.

Sincerely,

Lindsay M. Weber

cc: David J. Sheehan, Esq.
Gonzalo Zeballos, Esq.
Michelle Usitalo, Esq.
Robert S. Loigman, Esq.
Rex Lee, Esq.

EXHIBIT F

In The Supreme Court of Bermuda

CIVIL JURISDICTION
COMMERCIAL LIST
2010: No. 454

BETWEEN:-

(1) KINGATE GLOBAL FUND LIMITED (In Liquidation)
(2) KINGATE EURO FUND LIMITED (In Liquidation)

Plaintiffs

-and-

(1) KINGATE MANAGEMENT LIMITED
(2) FIM LIMITED
(3) FIM ADVISERS LLP
(4) FIRST PENINSULA TRUSTEES LIMITED
(as Trustee of the Ashby Trust)
(5) PORT OF HERCULES TRUSTEES LIMITED
(as Trustee of the El Prela Trust)
(6) ASHBY HOLDING SERVICES LIMITED
(7) EL PRELA GROUP HOLDING SERVICES LIMITED
(8) MR CARLO GROSSO
(9) MR FEDERICO CERETTI
(10) ASHBY INVESTMENT SERVICES LIMITED
(11) EL PRELA TRADING INVESTMENTS LIMITED
(12) ALPINE TRUSTEES LIMITED

Defendants

INTERIM RULING ON PLAINTIFF'S SUMMONS OF 13TH NOVEMBER 2015
(In Chambers)

Date of hearing: 17th March 2016
Date of ruling: 17th March 2016

Mr Alex Potts, Sedgwick Chudleigh Ltd, for the Plaintiffs

Mr Saul Froomkin QC for the First Defendant

Ms Sarah-Jane Hurrion, Ms Lilla Zuill and Mr Mark Burrows, Harneys Bermuda Limited, for the Second, Third, Eighth and Ninth Defendants

Mr Mark Diel and Ms Katie Tornari, Marshall Diel & Myers Limited, for the Fourth to Seventh and Tenth to Twelfth Defendants

Introduction

1. All parties have given extensive discovery in these proceedings, which involve claims arising from the *Ponzi* fraud carried out by Bernard L Madoff ("Mr Madoff"). Documents produced on discovery are produced on the implied undertaking that the party to whom they are disclosed will not use them for any ulterior or collateral purpose. However the court has a residual discretion to grant leave for such a purpose, eg to deploy the material in other litigation. When exercising that discretion the court will balance competing interests such as the public interest in preserving confidentiality and the litigant's right to participate effectively in the other litigation, including his compliance with any duties to which his participation in such litigation may give rise.

2. The Plaintiffs and the Defendants are also defendants to a complaint in the US Bankruptcy Court for the Southern District of New York ("The New York Action") brought by Irving H Picard, the Trustee for the liquidation estate of Bernard L Madoff Investment Securities LLC ("the Trustee"). By a summons dated 13th November 2015 ("the Plaintiffs' Summons") the Plaintiffs seek an order releasing them from the implied undertakings relating to the documents produced on discovery by the Defendants insofar as necessary to comply with their discovery obligations to the Trustee in the

New York Action. The Defendants resist such an order. They contend that the Plaintiffs should remain subject to the implied undertakings.

3. When seeking to do justice on the Plaintiffs' Summons, a material consideration will be what justice requires with respect to discovery in the New York Action. The arbiter of that question is the US Bankruptcy Court. I am helpfully informed that at a discovery conference in the New York Action on 7th March 2016 Judge Bernstein directed the Trustee to file a motion to compel production of documents which would seek production of documents from both the Plaintiffs and the Defendants. I shall therefore adjourn the Plaintiffs' Summons pending Judge Bernstein's ruling on that motion, with liberty to restore once the ruling has been given.

4. Having heard the parties as to costs, I order that costs be in the application.

Dated this 17th day of March, 2016

_____

Hellman J

EXHIBIT G

BakerHostetler

Baker&Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111

T 212.589.4200
F 212.589.4201
www.bakerlaw.com

Marshall J. Mattera
direct dial: 212.589.4606
mmattera@bakerlaw.com

April 15, 2016

VIA E-MAIL

Andreas A. Frischknecht, Esq.
Erin E. Valentine, Esq.
Peter R. Chaffetz, Esq.
Scott Reynolds, Esq.
Chaffetz Lindsey LLP
505 Fifth Avenue, 4th Floor
New York, NY 10017

Re: Picard v. Ceretti, et al., Adv. Pro. No. 09-01161 (SMB)

Dear Counsel:

Enclosed please find as service (i) the First Set of Requests for Production of Documents and Things by Irving H. Picard (the "Trustee") to Defendant Kingate Management Limited; (ii) copies of the Trustee's First Set of Requests for Production of Documents and Things to Defendants Carlo Grosso, Federico Ceretti, FIM Advisers LLP, FIM Limited, First Peninsula Trustees Limited, Port of Hercules Trustees Limited, Ashby Holdings Services Limited, El Prela Group Holding Services, Ashby Investment Services Limited, El Prela Trading Investments Limited, and Alpine Trustees Limited; and (iii) copies of the Trustee's First Set of Requests for Production of Documents and Things to Defendants Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd.

Very truly yours,

Marshall J. Mattera

Enclosures

cc: Robert S. Loigman, Esq.
Rex Lee, Esq.
Lindsay Weber, Esq.
Jodi Aileen Kleinick, Esq.

Mor Wetzler, Esq.
Thomas J. Moloney, Esq.
Samuel L. Raymond, Esq.
Timothy P. Harkness, Esq.

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

Attorneys for Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FEDERICO CERETTI, *et al.,* Defendants.	Adv. Pro. No. 09-01161 (SMB)

TRUSTEE'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO DEFENDANT KINGATE MANAGEMENT LIMITED

PLEASE TAKE NOTICE that in accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to this adversary proceeding under the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the applicable local rules of the United States District Court for the Southern District of New York and this Court (the "Local Rules"), Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-*lll* ("SIPA"), and the substantively consolidated estate of Bernard L. Madoff, hereby demands that defendant Kingate Management Limited produce Documents responsive to the requests set forth herein (the "Request" or "Requests") and deliver the same to the offices of Baker & Hostetler LLP, c/o Michelle Usitalo, Esq., 45 Rockefeller Plaza, New York, New York 10111, within the time set by the Federal Rules or by Order of this Court.

DEFINITIONS

1. The rules of construction and definitions set forth in Local Rule 26.3, as adopted by Bankruptcy Rule 7026-1, are incorporated in their entirety.

2. "All," "any," and "each" shall each be construed as encompassing any and all, as defined in Local Rule 26.3.

3. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope, as defined in Local Rule 26.3.

4. "Applicable Period" means the period beginning January 1, 1993 through the present.

5. "Bermuda Action" means that civil action commenced by Kingate Global Fund Ltd. and Kingate Euro Fund Ltd. against Kingate Management Limited and others in the Supreme Court of Bermuda, Civil Jurisdiction, Commercial List, bearing the caption *Kingate Global Fund Limited (in liquidation), et al. v. Kingate Management Limited, et al*., No. 2010:454.

6. "Bermuda Court" means the court presiding over the Bermuda Action.

7. "BLMIS" means Bernard L. Madoff Investment Securities LLC and anyone acting on behalf of or at the direction of Bernard L. Madoff Investment Securities LLC, including, but not limited to, current and former agents, representatives, employees, servants, predecessors, successors, and third-party service providers of the above specifically identified Persons, and any and all related entities, including without limitation: Abel Automatics, Inc.; Abel Holdings, LLC; Abtech Industries Inc.; BLM Air Charter LLC; Blumenfeld Development Group; BREA Associates LLC; Cohmad, Cohn, Delaire & Madoff, Inc.; Delta Fund I, L.P.; Madoff Brokerage & Trading Technologies LLC; Madoff Energy Holdings LLC; Madoff Energy III LLC; Madoff Energy IV LLC; Madoff Energy LLC; Madoff Family LLC (a/k/a Madoff Family Fund LLC); Madoff Realty LLC/Madoff Realty Associates/Madoff Realty Trust; Madoff Securities International Ltd.; Madoff Securities International LLC; Madoff Technologies LLC; Primex Holdings LLC; Realty Associates Madoff II; The Madoff Family Foundation (f/k/a Bernard L. and Ruth Madoff Foundation); Yacht Bull Corp (registered by Campbell Corporate Services LTD); Bernard Madoff; Ruth Madoff; Andrew Madoff; Deborah Madoff; Jennifer Madoff; Stephanie Madoff; Mark Madoff; Peter Madoff; Marion Madoff; Ruth Madoff; Shana Madoff; Sondra Madoff-Weiner; Roger Madoff; Marvin Wiener; Charles Wiener; Annette Bongiorno; Jo Ann "Jodi" Crupi; Eric Lipkin; Irwin Lipkin; Frank DiPascali; Erin Reardon; David Kugel; Belle Jones; and Darlene Concepcion.

8. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), as defined in Local Rule 26.3.

9. "Concerning" means relating to, referring to, describing, evidencing, or constituting, as defined in Local Rule 26.3.

10. "Document" is defined to be synonymous in meaning and equal in scope to the usage of the term "documents or electronically stored information" in Fed. R. Civ. P. 34(a)(1)(A), as defined in Local Rule 26.3. A draft or non-identical copy is a separate Document within the meaning of this term. For purposes of these Requests, the meaning and scope of Document captures the meaning and scope of Communication. Accordingly, a Request that demands the production of "all Documents" by definition demands the production of "all Communications" responsive to the Request. That a Request may specifically seek "all Communications" does not in any way limit or alter the definitions given to Document and Communication, respectively.

11. "Identify," when referring to a Document, means to give, to the extent known, the (i) type of Document, (ii) general subject matter, (iii) date of the Document, and (iv) author(s), addressee(s), and recipient(s), as defined in Local Rule 26.3. In the alternative, the Document may be produced, together with identifying information sufficient to satisfy Fed. R. Civ. P. 33(d).

12. "Identify," when referring to a Person, means to give, to the extent known, the Person's full name, present or last known address, and when referring to a natural Person, additionally, the present or last known place of employment, as defined in Local Rule 26.3. Once a Person has been identified in accordance with this paragraph, only the name of that Person need

be listed in response to subsequent discovery requesting the identification of that Person.

13. "Initial Transfer" means any and all Transfers (as defined herein) made by BLMIS or any Person acting on behalf of BLMIS to You or to any Person acting on Your behalf.

14. "Person" means any natural person or any legal entity, including, without limitation, any business or governmental entity or association, as defined in Local Rule 26.3.

15. Reference to any Person that is not a natural person and is not otherwise defined herein refers to and includes any parent, subsidiary, affiliate, division, branch, representative office, predecessor, successor, principal, member, director, officer, shareholder, manager, employee, attorney-in-fact, attorney, nominee, agent, or representative of such Person.

16. "Transfer" shall conform to the meaning set forth under the Bankruptcy Code, 11 U.S.C. § 101(54): (a) the creation of a lien; (b) the retention of title as a security interest; (c) the foreclosure of a debtor's equity redemption; or (d) each mode, direct and indirect, absolute or conditional, voluntary or involuntary, of disposing of or departing with—(i) property; or (ii) an interest in property. For purposes of these Requests, the term "Transfer(s)" shall only apply to amounts in excess of $10,000.

17. "You" and "Your" mean Kingate Management Limited and anyone acting on behalf of or at the direction of Kingate Management Limited, including, but not limited to, its current and former parents, subsidiaries, divisions, officers, directors, principals, partners, managers, members, shareholders, agents, representatives, employees, attorneys, nominees, servants, predecessors, successors, affiliates, and third-party service providers.

18. The use of the singular form of any word includes the plural and vice versa, as defined in Local Rule 26.3.

INSTRUCTIONS

Federal Rules 26 through 37, made applicable to this proceeding by the Bankruptcy Rules, are incorporated by reference and apply to each of the following instructions:

1. Unless otherwise specified, each of these Requests seeks Documents created, modified, or existing during the Applicable Period.

2. All Documents shall be identified by the request(s) to which they are primarily responsive and produced as they are maintained in the usual course of business.

3. Produce all Documents and all other materials described below in Your actual or constructive possession, custody, or control, including, but not limited to, those in the possession, custody, or control of a current or former employee or third-party service provider, wherever those Documents and materials are maintained, including, but not limited to, those on personal computers, PDAs, wireless devices, or web-based email systems (such as Gmail, Yahoo, etc.).

4. Produce all Documents in Your custody or control, whether maintained in electronic or paper form and whether located on hardware owned and maintained by You or hardware owned and/or maintained by a third party that stores data on Your behalf. You must produce all such Documents even if they were deleted or in draft form. Without limitation, hardware where such data may be stored includes: servers; desktop, laptop, or tablet computers; cell and smart phones; PDA devices; scanners, fax machines, and copying machines; and mobile storage devices, such as thumb or external hard drives. Electronically stored Documents include any computerized data or content stored on electromagnetic media. Without limitation, types of electronically stored Documents include email, voicemail, and instant messages; intranet and internet system data; telephone and cellular telephone calling records; data compilations; spreadsheets; word processing Documents; images; databases; digital photocopier memory; and any other information stored in memory storage devices.

5. Produce the original or duplicate, as such terms are defined by Rule 1001 of the Federal Rules of Evidence, of each Document requested together with all non-identical copies and drafts of that Document. If a duplicate is produced, it should be legible and bound or stapled in the same manner as the original.

6. Documents not otherwise responsive to these Requests should be produced: (i) if such Documents mention, discuss, refer to, explain, or concern one or more Documents that are called for by these Requests; (ii) if such Documents are attached to, enclosed with, or accompany Documents called for by these Requests; or (iii) if such Documents constitute routing slips, transmittal memoranda or letters, comments, evaluations, or similar materials.

7. Documents attached to each other should not be separated; separate Documents should not be attached to each other.

8. Documents should include all exhibits, appendices, linked Documents, or otherwise appended Documents that are referenced in, attached to, included with, or are a part of the requested Documents.

9. If a request calls for information concerning a Transfer, Initial Transfer, redemption, or withdrawal from an account, such request includes, but is not limited to, Documents that reflect the account name and number for the account the funds were transferred from and to, method of transfer (*i.e.*, wire, check, etc.), date of, amount and the reason for the Transfer, Initial Transfer, redemption, or withdrawal.

10. If any Document, or any part thereof, is not produced based on a claim of attorney-client privilege, work-product protection, or any other privilege or immunity from disclosure, then in answer to such request or part thereof, for each such Document:

a) Identify the type, title, and subject matter of the Document;

b) State the place, date, and manner of preparation of the Document;

c) Identify all authors, addressees, and recipients of the Document, including

information about such Persons to assess the privilege asserted; and

d) Identify the privilege(s) or immunity(ies) asserted and the factual basis for same.

11. Documents should not contain redactions unless such redactions are made to protect information subject to the attorney-client privilege and/or work-product protection. If Documents are produced with redactions, a log setting forth the information requested in Instruction #10 above must be provided.

12. If a Document sought herein was at one time, but is no longer, in Your actual or constructive possession, custody, or control, state whether it: (i) is missing or lost; (ii) has been destroyed; (iii) has been transferred to others; and/or (iv) has been otherwise disposed of. In each instance, Identify the Document, state the time period during which it was maintained, state the circumstance surrounding authorization for such disposition thereof and the date thereof, Identify each Person having knowledge of the circumstances of the disposition thereof, and Identify each Person who had possession, custody, or control of the Document, to whom it was available or who had knowledge of the Document and/or the contents thereof.

13. The Bankruptcy Court entered Orders on September 17, 2013: (I) Establishing Procedures for Third-Party Data Rooms; and (II) Modifying the June 6, 2011 Litigation Protective Order. Pursuant to those Orders, upon production, Producing Parties shall provide the following information in a production cover letter, to the extent any of the following information is applicable: (i) the Documents (listed in an Excel file Document-by-Document by Beginning Bates and Ending Bates for each Document) that are designated as confidential pursuant to the Litigation Protective Order; (ii) the Documents (listed in an Excel file Document-by-Document by Beginning Bates and Ending Bates for each Document) that are designated confidential pursuant to an Individual Confidentiality Standard, if applicable, pursuant to Paragraph 10 of the Order Establishing Procedures for Third-Party Data Rooms and Paragraph I of the Order Modifying the June 6, 2011 Litigation Protective Order; (iii) the Documents (listed in an Excel file Document-by-Document by Beginning Bates and Ending Bates for each Document) that should be excluded from the Third-Party Data Rooms pursuant to Paragraph 4 of the Order Establishing Procedures for Third-Party Data Rooms and Paragraph C of the Order Modifying the June 6, 2001 Litigation Protective Order; and (iv) the designated representative authorized for that production to provide consent to the disclosure of confidential Documents requested or to object to the disclosure of confidential Documents.[1] Failure to provide such information in a production cover letter shall result in a waiver by the Producing Parties of: (i) any confidential designations; (ii) any objections to inclusion of the Documents in the Third-Party Data Rooms; and/or (iii) notification that Documents have been requested for disclosure. For the avoidance of doubt, notwithstanding Paragraph 13 of the Order Establishing Procedures for Third-Party Data Rooms and Paragraph L of the Order Modifying the June 6, 2011 Litigation Protective Order, Paragraphs 7 and 14 of the Litigation Protective Order will still apply with respect to: (i) inadvertent failure to designate confidential material as confidential or incorrect designations of confidential material (Paragraph 7 of the Litigation Protective Order); and (ii) inadvertent production or disclosure of

[1] Electronic productions containing Documents designated as confidential shall also be accompanied by a database load file containing a field identifying if a Document has been designated confidential.

any Document or other material otherwise protected by the attorney-client privilege, work-product protection or a joint defense/common interest privilege (Paragraph 14 of the Litigation Protective Order).

MANNER OF PRODUCTION

1. All Documents produced to the Trustee shall be provided in either native file ("native") or single-page 300 dpi-resolution group IV TIF format ("tiff") format as specified below, along with appropriately formatted industry-standard database load files, and accompanied by true and correct copies or representations of unaltered attendant metadata. Where Documents are produced in tiff format, each Document shall be produced along with a multi-page, Document-level searchable text file ("searchable text") as rendered by an industry-standard text extraction program in the case of electronic originals, or by an industry-standard Optical Character Recognition ("ocr") program in the case of scanned paper Documents. Searchable text of Documents shall not be produced as fielded data within the ".dat file" as described below.

2. Database load files and production media structure: Database load files shall consist of: (i) a comma-delimited values (".dat") file containing: production Document identifier information, data designed to preserve "parent and child" relationships within Document "families," reasonably accessible and properly preserved metadata (or bibliographic coding in the case of paper Documents), custodian or Document source information; and (ii) an Opticon (".opt") file to facilitate the loading of tiff images. Load files should be provided in a root-level folder named "Data," images shall be provided within a root level "Images" folder containing reasonably structured subfolders, and searchable text files shall be provided in a single root-level "Text" folder. If any of the Documents produced in response to these Requests are designated as confidential pursuant to the Litigation Protective Order, in addition to marking the Documents with the brand "CONFIDENTIAL" or branding the media with the word "CONFIDENTIAL," also include a confidential field within the load file, with a "yes" or "no" indicating whether the Document has been designated as confidential, as well as native file loading/linking information (where applicable).

3. Electronic Documents and data, generally: Documents and other responsive data or materials created, stored, or displayed on electronic or electro-magnetic media shall be produced in the order in which the Documents are or were stored in the ordinary course of business, including all reasonably accessible metadata; custodian or Document source information; and searchable text as to allow the Trustee, through a reasonable and modest effort, to fairly, accurately, and completely access, search, display, comprehend, and assess the Document's true and original content.

4. Emails and attachments, and other email account-related Documents: All Documents and accompanying metadata created and/or stored in the ordinary course of business within commercial, off-the-shelf email systems including but not limited to, Microsoft Exchange™, Lotus Notes™, or Novell Groupwise™ shall be produced in tiff format, accompanying metadata, and searchable text files or, alternately, in a format that fairly, accurately, and completely represents each Document in such a manner as to make the Document(s) reasonably useable, manageable, and comprehendible by the Trustee.

5. Documents and data created or stored in or by structured electronic databases: With the exclusion of email and email account-related Documents and data, all Documents and accompanying metadata created and/or stored in structured electronic databases or files shall be produced in a format that enables the Trustee to reasonably manage and import those Documents into a useable, coherent database. Documents must be accompanied with reasonably detailed documentation explaining each Document's content and format, including but not limited to data dictionaries and diagrams. Some acceptable formats, if and only if provided with definitive file(s), table(s), and field level schemas include:

a) XML format file(s);

b) Microsoft SQL database(s);

c) Access database(s); and/or

d) Fixed or variable length ASCII delimited files.

6. Spreadsheets, multimedia, and non-standard file types: All Documents generated or stored in software such as Microsoft Excel or other commercially available spreadsheet programs, as well as any multimedia files such as audio or video, shall be produced in their native format, along with an accompanying placeholder image in tiff format indicating a native file has been produced. A "Nativelink" entry shall be included in the .dat load file indicating the relative file path to each native file on the production media. To the extent You have other file types that do not readily or easily and accurately convert to tiff and searchable text, You may elect to produce those files in native format subject to the other requirements listed herein. Native files may be produced within a separate root-level folder structure on deliverable media entitled "Natives."

7. "Other" electronic Documents: All other Documents and accompanying metadata and embedded data created or stored in unstructured files generated by commercially available software systems (excluding emails, structured electronic databases, spreadsheets, or multimedia) such as, but not limited to, word processing files (such as Microsoft Word), image files (such as Adobe .pdf files and other formats), and text files shall be produced in tiff and searchable text format in the order the files are or were stored in the ordinary course of business.

8. Paper Documents: Documents originally created or stored on paper shall be produced in tiff format. Relationships between Documents shall be identified within the Relativity .dat file utilizing Document identifier numbers to express parent Document/child attachment boundaries, folder boundaries, and other groupings. In addition, the searchable text of each Document shall be provided as a multi-page text file as provided for by these Requests.

REQUESTS FOR PRODUCTION

1. All Documents filed with, submitted to, or issued by the Bermuda Court, including, but not limited to, all pleadings, motions, orders, rulings, opinions, and judgments.

2. All transcripts and any exhibits thereto concerning the Bermuda Action, including, but not limited to, transcripts of court hearings, conferences, depositions, and any other proceedings.

3. All Documents concerning discovery or fact-finding in the Bermuda Action, including, but not limited to, all Documents produced, all witness statements, and all other forms of written discovery.

4. All Documents concerning the Bermuda Action, including, but not limited to, all correspondence exchanged between the parties thereto.

Dated: New York, New York
April 15, 2016

/s/ David J. Sheehan

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com

Attorney for Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2016 I caused a true and accurate copy of the foregoing to be served by electronic mail upon the following:

Counsel for Kingate Management Limited

Andreas A. Frischknecht
Erin E. Valentine
Peter R. Chaffetz
Scott Reynolds
Chaffetz Lindsey LLP
Email: Andreas.frischknecht@chaffetzlindsey.com
Email: erin.valentine@chaffetzlindsey.com
Email: peter.chaffetz@chaffetzlindsey.com
Email: scott.reynolds@chaffetzlindsey.com

/s/ Marshall J. Mattera
An Attorney for Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff

EXHIBIT H

February 19, 2016

VIA EMAIL

Anthony M. Gruppuso
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111

Re: *Picard v. Ceretti, et al.*, Adv. Pro. No. 09-1161 (SMB) (Bankr. S.D.N.Y.)

Dear Anthony:

We write in response to your February 10, 2016 letter requesting that the so-called "Non-Fund Defendants" consent to move forward with discovery through the entry of a proposed Stipulation and Order Setting Initial Pretrial Conference Between the Trustee and the Non-Fund Defendants (the "Stipulation").

We do not consent to entry of the Stipulation. *First*, commencement of discovery now is inconsistent with proceedings pursuant to Judge Bernstein's Order Concerning Further Proceedings on Extraterritoriality Motion and Trustee's Omnibus Motion for Leave to Replead and for Limited Discovery (the "Extraterritoriality Order"). The Extraterritoriality Order propounded a schedule for resolving pending motions to dismiss based on extraterritoriality (the "Extraterritoriality Motions") in adversary proceedings subject to Judge Rakoff's extraterritoriality decision, *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 513 B.R. 222 (S.D.N.Y. 2014) (the "Extraterritoriality Decision"). The Extraterritoriality Order makes clear that Judge Bernstein will first resolve whether the transfers at issue in each adversary proceeding occurred extraterritorially before considering any other issues. Paragraph 12 sets the time "for all defendants in any of the adversary proceedings [at issue] to respond to the complaints." That paragraph states that any response to the complaints – and thus any discovery – can only move forward "after the Court decides whether any counts of the respective complaints or portions thereof should be dismissed."

Second, even if the Extraterritoriality Order did not already foreclose the Trustee's request, under the Federal Rules of Civil and Bankruptcy Procedure, there is "good cause" to delay any party discovery involving the "Non-Fund Defendants" until after Judge Bernstein has ruled on the Extraterritoriality Motions. Fed. R. Civ. P. 26(c)(1); Fed. R. Bankr. P. 7026. In determining whether to grant a stay of discovery pending a motion to dismiss, "[c]ourts consider: '(1) [the] breadth of discovery sought, (2) any prejudice that would result, and (3) the strength of the motion.'" *Hong Leong Finance Ltd. (Singapore) v. Pinnacle Performance Ltd*, 297 F.R.D. 69, 72 (S.D.N.Y. 2013) (citation omitted). Here, you have not suggested that discovery the Trustee seeks would be limited. Nor have you indicated that the Trustee would suffer any prejudice if discovery does not commence now, and any such argument would be undermined by the fact that the Trustee has made no objection to the effective stay of discovery pending the resolution of the Extraterritoriality Motions for over a year (and even before then). Moreover, we believe that the Extraterritoriality Motions are dispositive of the adversary

proceedings against the "Non-Fund Defendants," and their adjudication could eliminate entirely the need for costly and time-consuming discovery. There is thus good cause to delay any discovery until after resolution of the Extraterritoriality Motions. *See, e.g.*, *Gandler v. Nazarov*, No. 94 Civ. 2272 (CSH), 1994 WL 702004, at *4 (S.D.N.Y. Dec. 14, 1994). Indeed, in issuing his decision, Judge Rakoff rejected the Trustee's efforts to obtain discovery while the extraterritoriality issue was pending. *See* Extraterritoriality Decision, 513 B.R. at 232 n.4.

Third, in the event that Judge Bernstein denies the Extraterritoriality Motions, all of the Non-Fund Defendants plan to file motions to dismiss on other grounds, and Citi Hedge Fund Services Limited, HSBC Bank Bermuda Limited, Kingate Management Limited, the Trust Defendants, and the FIM Defendants intend to move to dismiss based on lack of personal jurisdiction. The Extraterritoriality Order protects the right to so move. Paragraph 17 ("Without limitation, nothing in this Order . . . shall limit, restrict, or impair any defense, right or argument that has been raised or could be raised by any defendant in a motion to dismiss under Fed. R. Civ. P. 12 or Fed. R. Bankr. 7012 . . . including, without limitation, all defenses back on lack of personal jurisdiction."). To the extent that Judge Bernstein denies the Extraterritoriality Motions, *no* discovery, including non-party discovery under Federal Rule of Civil Procedure 45 or Federal Rule of Bankruptcy Procedure 9016, can occur with respect to any "Non-Fund Defendant" over whom the Bankruptcy Court lacks personal jurisdiction. *See Gucci Am. Inc. v. Weixing Li*, 768 F.3d 122, 141 (2d Cir. 2014) ("A district court, however, must have personal jurisdiction over a nonparty in order to compel it to comply with a valid discovery request under Federal Rule of Civil Procedure 45."); *see also Filus v. Lot Polish Airlines*, 907 F.2d 1328, 1332 (2d Cir. 1990) ("[U]ntil [a plaintiff] has shown a reasonable basis for assuming jurisdiction, [it] is not entitled to *any* other discovery.") (emphasis added).

Accordingly, in the event that Judge Bernstein denies the Extraterritoriality Motions, the next step before any discovery commences would be to confer on a briefing schedule for motions to dismiss or quash discovery on the basis of lack of personal jurisdiction. Prior to resolution of the Extraterritoriality Motions, however, moving forward with discovery would be wholly premature.

We are available to meet and confer regarding the foregoing at your convenience.

Regards,

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Rex Lee, Esq.
Lindsay M. Weber, Esq.

EXHIBIT I

AN AGREEMENT made the day of
One thousand nine hundred and ninety-four BETWEEN:-

KINGATE GLOBAL FUND, LTD. a company incorporated under the laws of the British Virgin Islands whose registered office is at Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, BVI (the "Company"); and

KINGATE MANAGEMENT LIMITED, a company incorporated under the laws of Bermuda whose office is at Hemisphere House, 9 Church Street, Hamilton HM 11, Bermuda (the "Manager").

WHEREBY IT IS AGREED AND DECLARED as follows:-

1 INTERPRETATION

1.1 In this Agreement the following words and expressions shall, where not inconsistent with the context, have the following meanings respectively:-

"Administrator" means Hemisphere Management Limited or any other Administrator appointed as such by the Directors;

"Articles" means the Memorandum and Articles of Association for the time being of the Company and any reference herein to an Article shall be taken to refer to the Articles unless otherwise specified;

"Auditors" means Coopers & Lybrand or any other auditor appointed as such by the Directors;

"Business Day" means any day when the central banking systems of the U.S. and Bermuda are open and operating;

"Connected Person" of a company means and includes (a) any person or company beneficially owning, directly or indirectly, 20 per cent or more of the issued ordinary share capital of that company or able to exercise, directly or indirectly 20 per cent or more of the total votes in that company; (b) any person or company controlled by a person who or company which meets one or both of the descriptions given in (a); (c) any company 20 per cent or more of whose issued ordinary share capital is beneficially owned, directly or indirectly by that company and any Connected Person of that company (as defined in (a), (b) or (d) of this definition) taken together or any company 20 per cent or more of the total votes in which can be exercised, directly or indirectly, by that company and any such Connected Person thereof (as defined in (a), (b) or (d) of this definition taken together; (d) any employee, director or officer of that company or of any Connected Person of that company (as defined in (a), (b) or (c) of this definition); (e) any spouse, minor child or step-child of the persons referred to in (a), (b) and (d); and (f) any trustee of a trust, the beneficiaries of which are persons falling into (a), (b), (d) and (e);

"Custodian" means the body corporate acting in the capacity of custodian of the Investments for the time being;

"Directors" means the Directors of the Company from time to time;

"Dollars ($) and Cents" means U.S. dollars and cents;

"Eligible Investor" means a person who is entitled to own Shares under the Articles;

"Investments" means all the assets and rights from time to time of the company held in accordance with the Articles;

"Laws" means the laws of Bermuda and any other applicable laws and regulations for the time being in force;

"Management Fees" means the fees payable to the Manager calculated in accordance with Clause 6.1 of this agreement;

"Net Asset Value" means the net asset value of all the Shares calculated in accordance with Clause 4 as of the close of business on the last Business Day of each calendar month;

"Redemption Date" means the last Business Day of each calendar month.

"Shares" means the Common Shares with an initial net price of $100 per share;

"Subscription Date" means the first Business Day subsequent to the prior month-end;

1.2 Any reference to the Company, the Manager or the Custodian includes a reference to its or their duly authorised agents or delegates.

1.3 Reference to Clauses are to Clauses of this Agreement.

1.4 The headings to the Clauses of this Agreement are for convenience only and shall not affect the construction or interpretation thereof.

1.5 Unless the context otherwise requires words and expressions contained in this Agreement shall bear the same meaning as in the Articles PROVIDED THAT any alteration or amendment of the Articles shall not be effective for the purposes of this Agreement unless the party hereto affected (to the extent that its rights or duties hereunder are affected by such alteration or amendment) shall, by endorsement hereon or otherwise, have consented thereto.

2 APPOINTMENT OF THE MANAGER

The Company HEREBY APPOINTS the Manager and the Manager shall act with effect from the date hereof as Manager of the Company upon the terms hereinafter contained and in accordance with the Laws, the Articles and the investment policy for the Company for the time being as determined by the Directors until its appointment shall be terminated as hereinafter provided and the Manager hereby accepts such appointment and agrees to assume the obligations set forth herein.

3 FUNCTIONS, POWERS AND OBLIGATIONS OF THE MANAGER

3.1 During the continuance of its appointment the Manager shall (subject to the overall policy and supervision of the Directors and subject to Clause 3.4) have full power, authority and right to exercise the functions, duties, powers and discretions exercisable by the Directors under the Articles either itself or wholly or in part through its authorised agents or delegates to (i) manage all aspects of the investment advisory services provided to the Fund, including the selection and evaluation of Investment Advisors and the allocation of the Fund's assets among the Investment Advisors and (ii) to arrange for the performance of all accounting and administrative services which may be required by the Fund's operations.

3.2 Without limiting the generality of the foregoing clause 3.1, the Manager shall have and is hereby granted the authority, power and right in the name of the Company but subject to the supervision of the Directors:-

3.2.1 to issue orders and instructions by telex or telefax to the Custodian as to payments in respect of the sale or acquisition of the Investments;

3.2.2 to purchase (or otherwise acquire), sell (or otherwise dispose of) and invest in the Investments for the account of the Company and effect foreign exchange transactions on behalf of the Company and for the account of the Company in connection with any such purchase, other acquisition, sale or other disposal or the protection of the value of Investments;

3.2.3 to enter into, make and perform all contracts, agreements and other undertakings as may in the opinion of the Manager be necessary or advisable or incidental to the carrying out of the objectives of this Agreement;

3.2.4 to apply to the relevant authorities for, and to obtain from such authorities, all confirmations or consents relating to the taxation status of the Company and all tax rebates and other payments which may be due to the Company from time to time in respect of the Investments and in connection therewith the Manager shall have and is hereby granted the authority to disclose to any such relevant authorities such information in its possession regarding the Company or its affairs as may be necessary or required; and

3.2.5 to supervise the distribution of the shares.

3.3 The Manager shall observe and comply with the Articles and with the applicable provisions of any prospectus, explanatory memorandum or other such document relating to the Company distributed from time to time by or on behalf of the Company and all resolutions of the Directors of which it has notice and other lawful orders and directions given to it from time to time by the Directors and all activities engaged in by the Manager hereunder shall at all times by subject to the control of and review by the Directors and without limiting the generality of the foregoing the Directors may from time to time:-

3.3.1 prohibit the Manager from investing in any Investment or in any currency or country or with any institution;

3.3.2 require the Manager to sell any Investment or (subject to the availability of funds) to purchase any Investment;

3.3.3 amend the investment objectives of the Company and specify the manner in which they wish the Manager to give effect to such objectives;

3.3.4 instruct the Manager as to the exercise of the rights attached to the Investments managed by the Manager;

and the Manager shall and shall procure that any person firm or company to whom it delegates any of its functions hereunder shall give effect to all such decisions.

3.4 Subject to the terms of this Agreement, to such orders and directions as may from time to time be given by the Directors and to the overall policy and supervision of the Directors, in exercising its rights and carrying out its duties hereunder the Manager is authorised to act for the Company and on the Company's behalf within the scope of this Agreement either itself or wholly or in part through its authorised agents or delegates in the same manner and with the same force and effect as the Company might or could do.

3.5 All rights of voting conferred by Investments shall be exercised in such manner as the Manager may determine (subject to the right of the Directors to give instructions) and subject as aforesaid the Manager may in its discretion refrain from the exercise of such voting rights. The Manager (subject as aforesaid) may instruct the Custodian as to how it should exercise the voting rights conferred by a particular Investment.

4 NET ASSET VALUE

4.1 Net Asset Valuations are determined by the Administrator, in large part based upon information regarding the value of the Fund's portfolio assets provided by the Investment Advisors, as of the close of business on the last Business Day of each calendar month. The Fund generally seeks to have portfolio securities valued in accordance with the following guidelines.

4.2 Portfolio securities are valued at the last sale price reported on the principal securities exchange or market on which the securities are traded. In the absence of reported sales prices on the valuation date, portfolio positions generally are valued at the last reported bid quotation in the case of securities held long and at the last reported offer quotation in the case of securities sold short. In special circumstances in which the Administrator determines that market prices or quotations do not fairly represent the value of particular assets based on information provided by the applicable Investment Advisor, the Administrator is authorized to assign a value to such assets which differs from the market prices or quotations based on information provided by the applicable Investment Advisor.

4.3 Securities or other assets which are not readily marketable, including, illiquid direct investments of the Fund, generally are valued at the lesser of cost or market price, and may be subject to an additional discount upon the recommendation of the Administrator. If appraisals are available, references can be made to such appraisals. Shares of other investment funds will generally be valued at the Net Asset Value supplied by such funds, less any applicable redemption charges customarily imposed by such funds and less any provision for non-accrued management and performance fees. The value of assets are recorded at their fair value as determined in good faith by the Administrator in the absence of current quotations or if the Administrator concludes that such quotations are not indicative of fair value by reason of illiquidity of a particular security or other factors.

4.4 In addition to special valuation calculations relating to illiquid securities, other special situations affecting the measurement of Net Asset Values may arise from time to time. Prospective investors should be aware that situations involving uncertainties as to the valuation of portfolio positions could have an adverse effect on the Fund's net assets if judgments regarding appropriate valuations made by the Administrator should prove incorrect. In the absence of bad faith or manifest error, the Net Asset Value calculations made by the Administrator are conclusive and binding on all shareholders.

4.5 There will be deducted from the total value of the Fund's assets all accrued debts and liabilities, including (i) fees of the Investment Advisors, the Manager, the Consultant and the Administrator earned or accrued but not yet paid, (ii) a provision for the annual performance fees of the Manager and the Investment Advisors measured as of the valuation date, (iii) monthly amortization of organization costs, (iv) an allowance for the Fund's estimated annual audit and legal fees, and (v) any contingencies for which reserves are determined to be required. Net Asset Valuations will be expressed in U.S. Dollars, and any items denominated in other currencies will be translated at prevailing exchange rates as determined by the Administrator.

5 CONTINUATION AND EXERCISE OF MANAGER'S POWERS

5.1 The authorities herein contained are continuing ones and shall remain in full force and effect until revoked by termination of this Agreement as hereinafter provided, but such revocation shall not affect any liability in any way resulting from transactions initiated prior to such revocation.

6 FEES OF THE MANAGER

6.1 In consideration of the services to be undertaken by the Manager hereunder the Manager shall be entitled to receive from the Company a fee or fees consisting of:-

6.1.1 Management Fee - The Manager receives a monthly fee from the Fund calculated at an annual rate equal to one and one-half percent (1.5%) of the month-end Net Asset Value of the Fund (the "Management Fee") before any current accrual for a Performance Fee. The Management Fee is generally payable as of the last Business Day of each month.

6.1.2 Annual Performance Fee - The Fund also pays the Manager a performance fee, payable annually, equal to ten percent (10%) of the Fund's cumulative net profit, including net realized and unrealized gains and losses and net investment income (the "Performance Fee"), but such payment is due only if:

- o the Fund's annual performance is in excess of ten percent (10%) prorated for a partial year, and
- o such payment (if due) does not cause the Fund's performance to fall below ten percent (10%).

The cumulative net profit of the Fund is generally determined as the amount, if any, by which the sum of the Fund's Net Asset Value as of the last Business Day of each year, before deduction or accrual of the Performance Fee, but after deduction or accrual of all other expenses and liabilities including basic monthly fees, exceeds the sum of the Fund's Net Asset Value as of the last Business day of the preceding year, in each case adjusted for capital changes since such date. Because the Fund's assets are recorded in the Fund's annual financial accounts at their market value, the Performance Fee will reflect any net changes in unrealised appreciation or depreciation in the value of the Fund's portfolio as of the last Business Day of each year as well as gains and losses realised during the year and net investment income or loss.

The Performance Fee will be payable on a cumulative, or "peak to peak", basis and will not be payable after a period during which the Fund experiences a net loss unless and until such net loss is recouped and net gains in excess of ten percent (10%) are achieved. If in a given year the Fund's annual performance, although positive, is less than ten percent (10%), no Performance Fee shall be payable to the Manager, but any such shortfall will not be taken into account in the calculation of the Performance Fee in the following year.

The Performance Fee is payable to the Manager as of the end of each calendar year. The Manager has no obligation to restore to the Fund Performance Fees previously earned and paid, notwithstanding a loss in a subsequent period.

Appropriate adjustments will be made in the calculation of the net profit and in the calculation of the net loss carried forward from one period to the next to account for capital contributions and withdrawals.

6.2 If this Agreement shall terminate otherwise than on any Redemption Date, the Manager, in respect of the Management Fee set out in Clause 5.1.1, shall be entitled to receive on the Redemption Date following termination in respect of the part of the relevant month preceding termination ("the partial month") only the amount which bears the same proportion to the amount calculated pursuant to Clause 5.1.1 above as the number of days in the partial month bears to the number of days in the relevant month.

6.3 If this Agreement shall terminate otherwise than on the last Redemption Date of the calendar year the Manager, in respect of the Performance Fee set out in Clause 5.1.2, shall be entitled to receive on the Redemption Date following termination the fee which had accrued as of the Redemption Date prior to termination.

6.4 In the event of any dispute arising as to the amount of the Management and/or Performance Fee, the same shall be referred to the Auditors for settlement, who shall be entitled to make such further or other adjustments as may in the circumstances appear to them to be appropriate and whose decision shall be regarded as the decision of an expert and not of an arbitrator and shall be binding and final upon the parties hereto.

7 EXPENSES

7.1 The Manager shall pay the expenses incurred by it in connection with the performance of its services hereunder unless the Company otherwise agrees in any particular case.

7.2 All remuneration and other sums payable to any person firm or company to whom the whole or any part of the Manager's functions hereunder shall be delegated under Clause 8 shall be paid by the Manager.

8 SERVICES OF THE MANAGER NOT TO BE EXCLUSIVE

The services of the Manager to the Company hereunder are not to be deemed exclusive and the Manager shall be free to render similar services to others so long as its services hereunder are not impaired thereby and to retain for its own use and benefit all fees or other monies payable thereby and the Manager shall not be deemed to be affected with notice of or to be under any duty to disclose to the Company any fact or thing which comes to the notice of the Manager or any servant or agent of the Manager in the course of the Manager rendering similar services to others or in the course of its business in any other capacity or in any manner whatsoever otherwise than in the course of carrying out its duties hereunder.

9 POWER OF DELEGATION

9.1 The Manager shall have full power to delegate the whole or any part of its functions hereunder to any person firm or company with the approval of the Board of Directors. The Manager shall (unless the Directors shall otherwise agree in any particular case) exercise its power of delegation only on terms which include a provision binding on the Appointee in terms similar in all respects to this Agreement.

9.2 Neither the responsibilities nor liabilities under this Agreement can be assigned by the Manager without the approval of the Board of Directors.

9.3 The Manager shall be entitled to obtain investment and other advice from such source or sources and on such terms as it thinks fit (including, without prejudice to the generality of the foregoing, full power to appoint information and consulting services, to advise as to and to effect on behalf of the Manager the investment and re-investment of the Investments with the proviso that no additional costs are incurred by the Company).

10 INTERESTS IN THE MANAGER OR THE COMPANY

10.1 It is understood that directors, officers, agents and shareholders of the Company are or may be interested in the Manager as directors, officers, or shareholders or otherwise, that directors, officers, shareholders, agents and any client of the Manager are or may be interested in the Company as directors, officers, shareholders of otherwise and that the Manager is or may be interested in the Company as shareholder or otherwise and it is hereby acknowledged that no person so interested shall be liable to account for any benefit to any other party by reason solely of such interest.

10.2 The Manager or any client of the Manager or any Connected Person of the Manager or any holding company of the Manager or any subsidiary of such holding company ("the interested party") may hold, acquire or dispose of any investments upon its own account notwithstanding that the same or similar Investments may be held by or for the account of or otherwise connected with the Company and it is hereby acknowledged that no such interested party shall be liable to account for any benefit to any other party by reason solely of such interest.

10.3 Nothing herein contained shall prevent an interested party from selling Investments to or purchasing Investments from or vesting Investments in the Company or from contracting or entering into any financial, banking, currency or other transaction with the Company or the holders of Shares of the shareholder(s) of any company or body any of whose securities are held by or for the account of or otherwise connected with the Company or from being interested in any such sale, vesting, contract or transaction and the interested party shall not be called upon to account in respect of any such contract or transaction or benefit derived therefrom provided that nothing herein contained shall permit any such sale or vesting or the entering into of any such contract or transaction as aforesaid with the Company unless such transaction is on the best terms reasonably obtainable.

10.4 Nothing herein contained shall prevent an interested party from receiving any commissions which it may negotiate in relation to any sale or purchase of Investments effected by it for the account of the Company and the interested party shall be entitled to retain for its own benefit any profit or benefit derived therefrom provided that the amount of such commission is not in excess of rates commonly receivable by security dealers in transactions of the kind contemplated and that in effecting any such sales or purchases the interested party shall do so on the best terms reasonably obtainable having regard to the interests of the Company and provided further that such commission does not

arise in circumstances in which the Company could itself have acquired such Investments without payment of commission.

11 LIABILITY AND INDEMNITY

11.1 The Manager shall not be liable to the Company or any holder of Shares or otherwise for any error of judgment or for any loss suffered by the Company or any such holder of Shares in connection with the subject matter of this Agreement howsoever any such loss may have occurred unless such loss arises from negligence, willful default, fraud or dishonesty in the performance or non-performance by the Manager or persons designated by it of its obligations or duties.

11.2 The Company hereby undertakes to hold harmless and indemnify the Manager against all actions proceedings claims costs demands and expenses which may be brought against suffered or incurred by the Manager by reason of its performance or non-performance of its duties under the terms of this Agreement (other than due to negligence, willful default, fraud or dishonesty on the part of the Manager or persons designated by it) including all legal professional and other expenses incurred by the Manager or persons designated by it in the performance of its obligations or duties and including indemnity obligations owed by the Manager to persons designated by it (except such as shall arise from negligence, willful default, fraud or dishonesty in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to or any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature, but not tax on the overall income or profits of the Manager.

11.3 The Manager hereby undertakes to hold harmless and indemnify the Company against all actions proceedings claims costs demands and expenses which may be brought against suffered or incurred by the Company by reason of its performance or non-performance of its duties under the terms of this Agreement (other than due to negligence, willful default, fraud or dishonesty on the part of the Company or persons designated by it) including all legal professional and other expenses incurred by the Company or persons designated by it in the performance of its obligations or duties and including indemnity obligations owed by the Company to persons designated by it (except such as shall arise from negligence, willful default, fraud or dishonesty in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to or any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature, but not tax on the overall income or profits of the Company.

11.4 Notwithstanding any other provision of this Agreement, the Manager shall not be liable to the Company or any holder of Shares or otherwise for any taxation assessed upon or payable by the Company wheresoever the same may be assessed or imposed and whether directly or indirectly except for such taxation as shall be attributable to negligence, willful default, fraud or dishonesty in the performance or non-performance by the Manager or persons designated by it of its obligations or duties. The Company shall indemnify and keep indemnified the Manager from and against all taxes not attributable to negligence, willful default, fraud or dishonesty as aforesaid (wheresoever and by whomsoever imposed) on profits or gains of the Company which may be assessed upon or become payable by the Manager and against all costs claims demands actions and proceedings in connection therewith.

11.5 For the avoidance of doubt it is hereby agreed and declared that references to the Manager in this Clause shall be deemed to include references to the officers, servants, agents and delegates of the Manager.

11.6 Any indemnity expressly given to the Manager in this agreement is in addition to and without prejudice to any indemnity provided by the Laws.

12 LEGAL ACTION BY THE MANAGER

The Manager shall not be required to take any legal action on behalf of the Company unless fully indemnified to its reasonable satisfaction for all costs and liabilities that may be incurred or suffered by the Manager in connection therewith and if the Company requires the Manager to take any action of whatsoever nature which in the reasonable opinion of the Manager might make the Manager liable for the payment of money or liable in any other way the Manager shall be and be kept indemnified in any reasonable amount and form satisfactory to the Manager as a prerequisite to taking action.

13 RESIGNATION AND TERMINATION

13.1 The Manager shall be entitled to resign its appointment hereunder:-

13.1.1 by giving not less than one years' notice in writing to the Company to expire at the end of a calendar month;

13.1.2 at any time if the Company shall go into liquidation (except a voluntary liquidation for the purposes of reconstruction or amalgamation upon terms previously approved in writing by the Manager) or be unable to pay its debts or commit any act of bankruptcy under the laws of Bermuda or if a receiver is appointed of any of the assets of the Company or if some event having an equivalent effect under the laws of Bermuda or elsewhere occurs;

13.1.3 at any time if the Company shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Manager requiring it so to do to make good such breach;

13.2 The Company may terminate the appointment of the Manager as follows:

13.2.1 by giving no less than one years' notice in writing to the Manager to expire at the end of a calendar month;

13.2.2 if the Manager goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the company) or is unable to pay its debts or commits any act of bankruptcy under the laws of Bermuda or if a receiver is appointed of any of the assets of the Manager or if some event having an equivalent effect occurs;

13.2.3 if the Manager shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Company requiring it so to do to make good such breach;

13.3 This agreement shall have an initial term expiring on December 31, 1995 and will be automatically renewed for successive one-year periods, subject to termination by either party in accordance with this Clause 13.

13.4 On termination of the appointment of the Manager under the provisions of this Clause the Manager shall be entitled to receive the fees referred to in Clauses 6.2 and 6.3 but shall not be entitled to compensation in respect of such termination; and the Manager shall deliver or procure to be delivered to the Company, or as it shall direct, all books of account, records, other registers, correspondence, documents and assets relating to the affairs of or belonging to the Company in the possession of or under the control of the Manager and shall take all necessary steps to vest in the Company or any new Manager any assets previously held in the name of or to the order of the Manager on behalf of the Company and shall not be entitled to any lien in respect of any of the foregoing.

14 CONFIDENTIALITY

Neither of the parties hereto shall (except under compulsion of law) either before or after the termination of this Agreement disclose to any person not authorised by the relevant party to receive the same any confidential information relating to such party or to the affairs of such party of which the party disclosing the same shall have become possessed during the period of this Agreement and each party shall use all reasonable endeavours to prevent any such disclosure as aforesaid.

15 MISCELLANEOUS PROVISIONS

15.1 No failure on the part of either party to exercise, and no delay on its part in exercising, any right or remedy under this Agreement will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies proved by the Laws.

15.2 Any provision of this Agreement may be amended only if the parties so agree in writing.

15.3 The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

15.4 Except to the extent that the Laws admit variations by contract and are so varied by the terms of this Agreement, the powers, duties, rights and obligations of the parties under this Agreement shall be overridden by, and to the extent that they may conflict, be subject to, the Laws and the Manager shall have all the powers and perform its functions in accordance with the Laws.

16 NOTICES

Any notice given hereunder shall be in writing and shall be served by hand at or by being sent by

prepaid airmail post to the registered office for the time being of the addressee and any such notice shall if so posted be deemed to be served seven days after posting. Evidence that the notice was properly addressed stamped and put into the post shall be conclusive evidence of posting.

17 LAW OF THE CONTRACT

17.1 This agreement shall be governed by and construed in accordance with the laws of Bermuda.

17.2 The Company and the Manager hereby irrevocably submit to the non-exclusive jurisdiction of the courts of Bermuda for the settlement of any dispute or difference arising between the parties hereto.

IN WITNESS whereof this Agreement has been entered into the day and year first above written.

SIGNED BY KEITH R. BISH)
for and on behalf of)
KINGATE GLOBAL FUND, LTD.)
)
in the presence of:-)

SIGNED BY)
for and on behalf of)
KINGATE MANAGEMENT LIMITED)
)
in the presence of:-)

FIRST AMENDMENT TO THE KINGATE GLOBAL FUND, LTD. MANAGEMENT AGREEMENT

FIRST AMENDMENT (the "First Amendment"), dated as of March 1, 1995, to the Management Agreement of Kingate Global Fund, Ltd. (the "Fund") dated as of November 1994 (the "Management Agreement") by and between the Fund and Kingate Management Limited (the "Manager").

W I T N E S S E T H :

WHEREAS, the Fund, pursuant to an Information Memorandum dated as of November 1994, offered common shares of the Fund (the "Common Shares") and simultaneously executed the Management Agreement; and

WHEREAS, as of March 1, 1995, the directors and members of the Fund approved a recapitalization of the Fund (the "Recapitalization") which involved a redesignation of the Common Shares as Class A Shares ("Class A Shares") and an issuance of a new class of common shares, Class B Shares ("Class B Shares"); and

WHEREAS, in order to effect the Recapitalization, the Fund, pursuant to a Restated Information Memorandum dated as of March 1, 1995, redesignated the Common Shares as Class A Shares (the "Restated Information Memorandum"); and

WHEREAS, in order to further effect the Recapitalization, the Fund, pursuant to an Information Memorandum dated as of March 1, 1995, offered the new Class B Shares (the "Class B Shares Information Memorandum"); and

WHEREAS, in order to effect the provisions of the Restated Information Memorandum and the Class B Shares Information Memorandum, the Fund wishes to amend the Management Agreement by executing this First Amendment.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

1. Definitions

Unless otherwise defined herein, terms defined in the Management Agreement hereby shall have such defined meanings when used herein.

2. Amendment

(i) Section 1.1 of the Management Agreement is hereby amended by deleting the definition of "Shares" and adding the following new definition, of "Class A Common Shares," to appear as the fifth definition:

"Class A Common Shares" means the Class A Common Shares which were initially offered as Common Shares pursuant to the Fund's Information Memorandum dated as of November 1994 (the "Information Memorandum") and redesignated as Class A Shares pursuant to the Fund's Restated Information Memorandum dated as of March 1, 1995. (Simultaneously, the Fund issued a new class of shares, Class B Shares, pursuant to a separate Information Memorandum dated as of March 1, 1995. All references in this Agreement refer to Class A Shares only.)

3. Effective Date

This First Amendment shall be effective as of the date first written above. Except as expressly set forth herein, all of the terms and conditions of the Management Agreement shall remain unchanged and shall continue in full force and effect and are hereby ratified and confirmed.

4. Counterparts

This First Amendment may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

5. Governing Law

This First Amendment and the underlying Agreement shall hereafter be governed by and construed in accordance with the substantive laws of the Bermuda applicable to contracts made and entirely performed therein, without regard to principles of conflicts of law.

IN WITNESS WHEREOF, the parties hereto have signed this First Amendment to be duly executed and delivered as of the date and year first written above.

KINGATE GLOBAL FUND, LTD.

By: _____
Name: Christopher Wetherhill
Title: Director

KINGATE MANAGEMENT LIMITED
(the "Manager")

By: _____
Name: Margaret Every
Title: Director

"Class A Common Shares" means the Class A Common Shares which were initially offered as Common Shares pursuant to the Fund's Information Memorandum dated as of November 1994 (the "Information Memorandum") and redesignated as Class A Shares pursuant to the Fund's Restated Information Memorandum dated as of March 1, 1995. (Simultaneously, the Fund issued a new class of shares, Class B Shares, pursuant to a separate Information Memorandum dated as of March 1, 1995. All references in this Agreement refer to Class A Shares only.)

3. Effective Date

This First Amendment shall be effective as of the date first written above. Except as expressly set forth herein, all of the terms and conditions of the Management Agreement shall remain unchanged and shall continue in full force and effect and are hereby ratified and confirmed.

4. Counterparts

This First Amendment may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

5. Governing Law

This First Amendment and the underlying Agreement shall hereafter be governed by and construed in accordance with the substantive laws of the Bermuda applicable to contracts made and entirely performed therein, without regard to principles of conflicts of law.

IN WITNESS WHEREOF, the parties hereto have signed this First Amendment to be duly executed and delivered as of the date and year first written above.

KINGATE GLOBAL FUND, LTD.

By: _____
Name: Christopher Wheeler
Title: Director

KINGATE MANAGEMENT LIMITED
(the "Manager")

By: _____
Name:
Title:

Attorney Eyes Only

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EXHIBIT J

MANAGER AGREEMENT

KINGATE EURO FUND, LTD.

MANAGER AGREEMENT (the "Agreement"), as of May 1, 2000 by and among KINGATE MANAGEMENT LIMITED, a company organized under the laws of Bermuda (the "Manager"), and KINGATE EURO FUND, LTD., a company organized under the laws of the British Virgin Islands (the "Fund").

WITNESSETH:

WHEREAS, the Fund has been organized for the principal purpose of investing its assets pursuant to a strategy as more fully described in the Information Memorandum with respect to the Fund's Common Shares (the "Shares"), initially dated as of May 1, 2000, as the same may from time to time be amended and/or supplemented (the "Information Memorandum");

WHEREAS, the Fund may from time to time issue securities in addition to the Shares such as without limitation, common or preferred stock, interests, participations, rights, notes, derivative arrangements and property interests of all sorts (collectively, including the Shares, the "Securities" or individually a "Security"); and

WHEREAS, the Fund's Board of Directors (the "Directors") desires to continue to avail itself of the experience, advice and assistance of the Manager and others to whom the Manager may delegate all or part of its responsibilities hereunder, with respect to the investment of its assets and the performance of investment management, accounting, sales and marketing outside of the United States, administration, custodial, banking and other services on behalf of the Fund;

NOW, THEREFORE, in consideration of the mutual premises and covenants contained herein, the Manager and the Fund hereby agree as follows:

PART 1. DEFINITIONS; SCOPE

All capitalized terms used herein and not otherwise defined herein shall have the meaning set forth in the Information Memorandum or if none, as set forth in the operative documents or subscription materials pursuant to which the particular Security was issued by the Fund (the "Operative Documents"). The parties intend that the scope of this

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Agreement be broad enough to cover all Securities issued by the Fund from time to time and that this Agreement be construed broadly in that regard.

PART 2. INVESTMENT MANAGEMENT SERVICES

2.1 *Investment Program.* Subject to the ultimate supervision of the Directors, and in accordance with the investment objectives, policies, guidelines and restrictions which are set forth in each Information Memorandum or Operative Documents or which are otherwise communicated to the Manager, the Manager shall develop, update and effect an overall investment strategy for the investment of the assets of the Fund as well as evaluate and select potential investments which are consistent with such strategy.

2.2 *Authority of the Manager.* The Manager shall have full discretion and authority, without obtaining the Fund's prior approval, to implement the Investment Objective and investment program set forth in the Information Memorandum or Operative Documents and to manage the investment and reinvestment of the assets of the Fund in such manner as the Manager considers appropriate, market the Securities and otherwise act in connection with the directions of the Fund. In furtherance of the foregoing, the Fund hereby designates and appoints the Manager with full power and authority and without the need for further approval of the Fund (except as may be required by applicable law) to carry out the following with respect to the assets of the Fund:

(a) subject to compliance with any applicable regulatory requirements, to effect purchases and sales (including short sales) of securities and other transactions relating to the management of the assets of the Fund, at all times consistent with the investment strategy as set out in the Information Memorandum or any Operative Documents;

(b) to make loans, whether secured or unsecured, to any entity (other than an affiliate of the Manager) of any kind and on such terms and conditions as the Manager deems appropriate;

(c) to make all decisions relating to the manner, method and timing of investment transactions, and to select brokers and dealers (including affiliates of the Manager) for the execution, clearance and settlement of any transactions;

(d) to trade on margin, to borrow from banks, brokers or other financial institutions and to pledge assets of the Fund in connection therewith;

• In accordance with Information Memorandum, the Fund is authorized to invest following what is commonly known as a "split strike conversion" strategy by employing the services of an NASD registered broker dealer with expertise in such strategy.

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(e) to direct prime brokers and custodians to deliver funds or securities for the purpose of effecting transactions, and to instruct such entities to exercise or abstain from exercising any privilege or right attaching to such assets; and

(f) to make and execute, in the name and on behalf of the Fund, or in nominee accounts, all such documents (including, without limitation, customer agreements and other documents in connection with the establishment and maintenance of brokerage accounts) and to take all such other actions which the Manager considers necessary or advisable to carry out its investment management duties hereunder;

(g) to enter into one or more consulting arrangements with one or more consultants, who may be affiliated with the Manager (and upon whom the Manager shall be entitled to rely) in order to hedge the currency risk between the Euro and the U.S. Dollar, including without limitation, to cause the Fund to be a counterparty in one or more FX agreements intended to hedge such risk.; and

(h) to retain auditors consultants, experts and attorneys including such firms with whom the Manager (or any director of the Manager) is or may be affiliated, and

(i) all other actions as may be necessary or appropriate to further the offering and the Investment Objective and investment program as set forth in the Information Memorandum and administrative matters in connection therewith.

2.3 *Custody.* Portfolio securities and other financial assets of the Fund shall be maintained at all times in the custody of one or more banks, prime brokers, trust companies, brokerage firms, investment advisers, brokers, dealers or other financial institutions as shall have been approved for that purpose by the Manager.

2.4 *Investments for the Accounts of Others.* It is understood that the Manager and its affiliates hereof may effect investment transactions for their own account and for the accounts of other customers, and the Fund further understands and agrees that nothing herein shall restrict the ability of the Manager and its affiliates from engaging in any such transactions notwithstanding the fact that the Fund may have or may take a position of any kind; provided, however, that the Manager or its affiliates shall not without the consent of the Fund cause the Fund to purchase any asset from or sell any asset to the Manager or any of its affiliates or any other person or entity for which the Manager or its affiliates is acting, unless such transaction involves (i) the purchase or sale of a security listed on a recognized securities exchange and such transaction is effected at current market prices or (ii) the purchase or sale of an interest or share of a privately placed investment vehicle and such transaction is effected at a price determined by an independent third party or by the Administrator of such investment vehicle.

When the Manager deems the purchase or sale of securities to be in the best interests of the Fund and of other clients, the Manager may aggregate the securities to be

purchased or sold. In such event, allocation of the securities purchased or sold, as well as expenses incurred in the transaction, shall be made in a manner which the Manager considers to be the most equitable, and if all such orders cannot be filled at the same price, the Manager may cause the Fund and the Manager's other clients to pay or receive the average of the prices at which such orders were filled. Similarly, if an order on behalf of more than one client cannot be fully executed under prevailing market conditions, the Manager may allocate the securities purchased or sold among the different clients on a basis which the Manager considers equitable.

2.5 *Access to Information.* The Manager shall retain, for a period of at least five (5) years, copies of any documents generated or received by the Manager in the ordinary course of business pertaining to the financial condition of the Fund's assets or to the compensation payable to the Manager. At the request of the Fund, the Manager shall afford to the Fund's independent auditors reasonable access to such documents during customary business hours and shall permit the Fund's auditors to make copies thereof or extracts therefrom at the expense of the Fund.

2.6 *Delegation.* The provisions of this Part 2 relating to investment management may be delegated to one or more persons or entities (including an affiliate of the Manager) pursuant to Section 4.8 hereof. It is expected that investment management functions described in subsections 2.2(a), 2.2(c) and 2.2(e) will be assigned and delegated to Bernard L. Madoff Investment Securities, a New York based NASD registered broker-dealer. Upon a proper delegation, the Manager shall be relieved of any responsibility for the acts or omissions of such delegate.

PART 3. PLACEMENT AND ADVISORY SERVICES

3.1 *Provision of Placement Duties and Advisory Services.* In accordance with the provisions of the Memorandum and Articles of Association of the Fund, as they may exist from time to time, and the Information Memorandum or Operative Documents, as the case may be, and under the ultimate supervision of the Directors, the Manager shall be responsible for performing (or procuring the performance of), and is hereby authorized and empowered to perform (or procure the performance of), all duties and functions necessary or appropriate in connection with the placement of the Securities outside of the United States and advising the Fund on general matters affecting its structure and operations, including from time to time advising the Directors concerning:

(a) the suitability of the Fund's structure and operating procedures in light of the expectations of prospective investors;

(b) steps which may be taken to enhance the marketability of the Fund's Securities and to improve investor relations;

(c) the identification and evaluation of candidates to serve as Directors;

(e) general economic and financial developments in international securities and capital markets affecting the Fund's investment program.

(f) in general, all aspects relating to Fund's administration, accounting, legal and operational matters.

3.2 *Meetings of Directors.* At the request of the Directors and subject to reasonable prior notice, the Manager, at its own expense, shall each endeavor to make one of its executive officers available to attend the meetings of the Directors to report on the Manager's activities and on other matters pertaining to its engagement.

3.3 *Placement of the Securities.* The Manager shall act as the placement agent for the Securities outside of the United States. The Manager shall use its best efforts to procure applications for the purchase of Securities by eligible investors, either directly or through securities dealers and other financial institutions selected by the Manager pursuant to Section 3.4 hereof (the "authorized dealers"). The Securities shall be offered at the subscription price and on the terms and conditions set forth herein and in the Information Memorandum or Operative Documents. All applicants shall be subject to acceptance by the Fund (it being understood that the Fund shall have the right to reject applications or to receive or accept on behalf of the Fund any funds or other property tendered as payment for the Securities.)

3.4 *Authorized Dealers.*

(a) The Manager may appoint securities dealers and other financial institutions as authorized dealers to solicit applications to purchase the Securities, one or more of whom may be affiliates of the Manager. The Manager shall use reasonable efforts to ensure that any such authorized dealer shall conduct solicitation activities in accordance with all of the conditions, restrictions and limitations applicable to the Manager's direct placement activities as set forth in this Agreement.

(b) Upon request, the Manager shall promptly furnish to the Fund a copy of any written agreement with any authorized dealer relating to the solicitation of applications for the Securities.

3.5 *Offering Materials.*

(a) The Manager shall deliver, or arrange for the delivery by any authorized dealer selected by the Manager, to each person to whom the Securities are offered a copy of the Fund's most recently published Information Memorandum or Operative Documents for the respective Security.

(b) If any form of offering materials (including any form of advertisement or other solicitation materials calculated to result in an expression of

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interest in subscribing for the Securities) concerning the Fund or the Securities other than the Information Memorandum or Operative Documents is required or permitted to be given to any prospective investor under the laws of any jurisdiction in which the Securities are offered by or through the Manager, the Manager agrees that any such document (i) shall not contain any information concerning the Fund or the Securities which is inconsistent with the Information Memorandum or Operative Documents, and (ii) shall comply in all respects with the laws of the jurisdiction in which it is furnished.

(c) The Manager acknowledges and agrees that no person is authorized to make any representations, whether written or oral, concerning the Fund and the Securities which are inconsistent with the Information Memorandum and that all offers of the Securities shall be made in conformity with the terms and conditions set forth therein.

3.6 *Certain Legal Restrictions.*

(a) None of the Securities shall be offered by the Manager or any authorized dealer to any person who is not reasonably believed by the Manager or the authorized dealer to be an Eligible Investor as set forth in each Information Memorandum or the Operative Documents. Furthermore, none of the Securities shall be offered or sold to any person to whom it would be illegal to offer or sell the Securities.

(b) The Securities and the Fund have not been and will not be registered or qualified for offer and sale under the applicable laws of any jurisdiction governing the offer or sale of investment company Securities or other securities. Neither the Manager nor any authorized dealer shall (i) solicit any applications or otherwise extend any offers for the purchase of the Securities, or (ii) deliver (or have in their possession for the purpose of delivery) the Information Memorandum or Operative Documents or any other offering literature relating to the Fund or the Securities, to any person in any jurisdiction in which such solicitation or delivery would be unlawful. The Manager represents to the Fund that it has informed itself as to the applicable legal restrictions governing the offer and sale of the Securities under the laws of any jurisdiction in which it intends to place share applications and that based on the methods of placement contemplated by the Manager, the sale of the Securities by the Fund to any person in any such jurisdiction will not be in violation of any applicable laws by reason of the activities of the Manager. The Manager undertakes to comply with the foregoing representations in connection with its placement activities (including the appointment of any authorized dealers) during the term of this Agreement.

3.7 *Delegation.* The provisions of this Part 3 may be delegated to one or more persons or entities (including an affiliate of the Manager) pursuant to Section 4.8 hereof.

3.8 *Consultants.* The Manager is authorized to engage consultants and other advisors to assist them in connection with their duties hereunder. The Fund agrees to such an arrangement and will incur the reasonable expenses thereof.

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PART 4. GENERAL PROVISIONS

The following general terms and conditions shall apply to the performance of the Manager's obligations as set forth in Parts 2 and 3 above:

4. *Compensation.*

(a) Management Fee. The Manager shall be entitled to a fixed monthly asset based fee (the "Management Fee") with respect to any Securities as such fee is defined and described in the Information Memorandum or the Operative Documents.

(b) Administration Fee. The Manager shall be entitled to a fixed monthly asset based fee (the "Administration Fee") with respect to any Securities as such fee is defined and described in the Information Memorandum or the Operative Documents.

(c) Performance Fees. The Share class presently outstanding as of the date of this Agreement is without a performance fee arrangement. In the event that Securities are issued by the Fund with a performance fee or incentive fee attached, then the parties will deal with such fee by separate agreement.

(d) Other Benefits. The Manager shall be entitled to receive other benefits (including redemption fees) that may be derived in connection with the issuance of Securities. ("Other Benefits")

(e) Agents. The Fund may pay a fee to third parties that introduce investors to the Fund and enter into compensation arrangements with such third parties.

(f) In the event that this Agreement is terminated, the Management Fee, the Administration Fee, any performance fee and Other Benefits will be computed as of such termination date.

(g) The Fund acknowledges that if a performance fee is attached to a Security issued by the Fund, the performance fee may create an incentive for the Manager to make investments that are riskier or more or less speculative than would be the case in the absence of a fee based on the performance of such Security. In addition, the performance fee shall be based on unrealized, as well as realized, appreciation and depreciation of the investments relating to such Security of the Fund.

4.2 *Expenses.*

(a) Except as otherwise provided below, the Manager shall bear all of its own costs and expenses incurred in the performance of its services provided pursuant

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to this Agreement as well as those attributable to the fees payable to delegates of and consultants to the Manager appointed pursuant to Sections 4.8 and 4.9 respectively.

(b) The Manager shall be reimbursed for all fees, costs and expenses incurred in connection with the performance of any services required or permitted to be procured for the Fund by the Manager pursuant to this Agreement including, but not limited to, all expenses related to trading the assets of the Fund (i.e., interest on margin borrowing, custodial fees, brokerage commissions, bank service fees and interest on loan and debit balances).

(c) Except as set forth above, the Fund shall bear all expenses incident to its organization, operations and business, including (i) brokerage commissions and charges on portfolio transactions, (ii) fees and charges of custodians and clearing agencies, (iii) interest and commitment fees on loans and debit balances, (iv) withholding taxes, transfer taxes and other governmental charges and duties, (v) fees of the Fund's legal advisors and independent auditors, (vi) Directors' fees and expenses, (vii) the costs of maintaining the Fund's registered office in the British Virgin Islands and elsewhere, and (viii) the costs of printing and distributing any offering documents, reports and notices to shareholders or prospective investors.

4.3 *Scope of Liabilities.* The Manager (and any officer or director of the Manager) shall not be liable to the Fund or its Security holders for any error of judgment or for any loss suffered by the Fund or its Security holders in connection with its services in the absence of gross negligence, willful default, fraud, or dishonesty in the performance or non-performance of their obligations or duties.

4.4 *Indemnification.*

(a) The Fund shall indemnify the Manager (which shall include solely for purposes of this Section 4.4, the Manager's directors, officers, employees, members and shareholders) and hold the Manager harmless from and against any expense (including without limitation legal fees and expenses), loss, liability or damage arising out of any claim asserted or threatened to be asserted in connection with the Manager serving or having served in good faith pursuant to this Agreement; provided, however, that the Manager shall not be entitled to any such indemnification with respect to any expense, loss, liability or damage which was caused by such Manager's own gross negligence, bad faith, breach of fiduciary duty, willful or reckless malfeasance or disregard of any of its obligations under this Agreement and such indemnification shall only be to the extent legally permissible under and by virtue of the laws of the jurisdiction in which Securities are offered or placed.

The indemnification provisions set forth in this Section shall not be construed as limiting in any way the provisions of Section 4.1(e).

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(b) The Manager shall indemnify the Fund against, and hold it harmless from, any expense, loss, liability or damage arising out of any claim asserted or threatened to be asserted by any third party as a consequence of any misstatement of any material fact or any other material misrepresentation concerning the Fund or the Securities by the Manager (other than any misstatement or misrepresentation contained in any document approved by the Fund).

(c) In the event that either party hereto is or becomes a party to any action or proceeding in respect of which it may be entitled to seek indemnification hereunder or under Section 4.1 (the "indemnitee") the indemnitee shall promptly notify the other party (the "indemnitor") thereof. The indemnitor shall be entitled to participate in any such suit or proceeding and, to the extent that it may wish, to assume the defense thereof with counsel reasonably satisfactory to the indemnitee. After notice of an election by the indemnitor so to assume the defense thereof, the indemnitor will not be liable to the indemnitee hereunder for any legal or other expenses subsequently incurred by the indemnitee in connection with the defense thereof other than reasonable costs of investigation or reasonable legal expenses incurred as a result of (i) potential conflicts of interest between the indemnitee and indemnitor or (ii) the protection of proprietary or privacy interests of other clients of the indemnitee. The indemnitor shall advance to the indemnitee the reasonable costs and expenses of investigating and/or defending such claim, subject to receiving a written undertaking from the indemnitee to repay such amounts if and to the extent of any subsequent determination by a court or other tribunal of competent jurisdiction that the indemnitee was not entitled to indemnification hereunder.

(d) The indemnitor shall not be liable hereunder for any settlement of any action or claim effected without its prior written consent thereto.

4.5 *Independent Contractor.* For all purposes of this Agreement, the Manager shall be an independent contractor and shall not be deemed an employee or agent of the Fund; nor shall anything herein (notwithstanding Section 2.2 hereof) be construed as making the Fund a partner or co-venturer with the Manager or any of its affiliates.

4.6 *Information Concerning Activities.* The Manager shall provide to the Fund from time to time and on request, information regarding the activities (i) conducted by the Manager since the inception of this Agreement or since the most recent date on which the Manager provided information to the Fund regarding the activities of the Manager and (ii) proposed to be conducted by the Manager. The Manager shall furnish information concerning the Manager and any authorized dealers and concerning the activities undertaken by it for the Fund as the Fund may reasonably request.

4.7 *Term; Termination and Renewal.* The initial term of this Agreement commenced as of May 1, 2000 and shall continue until December 31, 2002. Thereafter, this Agreement will be automatically renewed for successive one-year periods, subject to termination as of December 31, 2002 or the close of any calendar month thereafter by

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either party upon not less than one hundred twenty (120) days' prior written notice to the other party. In the event of termination, the provisions of Section 2.5 and Part 4 shall survive.

4.8 *Delegation.*

(a) The Manager shall be authorized to delegate as appropriate, in its discretion, any of the duties or obligations imposed upon it hereunder to one or more other persons or entities, whether affiliated with or independent of the Manager.

(b) In the event of any such delegation of duties or obligations hereunder pursuant to any agreement consented to in writing by the Fund, the Manager shall be relieved and discharged of its obligations to perform the services so delegated other than the continuing obligation (subject at all times to the standard of care set forth in Section 4.3 hereof) to take reasonable measures to ascertain the competence of the delegate to perform the services so delegated. Notwithstanding any other provision of this Agreement, following the Fund's consent to any such delegation agreement, the Manager shall not incur any liability hereunder to the Fund pursuant to Section 4.3 hereof for any acts or omissions of such delegate and shall remain entitled to indemnification as provided in Section 4.4 hereof.

(c) Whenever the Fund's consent to delegation is requested by the Manager, such consent shall not be withheld without reasonable cause.

(d) The Manager may arrange for compensation payable to any person or entity to which duties are delegated hereunder to be made directly from the Fund out of fees otherwise payable to the Manager.

4.9 *Consultants.* The Manager is authorized to engage, and are authorized to delegate the authority to engage, consultants and other advisors to assist it or its delegates in connection with its or their duties hereunder. The Fund agrees to such arrangements and will, upon prior agreement in writing, incur, or provide reimbursement for, the reasonable expenses thereof.

4.10 *Modification; Waiver.* Except as otherwise expressly provided herein, this Agreement shall not be amended, nor shall any provision of this Agreement be considered modified or waived, unless evidenced in writing and signed by the party to be charged with such amendment, waiver or modification.

4.11 *Notice.* Notices by one party to the other shall be made by facsimile, certified mail return receipt requested, or by recognized private courier (e.g., Federal Express, Airborne Express, etc.) at the usual business location of such other party.

4.12 *Binding Effect; Assignment.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and in the case of

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an individual, his heirs and estate, but the rights and obligations hereunder shall not be assignable, transferable or delegable without the written consent of the other party hereto except as provided in Section 4.8 hereof and any attempted assignment, transfer or delegation thereof without such consent except as provided in Sections 2.6, 3.7 and 4.8 hereof shall be void.

4.13 *Governing Law.* This Agreement shall be governed by and construed in accordance with the substantive laws of Bermuda applicable to contracts made and entirely to be performed therein.

4.14 *Counterparts.* This Agreement may be signed in any number of counter-parts. Any single counterpart or a set of counterparts signed in either case by the parties hereto, shall constitute a full and original Agreement for all purposes.

4.15 *No Third Party Beneficiaries.* Except as otherwise expressly provided for herein, the provisions hereof are for the sole benefit of the parties hereto and their successors and assigns (heirs and estates, as the case may be) and shall not be construed as containing, and are not intended to confer, any rights remedies or other benefits on any other persons.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as a deed as of the day and year first above written.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as a deed as of the day and year first above written.

KINGATE MANAGEMENT LIMITED
(The Manager)

Acting By: _____
Name:
Title:

In the Presence of: _____
Witness

KINGATE EURO FUND LIMITED
(The Fund)

Acting By: _____
Name:
Title:

In the Presence of: _____
Witness

[615593-3]

EXHIBIT K

1 July 04

CO-MANAGER AGREEMENT (this "Agreement"), dated as of , by and between **KINGATE MANAGEMENT LIMITED**, a company incorporated under the laws of Bermuda with offices located at 99 Front Street, Hamilton Bermuda HM 11 (the "Co-Manager" or sometimes "Co-Manager Kingate"), and **KINGATE GLOBAL FUND, LTD.** a company incorporated under the laws of the British Virgin Islands ("BVI") whose registered office is c/o Bison Financial Services Limited, Bison Court, PO Box 3460, Road Town, Tortola, British Virgin Islands (the "Fund").

WITNESSETH:

WHEREAS, the Fund seeks to obtain capital appreciation of its assets through the utilization of a non-traditional stock/options trading strategy as more fully described in its Amended and Restated Information Memorandum dated May 1, 2004, as the same may be supplemented, amended and restated from time to time (collectively the "Information Memorandum");

WHEREAS, the Fund previously appointed Co-Manager Kingate as Co-Manager to be responsible for certain investment management, administrative, and sales and marketing aspects of the Fund under the terms of a Co-Manager Agreement by and between the Fund, Co-Manager Kingate and Co-Manager Tremont, as the same may from time to time be amended and/or supplemented (the "Co-Manager Agreement"), and wish to supercede and replace such prior agreement with this Agreement and a similar agreement with Co-Manager Tremont ("Tremont Co-Manager Agreement"); and

WHEREAS, the Fund previously appointed Tremont (Bermuda) Limited ("Co-Manager Tremont") as Co-Manager to be responsible for certain investment management, administrative, sales and marketing aspects of the Fund under the terms of the Co-Manager Agreement; and

WHEREAS, Co-Manager Kingate and Co-Manager Tremont have performed their respective duties;

WHEREAS, the Fund, Co-Manager Kingate and Co-Manager Tremont wish to amend and restate their agreement in order to more precisely reflect each Co-Manager's activities to-date based on actual experience;

WHEREAS, this Agreement shall amend and restate the duties of Co-Manager Kingate;

WHEREAS, a separate Agreement shall amend and restate the duties of Co-Manager Tremont, which agreement Co-Manager Kingate has acknowledged and recognized;

NOW, THEREFORE, in consideration of the mutual premises and covenants contained herein, the parties hereto agree as follows:

PART I. SERVICES

1.1 Provision of Services. In accordance with provisions of the Memorandum and Articles of Association of the Fund and the Information Memorandum, and under the ultimate supervision of the directors of the Fund (the "Directors") from time to time as provided therein, the Co-Manager shall be responsible for performing or obtaining the performance of, and is hereby authorized and empowered to perform, or obtain the performance of, all of the following duties and functions necessary or appropriate in connection with the management of the Fund:

(a) Providing investment management services as described in Part II of this Agreement;

(b) Providing administrative services as described in Part III of this Agreement; and

(c) Providing services as described in Part IV of this Agreement.

The Co-Manager may delegate all or part of such responsibilities pursuant to Section 2.2, 3.2, 4.6 and 5.9 below.

PART II. INVESTMENT MANAGEMENT SERVICES

2.1 Investment Program. Subject to the ultimate supervision of the Directors, and in accordance with the Memorandum and Articles of Association of the Fund, as well as the investment objectives, policies, guidelines and restrictions which are set forth in the Information Memorandum, or which are otherwise communicated to the Co-Manager, the Co-Manager shall effect the investment strategy for the investment of the assets of the Fund as well as evaluating and selecting potential investments which are consistent with such strategy. Included within this power are the following:

(a) Investing the Fund's assets in accordance with the Information Memorandum and managing the investment and reinvestment of the assets of the Fund in such manner as the Co-Manager considers appropriate;

(b) Undertaking all actions that may be necessary in the furtherance of the investment objectives of the Fund;

(c) Arranging for the retention of Bernard L. Madoff Investment Securities LLC, a New York based financial institution ("Madoff"), as the Fund's the investment adviser and broker dealer with regard to substantially all of the assets of the Fund;

(d) Investing directly any assets of the Fund that are not allocated to Madoff;

(e) Reviewing from time to time the activity of Madoff to ensure that it complies with the investment guidelines provided to it in accordance with the Information Memorandum.

2.2 Authority of the Manager as to Investment Management. The Co-Manager shall have full discretion and authority, without obtaining the Fund's prior approval, to manage the investment and reinvestment of the assets of the Fund in such manner as the Co-Manager considers appropriate including without limitation hiring such experts, agents and consultants to assist the Co-Manager in performing its duties hereunder as the Co-Manager deems appropriate based upon Co-Manager's past practices.

2.3 Custody. Portfolio securities and other financial assets of the Fund shall be maintained at all times in the custody of one or more banks, trust companies, brokerage firms or other financial institutions as shall have been approved for that purpose by Co-Manager Kingate. As of the date hereof, custody of substantially all of the Fund's assets is custody with Bernard Madoff Investment Securities LLC, a New York based financial institution ("Madoff"). The Co-Manager has no custody of any of the Fund's assets.

PART III. ADMINISTRATIVE SERVICES

3.1 Provision of Administrative Services for Fund. In accordance with the provisions of the Memorandum and Articles of Association of the Fund, and under the ultimate supervision of

the Directors from time to time as provided therein, the Co-Manager shall be responsible for performing (or procuring the performance of) and is hereby authorized and empowered to perform (or procure the performance of) at the expense of the Fund, all duties and functions necessary or appropriate in connection with the administration of Fund, including:

(a) Undertaking all actions that may be necessary for the proper administration of the Fund;

(b) Arranging for the retention of BISYS Hedge Fund Services Limited, Hamilton, Bermuda, or such other Fund Administrator as the Co-Manager may deem appropriate;

(c) Supervising the Fund Administrator in all its functions;

(d) Arranging for the maintenance of an official register of Fund shares (the "Shares") issued, transferred, redeemed or canceled, arranging for the appointment of a registered agent in the BVI and arranging for the maintenance of the Fund's registered office and good standing as an international business company in the BVI;

(e) Reviewing the calculation of the Net Asset Value of the Fund's Shares on the part of the Fund Administrator;

(f) Verifying the calculation of the Management Fees charged to the Fund;

(g) Calculating the share of Management Fees payable to Co-Manager Tremont;

(h) Advising as to the payment of invoices payable by the Fund;

(i) Advising as to subscriptions, redemptions, and transfers of Fund Shares;

(j) Advising the Administrator as to whether or not subscription or redemption fees should be charged;

(k) Checking, to the extent reasonable, the accuracy of the Shareholders' register and reconciling nominees with final investors and, in this regard, assisting the Administrator in establishing the identity of the final investors;

(l) Ensuring that adequate procedures are undertaken by the Fund Administrator to comply with the USA PATRIOT Act and other anti-money laundering

laws;

(m) Ensuring that adequate procedures are undertaken by the Fund Administrator to ensure that every subscription, redemption, transfer comprises all the relevant documentation and enclosures;

(n) Advising the Fund with regard to instructions to the banks about receiving/paying out money to and from the Fund;

(o) Reviewing periodically the Fund's offering documents to ensure continued compliance with applicable laws and regulations;

(p) Overseeing the preparation of the Fund's interim and annual financial statements;

(q) Organizing, coordinating and facilitating the audit of the Fund;

(r) Maintaining contact with the Fund's legal advisers in Bermuda, the United States, the BVI and any other jurisdiction where the Fund may operate with a view towards advising the Fund on new legal and regulatory developments that may affect the structure of the Fund, its marketability, and its compliance with laws in general; and

(s) Maintaining contact with the regulatory authorities in Bermuda, the United States and the BVI and elsewhere as needed.

(t) In general, advising the Fund on all aspects related to Fund's administration, accounting, legal and operational matters based upon Co-Manager's past practices.

3.2 Authority of the Manager as to Administration. The Co-Manager shall have full discretion and authority, without obtaining the Fund's prior approval, to administer the Fund in such manner as the Co-Manager considers appropriate including without limitation hiring such experts, agents and consultants to assist the Co-Manager in performing its duties hereunder as the Co-Manager deems appropriate.

PART IV. ADVISORY SERVICES AND SALE OF SHARES

4.1 Provision of Advisory Services and Sale of Shares. In accordance with provisions of the Memorandum and Articles of Association of the Fund and the Information Memorandum, and under the ultimate supervision of the Directors from time to time as provided therein, the Co-

Manager is hereby authorized and empowered to perform (or procure the performance of), all duties and functions in connection with sale of any Shares of the Fund and advising the Fund on general matters affecting the marketing of the Shares, including from time to time advising the Fund's Directors concerning:

(a) Subject, inter alia, to the provisions of Section 4.5(b), soliciting and introducing prospective investors in the Fund's Shares;

(b) Maintaining regular contact and updating existing and prospective investors to keep them informed of investment results and other information with regard to the Fund;

(c) Advising the Fund on steps that may be taken to enhance the marketability of the Fund's securities and to improve investor relations;

(d) Preparing marketing and other material;

(e) Sending marketing material and offering documents to investors and prospective investors;

(f) Organizing and supervising the publication of the Fund's Net Asset Value in newspapers and other media;

(g) Supervising the distribution lists to keep prospective and existing investors informed of developments with regard to the Fund;

(h) Appointing authorized dealers and sales agents to assist it in the sales of any Shares; and

(i) Generally, providing such services as may be required to place the Fund's shares and to maintain good investor relations.

4.2 Sale of Shares. The Co-Manager, together with Co-Manager Tremont, as the co-managers of the Fund, shall have sole authority to act in respect of the sale of any of the Fund's Shares. In this regard, the Co-Manager shall seek to procure applications for the purchase of Shares by eligible investors, either directly or through securities dealers and other financial institutions selected by the Co-Manager pursuant to Section 4.3 hereof ("authorized dealers"). Shares shall be offered at the subscription price and on the terms and conditions set forth herein and in the Information Memorandum. All applications shall be subject to acceptance by the Fund (it being

understood that the Fund shall have the right to reject applications in its discretion). The Co-Manager shall have no authority (i) to bind the Fund to accept any applications or (ii) to receive or accept on behalf of the Fund any funds or other property tendered as payment for Shares, such authority resting with the Fund and its Directors. In this regard, Co-Manager Kingate shall confer from time to time and coordinate in good faith with Co-Manager Tremont with regard to its activities in respect to the selling of any Shares.

4.3 Authorized Dealers.

(a) In addition to any powers the Co-Manager may have under Section 5.9, hereof, the Co-Manager may appoint consultants, agents, securities dealers and other financial institutions as authorized dealers to solicit applications to purchase Shares. Such authorized dealers must have full authority to act in the jurisdiction within which they conduct business. The Co-Manager shall use reasonable efforts to ensure that any such authorized dealer shall conduct its solicitation activities in accordance with all of the conditions, restrictions and limitations applicable to the Co-Manager's direct sales activities as set forth in this Agreement.

(b) The Co-Manager may enter into compensation arrangements with authorized dealers as it sees fit and at no additional cost to the Fund.

4.4 Offering Materials.

(a) The Co-Manager shall deliver, or arrange for the delivery by any authorized dealer selected by the Co-Manager, to each person to whom Shares are offered a copy of the Fund's most recently published Information Memorandum and a copy of the Fund's most recently published annual report.

(b) If any form of offering materials (including any form of advertisement or other solicitation materials calculated to result in an expression of interest in subscribing for Shares) concerning the Fund or its Shares other than the Information Memorandum is required or permitted to be given to any prospective investor under the laws of any jurisdiction in which Shares are offered by or through the Co-Manager, the Co-Manager agrees that any such document (i) shall be prepared and furnished in a commercially reasonable manner, in good faith and reliance on its advisors and consultants, (ii) shall not contain any information concerning the Fund or the Shares which is materially inconsistent with the Information Memorandum, and (iii) shall use reasonable efforts to comply in all respects with the laws of the jurisdiction in which it is furnished.

(c) The Co-Manager acknowledges and agrees that no person is authorized to make any representations, whether written or oral, concerning the Fund and its Shares which are inconsistent with the Information Memorandum and that all offers of Shares shall be made in conformity with the terms and conditions set forth therein.

4.5 Certain Legal Restrictions.

(a) No Shares shall be offered by the Co-Manager or any authorized dealer to any person who is not reasonably believed by the Co-Manager or the authorized dealer to be an eligible investor as set forth in the Information Memorandum.

(b) The Shares and the Fund have not been and will not be registered or qualified for offer and sale under the applicable laws of any jurisdiction. Neither the Co-Manager nor any authorized dealer shall (i) solicit any applications or otherwise extend any offers for the purchase of Shares, or (ii) deliver (or have in their possession for the purpose of delivery) the Information Memorandum or any other offering literature relating to the Fund or its Shares, to any person in any jurisdiction in which such solicitation or delivery would be unlawful. The Co-Manager undertakes to comply with the foregoing representations in connection with its participation in the sale of Shares (including the appointment of any authorized dealers) during the term of this Agreement.

4.6 Authority of the Manager as to the Sale of Any Shares. The Co-Manager Tremont and Co-Manager Kingate, as they may agree from time to time, shall have full discretion and authority, without obtaining the Fund's prior approval, to manage any sale of the Shares of the Fund in such manner as the Co-Managers consider appropriate including without limitation hiring such experts, agents and consultants to assist each Co-Manager in performing its duties as such Co-Managers deem appropriate.

PART V. GENERAL PROVISIONS

The following general terms and conditions shall apply to the performance of the Co-Manager's obligations as otherwise set forth herein:

5.1 Net Asset Value. As used in this Agreement, the Net Asset Value of the Fund and of the Shares shall have the meaning assigned to it in the Information Memorandum and shall be calculated as described in the Information Memorandum.

5.2 Monthly Management Fee; Other Fees.

(a) For its services hereunder, Co-Manager Kingate and Co-Manager Tremont shall be entitled, in the aggregate, to receive from the Fund a monthly management fee at an annual rate of one and one-half percent (1.5%) of the Net Asset Value of the Fund determined as of each Valuation Date of each calendar month. Such fee shall be divided between Co-Manager Kingate and Co-Manager Tremont as they agree from time to time by separate agreement. Such monthly management fee shall be shall payable as of the last business day of each calendar month. As used herein, the term "Valuation Date" shall have the meaning assigned to it in the Information Memorandum.

(b) Other fees, such as without limitation, up-front fees and exit fees, shall be retained by and belong to the Co-Manager.

5.3 Expenses.

(a) Unless otherwise agreed to by the Fund, the Co-Manager shall bear all of its own costs and expenses incurred in the performance of its services provided pursuant to this Agreement, including those attributable to such office personnel, office space, office equipment and office services as may be required by the Co-Manager.

(b) The Fund shall bear all expenses incident to its organization, operations and business, including but not limited to (i) brokerage commissions and charges on portfolio fees on loans and debit balances, (ii) income taxes, withholding taxes, transfer taxes and other governmental charges and duties, (iii) fees of the Fund's legal advisers and independent auditors, (iv) directors, attorneys, audit and accounting fees and expenses, (v) the costs of maintaining the Fund's registered office in the BVI and Bermuda, if any, or anywhere else in the world, and (vi) the costs of printing and distributing the Fund's any offering documents, reports and notices to shareholders.

5.4 Scope of Liabilities. Neither the Co-Manager nor its directors, officers, shareholders and employees, shall be liable to the Fund or its Shareholders for any losses, damages, expenses or claims occasioned by any act or omission of the Co-Manager or directors, officers, shareholders or employees in connection with the performance of its services hereunder, other than as a result of its own gross negligence, bad faith, or willful or reckless malfeasance, disregard of any of its obligations under this Agreement.

5.5 Indemnification.

(a) The Fund shall indemnify the Co-Manager, and its directors, officers, employees, servants, agents, delegates and shareholders (each an "Indemnified Party") and hold the

Indemnified Parties harmless from and against any expense, loss, liability or damage arising out of any claim asserted or threatened to be asserted in connection with the Indemnified Party's serving or having served as such pursuant to this Agreement; provided, however, that no Indemnified Party shall be entitled to any such indemnification with respect to any expense, loss, liability or damage which was caused by the Indemnified Party's own gross negligence, bad faith, or willful or reckless malfeasance or disregard of any of its obligations under this Agreement.

(b) The Co-Manager shall indemnify the Fund against, and hold it harmless from, any expense, loss, liability or damage arising out of any claim asserted or threatened to be asserted by any third party as a consequence of any misstatement of any material fact or any other material misrepresentation concerning the Fund or its Shares by the Co-Manager, other than arising out of a misstatement or representation authorized, approved or furnished by the Fund.

(c) In the event that either party hereto is or becomes a party to any action or proceeding in respect of which it may be entitled to seek indemnification hereunder ("indemnitee"), the indemnitee shall promptly notify the other party ("indemnitor") thereof. The indemnitor shall be entitled to participate in any such suit or proceeding and, to the extent that it may wish, to assume the defense thereof with counsel reasonably satisfactory to the indemnitee. After notice of an election by the indemnitor so to assume the defense thereof, the indemnitor will not be liable to the indemnitee hereunder for any legal or other expenses subsequently incurred by the indemnitee in connection with the defense thereof other than reasonable costs of investigation or reasonable legal expenses incurred as a result of (i) potential conflicts of interest between the indemnitee and indemnitor or (ii) the protection of proprietary or privacy interests of other clients of the indemnitee. The indemnitor shall advance to the indemnitee the reasonable costs and expenses of investigating and/or defending such claim, subject to receiving a written undertaking from the indemnitee to repay such amounts if and to the extent of any subsequent determination by a court or other tribunal of competent jurisdiction that the indemnitee was not entitled to indemnification hereunder.

(d) The indemnitor shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

(e) Each Indemnified Party shall be entitled to reasonable advances with regard to alleged claims asserted and to attorney fees and expenses.

(f) The indemnity provided for hereunder is in addition to and without prejudice to any indemnity provided by law or contract.

5.6 Independent Contractor. For all purposes of this Agreement, the Co-Manager shall be an independent contractor and not an employee or dependent agent of the Fund; nor shall

anything herein be construed as making the Fund a partner or co-venturer with the Co-Manager or any of its affiliates. Any court or authority is requested to interpret the provisions of this Agreement recognizing that the foregoing is the firm intention of the parties even to the extent of amending or revising that portion of the Agreement that might lead to a contrary construction. Except as provided in this Agreement, the Co-Manager shall have no authority to bind, obligate or represent the Fund.

5.7 Information Concerning Activities; Records and Access; Confidentiality.

(a) The Co-Manager shall provide to the Fund from time to time and on request information regarding the activities (i) conducted by the Co-Manager since the inception of this Agreement or since the most recent date on which the Co-Manager provided information to the Fund regarding the activities of the Co-Manager and (ii) proposed to be conducted by the Co-Manager. The Co-Manager shall furnish information concerning the Co-Manager and any authorized dealers and concerning the activities undertaken by them for the Fund as the Fund may reasonably request.

(b) The Co-Manager shall retain for a period of at least five (5) years copies of any documents generated or received by the Co-Manager in the ordinary course of business pertaining to the financial condition of the Fund's assets or to the compensation payable to the Co-Manager. At the request of the Fund, the Co-Manager shall afford to the Fund's independent auditors reasonable access to documents pertaining to the Fund's activities during customary business hours and shall permit such auditors to make copies thereof or extracts therefrom at the expense of the requesting party.

(c) Neither of the parties hereto shall (except under compulsion of law) either before or after the termination of this Agreement disclose to any person not authorised by the relevant party to receive the same any confidential information relating to such party or to the affairs of such party of which the party disclosing the same shall have become possessed during the period of this Agreement and each party shall use all reasonable endeavours to prevent any such disclosure as aforesaid.

5.8 Term, Termination and Renewal.

(a) This Agreement (as restated and amended hereby) shall have a term expiring on December 31, 2004 and will be automatically renewed for successive one-year periods, subject to termination by either party in accordance with this section.

(b) The Co-Manager shall be entitled to resign its appointment

hereunder:-

(i) by giving not less than one years' notice in writing to the Fund to expire at the end of a calendar month;

(ii) at any time if the Fund shall go into liquidation or be unable to pay its debts or commit any act of bankruptcy or if a receiver is appointed of any of the assets of the Fund or if some event having an equivalent effect;

(iii) at any time if the Fund shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Co-Manager requiring it so to do to make good such breach;

(c) The Fund may terminate the appointment of the Co-Manager as follows:

(i) by giving no less than one years' notice in writing to the Co-Manager to expire at the end of a calendar month;

(ii) if the Co-Manager goes into liquidation or is unable to pay its debts or commits any act of bankruptcy or if a receiver is appointed of any of the assets of the Co-Manager or if some event having an equivalent effect occurs;

(iii) if the Co-Manager shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Fund requiring it so to do to make good such breach;

(d) Upon termination of the appointment of the Co-Manager, the Co-Manager shall be entitled to receive the fees and compensation as provided hereunder but shall not be entitled to compensation in respect of such termination; and the Co-Manager shall deliver or procure to be delivered to the Fund or successor manager, or as it shall direct, all books of account, records, other registers, correspondence, and documents relating to the affairs of or belonging to the Fund in the possession of or under the control of the Co-Manager.

(e) Upon termination of this Agreement for any reason (or for no reason) the following provisions shall survive: Sections: 5.3 (to the extent of unpaid expenses); 5.4; 5.5; 5.7; 5.12; 5.17; 5.20 and 5.21.

5.9 Delegation.

(a) The Co-Manager shall be authorized to delegate as appropriate, or in its discretion, any of the duties or obligations hereunder to one or more other persons or entities, whether affiliated with or independent of the Co-Manager.

(b) In the event of any such delegation of duties or obligations hereunder pursuant to any agreement consented to in writing by the Fund, the Co-Manager shall be relieved and discharged of its obligations to perform the services so delegated other than the continuing obligation (subject at all times to the standard of care set forth in Section 5.4 hereof) to take reasonable measures to (i) ascertain the competence of the delegatee to perform the services so delegated, (ii) monitor generally the faithful performance by the delegatee of the duties specified in the relevant delegation agreement, (iii) coordinate such performance with the performance of the other services contemplated hereunder, and (iv) perform or procure the future performance of the delegated services in the event of the expiration or termination of any such agreement with such delegatee. Notwithstanding any other provisions of this Agreement, following the Fund's consent to any such delegation agreement, the Co-Manager shall not incur any liability hereunder to the Fund pursuant to Section 5.4 hereof for any acts or omissions of such delegate and shall remain entitled to indemnification as provided in Section 5.5 hereof.

(c) The Fund acknowledges its understanding that the Co-Manager proposes to enter into delegation agreements pursuant to Section 5.9(b) hereof with respect to certain of the services contemplated by this Agreement, and agrees that whenever the Fund's consent to such agreements is requested by the Co-Manager, such consent shall not be withheld without reasonable cause.

(d) For the avoidance of doubt, the Co-Manager has delegated responsibilities as follows, which have the consent of the Fund's Directors:

i. To Madoff, investment advisory activities and custody services.

ii. To BISYS Hedge Fund Services Limited, Hamilton, Bermuda, as to administrative services.

iii. To Bank of Bermuda with respect to banking matters.

(e) Certain responsibilities are vested in Co-Manager Tremont by separate agreement between Co-Manager Tremont and the Fund. The parties hereto shall cooperate with

Co-Manager Tremont.

5.10 Modification; Waiver. Except as otherwise expressly provided herein, this Agreement shall not be amended, nor shall any provision of this Agreement be considered modified or waived, unless evidenced by a writing signed by the party to be charged with such amendment, waiver or modification.

5.11 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, but the rights and obligations hereunder shall not be assignable, transferable or delegable without the written consent of the other party hereto except as provided in Section 5.9 hereof and any attempted assignment, transfer or delegation thereof without such consent except as provided in Section 5.9 hereof shall be void.

5.12 Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of Bermuda, applicable to contracts made and entirely to be performed therein. The parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of Bermuda for the settlement of any dispute or difference arising between the parties hereto.

5.13 Definition; Headings. Terms used herein which are not otherwise defined herein shall have the meanings set forth in the Information Memorandum. Headings and titles are for ease of reference only and shall be given no substantive effect.

5.14 Services Non-Exclusive. The services of the Co-Manager to the Fund hereunder are not to be deemed exclusive and the Co-Manager shall be free to render similar services to others so long as its services hereunder are not impaired thereby and to retain for its own use and benefit all fees or other monies payable thereby and the Co-Manager shall not be deemed to be affected with notice of or to be under any duty to disclose to the Fund any fact or thing which comes to the notice of the Co-Manager or any servant or agent of the Co-Managers in the course of the Co-Manager rendering similar services to others or in the course of its business in any other capacity or in any manner whatsoever otherwise than in the course of carrying out its duties hereunder.

5.15 Counterparts. This Agreement may be signed in any number of counterparts. Any single counterpart or a set of counterparts signed, in either case, by the parties hereto, shall constitute a full and original agreement for all purposes.

5.16 Interest of Fund. In Co-Manager and Co-Manager in Fund.

(a) It is understood that directors, officers, agents and shareholders of the Fund are or may be interested in the Co-Manager as directors, officers, or shareholders or otherwise, that

directors, officers, shareholders, agents and any client of the Co-Manager are or may be interested in the Fund as directors, officers, shareholders of otherwise and that the Co-Manager is or may be interested in the Fund as shareholder or otherwise and it is hereby acknowledged that no person so interested shall be liable to account for any benefit to any other party by reason solely of such interest.

(b) The Co-Manager or any client of the Co-Manager or any Connected Person (as defined in the footnote to this section [1]) of the Co-Manager or any holding company of the Co-Manager or any subsidiary of such holding company ("the interested party") may hold, acquire or dispose of any investments upon its own account notwithstanding that the same or similar Investments may be held by or for the account of or otherwise connected with the Fund and it is hereby acknowledged that no such interested party shall be liable to account for any benefit to any other party by reason solely of such interest.

5.17 Legal Action by the Co-Manager. The Co-Manager shall not be required to take any legal action on behalf of the Fund unless fully indemnified to its reasonable satisfaction for all costs and liabilities that may be incurred or suffered by the Co-Manager in connection therewith.

5.18 Notices to Parties; Meetings of Directors.

(a) Any notice given hereunder shall be in writing and shall be served by hand at or by being sent by prepaid airmail post to the registered office for the time being of the addressee and any such notice shall if so posted be deemed to be served seven days after posting. Evidence that the notice was properly addressed stamped and put into the post shall be conclusive evidence of posting. Notice may also be given by e-mail and by fax transmission at the usual addresses on file with the Co-Manager with regard to such party. Notice given by fax or e-mail shall be deemed to have been given contemporaneously unless delivered outside normal business hours in which case it shall be deemed to have been received at the next time after delivery when normal business hours commence.

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[1] The term "Connected Person" of a company (such as the Co-Manager) means and includes (a) any person or company beneficially owning, directly or indirectly, 20 per cent or more of the issued ordinary share capital of that company or able to exercise, directly or indirectly 20 per cent or more of the total votes in that company; (b) any person or company controlled by a person who or company which meets one or both of the descriptions given in (a); (c) any company 20 per cent or more of whose issued ordinary share capital is beneficially owned, directly or indirectly by that company and any Connected Person of that company (as defined in (a), (b) or (d) of this definition) taken together or any company 20 per cent or more of the total votes in which can be exercised, directly or indirectly, by that company and any such Connected Person thereof (as defined in (a), (b) or (d) of this definition taken together; (d) any employee, director or officer of that company or of any Connected Person of that company (as defined in (a), (b) or (c) of this definition); (e) any spouse, minor child or step-child of the persons referred to in (a), (b) and (d); and (f) any trustee of a trust, the beneficiaries of which are persons falling into (a), (b), (d) and (e).

(b) At the request of the Directors and subject to reasonable prior notice, the Co-Manager, at its own expense, shall endeavor to make one of its executive officers available to attend the meetings of the Directors to report on the Co-Manager's activities and on other matters pertaining to its engagement.

5.19 Severability. The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

5.20 Authority. Each of the parties to this Agreement hereby represents that it is duly authorized and empowered to execute, deliver and perform this Agreement and that such action does not conflict with or violate any provision of law, rule or regulation, contract, deed of trust, or other instrument to which it is a party or to which any of its property is subject, and that this Agreement is a valid and binding obligation enforceable in accordance with its terms.

5.21 Entire Agreement. This Agreement and the Tremont Co-Manager Agreement set forth the entire agreement between the parties with respect to matters contained herein and therein and hereby supercede and replace in its entirety the previous agreement (except surviving provisions) among the parties with respect to co-management of the Fund.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

KINGATE MANAGEMENT LIMITED

By: _____
Name: MICHAEL TANNENBAUM
Title: DIRECTOR

KINGATE GLOBAL FUND LTD.

By: _____
Name: CHRISTOPHER HUNT
Title: DIRECTOR

This Agreement acknowledged
and recognized:

Tremont (Bermuda) Limited

By: _____
Name: Suzanne S. Hammond
Title: Director

715835.10

TSQ-87258

EXHIBIT L

MANAGEMENT AGREEMENT (this "Agreement"), dated as of January 1, 2006, by and between **KINGATE MANAGEMENT LIMITED**, a company incorporated under the laws of Bermuda with offices located at 99 Front Street, Hamilton HM11 Bermuda (the "Manager"), and **KINGATE GLOBAL FUND, LTD.**, a company incorporated under the laws of the British Virgin Islands (BVI) whose registered office is c/o Bison Financial Services Limited, Bison Court, PO Box 3460, Road Town, Tortola, British Virgin Islands (the "Fund").

WITNESSETH:

WHEREAS, the Fund seeks to obtain capital appreciation of its assets through the utilization of a non-traditional stock/options trading strategy as more fully described in its Amended and Restated Information Memorandum dated January 1, 2006, as the same may be supplemented, amended and restated from time to time (collectively the "Information Memorandum");

WHEREAS, the Fund wishes to engage the Manager and the Manager wishes to act as the manager of the Fund;

NOW, THEREFORE, in consideration of the mutual premises and covenants contained herein, the parties hereto agree as follows:

PART I. SERVICES

1.1 Provision of Services. In accordance with provisions of the Memorandum and Articles of Association of the Fund and the Information Memorandum, and under the ultimate supervision of the directors of the Fund (the "Directors") from time to time as provided therein, the Manager shall be responsible for performing or obtaining the performance of, and is hereby authorized and empowered to perform, or obtain the performance of, all of the following duties and functions necessary or appropriate in connection with the management of the Fund:

(a) Providing investment management services as described in Part II of this Agreement;

(b) Providing administrative services as described in Part III of this Agreement; and

(c) Providing services as described in Part IV of this Agreement.

The Manager may delegate all or part of such responsibilities pursuant to Section 2.2, 4.6 and 5.9 below.

PART II. INVESTMENT MANAGEMENT SERVICES

2.1 Investment Program. Subject to the ultimate supervision of the Directors, and in accordance with the Memorandum and Articles of Association of the Fund, as well as the

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investment objectives, policies, guidelines and restrictions which are set forth in the Information Memorandum, or which are otherwise communicated to the Manager, the Manager shall effect the investment strategy for the investment of the assets of the Fund as well as evaluating and selecting potential investments which are consistent with such strategy. Included within this power will be managing the investment and reinvestment of the assets of the Fund, in each case in such manner as the Manager considers appropriate based upon the Manager's past practices.

2.2 Custody. Portfolio securities and other financial assets of the Fund shall be maintained at all times in the custody of one or more banks, trust companies, brokerage firms or other financial institutions as shall have been approved for that purpose by the Manager. As of the date hereof, custody of substantially all of the Fund's assets is in custody with Bernard Madoff Investment Securities LLC, a New York financial institution ("Madoff"). The Manager has no custody of any of the Fund's assets.

PART III. ADMINISTRATION

3.1 Provision of Administrative Services for Fund. In accordance with the provisions of the Memorandum and Articles of Association of the Fund, and under the ultimate supervision of the Directors from time to time as provided therein, the Manager shall assist the Fund (in a manner consistent with existing practice) in the performance of certain of its administrative duties as may be agreed to by the parties from time to time.

PART IV. SALE OF SHARES

4.1 Marketing Generally. In accordance with provisions of the Memorandum and Articles of Association of the Fund and the Information Memorandum, and under the ultimate supervision of the Directors from time to time as provided therein, the Manager is hereby authorized and empowered to perform (or procure the performance of), all duties and functions in connection with the sale of any Shares of the Fund and advising the Fund on general matters affecting the marketing of the Shares, including from time to time advising the Fund's Directors concerning:

(a) Subject, inter alia, to the provisions of Section 4.5(b), soliciting and introducing prospective investors in the Fund's Shares, either relying upon an exemption from registration as a broker dealer or by engaging the services of a broker dealer which may be an affiliate of the Manager; and

(b) Maintaining regular contact and updating existing and prospective investors to keep them informed of investment results and other information with regard to the Fund.

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4.2 Sale of Shares. The Manager shall have sole authority to act in respect of the sale of any of the Fund's Shares. In this regard, the Manager, from time to time, shall seek to procure applications for the purchase of Shares by eligible investors, either directly or through securities dealers and other financial institutions selected by the Manager pursuant to Section 4.3 hereof ("authorized dealers"). Shares shall be offered at the subscription price and on the terms and conditions set forth herein and in the Information Memorandum. All applications shall be subject to acceptance by the Fund (it being understood that the Fund shall have the right to reject applications in its discretion). The Manager shall have no authority (i) to bind the Fund to accept any applications or (ii) to receive or accept on behalf of the Fund any funds or other property tendered as payment for Shares, such authority resting with the Fund and its Directors.

4.3 Authorized Dealers.

(a) In addition to any powers the Manager may have under Section 5.9, hereof, the Manager may appoint consultants, agents, securities dealers and other financial institutions as authorized dealers to solicit applications to purchase Shares. Such authorized dealers must have full authority to act in the jurisdiction within which they conduct business. The Manager shall use reasonable efforts to ensure that any such authorized dealer shall conduct its solicitation activities in accordance with all of the conditions, restrictions and limitations applicable to the Manager's direct sales activities as set forth in this Agreement.

(b) The Manager may enter into compensation arrangements with authorized dealers as it sees fit and at no additional cost to the Fund.

4.4 Offering Materials.

(a) The Manager shall deliver, or arrange for the delivery by any authorized dealer selected by the Manager, to each person to whom Shares are offered a copy of the Fund's most recently published Information Memorandum and a copy of the Fund's most recently published annual report.

(b) If any form of offering materials (including any form of advertisement or other solicitation materials calculated to result in an expression of interest in subscribing for Shares) concerning the Fund or its Shares other than the Information Memorandum is required or permitted to be given to any prospective investor under the laws of any jurisdiction in which Shares are offered by or through the Manager, the Manager agrees that any such document (i) shall be prepared and furnished in a commercially reasonable manner, in good faith and reliance on its advisors and consultants, (ii) shall not contain any information concerning the Fund or the Shares which is materially inconsistent with the Information Memorandum, and (iii) shall use reasonable efforts to comply in all respects with the laws of the jurisdiction in which it is furnished.

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(c) The Manager acknowledges and agrees that no person is authorized to make any representations, whether written or oral, concerning the Fund and its Shares which are inconsistent with the Information Memorandum and that all offers of Shares shall be made in conformity with the terms and conditions set forth therein.

4.5 Certain Legal Restrictions.

(a) No Shares shall be offered by the Manager or any authorized dealer to any person who is not reasonably believed by the Manager or the authorized dealer to be an eligible investor as set forth in the Information Memorandum.

(b) The Shares and the Fund have not been and will not be registered or qualified for offer and sale under the applicable laws of any jurisdiction. Neither the Manager nor any authorized dealer shall (i) solicit any applications or otherwise extend any offers for the purchase of Shares, or (ii) deliver (or have in their possession for the purpose of delivery) the Information Memorandum or any other offering literature relating to the Fund or its Shares, to any person in any jurisdiction in which such solicitation or delivery would be unlawful. The Manager undertakes to comply with the foregoing representations in connection with its participation in the sale of Shares (including the appointment of any authorized dealers) during the term of this Agreement.

4.6 Authority of the Manager as to the Sale of Any Shares. The Manager shall have full discretion and authority, without obtaining the Fund's prior approval, to manage any sale of the Shares of the Fund in such manner as the Manager consider appropriate including without limitation hiring such experts, agents and consultants to assist the Manager in performing its duties hereunder as such Manager may deem appropriate.

PART V. GENERAL PROVISIONS

The following general terms and conditions shall apply to the performance of the Manager's obligations as otherwise set forth herein:

5.1 Net Asset Value. As used in this Agreement, the Net Asset Value of the Fund and of the Shares shall have the meaning assigned to it in the Information Memorandum and shall be calculated as described in the Information Memorandum.

5.2 Monthly Management Fee; Other Fees.

(a) For its services hereunder, the Manager shall be entitled, in the aggregate, to receive from the Fund a monthly management fee at an annual rate of one and one-half percent (1.5%) of the Net Asset Value of the Fund determined as of each Valuation Date of each calendar month. Such monthly management fee shall be shall payable as of the last business day of each

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calendar month. As used herein, the term "Valuation Date" shall have the meaning assigned to it in the Information Memorandum.

(b) Other fees, such as without limitation, up-front fees and exit fees, shall be retained by and belong to the Manager.

5.3 Expenses.

(a) Unless otherwise agreed to by the Fund, the Manager shall bear all of its own costs and expenses incurred in the performance of its services provided pursuant to this Agreement, including those attributable to such office personnel, office space, office equipment and office services as may be required by the Manager.

(b) The Fund shall bear all expenses incident to its organization, operations and business, including but not limited to (i) brokerage commissions and charges on portfolio fees on loans and debit balances, (ii) income taxes, withholding taxes, transfer taxes and other governmental charges and duties, (iii) fees of the Fund's legal advisers and independent auditors, (iv) directors, attorneys, audit and accounting fees and expenses, (v) the costs of maintaining the Fund's registered office in the BVI and Bermuda, if any, or anywhere else in the world, and (vi) the costs of printing and distributing the Fund's any offering documents, reports and notices to shareholders.

5.4 Scope of Liabilities. Neither the Manager nor its directors, officers, shareholders and employees, shall be liable to the Fund or its Shareholders for any losses, damages, expenses or claims occasioned by any act or omission of the Manager or directors, officers, shareholders or employees in connection with the performance of its services hereunder, other than as a result of its own gross negligence, bad faith, or willful or reckless malfeasance, disregard of any of its obligations under this Agreement.

5.5 Indemnification.

(a) The Fund shall indemnify the Manager, and its directors, officers, employees, servants, agents, delegates and shareholders (each an "Indemnified Party") and hold the Indemnified Parties harmless from and against any expense, loss, liability or damage arising out of any claim asserted or threatened to be asserted in connection with the Indemnified Party's serving or having served as such pursuant to this Agreement; provided, however, that no Indemnified Party shall be entitled to any such indemnification with respect to any expense, loss, liability or damage which was caused by the Indemnified Party's own gross negligence, bad faith, or willful or reckless malfeasance or disregard of any of its obligations under this Agreement.

(b) The Manager shall indemnify the Fund against, and hold it harmless from, any expense, loss, liability or damage arising out of any claim asserted or threatened to be asserted

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by any third party as a consequence of any misstatement of any material fact or any other material misrepresentation concerning the Fund or its Shares by the Manager, other than arising out of a misstatement or representation authorized, approved or furnished by the Fund.

(c) In the event that either party hereto is or becomes a party to any action or proceeding in respect of which it may be entitled to seek indemnification hereunder ("indemnitee"), the indemnitee shall promptly notify the other party ("indemnitor") thereof. The indemnitor shall be entitled to participate in any such suit or proceeding and, to the extent that it may wish, to assume the defense thereof with counsel reasonably satisfactory to the indemnitee. After notice of an election by the indemnitor so to assume the defense thereof, the indemnitor will not be liable to the indemnitee hereunder for any legal or other expenses subsequently incurred by the indemnitee in connection with the defense thereof other than reasonable costs of investigation or reasonable legal expenses incurred as a result of (i) potential conflicts of interest between the indemnitee and indemnitor or (ii) the protection of proprietary or privacy interests of other clients of the indemnitee. The indemnitor shall advance to the indemnitee the reasonable costs and expenses of investigating and/or defending such claim, subject to receiving a written undertaking from the indemnitee to repay such amounts if and to the extent of any subsequent determination by a court or other tribunal of competent jurisdiction that the indemnitee was not entitled to indemnification hereunder.

(d) The indemnitor shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

(e) Each Indemnified Party shall be entitled to reasonable advances with regard to alleged claims asserted and to attorney fees and expenses.

(f) The indemnity provided for hereunder is in addition to and without prejudice to any indemnity provided by law or contract.

5.6 Independent Contractor. For all purposes of this Agreement, the Manager shall be an independent contractor and not an employee or dependent agent of the Fund; nor shall anything herein be construed as making the Fund a partner or co-venturer with the Manager or any of its affiliates. Any court or authority is requested to interpret the provisions of this Agreement recognizing that the foregoing is the firm intention of the parties even to the extent of amending or revising that portion of the Agreement that might lead to a contrary construction. Except as provided in this Agreement, the Manager shall have no authority to bind, obligate or represent the Fund.

5.7 Information Concerning Activities; Records and Access; Confidentiality.

(a) The Manager shall provide to the Fund from time to time and on request information regarding the activities (i) conducted by the Manager since the inception of this Agreement or since the most recent date on which the Manager provided information to the Fund

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regarding the activities of the Manager and (ii) proposed to be conducted by the Manager. The Manager shall furnish information concerning the Manager and any authorized dealers and concerning the activities undertaken by them for the Fund as the Fund may reasonably request.

(b) The Manager shall retain for a period of at least five (5) years copies of any documents generated or received by the Manager in the ordinary course of business pertaining to the financial condition of the Fund's assets or to the compensation payable to the Manager. At the request of the Fund, the Manager shall afford to the Fund's independent auditors reasonable access to documents pertaining to the Fund's activities during customary business hours and shall permit such auditors to make copies thereof or extracts therefrom at the expense of the requesting party.

(c) Neither of the parties hereto shall (except under compulsion of law) either before or after the termination of this Agreement disclose to any person not authorised by the relevant party to receive the same any confidential information relating to such party or to the affairs of such party of which the party disclosing the same shall have become possessed during the period of this Agreement and each party shall use all reasonable endeavours to prevent any such disclosure as aforesaid.

5.8 Term, Termination and Renewal.

(a) This Agreement (as restated and amended hereby) shall have a term ending on December 31, 2007 and will be automatically renewed for successive one-year periods, subject to termination by either party in accordance with this section.

(b) The Manager shall be entitled to resign its appointment hereunder:

(i) by giving not less than one years' notice in writing to the Fund to expire at the end of a calendar month;

(ii) at any time if the Fund shall go into liquidation or be unable to pay its debts or commit any act of bankruptcy or if a receiver is appointed of any of the assets of the Fund or if some event having an equivalent effect; or

(iii) at any time if the Fund shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty (30) days of receipt of notice served by the Manager requiring it so to do to make good such breach.

(c) The Fund may terminate the appointment of the Manager as follows:

(i) by giving no less than one years' notice in writing to the Manager to expire at the end of a calendar month;

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(ii) if the Manager goes into liquidation or is unable to pay its debts or commits any act of bankruptcy or if a receiver is appointed of any of the assets of the Manager or if some event having an equivalent effect occurs; or

(iii) if the Manager shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty (30) days of receipt of notice served by the Fund requiring it so to do to make good such breach.

(d) Upon termination of the appointment of the Manager, the Manager shall be entitled to receive the fees and compensation as provided hereunder but shall not be entitled to compensation in respect of such termination; and the Manager shall deliver or procure to be delivered to the Fund or successor manager, or as it shall direct, all books of account, records, other registers, correspondence, and documents relating to the affairs of or belonging to the Fund in the possession of or under the control of the Manager.

(e) Upon termination of this Agreement for any reason (or for no reason) the following provisions shall survive: Sections: 5.3 (to the extent of unpaid expenses); 5.4; 5.5; 5.7; 5.12; 5.17; 5.20 and 5.21.

5.9 Delegation.

(a) The Manager shall be authorized to delegate as appropriate, or in its discretion, any of the duties or obligations hereunder to one or more other persons or entities, whether affiliated with or independent of the Manager.

(b) In the event of any such delegation of duties or obligations hereunder pursuant to any agreement consented to in writing by the Fund, the Manager shall be relieved and discharged of its obligations to perform the services so delegated other than the continuing obligation (subject at all times to the standard of care set forth in Section 5.4 hereof) to take reasonable measures to (i) ascertain the competence of the delegatee to perform the services so delegated, (ii) monitor generally the faithful performance by the delegatee of the duties specified in the relevant delegation agreement, (iii) coordinate such performance with the performance of the other services contemplated hereunder, and (iv) perform or procure the future performance of the delegated services in the event of the expiration or termination of any such agreement with such delegatee. Notwithstanding any other provisions of this Agreement, following the Fund's consent to any such delegation agreement, the Manager shall not incur any liability hereunder to the Fund pursuant to Section 5.4 hereof for any acts or omissions of such delegate and shall remain entitled to indemnification as provided in Section 5.5 hereof.

(c) The Fund acknowledges its understanding that the Manager proposes to

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enter into delegation agreements pursuant to Section 5.9(b) hereof with respect to certain of the services contemplated by this Agreement, and agrees that whenever the Fund's consent to such agreements is requested by the Manager, such consent shall not be withheld without reasonable cause.

(d) For the avoidance of doubt, the Manager has delegated responsibilities as follows, which have the consent of the Fund's Directors:

i. To Madoff, investment advisory activities and custody services;

ii. To BISYS Hedge Fund Services Limited, Hamilton, Bermuda, as to administrative services; and

iii. To Bank of Bermuda with respect to banking matters.

5.10 Modification; Waiver. Except as otherwise expressly provided herein, this Agreement shall not be amended, nor shall any provision of this Agreement be considered modified or waived, unless evidenced by a writing signed by the party to be charged with such amendment, waiver or modification.

5.11 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, but the rights and obligations hereunder shall not be assignable, transferable or delegable without the written consent of the other party hereto except as provided in Section 5.9 hereof and any attempted assignment, transfer or delegation thereof without such consent except as provided in Section 5.9 hereof shall be void.

5.12 Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of Bermuda, applicable to contracts made and entirely to be performed therein. The parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of Bermuda for the settlement of any dispute or difference arising between the parties hereto.

5.13 Definition; Headings. Terms used herein which are not otherwise defined herein shall have the meanings set forth in the Information Memorandum. Headings and titles are for ease of reference only and shall be given no substantive effect.

5.14 Services Non-Exclusive. The services of the Manager to the Fund hereunder are not to be deemed exclusive and the Manager shall be free to render similar services to others so long as its services hereunder are not impaired thereby and to retain for its own use and benefit all fees or other monies payable thereby and the Manager shall not be deemed to be affected with notice of or to be under any duty to disclose to the Fund any fact or thing which comes to the notice of the Manager or any servant or agent of the Managers in the course of the Manager rendering similar services to others or in the course of its business in any other capacity or in any manner whatsoever

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otherwise than in the course of carrying out its duties hereunder.

5.15 Counterparts. This Agreement may be signed in any number of counterparts. Any single counterpart or a set of counterparts signed, in either case, by the parties hereto, shall constitute a full and original agreement for all purposes.

5.16 Interest of Fund in Manager and Manager in Fund.

(a) It is understood that directors, officers, agents and shareholders of the Fund are or may be interested in the Manager as directors, officers, or shareholders or otherwise, that directors, officers, shareholders, agents and any client of the Manager are or may be interested in the Fund as directors, officers, shareholders of otherwise and that the Manager is or may be interested in the Fund as shareholder or otherwise and it is hereby acknowledged that no person so interested shall be liable to account for any benefit to any other party by reason solely of such interest.

(b) The Manager or any client of the Manager or any Connected Person[1] of the Manager or any holding company of the Manager or any subsidiary of such holding company (the "interested party") may hold, acquire or dispose of any investments upon its own account notwithstanding that the same or similar Investments may be held by or for the account of or otherwise connected with the Fund and it is hereby acknowledged that no such interested party shall be liable to account for any benefit to any other party by reason solely of such interest.

5.17 Legal Action by the Manager. The Manager shall not be required to take any legal action on behalf of the Fund unless fully indemnified to its reasonable satisfaction for all costs and liabilities that may be incurred or suffered by the Manager in connection therewith.

5.18 Notices to Parties; Meetings of Directors.

(a) Any notice given hereunder shall be in writing and shall be served by hand at or by being sent by prepaid airmail post to the registered office for the time being of the addressee and any such notice shall if so posted be deemed to be served seven (7) days after posting. Evidence that the notice was properly addressed stamped and put into the post shall be

[1] The term "Connected Person" of a company means and includes (a) any person or company beneficially owning, directly or indirectly, 20 per cent or more of the issued ordinary share capital of that company or able to exercise, directly or indirectly, 20 per cent or more of the total votes in that company; (b) any person or company controlled by a person who or company which meets one or both of the descriptions given in (a); (c) any company 20 per cent or more of whose issued ordinary share capital is beneficially owned, directly or indirectly by that company and any Connected Person of that company (as defined in (a), (b) or (d) of this definition) taken together or any company 20 per cent or more of the total votes in which can be exercised, directly or indirectly, by that company and any such Connected Person thereof (as defined in (a), (b) or (d) of this definition taken together; (d) any employee, director or officer of that company or of any Connected Person of that company (as defined in (a), (b) or (c) of this definition); (e) any spouse, minor child or step-child of the persons referred to in (a), (b) and (d); and (f) any trustee of a trust, the beneficiaries of which are persons falling into (a), (b), (d) and (e).

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conclusive evidence of posting. Notice may also be given by e-mail and by fax transmission at the usual addresses on file with the Manager with regard to such party. Notice given by fax or e-mail shall be deemed to have been given contemporaneously unless delivered outside normal business hours in which case it shall be deemed to have been received at the next time after delivery when normal business hours commence.

(b) At the request of the Directors and subject to reasonable prior notice, the Manager, at its own expense, shall endeavor to make one of its executive officers available to attend the meetings of the Directors to report on the Manager's activities and on other matters pertaining to its engagement.

5.19 Severability. The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

5.20 Authority. Each of the parties to this Agreement hereby represents that it is duly authorized and empowered to execute, deliver and perform this Agreement and that such action does not conflict with or violate any provision of law, rule or regulation, contract, deed of trust, or other instrument to which it is a party or to which any of its property is subject, and that this Agreement is a valid and binding obligation enforceable in accordance with its terms.

5.21 Entire Agreement. This Agreement sets forth the entire agreement between the parties with respect to matters contained herein and therein and hereby supercedes and replaces in its entirety the previous agreement among the parties with respect to management of the Fund.

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IN WITNESS WHEREOF, the parties have executed this amended and restated Agreement as of the day and year first above written.

KINGATE GLOBAL FUND LTD.

By: _____
Name:
Title: Director

KINGATE MANAGEMENT LIMITED

By: _____
Name:
Title:

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IN WITNESS WHEREOF, the parties have executed this amended and restated Agreement as of the day and year first above written.

KINGATE GLOBAL FUND LTD.

By: _____
Name: GRAHAM COOK
Title: Director

KINGATE MANAGEMENT LIMITED

By: _____
Name:
Title:

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EXHIBIT M

ADMINISTRATION AGREEMENT

THIS AGREEMENT is made the day of One Thousand Nine Hundred and Ninety Four

BETWEEN :

(1) **KINGATE GLOBAL FUND, LTD.,** a company incorporated under the laws of the British Virgin Islands whose registered office is at Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, BVI (the "Company"); and

(2) **KINGATE MANAGEMENT LIMITED,** a company incorporated under the laws of Bermuda whose principal office is at Hemisphere House, 9 Church Street, Hamilton HM 11, Bermuda (the "Manager").

(3) **HEMISPHERE MANAGEMENT LIMITED,** a company incorporated under the laws of Bermuda whose principal office is at Hemisphere House, 9 Church Street, Hamilton HM 11, Bermuda (the "Administrator") of the third part.

WHEREBY IT IS AGREED AND DECLARED as follows :-

1. INTERPRETATION

1.1 In this Agreement the following words and expressions shall, where not inconsistent with the context, have the following meanings respectively:-

"Administration Fee" means the fee payable to the Administrator calculated in accordance with Clause 6.1;

"Articles" means the Memorandum and Articles of Association for the time being of the Company, any reference herein to an Article shall be taken to refer to the appropriate article unless otherwise specified;

"Auditors" means Coopers & Lybrand or any other auditor appointed as such by the Directors;

"Business Day" means any day on which the central banking systems of the U.S. and Bermuda are open and operating;

"Connected Person" of a company means and includes (a) any person or company beneficially owning, directly or indirectly, 20 per cent or more of the issued ordinary share capital of that company or able to exercise, directly or indirectly 20 per cent or more of the total votes in that company; (b) any person or company controlled by a person who or company which meets one or both of the descriptions given in (a); (c) any company 20 per cent or more of whose issued ordinary share capital is beneficially owned, directly or indirectly by that company and any Connected Person of that company (as defined in (a), (b) or (d) of this definition) taken together or any company 20 per cent or more of the total votes in which can be exercised, directly or indirectly, by that company and any such Connected Person thereof (as defined in (a), (b) or (d) of this definition taken together; (d) any employee, director or officer of that company or of any Connected Person of that company (as defined in (a), (b) or (c) of this definition); (e) any spouse, minor child or step-child of the persons referred to in (a), (b) and (d); and (f) any trustee of a trust, the beneficiaries of which are persons falling into (a), (b), (d) and (e);

"Custodian" means the body corporate acting in the capacity of custodian of the Investments for the time being;

"Directors" means the Directors of the Company from time to time;

"Dollars ($) and Cents" means US dollars and cents;

"Eligible Investor" means a person who is entitled to own Shares under the Articles;

"Investments" means all the assets and rights from time to time of the Company held in accordance with the Articles;

"Laws" means the laws of the Bermuda and any other applicable laws and regulations for the time being in force;

"Management Agreement" means the management agreement for the time being subsisting to which the Company and the Manager are parties and relating to the appointment and the duties of the Manager;

"Net Asset Value" means the net asset value of all the Shares calculated in accordance with Clause 4, as of the close of business on the last Business Day of each calendar month;

"Redemption Date" means the last Business Day of each calendar month;

"Secretary of the Company" means the person from time to time nominated by the Administrator and appointed by the Directors to act as the Secretary of the Company pursuant to Clause 3.7 of this Administration Agreement;

"Shares" means the Common Shares with an initial net price of $100;

"Subscription Date" means the first Business Day subsequent to the prior month end;

1.2 Any reference to the Company, the Manager or the Custodian includes a reference to its or their duly authorised agents or delegates.

1.3 References to Clauses are to Clauses of this Agreement.

1.4 The headings to the Clauses of this Agreement are for convenience only and shall not affect the construction or interpretation thereof.

1.5 Unless the context otherwise requires, words and expressions contained in this Agreement relating to the Company shall bear the same meaning as in the Articles of the Company PROVIDED THAT any alteration or amendment of either the Company's Articles shall not be effective for the purposes of this Agreement unless the party hereto affected (to the extent that its rights or duties hereunder are affected by such alteration or amendment) shall, by endorsement hereon or otherwise, have consented thereto.

2. APPOINTMENT OF THE ADMINISTRATOR

The Manager HEREBY APPOINTS the Administrator and the Administrator shall act with effect from the date hereof as Administrator of the Company upon the terms hereinafter contained and in accordance with the Laws and the Articles of the Company until its appointment shall be terminated as hereinafter provided and the Administrator hereby accepts such appointment and agrees to assume the obligations to the Company and the Manager set forth herein.

3. FUNCTIONS, POWERS AND OBLIGATIONS OF THE ADMINISTRATOR

3.1 During the continuance of its appointment as Administrator of the Company, the Administrator shall (subject to the overall policy and supervision of the Directors and subject to Clause 3.8) have full power, authority and right to carry on the general administration of the Company.

3.2 The Administrator shall keep or cause to be kept on behalf of the Company at the Administrator's premises in Bermuda such books, records and statements as may be necessary to give a complete record of all transactions carried out by the Administrator on behalf of the Company and such other books, records and statements as may be required by the Laws, the Articles of the Company and shall permit the Company and its respective employees and agents and the Auditors and so far as required by the laws, the public to inspect such books, records and statements at all reasonable times.

3.3 The Administrator shall have and is hereby granted the authority, power and right for the account and in the name of the Company but subject to the supervision of the Directors and the Laws:-

3.3.1 to enter into, make and perform all contracts, agreements and other undertakings as may in the opinion of the Administrator be necessary or advisable or incidental to the carrying out of the objectives for this Agreement;

3.3.2 to apply to the relevant authorities for, and to obtain from such authorities, all confirmations or consents relating to the taxation status of the Company and all tax rebates and other payments which may be due to the Company from time to time and in connection therewith the Administrator shall have and is hereby granted the authority to disclose to any such relevant authorities such information in its possession regarding the Company or any of its affairs as may be necessary or required;

3.4 Without prejudice to the generality of the foregoing but subject always to Clause 3.8, the duties to be performed by the Administrator during the continuance of its appointment as Administrator in relation to the Company shall include:-

3.4.1 the general administration of the Company and its management as an investment company and receiving and dealing with applications, notices and correspondence on behalf of the Company;

3.4.2 the receipt of applications for the subscription, notices for the redemption and instruments of transfer of Shares and being responsible for the administration of the procedure to be followed for the issue, redemption and transfer of Shares;

3.4.3 the determination of the number of Shares to be issued by the Company as of each Subscription Date as a result of subscriptions received for Shares;

3.4.4 the calculation of the Net Asset Valuation (pursuant to Clause 4);

3.4.5 the calculation of the Subscription Price and the Redemption Price of the Shares at each Subscription and Redemption Date;

3.4.6 the calculation of the fees of the Manager;

3.4.7 keeping and arranging for safe-keeping of the records and accounts of the Company in such manner as will enable the Company to publish yearly the report and accounts of the Company expressed in Dollars;

3.4.8 preparing for the approval of the Directors the annual report and accounts of the Company in Dollars and such other reports, notices and documents as the Company may from time to time require and arranging for the despatch of the same;

3.4.9 the determination of whether or not a person is an Eligible Investor in relation to Shares and whether to invoke the compulsory redemption procedures laid down by the Articles in respect of any person suspected not to be such an Eligible Investor and generally determining whether or not a person should or should not be permitted to hold or continue to hold Shares having regard only to the relative provisions, restrictions and powers contained in the Articles;

3.4.10 the safe-keeping, preparation and forwarding to shareholders, or to the order of such shareholders,in the Company of all certificates, cheques, statements, notices and other documents which the Company is required to issue or serve in connection with the said documents;

3.4.11 instructing the Custodian by telefax within thirty days after the Redemption Date of the total amounts (if any) payable in respect of the redemption of Shares;

3.4.12 the deposit of the monies received in respect of each application for subscription of Shares into a separate subscription account in the name of the Company;

3.4.13 paying out of the subscription account referred to in Clause 3.4.12 introductory commission in accordance with authority granted by the Directors from time to time (but which may not exceed 5% of the aggregate subscription price of the Shares to be subscribed) to the persons who introduce subscribers for Shares;

3.5 The Administrator shall nominate an employee whenever requested to do so by the Directors, to be appointed by the Directors as the Secretary of the Company:-

3.5.1 to carry out on behalf of the Secretary of the Company all the duties and the functions of the Secretary of the Company including without prejudice to the generality of the foregoing:-

(a) the convening of the meetings of Directors in the name of the Secretary of the Company and taking of the minutes thereof; and

(b) the keeping and safe-keeping of the statutory books and records of the Company; and

(c) the delivery of all returns required by the laws of the British Virgin Islands the Laws or to any competent authority in the British Virgin Islands; and

(d) all duties properly to be performed by the Secretary of a company under the laws of the British Virgin Islands the Laws or the Articles of the Company.

3.6 The Administrator shall provide a place for receiving applications for Shares, notices of redemption of Shares, instruments of transfer of Shares, Share Certificates, correspondence relating to the subscription, redemption and transfer of Shares and providing a place where notices may be served on the Company.

3.7 The Administrator shall answer any questions of prospective or existing holders of Shares relating to the subscription, redemption or transfer of Shares.

3.8 The Administrator shall observe and comply with the Articles of the Company, the Laws and with the applicable provisions of any prospectus, explanatory memorandum or other such document relating to the Company distributed from time to time by or on behalf of the Company and all resolutions of the Directors of which it has notice and other lawful orders and directions given to it from time to time by the Directors, and all activities engaged in by the Administrator hereunder shall at all times be subject to the control of and review by the Directors.

3.9 The Administrator shall provide all necessary office facilities, equipment and personnel to enable it to carry out its functions hereunder and shall liaise with the Directors and the Directors of the Manager, as necessary for this purpose.

4. NET ASSET VALUE

4.1 Net Asset Valuations are determined by the Manager or the Administrator, in large part based upon information regarding the value of the Fund's portfolio assets provided by the Investment Advisors, as of the close of business on the last Business Day of each calendar month. The Fund generally seeks to have portfolio securities valued in accordance with the following guidelines.

4.2 Portfolio securities are valued at the last sale price reported on the principal securities exchange or market on which the securities are traded. In the absence of reported sales prices on the valuation date, portfolio positions generally are valued at the last reported bid quotation in the case of securities held long and at the last reported offer quotation in the case of securities sold short. In special circumstances in which the Administrator determines that market prices or quotations do not fairly represent the value of particular assets based on information provided by the applicable Investment Advisor, the Administrator is authorized to assign a value to such assets which differs from the market prices or quotations based on information provided by the applicable Investment Advisor.

4.3 Securities or other assets which are not readily marketable, including, illiquid direct investments of the Fund, generally are valued at the lesser of cost or market price, and may be subject to an additional discount upon the recommendation of the Administrator. If appraisals are available, references can be made to such appraisals. Shares of other investment funds will generally be valued at the Net Asset Value supplied by such funds, less any applicable redemption charges customarily imposed by such funds and less any provision for non-accrued management and performance fees. The value of assets are recorded at their fair value as determined in good faith by the Administrator or the Administrator in the absence of current quotations or if Administrator concludes that such quotations are not indicative of fair value by reason of illiquidity of a particular security or other factors.

4.4 In addition to special valuation calculations relating to illiquid securities, other special situations affecting the measurement of Net Asset Values may arise from time to time. Prospective investors should be aware that situations involving uncertainties as to the valuation of portfolio positions could have an adverse effect on the Fund's net assets if judgments regarding appropriate valuations made by the Administrator should prove incorrect. In the absence of bad faith or manifest error, the Net Asset Value calculations made by the Administrator are conclusive and binding on all shareholders.

4.5 There will be deducted from the total value of the Fund's assets all accrued debts and liabilities, including (i) fees of the Investment Advisors, the Manager, the Consultant and the Administrator earned or accrued but not yet paid, (ii) a provision for the annual performance fees of the Manager and the Investment Advisors measured as of the valuation date, (iii) monthly amortization of organization costs, (iv) an allowance for the Fund's estimated annual audit and legal fees, and (v) any contingencies for which reserves are determined to be required. Net Asset Valuations will be expressed in U.S. Dollars, and any items denominated in other currencies will be translated at prevailing exchange rates as determined by the Administrator.

5. CONTINUATION AND EXERCISE OF ADMINISTRATOR'S POWERS

5.1 The authorities herein contained are continuing ones and shall remain in full force and effect until revoked by termination of this Agreement as hereinafter provided, but such revocation shall not affect any liability in any way resulting from transactions initiated prior to such revocation.

5.2 The Administrator will at all times exercise and perform the powers, rights and duties (or any of them) conferred upon it by this Agreement, any supplemental agreement, or otherwise by the Directors within Bermuda (or such other place or places as the Directors may from time to time approve) and in particular (but without prejudice to the generality of the foregoing) will hold all meetings at which such powers, rights and duties (or any of them) are exercised or performed within Bermuda or any such other place or places as aforesaid and any decision taken or directions given by the Administrator will be taken and be given within Bermuda or such other place or places as

aforesaid. The Administrator will not carry on in relation to the Company any business outside Bermuda (other than in any place or places as the Directors may from time to time approve for such purpose, such approval not to be unreasonably withheld) if by so doing the Administrator would cause the Company to become liable to pay any taxes which it would not otherwise be liable to pay.

6. FEES OF THE ADMINISTRATOR

6.1 In consideration of the services to be undertaken by the Administrator hereunder (including the provision of an employee to act as the Secretary of the Company under Clause 3.5) the Administrator shall be entitled to receive from the Company an Administration Fee payable monthly in arrears calculated on the basis of the amount of time spent in fulfilling its obligations under this Agreement at its hourly charge-out rate during each month subject to any separate agreement made between the Company and the Administrator as to a fixed annual fee.

6.2 If this Agreement shall terminate otherwise than on a monthly Redemption Date the Administrator shall be entitled to receive on the next Redemption Date an Administration Fee for services rendered until the date of termination.

6.3 In the event of any dispute arising as to the amount of the Administrator's fees hereunder, the same shall be referred to the Auditors for settlement, who shall be entitled to make such further or other adjustments as may in the circumstances appear to them to be appropriate and whose decision shall be regarded as the decision of an expert and not of an arbitrator and shall be binding and final upon the parties hereto.

7. EXPENSES

7.1 Subject to Clause 7.2, the Administrator shall pay the expenses incurred by it in connection with the performance of its services hereunder unless the Manager otherwise agrees in any particular case.

7.2 The Company shall pay itself, or if paid by the Administrator, will reimburse the Administrator in respect of all out-of-pocket expenses incurred by it in the performance of its duties including (without limitation):-

7.2.1 all expenses of every nature of or incidental to deposits of cash made on behalf of the Company;

7.2.2 all taxes and corporate fees payable by the Company to any Government or other authority or to any agency of such Government or authority whether in the British Virgin Islands or elsewhere;

7.2.3 all fees and expenses incurred in relation to the incorporation and initial organisation of the Company.

7.2.4 all audit fees of the Company and legal expenses in connection with the Company's corporate existence, corporate and financial structure and all other professional and other charges in respect of services rendered at the request of the Directors of the Company;

7.2.5 all expenses of and incidental to convening and holding Shareholders' and Directors' meetings of the Company;

7.2.6 the cost of minute books and other documentation required by the Laws;

7.2.7 all charges for postage, telephone, telex, telecopying, faxing and cable incurred by the Administrator in the proper performance of its duties hereunder.

8. SERVICES OF THE ADMINISTRATOR NOT TO BE EXCLUSIVE

The services of the Administrator to the Company hereunder are not to be deemed exclusive and the Administrator shall be free to render similar services to others so long as its services hereunder are not impaired thereby and to retain for its own use and benefit all fees or other monies payable thereby and the Administrator shall not be deemed to be affected with notice of or to be under any duty to disclose to the Company any fact or thing which comes to the notice of the Administrator or any servant or agent of the Administrator in the course of the Administrator rendering similar services to others or in the course of its business in any other capacity or in any manner whatsoever otherwise than in the course of carrying out its duties hereunder.

9. INTERESTS IN THE ADMINISTRATOR OR THE COMPANY

9.1 It is understood that directors, officers, agents and shareholders of the Company and the Manager are or may be interested in the Administrator as directors, officers or shareholders or otherwise, that directors, officers, shareholders and any client of the Administrator are or may be

11.5 The Manager hereby undertakes to hold harmless and indemnify the Company or the Administrator against all actions proceedings claims costs demands and expenses which may be brought against suffered or incurred by the Company or the Administrator by reason of their performance or non-performance of their duties under the terms of this Agreement (other than due to negligence, willful default, fraud or dishonesty on the part of the Company or the Administrator or persons designated by them) including all legal professional and other expenses incurred by the Company or the Administrator or persons designated by them in the performance of their obligations or duties and including indemnity obligations owed by the Company or the Administrator to persons designated by them (except such as shall arise from negligence, willful default, fraud or dishonest in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to or any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature, but not tax on the overall income or profits of the Company or the Administrator.

11.6 Notwithstanding any other provision of this Agreement, the Administrator shall not be liable to the Company, any holder of Shares or otherwise for any taxation assessed upon or payable by the Company wheresoever the same may be assessed or imposed and whether directly or indirectly except for such taxation or shall be attributable to negligence, willful default, fraud or dishonesty in the performance or non-performance by the Administrator of its obligations or duties. The Company shall indemnify and keep indemnified the Administrator from and against all taxes not attributable to negligence, willful default, fraud or dishonesty as aforesaid (wheresoever and by whomsoever imposed) on profits or gains of the Company which may be assessed upon or become payable by the Administrator and against all costs claims demands actions and proceedings in connection therewith.

11.7 For the avoidance of doubt it is hereby agreed and declared that reference to the Administrator in this Clause shall be deemed to include references to the officers and servants of the Administrator.

11.8 Any indemnity expressly given to the Company or the Manager or the Administrator in this Agreement is in addition to and without prejudice to any indemnity provided by the Laws.

12. LEGAL ACTION BY THE ADMINISTRATOR

The Administrator shall not be required to take any legal action unless fully indemnified to its reasonable satisfaction for all costs and liabilities that may be incurred or suffered by the Administrator and not attributable to its negligence, willful default, fraud or dishonesty in the performance or non-performance of its obligations or duties and if the Company requires the Administrator to take any action of whatsoever nature which in the reasonable opinion of the Administrator might make the Administrator liable for the payment of money or liable in any other way the Administrator shall be and be kept indemnified in any reasonable amount and form satisfactory to the Administrator as a prerequisite to taking action.

13. RESIGNATION AND TERMINATION

13.1 The Administrator shall be entitled to resign its appointment hereunder:-

13.1.1 by giving no less than three months' notice in writing to the Manager to expire at any time;

13.1.2 at any time if the Company shall go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Administrator) or be unable to pay its debts or commit any act of bankruptcy under the laws of the British West Indies or if a receiver is appointed of any of the assets of the Company or if some event having an equivalent effect occurs;

13.1.3 at any time if the Company shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Administrator requiring it so to do to make good such breach;

13.1.4 at any time if the present Manager shall cease to be the Manager of the Company for any reason.

13.2 The appointment of the Administrator may be terminated as hereunder:-

13.2.1 The Manager may terminate the appointment of the Administrator as Administrator of the Company by giving not less than three months' notice in writing to the administrator to expire at any time.

13.2.2 The Manager may terminate the appointment of the Administrator at any time by giving notice in writing to the Administrator in any of the following events:-

13.2.2.1 If the Administrator goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Company) or is unable to pay its debts or commits any act of bankruptcy under the laws of Bermuda or if a receiver is appointed of any of the assets of the Administrator or if some event having an equivalent effect occurs;

13.2.2.2 If the Administrator shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Company requiring it so to do to make good such breach;

13.2.2.3 If the Administrator ceases to be permitted to act as such under the Laws.

13.3 The appointment of the Administrator shall automatically terminate forthwith if the Administrator shall become or be deemed to become resident for tax purposes or carry on business within the United States or the United Kingdom or shall carry on any business elsewhere outside Bermuda and Cayman Islands (other than in any place or places as may from time to time be approved by the Directors for such purpose, such approval not to be unreasonably withheld) in circumstances which cause the Company to become liable to pay any taxes which it would not otherwise be liable to pay.

13.4 On termination of the appointment of the Administrator under the provisions of this Clause the Administrator shall be entitled to receive the fees referred to in Clause 6.2 but shall not be entitled to compensation in respect of such termination; and the Administrator shall deliver or procure to be delivered to the Company, or as it shall direct, all books of accounts, records, other registered correspondence, documents and assets relating to the affairs of or belonging to the Company in the possession of or under the control of the Administrator and shall take all necessary steps to vest in the Company or any new Administrator any assets previously held in the name of or to the order of the Administrator on behalf of the Company and shall not be entitled to any lien in respect of any of the foregoing.

14. CONFIDENTIALITY AND REPUTATION

14.1 None of the parties hereto shall (except under compulsion of law or in accordance with the Laws) either before or after the termination of this Agreement disclose to any person not authorised by the relevant party to receive the same any confidential information relating to any other party or to the affairs of such party of which the party disclosing the same shall have become possessed during the period of this Agreement and each party shall use all reasonable endeavours to prevent any such disclosure as aforesaid.

14.2 No party shall do or suffer any act or matter or thing which would or might prejudice or bring into disrepute the business or reputation of any other party.

15. MISCELLANEOUS PROVISIONS

15.1 No failure on the part of any party to exercise, and no delay on the part of any party in exercising, any right or remedy under this Agreement will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

15.2 Any provision of this Agreement may be amended only if the parties so agree in writing.

15.3 The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction or the legality, validity or enforceability of any other provision.

15.4 The Company shall not use the Administrator's name in any document or other publicity material without the prior consent of the Administrator (such consent not to be unreasonably withheld or delayed) which consent may be given generally in respect of agreed wording to be included in an agreed list of documents.

15.5 Except to the extent that the Laws admit variations by contract and are so varied by the terms of this Agreement, the powers, duties, rights and obligations of the parties under this Agreement shall be overridden by, and to the extent that they may conflict, be subject to, the Laws.

15.6 The Administrator will not cause or take any action as a consequence of which, the Company or the Manager will become the subject of United States or United Kingdom taxation.

16. NOTICES

Any notice given hereunder shall be in writing and shall be served by hand at or by being sent by prepaid airmail post to the registered office for the time being of the addressee and any such notice shall if so posted be deemed to be served seven days after posting. Evidence that the notice was properly addressed stamped and put into the post shall be conclusive evidence of posting.

17. LAW OF THE CONTRACT

17.1 This Agreement shall be governed by and construed in accordance with the Laws of Bermuda.

17.2 The Company, the Manager and the Administrator hereby irrevocably submits to the non-exclusive jurisdiction of the courts of Bermuda for the settlement of any dispute or difference arising between the parties hereto.

17.3 The Manager hereby irrevocably appoints the Administrator as its authorised agent to accept and acknowledge on its behalf service of any and all notices which may be served at any time by any person (other than the Administrator) on the Company.

IN WITNESS WHEREOF this Agreement has been entered into the day and year first above written.

SIGNED by KEITH R. BISH)
)
for and on behalf of)
)
KINGATE GLOBAL FUND, LTD.)
)
)
in the presence of:)

SIGNED by)
)
for and on behalf of)
)
KINGATE MANAGEMENT LIMITED)
)
)
in the presence of:-)

SIGNED by)
)
for and on behalf of)
)
HEMISPHERE MANAGEMENT LIMITED)
)
in the presence of:-)

DATED 1994

KINGATE GLOBAL FUND, LTD.

- AND -

KINGATE MANAGEMENT LIMITED

- AND -

HEMISPHERE MANAGEMENT LIMITED

ADMINISTRATION AGREEMENT

FIRST AMENDMENT TO THE KINGATE GLOBAL FUND, LTD. ADMINISTRATION AGREEMENT

FIRST AMENDMENT (the "First Amendment"), dated as of March 1, 1995, to the Administration Agreement of Kingate Global Fund, Ltd. (the "Fund") dated as of November 1994 (the "Administration Agreement") by and between the Fund, Kingate Management Limited (the "Manager") and Hemisphere Management Limited (the "Administrator").

W I T N E S S E T H :

WHEREAS, the Fund, pursuant to an Information Memorandum dated as of November 1994, offered common shares of the Fund (the "Common Shares") and simultaneously executed the Administration Agreement; and

WHEREAS, as of March 1, 1995, the directors and members of the Fund approved a recapitalization of the Fund (the "Recapitalization") which involved a redesignation of the Common Shares as Class A Shares ("Class A Shares") and an issuance of a new class of common shares, Class B Shares ("Class B Shares"); and

WHEREAS, in order to effect the Recapitalization, the Fund, pursuant to a Supplement to the Information Memorandum dated as of March 1, 1995, redesignated the Common Shares as Class A Shares (the "Class A Shares Supplement"); and

WHEREAS, in order to further effect the Recapitalization, the Fund, pursuant to an Information Memorandum dated as of March 1, 1995, offered the new Class B Shares (the "Class B Shares Information Memorandum"); and

WHEREAS, in order to effect the provisions of the Class A Shares Supplement, the Fund wishes to amend the Administration Agreement by executing this First Amendment.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

1. Definitions

Unless otherwise defined herein, terms defined in the Administration Agreement hereby shall have such defined meanings when used herein.

2. Amendment

(i) Section 1.1 of the Administration Agreement is hereby amended by deleting the definition of "Shares" and adding the following new definition:

> "Shares" means the Class A Common Shares (the "Class A Shares") which were initially offered as Common Shares pursuant to the Fund's Information Memorandum dated as of November 1994 and redesignated as Class A Shares pursuant to the Fund's Class A Shares Supplement to the Information Memorandum dated as of March 1, 1995 and Class B Common Shares (the "Class B Shares"), which were offered pursuant to a separate Information Memorandum dated March 1, 1995. All references in this Agreement refer to Class A and B Shares. The Administration Fee and costs directly attributable to a particular class of shares will be attributed to that class. The Administration Fee and costs not directly attributable to a particular class of shares will be attributed to both classes of shares based upon the pro rata value of the issued and outstanding shares.

3. Effective Date

This First Amendment shall be effective as of the date first written above. Except as expressly set forth herein, all of the terms and conditions of the Administration Agreement shall remain unchanged and shall continue in full force and effect and are hereby ratified and confirmed.

4. Counterparts

This First Amendment may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

5. Governing Law

This First Amendment and the underlying Agreement shall hereafter be governed by and construed in accordance with the substantive laws of the Bermuda applicable to contracts made and entirely performed therein, without regard to principles of conflicts of law.

Attorney Eyes Only

IN WITNESS WHEREOF, the parties hereto have signed this First Amendment to be duly executed and delivered as of the date and year first written above.

KINGATE GLOBAL FUND, LTD.

By: _____
Name: Christopher Wetherhill
Title: Director

KINGATE MANAGEMENT LIMITED
(the "Manager")

By: _____
Name: Margaret Emery
Title: Director

HEMISPHERE MANAGEMENT LIMITED
(the "Administrator")

By: _____
Name: M. Reape
Title: Director

IN WITNESS WHEREOF, the parties hereto have signed this First Amendment to be duly executed and delivered as of the date and year first written above.

KINGATE GLOBAL FUND, LTD.

By: _____
Name: Christopher Wellbrock
Title: Director

KINGATE MANAGEMENT LIMITED
(the "Manager")

By: _____
Name:
Title:

HEMISPHERE MANAGEMENT LIMITED
(the "Administrator")

By: _____
Name:
Title:

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EXHIBIT N

KINGATE GLOBAL FUND, LTD.

- AND -

KINGATE MANAGEMENT LIMITED

- AND -

HEMISPHERE MANAGEMENT LIMITED

RESTATED AND AMENDED ADMINISTRATION AGREEMENT
Dated May 1, 2000

[613588-2]

RESTATED AND AMENDED ADMINISTRATION AGREEMENT
(Kingate Global Fund, Ltd.)

THIS AGREEMENT is made as of May 1st, 2000

AMONG :

(1) **KINGATE GLOBAL FUND, LTD.,** a company incorporated under the laws of the British Virgin Islands whose registered office is at Bison Court, P.O. Box 3460, Road Town, Tortola, BVI (the "Company"); and

(2) **KINGATE MANAGEMENT LIMITED,** a company incorporated under the laws of Bermuda whose principal office is at 99 Front Street, Hamilton HM 11, Bermuda (the "Co-Manager").

(3) **HEMISPHERE MANAGEMENT LIMITED,** a company incorporated under the laws of Bermuda whose principal office is at Hemisphere House, 9 Church Street, Hamilton HM 11, Bermuda (the "Administrator") of the third part.

WHEREBY IT IS AGREED AND DECLARED as follows :-

1. INTERPRETATION

1.1 In this Agreement the following words and expressions shall, where not inconsistent with the context, have the following meanings respectively:-

"Administration Fee" means the fee payable to the Administrator calculated in accordance with Clause 6.1 or as otherwise agreed by the parties, in writing;

"Articles" means the Memorandum and Articles of Association for the time being of the Company, as amended and restated from time to time; any reference herein to an Article shall be taken to refer to the appropriate article unless otherwise specified;

"Auditors" means PricewaterhouseCoopers or any other auditor appointed as such by the Directors;

"Business Day" means any day on which the central banking systems of the U.S. and Bermuda are open and operating;

"Confidential Information" has the meaning ascribed to it Clause 14.4;

"Connected Person" of a company means and includes (a) any person or company beneficially owning, directly or indirectly, 20 per cent or more of the issued ordinary share capital of that company or able to exercise, directly or indirectly 20 per cent or more of the total votes in that company; (b) any person or company controlled by a person who or company which meets one or both of the descriptions given in (a); (c) any company 20 per cent or more of whose issued ordinary share capital is beneficially owned, directly or indirectly by that company and any Connected Person of that company (as defined in (a), (b) or (d) of this definition) taken together or any company 20 per cent or more of the total votes in which can be exercised, directly or indirectly, by that company and any such Connected Person thereof (as defined in (a), (b) or (d) of this definition taken together; (d) any employee, director or officer of that company or of any Connected Person of that company (as defined in (a), (b) or (c) of this definition); (e) any spouse, minor

child or step-child of the persons referred to in (a), (b) and (d); and (f) any trustee of a trust, the beneficiaries of which are persons falling into (a), (b), (d) and (e);

"Consultant" refers to the consultant retained by the Co-Manager to provide advice to the Co-Manager on such aspects of the Company's operational, administrative, accounting, legal, and marketing matters as may be required by the Co-Manager and the Company;

"Custodian" means the body corporate acting in the capacity of custodian, if any, of the Investments for the time being;

"Directors" means the Directors of the Company from time to time, such Directors as of the date of execution of this Agreement are Charles D. Sebah, Christopher Wetherhill and Keith R. Bish;

"Dollars ($)" means U.S. dollars;

"Eligible Investor" means a person who is entitled to own Shares under the Articles;

"Investments" means all the assets and rights from time to time of the Company held in accordance with the Articles or the Memorandum;

"Laws" means the laws of the Bermuda and any other applicable laws and regulations for the time being in force, as the context requires;

"Management Agreement" means the co-management agreement for the time being subsisting to which the Company, the Co-Manager and Tremont (Bermuda) Limited are parties and relating to the appointment and the duties of the Co-Manager;

"Memorandum" refers to the Company's Information Memorandum dated May 1, 2000, and includes any supplement, amendment and restatement thereof;

"Net Asset Value" means the net asset value of all the Shares calculated in accordance with Clause 4, as of the close of business on the last Business Day of each calendar month, and in a manner consistent with the Memorandum;

"Redemption Date" means the last Business Day of each calendar month;

"Secretary of the Company" means the person from time to time nominated by the Administrator and appointed by the Directors to act as the Secretary of the Company pursuant to Clause 3.7 of this Administration Agreement;

"Shares" means the Common Shares issued by the Company;

"Subscription Date" means the first Business Day of the month;

1.2 Any reference to the Company, the Co-Manager, Consultant or the Custodian includes a reference to its or their duly authorised agents or delegates.

1.3 References to Clauses are to Clauses of this Agreement.

1.4 The headings to the Clauses of this Agreement are for convenience only and shall not affect the construction or interpretation thereof.

1.5 Unless the context otherwise requires, words and expressions contained in this Agreement relating to the Company shall bear the same meaning as in the Articles of the Company PROVIDED THAT any alteration or amendment of either the Company's Articles shall not be effective for the purposes of this Agreement unless the

party hereto affected (to the extent that its rights or duties hereunder are affected by such alteration or amendment) shall, by endorsement hereon or otherwise, have consented thereto.

2. APPOINTMENT OF THE ADMINISTRATOR

The Co-Manager HEREBY APPOINTS the Administrator and the Administrator shall act with effect from the date hereof as Administrator of the Company upon the terms hereinafter contained and in accordance with the Laws and the Articles of the Company until its appointment shall be terminated as hereinafter provided and the Administrator hereby accepts such appointment and agrees to assume the obligations to the Company and the Co-Manager set forth herein.

3. FUNCTIONS, POWERS AND OBLIGATIONS OF THE ADMINISTRATOR

3.1 During the continuance of its appointment as Administrator of the Company, the Administrator shall (subject to the overall policy and supervision of the Directors and subject to Clause 3.8) have full power, authority and right to carry on the general administration of the Company.

3.2 The Administrator shall keep or cause to be kept on behalf of the Company at the Administrator's premises in Bermuda such books, records and statements as may be necessary to give a complete record of all transactions carried out by the Administrator on behalf of the Company and such other books, records and statements as may be required by the Laws, the Articles of the Company and shall permit the Company and its respective employees and agents and the Auditors and so far as required by the laws, the public to inspect such books, records and statements at all reasonable times.

3.3 The Administrator shall have and is hereby granted the authority, power and right for the account and in the name of the Company but subject to the supervision of the Directors and the Laws:-

3.3.1 to enter into, make and perform all contracts, agreements and other undertakings as may in the opinion of the Administrator be necessary or advisable or incidental to the carrying out of the objectives for this Agreement;

3.3.2 to apply to the relevant authorities for, and to obtain from such authorities, all confirmations or consents relating to the taxation status of the Company and all tax rebates and other payments which may be due to the Company from time to time and in connection therewith the Administrator shall have and is hereby granted the authority to disclose to any such relevant authorities such information in its possession regarding the Company or any of its affairs as may be necessary or required;

3.4 Without prejudice to the generality of the foregoing but subject always to Clause 3.8, the duties to be performed by the Administrator during the continuance of its appointment as Administrator in relation to the Company shall include:-

3.4.1 the general administration of the Company and its management as an investment company and receiving and dealing with applications, notices and correspondence on behalf of the Company;

3.4.2 the receipt of applications for the subscription, notices for the redemption and instruments of transfer of Shares and being responsible for the administration of the procedure to be followed for the issue, redemption and transfer of Shares;

3.4.3 the determination of the number of Shares to be issued by the Company as of each Subscription Date as a result of subscriptions received for Shares;

Attorney Eyes Only

3.4.4 the calculation of the Net Asset Valuation (pursuant to Clause 4) and the Memorandum and co-ordinating with Consultants and agents of the Company and with the Co-Manager with regard to is currency hedging activities and obtaining price quotes in a manner consistent with the Memorandum;

3.4.5 the calculation of the Subscription Price and the Redemption Price of the Shares at each Subscription and Redemption Date;

3.4.6 the calculation of the fees of the Co-Manager;

3.4.7 keeping and arranging for safe-keeping of the records and accounts of the Company in such manner as will enable the Company to publish yearly the report and accounts of the Company expressed in U. S. dollars;

3.4.8 preparing for the approval of the Directors the annual report and accounts of the Company in U. S. dollars and such other reports, notices and documents as the Company may from time to time require and arranging for the despatch of the same;

3.4.9 the determination of whether or not a person is an Eligible Investor in relation to Shares and whether to invoke the compulsory redemption procedures laid down by the Articles in respect of any person suspected not to be such an Eligible Investor, determining that the subscriber is not in violation of the applicable anti-money laundering laws, and generally determining whether or not a person should or should not be permitted to hold or continue to hold Shares having regard only to the relative provisions, restrictions and powers contained in the Articles;

3.4.10 the safe-keeping, preparation and forwarding to shareholders, or to the order of such shareholders, in the Company of all certificates, cheques, statements, notices and other documents which the Company is required to issue or serve in connection with the said documents;

3.4.11 instructing the Custodian by telefax within thirty days after the Redemption Date of the total amounts (if any) payable in respect of the redemption of Shares;

3.4.12 the deposit of the monies received in respect of each application for subscription of Shares into a separate subscription account in the name of the Company;

3.4.13 paying out of the subscription account referred to in Clause 3.4.12 introductory commissions in accordance with authority granted by the Directors from time to time (but which may not exceed 5% of the aggregate subscription price of the Shares to be subscribed) to the persons who introduce subscribers for Shares as determined by the Directors and collecting exit or redemption fees as the case may be;

3.5 The Administrator shall nominate an employee whenever requested to do so by the Directors, to be appointed by the Directors as the Secretary of the Company;

3.5.1 The Administrator shall carry out on behalf of the Secretary of the Company all the duties and the functions of the Secretary of the Company including without limiting the general nature of the foregoing:-

(a) the convening of the meetings of Directors in the name of the Secretary of the Company and taking of the minutes thereof; and

(b) the keeping and safe-keeping of the statutory books and records of the Company; and

(c) the delivery of all returns required by the laws of the British Virgin Islands the Laws or to any competent authority in the British Virgin Islands; and

(d) all duties properly to be performed by the Secretary of a company under the laws of the British Virgin Islands the Laws or the Articles of the Company.

3.6 The Administrator shall provide a place for receiving applications for Shares, notices of redemption of Shares, instruments of transfer of Shares, Share Certificates, correspondence relating to the subscription, redemption and transfer of Shares and providing a place where notices may be served on the Company.

3.7 The Administrator shall answer any questions of prospective or existing holders of Shares relating to the subscription, redemption or transfer of Shares.

3.8 The Administrator shall observe and comply with the Articles of the Company, the Laws and with the applicable provisions of the Memorandum or other such document relating to the Company distributed from time to time by or on behalf of the Company, all resolutions of the Directors of which it has notice and other lawful orders and directions given to it from time to time by the Directors and all anti-money laundering provisions of law as are applicable from time to time. All activities engaged in by the Administrator hereunder shall at all times be subject to the control of and review by the Directors and agents appointed by the board for this purpose.

3.9 The Administrator shall provide all necessary office facilities, equipment and personnel to enable it to carry out its functions hereunder and shall liaise with the Directors and the Directors of the Co-Manager, and others, as necessary for this purpose.

4. NET ASSET VALUE

4.1 The Net Asset Value of the Company and of each Share shall be calculated and computed in accordance with the Memorandum, as the same shall exist from time to time. An accurate copy of the definition of Net Asset Value as set forth in the Memorandum is attached hereto as an exhibit.

4.2 In the absence of bad faith or manifest error, the Net Asset Value calculations made by the Administrator shall be conclusive and binding on all shareholders.

5. CONTINUATION AND EXERCISE OF ADMINISTRATOR'S POWERS

5.1 The authorities herein contained are continuing ones and shall remain in full force and effect until revoked by termination of this Agreement as hereinafter provided, but such revocation shall not affect any liability in any way resulting from transactions initiated prior to such revocation.

5.2 The Administrator will at all times exercise and perform the powers, rights and duties (or any of them) conferred upon it by this Agreement, any supplemental agreement, or otherwise by the Directors within Bermuda (or such other place or places as the Directors may from time to time approve) and in particular (but without prejudice to the generality of the foregoing) will hold all meetings at which such powers, rights and duties (or any of them) are exercised or performed within Bermuda or any such other place or places as aforesaid and any decision taken or directions given by the Administrator will be taken and be given within Bermuda or such other place or places as aforesaid. The Administrator will not carry on in relation to the Company any business outside Bermuda (other than in any place or places as the Directors may from time to time approve for such purpose, such approval not to be unreasonably withheld) if by so doing the Administrator would cause the Company to become liable to pay any taxes which it would not otherwise be liable to pay.

5.3 The Administrator shall at all times make all reasonable efforts to ensure that, through maintenance of appropriate back-up records offsite in a secure location, readily accessible to the Administrator, the period of time during which the Administrator is unable to carry out its duties in accordance with this agreement shall be brought to an end as soon as reasonably possible.

5.4 All records relating to the Company shall be maintained by the Administrator for at least five (5) years and upon reasonable notice the Company shall have access to them, during reasonable business hours. Access shall include access to duly authorised representatives of the Company, as the case may be.

6. FEES OF THE ADMINISTRATOR

6.1 In consideration of the services to be undertaken by the Administrator hereunder (including the provision of an employee to act as the Secretary of the Company under Clause 3.5) the Administrator shall be entitled to receive from the Company a fee of $12,500 per month. The said fee shall be payable monthly in advance. The Company shall also pay (a) a one time set-up fee to the Administrator of $5,000 payable on May 1, 2000 and (b) a per transaction fee of $130 per transaction for every subscription for and redemption of Shares. These fees shall be reviewed by the Company, the Co-Manager and the Administrator on December 1, 2000 and annually thereafter.

6.2 If this Agreement shall terminate otherwise than on a monthly Redemption Date the Administrator shall be entitled to receive on the next Redemption Date an Administration Fee for services rendered until the date of termination.

6.3 In the event of any dispute arising as to the amount of the Administrator's fees hereunder, the same shall be referred to the Auditors for settlement, who shall be entitled to make such further or other adjustments as may in the circumstances appear to them to be appropriate and whose decision shall be regarded as the decision of an expert and not of an arbitrator and shall be binding and final upon the parties hereto.

7. EXPENSES

7.1 Subject to Clause 7.2, the Administrator shall pay the expenses incurred by it in connection with the performance of its services hereunder unless the Co-Manager otherwise agrees in any particular case.

7.2 The Company shall pay itself, or if paid by the Administrator, will reimburse the Administrator in respect of all out-of-pocket expenses incurred by it in the performance of its duties including (without limitation):

7.2.1 all expenses of every nature of or incidental to deposits of cash made on behalf of the Company;

7.2.2 all taxes and corporate fees payable by the Company to any Government or other authority or to any agency of such Government or authority whether in the British Virgin Islands or elsewhere;

7.2.3 all fees and expenses incurred in relation to the incorporation and initial organisation of the Company.

7.2.4 all audit fees of the Company and legal expenses in connection with the Company's corporate existence, corporate and financial structure and all other professional and other charges in respect of services rendered at the request of the Directors of the Company;

7.2.5 all expenses of and incidental to convening and holding Shareholders' and Directors' meetings of the Company;

7.2.6 the cost of minute books and other documentation required by the Laws;

7.2.7 all charges for postage, telephone, telex, telecopying, faxing and cable incurred by the Administrator in the proper performance of its duties hereunder.

8. SERVICES OF THE ADMINISTRATOR NOT TO BE EXCLUSIVE

The services of the Administrator to the Company hereunder are not to be deemed exclusive and the Administrator shall be free to render similar services to others so long as its services hereunder are not impaired thereby and to retain for its own use and benefit all fees or other monies payable thereby and the Administrator shall not be deemed to be affected with notice of or to be under any duty to disclose to the Company any fact or thing which comes to the notice of the Administrator or any servant or agent of the Administrator in the course of the Administrator rendering similar services to others or in the course of its business in any other capacity or in any manner whatsoever otherwise than in the course of carrying out its duties hereunder.

9. INTERESTS IN THE ADMINISTRATOR OR THE COMPANY

9.1 It is understood that directors, officers, agents and shareholders of the Company and the Co-Manager are or may be interested in the Administrator as directors, officers or shareholders or otherwise, that directors, officers, shareholders and any client of the Administrator are or may be interested in the Company as directors, officers, shareholders or otherwise and that the Administrator is or may be interested in the Company as shareholder or otherwise and it is hereby acknowledged that no person so interested shall be liable to account for any benefit to any other party by reason solely of such interest.

9.2 The Administrator or any client of the Administrator or any Connected Person of the Administrator or any holding company of the Administrator or any subsidiary of such holding company ("the interested party") may hold, acquire or dispose of any investments upon its own account notwithstanding that the same or similar investments may be held by or for the account of or otherwise connected with the Company and it is hereby acknowledged that no such interested party shall be liable to account for any benefit to any other party by reason solely of such interest.

9.3 Any transaction between the Administrator or Connected Person (directly or indirectly), on the one hand, and the Company on the other shall not be effective without the prior written consent of the Directors as to that particular transaction after a full and fair disclosure of all of the facts and circumstances surrounding such transaction.

10. DELEGATION AND ASSIGNMENT

10.1 The Administrator shall have full power to delegate the whole or any part of its functions hereunder to any person firm or company subject to the prior written approval of the Directors. The Administrator shall (unless the Directors shall otherwise agree in any particular case) exercise its power of delegation only on terms which include a provision binding on such delegate in terms similar in all respects to this Agreement. The Administrator in such cases shall remain responsible for the acts of the delegate.

10.2 Neither the responsibilities nor liabilities under this Agreement can be assigned by the Administrator without the approval of the Board of Directors.

11. LIABILITY AND INDEMNITY

11.1 The Administrator shall not be liable to the Company, or any holder of Shares or otherwise for any error of judgement or for any loss suffered by the Company or any such holder of Shares in connection with the subject matter of this Agreement howsoever any such loss may have occurred unless such loss arises from negligence, wilful default, fraud or dishonesty, in the performance or non-performance by the Administrator of its obligations or duties.

11.2 The Administrator shall not be liable to the Co-Manager or any shareholder of the Co-Manager or otherwise for any loss suffered by the Co-Manager or shareholder of the Co-Manager in connection with the subject matter of this Agreement howsoever any such loss may have occurred unless such loss arises from negligence, wilful default, fraud or dishonesty, in the performance or non-performance by the Administrator of its obligations or duties.

11.3 The Company hereby undertakes to hold harmless and indemnify the Co-Manager and the Administrator against all actions proceedings claims costs demands and expenses (including legal fees and costs) which may be brought against suffered or incurred by the Co-Manager and/or the Administrator by reason of their performance or non-performance of their duties to the Company under the terms of this Agreement including all legal professional and other expenses incurred by the Co-Manager and/or the Administrator (except such as shall arise from negligence, wilful default, fraud or dishonesty in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature but not tax on the overall income or profits of the Co-Manager or the Administrator.

11.4 The Administrator hereby undertakes to hold harmless and indemnify the Company and the Co-Manager against all actions proceedings claims costs demands and expenses (including all legal professional and other expenses but not tax on the overall income or profits of the Company or the Co-Manager) which may be brought against suffered or incurred by the Company or the Co-Manager as a direct result of negligence, wilful default, fraud or dishonesty in carrying out their duties under this agreement on the part of the Administrator its directors, officers, employees or delegates.

11.4.1 For the avoidance of doubt this indemnity shall extend to any loss suffered by the Company or the Co-Manager resulting from delay misdelivery or error in transmission of any telexed or telefaxed communication by the Administrator by reason of negligence, wilful default, fraud or dishonesty on the part of the Administrator or as a result of the Administrator acting upon any forged document or signature (other than where the Administrator reasonably believed the relevant forged document or signature to be authentic).

11.5 The Co-Manager hereby undertakes to hold harmless and indemnify the Company or the Administrator against all actions proceedings claims costs demands and expenses which may be brought against suffered or incurred by the Company or the Administrator by reason of their performance or non-performance of their duties under the terms of this Agreement (other than due to negligence, wilful default, fraud or dishonesty on the part of the Company or the Administrator or persons designated by them) including all legal professional and other expenses incurred by the Company or the Administrator or persons designated by them in the performance of their obligations or duties and including indemnity obligations owed by the Company or the Administrator to persons designated by them (except such as shall arise from negligence, wilful default, fraud or dishonest in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to or any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature, but not tax on the overall income or profits of the Company or the Administrator.

11.6 Notwithstanding any other provision of this Agreement, the Administrator shall not be liable to the Company, any holder of Shares or otherwise for any taxation assessed upon or payable by the Company wheresoever the same may be assessed or imposed and whether directly or indirectly except for such taxation or shall be attributable to negligence, wilful default, fraud or dishonesty in the performance or non-performance by the Administrator of its obligations or duties.

11.7 For the avoidance of doubt it is hereby agreed and declared that reference to the Administrator in this Clause shall be deemed to include references to the officers and servants of the Administrator.

12. LEGAL ACTION BY THE ADMINISTRATOR

The Administrator shall not be required to take any legal action unless fully indemnified to its reasonable satisfaction for all costs and liabilities that may be incurred or suffered by the Administrator and not attributable to its negligence, wilful default, fraud or dishonesty in the performance or non-performance of its obligations or duties and if the Company requires the Administrator to take any action of whatsoever nature which in the reasonable opinion of the Administrator might make the Administrator liable for the payment of money or liable in any other way the

Administrator shall be and be kept indemnified in any reasonable amount and form satisfactory to the Administrator as a prerequisite to taking action.

13. RESIGNATION AND TERMINATION

13.1 The Administrator shall be entitled to resign its appointment hereunder:-

3.1.1 by giving no less than three months' notice in writing to the Co-Manager to expire at any time;

13.1.2 at any time if the Company shall go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Administrator) or be unable to pay its debts or commit any act of bankruptcy under the laws of the British West Indies or if a receiver is appointed of any of the assets of the Company or if some event having an equivalent effect occurs;

13.1.3 at any time if the Company shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Administrator requiring it so to do to make good such breach;

3.1.4 at any time if the present Co-Manager shall cease to be the Co-Manager of the Company for any reason.

13.2 The appointment of the Administrator may be terminated as hereunder:-

13.2.1 The Co-Manager may terminate the appointment of the Administrator as Administrator of the Company by giving not less than three months' notice in writing to the administrator to expire at any time.

13.2.2 The Co-Manager may terminate the appointment of the Administrator at any time by giving notice in writing to the Administrator in any of the following events:-

13.2.2.1 If the Administrator goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Company) or is unable to pay its debts or commits any act of bankruptcy under the laws of Bermuda or if a receiver is appointed of any of the assets of the Administrator or if some event having an equivalent effect occurs;

13.2.2.2 If the Administrator shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Company requiring it so to do to make good such breach;

13.2.2.3 If the Administrator ceases to be permitted to act as such under the Laws.

13.3 The appointment of the Administrator shall automatically terminate forthwith if the Administrator shall become or be deemed to become resident for tax purposes or carry on business within the United States or the United Kingdom or shall carry on any business elsewhere outside Bermuda and Cayman Islands (other than in any place or places as may from time to time be approved by the Directors for such purpose, such approval not to be unreasonably withheld) in circumstances which cause the Company to become liable to pay any taxes which it would not otherwise be liable to pay.

13.4 On termination of the appointment of the Administrator under the provisions of this Clause the Administrator shall be entitled to receive the fees referred to in Clause 6.2 but shall not be entitled to compensation in respect of such termination; and the Administrator shall deliver or procure to be delivered to the Company, or as it shall direct, all books of accounts, records, other registered correspondence, documents and assets relating to the affairs of or belonging to the Company in the possession of or under the control of the Administrator, shall take all necessary steps to vest in the Company or any new Administrator any assets previously held in the name of or to the

order of the Administrator on behalf of the Company and shall cooperate fully and in good faith with transferring information and data about the Company, and shall not be entitled to any lien in respect of any of the foregoing. On termination, all Confidential Information shall be returned to the Company promptly. The Administrator shall be permitted to maintain copies of the Confidential Information for its own records but shall not be permitted to disclose such copies of the Confidential Information save in response to the Order of a Court of competent jurisdiction or regulatory authority, upon prior written notice to the Company to give it an opportunity to object, or to the Administrator's own legal counsel and other advisers on a strictly confidential basis. The Administrator shall otherwise seek to ensure that the confidentiality of the Confidential Information is maintained.

14. CONFIDENTIALITY AND REPUTATION

14.1 The Administrator acknowledges and agrees that the Confidential Information constitutes a valuable property right of the Company, the Co-Manager and Consultant. The Administrator shall not (except under compulsion of law and subject to the provisions below) either before or after the termination of this Agreement disclose to any person not authorised by the relevant party to receive the same any Confidential Information relating to the Company, Co-Manager or Consultant, as the case may be, to which the Administrator same shall become possessed pursuant to this Agreement or before or after the term of this Agreement and the Administrator agrees to use all accessible means to maintain its secrecy.

Accordingly, the Administrator hereby confirms that it will use its best efforts and take appropriate steps to ensure that all such Confidential Information that comes (or has come) into the Administrator's possession will be held strictly confidential and secret. The Administrator understands that this Agreement extends to its employees and agents and to others who may come into possession of the Confidential Information and that it will take appropriate steps to insure compliance with the terms hereof. Further, the Administrator agrees that (a) this provision will survive the termination of the Agreement, and (b) that it will return all Confidential Information, including without limitation, any and all copies made thereof, to the Company or Co-Manager as the case may be.

Notwithstanding the foregoing, the Company understands that the Administrator may be required to disclose Confidential Information in response to proper governmental request or order. However, the Administrator agrees that it will promptly and timely notify in writing the Company and the Co-Manager in the event of any such request or order before any such disclosure of Confidential Information is made.

The Administrator, Company, and Co-Manager and their respective affiliates agree that all provisions of this Agreement, and all dealings with the Administrator, Company and Co-Manager or Consultant and affiliates (as the case my be) concerning the performance of its obligations hereunder are also strictly confidential.

14.2 No party shall do or suffer any act or matter or thing which would or might prejudice or bring into disrepute the business or reputation of any other party.

14.3 The Administrator will not make any press releases, public statement or publish any notice in any publication (computer based or otherwise) referring the Company or the Co-Manager or Consultant without the prior written consent of the Directors.

14.4 The term "Confidential Information" shall mean any and all information, documents and disclosures (whether written, magnetic or oral) of any kind whatsoever regarding the Company and/or the Company's business strategies and/or dealings with third parties, including, without limitation, the identities of investors in any jurisdiction, all business plans, marketing plans, product information and/or plans, statistical data and possible products, whether derivative or otherwise, term sheets, contracts, proposals, data, designs, drawings, analyses, interpretations, reports, forecasts, financial projections, agreements, and/or any analyses, compilations, memoranda and/or other documents, whether prepared by the Administrator, the Company, the Co-Manager or others, which contain, reflect or include the subject matter of the Confidential Information. This definition shall be construed broadly recognizing the importance of Confidential Information to the Company and the Co-Manager.

15. MISCELLANEOUS PROVISIONS

15.1 No failure on the part of any party to exercise, and no delay on the part of any party in exercising, any right or remedy under this Agreement will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

15.2 Any provision of this Agreement may be amended only if the parties so agree in writing.

15.3 The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction or the legality, validity or enforceability of any other provision.

15.4 The Company shall not use the Administrator's name in any document or other publicity material without the prior consent of the Administrator (such consent not to be unreasonably withheld or delayed) which consent may be given generally in respect of agreed wording to be included in an agreed list of documents.

15.5 Except to the extent that the Laws admit variations by contract and are so varied by the terms of this Agreement, the powers, duties, rights and obligations of the parties under this Agreement shall be overridden by, and to the extent that they may conflict, be subject to, the Laws.

15.6 The Administrator will not cause or take any action as a consequence of which, the Company or the Co-Manager will become the subject of United States or United Kingdom taxation.

15.7 This Agreement supersedes all prior agreements relating to the administration of the Company by the Administrator.

15.8 The Consultant shall be a third party beneficiary of this Agreement as the context requires but shall not be deemed a party hereof.

16. NOTICES

Any notice given hereunder shall be in writing and shall be served by hand at or by being sent by prepaid airmail post to the registered office for the time being of the addressee and any such notice shall if so posted be deemed to be served seven days after posting. Evidence that the notice was properly addressed stamped and put into the post shall be conclusive evidence of posting.

17. LAW OF THE CONTRACT

17.1 This Agreement shall be governed by and construed in accordance with the Laws of Bermuda with reference to Bermuda's conflicts of laws provisions.

17.2 The Company, the Co-Manager and the Administrator hereby irrevocably submits to the non-exclusive jurisdiction of the courts of Bermuda for the settlement of any dispute or difference arising between the parties hereto.

17.3 The Co-Manager hereby irrevocably appoints the Administrator as its authorised agent to accept and acknowledge on its behalf service of any and all notices which may be served at any time by any person (other than the Administrator) on the Company provided that a copy of such service or notices, especially if adverse to the interest of the Company (or the Co-Manager) be promptly, and in a timely manner under the circumstances, be delivered to the Board and the Co-Manager.

IN WITNESS WHEREOF this Agreement has been entered into the day and year first above written.

SIGNED by)
)
for and on behalf of)
)
KINGATE GLOBAL FUND, LTD.)
)
)
in the presence of:-)

SIGNED by)
)
for and on behalf of)
)
KINGATE MANAGEMENT LIMITED)
)
)
in the presence of:-)

SIGNED by)
)
for and on behalf of)
)
HEMISPHERE MANAGEMENT LIMITED)
)
in the presence of:-)

EXHIBIT O

KINGATE EURO FUND, LTD.

- AND -

KINGATE MANAGEMENT LIMITED

- AND -

HEMISPHERE MANAGEMENT LIMITED

ADMINISTRATION AGREEMENT
Dated May 1, 2000

[613555-4]

ADMINISTRATION AGREEMENT
(Kingate Euro Fund, Ltd.)

THIS AGREEMENT is made as of May 1st, 2000

AMONG :

(1) **KINGATE EURO FUND, LTD.,** a company incorporated under the laws of the British Virgin Islands whose registered office is at Bison Court, P.O. Box 3460, Road Town, Tortola, BVI (the "Company"); and

(2) **KINGATE MANAGEMENT LIMITED,** a company incorporated under the laws of Bermuda whose principal office is at 99 Front Street, Hamilton HM 11, Bermuda (the "Manager").

(3) **HEMISPHERE MANAGEMENT LIMITED,** a company incorporated under the laws of Bermuda whose principal office is at Hemisphere House, 9 Church Street, Hamilton HM 11, Bermuda (the "Administrator") of the third part.

WHEREBY IT IS AGREED AND DECLARED as follows :-

1. INTERPRETATION

1.1 In this Agreement the following words and expressions shall, where not inconsistent with the context, have the following meanings respectively:-

"Administration Fee" means the fee payable to the Administrator calculated in accordance with Clause 6.1 or as otherwise agreed by the parties, in writing;

"Articles" means the Memorandum and Articles of Association for the time being of the Company, as amended and restated from time to time; any reference herein to an Article shall be taken to refer to the appropriate article unless otherwise specified;

"Auditors" means PricewaterhouseCoopers or any other auditor appointed as such by the Directors;

"Business Day" means any day on which the central banking systems of the U.S., London and Bermuda are open and operating;

"Confidential Information" has the meaning ascribed to it Clause 14.4;

"Connected Person" of a company means and includes (a) any person or company beneficially owning, directly or indirectly, 20 per cent or more of the issued ordinary share capital of that company or able to exercise, directly or indirectly 20 per cent or more of the total votes in that company; (b) any person or company controlled by a person who or company which meets one or both of the descriptions given in (a); (c) any company 20 per cent or more of whose issued ordinary share capital is beneficially owned, directly or indirectly by that company and any Connected Person of that company (as defined in (a), (b) or (d) of this definition) taken together or any company 20 per cent or more of the total votes in which can be exercised, directly or indirectly, by that company and any such Connected Person thereof (as defined in (a), (b) or (d) of this definition taken together; (d) any employee, director or officer of that company or of any Connected Person of that company (as defined in (a), (b) or (c) of this definition); (e) any spouse, minor

Attorney Eyes Only

child or step-child of the persons referred to in (a), (b) and (d); and (f) any trustee of a trust, the beneficiaries of which are persons falling into (a), (b), (d) and (e);

"Consultant" refers to the consultant retained by the Manager to provide advice to the Manager on such aspects of the Company's operational, administrative, accounting, legal, and marketing matters as may be required by the Manager and the Company (including advice on hedging the US Dollar to Euro currency exposure with regard to the assets of the Company);

"Custodian" means the body corporate acting in the capacity of custodian, if any, of the Investments for the time being;

"Directors" means the Directors of the Company from time to time, such Directors as of the date of execution of this Agreement are Charles D. Sebah, Christopher Wetherhill and Keith R. Bish;

"Dollars ($)" means U.S. dollars;

"Euro (€) and Cents" means euro and cents;

"Eligible Investor" means a person who is entitled to own Shares under the Articles;

"Investments" means all the assets and rights from time to time of the Company held in accordance with the Articles or the Memorandum;

"Laws" means the laws of the Bermuda and any other applicable laws and regulations for the time being in force, as the context requires;

"Management Agreement" means the management agreement for the time being subsisting to which the Company and the Manager are parties and relating to the appointment and the duties of the Manager;

"Memorandum" refers to the Company's Information Memorandum initially dated May 1, 2000, and includes any supplement, amendment and restatement thereof;

"Net Asset Value" means the net asset value of all the Shares calculated in accordance with Clause 4, as of the close of business on the last Business Day of each calendar month, and in a manner consistent with the Memorandum;

"Redemption Date" means the last Business Day of each calendar month;

"Secretary of the Company" means the person from time to time nominated by the Administrator and appointed by the Directors to act as the Secretary of the Company pursuant to Clause 3.7 of this Administration Agreement;

"Shares" means the Common Shares issued by the Company;

"Subscription Date" means the first Business Day of the month;

1.2 Any reference to the Company, the Manager, Consultant or the Custodian includes a reference to its or their duly authorised agents or delegates.

1.3 References to Clauses are to Clauses of this Agreement.

1.4 The headings to the Clauses of this Agreement are for convenience only and shall not affect the construction or interpretation thereof.

1.5 Unless the context otherwise requires, words and expressions contained in this Agreement relating to the Company shall bear the same meaning as in the Articles of the Company PROVIDED THAT any alteration or amendment of either the Company's Articles shall not be effective for the purposes of this Agreement unless the party hereto affected (to the extent that its rights or duties hereunder are affected by such alteration or amendment) shall, by endorsement hereon or otherwise, have consented thereto.

2. APPOINTMENT OF THE ADMINISTRATOR

The Manager HEREBY APPOINTS the Administrator and the Administrator shall act with effect from the date hereof as Administrator of the Company upon the terms hereinafter contained and in accordance with the Laws and the Articles of the Company until its appointment shall be terminated as hereinafter provided and the Administrator hereby accepts such appointment and agrees to assume the obligations to the Company and the Manager set forth herein.

3. FUNCTIONS, POWERS AND OBLIGATIONS OF THE ADMINISTRATOR

3.1 During the continuance of its appointment as Administrator of the Company, the Administrator shall (subject to the overall policy and supervision of the Directors and subject to Clause 3.8) have full power, authority and right to carry on the general administration of the Company.

3.2 The Administrator shall keep or cause to be kept on behalf of the Company at the Administrator's premises in Bermuda such books, records and statements as may be necessary to give a complete record of all transactions carried out by the Administrator on behalf of the Company and such other books, records and statements as may be required by the Laws, the Articles of the Company and shall permit the Company and its respective employees and agents and the Auditors and so far as required by the laws, the public to inspect such books, records and statements at all reasonable times.

3.3 The Administrator shall have and is hereby granted the authority, power and right for the account and in the name of the Company but subject to the supervision of the Directors and the Laws:-

3.3.1 to enter into, make and perform all contracts, agreements and other undertakings as may in the opinion of the Administrator be necessary or advisable or incidental to the carrying out of the objectives for this Agreement;

3.3.2 to apply to the relevant authorities for, and to obtain from such authorities, all confirmations or consents relating to the taxation status of the Company and all tax rebates and other payments which may be due to the Company from time to time and in connection therewith the Administrator shall have and is hereby granted the authority to disclose to any such relevant authorities such information in its possession regarding the Company or any of its affairs as may be necessary or required;

3.4 Without prejudice to the generality of the foregoing but subject always to Clause 3.8, the duties to be performed by the Administrator during the continuance of its appointment as Administrator in relation to the Company shall include:-

3.4.1 the general administration of the Company and its management as an investment company and receiving and dealing with applications, notices and correspondence on behalf of the Company;

3.4.2 the receipt of applications for the subscription, notices for the redemption and instruments of transfer of Shares and being responsible for the administration of the procedure to be followed for the issue, redemption and transfer of Shares;

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3.4.3 the determination of the number of Shares to be issued by the Company as of each Subscription Date as a result of subscriptions received for Shares;

3.4.4 the calculation of the Net Asset Valuation (pursuant to Clause 4) and the Memorandum and co-ordinating with Consultants and agents of the Company and with the Manager with regard to is currency hedging activities and obtaining price quotes in a manner consistent with the Memorandum;

3.4.5 the calculation of the Subscription Price and the Redemption Price of the Shares at each Subscription and Redemption Date;

3.4.6 the calculation of the fees of the Manager;

3.4.7 keeping and arranging for safe-keeping of the records and accounts of the Company in such manner as will enable the Company to publish yearly the report and accounts of the Company expressed in euro;

3.4.8 preparing for the approval of the Directors the annual report and accounts of the Company in euro and such other reports, notices and documents as the Company may from time to time require and arranging for the despatch of the same;

3.4.9 the determination of whether or not a person is an Eligible Investor in relation to Shares and whether to invoke the compulsory redemption procedures laid down by the Articles in respect of any person suspected not to be such an Eligible Investor, determining that the subscriber is not in violation of the applicable anti-money laundering laws, and generally determining whether or not a person should or should not be permitted to hold or continue to hold Shares having regard only to the relative provisions, restrictions and powers contained in the Articles;

3.4.10 the safe-keeping, preparation and forwarding to shareholders, or to the order of such shareholders, in the Company of all certificates, cheques, statements, notices and other documents which the Company is required to issue or serve in connection with the said documents;

3.4.11 instructing the Custodian by telefax within thirty days after the Redemption Date of the total amounts (if any) payable in respect of the redemption of Shares;

3.4.12 the deposit of the monies received in respect of each application for subscription of Shares into a separate subscription account in the name of the Company;

3.4.13 paying out of the subscription account referred to in Clause 3.4.12 introductory commissions in accordance with authority granted by the Directors from time to time (but which may not exceed 5% of the aggregate subscription price of the Shares to be subscribed) to the persons who introduce subscribers for Shares as determined by the Directors and collecting exit or redemption fees as the case may be;

3.5 The Administrator shall nominate an employee whenever requested to do so by the Directors, to be appointed by the Directors as the Secretary of the Company;

3.5.1 The Administrator shall carry out on behalf of the Secretary of the Company all the duties and the functions of the Secretary of the Company including without limiting the general nature of the foregoing:-

(a) the convening of the meetings of Directors in the name of the Secretary of the Company and taking of the minutes thereof; and

(b) the keeping and safe-keeping of the statutory books and records of the Company; and

(c) the delivery of all returns required by the laws of the British Virgin Islands the Laws or to any competent authority in the British Virgin Islands; and

(d) all duties properly to be performed by the Secretary of a company under the laws of the British Virgin Islands the Laws or the Articles of the Company.

3.6 The Administrator shall provide a place for receiving applications for Shares, notices of redemption of Shares, instruments of transfer of Shares, Share Certificates, correspondence relating to the subscription, redemption and transfer of Shares and providing a place where notices may be served on the Company.

3.7 The Administrator shall answer any questions of prospective or existing holders of Shares relating to the subscription, redemption or transfer of Shares.

3.8 The Administrator shall observe and comply with the Articles of the Company, the Laws and with the applicable provisions of the Memorandum or other such document relating to the Company distributed from time to time by or on behalf of the Company, all resolutions of the Directors of which it has notice and other lawful orders and directions given to it from time to time by the Directors and all anti-money laundering provisions of law as are applicable from time to time. All activities engaged in by the Administrator hereunder shall at all times be subject to the control of and review by the Directors and agents appointed by the board for this purpose.

3.9 The Administrator shall provide all necessary office facilities, equipment and personnel to enable it to carry out its functions hereunder and shall liaise with the Directors and the Directors of the Manager, and others, as necessary for this purpose.

4. NET ASSET VALUE

4.1 The Net Asset Value of the Company and of each Share shall be calculated and computed in accordance with the Memorandum, as the same shall exist from time to time. An accurate copy of the definition of Net Asset Value as set forth in the Memorandum is attached hereto as an exhibit.

4.2 In the absence of bad faith or manifest error, the Net Asset Value calculations made by the Administrator shall be conclusive and binding on all shareholders.

5. CONTINUATION AND EXERCISE OF ADMINISTRATOR'S POWERS

5.1 The authorities herein contained are continuing ones and shall remain in full force and effect until revoked by termination of this Agreement as hereinafter provided, but such revocation shall not affect any liability in any way resulting from transactions initiated prior to such revocation.

5.2 The Administrator will at all times exercise and perform the powers, rights and duties (or any of them) conferred upon it by this Agreement, any supplemental agreement, or otherwise by the Directors within Bermuda (or such other place or places as the Directors may from time to time approve) and in particular (but without prejudice to the generality of the foregoing) will hold all meetings at which such powers, rights and duties (or any of them) are exercised or performed within Bermuda or any such other place or places as aforesaid and any decision taken or directions given by the Administrator will be taken and be given within Bermuda or such other place or places as aforesaid. The Administrator will not carry on in relation to the Company any business outside Bermuda (other than in any place or places as the Directors may from time to time approve for such purpose, such approval not to be unreasonably withheld) if by so doing the Administrator would cause the Company to become liable to pay any taxes which it would not otherwise be liable to pay.

5.3 The Administrator shall at all times make all reasonable efforts to ensure that, through maintenance of appropriate back-up records offsite in a secure location, readily accessible to the Administrator, the period of time

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during which the Administrator is unable to carry out its duties in accordance with this agreement shall be brought to an end as soon as reasonably possible.

5.4 All records relating to the Company shall be maintained by the Administrator for at least five (5) years and upon reasonable notice the Company shall have access to them, during reasonable business hours. Access shall include access to duly authorised representatives of the Company, as the case may be.

6. FEES OF THE ADMINISTRATOR

6.1 In consideration of the services to be undertaken by the Administrator hereunder (including the provision of an employee to act as the Secretary of the Company under Clause 3.5) the Administrator shall be entitled to receive from the Company a fee of $12,500 per month. The said fee shall be payable monthly in advance. The Company shall also pay (a) a one time set-up fee to the Administrator of $5,000 payable on May 1, 2000 and (b) a per transaction fee of $130 per transaction for every subscription for and redemption of Shares. All payments under this Agreement may be effected by paying the Euro equivalent as of the date of payment These fees shall be reviewed by the Company, the Manager and the Administrator on December 1, 2000 and annually thereafter.

6.2 If this Agreement shall terminate otherwise than on a monthly Redemption Date the Administrator shall be entitled to receive on the next Redemption Date an Administration Fee for services rendered until the date of termination.

6.3 In the event of any dispute arising as to the amount of the Administrator's fees hereunder, the same shall be referred to the Auditors for settlement, who shall be entitled to make such further or other adjustments as may in the circumstances appear to them to be appropriate and whose decision shall be regarded as the decision of an expert and not of an arbitrator and shall be binding and final upon the parties hereto.

7. EXPENSES

7.1 Subject to Clause 7.2, the Administrator shall pay the expenses incurred by it in connection with the performance of its services hereunder unless the Manager otherwise agrees in any particular case.

7.2 The Company shall pay itself, or if paid by the Administrator, will reimburse the Administrator in respect of all out-of-pocket expenses incurred by it in the performance of its duties including (without limitation):

7.2.1 all expenses of every nature of or incidental to deposits of cash made on behalf of the Company;

7.2.2 all taxes and corporate fees payable by the Company to any Government or other authority or to any agency of such Government or authority whether in the British Virgin Islands or elsewhere;

7.2.3 all fees and expenses incurred in relation to the incorporation and initial organisation of the Company.

7.2.4 all audit fees of the Company and legal expenses in connection with the Company's corporate existence, corporate and financial structure and all other professional and other charges in respect of services rendered at the request of the Directors of the Company;

7.2.5 all expenses of and incidental to convening and holding Shareholders' and Directors' meetings of the Company;

7.2.6 the cost of minute books and other documentation required by the Laws;

7.2.7 all charges for postage, telephone, telex, telecopying, faxing and cable incurred by the Administrator in the proper performance of its duties hereunder.

8. SERVICES OF THE ADMINISTRATOR NOT TO BE EXCLUSIVE

The services of the Administrator to the Company hereunder are not to be deemed exclusive and the Administrator shall be free to render similar services to others so long as its services hereunder are not impaired thereby and to retain for its own use and benefit all fees or other monies payable thereby and the Administrator shall not be deemed to be affected with notice of or to be under any duty to disclose to the Company any fact or thing which comes to the notice of the Administrator or any servant or agent of the Administrator in the course of the Administrator rendering similar services to others or in the course of its business in any other capacity or in any manner whatsoever otherwise than in the course of carrying out its duties hereunder.

9. INTERESTS IN THE ADMINISTRATOR OR THE COMPANY

9.1 It is understood that directors, officers, agents and shareholders of the Company and the Manager are or may be interested in the Administrator as directors, officers or shareholders or otherwise, that directors, officers, shareholders and any client of the Administrator are or may be interested in the Company as directors, officers, shareholders or otherwise and that the Administrator is or may be interested in the Company as shareholder or otherwise and it is hereby acknowledged that no person so interested shall be liable to account for any benefit to any other party by reason solely of such interest.

9.2 The Administrator or any client of the Administrator or any Connected Person of the Administrator or any holding company of the Administrator or any subsidiary of such holding company ("the interested party") may hold, acquire or dispose of any investments upon its own account notwithstanding that the same or similar investments may be held by or for the account of or otherwise connected with the Company and it is hereby acknowledged that no such interested party shall be liable to account for any benefit to any other party by reason solely of such interest.

9.3 Any transaction between the Administrator or Connected Person (directly or indirectly), on the one hand, and the Company on the other shall not be effective without the prior written consent of the Directors as to that particular transaction after a full and fair disclosure of all of the facts and circumstances surrounding such transaction.

10. DELEGATION AND ASSIGNMENT

10.1 The Administrator shall have full power to delegate the whole or any part of its functions hereunder to any person firm or company subject to the prior written approval of the Directors. The Administrator shall (unless the Directors shall otherwise agree in any particular case) exercise its power of delegation only on terms which include a provision binding on such delegate in terms similar in all respects to this Agreement. The Administrator in such cases shall remain responsible for the acts of the delegate.

10.2 Neither the responsibilities nor liabilities under this Agreement can be assigned by the Administrator without the approval of the Board of Directors.

11. LIABILITY AND INDEMNITY

11.1 The Administrator shall not be liable to the Company, or any holder of Shares or otherwise for any error of judgement or for any loss suffered by the Company or any such holder of Shares in connection with the subject matter of this Agreement howsoever any such loss may have occurred unless such loss arises from negligence, wilful default, fraud or dishonesty, in the performance or non-performance by the Administrator of its obligations or duties.

11.2 The Administrator shall not be liable to the Manager or any shareholder of the Manager or otherwise for any loss suffered by the Manager or shareholder of the Manager in connection with the subject matter of this Agreement howsoever any such loss may have occurred unless such loss arises from negligence, wilful default, fraud or dishonesty, in the performance or non-performance by the Administrator of its obligations or duties.

11.3 The Company hereby undertakes to hold harmless and indemnify the Manager and the Administrator against all actions proceedings claims costs demands and expenses (including legal fees and costs) which may be brought against suffered or incurred by the Manager and/or the Administrator by reason of their performance or non-performance of their duties to the Company under the terms of this Agreement including all legal professional and other expenses incurred by the Manager and/or the Administrator (except such as shall arise from negligence, wilful default, fraud or dishonesty in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature but not tax on the overall income or profits of the Manager or the Administrator.

11.4 The Administrator hereby undertakes to hold harmless and indemnify the Company and the Manager against all actions proceedings claims costs demands and expenses (including all legal professional and other expenses but not tax on the overall income or profits of the Company or the Manager) which may be brought against suffered or incurred by the Company or the Manager as a direct result of negligence, wilful default, fraud or dishonesty in carrying out their duties under this agreement on the part of the Administrator its directors, officers, employees or delegates.

11.4.1 For the avoidance of doubt this indemnity shall extend to any loss suffered by the Company or the Manager resulting from delay misdelivery or error in transmission of any telexed or telefaxed communication by the Administrator by reason of negligence, wilful default, fraud or dishonesty on the part of the Administrator or as a result of the Administrator acting upon any forged document or signature (other than where the Administrator reasonably believed the relevant forged document or signature to be authentic).

11.5 The Manager hereby undertakes to hold harmless and indemnify the Company or the Administrator against all actions proceedings claims costs demands and expenses which may be brought against suffered or incurred by the Company or the Administrator by reason of their performance or non-performance of their duties under the terms of this Agreement (other than due to negligence, wilful default, fraud or dishonesty on the part of the Company or the Administrator or persons designated by them) including all legal professional and other expenses incurred by the Company or the Administrator or persons designated by them in the performance of their obligations or duties and including indemnity obligations owed by the Company or the Administrator to persons designated by them (except such as shall arise from negligence, wilful default, fraud or dishonest in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to or any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature, but not tax on the overall income or profits of the Company or the Administrator.

11.6 Notwithstanding any other provision of this Agreement, the Administrator shall not be liable to the Company, any holder of Shares or otherwise for any taxation assessed upon or payable by the Company wheresoever the same may be assessed or imposed and whether directly or indirectly except for such taxation or shall be attributable to negligence, wilful default, fraud or dishonesty in the performance or non-performance by the Administrator of its obligations or duties.

11.7 For the avoidance of doubt it is hereby agreed and declared that reference to the Administrator in this Clause shall be deemed to include references to the officers and servants of the Administrator.

12. LEGAL ACTION BY THE ADMINISTRATOR

The Administrator shall not be required to take any legal action unless fully indemnified to its reasonable satisfaction for all costs and liabilities that may be incurred or suffered by the Administrator and not attributable to its negligence, wilful default, fraud or dishonesty in the performance or non-performance of its obligations or duties and if the Company requires the Administrator to take any action of whatsoever nature which in the reasonable opinion of the Administrator might make the Administrator liable for the payment of money or liable in any other way the Administrator shall be and be kept indemnified in any reasonable amount and form satisfactory to the Administrator as a prerequisite to taking action.

13. RESIGNATION AND TERMINATION

13.1 The Administrator shall be entitled to resign its appointment hereunder:-

3.1.1 by giving no less than three months' notice in writing to the Manager to expire at any time;

13.1.2 at any time if the Company shall go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Administrator) or be unable to pay its debts or commit any act of bankruptcy under the laws of the British West Indies or if a receiver is appointed of any of the assets of the Company or if some event having an equivalent effect occurs;

13.1.3 at any time if the Company shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Administrator requiring it so to do to make good such breach;

3.1.4 at any time if the present Manager shall cease to be the Manager of the Company for any reason.

13.2 The appointment of the Administrator may be terminated as hereunder:-

13.2.1 The Manager may terminate the appointment of the Administrator as Administrator of the Company by giving not less than three months' notice in writing to the administrator to expire at any time.

13.2.2 The Manager may terminate the appointment of the Administrator at any time by giving notice in writing to the Administrator in any of the following events:-

13.2.2.1 If the Administrator goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Company) or is unable to pay its debts or commits any act of bankruptcy under the laws of Bermuda or if a receiver is appointed of any of the assets of the Administrator or if some event having an equivalent effect occurs;

13.2.2.2 If the Administrator shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Company requiring it so to do to make good such breach;

13.2.2.3 If the Administrator ceases to be permitted to act as such under the Laws.

13.3 The appointment of the Administrator shall automatically terminate forthwith if the Administrator shall become or be deemed to become resident for tax purposes or carry on business within the United States or the United Kingdom or shall carry on any business elsewhere outside Bermuda and Cayman Islands (other than in any place or places as may from time to time be approved by the Directors for such purpose, such approval not to be unreasonably withheld) in circumstances which cause the Company to become liable to pay any taxes which it would not otherwise be liable to pay.

13.4 On termination of the appointment of the Administrator under the provisions of this Clause the Administrator shall be entitled to receive the fees referred to in Clause 6.2 but shall not be entitled to compensation in respect of such termination; and the Administrator shall deliver or procure to be delivered to the Company, or as it shall direct, all books of accounts, records, other registered correspondence, documents and assets relating to the affairs of or belonging to the Company in the possession of or under the control of the Administrator, shall take all necessary steps to vest in the Company or any new Administrator any assets previously held in the name of or to the order of the Administrator on behalf of the Company and shall cooperate fully and in good faith with transferring information and data about the Company, and shall not be entitled to any lien in respect of any of the foregoing. On termination, all Confidential Information shall be returned to the Company promptly. The Administrator shall be permitted to maintain copies of the Confidential Information for its own records but shall not be permitted to disclose such copies of the Confidential Information save in response to the Order of a Court of competent

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jurisdiction or regulatory authority, upon prior written notice to the Company to give it an opportunity to object, or to the Administrator's own legal counsel and other advisers on a strictly confidential basis. The Administrator shall otherwise seek to ensure that the confidentiality of the Confidential Information is maintained.

14. CONFIDENTIALITY AND REPUTATION

14.1 The Administrator acknowledges and agrees that the Confidential Information constitutes a valuable property right of the Company, the Manager and Consultant. The Administrator shall not (except under compulsion of law and subject to the provisions below) either before or after the termination of this Agreement disclose to any person not authorised by the relevant party to receive the same any Confidential Information relating to the Company, Manager or Consultant, as the case may be, to which the Administrator same shall become possessed pursuant to this Agreement or before or after the term of this Agreement and the Administrator agrees to use all accessible means to maintain its secrecy.

Accordingly, the Administrator hereby confirms that it will use its best efforts and take appropriate steps to ensure that all such Confidential Information that comes (or has come) into the Administrator's possession will be held strictly confidential and secret. The Administrator understands that this Agreement extends to its employees and agents and to others who may come into possession of the Confidential Information and that it will take appropriate steps to insure compliance with the terms hereof. Further, the Administrator agrees that (a) this provision will survive the termination of the Agreement, and (b) that it will return all Confidential Information, including without limitation, any and all copies made thereof, to the Company or Manager as the case may be.

Notwithstanding the foregoing, the Company understands that the Administrator may be required to disclose Confidential Information in response to proper governmental request or order. However, the Administrator agrees that it will promptly and timely notify in writing the Company and the Manager in the event of any such request or order before any such disclosure of Confidential Information is made.

The Administrator, Company, and Manager and their respective affiliates agree that all provisions of this Agreement, and all dealings with the Administrator, Company and Manager or Consultant and affiliates (as the case my be) concerning the performance of its obligations hereunder are also strictly confidential.

14.2 No party shall do or suffer any act or matter or thing which would or might prejudice or bring into disrepute the business or reputation of any other party.

14.3 The Administrator will not make any press releases, public statement or publish any notice in any publication (computer based or otherwise) referring the Company or the Manager or Consultant without the prior written consent of the Directors.

14.4 The term "Confidential Information" shall mean any and all information, documents and disclosures (whether written, magnetic or oral) of any kind whatsoever regarding the Company and/or the Company's business strategies and/or dealings with third parties, including, without limitation, the identities of investors in any jurisdiction, all business plans, marketing plans, product information and/or plans, statistical data and possible products, whether derivative or otherwise, term sheets, contracts, proposals, data, designs, drawings, analyses, interpretations, reports, forecasts, financial projections, agreements, and/or any analyses, compilations, memoranda and/or other documents, whether prepared by the Administrator, the Company, the Manager or others, which contain, reflect or include the subject matter of the Confidential Information. This definition shall be construed broadly recognising the importance of Confidential Information to the Company and the Manager.

15. MISCELLANEOUS PROVISIONS

15.1 No failure on the part of any party to exercise, and no delay on the part of any party in exercising, any right or remedy under this Agreement will operate as a waiver thereof nor will any single or partial exercise of any right or

remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

15.2 Any provision of this Agreement may be amended only if the parties so agree in writing.

15.3 The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction or the legality, validity or enforceability of any other provision.

15.4 The Company shall not use the Administrator's name in any document or other publicity material without the prior consent of the Administrator (such consent not to be unreasonably withheld or delayed) which consent may be given generally in respect of agreed wording to be included in an agreed list of documents.

15.5 Except to the extent that the Laws admit variations by contract and are so varied by the terms of this Agreement, the powers, duties, rights and obligations of the parties under this Agreement shall be overridden by, and to the extent that they may conflict, be subject to, the Laws.

15.6 The Administrator will not cause or take any action as a consequence of which, the Company or the Manager will become the subject of United States or United Kingdom taxation.

15.7 This Agreement supersedes all prior agreements relating to the administration of the Company by the Administrator.

15.8 The Consultant shall be a third party beneficiary of this Agreement as the context requires but shall not be deemed a party hereof.

16. NOTICES

Any notice given hereunder shall be in writing and shall be served by hand at or by being sent by prepaid airmail post to the registered office for the time being of the addressee and any such notice shall if so posted be deemed to be served seven days after posting. Evidence that the notice was properly addressed stamped and put into the post shall be conclusive evidence of posting.

17. LAW OF THE CONTRACT

17.1 This Agreement shall be governed by and construed in accordance with the Laws of Bermuda with reference to Bermuda's conflicts of laws provisions.

17.2 The Company, the Manager and the Administrator hereby irrevocably submits to the non-exclusive jurisdiction of the courts of Bermuda for the settlement of any dispute or difference arising between the parties hereto.

17.3 The Manager hereby irrevocably appoints the Administrator as its authorised agent to accept and acknowledge on its behalf service of any and all notices which may be served at any time by any person (other than the Administrator) on the Company provided that a copy of such service or notices, especially if adverse to the interest of the Company (or the Manager) be promptly, and in a timely manner under the circumstances, be delivered to the Board and the Manager.

IN WITNESS WHEREOF this Agreement has been entered into the day and year first above written.

SIGNED by)
)
for and on behalf of)
)
KINGATE EURO FUND, LTD.)
)
)
in the presence of:-)

Kenneth H. Shanahan

SIGNED by)
)
for and on behalf of)
)
KINGATE MANAGEMENT LIMITED)
)
)
in the presence of:-)

Kenneth H. Shanahan

SIGNED by)
)
for and on behalf of)
)
HEMISPHERE MANAGEMENT LIMITED)
)
in the presence of:-)

EXHIBIT P

DATE 1 JUNE 2007

AMENDED AND RESTATED ADMINISTRATION AGREEMENT

KINGATE GLOBAL FUND, LTD.

- and -

KINGATE MANAGEMENT LIMITED

- and -

BISYS HEDGE FUND SERVICES LIMITED

BISYS Hedge Fund Services Limited
Hemisphere House
9 Church Street
Hamilton HM 11
Bermuda

DATE OF AGREEMENT: 1 JUNE 2007

PARTIES:

1. KINGATE GLOBAL FUND, LTD (the "Company") a company incorporated under the laws of the British Virgin Islands, whose registered office is located at Bison Court, P.O. Box 3460, Road Town, Tortola, British Virgin Islands;

2. KINGATE MANAGEMENT LIMITED (the "Manager") a company incorporated under the laws of Bermuda whose principal office is located at 99 Front Street, Hamilton HM 11, Bermuda; and

3. BISYS HEDGE FUND SERVICES LIMITED (the "Administrator") a limited company incorporated under the laws of Bermuda, whose registered office is at Hemisphere House, 9 Church Street, Hamilton HM 11, Bermuda.

RECITALS:

A. The Company wishes to appoint the Administrator to provide company secretarial, registrar and transfer agency, accounting and other administrative services as specified herein.

B. The Administrator has agreed to provide such services to the Company pursuant to the terms of this Agreement.

C. This Amended and Restated Administration Agreement shall supercede and replace in full all previous agreements between the parties regardimg the provision of administrative services by the Administrator to the Company.

OPERATIVE PROVISIONS:

1. DEFINITIONS

1.1 The following words and expressions shall have the following meanings:

"Agreement": this Administration Agreement, as amended or restated from time to time

"Auditor": the auditor of the Company from time to time.

"Articles": the memorandum and articles of association of the Company as they may be amended from time to time.

"Directors": the board of directors of the Company from time to time.

"Offering Memorandum": the current amended and restated information memorandum, listing particulars or other disclosure document utilized by the Company in connection with an offering of its Shares and all amendments to that document.

"Register": the register of Shareholders.

"Shareholders": the holders of Shares of the Company.

"Shares": the common shares of the Company, as described in the Offering Memorandum.

1.2 Words and expressions not otherwise defined in this Agreement shall bear the same meaning as in the Articles or Offering Memorandum as the context requires.

2. APPOINTMENT

The Company hereby appoints the Administrator as administrator for the Company from the date of this Agreement and to provide the administrative services referred to in this Agreement.

3. PROVISION OF FACILITIES

The Administrator shall provide and pay for an adequate staff and shall provide suitable office accommodation and other facilities for efficiently performing the functions set out in this Agreement, but the Company shall not be entitled to the exclusive use of any such accommodation or to the exclusive services of any member of such staff.

4. DUTIES OF THE ADMINISTRATOR

During the continuance of this Agreement the Administrator shall perform the functions of an administrator to the Company as may be requested by the Company namely:

4.1 Net Asset Value Calculation

4.1.1 calculate and publish the net asset value per Share for each class of Shares issued by the Company and the subscription and redemption prices per Share for each class of Shares issued by the Company in accordance with the methodology contained within the Articles, the Offering Memorandum or as directed by the Directors from time to time utilising, whenever reasonably practicable, such independent pricing services as chosen by the Administrator from time to time;

4.1.2 oversee and review the calculation and payment of fees payable to the Administrator, the Manager and other service providers to the Company;

4.2 Corporate Secretarial Services

4.2.1 provide the services of an officer or employee of the Administrator or an affiliate thereof to act as secretary of the Company in accordance with the laws of the British Virgin Islands, as may be requested by the Company;

4.2.2 continue to permit Bison Court, P.O. Box 3460, Road Town, Tortola, British Virgin Islands to be the Company's registered office;

4.2.3 be responsible for maintaining the Register in accordance with the statutory provisions for the time being in force and the Articles;

4.2.4 take or procure that there are taken reasonable and proper precautions for the safe custody of the Register, any certificates of the Company held by the Administrator, and of all other documents held by it in performance of its duties in accordance with this Agreement.

4.2.5 receive, record and deal with probates, letters of administration, powers of attorney, and other documents affecting the title of Shares or any dividends payable thereon in accordance with the Administrator's normal practice or in accordance with the written instructions of the Company;

4.2.6 prepare and seal on behalf of the Company Share certificates in accordance with the provision of the Articles and the Offering Memorandum;

4.2.7 subject to any instructions to the contrary from the Company, ensure that the officer or employee of the Administrator or an affiliate thereof appointed as secretary of the Company from time to time (or, if appropriate a suitable alternate) shall organize and attend in person or by telephone at board meetings and general meetings of the Company held and prepare agendas, minutes and other documents required at or in connection with such meetings held in the British Virgin Islands or elsewhere;

4.2.8 effect all necessary registrations with governmental and similar agencies in the British Virgin Islands in order to maintain the good standing of the Company except for those filings undertaken by the registered office of the Company which shall be effected by the Administrator only where the Administrator provides a registered office to the Company pursuant to 4.2.2 above. For the sake of clarity it is agreed that the Administrator shall not be responsible for effecting any U.S. federal or state regulatory filings which may be required as a result of the offering of Shares by the Company

4.2.9 establish and maintain such bank accounts as may be necessary and take such action in relation thereto as may be authorized by the directors from time to time;

4.3 Preparation of Financial Statements

4.3.1 maintain the principal corporate records and books of account of the Company as required for the proper conduct of the financial affairs of the Company, provided however, that the corporate records and books of account held by the Company in the British Virgin Islands shall, in any event, be treated as the Company's principal corporate records and books of account;

4.3.2 at any time during the Administrator's business hours permit the Auditor and any duly appointed agent or representative of the Company, at the expense of the Company, to audit or inspect the Register, the financial records of the Company and any other documents or records kept by the Administrator under the terms of this Agreement and make available all such documents and records in its possession to the Auditor, agent or representative during business hours whenever reasonably required so to do and afford all such information, explanations and assistance as the Auditor, agent or representative may reasonably require;

4.3.3 reconcile accounting issues with the Company's Directors, officers, the Auditor or the Company's legal counsel;

4.3.4 prepare draft financial statements for presentation to the Auditors annually;

4.3.5 at the end of each fiscal year of the Company, arrange for the books and accounts of the Company to be audited and cause the auditors report to be delivered to the Directors, the shareholders, the Manager and such governmental or regulatory agencies as may be required by law;

4.4 Shareholder Services

4.4.1 process subscription and redemption requests in accordance with the provisions of the Articles and the Offering Memorandum and arrange for the issue, transfer, allotment,

conversion and/or redemption of Shares and make any corresponding entries on the Register, provided that, in the performance of the foregoing, the Administrator shall:

(i) established and will apply to the Company in the performance of its duties hereunder anti-money laundering practices and procedures (including staff training programmes) that comply with the requirements of the British Virgin Islands Anti-Money Laundering Code of Practice 1999 as the same may be amended from time to time.

(ii) comply with any anti-money laundering or similar laws or regulations in British Virgin Islands, Bermuda or other jurisdictions that are applicable to the Company and the Administrator;

(iii) review the Company's subscription documents provided by potential investors in the Company; and

(iv) perform such Anti-Money Laundering Services as described in Section 4.5 hereto.

4.4.2 send all circulars, notices of meetings, reports, financial statements and other written material to all persons entitled to receive the same under the Articles and the Offering Memorandum as the Company may require;

4.4.3 act as may be required by the Company from time to time, as proxy agent in connection with the holding of meetings of Shareholders, receive and tabulate votes cast by proxy and communicate to the Company the results of such tabulation accompanied by appropriate certificates;

4.4.4 use reasonable efforts to deal with and answer all correspondence from or on behalf of Shareholders relating to the Company;

4.5 Anti-Money Laundering Services

4.5.1 the Administrator represents to the Company that the Administrator is subject to the anti-money laundering laws and regulations of the jurisdiction of the Administrator ("the AML Regime") and has anti-money laundering policies and procedures in place that are compliant with the requirements of the AML Regime;

4.5.2 the Administrator will deliver to the Company, a true and correct copy of its anti-money laundering policies and procedures as amended from time to time. The Administrator represents to the Company that it is properly enforcing its anti-money laundering policies and procedures;

4.5.3 the Administrator has read the section titled "Representations and Covenants of the Investor" (or its equivalent) in the subscription documents of the Company and the Administrator shall take all reasonable steps to ensure that it does not accept or maintain subscription funds from investors who have failed to provide the U.S. Office of Foreign Asset Control ("OFAC") representations included in the subscription documents of the Company without conducting such enhanced due diligence as may be agreed between the Administrator and the Company from time to time;

4.5.4 retain records for a period of five years after the termination of the appointment of the Administrator hereunder for any reason whatsoever all documentation related to the Shareholder;

4.5.5 maintain internal controls and communications for the ongoing monitoring of Shareholders in the Company to the extent practicable based on the information received by the Administrator in the regular discharge of the services, including searching on a periodic basis the list maintained by World Check (found at http://www.world-check.com) to ensure that the Shareholders are not identified by name on the said list;

4.5.6 provide to the Company or the Financial Services Commission ("FSC"), upon request, written evidence of its suitability to perform the AML Procedures on behalf of the Company;

4.5.7 provide identification information obtained and held with respect to the investors to the Company or FSC and to the British Virgin Islands financial reporting authority and/or other law enforcement authorities, upon lawful request;

4.5.8 provide the Company or its authorized agents, upon request, with information which they may reasonably require to satisfy themselves of the reliability of the Administrator's systems and procedures;

4.5.9 the Administrator reserves the right to engage such agents, in its absolute discretion, as it shall consider appropriate for the purposes of complying with its obligations pursuant to the AML Regime;

4.5.10 the Company and the Administrator understand and agree that, notwithstanding the ability of the Company to delegate the maintenance of the AML Procedures to the Administrator, the Company shall be ultimately responsible for ensuring that it is compliant with its own anti-money laundering obligations.

4.5.11 review the subscription agreement to ensure that investor has represented therein that he is not a senior foreign political figure, an immediate family member or close associate thereof or a foreign shell bank;

4.6 Other Services

4.6.1 establish and maintain such bank, brokerage, custodian and other accounts as may be necessary or advisable and do all such things and take such action in relation thereto as may be authorised by the Directors from time to time;

4.6.2 obtain approval from the Company for, and draw upon the bank account(s) of the Company to pay and discharge, all properly due, charged, and documented costs, expenses and liabilities of the Company due to the service providers to the Company;

5. RIGHTS OF THE ADMINISTRATOR

The Administrator may:

5.1 at its own expense employ servants or agents in performance of its duties and the exercise of its rights under this Agreement;

5.2 delegate its functions, powers, discretions, privileges and duties under this Agreement or any of them to any affiliate of the Administrator on such terms and conditions as it may deem appropriate and particularly to its British Virgin Islands affiliate, provided that such responsibility may not be delegated to the extent that they are to be performed by any person outside the British Virgin Islands if such responsibilities are required to be performed within the British Virgin Islands under British Virgin Islands law;

5.3 use one or more third parties to perform some or all of its obligations under this Agreement. The Administrator shall be fully responsible for the acts of such third parties and shall not be relieved of any of its responsibilities under this Agreement by virtue of the use of such third parties;

5.4 use the name of the Company and sign any necessary letters or other documents for and on behalf of the Company as Administrator of the Company in the performance of its duties under this Agreeent;

5.5 provide a secretary or act as administrator for any other company, corporation or body of persons on such terms as may be arranged with such company, corporation or body of persons and shall not be deemed to be affected with notice of or to be under any duty to disclose to the Company any fact or thing which may come to the knowledge of the Administrator or any servant, agent or delegate of the Administrator in the course of so doing or in any manner whatever otherwise than in the course of carrying out the duties of administrator under this Agreement;

6. POWERS RETAINED BY DIRECTORS

In the performance of its duties under this Agreement the Administrator shall at all times be subject to all of the following powers retained by the Directors:

6.1 with the consent of the Administrator, to define and modify the scope of the Administrator's duties under this Agreement, provided that any amendment to this Agreement shall be in writing and signed by the parties hereto;

6.2 to establish and apply benchmarks for measuring the quality of the Administrator's performance under this Agreement;

6.3 to request and promptly receive reports concerning the nature and quality of the services performed by the Administrator under this Agreement;

6.4 to evaluate the systems and controls utilised by the Administrator in performing its services hereunder; and

6.5 to exercise such other powers and take such other actions as may be deemed necessary to perform their duties as directors, provided however, the Directors shall not have the power to supervise or control the operations of the Administrator in the performance of its duties other than as provided above.

7. REMUNERATION OF THE ADMINISTRATOR

7.1 The Administrator shall be paid by the Company, by way of remuneration for its services under this Agreement, fees at such rates as may be agreed in writing from time to time between the Company and the Administrator. The initial fees payable by the Company to the Administrator are as set out in the attached Fee Schedule.

7.2 The Administrator shall also be entitled to receive from the Company an amount equal to all out of pocket expenses properly incurred by the Administrator in carrying out its duties under this Agreement upon receipt by the Company (if requested) of appropriate and reasonable supporting documentation.

7.3 Administration fees payable by the Company to the Administrator under this Agreement shall be paid in United States Dollars monthly in arrears. All other fees specified in the Fee Schedule attached hereto shall be payable in United States Dollars when invoiced.

8. DUTIES OF THE COMPANY

The Company shall:

8.1 with all reasonable expedition approve or disapprove transfers submitted to it by the Administrator;

8.2 after the commencement of and during the continuance of this Agreement not itself prepare or instruct any other person to prepare or issue any certificates or accept for registration any transfer of any Shares of the Company and on receipt of any document affecting the title to the Shares of the Company will immediately forward the same to the Administrator;

8.3 retain for a period of five years after the termination of the appointment of the Administrator hereunder for any reason whatsoever all cancelled certificates and transfer forms lodged during the period of such appointment; and

8.4 deliver or cause to be delivered from time to time to the Administrator proper certified or authenticated copies of its Articles and all amendments thereto and of such other documents and information as may be necessary for the Administrator to perform its duties under this Agreement.

9. TERMINATION

9.1 This Agreement may be terminated at any time by either party provided that at least ninty (90) days written notice has been given to the other party to this Agreement. The obligations of the Company pursuant to Clause 10.5 shall survive the termination of this Agreement and shall continue in full force and effect for the benefit of the Administrator and other parties named therein.

9.2 The appointment of the Administrator shall terminate immediately if (a) a secured party takes possession or a receiver, manager or other similar officer is appointed, of the whole or in part of the undertaking, assets and revenues of the Administrator, (b) the Administrator admits in writing its insolvency or inability to pay its debts as they fall due, (c) an administrator or liquidator of the Administrator or the whole or any part of the undertaking, assets and revenues of the Administrator is appointed (or application for any such appointment is made), (d) the Administrator takes any action for a readjustment or deferment of any of its obligations or makes a general assignment, or an arrangement, or composition, with, or for the benefit of, its creditors or declares a moratorium in respect of any of its indebtedness, (e) an order is made or an effective resolution is passed for the winding up of the Administrator or (f) any event occurs which has an analogous effect of any of the foregoing; whereupon the Company shall appoint a successor as Administrator acceptable to it to take effect immediately upon such termination.

9.3 Upon the resignation or any termination of the appointment of the Administrator, the Administrator shall be released and discharged from all its obligations under this Agreement (but shall not be released from its liabilities relating to its duties under this Agreement prior to resignation or termination) except for those contained in clauses 13 and 14 hereof.

10. RESPONSIBILITY OF ADMINISTRATOR AND INDEMNITY BY COMPANY

10.1 For the purpose of this Section 10, the term "Administrator" or any reference thereto shall be deemed to include each and any of the Administrator, its directors, officers, employees, agents, delegates or affiliates. Each person included within the term "Administrator" is entitled to the benefit of the agreements and indemnities contained in this Section 10 and may enforce the provisions of, and the rights, agreements and indemnities provided under, this Section 10 on behalf of any person included within the term "Administrator".

10.2 The Administrator shall not incur liability by refusing in good faith to perform any duty or obligation herein which in its reasonable judgment is improper or unauthorised provided that in performing its duties and obligations pursuant to this Agreement it shall not be required at any time to do or procure the doing of anything contrary to, or in breach of, or which constitutes any offence under, any applicable law or regulation then in force.

10.3 The Administrator shall not, in the absence of gross negligence, willful default or fraud on its part be liable to the Company or to any Shareholder for any act or omission, in the course of, or in connection with, the services rendered by it under this Agreement or for any loss or damage which the Company may sustain or suffer as the result of, or in the course of, the discharge by the Administrator of its duties under or pursuant to this Agreement.

10.4 The Administrator shall not be responsible for the loss or damage to any documents or property of the Company in the possession of the Administrator or for any failure to fulfil its duties hereunder, if such loss, damage or failure shall be caused by or directly or indirectly be due to war, enemy action, the act of government or other competent authority, riots, civil disturbance, rebellion, storm, tempest, accident, fire, strike, explosion or lock-out or any occurrence or event beyond the control of the Administrator.

10.5 The Company agrees to indemnify the Administrator from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (other than those resulting from the gross negligence, willful default or fraud on the part of the Administrator) which may be imposed on, incurred by, or asserted against the Administrator in performing its obligations or duties hereunder.

10.6 To the extent that the Administrator relies on information supplied by the Manager or any brokers or other financial intermediaries engaged by the Company in connection with performing its obligations hereunder, the Administrator's liability for the accuracy of any calculations utilising such information is limited to the accuracy of its own computations. The Administrator is not liable for the accuracy of the underlying data provided to it.

10.7 The Company acknowledges the Administrator shall have no discretionary authority or control with respect to the management or disposition of financial instruments held by the Company and shall not be required to undertake any action that could possibly characterize the Administrator as a fiduciary, as defined in Section 3(21) of the U.S. Employee Retirement Income Security Act of 1974, as amended ("ERISA"), of any "employee benefit plan" (within the meaning of Section 3(3) of ERISA) or "plan" (within the meaning of Section 4975 (e)(1) of the U.S. Internal Revenue Code of 1986, as amended) whose assets are comprised in the Company, directly or indirectly.

11. FRAUD

In the absence of gross negligence, or willful default and provided that the directors, officers, employees, agents, delegates or affiliates of the Administrator are not parties to any fraud, the Administrator shall not be responsible to the Company for any action taken by the Administrator upon the faith of any forged or fraudulent document in any case where, had the document not been

forged or fraudulent, the action taken by the Administrator would have been the normal and reasonable action to be taken.

12. REPUTATION

Except for acts incidental to the enforcement of its rights pursuant to this Agreement, neither party to this Agreement may do or commit any act or matter or thing which would or might prejudice or bring into disrepute in any manner the business or reputation of either of the parties or any director of any such party.

13. CONFIDENTIALITY

Neither of the parties to this Agreement shall, unless compelled so to do by any court of competent jurisdiction or any governmental or regulatory body, either before or after the termination of this Agreement, disclose any information relating to the other party without the prior written consent of the other party unless such information is already in the public domain other than as a result of a breach of this clause. It is agreed that such consent shall be deemed to have been given in the case of disclosure to a party's professional advisers, directors, officers, employees, agents or delegates for the purpose of the proper and effective carrying on of this Agreement.

14. DELIVERY OF DOCUMENTS

14.1 Upon the termination of this Agreement the Administrator shall, subject to clause 14.2, hand over to the Company the Register and all other documents in the possession of the Administrator in its capacity as Administrator or in relation to the functions assigned to it hereunder.

14.2 The Administrator shall not be required to make any delivery of documents under clause 14.1 until full payment shall have been made to the Administrator by the Company of its fees, compensation, costs and expenses due to it under the provisions of this Agreement.

15. NOTICES

Any notice, instruction or other instrument required or permitted to be given under this Agreement may be delivered in person or delivered by prepaid registered mail or by fax to the parties at the addresses set out in this document or such other address as may be notified in the manner provided hereunder by either party from time to time.

Unless shown to have been received earlier, such notice, instruction or other instrument shall be deemed to have been delivered, in the case of personal delivery, at the time it is left at the premises of the party, in the case of a registered letter at the expiration of five (5) business days after posting, and, in the case of fax, one hour after sending; provided that if any document is sent by fax outside normal business hours it shall be deemed to have been received at the next time after delivery when normal business hours commence. Evidence that the notice, instruction or other instrument was properly addressed, stamped and put into the post shall be conclusive evidence of posting.

16. SEVERABILITY

It is hereby agreed that, in the event any particular provision or provisions of this Agreement are determined to be unenforceable or void by a court of competent jurisdiction, such provision or provisions shall be deemed to be severable and such determination shall solely affect such provision or provisions and shall not, in itself, impair or render void or unenforceable the remaining provisions of this Agreement.

17. ASSIGNMENT

Except as provided in Clause 5.2, neither the benefit nor the burden of this Agreement shall be assigned by either party save with the consent of the other party to this Agreement. Notwithstanding the foregoing, in the event of a transfer of fifty percent (50%) or more of the ownership of the voting stock of the Administrator within any ninety day (90) period ("Change of Ownership"), this Agreement shall be binding upon, and shall inure to the benefit of, the Administrator's successor following any such Change of Ownership.

18. PROPER LAW

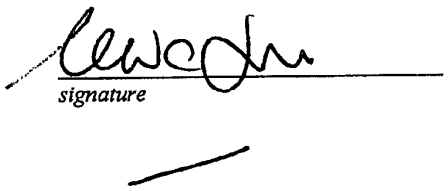
This Agreement shall be governed by and construed in accordance with the laws of the British Virgin Islands.

19. COUNTERPARTS

This Agreement may be executed in one or more counterparts all of which taken together shall be deemed to constitute one and the same instrument.

Signed as an agreement on behalf of the parties on the date set out in this document.

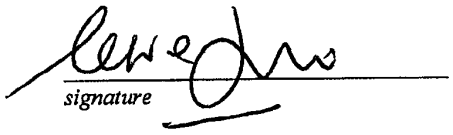
SIGNED BY)
duly authorised)
for and on behalf of)
KINGATE GLOBAL FUND, LTD)
)
in the presence of:)
)



signature

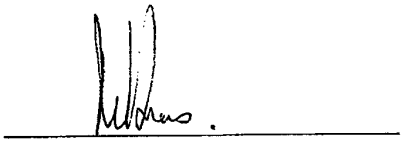
SIGNED BY)
duly authorised)
for and on behalf of)
KINGATE MANAGEMENT LIMITED)
)

in the presence of:



signature

SIGNED BY)
duly authorised)
for and on behalf of)
BISYS HEDGE FUND SERVICES)
LIMITED)
)
in the presence of:)



signature

EXHIBIT Q

DATE 1 JUNE 2007

AMENDED AND RESTATED ADMINISTRATION AGREEMENT

KINGATE EURO FUND, LTD.

- and -

KINGATE MANAGEMENT LIMITED

- and -

BISYS HEDGE FUND SERVICES LIMITED

BISYS Hedge Fund Services Limited
Hemisphere House
9 Church Street
Hamilton HM 11
Bermuda

DATE OF AGREEMENT: 1 JUNE 2007

PARTIES:

1. KINGATE EURO FUND, LTD (the "Company") a company incorporated under the laws of the British Virgin Islands, whose registered office is located at Bison Court, P.O. Box 3460, Road Town, Tortola, British Virgin Islands;

2. KINGATE MANAGEMENT LIMITED (the "Manager") a company incorporated under the laws of Bermuda whose principal office is located at 99 Front Street, Hamilton HM 11, Bermuda; and

3. BISYS HEDGE FUND SERVICES LIMITED (the "Administrator") a limited company incorporated under the laws of Bermuda, whose registered office is at Hemisphere House, 9 Church Street, Hamilton HM 11, Bermuda.

RECITALS:

A. The Company wishes to appoint the Administrator to provide company secretarial, registrar and transfer agency, accounting and other administrative services as specified herein.

B. The Administrator has agreed to provide such services to the Company pursuant to the terms of this Agreement.

C. This Amended and Restated Administration Agreement shall supercede and replace in full all previous agreements between the parties regardimg the provision of administrative services by the Administrator to the Company.

OPERATIVE PROVISIONS:

1. DEFINITIONS

1.1 The following words and expressions shall have the following meanings:

"Agreement": this Administration Agreement, as amended or restated from time to time

"Auditor": the auditor of the Company from time to time.

"Articles": the memorandum and articles of association of the Company as they may be amended from time to time.

"Directors": the board of directors of the Company from time to time.

"Offering Memorandum": the current amended and restated information memorandum, listing particulars or other disclosure document utilized by the Company in connection with an offering of its Shares and all amendments to that document.

"Register": the register of Shareholders.

"Shareholders": the holders of Shares of the Company.

"Shares": the common shares of the Company, as described in the Offering Memorandum.

1.2 Words and expressions not otherwise defined in this Agreement shall bear the same meaning as in the Articles or Offering Memorandum as the context requires.

2. APPOINTMENT

The Company hereby appoints the Administrator as administrator for the Company from the date of this Agreement and to provide the administrative services referred to in this Agreement.

3. PROVISION OF FACILITIES

The Administrator shall provide and pay for an adequate staff and shall provide suitable office accommodation and other facilities for efficiently performing the functions set out in this Agreement, but the Company shall not be entitled to the exclusive use of any such accommodation or to the exclusive services of any member of such staff.

4. DUTIES OF THE ADMINISTRATOR

During the continuance of this Agreement the Administrator shall perform the functions of an administrator to the Company as may be requested by the Company namely:

4.1 Net Asset Value Calculation

4.1.1 calculate and publish the net asset value per Share for each class of Shares issued by the Company and the subscription and redemption prices per Share for each class of Shares issued by the Company in accordance with the methodology contained within the Articles, the Offering Memorandum or as directed by the Directors from time to time utilising, whenever reasonably practicable, such independent pricing services as chosen by the Administrator from time to time;

4.1.2 oversee and review the calculation and payment of fees payable to the Administrator, the Manager and other service providers to the Company;

4.2 Corporate Secretarial Services

4.2.1 provide the services of an officer or employee of the Administrator or an affiliate thereof to act as secretary of the Company in accordance with the laws of the British Virgin Islands, as may be requested by the Company;

4.2.2 continue to permit Bison Court, P.O. Box 3460, Road Town, Tortola, British Virgin Islands to be the Company's registered office;

4.2.3 be responsible for maintaining the Register in accordance with the statutory provisions for the time being in force and the Articles;

4.2.4 take or procure that there are taken reasonable and proper precautions for the safe custody of the Register, any certificates of the Company held by the Administrator, and of all other documents held by it in performance of its duties in accordance with this Agreement.

4.2.5 receive, record and deal with probates, letters of administration, powers of attorney, and other documents affecting the title of Shares or any dividends payable thereon in accordance with the Administrator's normal practice or in accordance with the written instructions of the Company;

4.2.6 prepare and seal on behalf of the Company Share certificates in accordance with the provision of the Articles and the Offering Memorandum;

4.2.7 subject to any instructions to the contrary from the Company, ensure that the officer or employee of the Administrator or an affiliate thereof appointed as secretary of the Company from time to time (or, if appropriate a suitable alternate) shall organize and attend in person or by telephone at board meetings and general meetings of the Company held and prepare agendas, minutes and other documents required at or in connection with such meetings held in the British Virgin Islands or elsewhere;

4.2.8 effect all necessary registrations with governmental and similar agencies in the British Virgin Islands in order to maintain the good standing of the Company except for those filings undertaken by the registered office of the Company which shall be effected by the Administrator only where the Administrator provides a registered office to the Company pursuant to 4.2.2 above. For the sake of clarity it is agreed that the Administrator shall not be responsible for effecting any U.S. federal or state regulatory filings which may be required as a result of the offering of Shares by the Company

4.2.9 establish and maintain such bank accounts as may be necessary and take such action in relation thereto as may be authorized by the directors from time to time;

4.3 Preparation of Financial Statements

4.3.1 maintain the principal corporate records and books of account of the Company as required for the proper conduct of the financial affairs of the Company, provided however, that the corporate records and books of account held by the Company in the British Virgin Islands shall, in any event, be treated as the Company's principal corporate records and books of account;

4.3.2 at any time during the Administrator's business hours permit the Auditor and any duly appointed agent or representative of the Company, at the expense of the Company, to audit or inspect the Register, the financial records of the Company and any other documents or records kept by the Administrator under the terms of this Agreement and make available all such documents and records in its possession to the Auditor, agent or representative during business hours whenever reasonably required so to do and afford all such information, explanations and assistance as the Auditor, agent or representative may reasonably require;

4.3.3 reconcile accounting issues with the Company's Directors, officers, the Auditor or the Company's legal counsel;

4.3.4 prepare draft financial statements for presentation to the Auditors annually;

4.3.5 at the end of each fiscal year of the Company, arrange for the books and accounts of the Company to be audited and cause the auditors report to be delivered to the Directors, the shareholders, the Manager and such governmental or regulatory agencies as may be required by law;

4.4 Shareholder Services

4.4.1 process subscription and redemption requests in accordance with the provisions of the Articles and the Offering Memorandum and arrange for the issue, transfer, allotment,

conversion and/or redemption of Shares and make any corresponding entries on the Register, provided that, in the performance of the foregoing, the Administrator shall:

(i) established and will apply to the Company in the performance of its duties hereunder anti-money laundering practices and procedures (including staff training programmes) that comply with the requirements of the British Virgin Islands Anti-Money Laundering Code of Practice 1999 as the same may be amended from time to time.

(ii) comply with any anti-money laundering or similar laws or regulations in British Virgin Islands, Bermuda or other jurisdictions that are applicable to the Company and the Administrator;

(iii) review the Company's subscription documents provided by potential investors in the Company; and

(iv) perform such Anti-Money Laundering Services as described in Section 4.5 hereto.

4.4.2 send all circulars, notices of meetings, reports, financial statements and other written material to all persons entitled to receive the same under the Articles and the Offering Memorandum as the Company may require;

4.4.3 act as may be required by the Company from time to time, as proxy agent in connection with the holding of meetings of Shareholders, receive and tabulate votes cast by proxy and communicate to the Company the results of such tabulation accompanied by appropriate certificates;

4.4.4 use reasonable efforts to deal with and answer all correspondence from or on behalf of Shareholders relating to the Company;

4.5 Anti-Money Laundering Services

4.5.1 the Administrator represents to the Company that the Administrator is subject to the anti-money laundering laws and regulations of the jurisdiction of the Administrator ("the AML Regime") and has anti-money laundering policies and procedures in place that are compliant with the requirements of the AML Regime;

4.5.2 the Administrator will deliver to the Company, a true and correct copy of its anti-money laundering policies and procedures as amended from time to time. The Administrator represents to the Company that it is properly enforcing its anti-money laundering policies and procedures;

4.5.3 the Administrator has read the section titled "Representations and Covenants of the Investor" (or its equivalent) in the subscription documents of the Company and the Administrator shall take all reasonable steps to ensure that it does not accept or maintain subscription funds from investors who have failed to provide the U.S. Office of Foreign Asset Control ("OFAC") representations included in the subscription documents of the Company without conducting such enhanced due diligence as may be agreed between the Administrator and the Company from time to time;

4.5.4 retain records for a period of five years after the termination of the appointment of the Administrator hereunder for any reason whatsoever all documentation related to the Shareholder;

4.5.5 maintain internal controls and communications for the ongoing monitoring of Shareholders in the Company to the extent practicable based on the information received by the Administrator in the regular discharge of the services, including searching on a periodic basis the list maintained by World Check (found at http://www.world-check.com) to ensure that the Shareholders are not identified by name on the said list;

4.5.6 provide to the Company or the Financial Services Commission ("FSC"), upon request, written evidence of its suitability to perform the AML Procedures on behalf of the Company;

4.5.7 provide identification information obtained and held with respect to the investors to the Company or FSC and to the British Virgin Islands financial reporting authority and/or other law enforcement authorities, upon lawful request;

4.5.8 provide the Company or its authorized agents, upon request, with information which they may reasonably require to satisfy themselves of the reliability of the Administrator's systems and procedures;

4.5.9 the Administrator reserves the right to engage such agents, in its absolute discretion, as it shall consider appropriate for the purposes of complying with its obligations pursuant to the AML Regime;

4.5.10 the Company and the Administrator understand and agree that, notwithstanding the ability of the Company to delegate the maintenance of the AML Procedures to the Administrator, the Company shall be ultimately responsible for ensuring that it is compliant with its own anti-money laundering obligations.

4.5.11 review the subscription agreement to ensure that investor has represented therein that he is not a senior foreign political figure, an immediate family member or close associate thereof or a foreign shell bank;

4.6 Other Services

4.6.1 establish and maintain such bank, brokerage, custodian and other accounts as may be necessary or advisable and do all such things and take such action in relation thereto as may be authorised by the Directors from time to time;

4.6.2 obtain approval from the Company for, and draw upon the bank account(s) of the Company to pay and discharge, all properly due, charged, and documented costs, expenses and liabilities of the Company due to the service providers to the Company;

5. RIGHTS OF THE ADMINISTRATOR

The Administrator may:

5.1 at its own expense employ servants or agents in performance of its duties and the exercise of its rights under this Agreement;

5.2 delegate its functions, powers, discretions, privileges and duties under this Agreement or any of them to any affiliate of the Administrator on such terms and conditions as it may deem appropriate and particularly to its British Virgin Islands affiliate, provided that such responsibility may not be delegated to the extent that they are to be performed by any person outside the British Virgin Islands if such responsibilities are required to be performed within the British Virgin Islands under British Virgin Islands law;

5.3 use one or more third parties to perform some or all of its obligations under this Agreement. The Administrator shall be fully responsible for the acts of such third parties and shall not be relieved of any of its responsibilities under this Agreement by virtue of the use of such third parties;

5.4 use the name of the Company and sign any necessary letters or other documents for and on behalf of the Company as Administrator of the Company in the performance of its duties under this Agreeent;

5.5 provide a secretary or act as administrator for any other company, corporation or body of persons on such terms as may be arranged with such company, corporation or body of persons and shall not be deemed to be affected with notice of or to be under any duty to disclose to the Company any fact or thing which may come to the knowledge of the Administrator or any servant, agent or delegate of the Administrator in the course of so doing or in any manner whatever otherwise than in the course of carrying out the duties of administrator under this Agreement;

6. POWERS RETAINED BY DIRECTORS

In the performance of its duties under this Agreement the Administrator shall at all times be subject to all of the following powers retained by the Directors:

6.1 with the consent of the Administrator, to define and modify the scope of the Administrator's duties under this Agreement, provided that any amendment to this Agreement shall be in writing and signed by the parties hereto;

6.2 to establish and apply benchmarks for measuring the quality of the Administrator's performance under this Agreement;

6.3 to request and promptly receive reports concerning the nature and quality of the services performed by the Administrator under this Agreement;

6.4 to evaluate the systems and controls utilised by the Administrator in performing its services hereunder; and

6.5 to exercise such other powers and take such other actions as may be deemed necessary to perform their duties as directors, provided however, the Directors shall not have the power to supervise or control the operations of the Administrator in the performance of its duties other than as provided above.

7. REMUNERATION OF THE ADMINISTRATOR

7.1 The Administrator shall be paid by the Company, by way of remuneration for its services under this Agreement, fees at such rates as may be agreed in writing from time to time between the Company and the Administrator. The initial fees payable by the Company to the Administrator are as set out in the attached Fee Schedule.

7.2 The Administrator shall also be entitled to receive from the Company an amount equal to all out of pocket expenses properly incurred by the Administrator in carrying out its duties under this Agreement upon receipt by the Company (if requested) of appropriate and reasonable supporting documentation.

7.3 Administration fees payable by the Company to the Administrator under this Agreement shall be paid in United States Dollars monthly in arrears. All other fees specified in the Fee Schedule attached hereto shall be payable in United States Dollars when invoiced.

8. DUTIES OF THE COMPANY

The Company shall:

8.1 with all reasonable expedition approve or disapprove transfers submitted to it by the Administrator;

8.2 after the commencement of and during the continuance of this Agreement not itself prepare or instruct any other person to prepare or issue any certificates or accept for registration any transfer of any Shares of the Company and on receipt of any document affecting the title to the Shares of the Company will immediately forward the same to the Administrator;

8.3 retain for a period of five years after the termination of the appointment of the Administrator hereunder for any reason whatsoever all cancelled certificates and transfer forms lodged during the period of such appointment; and

8.4 deliver or cause to be delivered from time to time to the Administrator proper certified or authenticated copies of its Articles and all amendments thereto and of such other documents and information as may be necessary for the Administrator to perform its duties under this Agreement.

9. TERMINATION

9.1 This Agreement may be terminated at any time by either party provided that at least ninty (90) days written notice has been given to the other party to this Agreement. The obligations of the Company pursuant to Clause 10.5 shall survive the termination of this Agreement and shall continue in full force and effect for the benefit of the Administrator and other parties named therein.

9.2 The appointment of the Administrator shall terminate immediately if (a) a secured party takes possession or a receiver, manager or other similar officer is appointed, of the whole or in part of the undertaking, assets and revenues of the Administrator, (b) the Administrator admits in writing its insolvency or inability to pay its debts as they fall due, (c) an administrator or liquidator of the Administrator or the whole or any part of the undertaking, assets and revenues of the Administrator is appointed (or application for any such appointment is made), (d) the Administrator takes any action for a readjustment or deferment of any of its obligations or makes a general assignment, or an arrangement, or composition, with, or for the benefit of, its creditors or declares a moratorium in respect of any of its indebtedness, (e) an order is made or an effective resolution is passed for the winding up of the Administrator or (f) any event occurs which has an analogous effect of any of the foregoing; whereupon the Company shall appoint a successor as Administrator acceptable to it to take effect immediately upon such termination.

9.3 Upon the resignation or any termination of the appointment of the Administrator, the Administrator shall be released and discharged from all its obligations under this Agreement (but shall not be released from its liabilities relating to its duties under this Agreement prior to resignation or termination) except for those contained in clauses 13 and 14 hereof.

10. RESPONSIBILITY OF ADMINISTRATOR AND INDEMNITY BY COMPANY

10.1 For the purpose of this Section 10, the term "Administrator" or any reference thereto shall be deemed to include each and any of the Administrator, its directors, officers, employees, agents, delegates or affiliates. Each person included within the term "Administrator" is entitled to the benefit of the agreements and indemnities contained in this Section 10 and may enforce the provisions of, and the rights, agreements and indemnities provided under, this Section 10 on behalf of any person included within the term "Administrator".

10.2 The Administrator shall not incur liability by refusing in good faith to perform any duty or obligation herein which in its reasonable judgment is improper or unauthorised provided that in performing its duties and obligations pursuant to this Agreement it shall not be required at any time to do or procure the doing of anything contrary to, or in breach of, or which constitutes any offence under, any applicable law or regulation then in force.

10.3 The Administrator shall not, in the absence of gross negligence, willful default or fraud on its part be liable to the Company or to any Shareholder for any act or omission, in the course of, or in connection with, the services rendered by it under this Agreement or for any loss or damage which the Company may sustain or suffer as the result of, or in the course of, the discharge by the Administrator of its duties under or pursuant to this Agreement.

10.4 The Administrator shall not be responsible for the loss or damage to any documents or property of the Company in the possession of the Administrator or for any failure to fulfil its duties hereunder, if such loss, damage or failure shall be caused by or directly or indirectly be due to war, enemy action, the act of government or other competent authority, riots, civil disturbance, rebellion, storm, tempest, accident, fire, strike, explosion or lock-out or any occurrence or event beyond the control of the Administrator.

10.5 The Company agrees to indemnify the Administrator from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (other than those resulting from the gross negligence, willful default or fraud on the part of the Administrator) which may be imposed on, incurred by, or asserted against the Administrator in performing its obligations or duties hereunder.

10.6 To the extent that the Administrator relies on information supplied by the Manager or any brokers or other financial intermediaries engaged by the Company in connection with performing its obligations hereunder, the Administrator's liability for the accuracy of any calculations utilising such information is limited to the accuracy of its own computations. The Administrator is not liable for the accuracy of the underlying data provided to it.

10.7 The Company acknowledges the Administrator shall have no discretionary authority or control with respect to the management or disposition of financial instruments held by the Company and shall not be required to undertake any action that could possibly characterize the Administrator as a fiduciary, as defined in Section 3(21) of the U.S. Employee Retirement Income Security Act of 1974, as amended ("ERISA"), of any "employee benefit plan" (within the meaning of Section 3(3) of ERISA) or "plan" (within the meaning of Section 4975 (e)(1) of the U.S. Internal Revenue Code of 1986, as amended) whose assets are comprised in the Company, directly or indirectly.

11. FRAUD

In the absence of gross negligence, or willful default and provided that the directors, officers, employees, agents, delegates or affiliates of the Administrator are not parties to any fraud, the Administrator shall not be responsible to the Company for any action taken by the Administrator upon the faith of any forged or fraudulent document in any case where, had the document not been

forged or fraudulent, the action taken by the Administrator would have been the normal and reasonable action to be taken.

12. REPUTATION

Except for acts incidental to the enforcement of its rights pursuant to this Agreement, neither party to this Agreement may do or commit any act or matter or thing which would or might prejudice or bring into disrepute in any manner the business or reputation of either of the parties or any director of any such party.

13. CONFIDENTIALITY

Neither of the parties to this Agreement shall, unless compelled so to do by any court of competent jurisdiction or any governmental or regulatory body, either before or after the termination of this Agreement, disclose any information relating to the other party without the prior written consent of the other party unless such information is already in the public domain other than as a result of a breach of this clause. It is agreed that such consent shall be deemed to have been given in the case of disclosure to a party's professional advisers, directors, officers, employees, agents or delegates for the purpose of the proper and effective carrying on of this Agreement.

14. DELIVERY OF DOCUMENTS

14.1 Upon the termination of this Agreement the Administrator shall, subject to clause 14.2, hand over to the Company the Register and all other documents in the possession of the Administrator in its capacity as Administrator or in relation to the functions assigned to it hereunder.

14.2 The Administrator shall not be required to make any delivery of documents under clause 14.1 until full payment shall have been made to the Administrator by the Company of its fees, compensation, costs and expenses due to it under the provisions of this Agreement.

15. NOTICES

Any notice, instruction or other instrument required or permitted to be given under this Agreement may be delivered in person or delivered by prepaid registered mail or by fax to the parties at the addresses set out in this document or such other address as may be notified in the manner provided hereunder by either party from time to time.

Unless shown to have been received earlier, such notice, instruction or other instrument shall be deemed to have been delivered, in the case of personal delivery, at the time it is left at the premises of the party, in the case of a registered letter at the expiration of five (5) business days after posting, and, in the case of fax, one hour after sending; provided that if any document is sent by fax outside normal business hours it shall be deemed to have been received at the next time after delivery when normal business hours commence. Evidence that the notice, instruction or other instrument was properly addressed, stamped and put into the post shall be conclusive evidence of posting.

16. SEVERABILITY

It is hereby agreed that, in the event any particular provision or provisions of this Agreement are determined to be unenforceable or void by a court of competent jurisdiction, such provision or provisions shall be deemed to be severable and such determination shall solely affect such provision or provisions and shall not, in itself, impair or render void or unenforceable the remaining provisions of this Agreement.

17. ASSIGNMENT

Except as provided in Clause 5.2, neither the benefit nor the burden of this Agreement shall be assigned by either party save with the consent of the other party to this Agreement. Notwithstanding the foregoing, in the event of a transfer of fifty percent (50%) or more of the ownership of the voting stock of the Administrator within any ninety day (90) period ("Change of Ownership"), this Agreement shall be binding upon, and shall inure to the benefit of, the Administrator's successor following any such Change of Ownership.

18. PROPER LAW

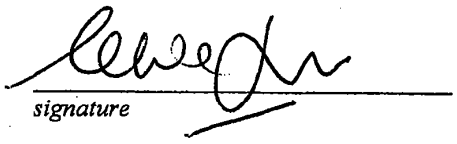
This Agreement shall be governed by and construed in accordance with the laws of the British Virgin Islands.

19. COUNTERPARTS

This Agreement may be executed in one or more counterparts all of which taken together shall be deemed to constitute one and the same instrument.

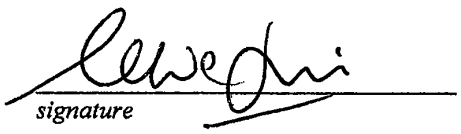
Signed as an agreement on behalf of the parties on the date set out in this document.

SIGNED BY)
duly authorised)
for and on behalf of)
KINGATE EURO FUND, LTD)
)
in the presence of:)
)



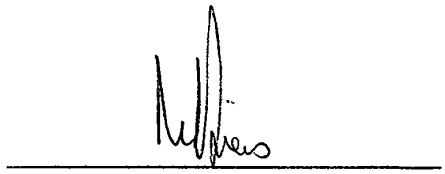
signature

SIGNED BY)
duly authorised)
for and on behalf of)
KINGATE MANAGEMENT LIMITED)
)
in the presence of:



signature

SIGNED BY)
duly authorised)
for and on behalf of)
BISYS HEDGE FUND SERVICES)
LIMITED)
)
in the presence of:)



signature

FEE SCHEDULE

For the purposes of this Fee Schedule "Combined Net Assets" shall mean the aggregate combined net assets of the Kingate Funds (as defined below) before deduction for accrued performance fees at the end of the prior month adjusted for subscriptions and redemptions at the start of the current month.

Fund Administration (including accounting and investor record keeping):

(a) On the first $2 billion of Combined Net Assets of the Kingate Funds	3 basis points (.03%) of Combined Net Assets per annum
(b) On Combined Net Assets of the Kingate Funds over $2 billion	2 basis points (.02%) of Combined Net Assets per annum

"Kingate Funds" shall mean as of the date of this agreement the Company and Kingate Global Fund, Ltd together.

Additionally, the Administrator shall charge its monthly out of pocket expenses (including communications, postage, printing, etc.) as they are incurred. The Administrator's fees are billed monthly and payable upon receipt. The Administrator's fees are reviewed following an initial period of six months and annually thereafter.

If at such point the service requirements are materially changed from the original assumptions the Administrator reserves the right to renegotiate these fees.

This fee schedule assumes that the Administrator will perform 12 official valuations per annum. To the extent the Company requires a second valuation in a month an additional charge of $3,000 will be assessed.

_____ Initial here to Accept

EXHIBIT R

REGISTRAR AGREEMENT

THIS AGREEMENT is made the 1st day of May Two Thousand

BETWEEN :

(1) **KINGATE GLOBAL FUND, LTD.,** a company incorporated under the laws of the British Virgin Islands whose registered office is at Bison Court, P.O. Box 3460, Road Town, Tortola, BVI (the "Company"); and

(2) **KINGATE MANAGEMENT LIMITED,** a company incorporated under the laws of Bermuda whose principal office is at 99 Front Street, Hamilton HM 11, Bermuda (the "Manager").

(3) **HEMISPHERE MANAGEMENT LIMITED,** a company incorporated under the laws of Bermuda whose principal office is at Hemisphere House, 9 Church Street, Hamilton HM 11, Bermuda (the "Administrator") of the third part.

WHEREBY IT IS AGREED AND DECLARED as follows :-

1. INTERPRETATION

1.1 In this Agreement the following words and expressions shall, where not inconsistent with the context, have the following meanings respectively:-

"Registrar Fee" means the fee payable to the Administrator calculated in accordance with Clause 5.1;

"Articles" means the Memorandum and Articles of Association for the time being of the Company, any reference herein to an Article shall be taken to refer to the appropriate article unless otherwise specified;

"Auditors" means PricewaterhouseCoopers or any other auditor appointed as such by the Directors;

"Business Day" means any day on which the central banking systems of the U.S. and Bermuda are open and operating;

"Connected Person" of a company means and includes (a) any person or company beneficially owning, directly or indirectly, 20 per cent or more of the issued ordinary share capital of that company or able to exercise, directly or indirectly 20 per cent or more of the total votes in that company; (b) any person or company controlled by a person who or company which meets one or both of the descriptions given in (a); (c) any company 20 per cent or more of whose issued ordinary share capital is beneficially owned, directly or indirectly by that company and any Connected Person of that company (as defined in (a), (b) or (d) of this definition) taken together or any company 20 per cent or more of the total votes in which can be exercised, directly or indirectly, by that company and any such Connected Person thereof (as defined in (a), (b) or (d) of this definition taken together; (d) any employee, director or officer of that company or of any Connected Person of that company (as defined in (a), (b) or (c) of this definition); (e) any spouse, minor child or step-child of the persons referred to in (a), (b) and (d); and (f) any trustee of a trust, the beneficiaries of which are persons falling into (a), (b), (d) and (e);

"Custodian" means the body corporate acting in the capacity of custodian of the Investments for the time being;

"Directors" means the Directors of the Company from time to time;

"Dollars ($) and Cents" means U.S. dollars and cents;

"Eligible Investor" means a person who is entitled to own Shares under the Articles;

"Investments" means all the assets and rights from time to time of the Company held in accordance with the Articles;

"Laws" means the laws of Bermuda and any other applicable laws and regulations for the time being in force;

"Management Agreement" means the co-management agreement for the time being subsisting to which the Company, Tremont (Bermuda) Limited and the Manager are parties and relating to the appointment and the duties of the co-managers;

"Redemption Date" means the last Business Day of each calendar month;

"Secretary of the Company" means the person from time to time nominated by the Administrator and appointed by the Directors to act as the Secretary of the Company pursuant to Clause 3.7 of this Administration Agreement;

"Shares" means the Common Shares of the Company offered at a price of net asset value per share;

"Share Register" means the official list of shareholders of the Company maintained in accordance with the laws of the British Virgin Islands;

"Share Transaction" means a subscription for shares, a redemption of shares, a transfer of shares or any other transaction requiring an entry or amendment to be made to the Share Register of the Company;

"Subscription Date" means the first Business Day of the month;

1.2 Any reference to the Company, the Manager or the Custodian includes a reference to its or their duly authorised agents or delegates.

1.3 References to Clauses are to Clauses of this Agreement.

1.4 The headings to the Clauses of this Agreement are for convenience only and shall not affect the construction or interpretation thereof.

1.5 Unless the context otherwise requires, words and expressions contained in this Agreement relating to the Company shall bear the same meaning as in the Articles of the Company PROVIDED THAT any alteration or amendment of either the Company's Articles shall not be effective for the purposes of this Agreement unless the party hereto affected (to the extent that its rights or duties hereunder are affected by such alteration or amendment) shall, by endorsement hereon or otherwise, have consented thereto.

2. APPOINTMENT OF THE ADMINISTRATOR

The Manager HEREBY APPOINTS the Administrator and the Administrator shall act with effect from the date hereof as Registrar and Transfer Agent of the Company upon the terms hereinafter contained and in accordance with the Laws and the Articles of the Company until its appointment shall be terminated as hereinafter provided and the Administrator hereby accepts such appointment and agrees to assume the obligations to the Company and the Manager set forth herein.

3. FUNCTIONS, POWERS AND OBLIGATIONS OF THE REGISTRAR

Acting as Registrar of the Company including without prejudice to the generality of the foregoing:-

3.1 the provision of facilities for the certification of Shares and for the registration or the recording of the issue, redemption and transfer of shares;

3.2 the maintenance of a register for Shares (the "Register");

3.3 the registration of shareholders on the occasion of each issue and transfer of Shares which are in registered form and the cancellation of entries in the Register in respect of Shares redeemed;

3.4 the registration of probates, letters of administration, powers of attorney, certificates of death or marriage, stop notices and other instruments affecting the legal ownership of the Shares;

3.5 the cancellation of share certificates representing Shares which have been redeemed or transferred;

3.6 the preparation and authentication of share certificates (which shall be provided in blank by the Company) and the despatch to the persons entitled thereto or to the order of such persons or to their agent;

3.7 the retention for a period of six years from the date thereof of all application forms for the subscription of, written instructions for the redemption of and the instruments for the transfer of any Shares or other similar documents and for a period of six years from the date of cancellation, all share certificates which have been cancelled;

3.8 the preparation of lists of the holders of Shares for inclusion in any annual or other return required to be made by the Company;

3.9 the holding of the Register open for inspection in accordance with the Articles of the Company;

3.10 generally performing all such functions as are usually performed by registrars and doing all such acts and things as may be incidental to the above duties or any of them.

4. CONTINUATION AND EXERCISE OF ADMINISTRATOR'S POWERS

4.1 The authorities herein contained are continuing ones and shall remain in full force and effect until revoked by termination of this Agreement as hereinafter provided, but such revocation shall not affect any liability in any way resulting from transactions initiated prior to such revocation.

4.2 The Administrator will at all times exercise and perform the powers, rights and duties (or any of them) conferred upon it by this Agreement, any supplemental agreement, or otherwise by the Directors within Bermuda (or such other place or places as the Directors may from time to time approve) and in particular (but without prejudice to the generality of the foregoing) will hold all meetings at which such powers, rights and duties (or any of them) are exercised or performed within Bermuda or any such other place or places as aforesaid and any decision taken or directions given by the Administrator will be taken and be given within Bermuda or such other place or places as aforesaid. The Administrator will not carry on in relation to the Company any business outside Bermuda (other than in any place or places as the Directors may from time to time approve for such purpose, such approval not to be unreasonably withheld) if by so doing the Administrator would cause the Company to become liable to pay any taxes which it would not otherwise be liable to pay.

5. FEES OF THE ADMINISTRATOR

5.1 In consideration of the services to be undertaken by the Administrator hereunder the Administrator shall be entitled to receive from the Company a Registrar and Transfer Agent fee of $130 per each Share Transaction. The said fee shall be payable monthly in arrears.

5.2 In the event of any dispute arising as to the amount of the Administrator's fees hereunder, the same shall be referred to the Auditors for settlement, who shall be entitled to make such further or other adjustments as may in the circumstances appear to them to be appropriate and whose decision shall be regarded as the decision of an expert and not of an arbitrator and shall be binding and final upon the parties hereto.

6. EXPENSES

6.1 Subject to Clause 6.2, the Administrator shall pay the expenses incurred by it in connection with the performance of its services hereunder unless the Manager otherwise agrees in any particular case.

6.2 The Company shall pay itself, or if paid by the Administrator, will reimburse the Administrator in respect of all out-of-pocket expenses incurred by it in the performance of its duties including (without limitation):-

6.2.1 all expenses of and incidental to convening and holding Shareholders' and Directors' meetings of the Company;

6.2.2 the cost of minute books and other documentation required by the Laws;

6.2.3 all charges for postage, telephone, telex, telecopying, faxing and cable incurred by the Administrator in the proper performance of its duties hereunder.

7. SERVICES OF THE ADMINISTRATOR NOT TO BE EXCLUSIVE

The services of the Administrator to the Company hereunder are not to be deemed exclusive and the Administrator shall be free to render similar services to others so long as its services hereunder are not impaired thereby and to retain for its own use and benefit all fees or other monies payable thereby and the Administrator shall not be deemed to be affected with notice of or to be under any duty to disclose to the Company any fact or thing which comes to the notice of the Administrator or any servant or agent of the Administrator in the course of the Administrator rendering similar services to others or in the course of its business in any other capacity or in any manner whatsoever otherwise than in the course of carrying out its duties hereunder.

8. INTERESTS IN THE ADMINISTRATOR OR THE COMPANY

8.1 It is understood that directors, officers, agents and shareholders of the Company and the Manager are or may be interested in the Administrator as directors, officers or shareholders or otherwise, that directors, officers, shareholders and any client of the Administrator are or may be interested in the Company as directors, officers, shareholders or otherwise and that the Administrator is or may be interested in the Company as shareholder or otherwise and it is hereby acknowledged that no person so interested shall be liable to account for any benefit to any other party by reason solely of such interest.

8.2 The Administrator or any client of the Administrator or any Connected Person of the Administrator or any holding company of the Administrator or any subsidiary of such holding company ("the interested party") may hold, acquire or dispose of any investments upon its own account notwithstanding that the same or similar investments may be held by or for the account of or otherwise connected with the Company and it is hereby acknowledged that no such interested party shall be liable to account for any benefit to any other party by reason solely of such interest.

8.3 Nothing herein contained shall prevent an interested party from selling Investments to or purchasing Investments from or vesting Investments in the Company or from contracting or entering into any financial, banking, currency or other transaction with the Company or any holders of Shares or the shareholders of any company or body any of whose securities are held by or for the account of or otherwise connected with the Company or from being interested in any such sale, vesting, contract or transaction and the interested party shall not be called upon to

account in respect of any such contract or transaction or benefit derived therefrom provided that nothing herein contained shall permit any such sale or vesting or the entering into of any such contract or transaction as aforesaid with the Company unless such transaction is on the best terms reasonably obtainable.

9. LIABILITY AND INDEMNITY

9.1 The Administrator shall not be liable to the Company, or any holder of Shares or otherwise for any error of judgment or for any loss suffered by the Company or any such holder of Shares in connection with the subject matter of this Agreement howsoever any such loss may have occurred unless such loss arises from negligence, willful default, fraud or dishonesty, in the performance or non-performance by the Administrator of its obligations or duties.

9.2 The Administrator shall not be liable to the Manager or any shareholder of the Manager or otherwise for any loss suffered by the Manager or shareholder of the Manager in connection with the subject matter of this Agreement howsoever any such loss may have occurred unless such loss arises from negligence, willful default, fraud or dishonesty, in the performance or non-performance by the Administrator of its obligations or duties.

9.3 The Company hereby undertakes to hold harmless and indemnify the Manager and/or the Administrator against all actions proceedings claims costs demands and expenses which may be brought against suffered or incurred by the Manager and/or the Administrator by reason of their performance or non-performance of their duties to the Company under the terms of this Agreement including all legal professional and other expenses incurred by the Manager and/or the Administrator (except such as shall arise from negligence, willful default, fraud or dishonesty in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature but not tax on the overall income or profits of the Manager or the Administrator.

9.4 The Administrator hereby undertakes to hold harmless and indemnify the Company or the Manager against all actions proceedings claims costs demands and expenses which may be brought against suffered or incurred by the Company or the Manager by reason of their performance or non-performance of their duties under the terms of this Agreement (other than due to negligence, willful default, fraud or dishonesty on the part of the Company or the Manager or persons designated by them) including all legal professional and other expenses incurred by the Company or the Manager or persons designated by them in the performance of their obligations or duties and including indemnity obligations owed by the Company or the Manager to persons designated by them (except such as shall arise from negligence, willful default, fraud or dishonesty in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to or any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature, but not tax on the overall income or profits of the Company or the Manager.

9.5 The Manager hereby undertakes to hold harmless and indemnify the Company or the Administrator against all actions proceedings claims costs demands and expenses which may be brought against suffered or incurred by the Company or the Administrator by reason of their performance or non-performance of their duties under the terms of this Agreement (other than due to negligence, willful default, fraud or dishonesty on the part of the Company or the Administrator or persons designated by them) including all legal professional and other expenses incurred by the Company or the Administrator or persons designated by them in the performance of their obligations or duties and including indemnity obligations owed by the Company or the Administrator to persons designated by them (except such as shall arise from negligence, willful default, fraud or dishonesty in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to or any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature, but not tax on the overall income or profits of the Company or the Administrator.

9.6 Notwithstanding any other provision of this Agreement, the Administrator shall not be liable to the Company, any holder of Shares or otherwise for any taxation assessed upon or payable by the Company wheresoever the same may be assessed or imposed and whether directly or indirectly except for such taxation or shall be attributable to negligence, willful default, fraud or dishonesty in the performance or non-performance by the Administrator of its obligations or duties. The Company shall indemnify and keep indemnified the Administrator from and against all taxes not attributable to negligence, willful default, fraud or dishonesty as aforesaid (wheresoever and by whomsoever imposed) on profits or gains of the Company which may be assessed upon or become payable by the Administrator and against all costs claims demands actions and proceedings in connection therewith.

9.7 For the avoidance of doubt it is hereby agreed and declared that reference to the Administrator in this Clause shall be deemed to include references to the officers and servants of the Administrator.

9.8 Any indemnity expressly given to the Company or the Manager or the Administrator in this Agreement is in addition to and without prejudice to any indemnity provided by the Laws.

10. DELEGATION AND ASSIGNMENT

10.1 The Administrator shall have full power to delegate the whole or any part of its functions hereunder to any person firm or company with the approval of the Board of Directors. The Administrator shall (unless the Directors shall otherwise agree in any particular case) exercise its power of delegation only on terms which include a provision binding on the Appointee in terms similar in all respects to this Agreement.

10.2 Neither the responsibilities nor liabilities under this Agreement can be assigned by the Administrator without the approval of the Board of Directors.

11. LEGAL ACTION BY THE ADMINISTRATOR

The Administrator shall not be required to take any legal action unless fully indemnified to its reasonable satisfaction for all costs and liabilities that may be incurred or suffered by the Administrator and not attributable to its negligence, willful default, fraud or dishonesty in the performance or non-performance of its obligations or duties and if the Company requires the Administrator to take any action of whatsoever nature which in the reasonable opinion of the Administrator might make the Administrator liable for the payment of money or liable in any other way the Administrator shall be and be kept indemnified in any reasonable amount and form satisfactory to the Administrator as a prerequisite to taking action.

12. RESIGNATION AND TERMINATION

12.1 The Administrator shall be entitled to resign its appointment hereunder:-

12.1.1 by giving no less than three months' notice in writing to the Manager to expire at any time;

12.1.2 at any time if the Company shall go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Administrator) or be unable to pay its debts or commit any act of bankruptcy under the laws of the British West Indies or if a receiver is appointed of any of the assets of the Company or if some event having an equivalent effect occurs;

12.1.3 at any time if the Company shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Administrator requiring it so to do to make good such breach;

12.1.4 at any time if the present Manager shall cease to be the Manager of the Company for any reason.

12.2 The appointment of the Administrator may be terminated as hereunder:-

12.2.1 The Manager may terminate the appointment of the Administrator as Administrator of the Company by giving not less than three months' notice in writing to the administrator to expire at any time.

12.2.2 The Manager may terminate the appointment of the Administrator at any time by giving notice in writing to the Administrator in any of the following events:-

12.2.2.1 If the Administrator goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Company) or is unable to pay its debts or commits any act of bankruptcy under the laws of Bermuda or if a receiver is appointed of any of the assets of the Administrator or if some event having an equivalent effect occurs;

12.2.2.2 If the Administrator shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Company requiring it so to do to make good such breach;

12.2.2.3 If the Administrator ceases to be permitted to act as such under the Laws.

12.3 The appointment of the Administrator shall automatically terminate forthwith if the Administrator shall become or be deemed to become resident for tax purposes or carry on business within the United States or the United Kingdom or shall carry on any business elsewhere outside Bermuda and Cayman Islands (other than in any place or places as may from time to time be approved by the Directors for such purpose, such approval not to be unreasonably withheld) in circumstances which cause the Company to become liable to pay any taxes which it would not otherwise be liable to pay.

12.4 On termination of the appointment of the Administrator under the provisions of this Clause the Administrator shall be entitled to receive the fees referred to in Clause 5.1 but shall not be entitled to compensation in respect of such termination; and the Administrator shall deliver or procure to be delivered to the Company, or as it shall direct, all books of accounts, records, other registered correspondence, documents and assets relating to the affairs of or belonging to the Company in the possession of or under the control of the Administrator and shall take all necessary steps to vest in the Company or any new Administrator any assets previously held in the name of or to the order of the Administrator on behalf of the Company and shall not be entitled to any lien in respect of any of the foregoing.

13. CONFIDENTIALITY AND REPUTATION

13.1 None of the parties hereto shall (except under compulsion of law or in accordance with the Laws) either before or after the termination of this Agreement disclose to any person not authorised by the relevant party to receive the same any confidential information relating to any other party or to the affairs of such party of which the party disclosing the same shall have become possessed during the period of this Agreement and each party shall use all reasonable endeavours to prevent any such disclosure as aforesaid.

13.2 No party shall do or suffer any act or matter or thing which would or might prejudice or bring into disrepute the business or reputation of any other party.

14. MISCELLANEOUS PROVISIONS

14.1 No failure on the part of any party to exercise, and no delay on the part of any party in exercising, any right or remedy under this Agreement will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

14.2 Any provision of this Agreement may be amended only if the parties so agree in writing.

14.3 The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction or the legality, validity or enforceability of any other provision.

14.4 The Company shall not use the Administrator's name in any document or other publicity material without the prior consent of the Administrator (such consent not to be unreasonably withheld or delayed) which consent may be given generally in respect of agreed wording to be included in an agreed list of documents.

14.5 Except to the extent that the Laws admit variations by contract and are so varied by the terms of this Agreement, the powers, duties, rights and obligations of the parties under this Agreement shall be overridden by, and to the extent that they may conflict, be subject to, the Laws.

14.6 The Administrator will not cause or take any action as a consequence of which, the Company or the Manager will become the subject of United States or United Kingdom taxation.

15. NOTICES

Any notice given hereunder shall be in writing and shall be served by hand at or by being sent by prepaid airmail post to the registered office for the time being of the addressee and any such notice shall if so posted be deemed to be served seven days after posting. Evidence that the notice was properly addressed stamped and put into the post shall be conclusive evidence of posting.

16. LAW OF THE CONTRACT

16.1 This Agreement shall be governed by and construed in accordance with the Laws of Bermuda.

16.2 The Company, the Manager and the Administrator hereby irrevocably submits to the non-exclusive jurisdiction of the courts of Bermuda for the settlement of any dispute or difference arising between the parties hereto.

16.3 The Manager hereby irrevocably appoints the Administrator as its authorised agent to accept and acknowledge on its behalf service of any and all notices which may be served at any time by any person (other than the Administrator) on the Company.

IN WITNESS WHEREOF this Agreement has been entered into the day and year first above written.

SIGNED by)
)
for and on behalf of)
)
KINGATE GLOBAL FUND, LTD.)
)
)
in the presence of:-)

SIGNED by)
)
for and on behalf of)
)
KINGATE MANAGEMENT LIMITED)
)
)
in the presence of:-)

SIGNED by)
)
for and on behalf of)
)
HEMISPHERE MANAGEMENT LIMITED)
)
in the presence of:-)

EXHIBIT S

REGISTRAR AGREEMENT

THIS AGREEMENT is made the 1st day of May Two Thousand

BETWEEN

(1) **KINGATE EURO FUND, LTD.**, a company incorporated under the laws of the British Virgin Islands whose registered office is at Bison Court, P.O. Box 3460, Road Town, Tortola, BVI (the "Company"); and

(2) **KINGATE MANAGEMENT LIMITED**, a company incorporated under the laws of Bermuda whose principal office is at 99 Front Street, Hamilton HM 11, Bermuda (the "Manager").

(3) **HEMISPHERE MANAGEMENT LIMITED**, a company incorporated under the laws of Bermuda whose principal office is at Hemisphere House, 9 Church Street, Hamilton HM 11, Bermuda (the "Administrator") of the third part.

WHEREBY IT IS AGREED AND DECLARED as follows :-

1. INTERPRETATION

1.1 In this Agreement the following words and expressions shall, where not inconsistent with the context, have the following meanings respectively:-

"Registrar Fee" means the fee payable to the Administrator calculated in accordance with Clause 5.1;

"Articles" means the Memorandum and Articles of Association for the time being of the Company, any reference herein to an Article shall be taken to refer to the appropriate article unless otherwise specified;

"Auditors" means PricewaterhouseCoopers or any other auditor appointed as such by the Directors;

"Business Day" means any day on which the central banking systems of the U.S. and Bermuda are open and operating;

"Connected Person" of a company means and includes (a) any person or company beneficially owning, directly or indirectly, 20 per cent or more of the issued ordinary share capital of that company or able to exercise, directly or indirectly 20 per cent or more of the total votes in that company; (b) any person or company controlled by a person who or company which meets one or both of the descriptions given in (a); (c) any company 20 per cent or more of whose issued ordinary share capital is beneficially owned, directly or indirectly by that company and any Connected Person of that company (as defined in (a), (b) or (d) of this definition) taken together or any company 20 per cent or more of the total votes in which can be exercised, directly or indirectly, by that company and any such Connected Person thereof (as defined in (a), (b) or (d) of this definition taken together; (d) any employee, director or officer of that company or of any Connected Person of that company (as defined in (a), (b) or (c) of this definition); (e) any spouse, minor child or step-child of the persons referred to in (a), (b) and (d); and (f) any trustee of a trust, the beneficiaries of which are persons falling into (a), (b), (d) and (e);

"Custodian" means the body corporate acting in the capacity of custodian of the Investments for the time being;

"Directors" means the Directors of the Company from time to time;

"Euros and Cents" means European euros and cents;

"Eligible Investor" means a person who is entitled to own Shares under the Articles;

"Investments" means all the assets and rights from time to time of the Company held in accordance with the Articles;

"Laws" means the laws of Bermuda and any other applicable laws and regulations for the time being in force;

"Management Agreement" means the management agreement for the time being subsisting to which the Company and the Manager are parties and relating to the appointment and the duties of the Manager;

"Redemption Date" means the last Business Day of each calendar month;

"Secretary of the Company" means the person from time to time nominated by the Administrator and appointed by the Directors to act as the Secretary of the Company pursuant to Clause 3.7 of this Administration Agreement;

"Shares" means the Common Shares of the Company offered at a price of net asset value per share;

"Share Register" means the official list of shareholders of the Company maintained in accordance with the laws of the British Virgin Islands;

"Share Transaction" means a subscription for shares, a redemption of shares, a transfer of shares or any other transaction requiring an entry or amendment to be made to the Share Register of the Company;

"Subscription Date" means the first Business Day of the month;

1.2 Any reference to the Company, the Manager or the Custodian includes a reference to its or their duly authorised agents or delegates.

1.3 References to Clauses are to Clauses of this Agreement.

1.4 The headings to the Clauses of this Agreement are for convenience only and shall not affect the construction or interpretation thereof.

1.5 Unless the context otherwise requires, words and expressions contained in this Agreement relating to the Company shall bear the same meaning as in the Articles of the Company PROVIDED THAT any alteration or amendment of either the Company's Articles shall not be effective for the purposes of this Agreement unless the party hereto affected (to the extent that its rights or duties hereunder are affected by such alteration or amendment) shall, by endorsement hereon or otherwise, have consented thereto.

2. APPOINTMENT OF THE ADMINISTRATOR

The Manager HEREBY APPOINTS the Administrator and the Administrator shall act with effect from the date hereof as Registrar and Transfer Agent of the Company upon the terms hereinafter contained and in accordance with the Laws and the Articles of the Company until its appointment shall be terminated as hereinafter provided and the Administrator hereby accepts such appointment and agrees to assume the obligations to the Company and the Manager set forth herein.

3. FUNCTIONS, POWERS AND OBLIGATIONS OF THE REGISTRAR

Acting as Registrar of the Company including without prejudice to the generality of the foregoing:

3.1 the provision of facilities for the certification of Shares and for the registration or the recording of the issue, redemption and transfer of shares;

3.2 the maintenance of a register for Shares (the "Register");

3.3 the registration of shareholders on the occasion of each issue and transfer of Shares which are in registered form and the cancellation of entries in the Register in respect of Shares redeemed;

3.4 the registration of probates, letters of administration, powers of attorney, certificates of death or marriage, stop notices and other instruments affecting the legal ownership of the Shares;

3.5 the cancellation of share certificates representing Shares which have been redeemed or transferred;

3.6 the preparation and authentication of share certificates (which shall be provided in blank by the Company) and the despatch to the persons entitled thereto or to the order of such persons or to their agent;

3.7 the retention for a period of six years from the date thereof of all application forms for the subscription of, written instructions for the redemption of and the instruments for the transfer of any Shares or other similar documents and for a period of six years from the date of cancellation, all share certificates which have been cancelled;

3.8 the preparation of lists of the holders of Shares for inclusion in any annual or other return required to be made by the Company;

3.9 the holding of the Register open for inspection in accordance with the Articles of the Company;

3.10 generally performing all such functions as are usually performed by registrars and doing all such acts and things as may be incidental to the above duties or any of them.

4. CONTINUATION AND EXERCISE OF ADMINISTRATOR'S POWERS

4.1 The authorities herein contained are continuing ones and shall remain in full force and effect until revoked by termination of this Agreement as hereinafter provided, but such revocation shall not affect any liability in any way resulting from transactions initiated prior to such revocation.

4.2 The Administrator will at all times exercise and perform the powers, rights and duties (or any of them) conferred upon it by this Agreement, any supplemental agreement, or otherwise by the Directors within Bermuda (or such other place or places as the Directors may from time to time approve) and in particular (but without prejudice to the generality of the foregoing) will hold all meetings at which such powers, rights and duties (or any of them) are exercised or performed within Bermuda or any such other place or places as aforesaid and any decision taken or directions given by the Administrator will be taken and be given within Bermuda or such other place or places as aforesaid. The Administrator will not carry on in relation to the Company any business outside Bermuda (other than in any place or places as the Directors may from time to time approve for such purpose, such approval not to be unreasonably withheld) if by so doing the Administrator would cause the Company to become liable to pay any taxes which it would not otherwise be liable to pay.

5. FEES OF THE ADMINISTRATOR

5.1 In consideration of the services to be undertaken by the Administrator hereunder the Administrator shall be entitled to receive from the Company a Registrar and Transfer Agent fee of euro 130 per each Share Transaction. The said fee shall be payable monthly in arrears.

5.2 In the event of any dispute arising as to the amount of the Administrator's fees hereunder, the same shall be referred to the Auditors for settlement, who shall be entitled to make such further or other adjustments as may in the circumstances appear to them to be appropriate and whose decision shall be regarded as the decision of an expert and not of an arbitrator and shall be binding and final upon the parties hereto.

6. EXPENSES

6.1 Subject to Clause 6.2, the Administrator shall pay the expenses incurred by it in connection with the performance of its services hereunder unless the Manager otherwise agrees in any particular case.

6.2 The Company shall pay itself, or if paid by the Administrator, will reimburse the Administrator in respect of all out-of-pocket expenses incurred by it in the performance of its duties including (without limitation):-

6.2.1 all expenses of and incidental to convening and holding Shareholders' and Directors' meetings of the Company;

6.2.2 the cost of minute books and other documentation required by the Laws;

6.2.3 all charges for postage, telephone, telex, telecopying, faxing and cable incurred by the Administrator in the proper performance of its duties hereunder.

SERVICES OF THE ADMINISTRATOR NOT TO BE EXCLUSIVE

The services of the Administrator to the Company hereunder are not to be deemed exclusive and the Administrator shall be free to render similar services to others so long as its services hereunder are not impaired thereby and to retain for its own use and benefit all fees or other monies payable thereby and the Administrator shall not be deemed to be affected with notice of or to be under any duty to disclose to the Company any fact or thing which comes to the notice of the Administrator or any servant or agent of the Administrator in the course of the Administrator rendering similar services to others or in the course of its business in any other capacity or in any manner whatsoever otherwise than in the course of carrying out its duties hereunder.

INTERESTS IN THE ADMINISTRATOR OR THE COMPANY

8.1 It is understood that directors, officers, agents and shareholders of the Company and the Manager are or may be interested in the Administrator as directors, officers or shareholders or otherwise, that directors, officers, shareholders and any client of the Administrator are or may be interested in the Company as directors, officers, shareholders or otherwise and that the Administrator is or may be interested in the Company as shareholder or otherwise and it is hereby acknowledged that no person so interested shall be liable to account for any benefit to any other party by reason solely of such interest.

8.2 The Administrator or any client of the Administrator or any Connected Person of the Administrator or any holding company of the Administrator or any subsidiary of such holding company ("the interested party") may hold, acquire or dispose of any investments upon its own account notwithstanding that the same or similar investments may be held by or for the account of or otherwise connected with the Company and it is hereby acknowledged that no such interested party shall be liable to account for any benefit to any other party by reason solely of such interest.

8.3 Nothing herein contained shall prevent an interested party from selling Investments to or purchasing Investments from or vesting Investments in the Company or from contracting or entering into any financial, banking, currency or other transaction with the Company or any holders of Shares or the shareholders of any company or body any of whose securities are held by or for the account of or otherwise connected with the Company or from being interested in any such sale, vesting, contract or transaction and the interested party shall not be called upon to

account in respect of any such contract or transaction or benefit derived therefrom provided that nothing herein contained shall permit any such sale or vesting or the entering into of any such contract or transaction as aforesaid with the Company unless such transaction is on the best terms reasonably obtainable.

9. LIABILITY AND INDEMNITY

9.1 The Administrator shall not be liable to the Company, or any holder of Shares or otherwise for any error of judgment or for any loss suffered by the Company or any such holder of Shares in connection with the subject matter of this Agreement howsoever any such loss may have occurred unless such loss arises from negligence, willful default, fraud or dishonesty, in the performance or non-performance by the Administrator of its obligations or duties.

9.2 The Administrator shall not be liable to the Manager or any shareholder of the Manager or otherwise for any loss suffered by the Manager or shareholder of the Manager in connection with the subject matter of this Agreement howsoever any such loss may have occurred unless such loss arises from negligence, willful default, fraud or dishonesty, in the performance or non-performance by the Administrator of its obligations or duties.

9.3 The Company hereby undertakes to hold harmless and indemnify the Manager and/or the Administrator against all actions proceedings claims costs demands and expenses which may be brought against suffered or incurred by the Manager and/or the Administrator by reason of their performance or non-performance of their duties to the Company under the terms of this Agreement including all legal professional and other expenses incurred by the Manager and/or the Administrator (except such as shall arise from negligence, willful default, fraud or dishonesty in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature but not tax on the overall income or profits of the Manager or the Administrator.

9.4 The Administrator hereby undertakes to hold harmless and indemnify the Company or the Manager against all actions proceedings claims costs demands and expenses which may be brought against suffered or incurred by the Company or the Manager by reason of their performance or non-performance of their duties under the terms of this Agreement (other than due to negligence, willful default, fraud or dishonesty on the part of the Company or the Manager or persons designated by them) including all legal professional and other expenses incurred by the Company or the Manager or persons designated by them in the performance of their obligations or duties and including indemnity obligations owed by the Company or the Manager to persons designated by them (except such as shall arise from negligence, willful default, fraud or dishonesty in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to or any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature, but not tax on the overall income or profits of the Company or the Manager.

9.5 The Manager hereby undertakes to hold harmless and indemnify the Company or the Administrator against all actions proceedings claims costs demands and expenses which may be brought against suffered or incurred by the Company or the Administrator by reason of their performance or non-performance of their duties under the terms of this Agreement (other than due to negligence, willful default, fraud or dishonesty on the part of the Company or the Administrator or persons designated by them) including all legal professional and other expenses incurred by the Company or the Administrator or persons designated by them in the performance of their obligations or duties and including indemnity obligations owed by the Company or the Administrator to persons designated by them (except such as shall arise from negligence, willful default, fraud or dishonesty in the performance of such obligations or duties) and in particular (but without limitation) this protection and indemnity shall extend to or any loss delay misdelivery or error in transmission of any telexed or telefaxed communication or as a result of acting upon any forged document or signature, but not tax on the overall income or profits of the Company or the Administrator.

9.6 Notwithstanding any other provision of this Agreement, the Administrator shall not be liable to the Company, any holder of Shares or otherwise for any taxation assessed upon or payable by the Company wheresoever the same may be assessed or imposed and whether directly or indirectly except for such taxation or shall be attributable to negligence, willful default, fraud or dishonesty in the performance or non-performance by the Administrator of its obligations or duties. The Company shall indemnify and keep indemnified the Administrator from and against all taxes not attributable to negligence, willful default, fraud or dishonesty as aforesaid (wheresoever and by whomsoever imposed) on profits or gains of the Company which may be assessed upon or become payable by the Administrator and against all costs claims demands actions and proceedings in connection therewith.

9.7 For the avoidance of doubt it is hereby agreed and declared that reference to the Administrator in this Clause shall be deemed to include references to the officers and servants of the Administrator.

9.8 Any indemnity expressly given to the Company or the Manager or the Administrator in this Agreement is in addition to and without prejudice to any indemnity provided by the Laws.

10. DELEGATION AND ASSIGNMENT

10.1 The Administrator shall have full power to delegate the whole or any part of its functions hereunder to any person firm or company with the approval of the Board of Directors. The Administrator shall (unless the Directors shall otherwise agree in any particular case) exercise its power of delegation only on terms which include a provision binding on the Appointee in terms similar in all respects to this Agreement.

10.2 Neither the responsibilities nor liabilities under this Agreement can be assigned by the Administrator without the approval of the Board of Directors.

11. LEGAL ACTION BY THE ADMINISTRATOR

The Administrator shall not be required to take any legal action unless fully indemnified to its reasonable satisfaction for all costs and liabilities that may be incurred or suffered by the Administrator and not attributable to its negligence, willful default, fraud or dishonesty in the performance or non-performance of its obligations or duties and if the Company requires the Administrator to take any action of whatsoever nature which in the reasonable opinion of the Administrator might make the Administrator liable for the payment of money or liable in any other way the Administrator shall be and be kept indemnified in any reasonable amount and form satisfactory to the Administrator as a prerequisite to taking action.

12. RESIGNATION AND TERMINATION

12.1 The Administrator shall be entitled to resign its appointment hereunder:-

12.1.1 by giving no less than three months' notice in writing to the Manager to expire at any time;

12.1.2 at any time if the Company shall go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Administrator) or be unable to pay its debts or commit any act of bankruptcy under the laws of the British West Indies or if a receiver is appointed of any of the assets of the Company or if some event having an equivalent effect occurs;

12.1.3 at any time if the Company shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Administrator requiring it so to do to make good such breach;

12.1.4 at any time if the present Manager shall cease to be the Manager of the Company for any reason.

12.2 The appointment of the Administrator may be terminated as hereunder:-

12.2.1 The Manager may terminate the appointment of the Administrator as Administrator of the Company by giving not less than three months' notice in writing to the administrator to expire at any time.

12.2.2 The Manager may terminate the appointment of the Administrator at any time by giving notice in writing to the Administrator in any of the following events:-

12.2.2.1 If the Administrator goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Company) or is unable to pay its debts or commits any act of bankruptcy under the laws of Bermuda or if a receiver is appointed of any of the assets of the Administrator or if some event having an equivalent effect occurs;

12.2.2.2 If the Administrator shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the Company requiring it so to do to make good such breach;

If the Administrator ceases to be permitted to act as such under the Laws.

12.3 The appointment of the Administrator shall automatically terminate forthwith if the Administrator shall become or be deemed to become resident for tax purposes or carry on business within the United States or the United Kingdom or shall carry on any business elsewhere outside Bermuda and Cayman Islands (other than in any place or places as may from time to time be approved by the Directors for such purpose, such approval not to be unreasonably withheld) in circumstances which cause the Company to become liable to pay any taxes which it would not otherwise be liable to pay.

12.4 On termination of the appointment of the Administrator under the provisions of this Clause the Administrator shall be entitled to receive the fees referred to in Clause 5.1 but shall not be entitled to compensation in respect of such termination; and the Administrator shall deliver or procure to be delivered to the Company, or as it shall direct, all books of accounts, records, other registered correspondence, documents and assets relating to the affairs of or belonging to the Company in the possession of or under the control of the Administrator and shall take all necessary steps to vest in the Company or any new Administrator any assets previously held in the name of or to the order of the Administrator on behalf of the Company and shall not be entitled to any lien in respect of any of the foregoing.

13. CONFIDENTIALITY AND REPUTATION

13.1 None of the parties hereto shall (except under compulsion of law or in accordance with the Laws) either before or after the termination of this Agreement disclose to any person not authorised by the relevant party to receive the same any confidential information relating to any other party or to the affairs of such party of which the party disclosing the same shall have become possessed during the period of this Agreement and each party shall use all reasonable endeavours to prevent any such disclosure as aforesaid.

13.2 No party shall do or suffer any act or matter or thing which would or might prejudice or bring into disrepute the business or reputation of any other party.

14. MISCELLANEOUS PROVISIONS

14.1 No failure on the part of any party to exercise, and no delay on the part of any party in exercising, any right or remedy under this Agreement will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

14.2 Any provision of this Agreement may be amended only if the parties so agree in writing.

14.3 The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction or the legality, validity or enforceability of any other provision.

14.4 The Company shall not use the Administrator's name in any document or other publicity material without the prior consent of the Administrator (such consent not to be unreasonably withheld or delayed) which consent may be given generally in respect of agreed wording to be included in an agreed list of documents.

14.5 Except to the extent that the Laws admit variations by contract and are so varied by the terms of this Agreement, the powers, duties, rights and obligations of the parties under this Agreement shall be overridden by, and to the extent that they may conflict, be subject to, the Laws.

14.6 The Administrator will not cause or take any action as a consequence of which, the Company or the Manager will become the subject of United States or United Kingdom taxation.

NOTICES

Any notice given hereunder shall be in writing and shall be served by hand at or by being sent by prepaid airmail post to the registered office for the time being of the addressee and any such notice shall if so posted be deemed to be served seven days after posting. Evidence that the notice was properly addressed stamped and put into the post shall be conclusive evidence of posting.

16. LAW OF THE CONTRACT

16.1 This Agreement shall be governed by and construed in accordance with the Laws of Bermuda.

16.2 The Company, the Manager and the Administrator hereby irrevocably submits to the non-exclusive jurisdiction of the courts of Bermuda for the settlement of any dispute or difference arising between the parties hereto.

16.3 The Manager hereby irrevocably appoints the Administrator as its authorised agent to accept and acknowledge on its behalf service of any and all notices which may be served at any time by any person (other than the Administrator) on the Company.

IN WITNESS WHEREOF this Agreement has been entered into the day and year first above written.

SIGNED by)
for and on behalf of)
KINGATE EURO FUND, LTD.)

in the presence of:-

SIGNED by
for and on behalf of
KINGATE MANAGEMENT LIMITED

in the presence of:-

SIGNED by
for and on behalf of
HEMISPHERE MANAGEMENT LIMITED

in the presence of:-

DATED _____ 2000

KINGATE GLOBAL FUND, LTD.

AND -

KINGATE MANAGEMENT LIMITED

- AND -

HEMISPHERE MANAGEMENT LIMITED

REGISTRAR AGREEMENT

EXHIBIT T

He ere House, 9 Church Street
P.O. Box HM ..., Hamilton HM DX, Bermuda
Telephone: (809) 295-9168
Telex: 3584 HML BA

HEMISPHERE MANAGEMENT LIMITED

FATOR.
Factual

Fax: (809) 292-6145

Sender's Name: CHRISTOPHER WETHERHILL

Message For: FRED T. BUSK III

Of: 295 6180

This is sheet no. 1 of THREE

Message transmitted on 22 February 1994

If all sheets of this transmission are not well received please call the sender as soon as possible.

DEAR MR. BUSK:

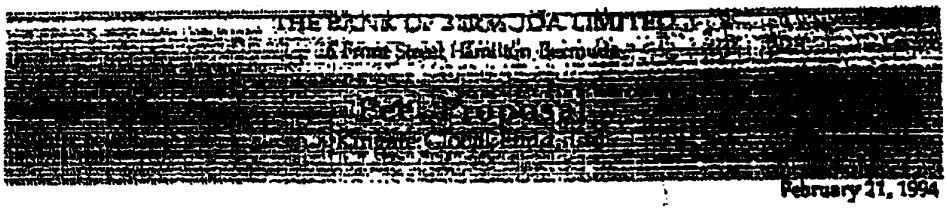
RE: KINGATE GLOBAL FUND, LTD.

PLEASE FIND ATTACHED THE REVISED FEE PROPOSAL FOR THE CAPTIONED COMPANY, DULY SIGNED BY MYSELF AS A DIRECTOR.

REGARDS,

KRS-

Signed Kingate Proposal for file -



1. INCEPTION FEE

A great deal of time is required when establishing a mutual fund. Officers of the Fund Administration Department are available to review offering memoranda, assist with preparation of Agreements, liaise with lawyers and accountants and generally to assist in the launch, subsequent issue or listing on an Exchange. This type of professional work will be charged out based on time and charges incurred subject to the following minimum :-

Inception Fee	$ 2,000.00

2. CUSTODIAN SERVICES

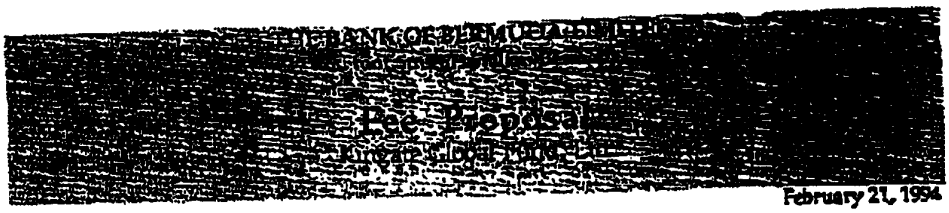
Our fee for Custodian services is comprised of three bases:

A safe keeping charge of 10 basis points (0.10%) per annum of the gross asset value of the Fund calculated on each Valuation Day.

Minimum Annual Custodian Fee	$10,000.00

A transaction fee of 1/4 of 1% of the consideration of the trade subject to a maximum of $250 per trade.

The right to recover all sub-custodian charges which will be charged directly to the fund.



3. DIRECTORS' FEES

For each Officer provided by the Bank of Bermuda — $1,000.00 each

4. DISBURSEMENTS

All out-of-pocket expenses incurred on behalf of a fund or its management company are charged to the appropriate entity. These expenses include the cost of communications, postage, printing and out-of-pocket expenses involved in the course of our duties, e.g. Stamp Duty, correspondent bank charges, etc.

5. REVIEW PERIOD

It should be noted that these fees are usually subject to review after six months from incorporation of a new fund and annually thereafter.

Accepted by:

Date: 22/2/94

DATED , 1994

BETWEEN:

KINGATE GLOBAL FUND, LTD.

- and -

THE BANK OF BERMUDA LIMITED

-and-

KINGATE MANAGEMENT LIMITED

CUSTODIAN AGREEMENT

BIBLE

CUSTODIAN AGREEMENT

THIS AGREEMENT is made this 1st day of March One Thousand Nine Hundred and Ninety-Four B E T W E E N **KINGATE GLOBAL FUND, LTD.** incorporated in and under the laws of the British Virgin Islands whose registered office is c/o HWR Services Limited, Craigmuir Chambers, P.O. Box 71, Road Town,Tortola, British Virgin Islands (hereinafter called the "Company") of the first part and **THE BANK OF BERMUDA LIMITED** whose registered office is at Bank of Bermuda Building aforesaid (hereinafter called the "Custodian") of the second part and **KINGATE MANAGEMENT LIMITED** whose registered office is at Hemisphere House, 9 Church Street, P.O. Box HM951, Hamilton HM DX, Bermuda of the third part.

WHEREAS:-

(A) The Company has as its principal object to carry on business as a mutual fund company and is desirous of being provided with custodian services.

(B) The Manager has been or is about to be appointed by the Company to administer its affairs.

(C) The Manager is to select a number of investment managers who will be appointed by the Company from time to time to manage certain assets of the Company.

(D) The Custodian is willing to provide the Company with such custodial services on the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

(A) In this Agreement and in all amendments hereto the following words and expressions shall, where not inconsistent with the context, have the following meanings respectively:-

"Bye-laws" shall mean the Memorandum of Association and the Bye-laws of the Company for the time being in force.

"Investment Advisors" shall mean the investment managers who shall be selected by the Manager to manage certain assets of the Company.

"Manager" shall mean Kingate Management Limited or such other person as may from time to time be appointed manager by the Company.

"Proper Instructions" shall mean written instructions from the Company or the Manager in respect of any of the matters referred to in this Agreement signed in the name of the Company or the Manager by such one or more Directors of the Company or the Manager as their respective Boards of Directors may from time to time have authorised, or any other person or persons duly authorised to sign by the Board of Directors of the Company or the Manager.

"Securities" shall mean listed and unlisted equity and equity related securities including convertible bonds and warrants; shares or units in collective investment schemes; debt securities including government and corporate issues and warrants or options thereon; bank deposits and certificates of deposit.

"Subsidiary" shall have the meaning assigned to it by Section 86 of the Companies Act 1981 or any amendment, modification or reenactment thereof.

(B) Unless the context otherwise requires words and expressions contained in this Agreement shall bear the same meaning as in the Bye-laws of the Company PROVIDED THAT any alteration or amendment of the Bye-laws shall not be effective for the purposes of this Agreement unless the Custodian shall have assented thereto.

(C) Unless the context otherwise requires words importing the singular number shall include the plural and vice versa, words importing masculine gender shall include the feminine and words importing persons shall include firms and companies and vice versa.

(D) The division of this Agreement into sections, clauses and sub-clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

2. APPOINTMENT OF CUSTODIAN

The Company HEREBY APPOINTS the Custodian to be and the Custodian HEREBY AGREES to act as custodian of the Company in accordance with the Bye-laws and the terms and conditions hereinafter contained from the date hereof. The Company agrees to deliver to the Custodian all Securities and cash owned by it, and all payments of income, payments of principal or capital distributions received by it with respect to the Securities.

3. NAMES, TITLES AND SIGNATURES

(A) Forthwith after execution of this Agreement the Company will certify and will procure the Manager to certify to the Custodian the names and signatures of the persons authorised to sign any Proper Instructions and generally to give instructions hereunder to the Custodian and shall deliver or procure the delivery to the Custodian of a certified copy of a resolution of the respective Board of Directors of the Company and the Manager containing any such authority and a certified copy of the Bye-laws.

(B) The Company shall and shall procure that the Manager shall promptly certify to the Custodian any changes that may be made from time to time in the persons so authorised.

4. DUTIES OF THE COMPANY

(A) The Company shall provide the Custodian with any amendments to its Bye-laws.

(B) The Company shall and shall procure that the Manager will deliver at the Custodian's request within five business days (or such other time as is agreed between the parties hereto) of each valuation of net assets of the Company a schedule of cash and Securities comprised in the investment portfolio of the Company as at the date of such valuation showing the type and amount of each investment and its value determined in accordance with the provisions of the Bye-laws for the purpose of ascertaining the subscription and redemption prices of a share of the Company and giving details of all purchases and sales effected since the date of the last such schedule and such schedules shall be certified as complete and correct by a responsible officer of the Manager.

(C) The Company shall and shall procure that the Manager will promptly deliver to the Custodian any management letter prepared by the Auditor of the Company.

5. RECEIPT AND DISBURSEMENT OF CASH

(A) The Custodian shall open and maintain a bank account or bank accounts in its books in the name of the Company and, if requested by Proper Instructions and subject to applicable laws, a separate bank account or accounts in the name of the Custodian for the benefit of the Company outside Bermuda with such bank or banks and in such place or places as may from time to time be agreed between it and the Manager. The Custodian shall hold in such bank account or bank accounts, subject to the provisions hereof, all cash received by it from or for the account of the Company. The Custodian shall make or procure the making of payments or cash out of such account or accounts on behalf of the Company only:-

(a) upon the purchase of Securities for the account of the Company and the delivery of such Securities to or to the order of the Custodian or anyone nominated by the Custodian in accordance with Clause 9 or in proper form for transfer;

(b) for the redemption of shares of the Company pursuant to the Bye-laws;

(c) for the payment of interest and dividends by the Company or the payment by the Company of taxes, management, custodian, secretarial and registrar and subscription and redemption agents fees or other operating expenses (including, without limitation thereto, fees for legal, accounting and auditing services, directors' remuneration, brokerage and commissions);

(d) for payments in connection with the conversion, exchange or surrender of Securities owned or subscribed for on behalf of the Company held by or to be delivered to the Custodian;

(e) for the transfer of cash from one bank account as aforesaid to another bank account as aforesaid or for deposit;

(f) for payments in connection with insuring Securities or in providing for the safekeeping thereof otherwise than in the vault of the Custodian;

(g) for payments of interest and payment of principal on all borrowing;

(h) for payments in connection with any margin calls;

(i) for payments in connection with any stock or other lender of Securities; and

(j) for other proper corporate purposes.

Before making any such payment the Custodian shall receive (and may rely upon), in the case of a payment permitted under the terms of items (a), (b), (c), (d), (e), (f), (g), (h) and (i) of this sub-clause Proper Instructions directing such payment, naming the person or persons to whom such payment is to be made and specifying the amount of, and the time by which, such payment is to be made and such other information as may be appropriate to allow the Custodian to effect the relevant payment in proper form, or, in the case of payment for a purpose permitted under the terms of item (j) of this sub-clause a copy of a resolution of the Board of Directors or of a Committee of the Board of Directors duly authorised certified by two Directors of the Company setting forth the purpose for which such payment is to be made, declaring such purpose to be a proper corporate purpose, naming the person or persons to whom such payment is to be made stating the amount of, and the time by which, such payment is to be made and stating all relevant information as aforesaid.

(B) The Custodian is hereby authorised to endorse and collect all cheques, drafts or other orders for the payment of money received by the Custodian for the account of the Company.

6. RECEIPT OF SECURITIES

(A) Except as provided in sub-clause (B) hereof, the Custodian shall record and hold in a separate account in its books all Securities received by it from time to time and shall arrange for all Securities to be deposited in the Custodian's vault or otherwise held by or to the order of the Custodian as it may think proper for the purpose of providing for the safekeeping thereof. Any expenses of whatever nature incurred by the Custodian in providing safe custody (other than in the vault of the Custodian) shall be payable by the Company.

(B) In connection with the trading activities of the Company and, in particular, the operation of various accounts to be managed by Investment Advisors, the Custodian shall upon receipt of Proper Instructions, open accounts with brokers or other intermediaries in its name on behalf of the Company or in the name of the Company and may make such arrangements concerning the trading authorisations

and other forms of authority with respect to such account or accounts as it deems advisable. The Custodian shall not be responsible for the safekeeping of Securities or cash deposited with or remaining in any such account or accounts and will not be liable for any loss occasioned by reason of the liquidation, bankruptcy or insolvency of such broker or other intermediary.

7. TRANSFER OF SECURITIES AND OTHER FUNCTIONS

(A) The Custodian shall transfer, exchange or deliver in the required form and manner Securities held by it hereunder only:-

(a) upon sales of such Securities for the account of the Company and receipt by the Custodian of payment therefor;

(b) when such Securities are called, redeemed or retired or otherwise become payable;

(c) for examination by any broker selling any such Securities in accordance with "street delivery" custom;

(d) in exchange for or upon conversion into other Securities alone or other Securities and cash pursuant to any plan or merger, consolidation, reorganisation, recapitalisation or readjustment or otherwise;

(e) upon conversion of such Securities pursuant to their terms into other Securities;

(f) upon exercise of subscription, purchase or other similar rights represented by such Securities;

(g) for the purpose of exchanging interim receipts or temporary securities for definitive securities;

(h) for the purpose of redeeming in kind shares of the Company;

(i) for collecting all income and other payments with respect to Securities;

(j) in connection with stock lending transactions entered into for the account of the Company;

(k) in connection with short sales entered into by the Company; and

(l) for other proper corporate purposes.

Except as provided in Clause 8, before making any such transfer, exchange or delivery the Custodian shall receive (and may rely upon) in the case of a matter permitted under the terms of items (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) of this sub-clause Proper Instructions directing such transfer, exchange or delivery, indicating the Securities in question, stating all relevant information to allow the Custodian to effect in the proper form and manner, as the case may be, such transfer, exchange or delivery or, in the case of a transfer, exchange or delivery permitted under the terms of item (l) of this

sub-clause a copy of a resolution of the Board of Directors or a Committee of the Board of Directors duly authorised certified by two Directors of the Company specifying the Securities in question, setting forth the purpose for which such transfer, exchange or delivery is to be made, declaring such purposes to be proper corporate purposes, naming the person or persons to whom transfer, exchange or delivery of such Securities shall be made and stating all relevant information as aforesaid.

(B) Upon receipt of Proper Instructions, the Custodian shall (1) receive and retain confirmations or other documents evidencing the purchase or writing of an option by the Company; (2) deposit and maintain in a segregated account, either physically or by book-entry, Securities, cash or other assets in connection with options transactions entered into by the Company; and (3) pay, release and/or transfer such Securities, cash or other assets only in accordance with a notice or other communication evidencing the expiration, termination or exercise of any such option furnished by the Securities or options exchange on which such option is traded or such other organisation, party, broker or dealer as may be responsible for handling such options transactions.

(C) Upon receipt of Proper Instructions, the Custodian shall (1) receive and retain confirmations evidencing the purchase or sale of a futures contract or an option on a futures contract by the Company; (2) deposit and maintain in a segregated account for the benefit of any futures commission merchant, or pay to such futures commission merchant, Securities, cash or other assets designated by the Company as initial, maintenance or variation "margin" deposits intended to secure the Company's performance of its obligations under any futures contracts purchased or sold or any options on futures contracts written or purchased by the Company, in accordance with the provisions of any agreement or agreements among the Company, the Custodian and such futures commission merchant, designed to comply with the rules of any relevant regulatory body and/or any contract market, or any similar organisation or organisations, regarding such margin deposits; and (3) pay, release and/or transfer Securities, cash or other assets into or out of such margin accounts only in accordance with any such agreements or rules.

(D) Upon receipt of Proper Instructions, the Custodian shall deliver Securities of the Company to lenders or their agents, or otherwise establish a segregated account as agreed to by the Company and the Custodian, as collateral for borrowings effected by the Company, but only against receipt of the amounts borrowed.

(E) Upon receipt of Proper Instructions, the Custodian shall enter into foreign exchange contracts or options to purchase and sell foreign currencies for spot and future delivery on behalf and for the account of the Company with such currency brokers or financial institutions as may be specified pursuant to Proper Instructions. The Custodian shall be responsible for the transmission of cash and instructions to

and from the currency broker or financial institution with which the contract or option is made, the safekeeping of all certificates and other documents and agreements evidencing or relating to such foreign exchange transactions and the maintenance of proper records with respect thereto.

(F) Upon receipt of Proper Instructions, the Custodian shall establish and maintain on its books a segregated account or accounts for and on behalf of the Company, into which account or accounts may be transferred cash and/or Securities or other assets of the Company, including Securities maintained by the Custodian in a book-entry system or foreign depository, said account to be maintained for such purposes as set forth in such Proper Instructions.

8. THE CUSTODIAN'S ACTS WITHOUT INSTRUCTIONS

Unless and until the Custodian receives Proper Instructions to the contrary, the Custodian shall:-

(a) present for payment all Securities which are called, redeemed or retired or otherwise become payable and all coupons and other income items held by it for the account of the Company which call for payment upon presentation;

(b) hold for the account of the Company hereunder all stock dividends, rights and similar securities issued with respect to any Securities held by it hereunder; and

(c) exchange interim receipts or temporary securities for definitive securities.

In addition, the Custodian shall use reasonable endeavours to sell, if there shall be a satisfactory market therefor, all subscription and other rights issued with respect to Securities held by the Custodian and with respect to which it shall not have received Proper Instructions to the contrary within a reasonable time prior to the expiration of such rights.

9. REGISTRATION OF SECURITIES

(A) The Custodian shall register all Securities in respect of which registration shall be necessary in order to perfect the transfer thereof or title thereto as soon as practicable after receipt of the necessary documents by the Custodian, in the name of the Custodian or its nominee as provided in this Clause. The Custodian shall hold the Securities of the Company: (1) by physical possession of the certificates or other instruments representing such Securities in registered or bearer form, or the broker's receipts or confirmations for futures contracts, options and similar investments, or (2) in book entry form by a foreign depository. The Custodian shall identify Securities held by it hereunder as being held for the account of the Company and shall require each agent, sub-custodian and delegate (referred to in Clause 16(B)) to identify Securities held by such agent, sub-custodian and delegate as being held by it, as custodian or

fiduciary, for the account of the Custodian. Any expenses of whatever nature incurred by the Custodian in effecting such registration shall be payable by the Company.

(B) The Company shall from time to time furnish to the Custodian appropriate instruments to enable the Custodian to hold or deliver in proper form for transfer or to register as provided in sub-clause (A) of this Clause any Securities belonging to the Company.

(C) The Custodian shall keep or cause to be kept such books, records and statements as may be necessary to give a complete record of all cash and Securities held and transactions carried out by it on behalf of the Company and shall permit the Company and its duly authorised agent(s) or delegate(s) to inspect such books, records and statements at any time during normal business hours on giving reasonable notice to the Custodian.

10. VOTING AND OTHER ACTION

(A) The Custodian shall deliver, or cause to be delivered, to the Company copies of all notices, proxies and proxy-soliciting materials received by it or its nominee or agent appointed hereunder in relation to any of the Securities held by any of them for the account of the Company. The Custodian shall not, and shall procure that no nominee of the Custodian shall, vote in respect of any of the Securities held by any of them for the account of the Company, except in accordance with Proper Instructions. The Custodian shall promptly deliver, or cause to be delivered, to the Company all other documents and payments received by it or its nominee or agent affecting or relating to the Securities held by it or its nominee or agent.

(B) The Company shall not and shall procure that the Manager shall not exercise the Company's power to borrow without notice to the Custodian.

(C) The Company shall not and shall procure that the Manager shall not enter into underwriting or sub-underwriting contracts in relation to the subscription or purchase of Securities without the prior notification of the Custodian and all commissions and fees payable under such contracts and all Securities acquired thereby shall form part of the assets of the Company.

11. TAXES

(A) The Company shall pay or reimburse the Custodian from time to time on demand for any transfer taxes payable upon transfers, exchanges or deliveries of Securities made hereunder.

(B) The Custodian shall execute such ownership and other certificates and affidavits as may be requested by Proper Instructions from time to time for fiscal tax and other purposes in connection with

Securities held by it under this Agreement and shall make such applications and reports as may be requested by Proper Instructions from time to time to the competent Bermuda and other authorities in order to apply for or secure any tax or other privileges and benefits to which the Company is or may be entitled in connection with such Securities.

12. BANKING FACILITIES

(A) During the continuance of its appointment, the Custodian shall provide banking facilities for the Company and, where any cash at the request of the Manager is placed on deposit with the Custodian in the latter's capacity as a banker, interest shall be allowed thereon in accordance with normal banking practice and as previously agreed with the Manager, but subject thereto the Custodian shall not be bound to pay interest on any cash (whether on current or deposit account) in respect of which the Custodian is indebted to the Company.

(B) In the event that the Company shall make any arrangements for borrowing or overdraft facilities with the Custodian or any affiliated company of the Custodian, such company shall be entitled to retain for its own use and benefit all profits and advantages which may be derived therefrom.

13. DEALING BY CUSTODIAN

(A) Nothing herein contained shall prevent the Custodian from becoming the owner of shares in the Company and holding, disposing or otherwise dealing with the same rights which it would have had if the Custodian were not a party to this Agreement; and the Custodian may buy, hold and deal in any Securities upon its individual account or for the accounts of its own customers notwithstanding that such Securities or similar Securities may be held by or for the account of the Company.

(B) Nothing herein contained shall prevent the Custodian from contracting or entering into any financial, banking or other transactions with the Company or any shareholder of the Company and the Custodian may be interested in any such contract or transaction and shall not be accountable for any profit arising therefrom.

14. REMUNERATION OF THE CUSTODIAN

(A) The Custodian shall be paid by way of remuneration for its services pursuant to this Agreement fees at such rates and at such times as may be agreed from time to time between the Company and the Custodian. Such fees shall be paid in Bermuda in United States Dollars.

(B) The Company will reimburse the Custodian in addition to the fees referred to in sub-clause (A) of this Clause for all out-of-pocket expenses properly incurred by the Custodian in carrying out its duties hereunder.

15. CONCERNING THE CUSTODIAN

(A) The Custodian shall not be required to take any legal action unless fully indemnified to its reasonable satisfaction for costs and liabilities by the Company and if the Company requires the Custodian as custodian to take any action which in the opinion of the Custodian might make the Custodian liable for the payment of money or liable in any other way the Custodian shall be kept indemnified by the Company in any reasonable form as a pre-requisite to taking such action.

(B) In performing its duties hereunder the Custodian may appoint such agents, sub-custodians and delegates as it might think fit to perform in whole or in part any of its duties and discretions (including in such appointment powers of sub-delegation) PROVIDED ALWAYS that notice of any such appointment shall promptly be given by the Custodian to the Company and that notwithstanding any such appointment the Custodian will at all times remain responsible to the Company for any acts or omissions of any such person or persons howsoever appointed as if such acts or omissions were those of the Custodian, but will not be liable for any loss occasioned by reason only of the liquidation, bankruptcy or insolvency of such person. The fees and other remuneration of any agent or delegate appointed by the Custodian shall be paid by the Custodian (except any fees or other remuneration as referred to in Clause 6 hereof) but any fees and other remuneration of sub-custodians shall be paid by the Company.

(C) The Custodian shall deliver to the Manager from time to time at such reasonable intervals as the Manager may require a full account of all receipts and payments made and other action taken by the Custodian pursuant to this Agreement since the date of the last preceding such account together with a list as at the date of such account of all Securities and cash or other indebtedness or obligations held by the Custodian or its agent for or on behalf of the Company or otherwise pursuant to the terms hereof.

(D) The Company as sole beneficial owner of all Securities delivered or to be delivered to the Custodian or its nominee hereunder hereby indemnifies and holds harmless the Custodian from and against all proper costs and expenses and liabilities resulting from the fact that such Securities are registered in the name of the Custodian or its nominee.

(E) The Custodian shall not, in the absence of gross negligence or wilful breach of duty on the part of the Custodian or any agent, delegate or sub-custodian, be liable to the Company or to any shareholder of the Company for any act or omission in the course of or in connection with the services

rendered by it hereunder or for any loss or damage which the Company may sustain or suffer as a result or in the course of the discharge by the Custodian of its duties hereunder or pursuant hereto. In particular, 1) the Company agrees that the Custodian shall be under no liability for any loss or damage caused by unauthorised use or forging of any authorised signature provided that in any such case the Custodian shall have properly investigated such signature in accordance with approved banking practice and by reference to any certified specimen signatures previously delivered to the Custodian by or on behalf of the Company pursuant to Clause 3 or shall have made such other investigations as may have been agreed from time to time in writing between the Manager on behalf of the Company and the Custodian and 2) the Custodian shall not incur any liability by reason of any loss which a shareholder of the Company may suffer by reason of any depletion in the value of net assets of the Company which may result from any borrowing or overdraft facilities made hereunder. The Company agrees to indemnify the Custodian from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (other than those resulting from the gross negligence or wilful breach of duty on the part of the Custodian or any agent appointed by it) which may be imposed on, incurred by or asserted against the Custodian in performing its obligations or duties hereunder.

(F) The Custodian shall be under no duty to supervise compliance with restrictions on the investment powers of the Company or to take any action other than as specified in this Agreement with respect to any Securities or cash of the Company held by the Custodian hereunder. The Custodian shall be entitled to receive and act upon any advice of counsel and shall be without liability for any action taken or thing done in good faith in reliance upon such advice.

16. REFUSAL TO ACT

The Custodian shall be entitled (subject to notice having been given to the Manager) to refuse to effect any investment, realisation or other transaction required to be carried out by it on behalf of the Company pursuant to this Agreement if in the opinion of the Custodian, 1) there are reasonable grounds for estimating that liabilities to be incurred in the case of such investment, realisation or other transaction may not be adequately covered by the assets of the Company held immediately prior to the time that such investment, realisation or other transaction is required to be effected or 2) personal liability may be incurred by the Custodian pursuant to such investment, realisation or other transaction PROVIDED ALWAYS that the foregoing (save as aforesaid) shall not absolve the Custodian from performing the obligations expressly assumed by it under this Agreement.

17. APPROVAL OF PUBLICATIONS

The Company shall deliver to the Custodian for approval prior to issue thereof a copy of all statements, notices, circulars and advertisements to be issued on behalf of or relating to the Company in which the name or any reference to the Custodian shall or will appear and any such publication not approved by the Custodian shall not be published by or on behalf of the Company and the Company hereby undertakes that no such statement, notice, circular or advertisement will be published and that no moneys will be raised nor any shares of the Company issued unless and until all necessary consents and permissions of whatever jurisdiction have been obtained in connection therewith.

18. CONFIDENTIALITY

Neither party hereto shall unless compelled so to do by any court of competent jurisdiction either before or after the termination of this Agreement disclose to any person not authorised by the relevant party to receive the same any information relating to such party or to the affairs of such party of which the party disclosing the same shall have become possessed during the period of this Agreement and each party shall use its best endeavours to prevent any such disclosure as aforesaid.

19. TERMINATION

(A) This Agreement and the appointment of the Custodian hereunder shall continue in force until terminated by either the Company or the Custodian giving to the other not less than sixty days' notice in writing (or such shorter notice as such other party may agree to accept) expiring at any time provided that either the Company or the Custodian may forthwith terminate this Agreement by notice taking immediate or subsequent effect if:-

(a) the Custodian or the Company respectively has broken or is in breach of any of the terms of this Agreement and shall not have remedied such breach within thirty days after service of notice requiring the same to be remedied; or

(b) the Custodian or the Company respectively shall go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation on terms previously approved in writing by the other party).

(B) Upon the termination of this Agreement the Custodian shall deliver the Securities, cash and any other property of the Company in its custody hereunder to such person as the Company may nominate; provided, however, that the Custodian shall not be required to make any such delivery or payment until full payment shall have been made by the Company of all liabilities constituting a charge on or against the properties held by the Custodian or on or against the Custodian, and until full

payment shall have been made to the Custodian of all its fees, compensation, costs and expenses due to it under the provisions of this Agreement.

20. NOTICES

Any notice, instruction or other instrument required or permitted to be given hereunder may be delivered in person to the offices of the parties as set forth herein during normal business hours, or delivered prepaid registered mail or by telex, cable or telecopy to the parties at the following addresses or such other address as may be notified by either party from time to time.

TO THE COMPANY:

KINGATE GLOBAL FUND, LTD.
c/o Hemisphere Management Limited
Hemisphere House
9 Church Street
P.O. Box HM 951
Hamilton HM DX
Bermuda

Attention: Christopher Wetherhill

Telex:
Cable:
Telecopy: 809-292-6145

TO THE CUSTODIAN:

THE BANK OF BERMUDA LIMITED
6 Front Street
Hamilton HM 11
Bermuda

Attention: Senior Manager, Corporate Trust

Telex: 3358 MIL B BA
Cable: Banco Bermuda
Telecopy: 809-295-6180

TO THE MANAGER:

KINGATE MANAGEMENT LIMITED
c/o Hemisphere Management Limited
Hemisphere House
9 Church Street
P.O. Box HM 951
Hamilton HM DX
Bermuda

Attention: Christopher Wetherhill

Telex:
Cable:
Telecopy: 809-292-6145

Such notice, instruction or other instrument shall be deemed to have been served in the case of a registered letter at the expiration of five business days after posting, in the case of cable twenty four hours after despatch and, in the case of telex, immediately on despatch and if delivered outside normal business hours it shall be deemed to have been received at the next time after delivery when normal business hours commence and in the case of cable, telex or telecopy on the business day after the receipt thereof. Evidence that the notice was properly addressed, stamped and put into the post shall be conclusive evidence of posting.

21. ASSIGNMENT

This Agreement may not be assigned by the Custodian without the consent of the Company, authorised or approved by a resolution of its Board of Directors.

22. PROPER LAW

This Agreement shall be governed by and construed in accordance with the laws of Bermuda.

AS WITNESS the hands of the duly authorised signatories of the parties hereto as of the day and year first above written.

SIGNED BY D.T. SMITH)
and K. SIGGINS)
for and on behalf of THE BANK OF)
BERMUDA LIMITED)
in the presence of:)

SIGNED BY KEITH R. BISH)
and)
for and on behalf of KINGATE)
GLOBAL FUND, LTD.)
)
in the presence of:)

SIGNED BY MARGARET EVORY)
and MADELIN REALE)
for and on behalf of)
KINGATE MANAGEMENT LIMITED)
)
in the presence of:)

EXHIBIT U

CTM403EM

CUSTODIAN AGREEMENT

THIS AGREEMENT is made this 1ST day of MAY Two Thousand

BETWEEN

KINGATE EURO FUND, LTD a company incorporated in and under the laws of the British Virgin Islands whose registered office is at Bison Court, P.O. Box 3460, Road Town, Tortola, BVI (hereinafter called the "Company") of the first part; and

THE BANK OF BERMUDA LIMITED whose registered office is at Bank of Bermuda Building, 6 Front Street, Hamilton HM 11, Bermuda (hereinafter called the "Custodian") of the second part.

WHEREAS:-

(A) The Company has as its principal object to carry on business as a mutual fund company and is desirous of being provided with custodian services.

(B) The Investment Manager has been or is about to be appointed by the Company to administer its affairs.

(C) The Custodian is willing to provide the Company with such custodial services on the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

(A) In this Agreement and in all amendments hereto the following words and expressions shall, where not inconsistent with the context, have the following meanings respectively:-

"Articles" shall mean the Memorandum and of Association of the Company for the time being in force.

"Securities" shall mean listed and unlisted equity and equity related securities including convertible bonds and warrants; shares or units in collective investment schemes; privatisation vouchers and coupons; debt securities including government and corporate issues and warrants or options thereon; bank deposits and certificates of deposit.

"Investment Manager" shall mean Kingate Management Limited or such other person as may from time to time be appointed Investment Manager by the Company.

"Proper Instructions" shall mean signed written instructions or facsimile or electronically transmitted instructions in respect of any of the matters referred to in this Agreement purported to

be signed (except in the case of electronically transmitted instructions) by one or more Directors of the Company or the Investment Manager or any other person or persons duly authorised to sign by the Board of Directors of the Company and in the case of electronically transmitted instructions in accordance with such authentication procedures as may be agreed by the Custodian, the Company and the Investment Manager from time to time. A certified copy of the resolution of the Board of Directors of the Company or the Investment Manager shall be conclusive evidence of the authority of any such person to act until the Custodian is in receipt of written notice to the contrary.

"Prospectus" shall mean the prospectus, explanatory memorandum, offering circular or other such document issued from time to time with respect to the offer of shares of the Company.

(B) Unless the context otherwise requires words and expressions contained in this Agreement shall bear the same meaning as in the Articles of the Company PROVIDED THAT any alteration or amendment of the Articles shall not be effective for the purposes of this Agreement unless the Custodian shall have assented thereto.

(C) Unless the context otherwise requires words importing the singular number shall include the plural and vice versa, words importing masculine gender shall include the feminine and words importing persons shall include firms and companies and vice versa.

(D) The division of this Agreement into sections, clauses and sub-clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

2. APPOINTMENT OF CUSTODIAN

The Company HEREBY APPOINTS the Custodian to be and the Custodian HEREBY AGREES to act as custodian of the Company in accordance with the Articles and the terms and conditions hereinafter contained from the date hereof. The Company agrees to deliver to the Custodian all Securities and cash owned by it, and all payments of income, payments of principal or capital distributions received by it with respect to the Securities.

3. NAMES, TITLES AND SIGNATURES

(A) Forthwith after execution of this Agreement the Company will certify and will procure the Investment Manager to certify to the Custodian the names and signatures of the persons authorised to sign any Proper Instructions and generally to give instructions hereunder to the Custodian and shall deliver or procure the delivery to the Custodian of a certified copy of a resolution of the respective Board of Directors of the Company and the Investment Manager containing any such authority and a certified copy of the Articles.

(B) The Company shall and shall procure that the Investment Manager shall promptly certify to the Custodian any changes that may be made from time to time in the persons so authorised.

4. DUTIES OF THE COMPANY

(A) The Company promptly shall provide the Custodian with any amendments to its Articles and Prospectus.

(B) The Company shall and shall procure that the Investment Manager will promptly deliver at the Custodian's request a schedule of cash and Securities comprised in the investment portfolio of the Company as at the date of the latest valuation of net assets of the Company showing the type and amount of each investment and its value determined in accordance with the provisions of the Articles and/or the Prospectus and giving details of all purchases and sales effected since the date of the last such schedule and such schedules shall be certified as complete and correct by a responsible officer of the Investment Manager.

(C) The Company shall procure that all sums representing subscription monies for shares are paid to the Custodian for the account of the Company upon issue.

(D) The Company shall and shall procure that the Investment Manager will promptly deliver to the Custodian any management letter prepared by the Auditor of the Company.

5. RECEIPT AND DISBURSEMENT OF CASH

(A) The Custodian shall open and maintain a separate bank account or bank accounts in its books in the name of the Company and, if requested by Proper Instructions and subject to applicable laws, a separate bank account or accounts in the name of the Custodian for the benefit of the Company outside Bermuda with such bank or banks and in such place or places as may from time to time be agreed between it and the Investment Manager. The Custodian shall hold in such bank account or bank accounts, subject to the provisions hereof, all cash received by it from or for the account of the Company. The Custodian shall make or procure the making of payments out of such account or accounts on behalf of the Company only:-

(a) upon the purchase of Securities for the account of the Company and, where market practices permit, subject to the delivery of such Securities to or to the order of the Custodian or anyone nominated by the Custodian in accordance with Clause 9 or in proper form for transfer;

[(b) for the redemption of shares of the Company pursuant to the Articles;]

(c) for the payment of interest and dividends by the Company or the payment by the Company of taxes, management, investment advisory, custodian, secretarial and registrar

and subscription and redemption agents fees or other operating expenses (including, without limitation thereto, fees for legal, accounting and auditing services, directors' remuneration, brokerage and commissions);

(d) for payments in connection with the conversion, exchange or surrender of Securities owned or subscribed for on behalf of the Company held by or to be delivered to the Custodian;

(e) for the transfer of cash from one bank account as aforesaid to another bank account as aforesaid or for deposit;

(f) for payments in connection with insuring Securities or in providing for the safekeeping thereof otherwise than in the vault of the Custodian;

(g) for payments of interest and payment of principal on all borrowing;

(h) for payments in respect of initial or variation margin requirements relative to the operation of any accounts with brokers or other intermediaries;;

(i) for payments in connection with any stock lending activities; and

(j) for other proper corporate purposes.

Before making any such payment the Custodian shall receive (and may rely upon), in the case of a payment permitted under the terms of items (a) to (i) of this sub-clause Proper Instructions directing such payment, naming the person or persons to whom such payment is to be made and specifying the amount of, and the time by which, such payment is to be made and such other information as may be appropriate to allow the Custodian to effect the relevant payment in proper form, or, in the case of payment for a purpose permitted under the terms of item (j) of this sub-clause a copy of a resolution of the Board of Directors or of a Committee of the Board of Directors duly authorised and certified by two Directors of the Company setting forth the purpose for which such payment is to be made, declaring such purpose to be a proper corporate purpose, naming the person or persons to whom such payment is to be made stating the amount of, and the time by which, such payment is to be made and stating all relevant information as aforesaid.

(B) The Custodian is hereby authorised to endorse and collect all cheques, drafts or other orders for the payment of money received by the Custodian for the account of the Company.

(C) In connection with any transaction involving Securities held by or to be acquired for the Company, the Custodian may in its discretion (by automatic process or otherwise):-

(i) credit the Company on the contractual settlement date with the proceeds of any sale or exchange of Securities and may on or before the contractual settlement date transfer the relevant Securities to a separate custody account awaiting delivery; and

(ii) debit the Company on the contractual settlement date with the purchase price of Securities purchased or acquired for the Company and may credit the Company on or before the contractual settlement date with the relevant Securities pending receipt of such Securities.

The Company hereby acknowledges that these procedures are of a strictly administrative nature and do not amount to an agreement by the Custodian to make loans and/or Securities available to the Company. The Custodian is authorised to reverse any such credit or debit referred to in this sub-clause

(D) In respect of any transaction for which the Custodian determines not to credit the Company on the contractual settlement date, the proceeds from the sale or exchange of Securities will be credited to the Company as soon as practical after such proceeds are received and Securities acquired will be credited on the date of receipt of such Securities by the Custodian.

6. RECEIPT OF SECURITIES

(A) Except as provided in sub-clause (B) hereof, the Custodian shall record and hold in a separate account in its books all Securities received by it or to its order from time to time and shall arrange for all Securities to be deposited in the Custodian's vault or otherwise held by or to the order of the Custodian as it may think proper for the purpose of providing for the safekeeping thereof. Any expenses of whatever nature incurred by the Custodian in providing safe custody (other than in the vault of the Custodian) or in the settlement of securities transactions or the collection of dividends, interest or any other rights attaching to such Securities shall be payable by the Company.

(B) The Custodian shall upon receipt of Proper Instructions, open accounts with brokers or other intermediaries in its name on behalf of the Company or in the name of the Company and may make such arrangements concerning the trading authorisations and other forms of authority with respect to such account or accounts as it deems advisable. The Custodian shall not be responsible for the safekeeping of Securities or cash deposited with or remaining in any such account or accounts and will not be liable for any loss occasioned by reason of the liquidation, bankruptcy or insolvency of such broker or other intermediary.

7 TRANSFER OF SECURITIES AND OTHER FUNCTIONS

(A) The Custodian shall transfer, exchange or deliver in the required form and manner Securities held by it hereunder only:-

(a) upon sales of such Securities for the account of the Company and where market practices permit receipt by the Custodian of payment therefor;

(b) when such Securities are called, redeemed or retired or otherwise become payable;

(c) for examination by any broker selling any such Securities in accordance with "street delivery" custom;

(d) in exchange for or upon conversion into other Securities alone or other Securities and cash pursuant to any plan or merger, consolidation, reorganisation, recapitalisation or readjustment or otherwise;

(e) upon conversion of such Securities pursuant to their terms into other Securities;

(f) upon exercise of subscription, purchase or other similar rights represented by such Securities;

(g) for the purpose of exchanging interim receipts or temporary securities for definitive securities;

(h) for the purpose of redeeming in kind shares of the Company;

(i) for collecting all income and other payments with respect to Securities;

(j) in connection with stock lending transactions entered into for the account of the Company;

(k) in connection with short sales entered into by the Company; and

(l) for other proper corporate purposes.

Except as provided in Clause 8, before making any such transfer, exchange or delivery the Custodian shall receive (and may rely upon) in the case of a matter permitted under the terms of items (a) to (k) of this sub-clause Proper Instructions directing such transfer, exchange or delivery, indicating the Securities in question, stating all relevant information to allow the Custodian to effect in the proper form and manner, as the case may be, such transfer, exchange or delivery or, in the case of a transfer, exchange or delivery permitted under the terms of item (l) of this sub-clause a copy of a resolution of the Board of Directors or a Committee of the Board of Directors duly authorised and certified by two Directors of the Company specifying the Securities in question, setting forth the purpose for which such transfer, exchange or delivery is to be made, declaring such purposes to be proper corporate purposes, naming the person or persons to whom transfer, exchange or delivery of such Securities shall be made and stating all relevant information as aforesaid.

(B) Upon receipt of Proper Instructions, the Custodian shall (1) receive and retain confirmations or other documents evidencing the purchase or writing of an option by the Company; (2) deposit and maintain in a segregated account, either physically or by book-entry, Securities, cash or other assets in

connection with options transactions entered into by the Company; and (3) pay, release and/or transfer such Securities, cash or other assets only in accordance with a notice or other communication evidencing the expiration, termination or exercise of any such option furnished by the securities or options exchange on which such option is traded or such other organisation, party, broker or dealer as may be responsible for handling such options transactions.

(C) Upon receipt of Proper Instructions, the Custodian shall (1) receive and retain confirmations evidencing the purchase or sale of a futures contract or an option on a futures contract by the Company; (2) deposit and maintain in a segregated account for the benefit of any futures commission merchant, or pay to such futures commission merchant, Securities, cash or other assets designated by the Company as initial, maintenance or variation "margin" deposits intended to secure the Company's performance of its obligations under any futures contracts purchased or sold or any options on futures contracts written or purchased by the Company, in accordance with the provisions of any agreement or agreements among the Company, the Custodian and such futures commission merchant, designed to comply with the rules of any relevant regulatory body and/or any contract market, or any similar organisation or organisations, regarding such margin deposits; and (3) pay, release and/or transfer Securities, cash or other assets into or out of such margin accounts only in accordance with any such agreements or rules.

(D) Upon receipt of Proper Instructions, the Custodian shall deliver Securities of the Company to lenders or their agents, or otherwise establish a segregated account as agreed to by the Company and the Custodian, as collateral for borrowings effected by the Company, but only against receipt of the amounts borrowed.

(E) Upon receipt of Proper Instructions, the Custodian shall enter into foreign exchange contracts or options to purchase and sell foreign currencies for spot and future delivery on behalf and for the account of the Company with such currency brokers or financial institutions as may be specified pursuant to Proper Instructions. The Custodian shall be responsible for the transmission of cash and instructions to and from the currency broker or financial institution with which the contract or option is made, the safekeeping of all certificates and other documents and agreements evidencing or relating to such foreign exchange transactions and the maintenance of proper records with respect thereto.

(F) Upon receipt of Proper Instructions, the Custodian shall establish and maintain on its books a segregated account or accounts for and on behalf of the Company, into which account or accounts may be transferred cash and/or Securities or other assets of the Company, including Securities maintained by the Custodian in a book-entry system or foreign depository, said account to be maintained for such purposes as set forth in such Proper Instructions.

8. THE CUSTODIAN'S ACTS WITHOUT INSTRUCTIONS

Unless and until the Custodian receives Proper Instructions to the contrary, the Custodian shall:-

(a) present for payment all Securities which are called, redeemed or retired or otherwise become payable and all coupons and other income items held by it for the account of the Company which call for payment upon presentation;

(b) hold for the account of the Company hereunder all stock dividends, rights and similar securities issued with respect to any Securities held by it hereunder; and

(c) exchange interim receipts or temporary securities for definitive securities.

9. REGISTRATION OF SECURITIES

(A) The Custodian shall register all Securities in respect of which registration shall be necessary in order to perfect the transfer thereof or title thereto as soon as practicable after receipt of the necessary documents by the Custodian, in the name of the Company, the Custodian or its nominee or in such other name as the Custodian deems proper as provided in this Clause. The Custodian shall hold the Securities of the Company: (1) by physical possession of the certificates or other instruments representing such Securities including privatisation vouchers or coupons and registry extracts in registered or bearer form, or the broker's receipts or confirmations for futures contracts, options and similar investments, or (2) in book entry form in a depository or clearing system (including Euroclear, Cedel and Depository Trust Company) (each a "Securities System"). The Custodian shall identify Securities held by it hereunder as being held for the account of the Company and shall require each agent, sub-custodian and delegate (referred to in Clause 15(B)) to identify Securities held by such agent, sub-custodian and delegate as being held by it, as custodian or fiduciary, for the account of the Custodian or the Company. Any expenses of whatever nature incurred by the Custodian in effecting such registration shall be payable by the Company.

(B) The Company shall from time to time furnish to the Custodian appropriate instruments to enable the Custodian to hold or deliver in proper form for transfer or to register as provided in sub-clause (A) of this Clause any Securities belonging to the Company.

(C) The Custodian shall keep or cause to be kept such books, records and statements as may be necessary to give a complete record of all cash and Securities held and transactions carried out by it on behalf of the Company and shall permit the Company and its duly authorised agent(s) or delegate(s) to inspect such books, records and statements at any time during normal business hours on giving reasonable notice to the Custodian.

10. VOTING AND OTHER ACTION

(A) The Custodian shall deliver, or cause to be delivered, to the Company or to such other person as the Company may from time to time direct copies of all notices, proxies and proxy-soliciting materials received by it and shall use reasonable endeavours to deliver or cause to be delivered to the Company copies of all such matierals received by its nominee or agent appointed hereunder in relation to any of the Securities held by any of them for the account of the Company. The Custodian shall not, and shall procure that no delegate, agent or nominee of the Custodian shall, vote in respect of any of the Securities held by any of them for the account of the Company, except in accordance with Proper Instructions. The Custodian shall promptly deliver, or cause to be delivered, to the Company all other documents and payments received by it or its nominee or agent affecting or relating to the Securities held by it or its nominee or agent.

(B) The Company shall not and shall procure that the Investment Manager shall not exercise the Company's power to borrow without prior notice to the Custodian.

(C) The Company shall not and shall procure that the Investment Manager shall not enter into underwriting or sub-underwriting contracts in relation to the subscription or purchase of Securities without the prior notification of the Custodian and all commissions and fees payable under such contracts and all Securities acquired thereby shall form part of the assets of the Company.

(D) The Custodian shall take no action with regard to any subscription and other rights issued with respect to Securities held by the Custodian Provided that the Custodian will notify the Company of such subscription or other rights and will undertake to act upon Proper Instructions received within a reasonable time prior to the expiration of such rights.

11 TAXES

(A) The Company shall pay or reimburse the Custodian from time to time on demand for any transfer taxes payable upon transfers, exchanges or deliveries of Securities made hereunder.

(B) The Custodian shall execute such ownership and other certificates and affidavits as may be requested by Proper Instructions from time to time for fiscal, tax and other purposes in connection with Securities held by it under this Agreement and shall make such applications and reports as may be requested by Proper Instructions from time to time to the competent Bermuda and other authorities in order to apply for or secure any tax or other privileges and benefits to which the Company is or may be entitled in connection with such Securities. The Custodian shall be entitled to refuse to execute such ownership and other certificates and affidavits referred to above if, in the opinion of the Custodian, personal liability may be incurred by the Custodian pursuant to such execution.

12. BANKING FACILITIES

(A) During the continuance of its appointment, the Custodian or an affiliated company of the Custodian shall provide banking facilities for the Company and, where any cash at the request of the Investment Manager is placed on deposit with the Custodian or an affiliated company of the Custodian in their capacity as a banker, interest shall be allowed thereon in accordance with normal banking practice and as previously agreed with the Investment Manager, but subject thereto there shall be no further liability to pay interest on cash.

(B) In the event that the Company shall make any arrangements for borrowing or overdraft facilities with the Custodian or any affiliated company of the Custodian, such company shall be entitled to retain for its own use and benefit all profits and advantages which may be derived therefrom.

(C) In the event that the Company incurs an unauthorised overdraft with the Custodian or any affiliated company of the Custodian or if, as a result of settlement delays, electronic payment failures or other similar circumstances, a credit facility is made available to the Company without completion of the customary credit documents, the Custodian shall have a lien over all assets of the Company held in any account whatsoever by or to the order of the Custodian and the Custodian shall be entitled to set-off any and all claims it or any affiliate of the Custodian has on the Company against any counterclaim of the Company on the Custodian.

13. DEALING BY CUSTODIAN

(A) Nothing herein contained shall prevent the Custodian or any affiliated company of the Custodian from becoming the owner of shares in the Company and holding, disposing or otherwise dealing with the same rights which any of them would have had if the Custodian were not a party to this Agreement; and the Custodian or any affiliated company of the Custodian may buy, hold and deal in any Securities upon their individual accounts or for the accounts of their own customers notwithstanding that such Securities or similar Securities may be held by or for the account of the Company.

(B) Nothing herein contained shall prevent the Custodian or any affiliated company of the Custodian from contracting or entering into any financial, banking or other transactions with the Company or any shareholder of the Company and the Custodian or any affiliated company of the Custodian may be interested in any such contract or transaction and shall not be accountable for any profit arising therefrom.

14. REMUNERATION OF THE CUSTODIAN

(A) The Custodian shall be paid by way of remuneration for its services pursuant to this Agreement fees at such rates and at such times as may be agreed from time to time between the Company and the Custodian. Such fees shall be paid in United States Dollars.

(B) The Company will reimburse the Custodian in addition to the fees referred to in sub-clause (A) of this Clause for all out-of-pocket expenses properly incurred by the Custodian in carrying out its duties hereunder.

15. CONCERNING THE CUSTODIAN

(A) The Custodian shall not be required to take any legal action unless fully indemnified to its reasonable satisfaction for costs and liabilities by the Company and if the Company requires the Custodian as custodian to take any action which in the opinion of the Custodian might make the Custodian liable for the payment of money or liable in any other way the Custodian shall be kept indemnified by the Company in any reasonable form as a pre-requisite to taking such action.

(B) In performing its duties hereunder the Custodian may with the consent of the Board of Directors and at the expense of the Company appoint such agents, sub-custodians and delegates as may be necessary to perform in whole or in part any of the duties and discretions of the Custodian (including in such appointment powers of sub-delegation) . Subject to the provisions of this sub-clause, the Custodian will remain responsible to the Company for any acts or omissions of any such person or persons howsoever appointed as if such acts or omissions were those of the Custodian. The Custodian shall not, howsoever, be liable for any acts or omissions of any agent, sub-custodian or delegate appointed pursuant to this sub-clause in relation to markets considered by the Custodian to be emerging markets or where in the Custodian's opinion the risks associated with any particular market are unacceptable (hereinafter referred to as "Emerging Markets") and in each such case the Custodian shall have notified the Company in writing of such market or markets. The current list of Emerging Markets is attached as Annex 1 to this Agreement and the Custodian may from time to time amend such list by written notice to the Company. Notwithstanding any such appointment the Custodian will not be responsible for any losses suffered by the Company by reason only of the liquidation, bankruptcy or insolvency of any agent, sub-custodian or delegate howsoever appointed. Any broker or other intermediary appointed pursuant to Clause 6 (B) and any Securities System utilized pursuant to Clause 9 (A) hereof shall not be an agent, sub-custodian or delegate for the purposes hereof and the Custodian shall not be liable for the acts or omissions or any loss directly or indirectly caused by any such person. The fees and other remuneration of any agent, sub-custodian or delegate appointed by the Custodian pursuant hereto (including any fees or other renumeration as referred to in Clause 6 hereof) shall be paid by the Company.

(C) All Securities which the Custodian or any of its agents, sub-custodians or delegates may hold from time to time on behalf of the Company in accordance with the terms and conditions hereof shall be subject to a general lien and security interest and the Custodian shall have power to withhold and/or sell such Securities for the discharge of the Company's obligations to the Custodian or any of its agents, sub-custodians or delegates.

(D) The Custodian shall deliver to the Investment Manager from time to time at such reasonable intervals as the Investment Manager may require a full account of all receipts and payments made and other action taken by the Custodian pursuant to this Agreement since the date of the last preceding such account together with a list as at the date of such account of all Securities and cash or other indebtedness or obligations held by the Custodian or its agent for or on behalf of the Company or otherwise pursuant to the terms hereof.

(E) The Company as sole beneficial owner of all Securities delivered or to be delivered to the Custodian or its nominee hereunder hereby indemnifies and holds harmless the Custodian from and against all proper costs and expenses and liabilities resulting from the fact that such Securities are registered in the name of the Custodian or its nominee.

(F) The Custodian shall not, in the absence of gross negligence or wilful default on the part of the Custodian, be liable to the Company or to any shareholder of the Company for any act or omission in the course of or in connection with the services rendered by it hereunder or for any loss or damage which the Company may sustain or suffer as a result or in the course of the discharge by the Custodian of its duties hereunder or pursuant hereto. In particular, but not without limiting the generality of the foregoing, the Custodian shall be under no liability in respect of:-

(i) any loss or damage caused by unauthorised use or forging of any authorised signature provided that in any such case the Custodian shall have properly investigated such signature in accordance with approved banking practice and by reference to any certified specimen signatures previously delivered to the Custodian by or on behalf of the Company pursuant to Clause 3 or shall have made such other investigations as may have been agreed from time to time in writing between the Investment Manager on behalf of the Company and the Custodian;

(ii) any loss which a shareholder of the Company may suffer by reason of any depletion in the value of net assets of the Company which may result from any borrowing or overdraft facilities made hereunder; or

(iii) any loss or damage which the Company or any shareholder of the Company may suffer as a result of Securities or other property of the Company being delivered to and held by a lender pursuant to any borrowing facility arranged by the Company or the Investment Manager.

The Company agrees to indemnify the Custodian from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (other than those resulting from the gross negligence or wilful default on the part of the Custodian or any agent, delegate or sub-custodian appointed by it and for which it would be liable as provided in sub-clause (B) of this Clause) which may be imposed on, incurred by or asserted against the Custodian in performing its obligations or duties hereunder.

(G) In any case where the Custodian may be held to be liable hereunder, its liability shall be limited to the loss suffered as a direct and reasonably foreseeable consequence of the Custodian's or its directors', officer's or employee's negligence or wilful default.

(H) The Custodian shall not be responsible for the loss or damage to any documents or other property of the Company or for any failure to fulfil its duties hereunder if such loss, damage or failure shall be caused by or directly or indirectly due to war, enemy action, the act of government or other competent authority, or if any investment exchange or clearing house, riots, civil disturbance, rebellion, storm, tempest, accident, fire, strike, explosion, or lock-out or the breakdown, failure or malfunction of any telecommunication or computer service or any occurrence or event beyond the control of the Custodian.

(I) The Custodian shall be under no duty to supervise compliance with restrictions on the investment powers of the Company or to take any action other than as specified in this Agreement with respect to any Securities or cash of the Company held by the Custodian hereunder. The Custodian shall be entitled to receive and act upon any advice of counsel and shall be without liability for any action taken or thing done in good faith in reliance upon such advice.

(J) Where any Proper Instructions or notices are given by way of facsimile transmission, the fact that a transmission report produced by the originator of such transmission discloses that the transmission was sent shall not be sufficient proof of receipt by the Custodian. The Company agrees to indemnify the Custodian from and against any and all actions, losses, costs, charges, expenses and demands of any and every kind which may at any time hereafter be incurred by the Custodian in consequence of accepting and acting upon such Proper Instruction or notices given by facsimile transmission whether or not such instructions were given by the Company or any other person duly authorised to give such instructions.

16. REFUSAL TO ACT

The Custodian shall be entitled (subject to notice having been given to the Investment Manager) to refuse to effect any investment, realisation or other transaction required to be carried out by it on behalf of the Company pursuant to this Agreement if in the opinion of the Custodian, 1) there are reasonable grounds for estimating that liabilities to be incurred in the case of such investment, realisation or other transaction may not be adequately covered by the assets of the Company held immediately prior to the time that such investment, realisation or other transaction is required to be effected or 2) personal liability may be incurred by the Custodian pursuant to such investment, realisation or other transaction PROVIDED ALWAYS that the foregoing (save as aforesaid) shall not absolve the Custodian from performing the obligations expressly assumed by it under this Agreement.

17. APPROVAL OF PUBLICATIONS

The Company shall deliver to the Custodian for approval prior to issue thereof a copy of all statements, notices, circulars and advertisements to be issued on behalf of or relating to the Company in which the name or any reference to the Custodian shall or will appear and any such publication not approved by the Custodian shall not be published by or on behalf of the Company and the Company hereby undertakes that no such statement, notice, circular or advertisement will be published and that no moneys will be raised nor any shares, warrants or other securities of the Company issued unless and until all necessary consents and permissions of whatever jurisdiction have been obtained in connection therewith.

18. TERMINATION

(A) This Agreement and the appointment of the Custodian hereunder shall continue in force until terminated by either the Company or the Custodian giving to the other not less than sixty days' notice in writing (or such shorter notice as such other party may agree to accept) expiring at any time provided that either the Company or the Custodian may forthwith terminate this Agreement by notice taking immediate or subsequent effect if:-

(a) the Custodian or the Company respectively has broken or is in breach of any of the terms of this Agreement and shall not have remedied such breach within thirty days after service of notice requiring the same to be remedied; or

(b) the Custodian or the Company respectively shall go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation on terms previously approved in writing by the other party).

(B) Upon the termination of this Agreement the Custodian shall deliver the Securities, cash and any other property of the Company in its custody hereunder to such person as the Company may nominate; provided, however, that the Custodian shall not be required to make any such delivery or payment until full payment shall have been made by the Company of all liabilities constituting a charge on or against the properties held by the Custodian or on or against the Custodian, and until full payment shall have been made to the Custodian of all its fees, compensation, costs and expenses due to it under the provisions of this Agreement.

(C) Termination of this Agreement shall be without prejudice to any claims or rights which either of the parties hereto may have by reason of any breach of the other party's obligations and, without prejudice to the generality of the foregoing, any indemnity provisions and provisions limiting the liabilities of either party shall survive termination of this Agreement.

19. NOTICES

Any notice, instruction or other instrument required or permitted to be given hereunder may be delivered in person to the offices of the parties as set forth herein during normal business hours, or delivered prepaid registered mail or by facsimile to the parties at the following addresses or such other address as may be notified by either party from time to time.

TO THE COMPANY:

KINGATE EURO FUND, LTD
C/o Hemisphere Management Limited
Hemisphere House
9 Church Street
Hamilton, HM 11
Bermuda

Attention: Rich Vickers

Facsimile: 441-296-5641

TO THE CUSTODIAN:

THE BANK OF BERMUDA LIMITED
6 Front Street
Hamilton HM 11
Bermuda

Attention: Senior Vice President, Global Fund Services

Facsimile: 441-299-6565

Such notice, instruction or other instrument shall be deemed to have been served in the case of personal delivery at the time of delivery in the case of a registered letter at the expiration of five business days after posting and, in the case of facsimile, immediately on despatch and if delivered outside normal business hours it shall be deemed to have been received at the next time after delivery when normal business hours commence . Evidence that the notice was properly addressed, stamped and put into the post shall be conclusive evidence of posting.

20. CONFIDENTIALITY AND REPUTATION

(A) Neither party hereto shall unless compelled so to do by any statute, court of competent jurisdiction or other regulatory authority either before or after the termination of this Agreement disclose to any person not authorised by the relevant party to receive the same any information relating to such party or to the affairs of such party of which the party disclosing the same shall have become possessed during the period of this Agreement and each party shall use its best endeavours to prevent any such disclosure as aforesaid.

(B) Neither party hereto shall do or commit any act or matter or thing which would or might prejudice or bring into disrepute in any manner the business or reputation of either of the parties or any Director of any such party.

21 RIGHT TO USE DATA PROCESSING RECORDS

The Custodian is authorised to maintain all accounts, corporate books and other documents relating to the Company or its affairs on computer records and to produce at any time during the course of legal proceedings, copies or reproductions of these documents made by photographic, photostatic or data processing procedures as juridical proof thereof.

22. ASSIGNMENT

This Agreement may not be assigned by the Custodian without the consent of the Company, authorised or approved by a resolution of its Board of Directors.

23. TELEPHONE RECORDING

The Custodian may record all telephone conversations between the Company and the Custodian or between any Shareholder or other person and the Custodian in relation to the affairs of the Company

and such tape recordings may be submitted evidence any proceedi elating th Agreement

24 AMENDMENT

or ision of Agree may be ended otherwise than by an instru writing igned by both parties here

COUNTERPART

Thi Agreemen may be executed iny ber of terp rts and the iffe ent parties to on separa counterparts each of hich when ited and delivered hall stitute ori and such terparts together stitute the same instrui

26 SEVERANCE

any provision her shall be lined to be void nforceable whole for reason whatsoever such invalidity forcea lity not affect th ng par th reof tained within thi Ag ent and ich void nforceable provision he ed to be ole iny oth provi part thereof ein contained

PROPER LAW

Thi Agreem shi be governed by strued accord vith the of Bermuda and each of the parties hereto submits to the clusi sdiction of the Bermuda

AS WITNESS the hands of the duly authorised signatories of the parties hereto as of the day and year first above written.

SIGNED BY)
for and on behalf of **KINGATE EURO**)
FUND, LTD)
in the presence of:)

Kenneth H Starnsteiner

SIGNED BY Anthony Riker
and Guy Kelly)
for and on behalf of **THE BANK OF BERMUDA LIMITED**
in the presence of:

ANNEX 1

As of the date of this Agreement, the following represents a list of Emerging Markets (as defined in the sub-clause (B) of Clause 15 of the Custodian Agreement):-

Bangladesh
Bahrain
Botswana
Bulgaria
Chile
Colombia
Costa Rica
Croatia
Czech Republic
Ecuador
Estonia
Ghana
Indonesia
Ivory Coast
Jamaica
Jordan
Kazakhstan
Kenya
Latvia
Lebanon
Lithuania
Morocco
Newly established countries, formerly part of the USSR
Oman
Palestine
Panama
Romania
Russian Federation
Slovakia
Slovenia
Tunisia
Ukraine
Venezuela
Vietnam
Zambia
Zimbabwe

EXHIBIT V

Dated APRIL 29 **2001**

KINGATE MANAGEMENT LIMITED

-and-

FIM LIMITED

Distribution Agreement

-relating to-

Kingate Global Fund, Ltd.

THIS DISTRIBUTION AGREEMENT is made this 28 day of April 2001

BETWEEN:

1. **KINGATE MANAGEMENT LIMITED,** a limited company registered in Bermuda (under number EC-19184) and whose registered office is at 99 Front Street, Hamilton HM11, Bermuda (the "Co-Manager");

2. **FIM LIMITED**, a limited company registered in England and Wales (under number 1536755) and whose registered office is at 62 Wilson Street, London EC2A 2BU ("FIM").

WHEREAS:

(A) Kingate Global Fund, Ltd. (the "Company") is open-end investment company organized as an international business company in the British Virgin Islands ("B.V.I.").

(B) By a Co-Manager Agreement dated November 1, 1994 between the Company and the Co-Manager, the Co-Manager has been appointed by the Company to provide the Company with Management and other services in relation to the Company's assets and operations, including the placement of Shares and the appointment of authorised dealers to solicit applications for the purchase of Shares, in accordance with the provisions of the Co-Manager Agreement.

(C) By a Consulting Services Agreement as amended and restated effective May 1, 2000 between the Co-Manager and FIM, FIM has been appointed Consultant to the Co-Manager to provide the Co-Manager with consultancy and other services to assist in the day to day management of the Company's assets and operations undertaken by the Co-Manager under the terms of the Co-Manager Agreement.

(D) FIM is a member of the Investment Management Regulatory Organisation Limited ("IMRO") in the United Kingdom. As part of its permitted business, it is allowed to market in England to certain persons certain types of investment fund.

(E) It is intended to sell the shares in the Company in England and elsewhere as permitted by applicable laws, rules, and regulation.

(F) FIM wishes to act as a distributor of the Shares in England and elsewhere where it may lawfully do so. It is authorised to do so in England within the parameters of its IMRO authorized business.

(G) In connection therewith, FIM has been providing distribution services to the Co-Manager since 1 June 2000, based on a verbal agreement.

(H) The Co-Manager now wishes to appoint FIM as a non-exclusive distributor of the Shares pursuant to and subject to the terms and provisions of this Agreement. FIM is prepared to so act.

NOW IT IS HEREBY AGREED as follows:

1. **Definitions and Construction**

(a) Save where the context otherwise requires, terms and expressions defined for the purposes of the Information Memorandum and the rules of IMRO shall have the same meaning when used in this Agreement.

(b) "FSA" means the Financial Services Act 1986 of the United Kingdom.

(c) "IMRO" means the Management Regulatory Organisation Limited or its successor(s) or replacement(s).

(d) "Information Memorandum" means the Information Memorandum of the Company dated May 1, 2000 or the most recent Information Memorandum, as appropriate.

(e) "Operative Documents" means any and all documents which may be issued by the Company in relation to the issue of securities (other than Shares) of the Company.

(f) "Shares" means the Participating Common Shares of the Company.

(g) "Unregulated Collective Investment Scheme" means an unregulated collective investment scheme as that term is defined in the FSA

(h) References to any statute, statutory enactment, rules and regulations shall be references to such statutes, statutory investments, rules or regulations as from time to time amended, re-enacted, replaced or substituted.

2. **Appointment as Distributor**

2.1 This Agreement shall be deemed to have taken effect on and from the 1 June 2000 (the "Effective date").

2.2 The Co-Manager hereby appoints FIM as distributor for the sale of the Shares subject to the terms and conditions of this Agreement as from the effective date of this Agreement.

2.3 This appointment is of a non-exclusive nature. FIM shall be free to render its services elsewhere as if FIM were not acting as a distributor of the Shares under the terms hereof for so long as its services hereunder shall not be impaired thereby. The Co-Manager shall be entitled to appoint distributors other than FIM in England and elsewhere.

2.4 The Information Memorandum, the Operative Documents and any amendments thereto, any published annual and/or interim reports and any sales material shall be sent to FIM by the Co-Manager promptly upon any such publications or amendments to them and as FIM shall from time to time reasonably request free of charge and in sufficient number.

3. **Distribution Services**

Without prejudice to the generality of the provisions of clause 2 above, the distribution services to be provided by FIM to the Co-Manager under the terms of this Agreement shall include, without limitation:-

(a) the identification and solicitation of prospective investors to purchase the Shares;

(b) the introduction of such prospective investors to the Co-Manager;

(c) the maintenance of regular contact with investors introduced to the Co-Manager to keep them informed of investment results and other information with regard to the Company;

(d) the preparation of marketing and other material for use in the performance of its duties under the terms of this Agreement, subject to approval by the Co-Manager;

(e) the supervision of distribution lists used by the Co-Manager to keep prospective and existing investors informed of developments with regard to the Company;

(f) generally, the provision of such services as may be required by the Co-Manager to enable it fulfil its duties with regard to the placement of the Shares in accordance with the provisions of the Co-Manager Agreement.

4. **Potential Conflicts of Interest and Disclosures**

FIM may be involved in other distribution activities which may be similar to, or in competition with, its activities for the Co-Manager with respect to the Company. FIM may effect transactions in which FIM, or its partners, officers, employees and directors, has, directly or indirectly, a material interest, which may involve a potential conflict with FIM's duty to the Co-Manager and the Company. FIM shall disclose such conflicts, but shall not be under any obligation to account to the Co-Manager or the Company for any profit, commission or remuneration earned or received in connection therewith. However, FIM shall at all times:-

(a) Have due regard to its duties to the Co-Manager and the Company and, where a conflict arises, use all reasonable endeavours to ensure it is resolved fairly; and

(b) Where FIM is acting as distributor of securities other than the Shares, act fairly with respect to the Co-Manager and the Company.

5. **Undertakings**

5.1 FIM undertakes with the Co-Manager that the sale of the Shares shall be conducted in accordance with the rules of IMRO and any other applicable regulation in England and, to the extent that FIM sells the Shares elsewhere in accordance with applicable local laws, rules and regulations.

5.2 The Company is an Unregulated Collective Investment Scheme. The Co-Manager shall inform FIM forthwith if the status of the Company changes.

5.3 The Co-Manager acknowledges that FIM may only sell the Shares in accordance with its own IMRO permitted business category and as permitted by local laws, rules and regulations in other countries.

5.4 The Co-Manager undertakes to FIM that the Information Memorandum and any sales material shall be drafted in accordance with the laws of England and any applicable rules and regulations of England and, to the extent that it requires FIM to market the Shares elsewhere, in accordance with any applicable local laws, rules and regulations.

5.5 FIM shall effect the sale of Shares in accordance with the provisions set forth in the Information Memorandum and Operative Documents and in accordance with any additional instructions which may be issued by or on behalf of the Co-Manager from time to time.

6. **Fees and Expenses**

Fees and expenses shall be as detailed in Schedule 1 to this Agreement, or as agreed from time to time between the parties.

7. **Indemnity**

The Co-Manager agrees that it will indemnify FIM from and against all claims, costs, charges, liabilities and expenses incurred by FIM directly or indirectly in connection with the performance of FIM's duties hereunder, in particular in respect of such claims, costs, charges, liabilities and expenses suffered or alleged to be suffered by any investor or former investor in the Company as a result of the acts or omissions of the Co-Manager, its delegates or agents, or the contravention by any of them of the applicable laws of The Territory of the British Virgin Islands, Bermuda, England, the Information Memorandum, the Operative Documents, the Memorandum and Articles of Association or this Agreement provided that such indemnify shall not apply to the extent that any such claim, cost, charge, liability or expense is due to the fraud, wilful default or negligence of FIM, its partners, offices, employees, directors or agents. This clause shall survive the termination of this Agreement.

8. **Termination**

8.1 This Agreement and the appointment of FIM shall continue until December 31, 2002. Thereafter, this Agreement shall be automatically renewed for successive one year periods, subject to termination as of the close of each calendar month by either the Co-Manager or FIM giving to the other party not less than six months' written notice (or such shorter notice as the parties may agree to accept).

8.2 Without prejudice to the accrued rights and provisions intended to survive termination, this Agreement may be terminated forthwith by written notice given by the Co-Manager or FIM to the other party if:-

(a) the other party shall commit any material breach of its obligations under this Agreement and shall fail to make good such breach within thirty days after receipt of notice from the other party requiring it so to do;

(b) the other party becomes insolvent or goes into liquidation (except a voluntary liquidation for the purposes of a reconstruction, amalgamation or merger upon terms previously approved in writing by the other party, such consent not to be unreasonably withheld or delayed) or if a receiver or administrator is appointed over all or any of its assets;

(c) the Co-Manager shall cease to be the co-manager of the Company; and

(d) FIM shall cease to be authorised by IMRO to provide its services under the terms of this Agreement.

8.3 Upon termination of this Agreement, FIM shall deliver to the Co-Manager or to such other person or corporation as the Co-Manager shall in writing direct, all books of account, correspondence and records or other documents which are in its power and/or possession, belonging to or relating to the Company.

8.4 On termination of the appointment FIM shall be entitled to payment of its fees and expenses as referred to in clause 6 and any additional expenses necessarily realised in settling or concluding outstanding obligations.

8.5 Termination of the appointment shall operate without prejudice to any rights which either party may have against the other in relation to any antecedent breach by the other of any provision of this Agreement.

8.6 In the event of termination of this Agreement, all pending trades and transactions shall be settled in the ordinary course and consistent with existing trade practices.

9. **Limitation on Authority**

9.1 In carrying out its duties hereunder, FIM shall comply with all instructions of the Co-Manager in connection therewith. Such instructions may be given by letter, by fax, by e-mail or by telephone (and the Co-Manager undertakes to confirm telephone instructions by fax, e-mail or in writing) by any director of the Co-Manager or by any other person authorised by resolution of the directors of the Co-Manager (of which a copy, certified by any two such directors, shall have been supplied to FIM).

9.2 For the purposes of clause 9.1 and unless and until FIM shall receive written notice that any such person's authority has been revoked FIM may rely or act upon any instructions or communications which FIM believes on reasonable grounds and in good faith, to have been given by or on behalf of any persons notified by the Company or the Co-Manager from time to time in accordance with clause 9.1 as being authorised to instruct FIM.

10. **Confidentiality**

Each of the parties at all times shall keep confidential information required in consequence of its services under this Agreement except information which it is bound to disclose under compulsion of law or compulsion of regulatory agencies to whose jurisdiction it is subject.

11. **Notices**

Any instructions, notices, demands, acknowledgements or requests to be given by any of the parties hereunder shall, subject to any express provision of this Agreement, be given in writing in the English language (and may be delivered in person or sent by facsimile or recorded delivery post) to the other party at the following address or any address subsequently notified by the relevant party to the other:-

To FIM:

FIM Limited
25-28 Old Burlington Street
London W1S 3AN
Attention: Carlo Grosso
Fax: (+ 44 20) 7494 1981

To the Co-Manager: Kingate Management Limited
99 Front Street
Hamilton HM11
Bermuda
Fax: (+ 1 441) 296 6775

Notice given in person shall be effective when delivered. Notice given by facsimile or e-mail shall be deemed to have been given contemporaneously unless delivered outside normal business hours in which case it shall be deemed to have been received at the next time after delivery when normal business hours commence. Notice given by recorded delivery shall be deemed to have been given seventy-two hours after posting. Evidence that the notice was properly addressed and sent by recorded delivery shall be conclusive evidence of posting.

12. **Assignment**

Neither the benefit nor the burden of this Agreement shall be assigned by any party without the written consent of the others.

13. **Independent Contractor**

In the performance of its duties hereunder, FIM shall be an independent contractor and not an employee or agent of the Co-Manager.

14. **Entire Agreement**

This Agreement sets forth the entire agreement of the parties relating to the subject matter hereof.

15. **Waiver**

The failure by any party to enforce at any time or for any period any one or more of the provisions of this Agreement shall not be a waiver of any one or more of them or of the right at any time thereafter to enforce all or any of them.

16. **Invalidity**

If any provision of this Agreement is or becomes invalid or contravenes any applicable law, the remaining provisions shall remain in full force and effect.

17. **Amendments**

This Agreement may only be amended in writing by the parties.

18. **Counterparts**

This Agreement may be executed in one or more counterparts all of which taken together shall be deemed to constitute one and the same agreement.

19. **Governing Law**

This Agreement will be governed by and construed in accordance with Bermuda law. Bermuda courts are to have non-exclusive jurisdiction to settle any disputes or claims which may arise out of or in connection with this Agreement for which purposes all parties agree to submit to the jurisdiction of Bermuda courts. Nothing contained in this clause shall limit the right of any party to take court proceedings against any other party or parties in any other court of competent jurisdiction, nor shall the taking of court proceedings in one or more jurisdictions preclude the taking of court proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of that other jurisdiction.

* * * * * * * * * * *

SCHEDULE 1

Fees and Expenses

Distribution Fees.

In consideration for its services, from the Effective Date of this Agreement, FIM shall be due a fixed monthly asset based fee (the "Distribution Fee") equal to 1/12th of 0.50% (one-twelfth of one-half of one percent) of the Net Asset Value at the end of each calendar month of the Shares that have been placed as a result of FIM's efforts.

Payment of Fees.

The Distribution Fee shall be payable quarterly in arrears within thirty (30) days of the end of each calendar quarter to FIM.

The Co-Manager may arrange to have the Company make payments directly to FIM for administrative convenience.

In the event that this Agreement is terminated, for a period of six (6) years following the effective date of termination the Distribution Fee shall be due to FIM for as long as the Shares continue to be held and until such time as the Shares are redeemed. No additional remuneration shall be due to FIM.

The Distribution Fee payable under this Agreement is payable exclusive of any Value Added Tax (if applicable).

Other Costs and Expenses

Unless otherwise agreed to by the Co-Manager and FIM, FIM shall bear all of its own costs and expenses incurred in the performance of the services provided pursuant to this Agreement, including those attributable to such office personnel, office space, office equipment and office services as may be required by FIM.

* * * * * * * * * * *

IN WITNESS whereof the parties hereto have caused this Agreement to be executed as of the day and year first above written.

SIGNED by)
C WETHERHILL)
for and on behalf of)
KINGATE)
MANAGEMENT LIMITED)

SIGNED by)
C. G Ross)
for and on behalf of)
FIM LIMITED)

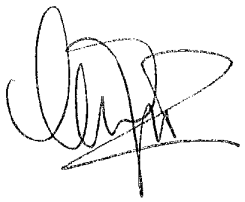


EXHIBIT W

Dated APRIL 23 - **2001**

KINGATE MANAGEMENT LIMITED

-and-

FIM LIMITED

Distribution Agreement

-relating to-

Kingate Euro Fund, Ltd.

THIS DISTRIBUTION AGREEMENT is made this 23 day of May 2001

BETWEEN:

1. **KINGATE MANAGEMENT LIMITED,** a limited company registered in Bermuda (under number EC-19184) and whose registered office is at 99 Front Street, Hamilton HM11, Bermuda (the "Manager");

2 **FIM LIMITED**, a limited company registered in England and Wales (under number 1536755) and whose registered office is at 62 Wilson Street, London EC2A 2BU ("FIM").

WHEREAS:

(A) Kingate Euro Fund, Ltd. (the "Company") is open-end investment company organized as an international business company in the British Virgin Islands ("B.V.I.").

(B) By a Management Agreement effective May 1, 2000 between the Company and the Manager, the Manager has been appointed by the Company to provide the Company with Management and other services in relation to the Company's assets and operations, including the placement of Shares and the appointment of authorised dealers to solicit applications for the purchase of Shares, in accordance with the provisions of the Management Agreement.

(C) By a Consulting Services Agreement effective May 1, 2000 between the Manager and FIM, FIM has been appointed Consultant to the Manager to provide the Manager with consultancy and other services to assist in the day to day management of the Company's assets and operations undertaken by the Manager under the terms of the Management Agreement.

(D) FIM is a member of the Investment Management Regulatory Organisation Limited ("IMRO")in the United Kingdom. As part of its permitted business, it is allowed to market in England to certain persons certain types of investment fund.

(E) It is intended to sell the shares in the Company in England and elsewhere as permitted by applicable laws, rules, and regulation.

(F) FIM wishes to act as a distributor of the Shares in England and elsewhere where it may lawfully do so. It is authorised to do so in England within the parameters of its IMRO authorized business.

(G) In connection therewith, FIM has been providing distribution services to the Manager since 1 June 2000, based on a verbal agreement.

(H) The Manager now wishes to appoint FIM as a non-exclusive distributor of the Shares pursuant to and subject to the terms and provisions of this Agreement. FIM is prepared to so act.

NOW IT IS HEREBY AGREED as follows:

1 **Definitions and Construction**

(a) Save where the context otherwise requires, terms and expressions defined for the purposes of the Information Memorandum and the rules of IMRO shall have the same meaning when used in this Agreement.

(b) "FSA" means the Financial Services Act 1986 of the United Kingdom.

(c) "IMRO" means the Management Regulatory Organisation Limited or its successor(s) or replacement(s).

(d) "Information Memorandum" means the Information Memorandum of the Company dated May 1, 2000 or the most recent Information Memorandum, as appropriate.

(e) "Operative Documents" means any and all documents which may be issued by the Company in relation to the issue of securities (other than Shares) of the Company.

(f) "Shares" means the Participating Common Shares of the Company.

(g) "Unregulated Collective Investment Scheme" means an unregulated collective investment scheme as that term is defined in the FSA.

(h) References to any statute, statutory enactment, rules and regulations shall be references to such statutes, statutory investments, rules or regulations as from time to time amended, re-enacted, replaced or substituted.

2. **Appointment as Distributor**

2.1 This Agreement shall be deemed to have taken effect on and from the 1 June 2000 (the "Effective date").

2.2 The Manager hereby appoints FIM as distributor for the sale of the Shares subject to the terms and conditions of this Agreement as from the effective date of this Agreement.

2.3 This appointment is of a non-exclusive nature. FIM shall be free to render its services elsewhere as if FIM were not acting as a distributor of the Shares under the terms hereof for so long as its services hereunder shall not be impaired thereby. The Manager shall be entitled to appoint distributors other than FIM in England and elsewhere.

2.4 The Information Memorandum, the Operative Documents and any amendments thereto, any published annual and/or interim reports and any sales material shall be sent to FIM by the Manager promptly upon any such publications or amendments to them and as FIM shall from time to time reasonably request free of charge and in sufficient number.

3. **Distribution Services**

Without prejudice to the generality of the provisions of clause 2 above, the distribution services to be provided by FIM to the Manager under the terms of this Agreement shall include, without limitation:-

(a) the identification and solicitation of prospective investors to purchase the Shares;

(b) the introduction of such prospective investors to the Manager,

(c) the maintenance of regular contact with investors introduced to the Manager to keep them informed of investment results and other information with regard to the Company;

(d) the preparation of marketing and other material for use in the performance of its duties under the terms of this Agreement, subject to approval by the Manager;

(e) the supervision of distribution lists used by the Manager to keep prospective and existing investors informed of developments with regard to the Company;

(f) generally, the provision of such services as may be required by the Manager to enable it fulfil its duties with regard to the placement of the Shares in accordance with the provisions of the Management Agreement.

4. **Potential Conflicts of Interest and Disclosures**

FIM may be involved in other distribution activities which may be similar to, or in competition with, its activities for the Manager with respect to the Company. FIM may effect transactions in which FIM, or its partners, officers, employees and directors, has, directly or indirectly, a material interest, which may involve a potential conflict with FIM's duty to the Manager and the Company. FIM shall disclose such conflicts, but shall not be under any obligation to account to the Manager or the Company for any profit, commission or remuneration earned or received in connection therewith. However, FIM shall at all times:-

(a) Have due regard to its duties to the Manager and the Company and, where a conflict arises, use all reasonable endeavours to ensure it is resolved fairly, and

(b) Where FIM is acting as distributor of securities other than the Shares, act fairly with respect to the Manager and the Company.

5. **Undertakings**

5.1 FIM undertakes with the Manager that the sale of the Shares shall be conducted in accordance with the rules of IMRO and any other applicable regulation in England and, to the extent that FIM sells the Shares elsewhere in accordance with applicable local laws, rules and regulations.

5.2 The Company is an Unregulated Collective Investment Scheme. The Manager shall inform FIM forthwith if the status of the Company changes.

5.3 The Manager acknowledges that FIM may only sell the Shares in accordance with its own IMRO permitted business category and as permitted by local laws, rules and regulations in other countries.

5.4 The Manager undertakes to FIM that the Information Memorandum and any sales material shall be drafted in accordance with the laws of England and any applicable rules and regulations of England and, to the extent that it requires FIM to market the Shares elsewhere, in accordance with any applicable local laws, rules and regulations.

5.5 FIM shall effect the sale of Shares in accordance with the provisions set forth in the Information Memorandum and Operative Documents and in accordance with any additional instructions which may be issued by or on behalf of the Manager from time to time.

6. **Fees and Expenses**

Fees and expenses shall be as detailed in Schedule 1 to this Agreement, or as agreed from time to time between the parties.

7. **Indemnity**

The Manager agrees that it will indemnify FIM from and against all claims, costs, charges, liabilities and expenses incurred by FIM directly or indirectly in connection with the performance of FIM's duties hereunder, in particular in respect of such claims, costs, charges, liabilities and expenses suffered or alleged to be suffered by any investor or former investor in the Company as a result of the acts or omissions of the Manager, its delegates or agents, or the contravention by any of them of the applicable laws of The Territory of the British Virgin Islands, Bermuda, England, the Information Memorandum, the Operative Documents, the Memorandum and Articles of Association or this Agreement provided that such indemnify shall not apply to the extent that any such claim, cost, charge, liability or expense is due to the fraud, wilful default or negligence of FIM, its partners, offices, employees, directors or agents. This clause shall survive the termination of this Agreement.

8. **Termination**

8.1 This Agreement and the appointment of FIM hereunder shall continue until December 31, 2002. Thereafter, this Agreement shall be automatically renewed for successive one year periods, subject to termination as of the close of each calendar month by either the Manager or FIM giving to the

other party not less than six months' written notice (or such shorter notice as the parties may agree to accept).

8.2 Without prejudice to the accrued rights and provisions intended to survive termination, this Agreement may be terminated forthwith by written notice given by the Manager or FIM to the other party if:-

(a) the other party shall commit any material breach of its obligations under this Agreement and shall fail to make good such breach within thirty days after receipt of notice from the other party requiring it so to do;

(b) the other party becomes insolvent or goes into liquidation (except a voluntary liquidation for the purposes of a reconstruction, amalgamation or merger upon terms previously approved in writing by the other party, such consent not to be unreasonably withheld or delayed) or if a receiver or administrator is appointed over all or any of its assets;

(c) the Manager shall cease to be the manager of the Company; and

(d) FIM shall cease to be authorised by IMRO to provide its services under the terms of this Agreement.

8.3 Upon termination of this Agreement, FIM shall deliver to the Manager or to such other person or corporation as the Manager shall in writing direct, all books of account, correspondence and records or other documents which are in its power and/or possession, belonging to or relating to the Company.

8.4 On termination of the appointment FIM shall be entitled to payment of its fees and expenses as referred to in clause 6 and any additional expenses necessarily incurred in settling or concluding outstanding obligations.

8.5 Termination of the appointment shall operate without prejudice to any rights which either party may have against the other in relation to any antecedent breach by the other of any provision of this Agreement.

8.6 In the event of termination of this Agreement, all pending trades and transactions shall be settled in the ordinary course and consistent with existing trade practices.

9. **Limitation on Authority**

9.1 In carrying out its duties hereunder, FIM shall comply with all instructions of the Manager in connection therewith. Such instructions may be given by letter, by fax, by e-mail or by telephone (and the Manager undertakes to confirm telephone instructions by fax, e-mail or in writing) by any director of the Manager or by any other person authorised by resolution of the directors of the Manager (of which a copy, certified by any two such directors, shall have been supplied to FIM).

9.2 For the purposes of clause 9.1 and unless and until FIM shall receive written notice that any such person's authority has been revoked FIM may rely or act upon any instructions or communications which FIM believes on reasonable grounds and in good faith, to have been given by or on behalf of any persons notified by the Company or the Manager from time to time in accordance with clause 9.1 as being authorised to instruct FIM.

10. **Confidentiality**

Each of the parties at all times shall keep confidential information required in consequence of its services under this Agreement except information which it is bound to disclose under compulsion of law or compulsion of regulatory agencies to whose jurisdiction it is subject.

11. **Notices**

Any instructions, notices, demands, acknowledgements or requests to be given by any of the parties hereunder shall, subject to any express provision of this Agreement, be given in writing in the English language (and may be delivered in person or sent by facsimile or recorded delivery post) to the other party at the following address or any address subsequently notified by the relevant party to the other:-

To FIM:

FIM Limited
25-28 Old Burlington Street
London W1S 3AN
Attention: Carlo Grosso
Fax: (+ 44 20) 7494 1981

To the Manager:

Kingate Management Limited
99 Front Street
Hamilton HM11
Bermuda
Attention: Christopher Wetherhill
Fax: (+ 1 441) 296 6775

Notice given in person shall be effective when delivered. Notice given by facsimile or e-mail shall be deemed to have been given contemporaneously unless delivered outside normal business hours in which case it shall be deemed to have been received at the next time after delivery when normal business hours commence. Notice given by recorded delivery shall be deemed to have been given seventy-two hours after posting. Evidence that the notice was properly addressed and sent by recorded delivery shall be conclusive evidence of posting.

12. **Assignment**

Neither the benefit nor the burden of this Agreement shall be assigned by any party without the written consent of the others.

13. **Independent Contractor**

In the performance of its duties hereunder, FIM shall be an independent contractor and not an employee or agent of the Manager.

14. **Entire Agreement**

This Agreement sets forth the entire agreement of the parties relating to the subject matter hereof.

15. **Waiver**

The failure by any party to enforce at any time or for any period any one or more of the provisions of this Agreement shall not be a waiver of any one or more of them or of the right at any time thereafter to enforce all or any of them.

16. **Invalidity**

If any provision of this Agreement is or becomes invalid or contravenes any applicable law, the remaining provisions shall remain in full force and effect.

17. **Amendments**

This Agreement may only be amended in writing by the parties.

18. **Counterparts**

This Agreement may be executed in one or more counterparts all of which taken together shall be deemed to constitute one and the same agreement.

19. **Governing Law**

This Agreement will be governed by and construed in accordance with Bermuda law. Bermuda courts are to have non-exclusive jurisdiction to settle any disputes or claims which may arise out of or in connection with this Agreement for which purposes all parties agree to submit to the jurisdiction of Bermuda courts. Nothing contained in this clause shall limit the right of any party to take court proceedings against any other party or parties in any other court of competent jurisdiction, nor shall the taking of court proceedings in one or more jurisdictions preclude the taking of court proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of that other jurisdiction.

****

SCHEDULE 1

Fees and Expenses

Distribution Fees.

In consideration for its services, from the Effective Date of this Agreement, FIM shall be due a fixed monthly asset based fee (the "Distribution Fee") equal to 1/12th of 0.50% (one-twelfth of one-half of one percent) of the Net Asset Value at the end of each calendar month of the Shares that have been placed as a result of FIM's efforts.

Payment of Fees.

The Distribution Fee shall be payable quarterly in arrears within thirty (30) days of the end of each calendar quarter to FIM.

The Manager may arrange to have the Company make payments directly to FIM for administrative convenience.

In the event that this Agreement is terminated, for a period of six (6) years following the effective date of termination the Distribution Fee shall be due to FIM for as long as the Shares continue to be held and until such time as the Shares are redeemed. No additional remuneration shall be due to FIM.

The Distribution Fee payable under this Agreement is payable exclusive of any Value Added Tax (if applicable).

Other Costs and Expenses

Unless otherwise agreed to by the Manager and FIM, FIM shall bear all of its own costs and expenses incurred in the performance of the services provided pursuant to this Agreement, including those attributable to such office personnel, office space, office equipment and office services as may be required by FIM.

* * * * * * * * * * *

IN WITNESS whereof the parties hereto have caused this Agreement to be executed as of the day and year first above written.

SIGNED by)
)
C WETHERILL)
)
for and on behalf of)
KINGATE)
MANAGEMENT LIMITED)

SIGNED by)
)
C. GROSSO)
)
for and on behalf of)
FIM LIMITED)

EXHIBIT X

KINGATE MANAGEMENT LIMITED

- AND -

KINGATE GLOBAL FUND, LTD.

- AND -

FIM LIMITED

CONSULTING SERVICES AGREEMENT

CONSULTING SERVICES AGREEMENT made as of the 1st day of December 1995 by and between:

Kingate Management Limited ("Kingate"), a company incorporated under Bermuda law;

Kingate Global Fund, Ltd.(the "Fund") a company incorporated under the laws of the Territory of the British Virgin Islands; and

FIM Limited ("FIM"), a company incorporated under the laws of England and regulated by the Investment Management Regulatory Organisation Limited ("IMRO") in carrying on investment business relevant to this Agreement.

WHEREAS

(A) the Fund invests its assets by selecting a number of funds and investment management firms (the "Investment Advisors") who are appointed to manage the Fund's assets;

(B) the Fund currently has 3 (three) Classes of Common Shares, called respectively "Class A", "Class B" and "DM Class" and may, in the future, create further Classes of Shares;

(C) the Fund has appointed Kingate as Manager of the Class A Shares and as Co-Manager with respect to the Class B Shares and the DM Class Shares under the terms of Management and Co-Management Agreements by and between Kingate and the Fund;

(D) Kingate has engaged FIM to act as a consultant to Kingate with respect to the allocation of the assets of the Fund's Class A Shares among different equity and fixed-income markets, currencies and asset classes, under the terms of a Consulting Services Agreement effective November 1, 1994 for an initial term to expire on December 31, 1995;

(E) Kingate wishes to amend and replace the Consulting Services Agreement effective November 1, 1994 and wishes to engage FIM to act as Consultant with respect to the investment of the assets comprised in each Class of Shares in the Fund currently outstanding or to be created in the future.

NOW THEREFORE, in consideration of premises and mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. *Appointment of the Consultant.* Effective December 1, 1995 and until this Agreement is terminated in accordance with clause 7 hereof, Kingate hereby appoints FIM as Consultant to Kingate to render consulting services with respect to the investments of the assets of each Class of Shares of the Fund currently outstanding or to be created in the future.

2. *Acceptance by the Consultant.* FIM hereby accepts such appointment as Consultant to Kingate as a "non-private customer" for IMRO purposes, and agrees to render such consulting services in accordance with the terms and conditions of this Agreement.

3. *Duties of FIM.* Without limiting the foregoing, FIM shall:

   (a) analyse trends in the world's economies and financial markets (including equity, fixed-income and money markets, currencies and commodities markets) and recommend to

Kingate an allocation of the Fund's assets in a manner consistent with the Fund's investment objectives and methodology;

(b) research, screen and nominate for selection by Kingate investment advisors that may be appointed by Kingate to manage the Fund's assets in a manner consistent with the Fund's investment objectives and methodology;

(c) advise Kingate concerning all actions which may appear to FIM that the Fund should take to carry into effect the purchase and sale of investments pursuant to clauses 3.(a) and 3.(b) above;

(c) provide relevant information covering the performance of each asset allocation, asset class and investment advisor recommended to Kingate;

(e) monitor on a continuing basis each recommendation and implementation of approved recommendations concerning the allocation of the Fund's assets and the appointment of investment advisors, including identification of additional or alternative asset allocations and investment advisors;

(f) prepare such reports as Kingate may request for inclusion in the annual or other reports of the Fund;

(g) provide such information as Kingate may require on matters related to the investment of the Fund's assets including, inter alia, such information as Kingate may require to calculate the value of each Class of Shares of the Fund;

(h) as requested, attend investment meetings with Kingate, its representatives and consultants;

(i) in general, comply with any reasonable requests made by Kingate.

4. ***Other Agreements and Obligations.*** It is understood that:

(a) FIM shall not have any power to enter into transactions on behalf of, or in any other way to bind, Kingate or the Fund and nothing herein contained shall be deemed to create or constitute a partnership between FIM, Kingate and the Fund;

(b) FIM may have business arrangements and/or consulting contracts with other persons, firms or organisations and other accounts for which it may act as consultant, investment supervisor, investment manager or otherwise;

(c) FIM may give advice and make recommendations to other clients which may differ from, may be the same as or similar to the advice and recommendations given and made to Kingate provided FIM acts in good faith and follows a consistent policy with respect to each client;

(d) personnel of FIM may be involved in the supervision and management of other investment companies, other investment programs or consulting activities;

(e) FIM may, at its own expense and under its own responsibility, employ or hire other consultants to assist it in the performance of its duties under the term of this Agreement;

(f) Kingate may have consultancy agreements with other consultants while this Agreement is in force;

(g) Kingate shall at all times keep FIM fully informed of its investment objectives and methodology, its cash requirements, the investments comprised in the portfolio of each Class of Shares and the affairs of the Fund in so far as they are relevant to the duties to be performed by FIM under the terms of this Agreement.

5. ***Remuneration.*** In consideration for the services thereof, Kingate hereby agrees to pay to FIM the fees specified in Exhibit B.

6. ***Liability.*** FIM shall not be liable to Kingate, the Fund or its shareholders for any error of judgement or for any loss suffered by the Fund in connection with the subject matter of this Agreement howsoever any such loss may have occurred unless such loss arises from negligence, wilful default, fraud or dishonesty in the performance or non-performance by FIM or persons designated by it of its obligations or duties.

Kingate and the Fund hereby undertake to hold harmless and indemnify FIM against all actions proceedings claims costs demands and expenses which may be brought against, suffered or incurred by FIM by reason of its performance or non-performance of its duties under the terms of this Agreement (other than due to negligence, wilful default, fraud or dishonesty on the part of FIM or persons designated by it) including all legal professional and other expenses incurred by FIM or persons designated by it in the performance of its obligations or duties and including indemnity obligations owed by FIM to persons designated by it (except such as shall arise from negligence, wilful default, fraud, dishonesty in the performance of such obligations or duties).

7. ***Term.*** This Agreement shall come into force as of the date hereof and continue in effect for an initial term to end on December 31, 1996 and shall be automatically renewed for subsequent terms of one year unless terminated at the end of the initial or a subsequent term by 30 days' notice given by one party to the others.

Any party may terminate this Agreement at any time if one of the other parties shall go into liquidation (except a voluntary liquidation for the purposes of reconstruction or amalgamation upon terms previously approved in writing by the other parties) or be unable to pay its debts or is insolvent or deemed to be insolvent or if a receiver is appointed of any of the assets of the parties. Any party may terminate this Agreement at any time if one of the other parties shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail within thirty days of receipt of notice served by the other parties requiring it to do so to do to make good such breach.

This Agreement shall terminate forthwith upon the termination of the Manager or Co-Manager Agreements between Kingate and the Fund. Kingate and the Fund may terminate this Agreement at any time if FIM ceases to be permitted by applicable law or regulation to act as consultant, or if FIM ceases to be authorised by IMRO. FIM may terminate this Agreement at any time if it becomes unlawful for FIM to act as consultant pursuant to this Agreement.

On termination of the appointment of FIM under the provisions of this Clause, FIM shall be entitled to receive the fees referred-to in Exhibit B up to the effective date of termination but shall not be entitled to compensation in respect of such termination; and FIM shall deliver or procure to be delivered to Kingate, or as it shall direct, all books of account, records, other registers, correspondence, documents and assets relating to the affairs of or belonging to the Kingate or the Fund in the possession of or under the control of FIM.

8. ***Records.*** FIM agrees to hold for a period of three years all books of account, records, other registers, correspondence, documents and assets relating to the object matter of this Agreement, and to make them available for inspection by Kingate or the Fund.

9. ***Confidentiality.*** During and after the continuance of this Agreement, FIM agrees to maintain strict confidentiality in respect to Kingate and the Fund.

10. ***Representations and Warranties.*** FIM, Kingate and the Fund represent and warrant that information with respect to them and annexed hereto as Exhibit A is correct and each agrees to furnish each other with such information, authorisation and documentation as the others may from time to time require to enable it to carry out its obligations under this Agreement.

11. ***Authority.*** Each of the parties to this Agreement hereby represents and warrants that it is duly authorised and empowered to execute, deliver and perform this Agreement and that such action does not conflict with or violate any provision of law, rule or regulation or contract or deed of trust to which it is a party.

12. ***Amendments.*** Any provision of this Agreement may be amended only if the parties so agree in writing.

13. ***Assignment.*** FIM may not assign this Agreement without the prior written agreement of Kingate and the Fund.

14. ***Notices.*** Any notice given by one party to the other under this Agreement shall be in writing and shall be delivered by hand or by telefax or mailed by registered or certified mail or by courier to the address shown on Exhibit A. A notice delivered by hand shall be deemed to be served upon such service. A notice delivered by telefax shall be deemed to have been given at the close of business on the day on which it is sent. A notice delivered by mail or courier shall be deemed to have been given at the expiration of seventy-two hours after posting. Evidence that the notice was properly addressed, faxed or stamped and put into the post or given to a courier shall be conclusive evidence of service A party may by notice hereunder to the other party designate a different address.

15. ***Complaints.*** FIM has in operation a written complaints procedure in accordance with IMRO rules for the effective consideration and proper handling of complaints from customers. Kingate and the Fund have the right to complain directly to FIM concerning the services rendered by FIM under the terms of this Agreement. FIM shall address to Kingate and the Fund a written reply within ten (10) days of receipt of such complaint, and the complaint shall be considered as settled if Kingate and the Fund do not indicate otherwise within one month of receipt of such reply. If within two months after the complaint is made it has not been resolved to the satisfaction of Kingate and the Fund, the complaint shall be notified to IMRO by FIM. Kingate and the Fund have the right to make complaints to the United Kingdom's Investment Ombudsman.

16. ***Governing Law.*** This Agreement shall be governed by, and construed in accordance with, the laws of Bermuda, and the parties hereto irrevocably agree to submit to the non-exclusive jurisdiction of the courts of Bermuda.

****

IN WITNESS WHEREOF this Agreement has been duly executed on behalf of the parties on the day and year first above written.

Signed for and on behalf of
KINGATE MANAGEMENT LIMITED by: _____
Christopher Wetherhill

Signed for and on behalf of
KINGATE GLOBAL FUND, LTD. by: _____
Keith R. Bish

Signed for and on behalf of
FIM LIMITED by: _____
Carlo Grosso

EXHIBIT A

INFORMATION REGARDING THE PARTIES

KINGATE MANAGEMENT LIMITED	c/o Hemisphere Management Limited Hemisphere House 9 Church Street P.O. Box HM 951 Hamilton HM DX Bermuda Authorised Party: Christopher Wetherhill
KINGATE GLOBAL FUND, LTD.	c/o HWR Services Limited Craigmuir Chambers P.O. Box 71 Road Town, Tortola British Virgin Islands Authorised Party: Keith R. Bish
FIM Limited	6-8 Sackville Street London W1X 1DD United Kingdom Authorised Party: Carlo Grosso

EXHIBIT B

FEE SCHEDULE

1. In consideration for the services detailed under Clause 3 of this Agreement, FIM shall be entitled to receive such fees as may be agreed from time to time between Kingate, the Fund and FIM. Such fees shall not abate and may be supplemented by reference to any other remuneration of FIM.

2. Such fees (payable to the extent that Kingate receives its management fee under the terms of its Management or Co-Management Agreement with the Fund) shall be no less than:

   - 0.50% (one-half of one percent) per annum of the Net Asset Value of the Fund (being the sum of the Net Asset value of each Class of Shares of the Fund calculated in accordance to the Information Memorandum of each Class of Shares of the Fund), and

   - US$ 300,000 (three hundred thousand U.S. dollars)

3. Such fees shall be payable in twelve equal monthly instalments of the greater of 1/12th of 0.50% (one twelfth of one-half percent) of the Net Asset Value of the Fund calculated as of the close of business on the last Business Day of each calendar month (as defined in the Fund's Information Memorandum) and US$ 25,000 (twenty five thousand U.S. dollars). The first payment shall be due as of the last Business Day of the month of December 1995 and subsequent payments shall be due as of the last Business Day of each calendar month.

4. FIM shall at its own expense employ such staff as may be necessary for the proper performance of its duties under the terms of this Agreement, except that reasonable travel expenses as mutually agreed in advance by the parties may be reimbursed by Kingate to FIM upon presentation of statement by FIM.

AMENDMENT TO CONSULTING SERVICES AGREEMENT

between
KINGATE MANAGEMENT LIMITED
and
KINGATE GLOBAL FUND, LTD.
and
FIM LIMITED

Effective December 1, 1995

SUPERCEDED 23 APRO

1. In accordance with Clause 12. of the Consulting Services Agreement (the "Agreement") by and between Kingate Management Limited, Kingate Global Fund, Ltd. and FIM Limited with regard to the allocation of investments of all Classes of Shares of Kingate Global Fund, Ltd. currently outstanding or to be created in the future, all parties hereby agree to amend such Agreement as provided herein with effect as from October 1, 1998.

2. Exhibit B ("Fee Schedule") is amended as follows:

    1. In consideration for the services detailed under Clause 3 of this Agreement, FIM shall be entitled to receive such fees as may be agreed from time to time between Kingate, the Fund and FIM. Such fees shall not abate and may be supplemented by reference to any other remuneration of FIM.

    2. Such fees (payable to the extent that Kingate receives its management fee under the terms of its Management or Co-Management Agreement with the Fund) shall be US$ 540,000 (five hundred forty thousand U.S. dollars) per annum.

    3. Such fees shall be payable in twelve equal monthly instalments of US$ 45,000 (forty five thousand U.S. dollars). The first payment shall be due as of the last Business Day of the month of October, 1998 and subsequent payments shall be due as of the last Business Day of each calendar month.

    4. FIM shall at its own expense employ such staff as may be necessary for the proper performance of its duties under the terms of this Agreement, except that reasonable travel expenses as mutually agreed in advance by the parties may be reimbursed by Kingate to FIM upon presentation of statement by FIM.

3. All other Clauses of the Agreement remain unchanged.

Signed for and on behalf of
KINGATE MANAGEMENT LIMITED

by: _____
Christopher Wetherhill

date: _____

Signed for and on behalf of
KINGATE GLOBAL FUND, LTD.

by: _____
Keith R. Bish

date: December 23, 1998

Signed for and on behalf of
FIM LIMITED

by: _____
Carlo Grosso

date: 10/12/98

EXHIBIT Y

Dated 29 APRIL **2001**

KINGATE MANAGEMENT LIMITED

-and-

FIM LIMITED

Consulting Services Agreement

-relating to-

Kingate Global Fund, Ltd.

THIS CONSULTING SERVICES AGREEMENT is made this 23 day of April 2001

BETWEEN:

1. **KINGATE MANAGEMENT LIMITED,** a limited company registered in Bermuda (under number EC-19184) and whose registered office is at 99 Front Street, Hamilton HM11, Bermuda (the "Co-Manager");

2. **FIM LIMITED**, a limited company registered in England and Wales (under number 1536755) and whose registered office is at 62 Wilson Street, London EC2A 2BU ("FIM").

WHEREAS:

(A) Kingate Global Fund, Ltd. (the "Company") is open-end investment company organized as an international business company in the British Virgin Islands ("B.V.I.").

(B) By a Co-Manager Agreement dated November 1, 1994 between Company and the Co-Manager (the "Co-Manager Agreement") the Company has appointed the Co-Manager to provide it with investment management and other services in relation to the Company's assets and operations in accordance with the provisions of the Co-Manager Agreement.

(C) Under the provisions of the Co-Manager Agreement the Co-Manager is authorised to appoint delegates to assist it in the discharge of its function under the Co-Manager Agreement.

(D) By a Consulting Services Agreement dated November 1, 1994 as amended FIM has been appointed as consultant to the Co-Manager to provide consulting and other services to the Co-Manager.

(E) The Co-Manager and FIM now wish to amend and restate the Consulting Services Agreement.

(F) FIM is regulated in the conduct of investment business in the United Kingdom by the Investment Management Regulatory Organisation Limited ("IMRO") or its successor(s) or replacement(s).

(G) This Agreement is in a form which complies with the Rules of IMRO on the basis that the Co-Manager and the Company (which is an unregulated collective investment scheme) are Non-Private Customers (as defined in the IMRO Rules).

NOW IT IS HEREBY AGREED as follows:

1. **Definitions and Constructions**

(a) Save where the context otherwise requires, terms and expressions defined for the purposes of the Information Memorandum ("Information Memorandum") and the rules of IMRO shall have the same meaning when used in this Agreement.

(b) "Information Memorandum" means the Information Memorandum of the Company dated 1 May 2000 relating to the Shares of the Company as the same may from time to time be amended or replaced. The term "Group Company" when used in this agreement means any company within the group comprising the Co-Manager and any subsidiaries, holding companies and associated companies.

(c) "IMRO" means the Investment Management Regulatory Organisation Limited or its successor(s) or replacement(s).

(d) "Operative Documents" means any and all documents which may be issued by the Company in relation to the issue of securities (other than Shares) of the Company.

(e) "Shares" means the Participating Common Shares of the Company.

(f) References to any statute, statutory enactment, rules and regulations shall be references to such statutes, statutory instruments, rules or regulations as from time to time amended, re-enacted, replaced or substituted.

2. **Appointment of Consultant**

2.1 This Agreement shall be operative with effect on and from May 1, 2000 (the "Effective Date").

2.2 FIM hereby agrees with the Co-Manager to act as a consultant to the Co-Manager to provide such advice and recommendations as the Co-Manager

may from time to time require in connection with its management of the Company's assets and in the implementation of the investment objectives and policies of the Company in accordance with the provisions of the Co-Manager Agreement. This Agreement waives FIM's formal duty of Best Execution as defined by the rules of IMRO.

2.3 In providing consulting services to the Co-Manager pursuant to this Agreement, FIM shall at all times have due regard to the need to comply with the following requirements:-

(a) the investment objective, policy and powers of the Company as outlined in the Information Memorandum and Operative Documents;

(b) any investment or other restrictions for the time being contained in the Memorandum of Association of the Company or the Articles (each as amended from time to time) or in the Information Memorandum and Operative Documents;

(c) the provisions of the Co-Manager Agreement to which the Co-Manager is subject in its provision of management services to the Company; and

(d) any other matter to which a prudent consultant should reasonably pay regard in the proper discharge of its duties.

2.4 The Co-Manager undertakes to provide FIM with copies of the Information Memorandum, Memorandum of Association, Articles of Association, Operative Documents and the Co-Manager Agreement and all amendments from time to time made thereto, promptly upon any such amendments being made and to provide to FIM such information in the Co-Manager's possession as FIM may reasonably request in relation to the Company or as the Co-Manager may consider relevant to FIM in the discharge of its duties hereunder, including, without limitation:-

(a) details of the sums available for investment and the money required to meet redemptions or pay fees, dividends of expenses of the Company;

(b) any notices of meetings, reports, circulars and other communications received or made by the Co-Manager in relation to the Company and the Company's investments;

(c) any proposed changes to the investment objectives, policies and restrictions of the Company; and

(d) details of any actions taken or not taken in relation to recommendations of FIM to the Company.

Without prejudice to its obligations under clause 2.3 above, FIM shall be entitled to rely on the authenticity and completeness of such documents.

2.5 FIM represents and warrants to the Co-Manager that it is a limited company duly registered under the laws of England and Wales having all necessary regulatory and other consents, including membership of IMRO or any successor organisation thereto, including the Financial Services Authority, and pursuant to the Investment Business Act 1998 of Bermuda to the extent FIM is carrying on investment business in or from within Bermuda by virtue of this Agreement or otherwise, and capacity to provide the services and discharge the duties of a consultant required of them under this Agreement.

3. **Consulting and Other Services**

Without prejudice to the generality of the provisions of clause 2 above, the consulting services and other services to be provided by FIM to the Co-Manager under the terms of this Agreement shall include, without limitation:-

(a) reviewing the Company's structure and operating procedures;

(b) preparing such analyses and reports as the Co-Manager and the Company may require, including such analyses and reports as may be required for use by the Co-Manager;

(c) providing the Co-Manager with assistance and support on such matters relating to investors relations as may be required by the Co-Manager and the Company;

(d) liaising directly with the Co-Manager on such matters relating to the Company's investment program as may be required to enable FIM to properly perform its duties hereunder; and

(e) in general, providing advice to and assisting the Co-Manager on such aspects of the Company's operational, administrative, accounting and legal matters as may be required by the Co-Manager and the Company.

4. **Limitation on Authority**

4.1 FIM, acting as a consultant, shall not have the power or authority to enter into any transaction on behalf of, or in any way to bind, the Co-Manager or the Company.

4.2 In carrying out its duties hereunder, FIM shall comply with all instructions of the Co-Manager in connection therewith. Such instructions may be given by letter, by fax, by e-mail or by telephone (and the Co-Manager undertakes to confirm telephone instructions by fax, e-mail or in writing) by any director of the Co-Manager or by any other person authorised by a resolution of the directors of the Co-Manager (of which a copy, certified by any two such directors, shall have been supplied to FIM).

4.3 For the purposes of clause 4.2 and unless and until FIM shall receive written notice that any such person's authority has been revoked FIM may rely or act upon any instructions or communications which FIM believes, on reasonable grounds and in good faith, to have been given by or on behalf of any persons notified by the Co-Manager from time to time in accordance with clause 4.2 as being authorised to instruct FIM.

5. **Delegation and Use of Agents**

FIM may not delegate or sub-contract any of its duties or services under this Agreement without the prior written consent of the Co-Manager provided that, in the event such delegation or sub-contracting is so permitted, FIM shall be relieved of any responsibility for the acts or omissions of such delegates except in circumstances where FIM shall be shown to have assumed responsibility for such acts or omissions.

6. **Client Money**

FIM will not hold cash on behalf of the Company.

7. **Custodial Services**

FIM will not be responsible for the provision of any safe custody services in relation to the Company.

8. **Valuations and Reports**

FIM will provide such assistance, information and reports as the Co-Manager and the Company's auditors may from time to time require in connection with the preparation of valuations in respect of the Company, the preparation by the Co-Manager of periodic reports for submission to the Company and the provision of annual, semi-annual and other reports for the benefit of Shareholders or prospective Shareholders of the Company whether these are published by the Company or the Co-Manager. FIM shall in addition provide such representative or representatives as the Co-Manager may from time to time request to attend board meetings of the Company with the Co-Manager and report to, and discuss with, the Directors of the Company the performance of the Company and other matters related to the management of the assets of the Company.

9. **Investments**

FIM may provide investment advice to the Co-Manager with respect to investments in collective investment schemes within the meaning of Section 75 of the United Kingdom Financial Services Act 1986 ("FSA") which are or are not authorised or recognised under ss78, 86, 87, 88 FSA (whether or not FIM and/or its affiliates are concerned in the operation thereof) and Contingent Liability Transactions. Advice on Contingent Liability Transactions may extend to investments not traded on exchanges recognised under the FSA or designated by the United Kingdom Financial Services Authority. Advice may relate to transactions with counterparties or through intermediaries that do not owe a duty of Best Execution.

FIM may provide investment advice to the Co-Manager subject to FIM having all necessary regulatory and other consents pursuant to the Investment Business Act 1998 of Bermuda to the extent FIM is carrying on investment business in or from within Bermuda by virtue of this Agreement or otherwise.

10. **Potential Conflicts of Interest and Disclosures**

FIM may be involved in other financial, investment or professional activities which may be similar to, or in competition with, its activities for the Co-Manager with respect to the Company. FIM may effect transactions in which FIM, or its partners, officers, employees and directors, has, directly or indirectly, a material interest, which may involve a potential conflict with FIM's duty to the Co-Manager and the Company. FIM shall disclose such conflicts, but shall not be under any obligation to account to the Co-Manager or the Company for any profit, commission or remuneration earned or received in connection therewith. However, FIM shall at all times:-

(a) Have due regard to its duties to the Co-Manager and the Company and, where a conflict arises, use all reasonable endeavours to ensure it is resolved fairly; and

(b) Where FIM acts as consultant to other ventures similar in nature to the Co-Manager's and the Company's business, act fairly with respect to the Co-Manager and the Company.

11. **Fees and Expenses**

Fees and expenses shall be as detailed in Schedule 1 to this Agreement, or as agreed from time to time between the parties.

12. **Exclusivity**

12.1 The appointment of FIM by the Co-Manager hereunder shall not be deemed to be an exclusive appointment. FIM shall be free to render similar services to others as if FIM were not acting as consultant to the Co-Manager under the terms hereof for so long as its services hereunder shall not be impaired thereby.

12.2 While this Agreement is in force, and for as long as FIM acts as consultant to the Co-Manager to advise it on the business of the Company, the Co-Manager may not appoint another consultant to provide services similar to the services that FIM provides under the terms of this Agreement.

13. Liability

13.1 In the absence of gross negligence, fraud or wilful default on the part of FIM, or failure to comply with instructions of the Co-Manager pursuant to clause 4.2, its directors, officers, employees or agents, FIM shall not be liable to the Co-Manager or the Company for any act or omission in the course of, or in connection with, the services rendered by it hereunder or for any decline in the value of the assets of the Company or any loss whatsoever that may result to the Company or the Co-Manager.

13.2 The Co-Manager agrees to keep FIM, its partners, officers, employees and directors indemnified from and against all claims, costs, charges, liabilities and expenses incurred by them directly or indirectly from any act or omission in the course of or in connection with the services provided by FIM hereunder ("Claims and/or Liabilities") provided that such indemnity shall not apply to the extent that any such Claim and/or Liability is due to the failure to comply with instructions of the Co-Manager pursuant to clause 4.2 or the fraud, wilful default or gross negligence of FIM, its partners, officers, employees, directors or agents.

14. **Termination**

14.1 This Agreement and the appointment of FIM hereunder shall continue until 31 December 2002. Thereafter, this Agreement shall be automatically renewed for successive one year periods, subject to termination as of the close of each calendar month by either the Co-Manager or FIM giving to the other party not less than six months' written notice (or such shorter notice as the parties may agree to accept).

14.2 Without prejudice to the accrued rights and provisions intended to survive termination, this Agreement may be terminated forthwith by written notice given by the Co-Manager or FIM to the other party if:-

(a) the other party shall commit any material breach of its obligations under this Agreement and shall fail to make good such breach within thirty days after receipt of notice from the other party requiring it so to do;

(b) the other party becomes insolvent or goes into liquidation (except a voluntary liquidation for the purposes of a reconstruction, amalgamation or merger upon terms previously approved in writing by the other party, such consent not to be unreasonably withheld or delayed) or if a receiver or administrator is appointed over all or any of its assets;

(c) the Co-Manager shall cease to be the co-manager of the Company; and

(d)FIM shall cease to be authorised by IMRO to provide its services under the terms of this Agreement.

14.3Upon termination of this Agreement, FIM shall deliver to the Co-Manager or to such other person or corporation as the Co-Manager shall in writing direct, all books of account, correspondence and records or other documents which are in its power and/or possession, belonging to or relating to the Company.

14.4On termination of this Agreement FIM shall be entitled to payment of its fees and expenses as referred to in clause 11 pro rata to the date of the termination and any additional expenses necessarily realised in settling or concluding outstanding obligations.

14.5Termination of this Agreement shall operate without prejudice to any rights which either party may have against the other in relation to any antecedent breach by the other of any provision of this Agreement.

14.6In the event of termination of this Agreement, all pending trades and transactions shall be settled in the ordinary course and consistent with existing trade practices.

15. **Confidentiality**

Each party shall at all times keep confidential, confidential information acquired in consequence of its services under this Agreement except information which it is bound to disclose under compulsion of law or compulsion of regulatory agencies to whose jurisdiction it is subject. This clause shall survive the termination of this Agreement.

16. **Notices**

Any instructions, notices, demands, acknowledgements or requests to be given by either of the parties hereunder shall, subject to any express provision of this Agreement, be given in writing in the English language (and may be delivered in person or sent by fax, e-mail or recorded delivery post) to the other party at the following address or any address subsequently notified by the relevant party to the other:-

To FIM:	FIM Limited 25-28 Old Burlington Street London W1X 1LB Attention: Carlo Grosso Fax: (+ 44 20) 7494 1981
To the Co-Manager:	Kingate Management Limited 99 Front Street Hamilton HM11 Bermuda Attention: Christopher Wetherhill Fax: (+ 1 441) 296 6775

Notice given in person shall be effective when delivered. Notice given by fax or e-mail shall be deemed to have been given contemporaneously unless delivered outside normal business hours in which case it shall be deemed to have been received at the next time after delivery when normal business hours commence. Notice given by recorded delivery shall be deemed to have been given seventy-two hours after posting. Evidence that the notice was properly addressed and sent by recorded delivery shall be conclusive evidence of posting.

17. **Assignment**

Neither the benefit nor the burden of this Agreement shall be assigned by any party.

18. **Independent Contractor**

In the performance of its duties hereunder, FIM shall be an independent contractor and not an employee or agent of the Co-Manager or the Company.

19. **Complaints**

FIM has in operation a written complaints procedure in accordance with the rules of IMRO for the effective consideration and proper handling of complaints from customers. The Co-Manager has the right to complain directly to FIM concerning the services rendered by FIM under the terms of the Agreement. FIM shall address to the Co-Manager a written reply within ten (10) days of receipt of such complaint, and the complaint shall be considered as settled if the Co-Manager does not indicate otherwise within one (1) month of receipt of such reply. If within two (2) months after the complaint is made, it has not been resolved to the satisfaction of the Co-Manager, the complaint shall be notified to IMRO by FIM.

20. **Entire Agreement**

This Agreement sets forth the entire agreement of the parties relating to the subject matter hereof.

21. **Waiver**

The failure by any party to enforce at any time or for any period any one or more of the provisions of this Agreement shall not be a waiver of any one or more of them or of the right at any time thereafter to enforce all or any of them.

22. **Invalidity**

If any provision of this Agreement is or becomes invalid or contravenes any applicable law, the remaining provisions shall remain in full force and effect.

23. **Amendments**

This Agreement may only be amended in writing by the parties. No amendments of the Articles of Association of the Company shall be effective for the purposes of this Agreement unless FIM has been notified thereof.

24. **Counterparts**

This Agreement may be executed in one or more counterparts all of which taken together shall be deemed to constitute one and the same agreement.

25. **Governing Law**

This Agreement will be governed by and construed in accordance with Bermuda law. Bermuda courts are to have non-exclusive jurisdiction to settle any disputes or claims which may arise out of or in connection with this Agreement for which purposes all parties agree to submit to the jurisdiction of Bermuda courts. Nothing contained in this clause shall limit the right of any party to take court proceedings against any other party or parties in any other court of competent jurisdiction, nor shall the taking of court proceedings in one or more jurisdictions preclude the taking of court proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of that other jurisdiction.

* * * * * * * * * *

SCHEDULE 1

Fees and Expenses

Consultancy Fee.

In consideration for its services, from the Effective Date of this Agreement, FIM shall be due a fixed monthly fee from the Co-Manager in respect of each calendar month falling within the term of the Agreement, equal to USD 30,000.00 (thirty thousand US dollars) (the "Consultancy Fee").

The Consultancy Fee is payable in arrears as of the last Business Day of each calendar month.

The Consultancy Fee shall be subject to review on May 1, 2001.

Payment of Fees.

The Consultancy Fee is payable by the Co-Manager to FIM within ten (10) days after becoming due.

The Co-Manager may arrange to have the Company make payments directly to FIM for administrative convenience.

In the event that this Agreement is terminated, the Consultancy Fee shall be calculated as of such termination date. No additional remuneration shall be due to FIM, except that FIM shall be entitled to the reimbursement of reasonable additional expenses necessarily incurred in settling or concluding outstanding obligations.

The Consultancy Fee payable under this Agreement are payable exclusive of any Value Added Tax (if applicable).

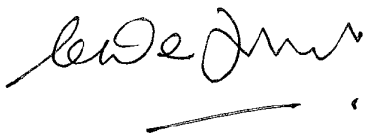
Other Costs and Expenses

Unless otherwise agreed to by the Co-Manager and FIM, FIM shall bear all of its own costs and expenses incurred in the performance of the services provided pursuant to the Agreement, including those attributable to such office personnel, office space, office equipment and office services as may be required by FIM.

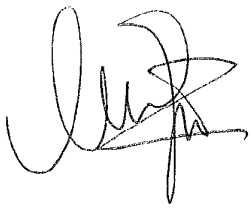
* * * * * * * * * *

IN WITNESS whereof the parties hereto have caused this Agreement to be executed as of the day and year first above written.

SIGNED by)
C WETHERICK)
for and on behalf of)
KINGATE)
MANAGEMENT LIMITED)



SIGNED by)
C. GROSSO)
for and on behalf of)
FIM LIMITED)



Deed of Novation

between

Kingate Management Limited
as the Continuing Party

FIM Limited
as the Outgoing Party

and

FIM Advisers LLP
as the Incoming Party

relating to

the assumption of obligations and benefits by FIM Advisers LLP of a consulting services agreement relating to Kingate Global Fund, Ltd – USD Shares

CONTENTS

1. Interpretation 1
2. Novation 1
3. Confirmation of terms 2
4. Limitation Periods 2
5. Governing Law 2

THIS DEED OF NOVATION is dated 29th July 2005 and made

BETWEEN:

(1) **KINGATE MANAGEMENT LIMITED**, (the "Continuing Party"), a limited liability company incorporated in Bermuda and having its registered office at 99 Front Street, Hamilton HM 11, Bermuda; and

(2) **FIM LIMITED**, (the "Outgoing Party"), a limited liability company registered in England and Wales and having its registered office at 20 St James's Street, London, SW1A 1ES, England; and

(3) **FIM ADVISERS LLP**, (the "Incoming Party"), a limited liability partnership registered in England and Wales and having its registered office at 20 St James's Street, London, SW1A 1ES, England.

Background:

(A) This Agreement is supplemental to the Original Agreement.

(B) The parties hereto have agreed that with effect from the effective date the Outgoing Party shall cease to be a party to the Original Agreement and that the Incoming Party shall become a party thereto in place of the Outgoing Party and accordingly the Outgoing Party shall be released and discharged from the Original Agreement upon the terms and to the extent set out in this Agreement.

THE PARTIES AGREE THAT:

1. **Interpretation**

In this Agreement:

"Original Agreement" means the Consulting Services Agreement dated 23rd April 2001 (as amended on June 7th 2001) made between the Continuing Party and the Outgoing Party.

"Effective Date" means 1st August 2005.

2. **Novation**

2.1 **Substitution of parties**

(A) The Incoming Party hereby undertakes to the Continuing Party to perform the Original Agreement and be bound by the terms thereof in every way as if the Incoming Party was, with effect from the Effective Date, a party to the Original Agreement in place of the Outgoing Party.

(B) The Continuing Party hereby releases and discharges the Outgoing Party from all obligations and liabilities of the Outgoing Party under the Original Agreement becoming due to be performed or satisfied on or after the Effective Date and all claims and demands whatsoever in respect thereof and accepts the performance thereof by the Incoming Party in place of performance by the Outgoing Party and hereby undertakes to the Incoming Party, with effect from the Effective Date, to

LN: 1CFD8C8

Attorney Eyes Only

perform the Original Agreement and be bound by the terms thereof in every way as if the Incoming Party was a party to the Original Agreement in place of the Outgoing Party.

2.2 **Surviving obligations**

The Incoming Party shall be liable to the Continuing Party in respect of the respective obligations and liabilities of the Outgoing Party under the Original Agreement becoming due to be performed or satisfied prior to the Effective Date and all claims and demands in respect thereof in all respects as if this Agreement had not been made and the Incoming Party was a party to the Original Agreement in place of the Outgoing Party.

3. **Confirmation of terms**

The Continuing Party and the Incoming Party hereby confirm the terms of the Original Agreement with the exception only of the substitution of parties hereby effected.

4. **Limitation Periods**

Nothing in this Agreement shall have the effect of extending any limitation period set out in, or applicable to, the Original Agreement and nothing in this Agreement shall operate to enable any claims to be brought against the Incoming Party whether in tort, contract or otherwise which, but for this Agreement, would be statute barred if made against the Outgoing Party.

5. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereto hereby submit to the non-exclusive jurisdiction of the English Courts.

IN WITNESS whereof this Deed of Novation has been executed as a deed by the parties hereto the day and year first above written.

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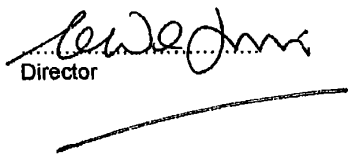
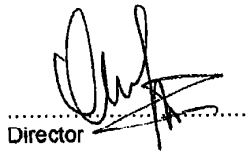
EXECUTED AS A DEED by
KINGATE MANAGEMENT LIMITED acting by:



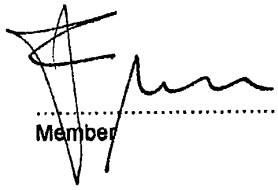
Director

EXECUTED AS A DEED by
FIM LIMITED acting by:



Director

EXECUTED AS A DEED by
FIM ADVISERS LLP
acting by:



Member

LN: 1D5F403

Attorney Eyes Only

EXHIBIT Z

Dated 23/4 **2001**

KINGATE MANAGEMENT LIMITED

-and-

FIM LIMITED

Consulting Services Agreement

-relating to-

Kingate Euro Fund, Ltd.

THIS CONSULTING SERVICES AGREEMENT is made this 23 day of April 2001

BETWEEN:

1. **KINGATE MANAGEMENT LIMITED,** a limited company registered in Bermuda (under number EC-19184) and whose registered office is at 99 Front Street, Hamilton HM11, Bermuda (the "Manager");

2. **FIM LIMITED**, a limited company registered in England and Wales (under number 1536755) and whose registered office is at 62 Wilson Street, London EC2A 2BU ("FIM").

WHEREAS:

(A) Kingate Euro Fund, Ltd. (the "Company") is open-end investment company organized as an international business company in the British Virgin Islands ("B.V.I.").

(B) By a Management Agreement effective May 1, 2000 between the Company and the Manager (the "Management Agreement") the Company has appointed the Manager to provide it with investment management and other services in relation to the Company's assets and operations in accordance with the provisions of the Management Agreement.

(C) Under the provisions of the Management Agreement the Manager is authorised to appoint delegates to assist it in the discharge of its function under the Management Agreement.

(D) In connection therewith FIM has been providing consultancy and other services to the Manager since May 1, 2000.

(E) The Manager now wishes to appoint FIM as a consultant to the Manager to provide it with consultancy and other services to assist in the day to day management of the Company's assets undertaken by the Manager under the Management Agreement.

(F) FIM is regulated in the conduct of investment business in the United Kingdom by the Investment Management Regulatory Organisation Limited ("IMRO") or its successor(s) or replacement(s).

(G) This Agreement is in a form which complies with the Rules of IMRO on the basis that the Manager and the Company (which is an unregulated collective investment scheme) are Non-Private Customers (as defined in the IMRO Rules).

NOW IT IS HEREBY AGREED as follows:

1. **Definitions and Constructions**

(a) Save where the context otherwise requires, terms and expressions defined for the purposes of the Information Memorandum ("Information Memorandum")and the rules of IMRO shall have the same meaning when used in this Agreement.

(b) "Information Memorandum" means the Information Memorandum of the Company dated 1 May 2000 relating to the Shares of the Company as the same may from time to time be amended or replaced. The term "Group Company" when used in this agreement means any company within the group comprising the Manager and any subsidiaries, holding companies and associated companies.

(c) "IMRO" means the Investment Management Regulatory Organisation Limited or its successor(s) or replacement(s).

(d) "Operative Documents" means any and all documents which may be issued by the Company in relation to the issue of securities (other than Shares) of the Company.

(e) "Shares" means the Participating Common Shares of the Company.

(f) References to any statute, statutory enactment, rules and regulations shall be references to such statutes, statutory instruments, rules or regulations as from time to time amended, re-enacted, replaced or substituted.

2. **Appointment of Consultant**

2.1 This Agreement shall be operative with effect on and from May 1, 2000 (the "Effective Date").

2.2 FIM hereby agrees with the Manager to act as a consultant to the Manager to provide such advice and recommendations as the Manager may from time to

time require in connection with its management of the Company's assets and in the implementation of the investment objectives and policies of the Company in accordance with the provisions of the Management Agreement. This Agreement waives FIM's formal duty of Best Execution as defined by the rules of IMRO.

2.3 In providing consulting services to the Manager pursuant to this Agreement, FIM shall at all times have due regard to the need to comply with the following requirements:-

(a) the investment objective, policy and powers of the Company as outlined in the Information Memorandum and Operative Documents;

(b) any investment or other restrictions for the time being contained in the Memorandum of Association of the Company or the Articles (each as amended from time to time) or in the Information Memorandum and Operative Documents;

(c) the provisions of the Management Agreement to which the Manager is subject in its provision of management services to the Company; and

(d) any other matter to which a prudent consultant should reasonably pay regard in the proper discharge of its duties.

2.4 The Manager undertakes to provide FIM with copies of the Information Memorandum, Memorandum of Association, Articles of Association, Operative Documents and the Management Agreement and all amendments from time to time made thereto, promptly upon any such amendments being made and to provide to FIM such information in the Manager's possession as FIM may reasonably request in relation to the Company or as the Manager may consider relevant to FIM in the discharge of its duties hereunder, including, without limitation:-

(a) details of the sums available for investment and the money required to meet redemptions or pay fees, dividends of expenses of the Company;

(b) any notices of meetings, reports, circulars and other communications received or made by the Manager in relation to the Company and the Company's investments;

(c) any proposed changes to the investment objectives, policies and restrictions of the Company; and

(d) details of any actions taken or not taken in relation to recommendations of FIM to the Company.

Without prejudice to its obligations under clause 2.3 above, FIM shall be entitled to rely on the authenticity and completeness of such documents.

2.5 FIM represents and warrants to the Manager that it is a limited company duly registered under the laws of England and Wales having all necessary regulatory and other consents including membership of IMRO or any successor organisation thereto, including the Financial Services Authority, and pursuant to the Investment Business Act 1998 of Bermuda to the extent FIM is carrying on investment business in or from within Bermuda by virtue of this Agreement or otherwise, and capacity to provide the services and discharge the duties of a consultant required of them under this Agreement.

3. **Consulting and Other Services**

Without prejudice to the generality of the provisions of clause 2 above, the consulting services and other services to be provided by FIM to the Manager under the terms of this Agreement shall include, without limitation:-

(a) reviewing the Company's structure and operating procedures;

(b) preparing such analyses and reports as the Manager and the Company may require, including such analyses and reports as may be required for use by the Manager;

(c) providing the Manager with assistance and support on such matters relating to investors relations as may be required by the Manager and the Company;

(d) liaising directly with the Manager on such matters relating to the Company's investment program as may be required to enable FIM to properly perform its duties hereunder;

(e) providing the Manager with advice regarding the Company's hedging activities in order to reduce the currency risk between the Euro and the US Dollar and overseeing of the execution of its recommendation; and

(e) in general, providing advice to and assisting the Manager on such aspects of the Company's operational, administrative, accounting and legal matters as may be required by the Manager and the Company.

4. **Limitation on Authority**

4.1 FIM, acting as a consultant, shall not have the power or authority to enter into any transaction on behalf of, or in any way to bind, the Manager or the Company.

4.2 In carrying out its duties hereunder, FIM shall comply with all instructions of the Manager in connection therewith. Such instructions may be given by letter, by fax, by e-mail or by telephone (and the Manager undertakes to confirm telephone instructions by fax, e-mail or in writing) by any director of the Manager or by any other person authorised by a resolution of the directors of the Manager (of which a copy, certified by any two such directors, shall have been supplied to FIM).

4.3 For the purposes of clause 4.2 and unless and until FIM shall receive written notice that any such person's authority has been revoked FIM may rely or act upon any instructions or communications which FIM believes, on reasonable grounds and in good faith, to have been given by or on behalf of any persons notified by the Manager from time to time in accordance with clause 4(b) as being authorised to instruct FIM.

5. **Delegation and Use of Agents**

FIM may not delegate or sub-contract any of its duties or services under this Agreement without the prior written consent of the Manager provided that, in the event such delegation or sub-contracting is so permitted, FIM shall be relieved of any responsibility for the acts or omissions of such delegates except in circumstances where FIM shall be shown to have assumed responsibility for such acts or omissions.

6. **Client Money**

FIM will not hold cash on behalf of the Company.

7. **Custodial Services**

FIM will not be responsible for the provision of any safe custody services in relation to the Company.

8. **Valuations and Reports**

FIM will provide such assistance, information and reports as the Manager and the Company's auditors may from time to time require in connection with the preparation of valuations in respect of the Company, the preparation by the Manager of periodic reports for submission to the Company and the provision of annual, semi-annual and other reports for the benefit of Shareholders or prospective Shareholders of the Company whether these are published by the Company or the Manager. FIM shall in addition provide such representative or representatives as the Manager may from time to time request to attend board meetings of the Company with the Manager and report to, and discuss with, the Directors of the Company the performance of the Company and other matters related to the management of the assets of the Company.

9. **Investments**

FIM may provide investment advice to the Manager with respect to investments in collective investment schemes within the meaning of Section 75 of the United Kingdom Financial Services Act 1986 ("FSA") which are or are not authorised or recognised under ss78, 86, 87, 88 FSA (whether or not FIM and/or its affiliates are concerned in the operation thereof) and Contingent Liability Transactions. Advice on Contingent Liability Transactions may extend to investments not traded on exchanges recognised under the FSA or designated by the United Kingdom Financial Services Authority. Advice may relate to transactions with counterparties or through intermediaries that do not owe a duty of Best Execution.

FIM may provide investment advice to the Manager subject to FIM having all necessary regulatory and other consents pursuant to the Investment Business Act 1998 of Bermuda to the extent FIM is carrying on investment business in or from within Bermuda by virtue of this Agreement or otherwise.

10. **Potential Conflicts of Interest and Disclosures**

FIM may be involved in other financial, investment or professional activities which may be similar to, or in competition with, its activities for the Manager with respect to the Company. FIM may effect transactions in which FIM, or its partners, officers, employees and directors, has, directly or indirectly, a material interest, which may involve a potential conflict with FIM's duty to the Manager and the Company. FIM shall disclose such conflicts, but shall not be under any obligation to account to the Manager or the Company for any profit, commission or remuneration earned or received in connection therewith. However, FIM shall at all times:-

(a) Have due regard to its duties to the Manager and the Company and, where a conflict arises, use all reasonable endeavours to ensure it is resolved fairly; and.

(b) Where FIM acts as consultant to other ventures similar in nature to the Manager's and the Company's business, act fairly with respect to the Manager and the Company.

11. **Fees and Expenses**

Fees and expenses shall be as detailed in Schedule 1 to this Agreement, or as agreed from time to time between the parties.

12. **Exclusivity**

12.1 The appointment of FIM by the Manager hereunder shall not be deemed to be an exclusive appointment. FIM shall be free to render similar services to others as if FIM were not acting as consultant to the Manager under the terms hereof for so long as its services hereunder shall not be impaired thereby.

12.2 While this Agreement is in force, and for as long as FIM acts as consultant to the Manager to advise it on the business of the Company, the Manager may not appoint another consultant to provide services similar to the services that FIM provides under the terms of this Agreement.

13. **Liability**

13.1 In the absence of gross negligence, fraud or wilful default on the part of FIM, or failure to comply with instructions of the Manager pursuant to clause 4.2, its directors, officers, employees or agents, FIM shall not be liable to the Manager or the Company for any act or omission in the course of, or in connection with, the services rendered by it hereunder or for any decline in the value of the assets of the Company or any loss whatsoever that may result to the Company or the Manager.

13.2 The Manager agrees to keep FIM, its partners, officers, employees and directors indemnified from and against all claims, costs, charges, liabilities and expenses incurred by them directly or indirectly from any act or omission in the course of or in connection with the services provided by FIM hereunder ("Claims and/or Liabilities") provided that such indemnity shall not apply to the extent that any such Claim and/or Liability is due to the failure to comply with instructions of the Manager pursuant to clause 4.2 or the fraud, wilful default or gross negligence of FIM, its partners, officers, employees, directors or agents.

14. **Termination**

14.1 This Agreement and the appointment of FIM hereunder shall continue until 31 December 2002. Thereafter, this Agreement shall be automatically renewed for successive one year periods, subject to termination as of the close of each calendar month by either the Manager or FIM giving to the other party not less than six months' written notice (or such shorter notice as the parties may agree to accept).

14.2 Without prejudice to the accrued rights and provisions intended to survive termination, this Agreement may be terminated forthwith by written notice given by the Manager or FIM to the other party if:-

(a) the other party shall commit any material breach of its obligations under this Agreement and shall fail to make good such breach within thirty days after receipt of notice from the other party requiring it so to do;

(b) the other party becomes insolvent or goes into liquidation (except a voluntary liquidation for the purposes of a reconstruction, amalgamation or merger upon terms previously approved in writing by the other party, such consent not to be unreasonably withheld or delayed) or if a receiver or administrator is appointed over all or any of its assets;

(c) the Manager shall cease to be the manager of the Company; and

(d) FIM shall cease to be authorised by IMRO to provide its services under the terms of this Agreement.

14.3 Upon termination of this Agreement, FIM shall deliver to the Manager or to such other person or corporation as the Manager shall in writing direct, all books of account, correspondence and records or other documents which are in its power and/or possession, belonging to or relating to the Company.

14.4 On termination of this Agreement FIM shall be entitled to payment of its fees and expenses as referred to in clause 11 pro rata to the date of the termination and any additional expenses necessarily realised in settling or concluding outstanding obligations.

14.5 Termination of this Agreement shall operate without prejudice to any rights which either party may have against the other in relation to any antecedent breach by the other of any provision of this Agreement.

14.6 In the event of termination of this Agreement, all pending trades and transactions shall be settled in the ordinary course and consistent with existing trade practices.

15. **Confidentiality**

Each party shall at all times keep confidential, confidential information acquired in consequence of its services under this Agreement except information which it is bound to disclose under compulsion of law or compulsion of regulatory agencies to whose jurisdiction it is subject. This clause shall survive the termination of this Agreement.

16. **Notices**

Any instructions, notices, demands, acknowledgements or requests to be given by either of the parties hereunder shall, subject to any express provision of this Agreement, be given in writing in the English language (and may be delivered in person or sent by fax, e-mail or recorded delivery post) to the other party at the following address or any address subsequently notified by the relevant party to the other:-

To FIM:	FIM Limited 25-28 Old Burlington Street London W1X 1LB Attention: Carlo Grosso Fax: (+ 44 20) 7494 1981
To the Manager:	Kingate Management Limited 99 Front Street Hamilton HM11 Bermuda Attention: Christopher Wetherhill Fax: (+ 1 441) 296 6775

Notice given in person shall be effective when delivered. Notice given by fax or e-mail shall be deemed to have been given contemporaneously unless delivered outside normal business hours in which case it shall be deemed to have been received at the next time after delivery when normal business hours commence. Notice given by recorded delivery shall be deemed to have been given seventy-two hours after posting. Evidence that the notice was properly addressed and sent by recorded delivery shall be conclusive evidence of posting.

17. **Assignment**

Neither the benefit nor the burden of this Agreement shall be assigned by any party.

18. **Independent Contractor**

In the performance of its duties hereunder, FIM shall be an independent contractor and not an employee or agent of the Manager or the Company.

19. **Complaints**

FIM has in operation a written complaints procedure in accordance with the rules of IMRO for the effective consideration and proper handling of complaints from customers. The Manager has the right to complain directly to FIM concerning the services rendered by FIM under the terms of the Agreement. FIM shall address to the Manager a written reply within ten (10) days of receipt of such complaint, and the complaint shall be considered as settled if the Manager does not indicate otherwise within one (1) month of receipt of such reply. If within two (2) months after the complaint is made, it has not been resolved to the satisfaction of the Manager, the complaint shall be notified to IMRO by FIM.

20. **Entire Agreement**

This Agreement sets forth the entire agreement of the parties relating to the subject matter hereof.

21. **Waiver**

The failure by any party to enforce at any time or for any period any one or more of the provisions of this Agreement shall not be a waiver of any one or more of them or of the right at any time thereafter to enforce all or any of them.

22. **Invalidity**

If any provision of this Agreement is or becomes invalid or contravenes any applicable law, the remaining provisions shall remain in full force and effect.

23. **Amendments**

This Agreement may only be amended in writing by the parties. No amendments of the Articles of Association of the Company shall be effective for the purposes of this Agreement unless FIM has been notified thereof.

24. **Counterparts**

This Agreement may be executed in one or more counterparts all of which taken together shall be deemed to constitute one and the same agreement.

25. **Governing Law**

This Agreement will be governed by and construed in accordance with Bermuda law. Bermuda courts are to have non-exclusive jurisdiction to settle any disputes or claims which may arise out of or in connection with this Agreement for which purposes all parties agree to submit to the jurisdiction of Bermuda courts. Nothing contained in this clause shall limit the right of any party to take court proceedings against any other party or parties in any other court of competent jurisdiction, nor shall the taking of court proceedings in one or more jurisdictions preclude the taking of court proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of that other jurisdiction.

* * * * * * * * * *

SCHEDULE 1

Fees and Expenses

Consultancy Fee

In consideration for its services, from the Effective Date of this Agreement, FIM shall be due a fixed monthly fee from the Manager in respect of each calendar month falling within the term of the Agreement, equal to USD 15,000.00 (fifteen thousand US dollars) (the "Consultancy Fee").

The Consultancy Fee is payable in arrears as of the last Business Day of each calendar month.

The Consultancy Fee shall be subject to review on May 1, 2001.

Payment of Fees

The Consultancy Fee is payable by the Manager to FIM within ten (10) days after becoming due.

The Manager may arrange to have the Company make payments directly to FIM for administrative convenience.

In the event that this Agreement is terminated, the Consultancy Fee shall be calculated as of such termination date. No additional remuneration shall be due to FIM, except that FIM shall be entitled to the reimbursement of reasonable additional expenses necessarily incurred in settling or concluding outstanding obligations.

The Consultancy Fee payable under this Agreement are payable exclusive of any Value Added Tax (if applicable).

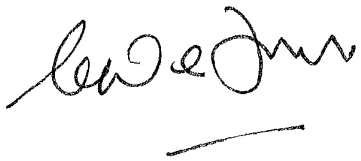
Other Costs and Expenses

Unless otherwise agreed to by the Manager and FIM, FIM shall bear all of its own costs and expenses incurred in the performance of the services provided pursuant to the Agreement, including those attributable to such office personnel, office space, office equipment and office services as may be required by FIM.

* * * * * * * * * *

IN WITNESS whereof the parties hereto have caused this Agreement to be executed as of the day and year first above written.

SIGNED by)
)
C WETHERHILL.)
)
for and on behalf of)
KINGATE)
MANAGEMENT LIMITED)



SIGNED by C. GROSS)
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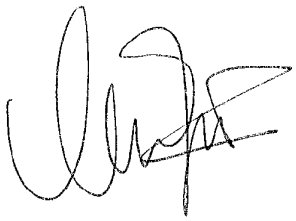
for and on behalf of)
FIM LIMITED)



Deed of Novation

between

Kingate Management Limited
as the Continuing Party

FIM Limited
as the Outgoing Party

and

FIM Advisers LLP
as the Incoming Party

relating to

the assumption of obligations and benefits by FIM Advisers LLP of a consulting services agreement relating to Kingate Euro, Ltd

CONTENTS

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THIS DEED OF NOVATION is dated 29th July 2005 and made

BETWEEN:

(1) **KINGATE MANAGEMENT LIMITED**, (the "Continuing Party"), a limited liability company incorporated in Bermuda and having its registered office at 99 Front Street, Hamilton HM 11, Bermuda; and

(2) **FIM LIMITED**, (the "Outgoing Party"), a limited liability company registered in England and Wales and having its registered office at 20 St James's Street, London, SW1A 1ES, England; and

(3) **FIM ADVISERS LLP**, (the "Incoming Party"), a limited liability partnership registered in England and Wales and having its registered office at 20 St James's Street, London, SW1A 1ES, England.

Background:

(A) This Agreement is supplemental to the Original Agreement.

(B) The parties hereto have agreed that with effect from the effective date the Outgoing Party shall cease to be a party to the Original Agreement and that the Incoming Party shall become a party thereto in place of the Outgoing Party and accordingly the Outgoing Party shall be released and discharged from the Original Agreement upon the terms and to the extent set out in this Agreement.

THE PARTIES AGREE THAT:

1. **Interpretation**

In this Agreement:

"Original Agreement" means the Consulting Services Agreement dated 23rd April 2001 (as amended on June 7th 2001) made between the Continuing Party and the Outgoing Party.

"Effective Date" means 1st August 2005.

2. **Novation**

2.1 **Substitution of parties**

(A) The Incoming Party hereby undertakes to the Continuing Party to perform the Original Agreement and be bound by the terms thereof in every way as if the Incoming Party was, with effect from the Effective Date, a party to the Original Agreement in place of the Outgoing Party.

(B) The Continuing Party hereby releases and discharges the Outgoing Party from all obligations and liabilities of the Outgoing Party under the Original Agreement becoming due to be performed or satisfied on or after the Effective Date and all claims and demands whatsoever in respect thereof and accepts the performance thereof by the Incoming Party in place of performance by the Outgoing Party and hereby undertakes to the Incoming Party, with effect from the Effective Date, to

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perform the Original Agreement and be bound by the terms thereof in every way as if the Incoming Party was a party to the Original Agreement in place of the Outgoing Party.

2.2 **Surviving obligations**

The Incoming Party shall be liable to the Continuing Party in respect of the respective obligations and liabilities of the Outgoing Party under the Original Agreement becoming due to be performed or satisfied prior to the Effective Date and all claims and demands in respect thereof in all respects as if this Agreement had not been made and the Incoming Party was a party to the Original Agreement in place of the Outgoing Party.

3. **Confirmation of terms**

The Continuing Party and the Incoming Party hereby confirm the terms of the Original Agreement with the exception only of the substitution of parties hereby effected.

4. **Limitation Periods**

Nothing in this Agreement shall have the effect of extending any limitation period set out in, or applicable to, the Original Agreement and nothing in this Agreement shall operate to enable any claims to be brought against the Incoming Party whether in tort, contract or otherwise which, but for this Agreement, would be statute barred if made against the Outgoing Party.

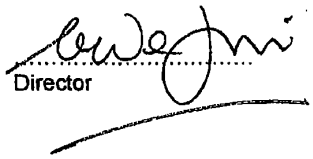
5. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereto hereby submit to the non-exclusive jurisdiction of the English Courts.

IN WITNESS whereof this Deed of Novation has been executed as a deed by the parties hereto the day and year first above written.

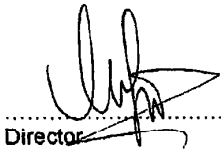
LN: 1D5F403

EXECUTED AS A DEED by
KINGATE MANAGEMENT LIMITED acting by:



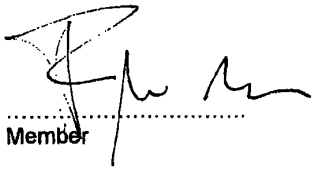
Director

EXECUTED AS A DEED by
FIM LIMITED acting by:



Director

EXECUTED AS A DEED by
FIM ADVISERS LLP
acting by:



Member

LN: 1D5F403

EXHIBIT AA

***756 Prudential Assurance Co. Ltd. v. Fountain Page Ltd. and Another**

Image 1 within document in PDF format.

Queen's Bench Division
22 November 1990

[1991] 1 W.L.R. 756

Hobhouse J.
1990 Nov. 14, 15; 22

Analysis

Practice—Witness statements—Exchange before trial—Witness statements and expert's report directed to be served by plaintiffs on defendants—Action settled—Whether any restriction upon subsequent use of statements or report in relation to other proceedings—R.S.C., Ord. 38, rr. 2A, 37, 42

[1]

The plaintiffs commenced proceedings in the High Court against the first three defendants, and subsequently the fourth ***757** defendants were joined as parties to the action. The court gave directions requiring the plaintiffs to serve on the defendants witness statements and an expert's report, pursuant to R.S.C., Ord. 38, rr. 2A and 37 respectively. The dispute was settled by the fourth defendants just before the trial, but their solicitors retained the witness statements and expert's report which had been served on them in accordance with those directions. Pursuant to letters of request issued by a Texan court in proceedings between two Texan companies and the fourth defendant and a related English company, witnesses were examined in London under R.S.C., Ord. 70. It emerged that documents disclosed to or served on the fourth defendants in the English action, including the witness statements and expert's report, had been disclosed to third parties and used in the Texas proceedings both in Texas and in the examination in London. The examiner required the fourth defendants to apply to the court for release from their implied undertaking not to use the documents other than for the proper conduct of the English action.

On summonses by the fourth defendants and the plaintiffs seeking, inter alia, the determination of the court as to whether the witness statements and expert's report were subject to any restriction on their use other than in the English proceedings:—

Held, that since a party had a right to choose the extent to which he would adduce evidence and was required to disclose it to other parties only if he proposed to adduce it at trial witness statements and experts' reports served pursuant to R.S.C., Ord. 38 or to directions given thereunder could not be said to be served under compulsion and were not protected by the implied undertaking to use documents disclosed under compulsion only for the proper conduct of the litigation in which they were disclosed; but that such an obligation would be implied where, on a true construction of the rules of court under which a document had been served on another party, any rights of confidentiality or privilege in the document had been reserved; that no such obligation could be implied in relation to an expert's report since Part IV of Order 38 had been made under the specific authority of section 2(3) of the Civil Evidence Act 1972, which authorised rules overriding rights of privilege against disclosure, and Ord. 38, r. 42 expressly provided in unqualified terms that the recipient of a report was entitled to use it in evidence; but that, since Ord. 38, r. 2A merely regulated procedure and rule 2A(8) expressly preserved rights of privilege, a party on whom a witness statement had been served pursuant to Ord. 38, r. 2A was subject to an implied obligation, owed to the court, not to put the statement in evidence save at the trial of the action in which it had been served and then only if the party who had served it elected to call that witness, and not to use it or allow it to be used for any purpose other than the proper conduct of that action or for any collateral or ulterior purpose; and that, accordingly, the fourth defendants' disclosure of the witness statements to third parties and the use of them in the Texan proceedings constituted a breach of that duty and would be restrained (post, pp. 769E–G, 770A–B, 772B–F, H–773F, 774G–775A).

Comfort Hotels Ltd. v. Wembley Stadium Ltd. [1988] 1 W.L.R. 872 and Rush & Tompkins Ltd. v. Greater London Council [1989] A.C. 1280, H.L.(E.) applied.

Per curiam. Breach of the implied obligation arising under Ord. 38, r. 2A amounts to a contempt of court. The court has power wholly or partially to release the recipient from the obligation. Circumstances under

which that relaxation could be ***758** allowed without the consent of the serving party are hard to visualise, particularly where there was any risk that the statement might be used to the prejudice of the serving party (post, p. 775A–B).

The following cases are referred to in the judgment:

•Black & Decker Inc. v. Flymo Ltd. [1991] 1 W.L.R. 753
•Comfort Hotels Ltd. v. Wembley Stadium Ltd. [1988] 1 W.L.R. 872; [1988] 3 All E.R. 53
•Crest Homes Plc. v. Marks [1987] A.C. 829; [1987] 3 W.L.R. 293; [1987] 2 All E.R. 1074, H.L.(E.)
•Derby & Co. Ltd. v. Weldon (No. 2), The Times, 20 October 1988
• Derby & Co. Ltd. v. Weldon (No. 9) (unreported), 18 October 1990,
•Mummery J.; The Times, 9 November 1990; Court of Appeal (Civil Division) Transcript No. 878 of 1990, C.A.
•Distillers Co. (Biochemicals) Ltd. v. Times Newspapers Ltd. [1975] Q.B. 613; [1974] 3 W.L.R. 728; [1975] 1 All E.R. 41
•Fairfield-Mabey Ltd. v. Shell U.K. Ltd. [1989] 1 All E.R. 576
•Grosvenor Hotel, London (No. 2), In re [1965] Ch. 1210; [1964] 3 W.L.R. 992; [1964] 3 All E.R. 354, C.A.
•Home Office v. Harman [1983] 1 A.C. 280; [1982] 2 W.L.R. 338; [1982] 1 All E.R. 532, H.L.(E.)
•Riddick v. Thames Board Mills Ltd. [1977] Q.B. 881; [1977] 3 W.L.R. 63; [1977] 3 All E.R. 677, C.A.
•Rush & Tompkins Ltd. v. Greater London Council [1989] A.C. 1280; [1988] 3 W.L.R. 939; [1988] 3 All E.R. 737, H.L.(E.)
•Webster v. James Chapman & Co. [1989] 3 All E.R. 939

The following additional cases, supplied by courtesy of counsel, were cited in argument:

•Acrow (Automation) Ltd. v. Rex Chainbelt Inc. [1971] 1 W.L.R. 1676; [1971] 3 All E.R. 1175, C.A.
• Attorney-General v. Guardian Newspapers Ltd. (No. 2) [1990] 1 A.C. 109; [1988] 2 W.L.R. 805; [1988] 3 All E.R. 545, Scott J. and C.A.; [1990] 1 A.C. 109; [1988] 3 W.L.R. 776; [1988] 3 All E.R. 545, H.L.(E.)
•Bibby Bulk Carriers Ltd. v. Cansulex Ltd. [1989] Q.B. 155; [1989] 2 W.L.R. 182; [1988] 2 All E.R. 820
•Causton v. Mann Egerton (Johnsons) Ltd. [1974] 1 W.L.R. 162; [1974] 1 All E.R. 453, C.A.
• Esterhuysen v. Lonrho Plc. (unreported), 24 May 1989; Court of Appeal (Civil Division) Transcript No. 484 of 1989, C.A.
• F. (orse. A.) (A Minor) (Publication of Information), In re [1977] Fam. 58; [1976] 3 W.L.R. 307; [1976] 3 All E.R. 274; [1977] Fam. 58; [1976] 3 W.L.R. 813; [1977] 1 All E.R. 114, C.A.
•I.T.C. Film Distributors Ltd. v. Video Exchange Ltd. [1982] Ch. 431; [1982] 3 W.L.R. 125; [1982] 2 All E.R. 241
•Medway v. Doublelock Ltd. [1978] 1 W.L.R. 710; [1978] 1 All E.R. 1261
•Naylor v. Preston Area Health Authority [1987] 1 W.L.R. 958; [1987] 2 All E.R. 353, C.A.

SUMMONSES

By a writ issued on 21 February 1986 the plaintiffs, Prudential Assurance Co. Ltd., brought an action for damages for deceit and breach of duty against the first three defendants, Fountain Page Ltd., Adrian Thomas Fountain and Paul James Page. On 11 April 1986 the fourth defendant, Tozer Fountain Page Ltd., applied to be joined as defendants to the action and Bingham J. so ordered. On 20 June 1988 ***759** the court gave directions pursuant to R.S.C., Ord. 38, r. 2A that the parties should serve witness statements on each other and pursuant to R.S.C., Ord. 38, rr. 36 and 37 that the plaintiffs should serve on the defendants a copy of the proposed evidence of their expert witness, Mr. Lawrence Todd. Pursuant to those directions, the plaintiffs served on the defendants five unsigned witness statements together with attached documents and the expert report of Mr. Todd. On 27 June 1988 the plaintiffs and the fourth defendants agreed to settle the action and judgment was entered and the proceedings stayed accordingly. The witness statements and expert report were retained by the fourth defendants' solicitors, Hewitt Wollacott Chown, and subsequently passed to their successor firm, Cameron Markby Hewitt. Proceedings having been commenced in February 1988 by two Texas insurance firms in the District Court of Harris County in the State of Texas against, inter alios, the fourth defendants and another English company belonging to the same group, Hinton Hill and Phillips Ltd., the Texas court issued letters of request under the Hague Convention of 1970 addressed to the High Court in London, pursuant to which witnesses were examined in London by an examiner appointed under the Evidence (Proceedings in Other

Jurisdictions) Act 1975 and R.S.C., Ord. 70. The defendants to those proceedings put in evidence and otherwise made use of documents disclosed in the 1986 proceedings, including documents attached to the witness statements served in those proceedings.

On 29 October 1990 the fourth defendants issued a summons in the 1986 action asking that they and Cameron Markby Hewitt be released from the implied undertaking arising in relation to documents which they had obtained on discovery in that action and that the court should rule that the other documents which they had used or disclosed in the Texas proceedings were not subject to any restriction on their use or disclosure arising from their having been obtained in the course of the 1986 action.

On 8 November 1990 the plaintiffs issued a summons in those proceedings seeking, inter alia, a ruling that the following four classes of documents were each subject to restrictions on their use, disregard of which amounted, or would amount, to a contempt of court: (1) any document disclosed by the plaintiffs upon discovery in the 1986 action, (2) any witness statement or document attached or appended thereto disclosed by the plaintiffs in the 1986 action pursuant to the order of the court made in that action, (3) any expert's report or document attached or appended thereto disclosed by the plaintiffs in the 1986 action pursuant to the order of the court in that action, and (4) any affidavit or exhibit thereto sworn on behalf of the plaintiffs in the 1986 action; and consequential relief including orders to prevent the inclusion of any of the relevant documents, or references to them, in the depositions to be remitted by the High Court to the Texas court pursuant to the letters of request issued by the Texas court.

By a writ issued on 9 November 1990 the plaintiffs commenced another action against Hinton Hill and Phillips Ltd. and their Texas attorneys, Kroll and Tract, claiming injunctive relief to restrain, inter alia, alleged breaches of confidence and direct and/or indirect contempt of court. The defendants to that action appeared by counsel on the hearing of the summonses.

The summonses were heard and the judge gave his ruling in chambers, for reasons to be given later in open court.

***760**

The facts are stated in the judgment.

Representation

• Michael Collins Q.C. and Mark Templeman for the plaintiffs.
• Adrian Hamilton Q.C. and Richard Southern for the fourth defendants.
• Robert Webb Q.C. and Charlotte Jones for the defendants in the second action.

Cur. adv. vult.

HOBHOUSE J.

22 November. delivered the following judgment. These are my reasons for a ruling that I gave on 15 November concerning the status of certain witness statements and an expert's report that had been served under R.S.C., Ord. 38 in an action which was subsequently settled before trial. It raises the question whether there is any restriction upon the subsequent use of those statements and that report by the party on whom they were served, or by others, in relation to other proceedings. The summonses therefore raised an important question whether there is any restriction upon the subsequent use of such documents analogous to the restrictions that exist in relation to documents that are obtained on discovery.

The proceedings in which the documents were served and in which the summonses before me were issued was an action started in this court in 1986 by the Prudential Assurance Co. Ltd. ("the London plaintiffs"). Their solicitors were Ince & Co. The claims in the action were for damages for deceit and/or breach of duty, for declarations that certain purported open covers issued on behalf of the London plaintiffs were procured fraudulently and were void, and that the London plaintiffs were entitled to be indemnified in respect of various potential losses. There were four defendants, two individual and two corporate. The only substantial defences were those sought to be raised by the fourth defendants who were Tozer Fountain and Page Ltd., a firm of London insurance brokers that was, and is, a subsidiary of W. S. Moody (London) Ltd. The action was to be tried at the end of June 1988 but a few days before the plaintiffs and the fourth defendants agreed to settle the dispute between them and to compromise the claims made in the action. The terms of settlement dated 27 June included a provision for the fourth defendants to make a substantial payment to the plaintiffs in full and final settlement of their claims; it is not necessary or appropriate at present to refer further to the terms of settlement. On the same day judgment for damages to be assessed was entered in the action for the plaintiffs against the two personal

defendants with costs and all further proceedings in the action as between the plaintiffs and the fourth defendants were stayed upon the terms of the settlement between them.

At earlier stages of the 1986 action there had been interlocutory proceedings including the grant of Mareva injunctions and the making of Anton Piller orders. Many affidavits had been sworn. Discovery had been given and documents inspected and copied. On 20 June 1988, while final preparations were still being made for the trial, the court gave further directions that the plaintiffs and the fourth defendants should serve on each other written statements of the oral evidence which they each intended to lead at the trial and for both parties to be at liberty to call expert evidence at the trial; it appears that the fourth defendants had already served an expert's report and accordingly the ***761** leave given to the plaintiffs to call an expert witness was on condition that they furnish a copy of his proposed evidence to the fourth defendants. Pursuant to these directions Ince & Co. served on Hewitt Wollacott Chown, who were at that time the fourth defendants solicitors, five unsigned statements of witnesses to which were attached substantial further documentation and an expert's report from a Mr. Lawrence Todd. In respect of the witness statements the direction was made under Ord. 38, r. 2A. In respect of the expert's report the direction was made under Ord. 38, rr. 36 and 37.

Because of the settlement of the action there was no trial. No documents were ever put in evidence in open court. Neither the witness statements nor the expert's report were referred to or put in evidence. However, the fourth defendants' solicitors retained the documents and they were subsequently handed over to their successor firm Cameron Markby Hewitt.

In February 1988 an action had been started in the District Court of Harris County in the State of Texas by two insurance businesses of that state claiming over U.S.$10 million damages for various alleged tortious interferences with contract and prospective business relations and negligent misrepresentation and infliction of emotional distress. Allegations of fraud were also made. The defendants in the Texas proceedings included the English fourth defendants and Hinton Hill and Phillips Ltd., another English company belonging to the same group. It appears that both those companies accepted the jurisdiction of the Texas court. Both were represented in those proceedings by a Texas firm of attorneys called Kroll and Tract. Hewitt Wollacott Chown and/or Cameron Markby Hewitt (whom I will from now on refer to simply as "the London solicitors") apparently supplied documentation which had come into existence in the 1986 action to Kroll and Tract ("the Texas attorneys") but not documents which had been solely obtained on discovery. Subsequently some of those documents were disclosed to the plaintiffs in the Texas action.

Further, within the last two months, letters of request under the Hague Convention of 1970 have been issued by the Texas court addressed to the High Court in London and pursuant to those letters of request witnesses have been and are being examined in London under the Evidence (Proceedings in Other Jurisdictions) Act 1975 and R.S.C., Ord. 70. These examinations are being conducted in London at the London offices of the Texas attorneys. During the course of these examinations the defendants have been putting in evidence and otherwise making use of various of the documents, including documents discovered in the 1986 action which had been attached to witness statements. As a result of this it has been pointed out to the London solicitors and the Texas attorneys that this conduct is at least to some extent clearly in breach of the implied undertakings that were given in the 1986 action and may involve further acts of contempt of the English courts. The examiner appointed by a master of the Queen's Bench Division to conduct the examinations in London has properly required the defendants to make an application to this court to be released from their undertakings before proceeding further with the examinations.

It has also emerged that the fourth defendants and the London solicitors have, or may have, committed contempt of court by parting with some of the documents in the United States and/or in using them there for the purposes of the Texas proceedings. Also, of more direct ***762** concern to the London plaintiffs, it has been stated by the defendants that notwithstanding the settlement of the 1986 action the defendants intend to try to join the London plaintiffs in the Texas action with a view to making claims against the London plaintiffs in that action.

In these circumstances the fourth defendants have issued a summons in the 1986 action asking that they and the London solicitors be released from the implied undertakings that they gave in that action in relation to documents obtained on discovery and that the court should rule that the other documents which they have used or disclosed in the Texas proceedings were not subject to any restriction arising from their having been obtained in the course of the 1986 action. The London

plaintiffs have countered with a summons of their own which asks for various heads of relief which, in essence, amount to an application for a ruling that four classes of documents are each covered by restrictions on their use, disregard of which amounts, or will amount, to a contempt of court, and for consequential injunctions and/or orders to prevent further breaches and remedy those that have already taken place. The London plaintiffs also asked for orders to prevent the inclusion of any of the relevant documents, or references to them, in the depositions that will in due course be remitted by the High Court back to the Texas court.

Further, the London plaintiffs have, shortly before this hearing, commenced another action ("the 1990 action") against Hinton, Hill and Phillips Ltd., that is to say the English registered company (associated with the fourth defendants) which is the primary defendant in the Texas action, and Kroll and Tract, that is to say the Texas attorneys, who also have a place of business within the jurisdiction of this court. In the writ in the 1990 action the London plaintiffs claim injunctive relief in respect of alleged breaches of confidence, direct and/or indirect contempt of court and alleged unlawful interference with the trade or business of the London plaintiffs. They have now asked, effectively ex parte, for interim injunctions against those defendants.

The proceedings before me have been in chambers and by agreement all potentially affected parties, including London lawyers appointed by the Texas plaintiffs, have been allowed to be present on the basis that this was clearly convenient and it was to be without prejudice to any right of the London plaintiffs to treat the relevant material as still confidential and subject to restriction (if that be its character which is, of course, in dispute). The proceedings in which I have given my ruling are the cross-applications in the 1986 action. I heard counsel for the London plaintiffs, Mr. Collins, and counsel for the fourth defendants and the London solicitors, Mr. Adrian Hamilton. I also invited Mr. Webb who was instructed on behalf of the 1990 defendants to address me on the question of law since his clients, although not technically bound, would clearly be affected by any ruling that I might make; in the event he considered it necessary to do little more than adopt the arguments of Mr. Hamilton. The Texas plaintiffs, although represented by counsel, did not seek to address me.

The cross-applications in the 1986 action involved two phases: first the determination as a matter of law what if any documents were subject to restriction and the nature and extent of that restriction, and second whether and if so to what extent and on what terms the fourth defendants and the London solicitors should be released from those restrictions and what injunctive or other relief the London plaintiffs should be granted against them. These reasons relate only to the ruling ***763** that I gave in respect of the first phase. It involved a question of law which so far as counsel are aware has not previously been the subject of judicial decision and it is for that reason that I am now giving my reasons in open court. It should be stressed that I am in no way concerned with any matter of Texas law or procedure; those are matters for the Texas court. I am solely concerned with English law and with the incidents of proceedings within the jurisdiction of the English courts and with the duties owed under English law by persons who are subject to the jurisdiction of the English courts.

In the summons issued by the London plaintiffs, four categories of documents are conveniently set out: (1) any document disclosed by the London plaintiffs upon discovery in the 1986action; (2) any witness statement or document attached or appended thereto disclosed by the London plaintiffs in the 1986 action pursuant to the order of the court made in that action; (3) any expert's report or document attached or appended thereto disclosed by the London plaintiffs in the 1986 action pursuant to the order of the court in that action; (4) any affidavit or exhibit thereto sworn on behalf of the London plaintiffs in the 1986 action.

The argument before me involved only the second and the third of these categories. There was no argument about the first category, documents obtained on discovery, because the defendants and the London solicitors accepted that the implied undertaking applied to those documents. As regards the fourth category, affidavits and exhibits, sworn on behalf of the London plaintiffs, it was accepted by the London plaintiffs that these were only subject to a restriction if they were covered by the compulsion principle. On this basis it was accepted by both sides that only one affidavit, together with its exhibits, was the subject of any implied undertaking and that all the remaining affidavits and exhibits were subject to no relevant restrictions.

The documents coming into the second category are the five unsigned witness statements. Their length was between four and 16 pages long and documents were attached to three of them (in one case 94 pages of attached documents). No Civil Evidence Act notices had at any time been served in respect of any of those

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statements or documents so the only rule of court which is applicable to the order for their service was Ord. 38, r. 2A. No argument was advanced which was based upon the actual contents of these statements nor upon the actual documents which were attached to them although, by way of illustration of the London plaintiffs' arguments it was pointed out that such documents would almost certainly consist of documents which had been disclosed by one of the parties to the litigation, not necessarily the party serving the statement, or if they were documents not previously disclosed would be documents which had been privileged; similarly the statement itself would probably refer to disclosed or other documents whether or not they were annexed and might refer to transactions which were otherwise covered by some category of privilege. However I was asked to give my ruling as a matter of principle and I was not actually referred to any of the statements or annexures.

The position was the same with regard to the single expert statement which was involved, that of Mr. Lawrence Todd. This may be because Mr. Todd is now acting, apparently without the objection of any relevant party, as the expert witness for the Texas plaintiffs in the Texas proceedings (which lends a certain artificiality to the London plaintiffs' ***764** present objections). I have assumed accordingly that the statement is a statement which contains expressions of opinion and is properly categorised as a written report containing the substance of the opinion evidence which he was to give as an expert witness at the trial of the 1986 action had that trial taken place. I mention this since it is a commonplace experience that so-called experts' reports are not so confined and frequently refer to many other matters which may or may not correspond to the evidence at the trial and that expert reports often include matters which are on the one hand evidence to be given by a factual witness or on the other hand are not admissible in evidence at all. I have not had to consider any such complication and if such matters be legally relevant they will have to be argued and decided in another case: see the discussion in Phipson on Evidence, 14th ed. (1990), at pp. 529–530.

Although the first and fourth categories were no longer in dispute before me each side advanced arguments in support of their arguments concerning the status of statements and reports which were based upon the authorities which govern the question of the restriction of the use of documents obtained on discovery and affidavits. In respect of both documents disclosed on discovery and affidavits the relevant principle is expressed in terms of an implied undertaking arising from the compulsion of a court order requiring the opposite party, whether he wishes to or not, to disclose documentary or factual material. In the leading case, Riddick v. Thames Board Mills Ltd. [1977] Q.B. 881, 896, Lord Denning M.R. adopted the statement in *Bray on Discovery*, 1st ed. (1885), p. 238:

> "A party who has obtained access to his adversary's documents under an order for production has no right to make their contents public or communicate them to any stranger to the suit … nor to use them or copies of them for any collateral object … If necessary an undertaking to that effect will be made a condition of granting an order …"

In Crest Homes Plc. v. Marks [1987] A.C. 829, 853, Lord Oliver of Aylmerton said:

> "a solicitor who, in the course of discovery in an action, obtains possession of copies of documents belonging to his client's adversary gives an implied undertaking to the court not to use that material nor to allow it to be used for any purpose other than the proper conduct of that action on behalf of his client … It must not be used for any 'collateral or ulterior' purpose …"

This undertaking is implied whether the court expressly requires it or not. The expression of the obligation as an implied undertaking given to the court derives from the historical origin of the principle. It is now in reality a legal obligation which arises by operation of law by virtue of the circumstances under which the relevant person obtained the documents or information. However treating it as having the character of an implied undertaking continues to serve a useful purpose in that it confirms that the obligation is one which is owed to the court for the benefit of the parties, not one which is owed simply to the parties; likewise, it is an obligation which the court has the right to control and can modify or release a party from. It is an obligation

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which arises from legal process and therefore is within the control of the court, gives rise ***765** to direct sanctions which the court may impose (viz. contempt of court) and can be relieved or modified by an order of the court. It is thus a formulation of the obligation which has merit and convenience and enables it to be treated flexibly having regard to circumstances of any particular case. Treating the duty as one which is owed to the court and breach of which is contempt of court also involves the principle that such contempts of court can be restrained by injunction and that any person who knowingly aids a contempt or does acts which are inconsistent with the undertaking is himself in contempt and liable to sanctions: see Distillers Co. (Biochemicals) Ltd. v. Times Newspapers Ltd. [1975] Q.B. 613.

The rational basis for the rule is that where one party compels another, either by the enforcement of a rule of court or a specific order of the court, to disclose documents or information whether that other wishes to or not, the party obtaining the disclosure is given this power because the invasion of the other party's rights has to give way to the need to do justice between those parties in the pending litigation between them; it follows from this that the results of such compulsion should likewise be limited to the purpose for which the order was made, namely, the purposes of that litigation then before the court between those parties and not for any other litigation or matter or any collateral purpose: see, for example, *per* Lord Keith of Kinkel in Home Office v. Harman [1983] 1 A.C. 280, 308.

It is also to be noted that this principle is independent of any question of confidentiality. The documents produced on discovery may or may not be confidential in character; the implied undertaking and the restriction upon the use that may be made of the documents or information by the party compelling their disclosure is independent of the actual character of the document or information. Confidentiality is relevant to the principle of privilege but not to the compulsion principle.

It was argued before me that the compulsion principle is not simply confined to orders which require the disclosure of documents or information. In litigation a party may be subjected to orders or rules of procedure which require him to do various things or take various steps in the action. It was argued that whenever a party was in this position he was acting under a compulsion which brought the implied undertaking into force. This argument can be attractively developed. It is said that many things in actions are done because a party is ordered or otherwise required to do them. They are required to deliver pleadings, swear and lodge affidavits, call witnesses, or, in the present context, serve advance copies of the evidence upon which he proposes to rely at the trial. In all these situations the practical sanction is similar to that which arises from a failure to give discovery or respond to other orders. The primary sanction that the court imposes is to strike out the claim or the defence. If a party fails to deliver a pleading or to lodge or adduce evidence he will fail to protect his rights and the other party's claims or defences will prevail. The outcome for the litigant is in practical terms the same. However in legal terms this is not correct. There is distinction between orders, the breach of which is a contempt court and those orders or rules which merely give rise to a default. The principle of compulsion applies to the former category only. This has been made clear in a number of cases.

At one of the interlocutory stages of the Derby & Co. Ltd. v. Weldon litigation, which it is convenient to call Derby & Co. Ltd. v. Weldon (No. 2) The Times, 20 October 1988, Sir Nicolas Browne-Wilkinson V.-C. gave an interlocutory ruling in a situation which was very similar to that which is raised in the present proceedings. He was asked to rule upon the restriction that applied to certain classes of documents which had been produced in that action. The reason why he was asked to give that ruling was because one of the defendants had been sued by another person in the courts of New York and the New York plaintiff had obtained subpoenas from the New York court requiring the plaintiffs in the London proceedings to produce those documents in New York. The relevant documents fell into four categories: first, documents which the plaintiffs had produced on discovery or themselves put in evidence; second, affidavits and exhibits which the defendants in London had put in evidence in the course of interlocutory proceedings, third, documents exhibited to an affidavit voluntarily sworn by one of the defendants but only produced to the plaintiffs pursaunt to the Chancery master's order to provide inspection of documents referred to in an affidavit; fourth, affidavits and exhibits sworn by the defendants under compulsion of court orders for discovery in support of orders for Mareva relief.

The first of these categories presented no problems; they were the English plaintiff's own documents and the fact that they had produced or used them in the Chancery proceedings was irrelevant and gave rise to no restriction upon their use by the plaintiffs. The fourth category was covered by the compulsion principle except that some of the affidavits had originally been sworn as result of an order of the

Chancery judge but were subsequently put in evidence before the Court of Appeal and referred to, directly or indirectly, in open court; under Ord. 24, r. 14A, those affidavits, etc. were therefore no longer subject to any restriction. By contrast the affidavits which were only brought into existence by reason of orders that the Court of Appeal itself made and had not thereafter been referred to or used in open court were, and remained, subject to a restriction.

With regard to the second cagtegory, that is to say affidavits which were in the possession of the English plaintiffs because they had been sworn and put in evidence in the Chancery proceedings by the English defendants when they were seeking to resist *Mareva* injunctions, Sir Nicholas Browne-Wilkinson V.-C. commented: "the fact of the matter is that the defendants chose that course themselves and voluntarily disclosed the information and documents contained in their affidavit." He referred to the submission of the defendants' counsel that:

> "even though the documents were not disclosed under compulsion of a court order or court procedure, there is an implied obligation … not to disclose those documents at least until they have been used in open court."

He continued:

> "I reject that submission without any hesitation. There is no trace of the existence of any such obligation in any authority. Indeed the whole development of the law relating to the implied undertaking affecting documents disclosed on discovery would have been quite unnecessary had any such general principle … existed in English law. The voluntary disclosure of documents in the course of interlocutory proceedings by a party does not come within the rationale which is the basis of the implied undertaking relating to ***767** documents disclosed on discovery. In relation to documents voluntarily disclosed the court has not invaded the privacy of the party. The party has, for his own purposes in defending a case, decided himself to use the documents rather than maintain his privacy. It is the party who has destroyed the privacy of the document, not the plaintiff or the court … It is true as [counsel] says that apart from litigation the defendants would not have disclosed the documents. They had the unhappy choice of deciding whether to defend the proceedings at that stage, maintaining that privacy, or to put in the documents. But it is an unavoidable consequence of all litigation that a party who chooses to put in evidence, necessarily risks such evidence becoming available to others. In my judgment the special protection given to documents disclosed under compulsion of discovery procedures does not apply to any wider class of documents. If [counsel] were right, I can see no logical step short of holding that all documents produced in litigation (whether voluntarily or involuntarily and whether at an interlocutory stage or later) remain confidential to the parties unless and until used in open court. That is not a result I will be prepared to reach unless compelled to do so by authority and, as I have said, there is none."

The Vice-Chancellor also had to deal with a further argument which was based upon an allegation that there was a private law duty of confidence owed by parties to litigation not to disclose such material to third parties even though there was no implied undertaking or notwithstanding that any implied undertaking had ceased to be applicable because of the subsequent use of the relevant documents in open court. He rejected that argument. There was no basis for any such private law duty of confidence; even if there were, he said, "such duty can only be implied from the circumstances of the case." He continued:

> "Such private duty of confidence cannot, in my judgment, be wider

> than that imposed by the implied undertaking. It seems to me impossible to imply a wider private duty since to do so would be to have two parallel but different obligations, but arising by implication from the same circumstances. That is a concept which I have never previously come across."

It is clear that where documents are produced in the course of legal proceedings, or information provided, the further use of that material must be governed by the legal principles or rules of court which relate to the use of such material and not by any private law rights. It is of course an a fortiori position where there were no antecedent private law rights in respect of that material; the use of material in litigation cannot itself give rise to that class of right. The remedies that arise, if at all, arise from the duty owed by the relevant person to the court and the capacity of a person with an interest in the enforcement of those rights to obtain further orders from the court against persons directly or indirectly involved in breaches of that duty.

With regard to the third category of documents that he had to consider, that is to say documents which a party was required to produce because they had been referred to in a voluntary affidavit, the Vice-Chancellor said that the source or the obligation to produce those documents was the voluntary affidavit and that therefore the subsequent ***768** order of the court was merely the recognition of an obligation which the party had already voluntarily accepted. Such documents were subject to no relevant restriction.

This approach to the distinction between what is produced by a party under compulsion and what is produced voluntarily has since been re-affirmed in connection with witness statements and experts reports exchanged under Order 38. In Comfort Hotels Ltd. v. Wembley Stadium Ltd. [1988] 1 W.L.R. 872 Hoffmann J. was concerned with a challenge to the validity of Ord. 38, r. 2A and its relationship to the right of privilege. I will have to refer again to this authority later on and it is therefore convenient to set out quite fully the context in which the point arose. Rule 2 A was introduced by a statutory instrument made by the Supreme Court Rules Committee under their general power in section 84(1) of the Supreme Court Act 1981:

> "Rules of court may be made for the purpose of regulating and prescribing the practice and procedure to be followed in the Supreme Court." This meant that, in the words of Lord Denning M.R. in In re Grosvenor Hotel, London (No. 2) [1965] Ch. 1210, 1243, the rule must be confined to regulating and prescribing procedure and cannot alter the rules of evidence for the ordinary law of the land. Therefore counsel argued before Hoffmann J. that a direction under rule 2A would infringe the rights of privilege to refuse to disclose documents or information which fall within the scope of such privilege. Hoffmann J. continued [1988] 1 W.L.R. 872, 877–878:
>
> > "Ord. 38, r. 2A has the effect of empowering the court to make it a condition of a party's ability to lead oral evidence at the trial that he should have given prior notice of such evidence in the form of a written statement served on the other parties. It does not mean that he cannot be compelled to disclose any document or information. Anything which he does not wish to disclose he may still keep to himself. It is only if he wants to disclose the information by way of evidence at the trial that he may now be required as a pre-condition to disclose it in written form in advance. What the rule therefore does is to advance the moment at which a party must examine the information he has gathered for the purposes of the trial and decide what he is going to use and what he is going to withold … In my judgment, therefore, the privilege which is preserved by Ord. 38, r. 2A(8) is not infringed by a requirement for the service of statements under sub-rule (2), nor does the making of the rule override the privilege. In my view the privilege remains intact and the rule merely regulates the practice and procedure of the court relating to the way in which oral evidence may be given."

The other case is Derby & Co. Ltd. v. Weldon (No. 9) (unreported), 18 October 1990, Mummery J.; The Times, 9 November 1990; Court of Appeal (Civil Division) Transcript No. 878 of 1990. The application with which the courts were there concerned was an application by the plaintiffs that the defendants should be required to deliver an expert's report on a particular topic even though those defendants did not propose to lead any expert evidence upon that topic at the trial. There had previously been a direction by the court under Ord. 38, r. 37 for the exchange of experts' reports on a number of topics and the plaintiffs were proposing to call evidence on all of them. Both Mummery J. and the Court of Appeal decided that the effect of Part IV of Order 38 and any direction given thereunder was not to impose any requirement on a ***769** party to serve an expert's report whether or not he proposed to lead any expert evidence; all it did was to impose a condition with which he must comply if he did intend to lead such evidence. Therefore the application was mistaken. Comfort Hotels Ltd. v. Wembley Stadium Ltd. [1988] 1 W.L.R. 872 was cited and both Mummery J. and Dillon L.J. in the Court of Appeal followed and adopted what Hoffmann J. had said. Dillon L.J. referred to the fact that proofs of evidence and reports obtained by solicitors for the purposes of legal proceedings are privileged and continued:

> "As I see it, the provisions in Part IV, and in particular rule 36, and the other rules which I have mentioned, do not have the direct effect of overriding the privilege. What they do is to empower the court to make it a condition of a party's ability to adduce expert evidence at the trial that he should have given prior notice of such evidence in the form of a written statement served on the other parties. That is in line with the view taken under Ord. 38, r. 2A by Hoffmann J. in Comfort Hotels Ltd. v. Wembley Stadium Ltd. [1988] 1 W.L.R. 872, 877H. Hoffmann J. went on: 'It does not mean that he can be compelled to disclose any document or information.' It may be that he can be compelled to disclose any document referred to by his expert in the expert's report and in effect incorporated in the report, but that is not this case. What is wanted by the plaintiffs is, if it exists, the report prepard by [the defendants' expert] on the alternative initial conspiracy, or alternatively that such a report should be prepared and disclosed … The way, as I see it, the procedure works is that the party can choose whether or not to call his expert. His expert's report, until disclosed, is privileged. When it is disclosed it loses the privilege …"

From these authorities it is clear that there is no blanket restriction on the use of documents and information acquired in the course of litigation. Prima facie there is no restriction. The compulsion exception is confined to documents and information which a party is compelled, without any choice, to disclose. Where a party has a right to chose the extent to which he will adduce evidence or deploy other material, then there is no compulsion even though a consequence of such choice is that he will have to disclose material to other parties. On the authority of the Comfort Hotels case and Derby & Co. Ltd. v. Weldon (No. 9), witness statements and experts' reports served pursuant to the provisions of Order 38 or directions given thereunder are not served under compulsion and are not protected by the duties or undertakings which the court implies where there is compulsion.

It follows that if the London plaintiffs are to succeed before me upon their application that a restriction should be recognised on the right of the fourth defendants and the London solicitors to use the seven witness statements and the expert report which are in dispute before me, the London plaintiffs must make out some basis of restriction which does not depend upon the principle of compulsion. To do this they invoke the privilege in the documents which existed prior to their service on the fourth defendants, which privilege derived in part from their confidential character (see Fairfield-Mabey Ltd. v. Shell U.K. Ltd [1989] 1 All E.R. 576), and rely upon the provisions of Order 38 which they say either confirm that that privilege has only been waived to a limited extent, or conditionally, or alternatively that Order 38 does not debar them from ***770** continuing to assert that privilege. The London plaintiffs say therefore that the court should recognise those continuing rights of privilege and allow them

either to enforce rights of confidentiality in respect of those documents or to ask the court to rule that the fourth defendants and the London solicitors are under a duty to the court which restricts the use that may be made of those documents.

I accept the submission of Mr. Hamilton that if the London plaintiffs are to succeed on this line of argument it must be by the demonstration of a duty owed to the court, analogous to that owed under the implied undertaking, which derives from the circumstances of the case and in particular as a matter of implication from the relevant rules of court. I consider that this is not only correct in principle but is also in accordance with what was decided by Sir Nicolas Browne-Wilkinson V.-C. in Derby & Co. Ltd. v. Weldon (No. 2) The Times, 20 October 1988. Prima facie, the use of documents and information in litigation is inconsistent with any such restriction or the reservation of any private law right. However such restrictions are capable of existing and where they do they derive from rules of procedure or principles of law recognised by the courts as being incidents of such procedure.

There is no conceptual difficulty about the reservation of rights of confidentiality or privilege notwithstanding that a document or piece of information has been communicated to another. One can take three examples to illustrate this.

First, in private law the concept of breach of confidence is well recognised. It has as its basis a situation where an owner of confidential information parts with it to another on the terms, or in circumstances, which impose a duty of confidence on that other and restrict the use that that other may make of the information. So although that other has gained possession of the confidential information, the original owner has not lost his rights over that informaiton and he can invoke legal and equitable remedies to enforce his rights.

A second example can be found in R.S.C., Ord. 27, r. 2. That rule permits a party to litigation to serve on another a notice requiring that other to admit, for the purpose of that cause or matter only, certain facts. The other party may of course refuse to make any admission but, if he does make an admission, sub-rule (2) of the rule applies. This provides:

> "An admission made in compliance with a notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given …"

This is an example of where the rules of court make express provision that, notwithstanding that the party making the admission is acting entirely voluntarily, the admission made is subject to specific restrictions (analogous to those which arise from the implied undertaking) preventing its use otherwise than in the litigation in which it was made. The rationale is not based upon any principle of compulsion but upon the recognition of the benefits that will flow for the administration of justice in facilitating such admissions and the fact that the procedure in a case is, and should be, directed to the achievement of justice in that particular case.

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The third example, which is perhaps the most pertinent, is the situation which arises from without prejudice communications. Here again the rationale is similar. It is the policy of the law to permit, and indeed encourage, confidential negotiations to take place to further the settlement of disputes and the law accordingly recognises that there shall be a restriction upon the use that can be made by the recipient of any such communication. The recent decision of the House of Lords inRush & Tompkins Ltd. v. Greater London Council [1989] A.C. 1280 establishes the wide ambit of the restriction that arises from communications being without prejudice. The restriction affects not only the party who received the communication but also any other party and the principle "once privileged always privileged" will apply to subsequent litigation as well as the actual litigation in relation to which the without prejudice communication was made.

The rule is described in the Rush & Tompkins case as one of the admissibility of evidence but this, as the decision in that case demonstrates, does not cover the full scope of the rule. Also, the without prejudice communication is, ex hypothesi, a communication which, were it not privileged, would be admissible in evidence; typically it will be an admission against the interest of the party making it. It would be admissible and relevant evidence were it not for the fact that there is a restriction upon the use that the recipient of the communication, or any other person, can make of that piece of evidence. The restriction includes the embargo

upon putting it in evidence. The scope of the rule is wider because it includes a right not to reveal the communications to others, which was the actual point of decision in the Rush & Tompkins case; they set aside an order that had been made by the Court of Appeal that discovery of the documents should be given to other parties in the aciton.

The without prejudice principle is normally referred to as a head of privilege. However, as between the parties to a without prejudice communication, it is privilege in a rather different sense from that which is normally used when talking about discovery — hence the use of the word "admissibility" in the Rush & Tompkins case. In Webster v. James Chapman & Co. [1989] 3 All E.R. 939, Scott J. considered the relationship confidentiality and privilege. In the course of his judgment he said, at pp.943–944:

> "I think it is important to notice the different principles on which protection of confidential documents on the one hand and privileged documents on the other hand are based. Once a privileged document or a copy of a privileged document passes into the hands of some other party to the action, prima facie the benefit of the privilege is lost: the party who has obtained the document has in his hands evidence which, pursuant to the principle in Calcraft v. Guest [1898] 1 Q.B. 759, can be used at the trial. But it will almost invariably be the case that the privileged document will also be a confidential document and, as such, eligible for protection against unauthorised disclosure or use. The reverse is not true. There are a variety of types of confidential information which have nothing whatever to do with legal privilege; but I cannot envisage a case of legal privilege attaching to documents which did not contain confidential material."

Scott J. is referring to the privilege against being required to disclose a documemt. Accordingly once the document has passed into the possession ***772** of another the privilege lacks subject matter. But where one is dealing with a privilege which can be treated as analogous to the privilege that attaches to without prejudice communications then it can be seen that the fact that relevant material has been disclosed to another party is not the moment at which the right ceases to exist but is the moment at which it comes into existence. If the analogy is apt the communication of a witness statement or a report to another party, although it may be the moment at which the waiver of the privilege against disclosure occurs, may be the moment when a right to restrict the use that can be made of the document arises.

The question therefore is whether there is such an analogoy and what is the correct inference to be drawn from the respective provisions of Order 38. The Court of Appeal in Derby & Co. Ltd. v. Weldon (No. 9) Court of Appeal (Civil Division) Transcript No. 878 of 1990 was not concerned with this point at all and it was not to this question that Dillon L.J. was addressing his observations.

There is no necessary reason why the same inferences should be drawn from Part IV of Order 38 and rule 2A of that Order. The rules in Part IV of Order 38 were made under the specific statutory authority that was given by section 2(3) of the Civil Evidence Act 1972. The subsection opens with the words:

> "Notwithstanding any enactment or rule of law by virtue of which documents prepared for the purpose of pending or contemplated civil proceedings or in connection with the obtaining or giving of legal advice are in certain circumstances privileged from disclosure, provision may be made by rules of court …"

The rules which were made were therefore rules which could override rights of privilege against disclosure. Further in rule 42 it is expressly provided: "A party to any cause or matter may put in evidence any expert report disclosed to him by any other party in accordance with this part of this Order." This rule therefore expressly states that the recipient of a report is entitled to use it; further that entitlement is expressed in unqualified terms which obviously contemplate use at the trial in the instant ligitation but is not in terms restricted to such use.

It can be commented that note 38/42/1 in *The Supreme Court Practice 1991* says, among other things: "This rule, however, does not apply to an expert report disclosed voluntarily by one party to another, unless the parties have agreed to put in that report in evidence." No authority is cited for this statement. In one sense it is a truism because the rule relates to reports disclosed in accordance with Part IV of Order 38. But if the note is saying more than that it clearly states the position the wrong way round. If one party supplies a report to another without any qualification that other party is at liberty to make such use of it as it may think fit including putting it in evidence, for what it is worth, as an admission made by the other party. If the report was supplied on a without prejudice basis in a context where the court will recognise the communication as having that character then the recipient is not at liberty to use the report or put it in evidence.

Rule 2A, as already pointed out in the citation from Comfort Hotels Ltd. v. Wembley Stadium Ltd. [1988] 1 W.L.R. 872, had a different statutory basis. It was later in date than Part IV of Order 38 and was not based upon any statutory authority additional to that which permits the regulation of procedure. Further, as a matter of major caution, this ***773** is made clear by the express statement in sub-rule (8) of rule 2A: "Nothing in this rule shall deprive any party of his right to treat any communication as privileged or make admissible evidence otherwise inadmissible." The contrast between this wording and the opening words of section 2(3) of the Act of 1972 needs no elaboration. Sub-rule (8) is widely drafted and its wording remarkably pertinent to the present argument. But the intent of rule 2A is further emphasised by sub-rule (4) which, save where the Civil Evidence Act 1968 and 1972 apply, provides that where the party serving a statement "does not call the witness to whose evidence it relates no other party may put the statement in evidence at the trial." Here again the contrast is obvious: there is a restriction on the use which any other party may make of the witness statement that has been served.

I consider that the inferences to be drawn from reading these two parts of Order 38 both separately and, more strikingly, together are that in respect of experts' reports there is to be no restriction and in respect of witness statements there is to be a restriction which, subject to sub-rule (4), preserves a privilege in the document.

With regard to experts' reports served pursuant to an order under Part IV of the Order (leaving on one side the potential complications to which I referred at an earlier stage in this judgment) the inference which I draw takes into account both the basic legal position that documents and information that are disclosed voluntarily are not subject to any restriction as to their use and the unqualified liberty that is given by rule 42. There is no implied restriction or undertaking.

Under rule 2A the inference to be drawn is, in my judgment, different but equally clear. I infer that the receiving party is not to be allowed to put the statement in evidence save at the trial (if there is one) or the aciton in which the statement has been served and then only if the serving party elects to call the relevant witness at that trial; and that, apart from this, the receiving party and his solicitor may not use the material nor allow it to be used for any purpose other than the proper conduct of that action on behalf of the receiving party and may not use it or allow it to be used for any collateral or ulterior purpose. It follows from this that the solicitor and his client may not supply the material to any other person (until it has passed into the public domain and is covered by Ord. 24, r. 14A) save for the purposes of the action in which it was served and the serving party may ask the court to prevent any breach of this obligation.

The only argument to the contrary which was advanced on the wording of the rule was that sub-rule (4) uses the phrase "put in evidence at the trial." Mr. Hamilton argued that this was the extent to the restriction and that the statement could be used without restriction at any other time and could for instance be used and put in evidence in subsequent litigation. This is an absurdity. The recipient was debarred from using the statement at the trial of the action (say, because the serving party elected not to call the witness); but, it is said, the completion of that litigation releases the recipient from any restriction and he can use the document at a later trial without restriction even between the same parties or he can give it to another to use against the serving party. This submission only has to be formulated for it to be seen that it is unacceptable both as a matter of common sense, legal policy, and as a matter of the intent of the rule. The testing of Mr. ***774** Hamilton's argument by reference to this example also demonstrates the irresistibility of the inference which I have accepted.

In my judgment when a statement is served pursuant to a direction given under Ord. 38, r. 2A and the witness to whose evidence that statement relates is never called by that party to give evidence (whether it be because the trial never takes place or for any other reason) that

statement remains a privileged documents in the same way as a without prejudice communication remains privileged. The party serving the statement may not be compelled to disclose the statement to any other person and is entitled to prevent any other person using that statement without his consent and, in particular, using it in evidence against the person who originally served the statement. This was what was decided by the House of Lords in Rush & Tompkins Ltd. v. Greater London Council [1989] A.C. 1280 in relation to without prejudice communications and I consider that the same applies to witness statements served under rule 2A.

The policy reflected in the rule is simply procedural. Its purpose is stated in sub-rule (2) to be "disposing fairly and expeditiously of the cause or matter and saving costs." It is related to the instant litigation alone. Later paragraphs of the rule cover matters of obvious relevance to the trial, and its preparation, in that action. A secondary purpose must also be to encourage and facilitate the making of admissions and settlements. If one party can see the evidence that the other party has and has also to disclose its own, this exchange of information may enable disputes to be resolved in a manner that is exactly parallel to that which often occurs in without prejudice negotiations. Costs are saved if trials are rendered unnecessary or appropriate admissions are made. The policy of the law which protects without prejudice communications should apply to protect the confidentiality of statements that are exchanged but not used under rule 2A. Similarly, the example of Riddick v. Thames Board Mills Ltd. [1977] Q.B. 881 illustrates another danger of not recognising a restriction. A statement may contain possibly defamatory statements; if an unused statement is not to be treated as privileged from disclosure to third parties or being used in evidence, obvious difficulties can arise. Accordingly there are good reasons of policy arising from the rule that reinforce the analogy with the treatment of documents obtained on discovery and communications without prejudice. Likewise, there are good policy reasons for imposing similar restrictions. There is therefore no basis for declining to give effect to the inference to be drawn from the rule itself.

I consider that the rights of the London plaintiffs arise by inference from the terms of rule 2A and from the confidential and privileged character of the statement prior to the time at which it was served. I consider that it is therefore a rule of law that, unless the London plaintiffs have relinquished their rights to restrict the use of the document by some further waiver or consent (which is not alleged has happened in the present case), the fourth defendants and the London solicitors were under the duty which I have formulated above. Their supplying the statements to the Texas attorneys and to other parties in the Texas proceedings and their use of the documents in and for the purposes of the Texas proceedings was a breach of that duty.

It may be thought desirable to express the duty as an implied undertaking to the court. But, whether it is so expressed or not, it is in my judgment a duty that is owed to the court and which can be ***775** enforced by the court at the instance of the English plaintiffs. Breach of the duty amounts to a contempt of court, which may be trivial or serious depending upon the circumstances. The court has the power wholly or partially to release the recipient from the duty, or undertaking, and to permit use to be made of the documents nevertheless. Circumstances under which that relaxation would be allowed without the consent of the serving party are hard to visualise, particularly where there was any risk that the statement might be used directly or indirectly to the prejudice of the serving party. (This is, of course, always subject to any overriding principle of public policy.)

For these reasons I ruled that there was no restriction affecting the expert's report and that no contempt of court had been committed. As regards the witness statements I ruled that they were subject to a restriction which had been broken and which should at the least on an interim basis be restrained.

Since preparing these reasons, I have seen a note of a decision of Hoffmann J. on an interlocutory motion in a patent action, Black & Decker Inc. v. Flymo Ltd. [1991] 1 W.L.R. 753 and have obtained a transcript. He was concerned with a question whether a witness statement served under Ord. 38, r. 2A could be referred to on an interlocutory application for further discovery prior to the trial of the action; he held that it could. No question of the use of the statement in other later proceedings was involved. He referred to the fact that privilege from disclosure ceases to be relevant once the document has been disclosed and cited what he had said in Comfort Hotels Ltd. v. Wembley Stadium Ltd. [1988] 1 W.L.R. 872. His decision is not contrary to that which I have reached in the present matter or what I have said in these reasons.

Representation

•Solicitors: Ince & Co.; Cameron Markby Hewitt; More Fisher Brown.

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Appendix A

Page 786G, line 42: Please note that Derby & Co. Ltd. v. Weldon (No.9) (unreported), 18 October 1990, Mummery J.; The Times, 9 November 1990; Court of Appeal (Civil Division) Transcript No.878 of 1990 does npt call for report in the Weekly Law Reports and should not be confused with the case of that name reported at [1991] 1 W.L.R. 652; [1991] 2 All E.R. 901.

Footnotes

[1] R.S.C., Ord. 38, r. 2A(2): "At any stage in any cause or matter, the court may, if it thinks fit for the purpose of disposing fairly and expeditiously of the cause or matter and saving costs, direct any party to serve on the other parties, on such terms as the court shall think just, written statements of the oral evidence which the party intends to lead on any issues of fact to be decided at the trial." R. 2A(8): see post, p. 773A. R. 37(1) "where in any cause or matter an application is made … in respect of oral expert evidence, then, unless the court considers that there are special reasons for not doing so, it shall direct that the substance of the evidence be disclosed in the form of a written report or reports … "R. 42: see post, p. 772E.

[1991] 1 W.L.R. 756

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EXHIBIT BB

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***424 Mahon and Another v. Rahn and Others**

Image 1 within document in PDF format.

Court of Appeal
23 May 1997

[1997] 3 W.L.R. 1230

[1998] Q.B. 424

Staughton, Otton and Schiemann L.JJ.
1997 April 16, 17; May 23

Analysis

Practice—Discovery—Use of documents—Implied undertaking not to use for other purposes—Documents disclosed to plaintiffs as defendants in criminal proceedings and used in open court—Plaintiffs bringing libel action based on documents—Whether plaintiffs subject to implied undertaking not to use disclosed documents for purposes other than criminal proceedings without leave of court—Whether action abuse of process

A bank, acting as agent, placed an order with stockbrokers for the purchase of certain Canadian shares. In the course of subsequent investigations against the stockbrokers, the Serious Fraud Office ("S.F.O.") obtained from The Securities Association ("T.S.A.") a letter which had been sent to T.S.A. by the bank's lawyer enclosing documents relating to the share transaction. The S.F.O. instituted criminal proceedings for fraud against the plaintiffs, the managing director and a senior executive of the stockbrokers, in connection with their dealings with the bank. The letter was exhibited to prosecution witness statements which were disclosed by the S.F.O. to the plaintiffs before the trial and the letter was read in open court during the criminal proceedings. After their acquittal, the plaintiffs claimed damages for alleged libel published or caused to be published by the defendants, partners in the bank, in the letter to the T.S.A. The defendants applied to strike out the action as an abuse of process on the ground that the documents sued on had been obtained by the plaintiffs by way of disclosure in criminal proceedings against them and were therefore subject to an implied undertaking that they would not be used in any other proceedings without the leave of the court. The judge granted the application.

On appeal by the plaintiffs: -

Held, allowing the appeal, that material disclosed by the prosecution to a defendant in criminal proceedings, whether obtained by compulsion or voluntarily, and whether used or unused in those proceedings, was not subject to any implied undertaking, analogous to that which existed in relation to material discovered in civil proceedings, that the defendant would not use the disclosed material in any other proceedings without the leave of the court; that, in any event, any such undertaking would cease to apply once the material had been read or referred to in open court in the course of criminal proceedings and had thus been used in those proceedings; and that, accordingly, it was no abuse of process for the plaintiffs to commence an action for libel in reliance upon the letter which had been disclosed to them by the prosecution in the criminal proceedings (post, pp. 447C-D, 448G-H, 449B-E, 450D-H, 451C, 452D, 453B, 457G-458A).

British Coal Corporation v. Dennis Rye Ltd. (No. 2) [1988] 1 W.L.R. 1113, C.A. and Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278, C.A. considered.

Decision of Brooke J. reversed.

***425**

The following cases are referred to in the judgments:

- Bibby Bulk Carriers Ltd. v. Cansulex Ltd. [1989] Q.B. 155; [1989] 2 W.L.R. 182; [1988] 2 All E.R. 820
- British Coal Corporation v. Dennis Rye Ltd. (No. 2) [1988] 1 W.L.R. 1113; [1988] 3 All E.R. 816, C.A..
- Coventry Newspapers Ltd., Ex parte [1993] Q.B. 278; [1992] 3 W.L.R. 916; [1993] 1 All E.R. 86, C.A..
- Cunningham v. Essex County Council , The Times, 31 March 1997
- Dallision v. Caffery [1965] 1 Q.B. 348; [1964] 3 W.L.R. 385; [1964] 2 All E.R. 610, C.A..
- Derby & Co. Ltd. v. Weldon (No. 2) (1988) 132 S.J. 1755; The Times, 20 October 1988
- Derby & Co. Ltd. v. Weldon (Nos. 3 & 4), The Times, 15 November 1988

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•Distillers Co. (Biochemicals) Ltd. v. Times Newspapers Ltd. [1975] Q.B. 613; [1974] 3 W.L.R. 728; [1975] 1 All E.R. 41
•Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184; [1981] 1 All E.R. 715
• Hasselblad (G.B.) Ltd. v. Orbinson [1985] Q.B. 475; [1985] 2 W.L.R. 1; [1985] 1 All E.R. 173, C.A..
• Home Office v. Harman [1983] 1 A.C. 280; [1982] 2 W.L.R. 338; [1982] 1 All E.R. 532, H.L.(E.).
•Kennedy v. Hilliard (1859) 10 I.C.L.R. 195
• McGrath v. Chief Constable of Lancashire Police (unreported), 3 April 1996, Forbes J.
•P. v. T. Ltd. [1997] 1 W.L.R. 1309; [1997] 4 All E.R. 200
•Practice Note (Criminal Evidence: Unused Material) [1982] 1 All E.R. 734; 74 Cr.App.R. 302
•Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756; [1991] 3 All E.R. 878
• Reg. v. Keane [1994] 1 W.L.R. 746; [1994] 2 All E.R. 478, C.A..
• Reg. v. Secretary of State for the Home Department, Ex parte Fire Brigades Union [1995] 2 A.C. 513; [1995] 2 W.L.R. 464; [1995] 2 All E.R. 244, H.L.(E.).
• Reg. v. Ward (Judith) [1993] 1 W.L.R. 619; [1993] 2 All E.R. 577; 96 Cr.App.R. 1, C.A..
• Rex v. Bryant and Dickson (1946) 31 Cr.App.R. 146, C.C.A..
• Riddick v. Thames Board Mills Ltd. [1977] Q.B. 881; [1977] 3 W.L.R. 63; [1977] 3 All E.R. 677, C.A..
• Royal Aquarium and Winter Garden Society Ltd. v. Parkinson [1892] 1 Q.B. 431, C.A..
•Singh (Tejendra) v. Christie , The Times, 11 November 1993; sub nom.
• Tejendrasingh v. Metsons (unreported), 20 May 1994; Court of Appeal (Civil Division) Transcript No. 669 of 1994, C.A..
•Sybron Corporation v. Barclays Bank Plc. [1985] Ch. 299; [1984] 3 W.L.R. 1055
• Taylor v. Director of the Serious Fraud Office (unreported), 26 July 1996, Sir Michael Davies
• X. (Minors) v. Bedfordshire County Council [1995] 2 A.C. 633; [1995] 3 W.L.R. 152; [1995] 3 All E.R. 353, H.L.(E.).

The following additional cases were cited in argument:

•Bhimji v. Chatwani (No. 2) [1992] 1 W.L.R. 1158; [1992] 4 All E.R. 912
• Lincoln v. Daniels [1962] 1 Q.B. 237; [1961] 3 W.L.R. 866; [1961] 3 All E.R. 740, C.A..
• Marcel v. Commissioner of Police of the Metropolis [1992] Ch. 225; [1992] 2 W.L.R. 50; [1992] 1 All E.R. 72, C.A..
• Martin v. Watson [1996] A.C. 74; [1995] 3 W.L.R. 318; [1995] 3 All E.R. 559, H.L.(E.).
•Miller v. Scorey [1996] 1 W.L.R. 1122; [1996] 3 All E.R. 18

Appeal from Brooke J.

By a writ issued on 17 December 1993 the plaintiffs, Patrick Mahon and Andrew Leslie Kent, claimed against the defendants, Dr. Christian Rahn, Hans-Jakob Biederman, Martin Haab-Biedermann and Frank Bodmer, damages for libel published or caused to be published by the defendants in a letter dated 20 December 1990 and an injunction to restrain further publication of those or similar libels. By a summons dated 23 February 1996 the defendants applied for the action to be struck out as vexatious and an abuse of the process of the court, on the ground that the document sued on had been obtained by the plaintiffs by way of disclosure in criminal proceedings against them. On 19 June 1996 Brooke J. ordered that the action be struck out under R.S.C., Ord. 18, r. 19 and the inherent jurisdiction of the court as an abuse of the process, but granted the plaintiffs leave to appeal.

By a notice of appeal dated 8 July 1996 the plaintiffs appealed on the grounds, inter alia, that (1) the judge had been wrong to hold that the documents disclosed in the course of criminal proceedings by the prosecution to the defence were subject to an implied undertaking that they would not be used for any collateral purpose; (2) the analogy drawn by the judge between the admitted existence of such an implied undertaking in civil proceedings and the position in criminal proceedings was a false one because the rationale for the existence of the implied undertaking in civil proceedings, namely that the party to those proceedings had been compelled to produce documents which would otherwise have remained private and confidential, had no application to disclosure by the prosecution in the course of criminal proceedings; and (3) even if the judge had been correct in holding that the implied undertaking existed in the context of disclosure in criminal proceedings, any inhibition on using disclosed documents disappeared once the documents had been referred to in open court and so entered the public domain.

The facts are stated in the judgment of Otton L.J.

Charles Gray Q.C. and *Victoria Sharp* for the plaintiffs. There is no implied undertaking, in criminal proceedings, in relation to documents or information disclosed to defendants, akin to that which exists in civil proceedings. In civil proceedings a party is subject to an implied undertaking not to use documents compulsorily disclosed on discovery for any collateral purpose. In criminal proceedings the principal rationale advanced for the existence of an implied undertaking preventing the use of such documents is the public interest in ensuring that those who supply information to the police or prosecuting authorities are not deterred from giving such information by the risk of proceedings being brought against them: see McGrath v. Chief Constable of Lancashire Police (unreported), 3 April 1996; Taylor v. Director of the Serious Fraud Office (unreported), 26 July 1996; British Coal Corporation v. Dennis Rye Ltd. (No. 2) [1988] 1 W.L.R. 1113, 1120; Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278, ***427** 291, 292 and Cunningham v. Essex County Council, The Times, 31 March 1997). [Reference was also made to Reg. v. Ward [1993] 1 W.L.R. 619; Reg. v. Keane [1994] 1 W.L.R. 746 and Archbold, Criminal Pleading, Evidence and Practice 1997, paras. 12-43, 12-54.]

The reasons for implying the undertaking in civil proceedings - confidentiality, compulsion and integrity of the discovery process - do not apply in the criminal context. [Reference was made to *Gatley on Libel and Slander,* 8th ed. (1981), pp. 159-162, 205, paras. 383-385, 484-485 and Lincoln v. Daniels [1962] 1 Q.B. 237.] There is, in any event, a strong countervailing public interest in not giving absolute protection to informants who maliciously make false statements to prosecuting authorities: see Martin v. Watson [1996] A.C. 74.

Even in civil proceedings, the voluntary use in court proceedings of documents disclosed under compulsion negates the implied undertaking: see Derby & Co. Ltd. v. Weldon (No. 2) (1988) 132 S.J. 1755; Marcel v. Commissioner of Police of the Metropolis [1992] Ch. 224, 256 and R.S.C., Ord 24, r. 14A. That is the position in criminal proceedings under section 17 of the Criminal Procedure and Investigations Act 1996: see Archbold, Criminal Pleading, Evidence and Practice 1997, para. 12-45 and Halsbury's Statutes, 4th ed. (1977 reissue), vol. 12, p. 1801. It would be wrong to read into the plain meaning of section 17(3) a further restriction on the use to which material disclosed and used in criminal proceedings may be put by the accused: see Singh (Tejendra) v. Christie, The Times, 11 November 1993; Tejendrasingh v. Metsons (unreported), 20 May 1994; Court of Appeal (Civil Division) Transcript No. 669 of 1994 and Home Office v. Harman [1983] 1 A.C. 280.

Patrick Moloney for the defendants. The judgment of Brooke J. was correct for the reasons stated therein. [Reference was made to Taylor v. Director of the Serious Fraud Office, 26 July 1996; Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756; Miller v. Scorey [1996] 1 W.L.R. 1122 and Bhimji v. Chatwani (No. 2) [1992] 1 W.L.R. 1158.]

It is an equitable principle of general application that where a person receives documents from another, by means of compulsory disclosure in particular legal proceedings, he is under a legal obligation, namely, an implied undertaking to the court, not to use them for any purpose other than the conduct of those proceedings in which they were disclosed, without the prior leave of the court: see Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756, 764g-765e. The obligation exists for two reasons: (i) compulsory disclosure is an invasion of the rights of the party giving disclosure and should be kept within legitimate bounds (see Home Office v. Harman [1983] 1 A.C. 280, 308); (ii) if those giving disclosure were not so protected, there would be a real risk that they would be deterred from giving full and frank disclosure to the prejudice of the interests of justice: see Riddick v. Thames Board Mills Ltd. [1977] Q.B. 881, 896, 902, 912. The latter reason applies with greater force to criminal cases than it does to civil litigation.

The obligation of the Crown to give full disclosure in criminal proceedings necessitates the recognition of a parallel obligation relating to documents disclosed in criminal proceedings: see Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278, 285-286; McGrath v. Chief Constable ofLancashire Police, 3 April 1996 and Taylor v. Director of the Serious Fraud Office, 26 July 1996. While it is correct that the narrow issue in the Ex parte Coventry case was a different one, namely whether public interest immunity operated to prevent disclosure, both the parties and the Court of Appeal unhesitatingly accepted that an implied undertaking existed not to use documents disclosed in a criminal appeal save for the purposes of the appeal without the leave of the court. This was persuasive authority of high value to which Brooke J. was entitled to give considerable weight.

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The implied undertaking does not cease once the document is read or referred to in open court, although the court has power to vary it. R.S.C., Ord. 24, r. 14A does not apply in criminal proceedings. Even in civil proceedings rule 14A permits publication of the document, rather than its use to found collateral actions: see Singh (Tejendra) v. Christie, The Times, 11 November 1993, and Tejendrasingh v. Metsons (unreported), 20 May 1994; Court of Appeal (Civil Division) Transcript No. 669 of 1994.

Cur. adv. vult.

23 May. The following judgments were handed down
Otton L.J.

This is an appeal from the order of Brooke J. made on 19 June 1996 in which he struck out the plaintiffs' action for libel pursuant to R.S.C., Ord. 18, r. 19 and the inherent jurisdiction of the court on the ground that it constitutes an abuse of process of the court.

Background

At all material times the plaintiffs were the managing director and the corporate development manager of T. C. Coombs, a firm of stockbrokers in the City of London. The defendants are the partners in a private Swiss Bank in Zurich known as Rahn and Bodmer Banquiers. In the late 1980s the bank, acting as agents, placed a purchase order with the stockbrokers for the purchase of shares in a Canadian company called Coastline Resources for Can.$5m. In September 1988 the bank paid Can.$3m. but did not pay the balance of Can.$2m. despite a number of requests from the stockbrokers. Towards the end of 1990 the stockbrokers came und er investigation by the Serious Fraud Office ("S.F.O.") and the bank furnished a number of documents to the S.F.O. at their request for the purposes of their inquiries. In late 1990 The Securities Association ("T.S.A.") also got in touch with the bank. On 20 December 1990 Dr. Paltzer, a partner in a Swiss law firm, wrote a letter to Mrs. Rose Wright of T.S.A. setting out information and enclosing documents which related to the dealings in connection with the Coastline shares. The letter stated:

> "I rely on your assurances of complete confidentiality with respect to the following information and documentation provided to you by our client, Rahn and Bodmer, Zurich. Since Mr. M. Kaiser who was responsible for the T. C. Coombs-Coastline transaction is not with the bank any more, it is difficult for Rahn and Bodmer to piece together with certainty the relevant facts. Therefore, the following ***429** outline is, to a large extent, based on presumptions and retrospective assessments of documents and information obtained by the bank. The bank does not warrant the accuracy and completeness of the following outlines. We, however, hope that the information and the documents we are providing to you will be helpful in your proceedings."

At the same time Dr. Paltzer wrote to the S.F.O. attaching a copy of that letter without the enclosures. The original letter was passed by T.S.A. to the S.F.O. under section 2 of the Criminal Justice Act 1987 in the course of criminal proceedings for fraud instituted by the S.F.O. against the plaintiffs in connection with their dealings with the bank.

The plaintiffs were duly arraigned at the Crown Court at Middlesex Guildhall on an indictment containing two counts of conspiracy to defraud against both plaintiffs and attempting dishonestly to obtain property by deception against the first plaintiff alone. Two days prior to the pre-trial review the S.F.O. disclosed to the defence a copy of the letter to T.S.A. The letter was produced as part of the exhibits to the witness statements. When giving evidence Ms Garlick of the S.F.O. produced the letter during her evidence in chief. It was read in open court and the plaintiffs' counsel cross-examined her and Dr. Rahn, the first defendant in the civil proceedings, upon it when he gave evidence. No application was made either on behalf of the defendants or the prosecution before, during or after the criminal trial for any order restricting the use for which the letter could be put. After several weeks, at the end of the prosecution case, counsel for the plaintiffs submitted that there was no case to answer. The submission was upheld by the trial judge and verdicts of not guilty were recorded against both plaintiffs.

The Securities and Futures Authority (the successor to T.S.A.) acknowledge that the S.F.O. did not seek or

obtain the consent of Dr. Paltzer to disclose voluntarily to a third party his letter to Mrs. Wright. During the pre-trial procedures the prosecution made a claim of public interest immunity in respect of confidential information in the S.F.O.'s possession which included correspondence between Rahn and Bodmer and their legal adviser and T.S.A. No order was made in relation to "discovery" of correspondence between Rahn and Bodmer and T.S.A. In giving his ruling the trial judge said:

> "It is urged in favour of the immunity claim that disclosure would result in publication of sources of information and informants, which would inhibit the provision of a lot of such information in the future and so restrict the ability of the authority to discharge its duties - statutory duties - adequately. I ask myself: is immunity essentially necessary for the proper functioning of the public service which the authority is discharging? One must bear in mind that these documents are contemporary material (they were in some cases subsequent material) with the events which are complained of by both sides, and hence may prove of some value in helping the defence in seeking to ascertain the true attitudes and influences exerting themselves on the decisions and requirements of the Securities and Futures Authority. I therefore hold that in general (I am generalising because I have not seen the documents) documents in classes 1 to 4 ***430** should be disclosed to the defence, but I would qualify that by saying that there may well be some instances where the document itself discloses a particularly sensitive source which perhaps ought not to be disclosed in the particular circumstances of the case. If agreement on any such document's disclosure cannot be reached by the parties, it may well be that the matter will have to be returned to the court and I will have to peruse the document and perhaps modify this decision in relation to that document."

The proceedings

The plaintiffs claim damages for libel published or caused to be published by the defendants in the letter sent to Rosalind Wright of T.S.A. It is the plaintiffs' case that the letter contained an entirely inaccurate and misleading account of the defendants' dealing with T. C. Coombs, that the defendants deliberately misled T.S.A. and the S.F.O. in order to avoid payment of Can.$2m. to T. C. Coombs and dishonestly withheld crucial documents from the T.S.A. and S.F.O. in order to allege that the entire agreement for the sale of the Coastline Resources shares was fraudulent. The action was started by writ issued on 17 December 1993 in which the plaintiffs claim damages for libel in the letter to T.S.A. The statement of claim was served on 8 December 1994. The defence served on 26 February 1996 includes a claim for qualified, but not absolute, privilege and an assertion that the plaintiffs' claim is vexatious and an abuse of process. The defendants issued a summons seeking to strike out the action on the grounds that the documents sued on were obtained by the plaintiffs by way of disclosure in criminal proceedings against them.

The issues

Before Brooke J. it was agreed between counsel that there were five issues. (1) Is there an implied undertaking in criminal discovery as there is in civil? (2) Does it apply to all documents disclosed by the Crown without regard to the question whether the Crown obtained them voluntarily or by compulsion? (3) Does it apply to documents disclosed by the Crown both as "used" and "unused" documents? (4) Does it continue to apply after the relevant document has been read or referred to in open court in the criminal proceedings? (5) If the undertaking continues to apply, and a libel action is commenced in breach of the undertaking, does the court have any discretion not to strike it out as an abuse of process?

It must be emphasised that from the outset it was common ground between the parties that the letter and documents in question were not disclosed subject to any undertaking of confidentiality. The judge answered all five questions in the affirmative and concluded:

> "It follows, therefore, that in the present case the undertaking continues to apply, and these

> proceedings have been commenced in breach of it. While I would not wish to lay down any absolute rule, I can see no reason in the present context why this court should be willing to entertain proceedings based on a document that the plaintiffs had no business to be using without the consent of the Crown Court: as Sir Nicolas Browne-Wilkinson V.-C. said in Derby& Co. Ltd. v. Weldon (No. 2) (1988) 132 S.J. 1755 its use in such circumstances would prima facie constitute a contempt of court. For these reasons, therefore, I am of the opinion that these proceedings constitute an abuse of this court and that they should be struck out on these grounds. Miss Sharp submitted that if I came to this conclusion innocent plaintiffs might be bereft of a remedy even though they had suffered grievously at the hands of a malicious complainant who for some technical reason could not be sued for damages for malicious prosecution notwithstanding the recent liberalising decision of the House of Lords in Martin v. Watson [1996] A.C. 74. It may be that in such circumstances the Crown Court might be willing to exercise its discretion in favour of varying the undertaking, on an application made in due time, in order to permit justice to be done, for reasons similar to those which influenced the Court of Appeal in Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278. At all events there is nothing in my present judgment to deprive the Crown Court of the power to do justice, balancing all competing interests, along the lines advocated by the Court of Appeal in Marcel v. Commissioner of Police of the Metropolis [1992] Ch. 225."

The same five issues fall for consideration on this appeal.

Issue 1: Is there an implied undertaking in criminal discovery as there is in civil?

Several matters need to be examined in order to decide this issue. (a) What is the scope of the implied undertaking which applies in civil proceedings? (b) What is the rationale for the existence of the implied undertaking in civil proceedings? (c) What authority exists as to the existence of such an implied undertaking in criminal proceedings? (d) What is the position in relation to discovery in criminal proceedings? (e) Is it appropriate to imply an undertaking in criminal proceedings by analogy with the implied undertaking which exists in civil proceedings?

(a) What is the scope of the implied undertaking which applies in civil proceedings?

In civil proceedings a party who obtains discovery may use the documents disclosed to him only for the proper purposes of conducting his own case, and there is an implied undertaking by him not to use them for any collateral or ulterior purpose - any misuse of the documents may be restrained by injunction or punished as a contempt. An action based on a misused document will, ordinarily, be dismissed as an abuse of process. The implied undertaking may, in exceptional circumstances and on the application of the party obtaining discovery be relaxed or modified by the court: see *The Supreme Court Practice 1997,* vol. 1, pp. 420-421, para. 24/1/3. In Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756, 764-765, Hobhouse J. stated:

> "This undertaking is implied whether the court expressly requires it or not. The expression of the obligation as an implied undertaking given to the court derives from the historical origin of the principle. It is now in reality a legal obligation which arises by operation of law ***432** by virtue of the circumstances under which the relevant person obtained the documents or information. However treating it as having the character of an implied undertaking continues to serve a useful purpose in that it confirms that the obligation is one which is owed to the court for the benefit of the parties, not one which is owed simply to the parties; likewise, it is an obligation which the court has the right to control and can modify or

> release a party from. It is an obligation which arises from legal process and therefore is within the control of the court, gives rise to direct sanctions which the court may impose (viz. contempt of court) and can be relieved or modified by an order of the court. It is thus a formulation of the obligation which has merit and convenience and enables it to be treated flexibly having regard to the circumstances of any particular case."

The implied undertaking does not apply to documents which have been voluntarily disclosed by a party in the course of interlocutory proceedings: see Derby & Co. Ltd. v. Weldon (No. 2) (1988) 132 S.J. 1755. In that case Sir Nicolas Browne-Wilkinson V.-C. stated:

> "The voluntary disclosure of documents in the course of interlocutory proceedings by a party does not come within the rationale which is the basis of the implied undertaking relating to documents disclosed on discovery. In relation to documents voluntarily disclosed the court has not invaded the privacy of the party. The party has, for his own purposes in defending a case, decided himself to use the documents rather than maintain his privacy. It is the party who has destroyed the privacy of the document, not the plaintiff or the court . . . it is an unavoidable consequence of all litigation that a party who chooses to put in evidence, necessarily risks that such evidence becomes available to others. In my judgment the special protection given to documents disclosed under compulsion of discovery procedures does not apply to any wider class of documents."

However, once the document has been read to or by the court or referred to in open court, the matter is governed by R.S.C., Ord. 24, r. 14A, which was brought into force in order to reverse the effect of Home Office v. Harman [1983] 1 A.C. 280. R.S.C., Ord. 24, r. 14A provides:

> "Any undertaking, whether express or implied, not to use a document for any purposes other than those of the proceedings in which it is disclosed shall cease to apply to such document after it has been read to or by the court, or referred to, in open court, unless the court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs." See The Supreme Court Practice 1997, vol. 1, pp. 455-456, para. 24/14A/1.

Rule 14A was considered by Drake J. in Singh (Tejendra) v. Christie, The Times, 11 November 1993. In that case, a document which had been disclosed in discovery in an action and read in open court, was used as the basis for four subsequent defamation actions. The plaintiff relied upon rule 14A as releasing him from his undertaking. Drake J. stated:

> "The apparent effect on the implied undertaking by a party to whom a document has been disclosed on discovery seems at first sight ***433** clear enough: that is, that once the document has been read out or referred to in open court the party is completely freed from all restrictions and may use the document for any purpose whatsoever. That would include using the document as the basis for libel proceedings against strangers to the action in which the document was disclosed. It is a freedom which will apply unless, in accordance with a provision in the Order, the court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs. This complete freedom would however amount to a much greater change in

> the law than seems to have been the intended purpose for which the rule was made. . . . I think that the intention of the makers of the rule was merely to avoid the absurdity of the situation which arose in Home Office v. Harman [1983] 1 A.C. 280. . . . If the effect of rule 14A is limited to permitting the party subject to the undertaking to make known the contents of the disclosed documents, but does not have the effect of freeing him to use it for any other purpose, including bringing a libel action upon it, then the injustice of limiting the category of those who may apply under rule 14A would not arise. On the contrary, it would seem to me to explain and make sensible the provision that the application should be made only by the owner of the document, or a party to the action in which it is disclosed."

However, he recognised the danger of this limited approach:

> "The difficulty I find in adopting that interpretation is that rule 14A expressly refers to any undertaking 'not to use a document for *any* purposes' - to which I give emphasis. It does not say 'any undertaking not to make public the contents of such a document.' But despite what I see as a considerable difficulty in interpreting this rule, I cannot find that the scope of rule 14A is such as to effect a fundamental change in the law and at the same time work a considerable injustice on anyone in the situation of six of the defendants in these actions."

Drake J. therefore held that the plaintiff could not use the document in question as the basis for the defamation actions.

An application for leave to appeal was refused sub nom. Tejendrasingh v. Metsons (unreported), 20 May 1994; Court of Appeal (Civil Division) Transcript No. 669 of 1994, before Butler-Sloss L.J. and Sir Michael Kerr. Butler-Sloss L.J. stated:

> "Quite clearly, rule 14A, which was brought into effect to get rid of what have been called the absurdities of the Home Office v. Harman situation, is not to be used to enable a litigant who obtains documents in one set of proceedings to use them as the foundation for a wholly different, completely separate set of proceedings, as in this case for defamation. It is not, as I said, a matter of confidentiality; it is a matter of the undertakings. The scope of rule 14A does not, in my view, give the applicant the right to start quite different sets of proceedings relying upon those attendance notes."

***434** The question of the exact scope of R.S.C., Ord. 24, r. 14A is not a matter which must be decided on the facts of this case which is concerned with the disclosure of documents in criminal proceedings. However, Drake J.'s narrow interpretation of rule 14A sits uneasily with the rule's wide wording. The decision must be read in the light of Sir Nicolas Browne-Wilkinson V.-C. in Derby & Co. Ltd. v. Weldon (No. 2), 132 S.J. 1755:

> "I believe the purpose behind Ord. 24, r. 14A is to produce the result save in truly exceptional circumstances that once a document has been used and referred to in open court, it is a public document and no special undertaking continues."

The plaintiffs have sought to rely upon this dictum, applying it by analogy to criminal proceedings.

(b) What is the rationale for the existence of the implied undertaking in civil proceedings?

In Riddick v. Thames Board Mills Ltd. [1977] Q.B. 881, concerning the use of a memorandum disclosed in one

action as the basis for a subsequent defamation action, the Court of Appeal held that a party who disclosed a document on discovery was entitled to the protection of the court against any use of it otherwise than in the action in which it was disclosed. In the interests of public policy and the proper administration of justice, the plaintiff was not entitled to use it as the basis for the subsequent defamation action: see also Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756, 774e-g. Lord Denning M.R. stated, at p. 896:

> ”The memorandum was obtained by compulsion. Compulsion is an invasion of a private right to keep one’s documents to oneself. The public interest in privacy and confidence demands that this compulsion should not be pressed further than the course of justice requires. The courts should, therefore, not allow the other party - or anyone else - to use the documents for any ulterior or alien purpose. Otherwise the courts themselves would be doing injustice. Very often a party may disclose documents, such as inter-departmental memoranda, containing criticisms of other people or suggestions of negligence or misconduct. If these were permitted to found actions of libel, you would find that an order for discovery would be counter-productive. The inter-departmental memoranda would be lost or destroyed or said never to have existed. In order to encourage openness and fairness, the *public interest* requires that documents disclosed on discovery are not to be made use of except for the purposes of the action in which they are disclosed. They are not to be made a ground for comments in the newspapers, nor for bringing a libel action, or for any other alien purpose.” (Emphasis added.)

Stephenson L.J. stated, at pp. 901-902:

> ”the obligation is owed to the party who produces the document on discovery and to the court; that party is entitled to the protection of the court against the use of the document otherwise than in the action in which it is disclosed; and that protection is necessary for the *proper administration of justice*; it is important to the public and in the public ***435** interest that the protection should be enforced against anybody who makes improper use of it. . . .” (Emphasis added.)

He said, at pp. 902-903:

> ”There may be cases in which a plaintiff would be justified in bringing an action on a document disclosed in an earlier action. I do not say that it could never be done without abusing the process of the court. But generally speaking it would be an *abuse of its process* and in the circumstances of this case the plaintiff’s use of this memorandum is an improper use which the court should not countenance.” (Emphasis added.)

In Home Office v. Harman [1983] 1 A.C. 280, concerning the disclosure of documents to the press which had been read in court at trial, the House of Lords held that the fact that the documents were read in open court did not bring the implied undertaking to an end. As referred to above, the effect of this decision was reversed by the R.S.C., Ord. 24, r. 14A. Even so it is illuminating to consider the reasoning. Lord Diplock stated, at p. 300:

> ”The use of discovery involves an inroad, in the interests of achieving justice, upon the right of the individual to keep his own documents to himself; it is an inroad that calls for safeguards against abuse, and these the English legal system provides, in its own distinctive fashion, through its rules about abuse of process and contempt of court.”

Lord Keith of Kinkel stated, at p. 308:

> ”Discovery constitutes a very serious invasion of the privacy and confidentiality of a litigant’s affairs. It forms part of English legal procedure because the public interest in securing that justice is done between parties is considered to outweigh the private and public interest in the maintenance of confidentiality. But the process should not be allowed to place upon the litigant any harsher or more oppressive burden than is strictly required for the purpose of securing that justice is done. In so far as that must necessarily involve a certain degree of publicity being given to private documents, the result has to be accepted as part of the price of achieving justice. But the fact that a certain inevitable degree of publicity has been brought about does not, in my opinion, warrant the conclusion that the door should therefore be opened to widespread dissemination of the material by the other party or his legal advisers, for any ulterior purpose whatsoever, whether altruistic or aimed at financial gain.”

In Derby & Co. Ltd. v. Weldon (No. 2), 132 S.J. 1755 Sir Nicolas Browne-Wilkinson V.-C. sought to update and rationalise the approach:

> ”It will be helpful to state in outline the English law applicable to documents obtained on discovery in an action. The approach of English law is that discovery in the course of an action is an interference with the right of privacy which an individual would otherwise enjoy in relation to his own documents. As a result of the public interest in ensuring that all relevant information is before the court in adjudicating on the claim in the action, that right of privacy is invaded and the litigant is forced, under compulsion by the process ***436** of discovery, to disclose his private documents. But, such invasion of privacy being only for the purpose of enabling a proper trial of the action in which the discovery is given, the court is astute to prevent a document so obtained from being used for any other purpose. As a result the law is well established that the recipient of documents disclosed under compulsion of court proceedings holds those documents subject to an implied undertaking not, without the consent of the court, to disclose such documents to any third party or use the documents for any purpose other than the action in which they were disclosed.”

In Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756, Hobhouse J. continued the process and stated, at p. 765:

> ”The rational basis for the rule is that where one party compels another, either by the enforcement of a rule of court or a specific order of the court, to disclose documents or information whether that other wishes to or not, the party obtaining the disclosure is given this power because the invasion of the other party’s rights has to give way to the need to do justice between those parties in the pending litigation between them; it follows from this that the results of such compulsion should likewise be limited to the purpose for which the order was made, namely, the purposes of that litigation then before the court between those parties and not for any other litigation or matter or any collateral purpose: . . . It is also to be noted that this principle is independent of any question of confidentiality. The documents produced on discovery may or may not be confidential in character; the implied undertaking and the

> restriction upon the use that may be made of the documents or information by the party compelling their disclosure is independent of the actual character of the document or information. Confidentiality is relevant to the principle of privilege but not to the compulsion principle."

It is therefore apparent that the rationale for the existence of the implied undertaking in civil proceedings is based upon: (1) the "compulsion principle" - the discovery process compels a party to disclose documents or information whether he wishes to or not, and is therefore an invasion of his privacy. A litigant's rights give way to the need to do justice between the parties. Confidentiality is irrelevant. Voluntary disclosure does not attract the undertaking. (2) The "full and frank disclosure principle" - it follows from the compulsion principle that the invasion of a litigant's rights is counterbalanced by the limitation placed on the use to which the documents or information may be put, in order to encourage full and frank disclosure. This is achieved by the implied undertaking by the recipient to the court, not to the other party or any third party.

(c) What authority exists as to the existence of such an implied undertaking in criminal proceedings?

Brooke J.'s attention was drawn by counsel to the three cases where the issue of whether there was an implied undertaking in criminal proceedings had been raised: see British Coal Corporation v. Dennis Rye Ltd. (No. 2) ***437** [1988] 1 W.L.R. 1113; Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278 and McGrath v. Chief Constable of Lancashire Police (unreported), 3 April 1996.

In the British Coal Corporation case [1988] 1 W.L.R. 1113, documents created for the purpose of certain civil proceedings between the plaintiff and the defendants were handed to the police to assist with an investigation as a result of which criminal charges were brought against the defendants. Pursuant to the Attorney-General's Guidelines on the Disclosure of Information to the Defence issued in December 1981 and set out in Practice Note (Criminal Evidence: Unused Material) [1982] 1 All E.R. 734, the documents were supplied to the defendants by the police prior to the criminal trial. In the course of the criminal trial the judge ordered that the plaintiff disclose to the defendants further documents relevant to the criminal proceedings. The plaintiff thereupon disclosed those documents and others which were not directly relevant to those proceedings. All the documents disclosed in the course of the trial had been created for the purpose of the civil proceedings. The defendants were acquitted and the plaintiff applied in the civil proceedings for the return of all the documents. The matter came before the Court of Appeal.

One of the grounds upon which the plaintiff based its claim was that, as the documents had been disclosed in the course of the criminal proceedings the defendants were bound by an implied undertaking not to make any use of them for a collateral purpose: see the British Coal Corporation case [1988] 1 W.L.R. 1113, 1119-1120. The court was referred to Distillers Co. (Biochemicals) Ltd. v. Times Newspapers Ltd. [1975] Q.B. 613, Riddick v. Thames Board Mills Ltd. [1977] Q.B. 881 and Home Office v. Harman [1983] 1 A.C. 280. Neill L.J. identified the issue but declined to rule upon it, at p. 1120:

> "These authorities show that where discovery is made in civil proceedings the party to whom disclosure is made is bound by an implied undertaking not to use the documents disclosed for any collateral purpose. Such a collateral purpose would include the use of the disclosed documents in other proceedings. We were also referred to the recent amendment to the Rules of the Supreme Court, effected by Ord. 24, r. 14A. Basing itself on the existence of this implied undertaking in civil proceedings, the plaintiff argued that where documents are disclosed to the police for the purpose of the investigation of a possible criminal offence, and then made available to the defence in subsequent criminal proceedings in accordance with the practice authorised by the Attorney-General in the guidelines issued in December 1981, or are disclosed to the defence in the course of a criminal trial either by an order of the court or otherwise, the defendants to whom the documents are disclosed are bound by an implied undertaking analogous to

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> that which exists in a civil action. In view, however, of the clear conclusion which I have reached on the question of legal professional privilege, I do not find it necessary to reach any decision on this aspect of the case." (Emphasis added.)

The court did not have to decide the issue. Note that in any event, on the facts of that case, any order for delivery up of the documents disclosed ***438** in the criminal proceedings would be pointless because, as Neill L.J. pointed out at p. 1120g-h, if the documents were no longer privileged, the same documents would have to be disclosed in the course of the ordinary discovery in the present action.

The second case, Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278, concerned alleged malpractice by the West Midlands Police. B. had been convicted of unlawful wounding and his appeal against conviction was dismissed. The case was again referred to the Court of Appeal. The Court of Appeal (Criminal Division) ordered disclosure to B., for use on the hearing of the reference, of certain documents in the possession of the Police Complaints Authority ("P.C.A.") as a result of an investigation, on an implied undertaking not to use the disclosed documents otherwise than for the purposes of pursuing his criminal appeal on the reference, assurances having been given to informants that statements would not ordinarily be used otherwise than for the investigation of the complaint or for any criminal or disciplinary proceedings which might follow. The disclosed documents proved vital to the presentation of B.'s case, his appeal was allowed and his conviction was quashed. The applicants, Coventry Newspapers Ltd. ("C.N.L.") were the proprietors of a newspaper who were being sued for libel by two of the Serious Crime Squad officers. The applicants applied to the Court of Appeal (Criminal Division) to whom the implied undertaking had been given by B., to vary the undertaking to permit B. to disclose to them the authority's documents to enable them to plead justification in the libel action.

The Court of Appeal in the Coventry Newspapers Ltd. case was therefore not dealing with the question of whether such an implied undertaking existed in criminal proceedings, but whether such an implied undertaking should be varied. Nevertheless, it appeared from the judgment of Lord Taylor of Gosforth C.J., at p. 285, that such an implied undertaking was assumed to exist:

> "it is an application at the suit of . . . a third party for the court to release the appellant from his implied undertaking pursuant to which discovery of the P.C.A. documents was given under the court's order . . . But for such proposed order the appellant would clearly be unable to hand over the documents: he would be subject to an implied undertaking, analogous to that arising on discovery in civil proceedings, not to use the disclosed documents otherwise than for the purposes for which discovery was given, here the pursuance of the criminal appeal which is now, of course, successfully concluded. P.C.A. assert the undertaking and C.N.L. acknowledge it. What is in issue here is whether it should now be varied." (Emphasis added.)

Lord Taylor of Gosforth C.J. also referred, at p. 285h, to: "a public interest underlying the implication of the undertaking in the first place . . ." and accepted that the Court of Appeal (Criminal Division) alone, being the court to whom the implied undertaking was given, had power to vary it: see p. 286a-b. Lord Taylor of Gosforth C.J., at p. 286c-d, viewed the extent of the public disclosure of the documents as "but one of the considerations in play" and not the most material one in the circumstances of the case. The question of public disclosure was argued ***439** first, in relation to the issue of public interest immunity and secondly, in relation to the implied undertaking.

On the public interest immunity issue it was contended, at p. 289f-h, that the documents had been "read to or by the court, or referred to, in open court" within the meaning of R.S.C., Ord. 24, r. 14A. Reliance was placed on the judgment of Sir Nicolas Browne-Wilkinson V.-C. in Derby & Co. Ltd. v. Weldon (No. 2), 132 S.J. 1755 and Derby & Co. Ltd. v. Weldon (Nos. 3 & 4), The Times, 15 November 1988. It was submitted that, inviting analogy first between discovery in civil and in criminal proceedings, and then between the implied undertaking on the one hand and public interest immunity on the other,

that the court should conclude that the immunity too had lapsed: that there no longer remained any public interest in withholding the documents from further dissemination.

The court rejected that submission, at p. 290:

> "This submission appears to us unsound on several grounds. First, because rule 14A in any event expressly provides for the court to order otherwise if appropriate. More fundamentally, however, because the suggested analogy at once breaks down when it is recognised that the public interest immunity presently in question is not, or at least not principally, confidentiality-based. Rather, as was pointed out in Makanjuola v. Commissioner of Police of the Metropolis [1992] 3 All E.R. 617, it is intended to reassure informants that their statements will only be used for the investigation of complaints and for such criminal or disciplinary proceedings as directly follow. It is accordingly unnecessary to address the fine points of interpretation which rule 14A undoubtedly raises in the context of civil discovery for, even if Mr. Browne's arguments upon them are correct, that cannot avail him here."

On the issue of the implied undertaking, Lord Taylor of Gosforth C.J. stated, at p. 291:

> "It is the argument founded upon analogy with R.S.C., Ord. 24, r. 14A and it seems to us in this context a little stronger. The reason is this. Rule 14A appears clearly to postulate confidentiality as the central consideration underlying the implication of the undertaking in the first place. Once that confidentiality is dissipated by the use of the documents in open court, prima facie the undertaking lapses. But the argument still cannot carry Mr. Browne all the way. Because even if the element of confidentiality in the documents is entirely lost, the rule nevertheless clearly caters to other considerations: it expressly empowers the court 'for special reasons' to order the undertaking to continue. Even, therefore, were the rule 14A analogy exact, the future of this undertaking remains in the court's discretion."

Counsel for the P.C.A. submitted that only very exceptionally should the implied undertaking be varied to permit disclosed documents to be used for ulterior purposes, not least when the application was made by a third party and for the purposes of proceedings wholly unconnected with those in which discovery was ordered. It was contended that the "fortuitous intervention of a criminal appeal" during the course of the libel action, ***440** should not persuade the court to depart from its strict approach to implied undertakings.

The court dealt with that submission by drawing a distinction between an undertaking given in civil as opposed to criminal proceedings. Lord Taylor of Gosforth C.J. said, at p. 291:

> "Mr. Richard's argument would, we accept, be formidable indeed had the implied undertaking with which we are concerned been one given in the usual way in civil proceedings. Certainly nothing that we decide in the present case is intended in the least degree to diminish the high importance rightly recognised to attach to the concept of the implied undertaking as a necessary way of underpinning the integrity of the discovery process. But characterisations of discovery such as that of Lord Keith of Kinkel in Home Office v. Harman [1983] 1 A.C. 280, 308b, as 'a very serious invasion of the privacy and confidentiality of a litigant's affairs,' although of the clearest application to discovery given in private civil litigation, appear to us altogether less obviously apt in relation to an order such as that made by this court in the appellant's appeal.

> Orders for discovery rarely are made in criminal appeals and, when made, generally go, if not to the prosecution, then, as here, to a statutory body. Such bodies surely need little in the way of encouragement before making full and frank disclosure. In short, we have reached the conclusion that the public interest underlying this particular implied undertaking adds little, if anything, to that giving rise to the basic immunity claim attaching to these documents. If that immunity ought properly to be overridden in light of the countervailing public interest arising, then in our view that countervailing interest will outweigh too such limited value as still attaches to the implied undertaking." (Emphasis added.)

Having considered the question of public interest immunity, the Court of Appeal ordered that the undertaking should be varied to permit disclosure of the documents which were incorporated in B.'s appeal bundle, with the applicants undertaking to use the documents only for the purposes of defending the libel proceedings. In doing so Lord Taylor of Gosforth C.J. noted, at p. 292f-g, that the reassurance given to police complainants expressly admitted of exceptions and that it was:

> "a different case from those in which disclosure of this class of document is generally sought. The documents here are proposed for use not as a sword but as a shield; this is hardly a floodgate situation."

In the circumstances of the case it seemed to the court, at pp. 292-293:

> "nothing short of absurd to suppose that those who co-operated in this investigation - largely other police officers and court officials - will regret that co-operation, or that future generations of potential witnesses will withhold it, were this court now to release the documents to C.N.L. to enable them to defeat if they can an allegedly corrupt claim in damages."

However it should be noted that Lord Taylor C.J. had reservations about whether the Criminal Division of the Court of Appeal was the most ***441** suitable tribunal to deal with the case. He referred to the "very special facts of the case" and stated, at p. 286e: "This is not a case where we need decide difficult questions of law or lay down principles of general application." It was for that reason that Brooke J. found the case of limited assistance.

The defendants accept that the narrow issue in Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278 was a different one, namely, whether public interest immunity operated to prevent disclosure, but rely upon the fact that both parties in that case together with the court unhesitatingly accepted that an implied undertaking existed: see *per* Lord Taylor of Gosforth C.J., at p. 285e-f. The defendants contend that this was "persuasive authority of high value" to which the judge was entitled to give considerable weight.

The third case was McGrath v. Chief Constable of Lancashire Police (unreported), 3 April 1996, a decision of Forbes J. which concerned two applications by Mr. McGrath regarding his proposed use in civil proceedings of certain documents which formed part of the documentation served upon him by the Crown Prosecution Service ("C.P.S.") for the purpose of his criminal prosecution on various charges of fraud. The documents fell into two classes: (1) witness statements and exhibits served by the C.P.S. as part of the prosecution's case and upon which the prosecution intended to rely - "used material;" and (2) witness statements and other material upon which the prosecution did not intend to rely in order to advance the criminal proceedings and which had been served on Mr. McGrath pursuant to the Attorney-General's Guidelines on the Disclosure of Information to the Defence, Practice Note (Criminal Evidence: Unused Material) [1982] 1 All E.R. 734.

In relation to the unused material, the Chief Constable of Lancashire had sought an injunction against Mr. McGrath in July 1995 to restrain his proposed use of the unused material in intended libel proceedings on the basis that it

was subject to an implied undertaking that it was to be used only for the purpose of defending the criminal charges. The chief constable withdrew that action upon Mr. McGrath giving an undertaking to Morrison J. on 19 July 1995. Before Forbes J. Mr. McGrath sought a release from the express and implied undertakings to which the unused material was accepted to be subject. Therefore the only issue before the court was whether such a release should be granted.

Forbes J. stated:

> ”in both the proceedings in July 1995 and in those before me, it was accepted on behalf of Mr. McGrath, in the light of the decision of the Court of Appeal in Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278, that where ‘unused material’ has been served pursuant to an order of the court, it is subject to the implied undertaking alleged: . . . On behalf of Mr. McGrath, Mr. Bloom therefore accepted that, given the legally enforceable nature of the obligation to disclose ‘unused material to the defence, the unused material in this case was subject to the implied undertaking . . .”

In relation to the used material, Mr. McGrath sought a declaration that certain of the documents forming part of the used material were not ***442** subject to any implied undertaking that they could only be used by Mr. McGrath in the defence of the relevant criminal charges, or alternatively a release from any such implied undertaking. It was therefore an issue before the court whether witness statements and other documentary exhibits served on a defendant as part of the prosecution case were subject to an implied undertaking that the documents would be used solely for the purposes of those criminal proceedings.

On this issue, Forbes J. considered Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278 and noted that the documents in question in that case were not the statements and exhibits which had been served on B. as part of the prosecution’s case against him in the original criminal proceedings and said:

> ”In my judgment, it is clear that the documents in question were held to be subject to an implied undertaking by B. to the court that he would not use those documents otherwise than for the purposes for which discovery had been given - namely the pursuance of the criminal appeal: . . .”

Counsel for Mr. McGrath submitted that an analysis of the nature and reasons for the analogous implied undertaking in civil proceedings showed that the reasons for such an implied undertaking did not apply in the case of used material in criminal proceedings and contended that the essence of the implied undertaking in civil proceedings was the compulsory nature of the process of discovery, involving a serious interference with the right of privacy. It was submitted that the documents served by the prosecution as part of the evidence upon which it would rely in the criminal proceedings (”the used material”) were not served under compulsion and there was no invasion of privacy. He did accept that the prosecution’s obligation to disclose its evidence in advance of trial was compulsory in nature.

However, Forbes J. was unpersuaded by these submissions. He said:

> ”The compulsion, to which the prosecution is subject, to disclose its case in advance of a trial on indictment, does not arise as a mere incident of the burden and standard of proof which must be met by the prosecution in criminal proceedings. If that were the case, the compulsion would apply also to all summary trials in the vast majority of which there is no advance disclosure by the prosecution of the evidence upon which it intends to rely. In my opinion, the compulsion on the prosecution to disclose its case to a defendant in advance of trial on indictment is a direct consequence of the decision to prosecute the alleged offender on indictment, following investigation of an alleged offence by

> the appropriate authorities. . . . The vast majority of those who supply information to the police expect and are entitled to expect that the information will only be used for the purposes of the investigation and resulting criminal proceedings. For all other purposes the information is, in effect, treated as private. In the present case therefore, I am satisfied that the C.P.S. did act under compulsion of law in serving the witness statements and other documents upon which the prosecution relied in support of the criminal proceedings brought against Mr. McGrath (i.e. the 'used material'). Accordingly, for those reasons, I reject the fundamental and principal submission by which Mr. Bloom ***443** sought to persuade me that 'used material' in criminal proceedings is not subject to the alleged implied undertaking, in contrast to the position which he accepts applies to 'unused material.' In my opinion, the position relating to the disclosure of 'used material' in criminal proceedings is as analogous to the process of discovery in civil proceedings as that of 'unused material.' " (Emphasis added.)

It was submitted that there was a public interest in ensuring that any documents or witness statements obtained by the police in the course of investigating crime would only be used for the purposes of the resulting criminal proceedings, if any, and that such a restriction on the use of documents was needed to reassure informants and to secure their confidence and co-operation. Without such reassurance the public interest in the proper and successful prosecution of crime would suffer. Forbes J. stated:

> "These are compelling submissions and, in my judgment, they are correct. I am satisfied that the implied undertaking, which was recognised in Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278, is one which attaches to all the documents disclosed by the prosecution for the purposes of the criminal proceedings - whether the documents, in the event, are 'used' or 'unused' material. Lord Taylor of Gosforth C.J. made it clear in Ex parte Coventry Newspapers Ltd., at p. 291, that there is a public interest underlying the implied undertaking and that, for all practical purposes, that public interest is coextensive with the public interest in protecting the documents in question from disclosure - a public interest immunity which was then thought to subsist in the documents which were the subject matter of that judgment. It should be noted that the House of Lords has since made it clear that there is no public interest immunity attaching to the class of documents which the court was considering in Ex parte Coventry Newspapers Ltd.: see Reg. v. Chief Constable of West Midlands Police, Ex parte Wiley [1995] 1 A.C. 274. However, I am satisfied that the decision in Ex parte Wiley does not affect the material and relevant reasoning and judgment of the Court of Appeal in Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278 which decision is binding upon me. In my opinion, that decision establishes that the underlying public interest, which is served by the imposition of the implied undertaking, is the same as the public interest which was then thought to justify the immunity from disclosure of the relevant class of documents. The public interest is defined as one which is *not* based on confidentiality but rather on the need to 'reassure informants that their statements will only be used for the investigation of complaints and for such criminal or disciplinary proceedings as directly follow:' see *per* Lord Taylor of Gosforth C.J., at p. 290b."

Forbes J. then went on to consider whether Mr. McGrath should be released from the implied undertaking which

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applied to both the "used" and the "unused material" and from the express undertaking which he gave to the court on 19 July 1995 in respect of the "unused material:"

> "it will only be in very exceptional or very unusual circumstances that the court will be prepared to grant the necessary release or variation ***444** in the implied undertaking to enable the documents in question to be used in bringing and maintaining civil proceedings."

The facts of that case were, in the judgment of Forbes J., "sufficiently exceptional or unusual" to justify granting a variation of the relevant undertakings.

Brooke J. stated that he saw the force in the submission that if a complainant gave information voluntarily which turned out to be untrue he or she ought to be prosecuted by the police for wasting police time or perverting the course of justice, but he stated that even if Forbes J. went a little too far in the following passage:

> "The vast majority of those who supply information to the police expect and are entitled to expect that the information will only be used for the purposes of the investigation and resulting criminal proceedings. For *all* other purposes the information is, in effect, treated as private." (Emphasis added.)

That did not detract from the main thrust of what Forbes J. had to say in that passage with which Brooke J. agreed.

Having considered the above cases, Brooke J. held that an implied undertaking did exist in criminal proceedings. He based his reasoning on the analogy of the implied undertaking which exists in civil proceedings and could see "no good reason why the same principles should not apply to documents disclosed under compulsion in criminal proceedings . . ." He said:

> "The Crown Court is also a superior court of record: see section 45 of the Supreme Court Act 1981; and I can see no good reason why the same principles should not apply to documents disclosed under compulsion in criminal proceedings. I am therefore not at all surprised that the very experienced counsel who appeared in Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278 and McGrath v. Chief Constable of Lancashire made the concessions they did. In my judgment they were correct to do so as a matter of law."

The attention of this court has been drawn to Taylor v. Director of the Serious Fraud Office (unreported), 26 July 1996 - a decision of Sir Michael Davies given in chambers, but to be treated as having been given in open court, which was given after Brooke J. had given judgment in this case.

In Taylor's case the defendants sought to strike out a defamation action which was based on documents which had been disclosed by the Crown as *unused* material to two men who were defendants in a fraud prosecution. The documents were then disclosed to the plaintiff by solicitors for one of the defendants in the criminal proceedings. The documents had not been read out or referred to at the criminal trial, and were prima facie confidential and private. It was argued that there was no implied undertaking in criminal proceedings equivalent to that which applied in civil proceedings. Sir Michael Davies held that it was a breach of the implied undertaking to use the documents and struck out the action. He referred to Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278 and said: "To some extent, that case is, for our purposes, clouded by the fact that public interest immunity played a substantial part in the argument ***445** and decision, and it does not have any part to play here." And, to the statement by Lord Taylor of Gosforth C.J. that it was not a case where it was necessary to lay down principles of general application, he said: "But so trenchant is the judgment here, I do not think that comment prevents it from being of very considerable importance in this case."

Counsel for the plaintiff in Taylor's case argued that in Ex parte Coventry Newspapers Ltd. counsel should not have

conceded that the same considerations applied to implied undertakings in criminal as civil proceedings and that the judgment of the Court of Appeal was coloured by that concession. Sir Michael Davies indicated that he was not as persuaded that such a "watering down" was justified: he then referred to McGrath v. Chief Constable of Lancashire Police, 3 April 1996 and the judgment of Brooke J. in this case and stated:

> "What makes what Forbes J. said much stronger is the fact that he justifies the implied undertaking because it has the effect in criminal cases of enabling the court to control the use to which the documents can be put. That seems to me a fundamental matter of public policy. Here are documents which may contain, and very often do if a situation like this arises, and do here, matters which are sensitive, and perhaps more important for our purposes, contain matters which are potentially defamatory. . . . It does not seem to me to be in the interests of the public that in circumstances like this there should be opened up the possibility of countless, and I use the word deliberately, defamation cases arising from a situation like the present."

He struck out the action.

In summary, those decisions seem to recognise the necessity of an implied undertaking in criminal proceedings. In the British Coal Corporation case [1988] 1 W.L.R. 1113, it was unnecessary for the court to decide whether an implied undertaking existed. In Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278, the existence of an implied undertaking was assumed and the only issue before the court was its variation. McGrath's case, 3 April 1996 did decide that an implied undertaking applied to the "used" material as defined in that case. Forbes J. declined to draw a distinction between "used" and "unused" material. In Taylor's case, 26 July 1996 the documents in question had not been read or referred to in open court. The rationale advanced in those authorities is that an implied undertaking is necessary in criminal proceedings to reassure and thus not deter informers, and the fear of a flood of defamation actions.

(d) What is the position in relation to discovery in criminal proceedings?

In criminal proceedings, the law relating to the disclosure of documents has been a mixture of common law and statute. Historically the prosecution's duty to disclose unused material to the defence was first formulated in Rex v. Bryant and Dickson (1946) 31 Cr.App.R. 146 and extended in Dallison v. Caffery [1965] 1 Q.B. 348. The Attorney - General's Guidelines (Disclosure of Information to the Defence in cases to be tried on Indictment) were then issued in December 1981: see Practice Note (Criminal Evidence: Unused Material) [1982] 1 All E.R. 734. However those guidelines have now been largely superseded by subsequent case law: ***446** see for example Reg. v. Ward (Judith) [1993] 1 W.L.R. 619, Reg. v. Keane [1994] 1 W.L.R. 746 and *Archbold, Criminal Pleading, Evidence & Practice 1997*, paras. 12-46-12-54.

In criminal proceedings there is no duty of disclosure on third parties, although the concept of what constitutes the prosecution has gradually been extended: see Archbold, Criminal Pleading, Evidence & Practice 1997, paras. 12-45 and 12-48 (failure to disclose did not result in prejudice.)

The Criminal Procedure and Investigations Act 1996 establishes a general regime of disclosure by both prosecution and defence, replacing the common law rules as to disclosure in their entirety and being supplementary to the other statutory rules as to disclosure: see *Archbold, Criminal Pleading, Evidence & Practice 1997*, pp. 1210-1211, para. 12-45. The Act of 1996 has received the royal assent and section 17 came into force on 1 April 1997, after Brooke J.'s decision.

Although Brooke J.'s decision predates the Act of 1996, it is interesting to note the following provisions of section 17 which deal with the confidentiality of disclosed information. (1) Section 17(1) provides that if an accused is given or allowed to inspect a document under certain specified sections of the Act then, subject to sections 17(2) to (4), he must not use or disclose it or any information recorded in it. (2) Section 17(2) provides that the document may be used or disclosed by the accused in connection with the proceedings for whose purposes he was given the document or allowed to inspect it. (3) Section 17(3) makes an exception from the prohibition

against use or disclosure to the extent that a document has been displayed to the public in open court or to the extent that information has been communicated to the public in open court. It provides: "The accused may use or disclose - (a) the object to the extent that it has been displayed to the public in open court, or (b) the information to the extent that it has been communicated to the public in open court; . . ." (4) Section 17(4) to (6) provides a mechanism by which the accused may apply to the court for permission to use or disclose the document or information. The prosecutor or a person claiming to have an interest in the document or information may apply to the court to be heard on the application.

The commentary on section 17 in Halsbury's Statutes of England and Wales, 4th ed., vol. 12 (1997 reissue), p. 1801 is as follows:

> "This section is intended to protect *unused* material disclosed to the defence under this Part by requiring it to be treated confidentially. Such material may contain sensitive or potentially embarrassing information about individuals which could be used to harass witnesses or for blackmail. The type of situation that this section is intended to prevent is where, for example, unused material given to the defendant is circulated in prisons or disclosed in the press; the effect of this section is that an accused will, subject to the permission of the court, be able to use disclosed unused material only to prepare his defence or an appeal . . . Note that only unused material is protected by this section; the Government considered that it would be 'inappropriate' to place a special duty of confidentiality on the accused in respect of material that has been disclosed to the defence and will therefore be used in open court." (Emphasis added.)

***447** It is a contempt of court for a person knowingly to use or disclose a document or information recorded in it if the use or disclosure is in contravention of section 17: see section 18(1).

As I read the Act of 1996 its significance to the facts of this case is that (a) section 17 appears only to concern the disclosure of unused material - there appears to be no statutory restriction on the use of used material; (b) section 17(3) recognises, as R.S.C., Ord. 24, r. 14A does in civil proceedings, that the relevant undertaking does not apply where the documents or information have been displayed or communicated to the public in open court; and (c) section 17(6) provides a mechanism whereby the prosecutor or a person claiming to have an interest in the document or information may apply to be heard by the court where the accused has made an application under section 17(4). Given that the undertaking does not apply where the circumstances specified in section 17(3) arise, there would appear to be no statutory mechanism whereby a prosecutor or a person claiming an interest can make an application to the court seeking an order restricting the use of the document in question in the absence of an application having been made by the accused under section 17(4). This contrasts with the position under R.S.C., Ord. 24, r. 14A.

I have come to the conclusion that in the absence of a public interest immunity ruling to the contrary there never has been a fetter on the subsequent use of documents which have been "used" in the criminal process and the Act of 1996 confirms this.

(e) Is it appropriate to apply an implied undertaking in criminal proceedings by analogy with the implied undertaking which exists in civil proceedings?

The argument

The plaintiffs, in essence, submit that the analogy between criminal and civil proceedings is unconvincing; the position of the prosecution in a criminal case is not comparable with that of a plaintiff or a defendant in civil proceedings. In criminal cases, the prosecuting authority is under a strict and well-defined common law duty of disclosure. Such an authority is not a party to the dispute, is not, generally, the owner or author of the documents disclosed but is an independent public body acting in the interests of justice. That common law duty is converted into a statutory duty by section 3 of the Act of 1996. The plaintiffs reject the notion that the imposition of an implied undertaking is necessary on strong public policy grounds since otherwise prosecuting authorities would be deterred from strictly complying with their legal obligations of frank disclosure to the criminal defence solicitors. The reasons for implying the undertaking in civil proceedings are, submit the plaintiffs, not relevant in

the criminal context. If those rationales have no application, or rarely apply, to criminal proceedings then the court should not imply the undertaking in criminal proceedings.

It is the defendants' case that it is an equitable principle of general application that where a person receives documents from another by means of compulsory disclosure in particular legal proceedings, he is under a legal obligation not to use them for any purpose other than the conduct ***448** of those proceedings in which they were disclosed without the prior leave of the court under whose authority the documents were disclosed. The defendants submit that the argument that the reason in Riddick v. Thames Board Mills Ltd. [1977] Q.B. 881 for the existence of the implied undertaking in civil proceedings applies with even greater force to criminal cases and to the protection of informants from suit, than it does in civil litigation, is in order to protect informers.

Conclusion

I can find no basis for an implied undertaking in criminal proceedings on the grounds of privacy and confidentiality. It is foreseeable that any letter which is sent to a disciplinary body, if it is acted upon, will not preserve the anonymity of its source or the identity of the informant merely by an assertion of confidentiality. I note that in P. v. T. Ltd. [1997] 1 W.L.R. 1309, Sir Richard Scott V.-C. ordered disclosure of precise details of allegations made against a plaintiff which formed the basis for his dismissal by his former employers and disclosure of the identity of the complainant who made the allegations. He further ordered that the plaintiff was at liberty to use the documents and information so provided in an action against the unidentified informant in order to clear his name.

In the present case no confidentiality arises. This was conceded before the trial judge and before this court. On close perusal of the contemporaneous correspondence it is evident that the issues of confidentiality raised by the defendants and their lawyers related to the bank's obligations to their clients under Swiss law. No confidentiality could have been sought or given in respect of the letter or its enclosures. Accordingly it would have been impossible to restrict further use of it to the criminal proceedings on the basis of confidentiality. As Mr. Gray put it: the confidentiality of the letter, if it ever existed, evaporated in the course of the criminal trial.

Although the Act of 1996 was not in force when the matter was before Brooke J. it provides some indication of the intention of the legislature on confidentiality of documents in the criminal law process. It establishes a general regime of disclosure by the Crown and the defence enhancing the common law position. The effect of section 17 is to draw a distinction between used and unused material and to protect unused material by requiring it to be treated confidentially. Thus if a document is displayed in open court, or the information within it has been communicated to the public in open court, no such restriction applies, and the document may be used or disclosed by the accused without restriction. Parliament evidently considered it inappropriate to attach confidentiality in respect of material that has been disclosed to the defence and will be, or has been, used in open court.

Consequently I can discern no overriding public policy argument for the restriction of material disclosed during criminal proceedings and used in open court. I can find no justification for this court to proceed on the basis that prior to the Act of 1996 any restriction existed in relation to used material other than public interest immunity. I do not accept that section 17 should be construed so as to prevent the use of documents or information in the public domain to found an action for libel. In so ***449** concluding I am not deflected by decisions or dicta based on R.S.C., Ord. 24, r. 14A which suggests that libel actions should be treated differently: see Singh (Tejendra) v. Christie, The Times, 11 November 1993 and Taylor v. Director of the Serious Fraud Office, 26 July 1996. I prefer the reasoning of Sir Nicolas Browne-Wilkinson V.-C. that Ord. 24, r. 14A has the effect that, save in exceptional circumstances, once a document has been used and referred to in open court it is a public document and no special undertaking continues: see Derby & Co. Ltd. v. Weldon (No. 2), 132 S.J. 1755.

Accordingly, in my view exceptional or special circumstances in the criminal context can exist but should be confined to matters of public interest immunity, and absolute privilege. I do not regard the position of the Crown in a criminal case as analogous to that of a party in civil proceedings. The former is bound by a strict common law, and now statutory, duty to disclose documents of which the body is rarely the author or owner. Such documents are often obtained by compulsion. The disclosure must be in the interests of justice so that the accused knows the nature of the case against him, and so that he has access to documents which

might assist his case. I am unable to accept that public policy requires a duty on an accused not to use disclosed documents for any purpose other than the criminal proceedings on the ground that the Crown would be deterred from complying with their obligations of full disclosure in the interests of justice. The common law duty ensured that this did not happen; it is now a statutory duty.

The principle in Riddick v. Thames Board Mills Ltd. [1977] Q.B. 881 is firmly established in the civil law and there is clearly good reason for ensuring that private parties in litigation are not discouraged from making full and proper discovery. In my judgment, the reasons of public policy, proper administration of civil justice and abuse of civil process have no relevance in the criminal sphere where the rules of disclosure are for different purposes and now have statutory force.

To my mind, the defendants' most impressive argument is that without an implied undertaking informants would be exposed to the risk of proceedings based on such documents and so would be discouraged from coming forward. As Forbes J. aptly put it inMcGrath v. Chief Constable of Lancashire Police, 3 April 1996:

> "The vast majority of those who supply information to the police expect and are entitled to expect that the information will only be used for the purpose of the investigation and resulting criminal proceedings. For all other purposes the information is, in effect, treated as private."

It is said that there is an overriding public interest in protecting informants, witnesses and their sources.

I accept that there is a public interest in protecting informants. The police rely heavily upon information and intelligence provided by individuals close to criminals. Unless there is protection for informants many criminals would not be brought to justice. However I doubt that public policy recognises or requires a protection which is comprehensive as the defendants claim. There is no blanket protection for material disclosed in criminal proceedings. In a subsequent libel suit a distinction is drawn between publications in the preliminary stages and those in the course of, ***450** or sufficiently proximate to, the judicial process. The former are subject to qualified privilege; the latter are covered by absolute privilege.

Those who have absolute privilege are immune from suit "although the words written or spoken were written or spoken maliciously, without any justification or excuse, and from personal ill-will and anger against the party defamed:" see *per* Lopes L.J. in Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson [1892] 1 Q.B. 431, 451 and *Gatley on Libel and Slander*, 8th ed. (1981), p. 160, paras. 384 et seq. "This rule of law . . . is founded on public policy which requires that a . . . witness in giving evidence, oral or written, in a court of justice, shall do so with his mind uninfluenced by the fear of an action for defamation or a prosecution for libel:" see *per* Pigot C.B. in Kennedy v. Hilliard (1859) 10 I.C.L.R. 195, 209. I recognise however that informants are more likely to participate in the preliminary stages, and are less likely to give evidence and thus are unlikely to benefit from absolute privilege. Those who volunteer information enjoy only qualified immunity from proceedings in libel. But if the informants are honest their protection is complete. If "malicious, without justification or excuse or from personal ill-will" their protection is forfeit: see *Gatley on Libel and Slander*, paras. 384 et seq. The informant is not bereft of all protection. In exceptional cases of particular sensitivity where there is a legitimate reason for protecting the anonymity of the source that object can still be achieved by making a claim for public interest immunity, if necessary, by an ex parte application in camera. In the present case the Crown made an application but the trial judge rejected it.

Accordingly, I am of the view that there is no compelling reason for the implied undertaking on the ground that its absence will deter informants from coming forward. The honest have nothing to fear. The anonymity of those in peril can be protected. It is in the interests of justice that the dishonest should be deterred from disseminating calumny and perverting the course of justice. Thus, in practice, there is only a small risk to informants and it is hardly a floodgates situation. Moreover as a matter of public policy a person who is the victim of malicious false statements to regulatory bodies who wish "to put the record straight" should not be met by blanket protection of the kind advocated by the defendants. Qualified privilege is sufficient protection leaving the victim plaintiff to prove malice.

I venture to suggest that this analysis and approach does have the merit of conforming with article 6 of the

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Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd. 8969), which provides: "In the determination of his civil rights and obligations . . . everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Accordingly, I have come to the conclusion that it is not appropriate to imply an undertaking in criminal proceedings by analogy with the implied undertaking which exists in civil proceedings. It must follow that I must respectfully dissent from the conclusion of Brooke J. on the first issue when he found that an implied undertaking did exist.

***451** Issue 2: Does the implied undertaking apply to all documents disclosed by the Crown without regard to the question whether the Crown obtained them voluntarily or by compulsion?

If my analysis and conclusions are correct then the issue does not arise. If I am wrong then Brooke J. would be correct when he said:

> "it applies to all documents disclosed by the Crown without regard to the question whether the Crown obtained them voluntarily or by compulsion. In my judgment the courts would be doing a disservice to those engaged in the investigation of crime if they had to warn would be informants that less protection would be afforded to written information they supplied voluntarily, and in consequence, in fairness to their informants, they always had to have recourse to compulsory powers."

I would have to concede that an implied undertaking should apply to all documents regardless of whether they were obtained voluntarily or by compulsion. A prosecuting authority who discloses documents pursuant to its common law, and now statutory, obligations is not in the same position as a party to civil proceedings who voluntarily discloses documents at an interlocutory stage as was done in Derby & Co. Ltd. v. Weldon (No. 2), 132 S.J. 1755. If one recognises the underlying rationale of reassuring and not deterring informants, there is no logical reason for distinguishing between the means by which the documents were obtained. If such a distinction were recognised it might well be detrimental to the administration of justice, as it would discourage informers from volunteering information.

Issue 3: Does it apply to documents disclosed by the Crown both as used" and unused" documents?

If I am correct the issue does not arise. If I am wrong then I would still dissent from the conclusion of Brooke J., that the undertaking applied to both "used" and "unused" documents. This was based on his concurrence with the reasoning of Forbes J. in McGrath v. Chief Constable of Lancashire Police, 3 April 1996. As I read the Act of 1996 there is an implied distinction between used and unused material. If there is an undertaking it can only apply to unused material until the court releases the embargo. The undertaking could and should not attach to used material, particularly when the information and the identity of the informant were in the public domain, except where public interest immunity considerations arise.

Issue 4: Does it continue to apply after the relevant document has been read or referred to in open court in the criminal proceedings?

If I am correct the issue does not arise. If I am wrong, then I would be inclined to the view that the undertaking does continue to apply for so long as it remains unused and the court has made no order. Conversely I am satisfied that the undertaking would not continue to apply after it ***452** has been used, subject to public interest immunity considerations. It follows that I must dissent from the conclusion of Brooke J.:

> "In my judgment, therefore, even after documents have been read in open court, the court to whom the undertaking was given is still entitled to exercise control in this regard, and an application would have to be made to the court for the variation of the undertaking to permit their use in other proceedings."

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I prefer: (1) the reasoning and approach in civil proceedings: see R.S.C., Ord. 24, r. 14A and Derby & Co. Ltd. v. Weldon (No. 2), 132 S.J. 1755, but excluding Singh (Tejendra) v. Christie, The Times, 11 November 1993; (2) the rationale of section 17 of the Act of 1996; (3) an approach rooted in common sense that there should be no impediment on the use of information which is in the public domain subject to the very rare invocation of public interest immunity; and (4) the basic concept encapsulated in article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1953).

Issue 5: If the undertaking continues to apply, and a libel action is commenced in breach of the undertaking, does the court have any discretion not to strike it out as an abuse of process?

If I am correct and no undertaking exists it would not be an abuse of process to commence a libel action. If I am wrong then I am inclined to the view that if the publication is based on used material there would be no abuse of process and no discretion to strike it out on this ground. If it is based on unused material it would be a contempt of court and an abuse of process to commence an action. The court within its inherent jurisdiction and under R.S.C., Ord. 18, r. 19 would have power to strike it out on this ground. However I would not regard this power as absolute and the court, Crown Court or civil, has a discretion to vary the undertaking, on an application made in due time, to permit an aggrieved plaintiff to remedy an injustice he has suffered at the hands of the unscrupulous.

If this court were to exercise its discretion I would accede to the plaintiffs' argument, as set out in counsel's skeleton argument, that: "[they] became aware, without any impropriety on their part, of a document which on their case is seriously libellous of them and highly damaging. This being a strike-out application the facts pleaded in the statement of claim must be assumed to be true . . . there is clear reason to suppose that a major wrong has been done to the plaintiffs . . . and [they] should be able to obtain redress for the wrong done to them."

In my judgment at this stage of the civil process the balance of competing public interests comes down in favour of the plaintiffs.

I wish to add a postscript based on authority which was not cited before this court. Earlier I drew a distinction between statements made during the actual proceedings - attracting absolute privilege - and statements made in the preliminary stages of investigation - attracting qualified privilege. On the basis of Hasselblad (G.B.) Ltd. v. Orbinson [1985] Q.B. 475, 504b-e, Evans v. London Hospital Medicial College (University of London) [1981] 1 W.L.R. 184, 191f-h, *per* Drake J., X (Minors) v. Bedfordshire County Council [1995] 2 A.C. 633, 755e-f, and ***453** *Phipson on Evidence*, 14th ed. (1990), pp. 149-152, para. 9-14, it would appear at least arguable that the defendants in this case could raise the defence of absolute immunity. However, this has not been pleaded, nor was the point argued below or before this court. Thus it would not be appropriate for this court to maintain Brooke J.'s decision to strike out on this ground.

I would therefore allow the appeal and reinstate the action.

Schiemann L.J.

I agree.

Staughton L.J.

The rule in civil proceedings

Documents disclosed by one party to another in civil proceedings, as part of the process of discovery, may not be used for other purposes without leave of the court. One should notice three limitations on the rule. First, it does not apply to documents disclosed voluntarily by one party in interlocutory proceedings: see Derby & Co. Ltd. v. Weldon (No. 2), 132 S.J. 1755, where Sir Nicolas Browne-Wilkinson V.-C. said: "The voluntary disclosure of documents in the course of interlocutory proceedings by a party does not come within the rationale which is the basis of the implied undertaking relating to documents disclosed on discovery."

Secondly, so far as the cases show the rule applies only to the parties to the proceedings in which the documents are disclosed, and to those, such as Miss Harman, the solicitor, who have access to the documents on their behalf: see the hypothetical example given by Lord Diplock in Home Office v. Harman [1983] 1 A.C. 280, 305, and Lord Roskill, at p. 322: "a party to whom discovery has been made is in relation to his opponent's

documents at a great advantage in comparison with the rest of the world." A stranger who happens to be in court is not deemed to have given an implied undertaking. He is free to make such use as he pleases of the information which is publicly imparted to the rest of the world, subject of course to the general law for example in relation to defamation.

Thirdly, a civil litigant is, as it seems to me, forbidden only to use the documents disclosed on discovery by his opponent and the information in them; he remains free to sue in another action on the basis of information which he has obtained from another source. Authority for the first part of the proposition is said to be found inSybron Corporation v. Barclays Bank Plc. [1985] Ch. 299. The second part is supported, so far as I am aware, only by common sense. It cannot be the law that a litigant, having from the start information and evidence which would enable him to bring an action against another, becomes disqualified from using it if that information and that evidence are later disclosed to him on discovery in another action to which he is a party.

The implied undertaking in civil proceedings is thus a somewhat unusual creature. It is imposed not by statute or a rule of court but by the common law; it is carefully tailored as a remedy for the intrusion on a litigant's privacy; and although described as an implied undertaking it is a rule which neither party can unilaterally disclaim. The origin and true ***454** nature of the rule are, if I may say so, well described by Hobhouse J. in Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756, 764-765:

> "This undertaking is implied whether the court expressly requires it or not. The expression of the obligation as an implied undertaking given to the court derives from the historical origin of the principle. It is now in reality a legal obligation which arises by operation of law by virtue of the circumstances under which the relevant person obtained the documents or information. However treating it as having the character of an implied undertaking continues to serve a useful purpose in that it confirms that the obligation is one which is owed to the court for the benefit of the parties, not one which is owed simply to the parties; likewise, it is an obligation which the court has the right to control and can modify or release a party from. It is an obligation which arises from legal process and therefore is within the control of the court, gives rise to direct sanctions which the court may impose (viz. contempt of court) and can be relieved or modified by an order of the court. It is thus a formulation of the obligation which has merit and convenience and enables it to be treated flexibly having regard to circumstances of any particular case. Treating the duty as one which is owed to the court and breach of which is contempt of court also involves the principle that such contempts of court can be restrained by injunction and that any person who knowingly aids a contempt or does acts which are inconsistent with the undertaking is himself in contempt and liable to sanctions: see Distillers Co. (Biochemicals) Ltd. v. Times Newspapers Ltd. [1975] Q.B. 613."

An implied obligation which the parties cannot contract out of is not a creature wholly unknown to the law; see for example the implied terms in section 8 of the Hire Purchase Act 1938. It is, as Hobhouse J. said, in reality an obligation imposed by law.

R.S.C., Ord. 24, r. 14A

Although this rule does not, in my opinion, apply to criminal proceedings in the Crown Court, we ought to consider it when deciding whether the common law rule for civil proceedings should also apply in crime. The rule provides:

> "Any undertaking whether express or implied not to use a document for any purposes other than those of proceedings in which it is disclosed, shall cease to apply to such document after it has been read to or by the court, or referred to, in open court

> unless the court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs."

This rule came into force in 1987.

There can be little doubt that the rule resulted from the settlement that was reached of Miss Harman's application to the European Commission ***455** of Human Rights against the United Kingdom, quoted by Hirst J. in Bibby Bulk Carriers Ltd. v. Cansulex Ltd. [1989] Q.B. 155, 159:

> "The Government are prepared to undertake to seek to change the law so that it will no longer be a contempt of court to make public material contained in documents compulsorily disclosed in civil proceedings, once those documents have been read out in open court. The substance of the change would be that where a document or part of a document so disclosed to a party in civil proceedings has been read out in open court, the implied undertaking given by the person to whom such disclosure has been made not to use the document for any purpose other than the proper conduct of his own case should not prevent his using that document for the purpose of his making the contents of the document, of that part of it, as the case may be, known to any person. This change would not apply in the case of a document, or part of a document, which was the subject of an order of the court preventing its disclosure otherwise than to the parties to the action."

There remains a question whether Ord. 24, r. 14A reproduces exactly what the United Kingdom undertook to do, or whether it goes a good deal further than that.

That question was decided by Drake J. in Singh (Tejendra) v. Christie, The Times, 11 November 1993 and on appeal by Butler-Sloss L.J. and Sir Michael Kerr in this court in Tejendrasingh v. Metsons, 20 May 1994. It was held that the effect of the rule was limited to allowing the party subject to the undertaking to make known the contents of the documents; it did not have the effect of freeing him to use it for any other purpose, including bringing a libel action upon it. I have to say with great respect to two distinguished colleagues, that the decision in Singh's case is not binding upon us (see *The Supreme Court Practice 1997*, p. 948, para. 59/1/61) and ought not to be followed. It was made in a series of applications for an extension of time and leave to appeal all of which were refused. The applicant was a litigant in person of whose litigation it was said "These cases do not deserve to be heard" and who was warned that he was in danger of being held to be a vexatious litigant. The court was not, so far as I can tell, referred to the decision of Sir Nicolas Browne-Wilkinson V.-C. in Derby & Co. Ltd. v. Weldon (No. 2), 132 S.J. 1755, where it was held, if indeed it was disputed, that Ord. 24, r. 14A enabled documents to be disclosed in other proceedings if the condition laid down by the rule was fulfilled. In *Style & Hollander's Documentary Evidence*, 5th ed. (1995), p. 272 it is said that, when rule 14A applies, "The holder of the document is then completely freed from all restrictions and can use the document for any purpose whatsoever." It is then suggested that the decision of Drake J. in Singh (Tejendra) v. Christie, The Times, 11 November 1993 was incorrect. To the same effect is Matthews and Malek, Discovery (1992), pp. 260-261, paras. 12.22-12.23.

Criminal proceedings

Against that background, I turn to consider what the rule is in criminal proceedings in the Crown Court. At the start I would emphasise that we ***456** are dealing in this case with a document which was disclosed to the plaintiffs because it formed part of the material which the prosecution wished to put before the court. It was exhibited to the witness statement of an official of the Serious Fraud Office. That it may or may not have done much to forward the prosecution case is immaterial. What is more, the document was read or referred to in open court, in evidence in chief and cross-examination. It certainly entered the public domain.

Anyone who wishes to prosecute someone in the Crown Court is obliged to disclose his witness statements and exhibits as part of the prosecution process. Despite inquiries, counsel were unable to tell us the source of that

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obligation; perhaps it is too well known to be readily available. In a sense, I suppose, the prosecutor is subject to compulsion, since his duty is to prosecute: and if he does not disclose his witness statements and exhibits he cannot discharge that duty. But clearly it is a considerable stretching of language to say that the prosecutor's privacy is thereby invaded, which is commonly the justification for the rule in civil proceedings.

The leading case on the topic under this head is Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278. There the Criminal Division of this court had ordered disclosure to an appellant and his advisers of documents assembled by the Police Complaints Authority; and the publishers of the "Coventry Evening Telegraph" applied to the court for the appellant to be released from his implied undertaking not to disclose the documents to anyone else. The publishers wished, with the appellant's consent, to use the documents in defending a libel action which police officers had brought against them. It was thus common ground that there was an implied undertaking by an appellant to whom documents were disclosed by an order of the Court of Appeal (Criminal Division). Lord Taylor of Gosforth C.J. said as much, at p. 285:

> "In form it is an application at the suit of C.N.L. as a third party for the court to release the appellant from his implied undertaking pursuant to which discovery of the P.C.A. documents was given under the court's order of 9 July 1991 - released that is to the extent of permitting him to disclose the documents to C.N.L., they for their part undertaking to the court to hold them for the strictly limited purpose of defending the libel proceedings brought against them by Woodly and Clifford. But for such proposed order the appellant would clearly be unable to hand over the documents: he would be subject to an implied undertaking, analogous to that arising on discovery in civil proceedings, not to use the disclosed documents otherwise than for the purposes for which discovery was given, here the pursuance of the criminal appeal which is now, of course, successfully concluded. P.C.A. assert the undertaking and C.N.L. acknowledge it. What is in issue here is whether it should now be varied."

Lord Taylor of Gosforth C.J. referred to an argument based on an analogy with Ord. 24, r. 14A and said, at p. 291, that "Once . . . confidentiality is ***457** dissipated by the use of the documents in open court, prima facie the undertaking lapses." He continued:

> "Mr. Richard's argument would, we accept, be formidable indeed had the implied undertaking with which we are concerned been one given in the usual way in civil proceedings. Certainly nothing that we decide in the present case is intended in the least degree to diminish the high importance rightly recognised to attach to the concept of the implied undertaking as a necessary way of underpinning the integrity of the discovery process. But characterisations of discovery such as that of Lord Keith of Kinkel in Home Office v. Harman [1983] 1 A.C. 280, 308b, as 'a very serious invasion of the privacy and confidentiality of a litigant's affairs,' although of the clearest application to discovery given in private civil litigation, appear to us altogether less obviously apt in relation to an order such as that made by this court in the appellant's appeal. Orders for discovery rarely are made in criminal appeals and, when made, generally go, if not to the prosecution, then, as here, to a statutory body. Such bodies surely need little in the way of encouragement before making full and frank disclosure."

That supports the view which I have already expressed, that invasion of privacy is not exactly how one would characterise the obligation of a prosecutor to disclose his witness statements and exhibits. Whether it is apt to describe the prosecutor's obligation to disclose unused material is or may be another question. It is not what we have to decide today.

In McGrath v. Chief Constable of Lancashire Police, 3 April 1996, the defendant on a criminal charge was served both with witness statements and exhibits which the prosecution intended to use as part of their case, and also with unused material. He applied for a declaration that he was entitled to make use of the first class of material in a civil action, and for leave to use the second class of material also. Forbes J. held that the used material was subject to an implied undertaking, in the same way as it was conceded that the unused material was. He supported this conclusion by reference to the judgment in the Coventry Newspapers Ltd. case [1993] Q.B. 278. For my part, I cannot agree that the Coventry Newspapers Ltd. decision necessarily applies to a case where there has been no specific order for disclosure of documents; and if it does apply to the disclosure of unused material without an order, I do not accept that it applies to documents disclosed as part of the prosecution case.

Taylor v. Director of the Serious Fraud Office (unreported), 26 July 1996 was concerned with unused material, which had not been read out or referred to in the criminal trial. Sir Michael Davies ordered a libel action based upon it to be struck out.

In Cunningham v. Essex County Council, The Times, 31 March 1997, Judge Rivlin Q.C. followed the decision of Brooke J. in the present case.

Despite this impressive concurrence of opinion among judges at first instance, I do not consider that the defendant in a criminal trial is under any implied undertaking as to the use of material disclosed to him as part of the prosecution case, whether or not it is read out or referred to in open court. It was not in my judgment an invasion of privacy which caused that material to be disclosed. That seems to me to be what Lord ***458** Taylor of Gosforth C.J. was saying in the Coventry Newspapers Ltd. case [1993] Q.B. 278, and I agree with it.

There is one further source which lends strong support for that conclusion. It is the Criminal Procedure and Investigations Act 1996. Section 17 provides:

> "(1) If the accused is given or allowed to inspect a document or other object under - (a) section 3, 4, 7, 9, 14 or 15, or (b) an order under section 8, then, subject to subsections (2) to (4), he must not use or disclose it or any information recorded in it. (2) The accused may use or disclose the object or information - (a) in connection with the proceedings for whose purposes he was given the object or allowed to inspect it, (b) with a view to the taking of further criminal proceedings (for instance, by way of appeal) with regard to the matter giving rise to the proceedings mentioned in paragraph (a), or (c) in connection with the proceedings first mentioned in paragraph (b). (3) The accused may use or disclose - (a) the object to the extent that it has been displayed to the public in open court, or (b) the information to the extent that it has been communicated to the public in open court; but the preceding provisions of this subsection do not apply if the object is displayed or the information is communicated in proceedings to deal with a contempt of court under section 18. (4) If - (a) the accused applies to the court for an order granting permission to use or disclose the object or information, and (b) the court makes such an order, the accused may use or disclose the object or information for the purpose and to the extent specified by the court."

The important point to my mind is that none of the sections referred to in section 17(1)(a) deals with the disclosure of witness statements and exhibits which are part of the prosecution case. They are all concerned with disclosure of unused material. Why the omission? Does it mean that subsection (3), which licenses use of material that has been read in open court, applies to the compulsorily disclosed unused material but not to that which was part of the prosecution's case? Such a result would be bizarre. The true answer must be that there is no need to make provision for the release of material in the prosecution case, as it is not subject to any implied undertaking against disclosure in the first place.

Section 17 came into force on 1 April 1997. But it has been available as a guide to what Parliament thought the existing law to be since it was enacted on 4 July 1996: compare Reg. v. Secretary of State for the Home Department, Ex parte Fire Brigades Union [1995] 2 A.C. 513.

If I understood him correctly, Mr. Moloney argued that the present appeal could be decided on the narrow ground of abuse of process. It was submitted that, even if there was no implied undertaking, no breach, no contempt of court, still it was an abuse of process to use the document in question in the present action. I say only that I can detect no support whatever for such doctrine.

I would allow this appeal. The defendants must rely on the protection afforded to them, where appropriate, by absolute or qualified privilege in defamation proceedings. Otton L.J. in his penultimate paragraph has ***459** referred to cases which elucidate the privilege that is available to witnesses. We heard no argument on that topic, but clearly it may well be relevant if this action proceeds further. I agree that we should not rule upon it at the present stage. It is not pleaded, the full facts may not be known, and we would have to recall the parties for further argument. It must be considered, if at all, on some other occasion.

Representation
Solicitors: Sheridans; Bircham & Co.

Appeal allowed with costs. Leave to appeal refused. ([Reported by Isobel Collins, Barrister])

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[1998] Q.B. 424

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EXHIBIT CC

ICLR

***177 Taylor and Another Appellants v. Director of the Serious Fraud Officeand Others Respondents**

Image 1 within document in PDF format.

House of Lords
29 October 1998

[1998] 3 W.L.R. 1040

[1999] 2 A.C. 177

Lord Lloyd of Berwick, Lord Goff of Chieveley, Lord Hoffmann, Lord Hope of Craighead and Lord Hutton

Kennedy and Millett L.JJ. and Sir Brian Neil
1998 July 6, 7; Oct. 29
1997 June 23; July 22

Analysis

Practice—Discovery—Use of documents—Documents prepared by prosecution in course of investigation disclosed to accused in criminal proceedings—Documents shown to plaintiff by accused's solicitor—Plaintiff bringing libel action based on documents—Whether abuse of process—Whether implied undertaking not to use documents for purposes other than defence in criminal trial—Whether absolute immunity from suit

The first defendant was investigating the activities of D. and F. in connection with a fraud where moneys obtained from the victim had passed through the hands of the first plaintiff, a solicitor practising in the Isle of Man, or the second plaintiff, a company controlled by him. The second defendant, an employee of the S.F.O., wrote a letter to the Attorney-General of the Isle of Man, requesting assistance in the investigation and setting out the facts as they appeared to the S.F.O., which suggested that the first plaintiff had been a party to the fraud. The second defendant also spoke to the fourth defendant, an employee of the third defendant, the Law Society, and made a file note which recorded their views that the first plaintiff was a co-conspirator and should be struck off as a solicitor. The plaintiffs were not charged with any offence. When criminal proceedings were begun against D. and F., the first defendant disclosed to their solicitors the unused material which had come into existence during the investigation, including the letter and the file note. The first plaintiff was shown the unused material when he was asked by F.'s solicitors to give evidence for F. The plaintiffs began an action for defamation against the defendants based on the contents of the letter and the file note. The judge granted the defendants' application to strike out the action as an abuse of process, holding that the disclosure to F.'s solicitors had been subject to an implied undertaking that the documents would not be used for any purpose other than F.'s defence. The Court of Appeal held that there was no such implied undertaking but dismissed the plaintiffs' appeal on the ground that the documents were immune from suit because they were brought into existence for the purposes of a criminal investigation.

On the plaintiffs' appeal:-

Held, dismissing the appeal,
(1) that in order to ensure that the privacy and confidentiality of those who made, and those who were mentioned in, statements contained in unused material which had come into existence as a result of a criminal investigation were not invaded more than was absolutely necessary for the purposes of justice, compliance by the prosecution with its ***178** obligation to disclose all such material to the defence generated an implied undertaking not to use the material for any purpose other than the conduct of the defence; and that, accordingly, the documents disclosed to F.'s solicitors could not be used for the purposes of the action for defamation (post, pp. 203C-D, 204G-H, 210E-H, 211A-F, 212D-E, 220C-D).
Mahon v. Rahn [1998] Q.B. 424, C.A. disapproved.
(2) (*Per* Lord Goff of Chieveley, Lord Hoffmann, Lord Hope of Craighead and Lord Hutton) that the absolute immunity from suit which applied to judges, advocates and witnesses in respect of statements made in court extended also to out of court statements which could fairly be said to be part of the process of investigating a crime or a possible crime with a view to a prosecution; and that, accordingly, the statements made in the letter and the file note were subject to absolute immunity from suit in respect of an action for defamation (post, pp. 204G-H, 214D-215B, 219D-F, 220C-D, 221B-G, 222B).
Dictum of Drake J. in Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184, 192 approved.

Decision of the Court of Appeal [1997] 4 All E.R. 887 affirmed.

The following cases are referred to in their Lordships' opinions in the House of Lords:

•Bennett v. Commissioner of Police for the Metropolis (1997) 10 Admin.L.R. 245
• Coventry Newspapers Ltd., Ex parte [1993] Q.B. 278; [1992] 3 W.L.R. 916; [1993] 1 All E.R. 86, C.A..
• D. v. National Society for the Prevention of Cruelty to Children [1978] A.C. 171; [1977] 2 W.L.R. 201; [1977] 1 All E.R. 589, H.L.(E.).
• Docker v. Chief Constable of West Midlands Police, The Times, 29 April 1998; Court of Appeal (Civil Division) Transcript No. 472 of 1998, C.A..
•Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184; [1981] 1 All E.R. 715
• Hill v. Chief Constable of West Yorkshire [1989] A.C. 53; [1988] 2 W.L.R. 1049; [1988] 2 All E.R. 238, H.L.(E.).
• Home Office v. Harman [1983] 1 A.C. 280; [1982] 2 W.L.R. 338; [1982] 1 All E.R. 532, H.L.(E.).
• Mahon v. Rahn (unreported), 19 June 1996; [1998] Q.B. 424; [1997] 3 W.L.R. 1230; [1997] 3 All E.R. 687, C.A..
•Mann v. O'Neill (1997) 71 A.L.J.R. 903
• Marrinan v. Vibart [1963] 1 Q.B. 528; [1962] 3 W.L.R. 912; [1962] 3 All E.R. 380, C.A..
• Munster v. Lamb (1883) 11 Q.B.D. 588, C.A..
•Practice Note (Criminal Evidence: Unused Material) [1982] 1 All E.R. 734
•Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756; [1991] 3 All E.R. 878
•Rees v. Sinclair [1974] 1 N.Z.L.R. 180
• Reg. v. Brown (Winston) [1994] 1 W.L.R. 1599; C.A..; [1998] A.C. 367; [1997] 3 W.L.R. 447; [1997] 3 All E.R. 769, H.L.(E.).
• Reg. v. Davis [1993] 1 W.L.R. 613; [1993] 2 All E.R. 643, C.A..
• Reg. v. Keane [1994] 1 W.L.R. 746; [1994] 2 All E.R. 478, C.A..
• Reg. v. Maguire [1992] Q.B. 936; [1992] 2 W.L.R. 767; [1992] 2 All E.R. 433, C.A..
• Reg. v. Ward (Judith) [1993] 1 W.L.R. 619; [1993] 2 All E.R. 577, C.A..
• Roy v. Prior [1971] A.C. 470; [1970] 3 W.L.R. 202; [1970] 2 All E.R. 729, H.L.(E.).
• Silcott v. Commissioner of Police of the Metropolis (1996) 8 Admin.L.R. 633, C.A..
• Watson v. M'Ewan [1905] A.C. 480, H.L.(Sc.).
• X (Minors) v. Bedfordshire County Council [1995] 2 A.C. 633; [1995] 3 W.L.R. 152; [1995] 3 All E.R. 353, H.L.(E.).

The following additional cases were cited in argument in the House of Lords:

•Canada v. Lukasik (1985) 18 D.L.R. (4th) 245
• Connelly v. Director of Public Prosecutions [1964] A.C. 1254; [1964] 2 W.L.R. 1145; [1964] 2 All E.R. 401, H.L.(E.).
•Dooley v. C. N. Weber Ltd. (1994) 118 D.L.R. (4th) 750
• Marcel v. Commissioner of Police of the Metropolis [1992] Ch. 225; [1992] 2 W.L.R. 50; [1992] 1 All E.R. 72, C.A..
• Trapp v. Mackie [1979] 1 W.L.R. 377; [1979] 1 All E.R. 489, H.L.(Sc.).

The following cases are referred to in the judgment of the Court of Appeal:

• Arrows Ltd. (No. 4), In re [1995] 2 A.C. 75; [1994] 3 W.L.R. 656; [1994] 3 All E.R. 814, H.L.(E.).
• Coventry Newspapers Ltd., Ex parte [1993] Q.B. 278; [1992] 3 W.L.R. 916; [1993] 1 All E.R. 86, C.A..
•Distillers Co. (Biochemicals) Ltd. v. Times Newspapers Ltd. [1975] Q.B. 613; [1974] 3 W.L.R. 728; [1975] 1 All E.R. 41
•Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184; [1981] 1 All E.R. 715
• Hasselblad (G.B.) Ltd. v. Orbinson [1985] Q.B. 475; [1985] 2 W.L.R. 1; [1985] 1 All E.R. 173, C.A..
• Home Office v. Harman [1983] 1 A.C. 280; [1982] 2 W.L.R. 338; [1982] 1 All E.R. 532, H.L.(E.).
• Lincoln v. Daniels [1962] 1 Q.B. 237; [1961] 3 W.L.R. 866; [1961] 3 All E.R. 740, C.A..
• Mahon v. Rahn (unreported), 19 June 1996, Brooke J.; [1998] Q.B. 424; [1997] 3 W.L.R. 1230; [1997] 3 All E.R. 687, C.A..
• Marcel v. Commissioner of Police of the Metropolis [1992] Ch. 225; [1991] 2 W.L.R. 1118; [1991] 1 All E.R. 845; [1992] Ch. 225; [1992] 2 W.L.R. 50; [1992] 1 All E.R. 72, C.A..
• Marrinan v. Vibart [1963] 1 Q.B. 528; [1962] 3 W.L.R. 912; [1962] 3 All E.R. 380, C.A..
•Morris v. Director of the Serious Fraud Office [1993] Ch. 372; [1993] 3 W.L.R. 1; [1993] 1 All E.R. 788
• Munster v. Lamb (1883) 11 Q.B.D. 588, C.A..
•Practice Note (Criminal Evidence: Unused Material) [1982] 1 All E.R. 734; 74 Cr.App.R. 302

•Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756; [1991] 3 All E.R. 878
• Reg. v. Keane [1994] 1 W.L.R. 746; [1994] 2 All E.R. 478, C.A..
• Reg. v. Ward (Judith) [1993] 1 W.L.R. 619; [1993] 2 All E.R. 577; 96 Cr.App.R. 1, C.A..
• Richards v. Naum [1967] 1 Q.B. 620; [1966] 3 W.L.R. 1113; [1966] 3 All E.R. 812, C.A..
• Saif Ali v. Sydney Mitchell & Co. [1980] A.C. 198; [1978] 3 W.L.R. 849; [1978] 3 All E.R. 1033, H.L.(E.).
• Silcott v. Commissioner of Police of the Metropolis (1996) 8 Admin.L.R. 633, C.A..
• Watson v. M'Ewan [1905] A.C. 80, H.L.(Sc.).
• X (Minors) v. Bedfordshire County Council [1995] 2 A.C. 633; [1995] 3 W.L.R. 152; [1995] 3 All E.R. 353, H.L.(E.).

The following additional cases were cited in argument in the Court of Appeal:

• British Coal Corporation v. Dennis Rye Ltd. (No. 2) [1988] 1 W.L.R. 1113; [1988] 3 All E.R. 816, C.A..
• Davis v. Johnson [1979] A.C. 264; [1978] 2 W.L.R. 553; [1978] 1 All E.R. 1132, H.L.(E.).
• Gold v. Essex County Council [1942] 2 K.B. 293, C.A..
• Johnson v. Agnew [1978] Ch. 176; [1978] 2 W.L.R. 806; [1978] 3 All E.R. 314, C.A..; [1980] A.C. 367; [1979] 2 W.L.R. 487; [1979] 1 All E.R. 883, H.L.(E.).
•Miller v. Scorey [1996] 1 W.L.R 1122; [1996] 3 All E.R. 18
• Morelle Ltd. v. Wakeling [1955] 2 Q.B. 379; [1955] 2 W.L.R. 672; [1955] 1 All E.R. 708, C.A..
• Young v. Bristol Aeroplane Co. Ltd. [1946] A.C. 163; [1946] 1 All E.R. 98, H.L.(E.).

Appeal from Sir Michael Davies sitting as a judge of the Queen's Bench Division.

By a writ endorsed with a statement of claim issued on 24 March 1996 as subsequently amended the plaintiffs, Thomas Denton Taylor and Monarch Assurance Plc., of which he was managing director, brought an action for defamation against the defendants, the Serious Fraud Office, Katherine McKenzie, the Law Society and Neil Rogerson. By summonses dated 1 May 1996 and 29 May 1996 the first and second defendants, and the third and fourth defendants respectively sought orders that the writ and statement of claim be struck out pursuant to R.S.C., Ord. 18, r. 19 or under the inherent jurisdiction of the court. On 26 July 1996 Sir Michael Davies made the orders sought.

By a notice of appeal dated 20 August 1996 the plaintiffs appealed with leave, on the grounds, inter alia, that the judge had (1) erred in law in holding that the prosecution in the criminal proceedings against D. and F. were under a duty to disclose to them the documents on which the plaintiffs based their action; (2) erred in law in holding that an implied undertaking not to use documents disclosed by one party to another for purposes collateral to the proceedings in which they were disclosed arose by operation of law in criminal proceedings; (3) erred in law in holding that the implied undertaking was binding as against the plaintiffs, who were not defendants to the criminal proceedings and to whom the documents were properly disclosed by F.; and (4) wrongly exercised his discretion in striking out the plaintiffs' statement of claim.

The facts are stated in the judgment of Kennedy L.J.

Leolin Price Q.C. and *Julian Knowles* for the plaintiffs. Mahon v. Rahn [1998] Q.B. 424 was determinative as to whether the documents were "used" or "unused" since criteria in Young v. Bristol Aeroplane Co. Ltd. [1946] A.C. 163 were not applicable.

If there was an undertaking not to use documents disclosed in the criminal proceedings for any collateral or ulterior purpose that undertaking was not binding on the plaintiffs, who obtained the documents properly ***181** from F.'s solicitors. However, the disclosure by F. to the first plaintiff was not in breach of such an undertaking because F. made the disclosure for the purposes of his criminal proceedings. There was no reason of public policy to prevent the first plaintiff from seeking by action protection of his reputation. Documents obtained from public bodies in criminal proceedings, if not covered by public interest immunity, do not fall within the scope of an undertaking given by third parties.

The court should decline to rule on absolute privilege and qualified privilege because they were not pleaded by the defendants as defences.

Andrew Caldecott Q.C. and *Catrin Evans* for the

defendants. Mahon v. Rahn is not decisive on the issue whether unused material is subject to an implied undertaking. [Reference was made to Gold v. Essex County Council [1942] 2 K.B. 293; Morelle Ltd. v. Wakeling [1955] 2 Q.B. 379; Davis v. Johnson [1979] A.C. 264; Johnson v. Agnew [1978] Ch. 176 and Young v. Bristol Aeroplane Co. Ltd. [1946] A.C. 163.]

Prior to the Criminal Procedure and Investigations Act 1996, pre-trial disclosure in criminal proceedings was governed by Practice Note (Criminal Evidence: Unused Material) [1982] 1 All E.R. 734 and Reg. v. Keane [1994] 1 W.L.R. 746. Generally, material disclosed pursuant to an obligation to disclose for a particular purpose should only be used for that purpose: see British Coal Corporation v. Dennis Rye Ltd. (No. 2) [1988] 1 W.L.R. 1113 and Marcel v. Commissioner of Police of the Metropolis [1992] Ch. 225. There are policy reasons why a person should be able to speak freely when giving proofs of evidence, reporting to the Director of Public Prosecutions or otherwise making statements with a view to a criminal prosecution: see Watson v. M'Ewan [1905] A.C. 480; Marrinan v. Vibart [1963] 1 Q.B. 528; Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184 and X (Minors) v. Bedfordshire County Council [1995] 2 A.C. 633. There is a presumption against any collateral use of such material. The concept of an implied undertaking is a convenient mechanism: see Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756. [Reference was also made to Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278.] If policy imposes an implied undertaking, it is absurd if third parties receiving the material with notice of the undertaking are free to ignore it: see Distillers Co. (Biochemicals) Ltd. v. Times Newspapers Ltd. [1975] Q.B. 613. [Reference was also made to Munster v. Lamb (1883) 11 Q.B.D. 588 and Lincoln v. Daniels [1962] 1 Q.B. 237.] Striking out the action as an abuse of process in the circumstances was a proper exercise of the judge's discretion: see Miller v. Scorey [1996] 1 W.L.R. 1122.

In any event, the action should be struck out, under R.S.C., Ord. 18, r. 19, on the ground that the relevant publications were immune from suit because they were protected by absolute privilege: see Silcott v. Commissioner of Police of the Metropolis (1996) 8 Admin.L.R. 633

Price Q.C. replied.

Cur. adv. vult.

22 July. The following judgments were handed down

Kennedy L.J.

This is the plaintiffs' appeal from a decision of Sir Michael Davies, sitting as a judge of the Queen's Bench Division, who on ***182** 27 June 1996 ordered that the plaintiffs' action be struck out against all four defendants.

Facts

For the purposes of this appeal the facts can be briefly stated. In 1994 the Serious Fraud Office ("S.F.O.") was investigating the activities of Charles Deacon, James Fuller and John Patrick Savage, who were alleged to have committed a serious and complex fraud. The investigations resulted in January 1996 in Deacon and Fuller being convicted of conspiracy to defraud, by which time Savage had died. But on 4 May 1994, during the course of the investigations, Katherine McKenzie, an investigating lawyer employed by the S.F.O., wrote to seek the assistance of the Attorney-General for the Isle of Man in relation to the investigation. It had apparently emerged that Mr. Taylor, a solicitor in the Isle of Man, (and in England) had, on behalf of clients, invested money with Deacon and Savage, and the letter proposed that Mr. Taylor be interviewed, and that Ms McKenzie and Detective Constable Walker of Staffordshire Police be given authority to undertake their inquiries in the Isle of Man.

On 17 May 1994, as part of the investigation, Ms McKenzie and Detective Inspector Hulse of Staffordshire Police went to the Solicitors Complaints Bureau at Leamington Spa to see Neil Rogerson, a Law Society employee, who explained how the compensation fund worked and its application to the instant fraud inquiry. A file note was made. By that date the criminal proceedings against Deacon and Fuller had already been transferred to the Crown Court and on 24 October 1994 the S.F.O. disclosed to the defendant's solicitors in the criminal case "unused material" which included the letter of 4 May 1994 and the file note of 17 May 1994.

In May 1995 Mr. Taylor was asked by counsel representing Fuller if he would be prepared to assist, and

a meeting was arranged. To enable him to prepare for that meeting he was shown amongst other documents the letter of 4 May 1994 and the file note of 17 May 1994 and he was, he says, concerned because in those documents he was being portrayed by Ms McKenzie as a conspirator.

The defamation action

By a specially endorsed writ issued on 24 March 1996 Mr. Taylor and Monarch Assurance Plc., of which he is managing director, commenced this action against the Director of the S.F.O., Ms McKenzie, the Law Society and Neil Rogerson. The plaintiffs were subsequently given leave to amend the writ and all subsequent proceedings to show the S.F.O. as the title of the first defendant, and nothing now turns on that. The statement of claim sets out in full the letter of 4 May 1994, and asserts that the words used, in their natural and ordinary meaning, were defamatory of the plaintiffs. In paragraph four of the statement of claim the word defendant is persistently used in place of the word plaintiff, but the meaning is clear. Similar allegations are made in relation to the meeting of 17 May 1994, based on the file note, although here again the misdescription of the parties makes it difficult to disentangle what precisely is being alleged. In ***183** paragraph 11 of the statement of claim criticism is made of disclosure of the file note to Fuller's legal advisers.

On 1 May 1996 the Treasury Solicitor, acting for the first and second defendants, took out a summons which sought an order that the writ and statement of claim be struck out pursuant to R.S.C., Ord. 18, r. 19 or under the inherent jurisdiction of the court, on the grounds that: "(a) as against the first defendant they disclosed no reasonable cause of action and/or are embarrassing: (b) as against each of the first and second defendants they are scandalous and/or an abuse of the process of the court."

On 29 May 1996 solicitors acting for the third and fourth defendants also took out a summons seeking an order that the action against those defendants be struck out pursuant to Ord. 18, r. 19 or under the inherent jurisdiction of the court. Thus the matter came before Sir Michael Davies on 26 July 1996, when he made the order to which I have already referred.

The decision under appeal

As the judge pointed out:

> "All the causes of action derived from the letter, the file note, and any oral statements which led to them and the plaintiffs only acquired access to them because they were disclosed as unused material by the crown to Fuller's legal advisers. These were documents which were prima facie confidential and private, and this, I think, may be important, neither of the documents nor the oral conversations were read out or referred to at the criminal trial."

The judge found:

> "(1) that it was the duty of the prosecution to disclose the two documents without formal order; (2) that in civil proceedings there is an implied undertaking that documents disclosed on discovery must not be used for any purpose other than the purposes of the case in which they are disclosed [in this court it has been common ground that such an undertaking extends to a third party who sees documents as a result of discovery and knows that they have been available in that way - as the first plaintiff saw them in the present case]; (3) that it is not in the interests of the public that there should be opened up the possibility of countless defamation cases arising from situations like those in the present case; (4) that when shown the documents the first plaintiff was subject to an implied undertaking to the court, which was entitled to control the documents, and that it was a breach of that undertaking for him to use them for the purposes of this action; (5) that if such documents are to be used for any purpose other than that for which they are disclosed an application should be made to the Crown Court to release the undertaking."

In arriving at his conclusion the judge referred to various authorities including, in particular, the decision at first instance of Brooke J. in Mahon v. Rahn (unreported), 19 June 1996. That decision was reversed by another division of the Court of Appeal [1998] Q.B. 424, and Mr. Leolin Price, who has appeared for the plaintiffs before us, contends that because of the ***184** way in which Mahon's case was decided by this court we must now allow this appeal. Before I turn to consider what was decided by this Court in Mahon v. Rahn, and the extent to which this court is bound by that decision, it is in my judgment appropriate to consider how Mr. Caldecott, for the defendants, puts his case in relation to the main issue, namely whether, in the absence of recent binding authority, this court should say that these plaintiffs were entitled to start proceedings on the basis of documents disclosed to the first plaintiff in the way that I have described.

Why maintain confidentiality?

Unfortunately no prosecuting authority was a party to Mahon's case, so this court did not have the advantage of the submissions which we have heard.

As Mr. Caldecott pointed out, although it can be valuable to see what, if anything, is done in civil litigation to restrict collateral use of documents disclosed on discovery, the approach if carried too far can lead to error, because if the reasons for restriction which apply in relation to civil litigation are not present in the criminal field it does not necessarily follow that in relation to criminal litigation there should be no restrictions. There may be, and he submits that there are, quite separate and powerful reasons for imposing and maintaining restrictions in the criminal field. The first and most obvious of those reasons is the need to sustain and encourage the free flow of information from informants both to initiate and to achieve progress with criminal inquiries. By informants I do not mean only those who operate close to criminals and give information for reward. I mean anyone in a position to give useful information, such as a neighbour who may have made a potentially significant observation, or an employer who may have suspected an employee of dishonesty. If informants are to be encouraged to be forthcoming and frank it is obviously essential for them to know that so far as possible the information which they give will remain confidential. In order to ensure that no injustice is done to a defendant in a criminal trial the information may have to be made available to that defendant, or to those acting for him, for the purposes of conducting his defence in that case, but the needs of justice require no wider disclosure. So long as the information does not actually become public as a result of it being used at a criminal trial it seems to me that, save in highly exceptional cases, no significant damage can be done to anyone's reputation as a result of the very limited disclosure to which I have just referred, and so the common good clearly requires that the documents disclosed should go no further. Otherwise not only will there be a real danger of informants being stifled by the threat, if not the reality, of civil litigation, but there will also be a risk of their being ostracised or subjected to violence and intimidation from those sympathetic to the criminal's cause. To say that informants have nothing to fear because a prosecutor can always seek a special order to safeguard particularly sensitive information and that if the action against them should happen to take the form of a claim for damages for defamation they can, if not malicious, sustain a defence of qualified privilege or even absolute privilege is, in my judgment, a wholly inadequate response. No one, least of all a bona fide potential informer, wishes to be dependent upon the prosecutor's ***185** view of what is sensitive, or to be sued (especially if the cause of action is one for which legal aid is not available), and if he can avoid those risks by withholding information he will do so.

A second compelling reason in favour of maintaining confidentiality as far as possible is that the material gathered in during the course of a criminal investigation and properly disclosed on discovery will often affect others who may never even have given a statement to anyone, and who may not even be aware of the disclosure. For example, disclosed material may show that someone other than the defendant was originally suspected of the crime, or a letter properly written in confidence by A to B may exist which is disparaging to C. Long after the letter was written a prosecution of B may lead to the disclosure of that letter as unused material. If C obtains access to it and sues A it is, in my judgment, plain that justice is not being done if A is simply left to avail himself if he can of such defence as he can raise to an action in defamation. Similarly, if it is not C who obtains access to the letter but a newspaper, which refuses to reveal its source, C's reputation may be seriously damaged before he can do anything to stop it. It may be information affecting his private life, it may even affect vulnerable children.

A third reason for maintaining confidentiality, demonstrated by the facts of this case, is the need to enable those investigating crime to operate freely, to follow leads, to consider suspects, and to record their thoughts without the fear of parasitic litigation.

I have therefore no hesitation in concluding that the interests of justice are best served if material which is disclosed to a defendant by the prosecution as part of the criminal process is subject to the restriction that it can only be used for the purposes of conducting the defence in those proceedings, at least until it enters the public domain by being referred to in open court. I accept, as will become apparent, that at present, even since the implementation of the Criminal Procedure and Investigations Act 1996, the restriction is not precisely as I have suggested that it should be, but it is Mr. Caldecott's submission that long prior to the Act the law had demonstrated in many fields, including in particular in the field of defamation, a policy against allowing, without the leave of the court, collateral use of information which it required to be disclosed for the purposes of particular proceedings where such information had not been referred to in open court. Mr. Caldecott submits that it was because it was not alerted to the existence of that well established policy that this court in Mahon's case fell into error.

Relevant authorities

It is said that only limited assistance can be gained from cases concerning the alleged misuse of material disclosed in criminal proceedings because there are few such cases. No doubt that is because extensive disclosure by the prosecution of material other than that relied on in open court is a recent development: see Practice Note (Criminal Evidence: Unused Material) [1982] 1 All E.R. 734, Reg. v. Ward [1993] 1 W.L.R. 619, and Reg. v. Keane [1994] 1 W.L.R. 746. Bearing that in mind Mr. Caldecott submits that the policy of the law can be seen in many cases in other fields of law to which we were referred. Those cases show, he submits, a ***186** recognition that private law remedies, such as seeking an injunction, or raising a defence of privilege, are inadequate. As I have already indicated the injured party may not know of the collateral publication until serious damage has been done. He may not know who to proceed against because he may not know how the information became public, he may not have the necessary means, his opponent may be impecunious, or if he takes proceedings in defamation he may be met by a defence of justification, in which event no interlocutory injunction will normally be granted.

Mr. Caldecott submits, and I accept, that by granting the defence of absolute privilege to every advocate and every witness in a trial in respect of what is said in court, and in respect of fair and accurate reports thereof, the courts have long recognised the need to protect the trial process from extraneous influences, and, he submits, that privilege, which arises from public policy, is more widely available than was recognised by this court in Mahon v. Rahn [1998] Q.B. 424. In Munster v. Lamb (1883) 11 Q.B.D. 588 the defendant to the action in defamation was a solicitor who had used the words complained of when conducting a defence at petty sessions. The Court of Appeal held that he was entitled to the protection of absolute privilege and explained why. Brett M.R. said, at p. 604:

> "To my mind it is illogical to argue that the protection of privilege ought not to exist for a counsel, who deliberately and maliciously slanders another person. The reason of the rule is, that a counsel, who is not malicious and who is acting bona fide, may not be in danger of having actions brought against him. If the rule of law were otherwise, the most innocent of counsel might be unrighteously harassed with suits, and therefore it is better to make the rule of law so large that an innocent counsel shall never be troubled, although by making it so large counsel are included who have been guilty of malice and misconduct."

In other words qualified privilege was not a sufficient safeguard because of the dangers of being "harassed with suits," one of Mr. Caldecott's arguments in the present case. Fry L.J. made the same point, at p. 607:

> "The rule of law exists, not because the conduct of those parties ought not of itself to be actionable, but because if their conduct was actionable, actions would be brought against judges and witnesses in cases in which they have not spoken with malice, in which they have not spoken

> with falsehood. It is not a desire to prevent actions from being brought in cases where they ought to be maintained that has led to the adoption of the present rule of law; but it is the fear that if the rule were otherwise, numerous actions would be brought against persons who were merely discharging their duty."

In Watson v. M'Ewan [1905] A.C. 480 the House of Lords held that the privilege which protects the witness from an action in slander in respect of his evidence in the witness box also protects him against the consequences of statements made to the client and his solicitor when preparing the case for trial. The Earl of Halsbury L.C. said, at p. 487:

> "It is very obvious that the public policy which renders the protection of witnesses necessary for the administration of justice must as a ***187** necessary consequence involve that which is a step towards and is part of the administration of justice namely, the preliminary examination of witnesses to find out what they can prove."

Mr. Caldecott invites us to note the thinking which is there articulated. In Lincoln v. Daniels [1962] 1 Q.B. 237 this court made it clear that the decision in Watson's case [1905] A.C. 480 must not be read too widely, but Devlin L.J. reiterated the reasons for the rule of absolute privilege saying [1962] 1 Q.B. 237, 256:

> "The rule of absolute privilege, as has so often been pointed out, has not been devised so as to protect malicious persons but to ensure that judges and others engaged in the administration of justice should be free from the fear of proceedings and 'the vexation of defending actions.'"

In Marrinan v. Vibart [1963] 1 Q.B. 528 the cause of action was conspiracy, the plaintiff alleging that two police constables had conspired to defame him in a report to the Director of Public Prosecutions, in evidence given at a trial, and in testimony to an inquiry ordered by the benchers of an Inn of Court. On a preliminary issue Salmon J. held that each publication was absolutely privileged, and that decision was upheld by this court. Sellers L.J. said, at p. 535:

> "Whatever form of action is sought to be derived from what was said or done in the course of judicial proceedings must suffer the same fate of being barred by the rule which protects witnesses in their evidence before the court and in the preparation of the evidence which is to be so given."

Mr. Caldecott submits that there is an obvious parallel between that case and the position of the second and fourth defendants in the present case. Of course we are not concerned with the defence of absolute privilege - no defence has yet been served. The problem is that even if such a defence is available it does not prevent proceedings being started, and if there is any doubt as to the availability of the defence of absolute privilege it will not be considered as a preliminary issue: see Richards v. Naum [1967] 1 Q.B. 620.

The present case also raises the question of the extent to which confidentiality or privilege attaches to material disclosed so as to restrain someone other than the defendant. In Distillers Co. (Biochemicals) Ltd. v. Times Newspapers Ltd. [1975] Q.B. 613, in the context of civil litigation, that problem was addressed. An expert who was advising some claimants in their action against Distillers was given access to material disclosed by the defendants in that action. He agreed to sell the material to a newspaper, and refused to return it after the claimants' action had been settled. The court ordered that it be returned, Talbot J. saying, at p. 621:

> "Those who disclose documents on discovery are entitled to the

> protection of the court against any use of the documents otherwise than in the action in which they are disclosed. I also consider that this protection can be extended to prevent the use of the documents by any person into whose hands they come unless it be directly ***188** connected with the action in which they are produced. I am further of the opinion that it is a matter of importance to the public, and therefore of public interest, that documents disclosed on discovery should not be permitted to be put to improper use and the court should give its protection in the right case."

Mr. Caldecott of course submits that the same line of reasoning should be adopted in relation to material disclosed to the defence as unused material in the course of a criminal prosecution.

In Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184 the plaintiff had been arrested and charged with the murder of her five-month-old son by morphine poisoning, on the basis of post mortem investigation results provided by the defendants. Further investigations led to no evidence being offered, and she was acquitted. She then commenced civil proceedings against the defendants alleging negligence, thus illustrating, as Mr. Caldecott has pointed out, that a person who starts civil proceedings on the basis of material disclosed during the course of a criminal prosecution will not always seek damages for defamation. He or she may select a different cause of action. The defendants successfully moved to set aside the statement of claim on the basis that they were at all times acting in the course of preparing evidence for a possible criminal prosecution, and for that reason were *immune from any civil proceedings* arising from their acts. Drake J. reviewed the line of authority to which I have already referred, and, having referred to a test used by the House of Lords in Saif Ali v. Sydney Mitchell & Co. [1980] A.C. 198, said [1981] 1 W.L.R. 184, 192:

> "I would alter it to apply it to the immunity attaching to a witness or possible witness in a criminal investigation, thus: the protection exists only where the statement or conduct is such that it can fairly be said to be part of the process of investigating a crime or a possible crime with a view to a prosecution or possible prosecution in respect of the matter being investigated."

If that is right then it would appear to have direct application to the facts of the present case. The importance of the decision in Evans's case is twofold - (1) the immunity from suit is not the same as absolute privilege because the cause of action was one for which absolute privilege would not have afforded any defence; (2) the immunity did not arise out of the way in which the plaintiff obtained the information which enabled her to sue. It arose out of the nature of the activity being undertaken by the defendants at the time of the acts complained of.

In Mahon v. Rahn [1998] Q.B. 424 Otton L.J. did refer briefly at the end of his judgment to Evans's case and to two other decisions namely Hasselblad (G.B.) Ltd. v. Orbinson Ltd. [1985] Q.B. 475 and X v. Bedfordshire County Council [1995] 2 A.C. 633, saying that it was "at least arguable" that the respondents in Mahon's case [1998] Q.B. 424 could raise the defence of absolute immunity. But it had not been pleaded or argued, either in the Court of Appeal or in the court below, so Otton L.J. considered that it would not be appropriate to maintain the first instance decision on that ground. That, is not our position. We have had the benefit of argument, in particular at an adjourned hearing, in relation to that ***189** defence and the relevant cases have been cited to us. The decision in the Hasselblad case [1985] Q.B. 475 is sufficiently far away from the facts of the present case for me not to need to pause to consider it, but X v. Bedfordshire County Council [1995] 2 A.C. 633 is a decision to which I will later refer.

The Criminal Justice Act 1987 established the S.F.O. and gave to the director certain investigative powers, but only for the purposes of an investigation (seesection 2(1)), and the Act in section 3(5) sets out the purposes for which information obtained may be used. In Morris v. Director of the Serious Fraud Office [1993] Ch. 372 the court considered a liquidator's application under section 236 of the Insolvency Act 1986 for an order that the S.F.O. produce certain documents in its possession, and Sir Donald Nicholls V.-C. said, at p. 380:

> "I can see no justification for implying a general power for the S.F.O. to disclose information, obtained in the exercise of compulsory powers conferred by the Act, to persons not named in section 3. . . . When information is obtained in exercise of those powers the S.F.O. may use the information for those purposes and purposes reasonably incidental thereto and such other purposes as may be authorised by statute, but not otherwise."

Mr. Caldecott submits first that the Act of 1987 gives some useful indication how Parliament expects confidence to be respected so far as practicable when documents are brought to light during the course of criminal investigations, and, secondly, that it would be curious, to say the least, if a responsible investigating authority such as the S.F.O. were unable to make or permit collateral use of any documents revealed in the course of an investigation, but if criminal proceedings were commenced and those documents were then disclosed to the defendant, he and those to whom he revealed the documents would be free to use the documents as they chose.

In Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756 Hobhouse J. considered the extent to which a party to whom documents had been disclosed during exchanges before trial of a civil action could make use of those documents after the action had been settled. Having reviewed some of the authorities he said, at p. 764h, that an undertaking to the court not to use material supplied in the course of discovery, or allow it to be used, for any purpose other than the proper conduct of the instant action will be implied. The judge continued, at p. 765:

> "The rational basis for the rule is that where one party compels another, either by the enforcement of a rule of court or a specific order of the court, to disclose documents or information whether that other wishes to or not, the party obtaining the disclosure is given this power because the invasion of the other party's rights has to give way to the need to do justice between those parties in the pending litigation between them: it follows from this that the results of such compulsion should likewise be limited to the purpose for which the order was made, namely, the purposes for that litigation then before the court between those parties and not for any other litigation or matter or any collateral purpose."

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Obviously it involves some straining of language to apply that reasoning to disclosure by the prosecution in the course of criminal proceedings. There is no relevant rule of the court, and normally the prosecution does not disclose because the defence obtains an order. Prior to the implementation of the Criminal Procedure and Investigations Act 1996 disclosure was made because, in the light of the authorities, that was known to be what was required, and if the court did make an order it could not be said to invade the prosecutor's rights.

In Marcel v. Commissioner of Police of the Metropolis [1992] Ch. 225 the court had to consider how to deal with documents which came into the hands of the prosecution during the course of a criminal investigation. The solicitor for the defendant in a civil action was allowed to inspect and copy some documents seized by the police from those who were to be witnesses in that action. A subpoena duces tecum was then taken out requiring the police to produce the documents at court, but a witness from whom documents had been seized asked the court to order, inter alia, that the copies of the documents be returned to the police and that the subpoena be set aside. At first instance Sir Nicholas Browne-Wilkinson V.-C. held that section 22 of the Police and Criminal Evidence Act 1984 does not expressly state the only purposes for which documents seized can be used, and he continued, at pp. 234c, 235c:

> "However, there manifestly must be some limitation on the purposes for which seized documents can be used. Search and seizure under statutory powers constitute fundamental infringements of the individual's immunity from interference by the state with his property and privacy

> fundamental human rights. Where there is a public interest which requires some impairment of those rights, Parliament legislates to permit such impairment. But, in the absence of clear words, in my judgment Parliament cannot be assumed to have legislated so as to interfere with the basic rights of the individual to a greater extent than is necessary to secure the protection of that public interest . . . In my judgment, subject to any express statutory provision in other Acts, the police are authorised to seize, retain and use documents only for public purposes related to the investigation and prosecution of crime and the return of stolen property to the true owner. Those investigations and prosecutions will normally be by the police themselves and involve no communication of documents or information to others. However, if communication to others is necessary for the purpose of the police investigation and prosecution, it is authorised."

Those passages, in so far as they relate to voluntary disclosure by the police, were expressly approved by Dillon L.J. in this court. The Court of Appeal declined to set aside the subpoena, but stressed also the need to recognise the private law rights of the owner of the documents seized. Nolan L.J. said, at p. 261b:

> "In the context of the seizure and retention of documents, I would hold that the public law duty is combined with a private law duty of confidentiality towards the owner of the documents. The private law duty . . . arises from the relationship between the parties. It matters ***191** not, to my mind, that in this instance, so far as the owners of the documents are concerned, the confidence is unwillingly imparted."

Sir Christopher Slade said, at pp. 262d, 263f:

> "In my judgment, documents seized by a public authority from a private citizen in exercise of a statutory power can properly be used only for those purposes for which the relevant legislation contemplated they mig ht be used. The user for any other purpose of documents seized in exercise of a draconian power of this nature, without the consent of the person from whom they were seized, would be an improper exercise of the power. Any such person would be entitled to expect that the authority would treat the documents and their contents as confidential, save to the extent that it might use them for purposes contemplated by the relevant legislation. . . . I agree with the Vice-Chancellor that these documents and information were disclosed in breach of confidence."

So I come to Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278, a decision of the Court of Appeal (Criminal Division) on unusual facts. B. was convicted of unlawful wounding. The evidence against him included that of two police officers who were alleged to have behaved improperly. A complaint was made about their conduct which was investigated by the Police Complaints Authority ("P.C.A."). A newspaper then published an article which was said to be defamatory of the two officers, and they took civil proceedings against the newspaper. At that stage the conviction of B. was referred to the Court of Appeal (Criminal Division) by the Home Secretary, and for the purposes of that hearing the court ordered disclosure to B. of all witness statements and documents in the possession of the P.C.A. The appeal succeeded, and the newspaper then asked the Court of Appeal (Criminal Division) to release B. from his implied undertaking pursuant to which discovery of the P.C.A. documents to him was given. It was, said Lord Taylor of Gosforth C.J., at p. 285f: "an implied undertaking, analogous to that arising on discovery in civil proceedings, not to use the disclosed documents otherwise than for the purposes for which discovery was given, here the pursuance of the criminal appeal."

It was accepted, both by experienced counsel and by the

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court, that an implied undertaking had been given to the Court of Appeal (Criminal Division) which alone had power to vary it, but it was significantly different from such an undertaking arising as a result of discovery in civil proceedings. Counsel for the P.C.A. argued against any variation of the undertaking, and the court said, at p. 291e that his argument "would, we accept, be formidable indeed had the implied undertaking with which we are concerned been one given in the usual way in civil proceedings." The court went on to recognise that in civil proceedings the concept of the implied undertaking is a necessary way of underpinning the integrity of the discovery process, but whereas in private litigation discovery is "a very serious invasion of the privacy and confidentiality of the litigant's affairs" (*per* Lord Keith of Kinkel in Home Office v. Harman [1983] 1 A.C. 280, 308) that is less obviously apt in relation to an order made by the Court of Appeal (Criminal Division). The court held that the implied undertaking added little to the public interest immunity attaching to the P.C.A. ***192** documents, and that both should yield to the countervailing public interest which required that the newspaper be able to mount a proper defence.

In X (Minors) v. Bedfordshire County Council [1995] 2 A.C. 633 one of the actions considered by the House of Lords was M (A Minor) v. Newham London Borough Council in which an infant and her mother claimed damages for negligence and breach of statutory duty against the local authority and others. It was said that a psychiatrist and a social worker employed by the local authority had erred in diagnosing sex-abuse and in concluding that the child's mother's cohabitee was the abuser. The master granted an application to strike out the claim as disclosing no cause of action on the basis that the psychiatric injury complained of could not found a claim for damages in negligence, and that the psychiatrist was protected from suit by a witness's immunity from actions in negligence. The Court of Appeal disagreed, but in the House of Lords Lord Browne-Wilkinson, with whom the other members of the House agreed, said, at p. 754g, that the Court of Appeal "placed too narrow a limit on the principle of witness immunity." He referred to the decision of the House of Lords in Watson v. M'Ewan [1905] A.C. 405, to which I have already referred, and [1995] 2 A.C. 633, 755 cited this passage from the decision of Drake J. in Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184, 191:

> "The immunity given to a witness or potential witness is because the administration of justice would be greatly impeded if witnesses were to be in fear that . . . persons against whom they gave evidence might subsequently involve them in costly litigation: see *per* Salmon J. in Marrinan v. Vibart [1963] 1 Q.B. 234, 237. If this object is to be achieved I think it essential that the immunity given to a witness should also extend to cover statements he makes prior to the issue of a writ or commencement of a prosecution, provided that the statement is made for the purpose of a possible action or prosecution and at a time when the possible action or prosecution is being considered. In a large number of criminal cases the police have collected statements from witnesses before anyone is charged with an offence; indeed sometimes before it is known whether or not any criminal offence has been committed. If immunity did not extend to such statements it would mean that the immunity attaching to the giving of evidence in court or the formal statements made in preparation for the court hearing could easily be outflanked and rendered of little use. For the same reason I think that the immunity must extend also to the acts of the witness in collecting or considering material on which he may later be called to give evidence."

Lord Browne-Wilkinson then continued [1995] 2 A.C. 633, 755:

> "My Lords, I find the reasoning of Drake J. compelling at least in relation to the investigation and preparation of evidence in criminal proceedings. In my judgment exactly similar considerations apply where, in the performance of a public duty, the local authority is investigating whether or not there is evidence on which to bring proceedings for the protection of the child from abuse, such abuse ***193** frequently being a

> criminal offence. I express no view as to the position in relation to ordinary civil proceedings."

In my judgment the last sentence quoted by Lord Browne-Wilkinson from the decision of Drake J. plainly applies to the letter and to the file note which are at the heart of this case, and to the discussion which the file note was intended to summarise. It is also important to note that it was precisely because it was potentially a criminal and not a civil investigation that the witness was granted immunity in the Newham case.

In In re Arrows Ltd. (No. 4) [1995] 2 A.C. 75 the liquidators of a company applied to a judge for directions, having received a request from the S.F.O. for transcripts of the examination of the chairman and managing director under section 236 of the Insolvency Act 1986. The judge ordered that the transcripts be released on certain undertakings being given, but the Court of Appeal released the S.F.O. from undertakings, and the appeal to the House of Lords was dismissed. The case is really concerned with the extent of the powers of the S.F.O., and although cited to us in my judgment it is not really of assistance in the present case.

In Silcott v. Commissioner of Police of the Metropolis (1996) 8 Admin.L.R. 633, this court considered a plaintiff's appeal against an order that his action for conspiracy to pervert administration of justice and misfeasance in public office be struck out. The third cause of action for malicious prosecution was not affected by the order. The factual basis of the case was that, according to the plaintiff, two police officers had conspired together to produce false notes of interview which indicated that the plaintiff was the murderer of Police Constable Blakelock, with the result that he was wrongly convicted of that offence. The issue on appeal was identified by Simon Brown L.J. as being: "whether the alleged actions of the police officers are protected from any civil action for conspiracy to pervert the course of justice or misfeasance in a public office by reason of a cloak of absolute immunity conferred as a matter of public policy."

Simon Brown L.J. set out the immunity rule which protects parties and witnesses from any action arising out of anything said or done in the ordinary course of any proceedings in a court of justice. He referred to Munster v. Lamb, 11 Q.B.D. 588, Marrinan v. Vibart [1963] 1 Q.B. 234 and Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184 as indicating the width of the rule and its limitations, and he said that "protection must extend to the preparation of evidence equally as to its presentation." He said:

> "In my judgment, Drake J. was correct in Evans's case to have held that the immunity covers all conduct that can fairly be said to be part of the investigatory and, I would add, preparatory process. To Lord Williams' submission that there is no public interest in protecting those who create false evidence or, for that matter, those who destroy sound evidence, I would answer that that misses the essential point: the public interest is in the protection of those who might otherwise be falsely accused of such conduct."

That answer, as it seems to me, must be the same if the cause of action happens to be in defamation.

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Conclusions from authorities

In my judgment five propositions can be extracted from that rather lengthy examination of authorities.

(1) Whatever the form of action it will be barred if it is founded upon what a witness has said in the witness box, or upon what has been said or done in preparing the evidence for a trial: see Watson v. M'Ewan [1905] A.C. 405; Marrinan v. Vibart [1963] 1 Q.B. 234.

(2) This immunity is not, like absolute privilege, limited to actions alleging defamation. In criminal cases it applies to prevent any form of parasitic litigation (other than an action like malicious prosecution which relates directly to criminal proceedings) where the statement or conduct relied upon is such that it can fairly be said to be part of the process of investigating a crime or a possible crime with a view to a prosecution or possible prosecution: see

Marrinan's case, Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184, X v. Bedfordshire County Council [1995] 2 A.C. 633 and Silcott's case (1996) 8 Admin.L.R. 633,

(3) Documents seized by the police or other prosecuting authority during a criminal investigation must be treated as confidential. The owners of the documents are entitled to expect that they will only be used for the specific purpose for which they have been seized (i.e. to further the criminal investigation) and the courts will if necessary act to support that expectation: see Marcel's case [1992] Ch. 225.

(4) In civil proceedings a party who obtains discovery is required in return to give an implied undertaking to the court not to use material supplied in the course of discovery or allow it to be used for any purpose other than the proper conduct of the action in which discovery is obtained. That is to encourage full discovery, and to ensure that the invasion of the rights of the party giving discovery is restricted to what is necessary to do justice in the instant case: Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756.

(5) When the prosecution discloses material to the defence in the course of a criminal prosecution, whether it be used material or unused material, the authorities prior to Mahon v. Rahn [1998] Q.B. 224 are silent as to whether that gives rise to an implied undertaking of the kind to which I have just referred. Some such undertaking may well be implied if the Court of Appeal (Criminal Division) orders specific disclosure of documents normally protected by public interest immunity (see Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278) but the reasons for the undertaking will not be the same as in relation to a civil action.

Those propositions are not quite the policy for which Mr. Caldecott contended, but unless there is anything in the Criminal Procedure and Investigations Act 1996 or Mahon's case which compels me to take a different view I regard the first and second propositions as determinative of this appeal.

Criminal Procedure and Investigations Act 1996

Part I of the Act creates for the first time a statutory scheme for prosecution and defence disclosure in criminal proceedings. As part of that scheme section 17 makes provision for protecting unused material that is ***195** disclosed by a prosecutor to an accused or to his or her legal adviser. It has to be treated as confidential, and cannot be used, except with the permission of the court other than for the purposes of the criminal proceedings to which it relates. As we discovered during the course of argument, it is by no means easy to see how Part I of the Act will apply to persons in the position of the plaintiffs in the present case, but fortunately that is not something we have to decide, because the material parts of the Act did not come into force until April 1997, and so they have no direct application to this case. We were really invited to consider the Act because it was thought it might assist us as to the state of the law before it came into force. I confess that I have not been able to find any such assistance in the Act. Much of the procedure which it lays down is new, and section 17(8) provides:

> "Nothing in this section affects any other restriction or prohibition on the use or disclosure of an object or information, whether the restriction or prohibition arises under an enactment (whenever passed) or otherwise."

Mahon v. Rahn [1998] Q.B. 424

I return now to the case which Mr. Price has submitted that we must follow in deciding this appeal. The plaintiffs were London stockbrokers, and the defendants were partners in a Swiss bank. The defendants instructed the plaintiffs to purchase certain shares for $5m., but provided only $3m. They were pressed for the balance before the S.F.O. and the Securities Association ("S.A.") began to investigate the plaintiffs. As part of that investigation the defendants were approached, and they wrote a letter to the S.A. Criminal proceedings were commenced, and the letter was read out in court. The criminal proceedings were dismissed and the plaintiffs claimed damages for libel on the basis of the letter. The defence served a defence in which they claimed qualified (but not absolute) privilege. They then issued a summons to strike out on the grounds that the letter had been obtained by the plaintiffs by way of disclosure in criminal proceedings against them. Brooke J. held that when the prosecution discloses material in criminal proceedings that gives rise to an implied undertaking by a defendant similar to that which arises in civil proceedings. The undertaking is to be implied whether the disclosure is voluntary or pursuant of an order of the court. It continues

to apply even if the document is read or referred to in court and if a libel action is commenced in breach of the undertaking the court may strike it out. On appeal Otton L.J. examined the scope of the implied undertaking as it exists in civil proceedings, and concluded, at p. 447, that "in the absence of a public interest immunity ruling to the contrary there never has been a fetter on the subsequent use of documents which have been "used" in the criminal process." He was not satisfied that it was appropriate to imply an undertaking in criminal proceedings by analogy with the implied undertaking which exists in civil procedure and found that to be decisive of the appeal, but then added the postscript to which I have already referred, but which it is now appropriate to quote verbatim. He said, at p. 453, that on the basis of the decisions in the Hasselblad case [1985] Q.B.475, Evans's case [1981] 1 W.L.R. 184 and X (Minors) v. Bedfordshire County Council [1995] 2 A.C. 633:

> "it would appear at least arguable that the respondents in this case could raise the defence of absolute immunity. However, this has not been pleaded, nor was the point argued below or before this court. Thus it would not be appropriate for this court to maintain Brooke J.'s decision to strike out on this ground."

As I hope I have made clear, it is the plea of absolute immunity which I regard as being entitled to succeed in the present case. It follows that the judgment of Otton L.J. in Mahon's case is in no way decisive because it does not address the issue. Schiemann L.J. simply agreed, and Staughton L.J., at p. 456, emphasised that in that case the court was dealing with a document which was disclosed to the plaintiffs "because it formed part of the material which the prosecution wished to put before the court." That, of course, is not the position in this case. He did not consider that the defendant in a criminal trial is under any implied undertaking as to material "disclosed to him as part of the prosecution case whether or not it is read out or referred to in open court:" p. 457. So Mr. Caldecott submitted to us that Staughton L.J. having made no finding in relation to unused material, and Schiemann L.J. not having made it clear with whom he agreed, we are free to decide that an implied undertaking does arise in relation to unused material. That is not a decision which I have to make in order to reach a conclusion in relation to this appeal. More significant from my point of view, is what Staughton L.J. said at the end of his judgment, at pp. 458-459:

> "Otton L.J. in his penultimate paragraph has referred to cases which elucidate the privilege that is available to witnesses. We heard no argument on that topic, but clearly it may be relevant if this action proceeds further. I agree that we should not rule upon it at the present stage. It is not pleaded, the full facts may not be known, and we would have to recall the parties for further argument. It must be considered, if at all, on some other occasion."

Contrary to the submissions made by Mr. Price I do not regard the decision in Mahon's case as being determinative of this appeal, which I would dismiss.

Does Mahon v. Rahn apply to unused material?

Were it not for the decision in Mahon v. Rahn I would have had a second reason for dismissing this appeal, namely that Sir Michael Davies was right for the reasons which he gave. It seems to me that:

(1) Where the needs of criminal justice involve, as they do, invasions of privacy and confidentiality - as, for example, by the seizure of documents during the course of an inquiry, and the disclosure of documents to the court and to the defence (both used and unused material) - the extent of the invasion should be no greater than the needs of criminal justice in the instant case require. That is necessary not only to encourage and protect informants and investigators, but also because those whose privacy and confidentiality have been invaded have a right to expect the law to protect ***197** them from any unnecessary exposure. (2) It follows that save in two exceptional cases the court should be prepared to act so as to ensure that documents created or collected during the course of a criminal inquiry are used only for the purposes of that inquiry, and of any prosecution which arises out of it. (3) The first exceptional case is where a document is used in a criminal court in such a way that the contents of the document become public knowledge. It then becomes no longer practicable for the court to protect the privacy or confidentiality so far as that document is concerned. (4)

The second exceptional case is where the court is persuaded that the overall interests of justice require that the document or documents in question be available for use in other proceedings (e.g. where someone released soon after being charged seeks damages for wrongful arrest and false imprisonment, or a problem arises of the kind considered in Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278). (5) In circumstances where there is no protection to be derived from the immunity which in my judgment applies in this case the reasons for restricting the use of documents which come to light in the course of criminal investigations and criminal trials are therefore different from those which underpin the well-established implied undertaking which arises on discovery in civil proceedings, but they are no less powerful, and it can be persuasively argued that they should lead to the same result, namely confirmation of the existence of an implied undertaking in all cases other than those where the document has come fully into the public domain during the criminal trial. (6) However this court in Mahon's case [1998] Q.B. 424 decided not to follow that route so far as used material was concerned. The way in which the matter was dealt with by Otton and Staughton L.JJ. (even allowing for the latter's more restricted approach) seems to me to leave no room for a meaningful distinction to be drawn between used material and unused material, nor would such a distinction constitute an adequate response to the reasoning in favour of an implied undertaking which I have attempted to summarise. Although, as I have said, the court in Mahon's case did not have the benefit of submissions from a prosecuting authority I cannot accept Mr. Caldecott's submission that an established policy was overlooked, and even if I could accept it I am not persuaded that this court could decline to follow Mahon v. Rahn on that ground.

In conformity with the decision in Mahon's case I must therefore accept that in this court Sir Michael Davies's finding as to the existence of and breach of an implied undertaking cannot now be sustained, but for the reasons I have given that, in my judgment, has no effect on the outcome of the appeal.

Millett L.J.

I would be very concerned if private and confidential material, such as bank statements, medical records and tax returns, belonging to private individuals and seized by the police or provided to them voluntarily and in confidence, and which was then served on an accused as part of the prosecution case or supplied to him by the prosecution as unused material in order to assist him with his defence, but which was not then used or referred to in open court, could be used by the accused for his own purposes free from restriction. In my opinion this would be contrary to basic legal policy derived from principles which ***198** I regard as fundamental in a free society. In my view: (1) The seizure or compulsory disclosure of material is an interference with the owner's privacy. The invasion of his privacy can only be justified by the public interest in ensuring that all relevant material should be available to a court of justice and that an accused person should have made available to him all material which may assist him to meet the case against him. It follows that the use to which the material may lawfully be put should be limited by the purpose for which its compulsory production is justified. (2) Persons who voluntarily supply material in confidence are entitled to have their confidence respected save only in so far as they must be taken to have consented to the use of the material. Members of the public who volunteer information to the police are entitled to expect that it will be used only for the purpose of the investigation and subsequent criminal proceedings. Their expectations should be respected. (3) Nothing should be done to discourage members of the public from voluntarily assisting the police or prosecuting authorities. This applies with particular force to informers, but it is not confined to them. The risk that material which they provide will come into the public domain by being used or referred to in open court may discourage co-operation but is unavoidable. But there would be a further and unnecessary disincentive to co-operation if material of only peripheral relevance to the proceedings but disclosed by the prosecution to the accused in conformity with its duty should thereafter be freely available for use for any purpose. (4) A person who is supplied with material for a limited purpose is not entitled without the consent of the person who supplied it to use it for any other purpose.

To a large extent these principles are given effect by the doctrines of public interest immunity and immunity from suit. But these doctrines do not give complete protection. The prosecution may not claim public interest immunity, and even if it does its claim may be refused. Immunity from suit does not extend to pre-existing documents, that is to say documents which are not brought into existence in the course of the criminal investigation, and does not prevent the use of material otherwise than for the purpose of civil proceedings.

In my view, those who volunteer information to and those whose documents are seized by the police are entitled to protection from improper use of their material. So, too, are those who are responsible for creating documents in

the course of a criminal investigation. If, therefore the matter were res integra, I would agree with Kennedy L.J. that the accused ought to be subjected to a legal obligation similar to that which arises under the implied undertaking in civil proceedings in relation to documents obtained on discovery. We are, however, bound by the recent decision of this court in Mahon v. Rahn [1998] Q.B. 424 to hold that material supplied to the accused as part of the prosecution case is not subject to any restriction on its subsequent use, even though it has not become public knowledge, and even though it may have been seized under compulsory powers or obtained in confidence.

I have not found the reasoning in that case persuasive. In the first place, I cannot accept the proposition that persons who take part in the administration of justice are sufficiently protected by qualified privilege. This would be contrary to a long line of authority. It is the policy of the ***199** law to protect such persons against baseless allegations of malice, and this requires nothing less than absolute immunity from suit. In the second place, a very narrow view was taken of the scope of privacy, and no regard appears to have been paid to the fact that it is the privacy of the individual witness or investigator, not the prosecution, which is invaded when his material is supplied to the accused. Thirdly, in my view no support can be derived from the terms of section 17 of the Criminal Procedure and Investigations Act 1996. The section is limited to unused material, but the reason for this is self-evident: other material was beyond the scope of the Act. It is not possible to deduce what Parliament considered to be the position in relation to material served on the accused as part of the prosecution case. It is possible though unlikely that Parliament thought that such material should be at the free disposition of the accused. But it is at least possible that Parliament assumed that the existing law prevented this.

The position in relation to unused material was expressly left open in Mahon's case. I agree with Kennedy L.J., however, that it is not open to us to distinguish the case on that ground. To do so would be to introduce an indefensible distinction between used and unused material. It would mean that a member of the public whose information undermined the prosecution case would be protected, whereas one whose information advanced it would not. Such a policy would have no rational basis.

Accordingly, I reluctantly agree that it was not open to the judge to strike out the proceedings on the ground that they were brought in breach of an implied undertaking to the court. But I am also relieved to find that the proceedings should be struck out on the ground that they infringe the defendants' immunity from suit and that to continue them would be an abuse of the process of the court.

I agree that the appeal should be dismissed.

Sir Brian Neill.

In these proceedings for defamation the plaintiffs rely on: (a) a letter dated 4 May 1994 from Ms McKenzie of the S.F.O. to the Attorney-General for the Isle of Man; (b) a discussion which took place on 17 May 1994 in Leamington Spa at a meeting attended by Ms McKenzie, Detective Inspector Hulse of the Staffordshire Police and Mr. Rogerson of the Law Society; (c) a file note dated 17 May 1994 in which Ms McKenzie made a record of the discussion referred to in (b).

The claims in respect of (a) and (c) are for damages for libel. The claims in respect of (b) are for damages for slander.

In the course of the hearing in this court Mr. Caldecott advanced two arguments as to why these claims should be struck out: (1) because the documents and the terms of the discussion on 17 May only came to the knowledge of the plaintiffs by reason of the fact that the letter and the file note had been disclosed by the prosecution in accordance with the modern practice in criminal proceedings to a defendant in such proceedings for the purpose of the preparation by him of his defence; (2) because the documents came into existence and the discussion took place in the course of and for the purpose of a criminal investigation.

These two arguments raise quite separate considerations. Thus the first argument, if correct, would mean that the documents which were disclosed ***200** by the prosecution to the defence in criminal proceedings could not be used as the basis of a subsequent civil action irrespective of the circumstances in which the documents first came into existence.

If the matter were free from authority I would be disposed, for the reasons explained by Kennedy and Millett L.JJ., to uphold this argument. The law of

confidence recognises that there are circumstances in which the protection of the court can be invoked to prevent the use of documents for purposes other than those for which they first came into the possession of a defendant. The limited use that can be made of "without prejudice" documents provides a similar example. It seems to me that on grounds of public policy the court should be able to intervene to prevent the misuse of what are in effect its own processes. But I have come to the conclusion that there is no satisfactory way in which the recent decision of this court in Mahon v. Rahn [1998] Q.B. 424 can be distinguished. Accordingly, had the first argument been the only material available to Mr. Caldecott, I would have felt obliged to allow the appeal.

On the facts of the present case, however, I am satisfied that neither the documents nor the words used in the course of the discussion of 17 May 1994 can found an action for defamation at the suit of the plaintiffs. The documents came into existence and the discussion took place in the context of the investigation of suspected crime. Public policy requires, for the reasons explained by Kennedy L.J., that such documents and such discussions should be immune from suit. In this context I say nothing of course about the exceptional remedies of malicious prosecution and malicious arrest.

A decision on this second ground does not meet the concerns voiced by Mr. Caldecott. In my judgment, however, in the light of the decision in Mahon's case this is the only ground on which this appeal can be dismissed. I therefore concur in the order proposed by Kennedy L.J.

Petition: 29 January 1998. The Appeal Committee of the House of Lords (Lord Goff of Chieveley, Lord Hoffmann and Lord Saville) allowed a petition by the plaintiffs for leave to appeal. ([Reported by Alison Sylvester, Barrister])

The plaintiffs appealed by leave of the House of Lords (Lord Goff of Chieveley, Lord Hoffmann and Lord Saville) granted on 29 January 1998.

Leolin Price Q.C. and *Julian Knowles* for the plaintiffs. The rival public interests involved in the case are the public interest in granting absolute privilege and immunity from defamation proceedings in respect of communications made in the course of a criminal investigation and the public interest in not denying justice in respect of damage to reputation.

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The defence of absolute privilege should be strictly confined. It is for the defendant to allege and prove all the facts necessary to bring the words complained of within that defence. [Reference was made to Trapp v. Mackie [1979] 1 W.L.R. 377; Mann v. O'Neill (1997) 71 A.L.J.R. 903; Roy v. Prior [1971] A.C. 470; Bennett v. Commissioner of Police of the Metropolis (1997) 10 Admin.L.R. 245 and Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278.] In defamation proceedings there is no defence of absolute immunity distinct from absolute privilege, which extends to everything said or done in the course of preparing for a potential prosecution. Absolute immunity is simply the name given to absolute privilege in actions other than defamation actions: Marrinan v. Vibart [1963] 1 Q.B. 528, 535.

Absolute privilege attaches to the character or identity of the person writing or speaking the defamatory matter: see Munster v. Lamb (1883) 11 Q.B.D. 588. The defence of qualified privilege attaches more to the occasion on which the words were spoken. A claimed immunity arising from things done in the course of criminal investigations therefore has the character of a qualified rather than absolute privilege. The immunity that covers proceedings in a court of justice should not be extended to matters outside those proceedings except where such immunity is necessary for the protection of those participating in the proceedings: see Marrinan v. Vibart [1963] 1 Q.B. 528; Watson v. M'Ewan [1905] A.C. 480; Silcott v. Commissioner of Police of the Metropolis (1996) 8 Admin.L.R. 633; Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184 and X (Minors) v. Bedfordshire County Council [1995] 2 A.C. 633. The Court of Appeal erred in holding that absolute immunity extended to what could fairly be said to be part of the process of investigating a crime or possible crime with a view to prosecution.

Considerations of public policy do not require all those involved in criminal investigations to be given immunity from suit. The two public policy reasons underpinning absolute privilege are the need to encourage witnesses to assist the course of justice without fear of exposing themselves to litigation, and the need to avoid relitigation by subsequent collateral challenges. Those policy concerns are sufficiently addressed by the absolute privilege accorded to witnesses and potential witnesses

and the doctrine of public interest immunity. It is absurd to suggest that police officers and court officials will be inhibited in the prosecution of crime unless they have immunity from suit. The right of a plaintiff to go to court to protect his reputation must be given its due weight. [Reference was made to D. v. National Society for the Prevention of Cruelty to Children [1978] A.C. 171; Docker v. Chief Constable of West Midlands Police, The Times, 29 April 1998; Court of Appeal (Civil Division) Transcript No. 472 of 1998; Hill v. Chief Constable of West Yorkshire [1989] A.C. 53; Dooley v. C. N. Weber Ltd. (1994) 118 D.L.R. (4th) 750; Canada v. Lukasik (1985) 18 D.L.R. (4th) 245 and Practice Note (Criminal Evidence: Unused Material) [1982] 1 All E.R. 734.]

There is no implied undertaking as to use attaching to documents disclosed in criminal proceedings. A person receiving documents is free to use them as he wishes unless there is some principle which prevents him from doing so. Under English law that which is not expressly prohibited is lawful. If a person is defamed he ought not to be prevented from seeking ***202** redress in the courts, save where that would clearly not be in the public interest.

Unlike a litigant in civil proceedings, the Crown has an interest in the information contained in a document but not in the document. Those who sign witness statements fully expect to give evidence in public and the police cannot know at that stage whether that evidence will be used at the trial. Notions of confidence do not apply to information supplied for use in the criminal justice process. Where there is a genuine public interest in information being kept confidential public interest immunity will apply. [Reference was made to Home Office v. Harman [1983] 1 A.C. 280.]

Mahon v. Rhan [1998] Q.B. 424 was correctly decided. At common law there is no implied undertaking as to the use of documents disclosed by the Crown in the course of criminal proceedings, whether as part of its case or as unused material.

Andrew Caldecott Q.C. and*Catrin Evans* for the defendants. The restrictions on the application of immunity to actual or potential witnesses and evidence in court, as proposed by the plaintiffs, are impractical. Those restrictions have to be judged at the time when the relevant communication is made since the whole purpose of immunity is that at that point the person concerned knows he can speak freely without fear of proceedings being brought against him. Defamatory statements are a necessary part of any police investigation and a prospective witness's account will often include a mixture of his own observations and hearsay.

The prosecution's obligation to disclose unused material is not confined to material which is admissible in evidence but extends to material which may set in train a line of inquiry and which is not prima facie admissible in court. [Reference was made to Reg. v. Brown (Winston) [1994] 1 W.L.R. 1599; Reg. v. Keane [1994] 1 W.L.R. 746 and Reg. v. Ward (Judith) [1993] 1 W.L.R. 619.]

Statements made in the course of an investigation into a possible crime are immune from suit on grounds of public policy developed from the absolute immunity afforded to witnesses in court proceedings. The public interest in protecting the free flow of information to and from those investigating crime outweighs the need for private remedies for those damaged in the course of criminal investigations. Qualified privilege affords insufficient protection for persons wishing to assist in the investigation of crime [Reference was made to Munster v. Lamb, 11 Q.B.D. 588.]

For the purposes of the law of defamation there is no meaningful distinction between absolute privilege and absolute immunity. The former is but an application of the latter in defamation proceedings.

Investigators are obliged by law to use information and documents obtained or generated by them only for the purposes of the investigation. Collateral use without the leave of the court of such information is contrary to the public interest in that such use tends to deter the free flow of information to, and free communication between, investigators. [Reference was made to Marcel v. Commissioner of Police of the Metropolis [1992] Ch. 225.]

An implied undertaking or obligation to the court is a convenient mechanism protecting the administration of justice against the harmful consequences of collateral use, while allowing persons to apply to the court ***203** for release from the obligation or undertaking where the particular use is in the public interest. In contrast, private law remedies afford wholly inadequate protection. [Reference was made to Connelly v. Director of Public Prosecutions [1964] A.C. 1254.] The person harmed may

know of the prosecution or the identity of the person responsible for the improper use. There is no legal aid for defamation and there is uncertainty as to the effectiveness of financial remedies in breach of confidence in such a context. An obligation or undertaking is effective against third parties to whom such information is disclosed since collateral use by them would be an interference with the administration of justice and, prima facie, a contempt of court.

Mahon v. Rahn [1998] Q.B. 424 should be overruled, save in so far as it indicates that material communicated to the public in open court is not protected.

Price Q.C. relied.

Their Lordships took time for consideration.

29 October. Lord Lloyd of Berwick.

I would decide this appeal on the first of the two principles discussed by my noble and learned friend, Lord Hoffmann. This was the ground on which Sir Michael Davies decided the case, correctly in my view. He was following the closely reasoned judgment of Brooke J. in Mahon v. Rhan (unreported), 19 June 1996. Unfortunately Brooke J.'s judgment was reversed on appeal [1998] Q.B. 424. This provided Mr Leolin Price with the ammunition which he needed.

The Court of Appeal [1997] 4 All E.R. 887 in the present case held that it was bound by its previous decision in Mahon v. Rahn. So they could not decide against the plaintiff on the preferred ground of an implied undertaking. Instead they turned with relief (see *per* Millett L.J., ante, p. 199d) to an alternative ground not argued before them. They held that the absolute immunity which attaches to witnesses and potential witnesses should be extended to all those taking part in a criminal investigation with a view to a prosecution or possible prosecution. Since the point was not argued, it may be that if it had not been for Mahon v. Rahn it would never have been decided.

Whereas the implied undertaking is a clear cut and relatively straightforward point, the absolute immunity raises issues of far reaching importance on which I would for my part have wished to hear fuller argument. In Watson v. M'Ewan [1905] A.C. 480 the House extended the original absolute privilege attaching to a witness's statement in court to his statements in preparation for court proceedings. This was a natural, necessary and indeed obvious extension of the principle. But I am not persuaded that it is obvious or necessary to extend the principle to those who are not witnesses or potential witnesses at all, but whose only function is to investigate and prosecute crime, such as the Serious Fraud Office, the Crown Prosecution Service and the police.

The new rules on disclosure of unused material, to which my noble and learned friend, Lord Hope, attaches importance, do not seem to me to justify the extension of absoluite privilege to a different class of beneficiary. ***204** Nor can I see any logical reason for doing so. Indeed logic would seem to point in the other direction. If the immunity is absolute, how is it to be reconciled with proceedings against the police for malicious prosecution? If there is to be an exception for malice, is this not more consistent with qualified privilege rather than absolute privilege? It is said that qualified privilege is insufficient protection for the reasons stated by Fry L.J. in Munster v. Lamb (1883) 11 Q.B.D. 588, 607. But the same could be said of every case in which the law allows qualified but not absolute privilege.

It is said that the absolute privilege or immunity will not apply unless what is said or done is "fairly part" of the investigation process. But the absolute privilege of the judge and advocate are not subject to that qualification. The privilege applies even though what is said is gratuitous and irrelevant to every issue in the trial: Munster v. Lamb. Does this mean that there is now to be an intermediate level of privilege lying somewhere between absolute privilege on the one hand and qualified privilege on the other?

Reliance was placed on a dictum of Drake J. in Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184. But I do not see how that case helps. The third and fourth defendants in that case were clearly potential witnesses. This is how Drake J. approached the case, at pp. 191-192. This is how Lord Brown-Wilkinson understood the case in X (Minors) v. Bedfordshire County Council [1995] 2 A.C. 633, 755. In that case, too, the psychiatrist was clearly a potential witness. This is confirmed by Mr. Caldecott's own treatment of the decision in paragraph 3.3 of his written case. The passage in Drake J.'s judgment, at p. 192, on

which particular reliance is placed begins with the words "the protection exists only where the statement or conduct is such that it can fairly be said to be part of the process of investigating a crime . . ." But this passage is prefaced by the words "I would alter [the test suggested in Rees v. Sinclair 1 N.Z.L.R. 180, 187] to apply it to the immunity attaching to a witness or possible witness in a criminal investigation." There is nothing in these decisions which would extend absolute immunity to the Crown Prosecution Service, the Serious Fraud Office or the police.

The merit of deciding the case on the first ground is that it allows a degree of flexibility. It enables the court to keep control of the material in question. This was regarded by Brooke J. and Sir Michael Davies as a factor of importance. I agree with them. There will be little if any flexibility, and little if any control by the courts, if the police are to enjoy absolute immunity in the course of their investigations. Instead of investigating complaints by members of the public whose rights have been infringed, the courts will presumably be met in every case with an application to strike out. I am bound to say that I regard this development with some alarm. But, as your Lordships take a different view, I say no more about it.

On the first ground I am in complete agreement with the speech of my noble and learned friend, Lord Hoffmann. I would dismiss the appeal on that ground, but leave the second ground undecided.

Lord Goff of Chieveley.

My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Hoffmann. For the reasons which he gives I would dismiss the appeal.

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Lord Hoffmann.

My Lords,

1. The facts

In 1994 the Serious Fraud Office ("S.F.O.") was investigating a fraud involving U.S.$8m. alleged to have been committed by James Fuller, John Savage and a London solicitor named Charles Deacon. The money which they obtained from the victim had passed through the hands of the first appellant, Mr. Taylor, who was a solicitor practising in the Isle of Man, or the second appellant, a company with which he was connected called Monarch Assurance Plc. By a letter dated 4 May 1994, Katherine McKenzie, a lawyer employed by the S.F.O., made a formal request to the Attorney-General of the Isle of Man, asking for his assistance in the investigation of the fraud. She requested the Attorney-General to exercise his powers under section 24 of the Criminal Justice Act 1990 (Isle of Man) by summoning Mr. Taylor for an interview about the transactions. This section, so far as material, provides:

> "(1) The powers of the Attorney-General under this section shall be exercisable in any case in which it appears to him - (a) on reasonable grounds that there is a suspected offence involving serious or complex fraud, wherever committed; and (b) that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person. (2) The Attorney-General may by notice in writing require the person whose affairs are to be investigated ('the person under investigation') or any other person whom he has reason to believe has relevant information to attend before the Attorney-General at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation . . . (10) The Attorney-General may authorise any person to exercise on his behalf all or any of the powers conferred by this section but no such authority shall be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in the authority."

Ms McKenzie's letter presented the facts as they appeared to the S.F.O. They depicted Mr. Taylor's part in the transaction in such a way as to suggest that the S.F.O. suspected him to have been a party to the fraud. The letter

concluded with a statement that by reason of the facts stated, the S.F.O. had reason to believe that the use of the powers contained in section 24 was justified and desirable. It invited the Attorney-General to authorise Ms McKenzie and a police officer to exercise those powers on his behalf by interviewing Mr. Taylor.

On 3 June 1994 the Attorney-General sent Mr. Taylor a formal notice requiring him to attend for an interview but owing to illness he was unable to do so. Meanwhile Ms McKenzie had been pursuing her inquiries and on 17 May 1994 she and a colleague called upon a Mr. Rogerson, who worked for the Law Society in the administration of the solicitors' compensation fund, to talk about the transaction, which had given rise to a claim by the victim against the fund. She made a file note of the interview, recording among other things Mr. Rogerson's view that ***206** Mr. Taylor should be struck off as a solicitor and her own contention that Mr. Taylor was a co-conspirator.

Mr. Fuller and Mr. Deacon were indicted on charges of conspiracy to defraud and eventually convicted. Mr. Savage was in the United States and died before an application for extradition had run its course. Mr. Taylor, despite the suspicions I have recorded, was not charged. Mr. Fuller's solicitors asked him to give evidence on his behalf. Before meeting him to discuss the case, they gave him a file of documents which had been disclosed to them by the S.F.O. as unused material in accordance with the principles stated by the Court of Appeal (Criminal Division) in Reg. v. Ward (Judith) [1993] 1 W.L.R. 619, 679-681 and Reg. v. Keane [1994] 1 W.L.R. 746. It included a copy of the letter of 4 May 1994 to the Attorney-General of the Isle of Man and the file note of the meeting with Mr. Rogerson on 17 May 1994.

2. The litigation

Mr. Taylor commenced an action for libel. He alleged that the letter contained a libel published by the S.F.O. and Ms McKenzie to the Attorney-General and that the file note contained a libel published by the S.F.O. and Ms McKenzie to Mr. Rogerson as well as a libel published by Mr. Rogerson to Ms McKenzie. He also relied upon a publication by Ms McKenzie of both documents by their disclosure to Mr. Fuller's solicitors.

All four defendants took out summonses to strike out the action as an abuse of process. On 26 July 1996 they were heard by Sir Michael Davies, sitting as a High Court judge. He struck out the action on the ground that the disclosure of the two documents to Mr. Fuller's solicitors had been subject to an implied undertaking, similar to that which applies to documents produced on discovery in civil proceedings, that they would not be used for any purpose other than Mr. Fuller's defence. It followed that they could not be used as the basis of a libel action by Mr. Taylor without the leave of the court.

Mr. Taylor appealed. Shortly before the appeal was heard in June 1997 by a Court of Appeal consisting of Kennedy and Millett L.JJ. and Sir Brian Neill, Mahon v. Rahn [1998] Q.B. 424 had been decided by a differently constituted Court of Appeal. The holding, according to the headnote, was that:

> "material disclosed by the prosecution to a defendant in criminal proceedings, whether obtained by compulsion or voluntarily . . . was not subject to any implied undertaking, analogous to that which existed in relation to material discovered in civil proceedings . . ."

I shall examine this case in more detail later, but the Court of Appeal regarded it as a binding authority which obliged it to hold that the ground upon which Sir Michael Davies had struck out the action could not be sustained. But the court invited argument on whether the striking out could be affirmed for a different reason, namely that the documents were immune from suit because they were brought into existence for the purposes of a criminal investigation. The court accepted this alternative submission and dismissed the appeal. Mr. Taylor appeals to your ***207** Lordships' House on the ground that the Court of Appeal extended the principle of immunity from suit beyond its proper sphere. The respondents, on the other hand, say that Mahon v. Rahn [1998] Q.B. 424 was wrongly decided and that the judgment ought also to be upheld on the ground upon which they succeeded before Sir Michael Davies.

3. The two principles

The two principles in debate are each well established and the question before your Lordships is the extent of their reach. The concept of an implied undertaking originated in the law of discovery in civil proceedings. A solicitor or

litigant who receives documents by way of discovery is treated as if he had given an undertaking not to use them for any purpose other than the conduct of the litigation. As Hobhouse J. pointed out in Prudential Assurance Co. Ltd. v. Fountain Page Ltd. [1991] 1 W.L.R. 756, 764 the undertaking is in reality an obligation imposed by operation of law by virtue of the circumstances in which the document or information is obtained. The reasons for imposing such an obligation were explained by Lord Keith of Kinkel in Home Office v. Harman [1983] 1 A.C. 280, 308:

> "Discovery constitutes a very serious invasion of the privacy and confidentiality of a litigant's affairs. It forms part of English legal procedure because the public interest in securing that justice is done between parties is considered to outweigh the private and public interest in the maintenance of confidentiality. But the process should not be allowed to place upon the litigant any harsher or more oppressive burden than is strictly required for the purpose of securing that justice is done."

The question in this appeal is whether the public interest in the administration of justice requires the application of an analogous principle to documents disclosed by the prosecution to the defence in criminal proceedings.

Likewise, the core of the principle of immunity from suit is not in doubt. By the end of the 19th century it was settled that persons taking part in a trial - the judge, the advocates, the witnesses - could not be sued for anything written or spoken in the course of the proceedings. The immunity was absolute and could not be defeated even by proof of malice. The reason for the immunity was explained by Fry L.J. in a well known passage in Munster v. Lamb, 11 Q.B.D. 588, 607:

> "Why should a witness be able to avail himself of his position in the box and to make without fear of civil consequences a false statement, which in many cases is perjured, and which is malicious and affects the character of another? The rule of law exists, not because the conduct of those persons ought not of itself to be actionable, but because if their conduct was actionable, actions would be brought against judges and witnesses in cases in which they had not spoken with malice, in which they had not spoken with falsehood. It is not a desire to prevent actions from being brought in cases where they ought to be maintained that has led to the adoption of the present rule of law; but it is the fear that if the rule were otherwise, numerous actions would be brought against persons who were merely discharging ***208** their duty. It must always be borne in mind that it is not intended to protect malicious and untruthful persons, but that it is intended to protect persons acting bona fide, who under a different rule would be liable, not perhaps to verdicts and judgments against them, but to the vexation of defending actions."

In Watson v. M'Ewan [1905] A.C. 480 the House of Lords extended the immunity to statements made by the witness to a party and his legal advisers with a view to giving evidence. The question in this case is whether the immunity extends more generally to statements made to or by investigators for the purposes of a criminal investigation.

It will be noticed that although both principles are concerned with public policy in securing the proper administration of justice, the interests which they are intended to protect are somewhat different and this is reflected in differences in their scope. The implied undertaking in civil proceedings is designed to limit the invasion of privacy and confidentiality caused by compulsory disclosure of documents in litigation. It is generated by the circumstances in which the documents have been disclosed, irrespective of their contents. It excludes all collateral use, whether in other litigation or by way of publication to others. On the other hand, the undertaking may be varied or released by the courts if the interests of justice so require and, unless the court otherwise orders, ceases to apply when the documents

have been read to or by the court, or referred to, in proceedings in open court: R.S.C., Ord. 24, r. 14A.

The immunity from suit, on the other hand is designed to encourage freedom of speech and communication in judicial proceedings by relieving persons who take part in the judicial process from the fear of being sued for something they say. It is generated by the circumstances in which the statement was made and it is not concerned with its use for any purpose other than as a cause of action. In this respect, however, the immunity is absolute and cannot be removed by the court or affected by subsequent publication of the statement.

While therefore the effect of the two principles may occasionally overlap, it is easy to think of cases in which one would apply but not the other. For example, a statement protected by the immunity may be disclosed on discovery and subsequently read out in court. The implied undertaking would cease to apply and anyone would be free to publish the statement but it still could not form the basis of a cause of action.

Nevertheless, there is some degree of interaction between the two principles. The implied undertaking prevents, so far as possible, the publication or dissemination of disclosed documents and therefore restricts the extent to which damage can be caused by defamatory statements which they may contain. In this sense, the injustice which may be caused by the fact that such defamatory statements are protected by the immunity is reduced.

It is now time to make a separate examination of the scope of the two principles. I shall begin with the implied undertaking.

4. The implied undertaking

We are concerned in this appeal with whether an implied undertaking is created by the disclosure of documents pursuant to the prosecution's ***209** duty at common law, in accordance with the principles most recently discussed by Lord Hope of Craighead in Reg. v. Brown (Winston) [1998] A.C. 367, 374-377. Since the trial of Fuller and Deacon took place, the law of disclosure has been put on a statutory basis by the Criminal Procedure and Investigations Act 1996. Section 17 imposes obligations of confidentiality in relation to disclosed material, but I do not think that the statute is of any assistance in deciding whether such obligations existed at common law.

Until recently there was no authority on the subject. The reason, I suspect, is that the perception by prosecuting authorities of their disclosure obligations was substantially widened by the decisions of the Court of Appeal in Reg. v. Ward (Judith) [1993] 1 W.L.R. 619 and Reg. v. Keane [1994] 1 W.L.R. 746. Under the earlier Attorney-General's guidelines (Practice Note (Criminal Evidence: Unused Material) [1982] 1 All E.R. 734), the documents disclosed would almost invariably have fallen within the immunity principle as extended in Watson v. M'Ewan [1905] A.C. 480. We were told that the disclosure of internal memoranda made by investigators or letters passing between investigators is a relatively new practice.

The matter was however discussed by the Court of Appeal in Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278. The case was unusual in a number of respects and did not involve normal disclosure by the prosecution in advance of the trial. The documents in question were in fact disclosed by the Police Complaints Authority pursuant to an order of the Court of Appeal for the purposes of an appeal against conviction. They related to an investigation of the conduct of police officers who had given evidence against the appellant. As a result of the information contained in the documents, his appeal was allowed. A newspaper which was being sued for libel by the same police officers applied to the court for the accused to be given leave to allow it to use the documents in its defence. Both sides proceeded on the assumption that there had been an implied undertaking which it was necessary to vary. Lord Taylor of Gosforth C.J. endorsed this assumption. He said, at p. 285:

> "But for such proposed order the appellant would clearly be unable to hand over the documents: he would be subject to an implied undertaking, analogous to that arising on discovery in civil proceedings, not to use the disclosed documents otherwise than for the purposes for which discovery was given, here the pursuance of the criminal appeal, which is now, of course, successfully concluded."

The court went on to hold that the interests of justice required the undertaking to be varied so as to allow the appellant in the criminal proceedings to hand over the documents to the newspaper upon its undertaking to use them only for the purposes of its defence.

At first instance in Mahon v. Rahn (unreported), 19 June 1996, Brooke J. held that counsel in Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278 had been right to concede the existence of an implied undertaking. The case concerned a libel action brought by two directors of a London firm of stockbrokers against two Swiss bankers. The alleged libel was contained in a document provided by the bankers to the Securities ***210** Association and the Serious Fraud Office in connection with an investigation which led to a prosecution of the plaintiffs on charges of conspiracy to defraud. The document was disclosed to the plaintiffs as an exhibit to a witness statement before the trial and subsequently read in open court. At the end of the prosecution case the plaintiffs successfully submitted that there was no case to answer and were acquitted.

Brooke J. said that in his view the general principle was that the use of documents disclosed for the purpose of legal proceedings should remain under the control of the court. The undertaking could always be varied in an appropriate case but the court should retain control. It was a necessary tool for preventing its process from being abused. He also held that the undertaking applied to material disclosed by the prosecution as intended to be used at the trial as well as to unused material and that it survived the use of the document in open court.

In the Court of Appeal [1998] Q.B. 424 his decision was reversed. Otton L.J. said, at p. 448, that he could find "no basis for an implied undertaking in criminal proceedings on the grounds of privacy and confidentiality." The reason, as I understand it, was that it was foreseeable that the information, if acted upon, would be made public. It is true that in Mahon v. Rahn the letter had actually been made public by use in open court. But that raised the separate and subsequent question of whether the undertaking, if it exists, should survive publication in open court. In the case of information which has not been made public, like the letter and file note in this case, the fact that publication may have been foreseeable as a possibility at the time when the documents were written does not mean that privacy and confidentiality should not be preserved so far as it is possible to do so. It is equally foreseeable that documents disclosed in civil discovery will be published in open court but that does not mean that there is no point in the court retaining control over the use of documents which have not been published or even, for some purposes, over those which have.

Otton L.J. went on to say that he saw no analogy between the position of the Crown in a criminal case and that of a party in civil proceedings. It could not be said that the Crown would be deterred from complying with its obligations of disclosure, whether at common law or now under statute, by concern that the accused might use the documents for some ulterior purpose.

I am not sure that it is right to treat the implied undertaking in civil proceedings merely as an inducement to a litigant to disclose documents which he might otherwise have been inclined to conceal. I think that it is more a matter of justice and fairness, to ensure that his privacy and confidentiality are not invaded more than is absolutely necessary for the purposes of justice. But I readily accept that these considerations do not apply to the Crown as prosecutor with the same force as they apply to an individual litigant. In the case of material disclosed by the prosecution, the main interest in privacy and confidentiality lies at one or sometimes two removes: in the persons who provided the information and in the persons to whom the information refers.

Otton L.J. said that the most impressive argument in favour of an implied undertaking was the need to protect informers close to criminals. ***211** But in his view sufficient protection was already provided by public interest immunity, which entitled the prosecution to apply for leave to withhold documents which would disclose the identity of a police informer, and by the immunity from suit accorded to statements made for the purpose of litigation, which I shall consider in more detail later.

In my view, this takes too narrow a view of the interests which require protection and too broad a view of the other rules which may be available for that purpose. Many people give assistance to the police and other investigatory agencies, either voluntarily or under compulsion, without coming within the category of informers whose identity can be concealed on grounds of public interest. They will be moved or obliged to give the information because they or the law consider that the interests of justice so require. They must naturally accept that the interests of justice may in the end require the publication of the information or at any rate its disclosure to the accused for the purposes of enabling him to conduct

his defence. But there seems to me no reason why the law should not encourage their assistance by offering them the assurance that, subject to these overriding requirements, their privacy and confidentiality will be respected.

One must also consider the interests of persons who are mentioned in the statements. Information given to the police or investigatory authorities will frequently contain defamatory or at least hurtful allegations about other people. That is to be expected in a criminal investigation. Such people may never be charged or know that they were under suspicion or that anything untoward was said about them. If such allegations are given publicity during the course of the proceedings, they will have to suffer the consequences because of the public interest in open justice. Even then, the judge will often be able to prevent the introduction of allegations about third parties which are not relevant to the issues in the case. But there seems to me no reason why the accused should be free, outside court, to publish such statements to the world at large. The possibility of a defamation action is for most people too expensive and impractical to amount to an adequate remedy.

Otton L.J. thought that the rules of public interest immunity, immunity from suit and qualified privilege should be sufficient protection for people who might be adversely affected by collateral use of disclosed documents. But the first two of these rules are not designed to protect the same interests as those protected by the implied undertaking and can therefore offer only accidental protection. Public interest immunity, in a criminal trial, involves weighing the public interest in confidentiality against the interests of justice - usually, the interests of the accused in being able to establish his defence. But the interests at stake when a question of collateral use arises are quite different. One is, by definition, no longer concerned with the use of the information for the purposes of establishing a defence at the trial. The interests to be weighed are, on the one hand, the public interest in allowing the collateral use (as in Ex parte Coventry Newspapers Ltd. [1993] Q.B. 278) and, on the other hand, the public interest in avoiding unnecessary invasion of the privacy and confidentiality of the maker of the statement and anyone to whom it refers. There may be ***212** occasions on which the answers produced by these two exercises will coincide but that will be accidental.

Likewise, as I mentioned earlier, the interests protected by the immunity rule are different. The immunity rule, for example, offers no protection of the privacy or reputations of people mentioned in the statement. On the contrary, it makes their position worse, since they cannot even clear their names by bringing a libel action against the maker. In the present case, the plaintiff might have taken some comfort from the fact that the documents which showed that he had been under suspicion could go no further than the files of the S.F.O. and Mr. Fuller's solicitors. They could not have damaged his reputation in the outside world. Instead, he chose to bring libel proceedings and (apparently due to the thoughtlessness of his solicitors) put the statements into the public domain by quoting them in extenso on a specially indorsed writ.

In addition, the immunity rule, at its widest, protects only statements made for the purposes of the investigation. It offers no protection for documents in existence at the time when the investigation commences and which are given to the police or investigators for the purposes of the prosecution. But these documents too would have been disclosed only because the interests of justice so required and there seems no reason why that should justify their collateral use.

Finally, qualified privilege also seems to me an inadequate answer, both for the reasons given by Fry L.J. in Munster v. Lamb, 11 Q.B.D. 588, 607 and because it does nothing to protect the privacy of persons mentioned in the statements.

In my opinion, therefore, the disclosure of documents by the prosecution as unused material under its common law obligations did generate an implied undertaking not to use them for any collateral purpose. I agree with the reasoning of Brooke J. on this point in Mahon v. Rahn and I think that Sir Michael Davies was right to strike out the action for the reasons which he gave.

I do not propose to express a view on the further points which arose in Mahon v. Rahn [1998] Q.B. 424, namely whether the undertaking applies also to used materials and whether it survives the publication of the statement in open court. I do not do so because these questions may well have been overtaken by the express provisions of the Criminal Procedures and Investigations Act 1996. But I would draw attention to the comments of Brooke J. in Mahon v. Rahn on the question of whether the provisions of Ord. 24, r. 14A (which was introduced in response to a decision of the European Court of Human Rights holding that the previous law unduly limited freedom of expression) and, by parity of reasoning, section 17(3)(b)

of the Act of 1996, are not too widely drawn. There seems to me much force in his view that the court should nevertheless retain control over certain collateral uses of the documents, including the bringing of libel proceedings.

5. Immunity from suit

In view of the opinion I have expressed on the implied undertaking, it is not strictly necessary for me to consider the ground upon which the Court of Appeal dismissed the appeal, namely immunity from suit. ***213** Nevertheless, the question was fully argued before your Lordships and I think it is right to deal with it. It could easily have happened that, as in Mahon v. Rahn [1998] Q.B. 424, the documents were read in open court. I think it would be right for your Lordships to decide whether in that case the plaintiff would have been entitled to rely upon them for the purposes of an action in libel.

I have already described the evolution of the principle of immunity from suit in respect of statements made in the course of litigation and its extension in Watson v. M'Ewan [1905] A.C. 480 to statements made before the proceedings. In that case, a wife who had brought matrimonial proceedings in Scotland claimed that a doctor (who had examined her) had made defamatory statements in the course of giving evidence for her husband. This was held to be subject to absolute immunity, but she relied also upon the publication of the same statements before trial to her husband and his lawyers. In the House of Lords, Lord Halsbury L.C. said that the earlier statements were subject to the same immunity. He said, at p. 487:

> "It is very obvious that the public policy which renders the protection of witnesses necessary for the administration of justice must as a necessary consequence involve that which is a step towards and is part of the administration of justice - namely, the preliminary examination of witnesses to find out what they can prove. It may be that to some extent it seems to impose a hardship, but after all the hardship is not to be compared with that which would arise if it were impossible to administer justice, because people would be afraid to give their testimony."

In later cases there has been some discussion of the general principle upon which this extension was based. Judges have rightly cautioned against further extension merely by analogy. In Mann v. O'Neill (1997) 71 A.L.J.R. 903, 912 McHugh J. identified two dangers in judicial reasoning - a Scylla and Charybdis through which it was necessary to navigate. The first was:

> "the temptation to recognise the availability of the defence for new factual circumstances simply because they are closely analogous to an existing category (or cases within an existing category) without examining the case for recognition in light of the underlying rationale for the defence."

On the other hand, there was an opposite peril in:

> "the temptation too readily to dismiss the defence as applicable in novel circumstances because the case is not within or analogous to an existing category but without determining the matter by reference to the defence's underlying rationale."

There is no doubt that the claim for absolute immunity in respect of statements made by one investigator to another (as in the case of the letter from the S.F.O. to the Attorney-General of the Isle of Man) or by an investigator to a person helping with the inquiry (as in the statements of Ms McKenzie recorded in the file note) or to an investigator by a person helping the inquiry who is not intended to be called as a witness (as in the ***214** remarks of Mr. Rogerson included in the file note) is a novel one. So far as I know, it is not a category of absolute immunity which has been considered before. But it should not for that reason be rejected. Again, I would imagine that the reason why this question now arises for the first time is that before the broadening of the prosecution's disclosure obligation, such letters and memoranda, internal to the

investigation, would never have seen the light of day. At any rate, the question is now whether they fall within the underlying rationale for the existence of immunity from suit.

In Mann v. O'Neill, 71 A.L.J.R. 903, 907 the judgment of Brennan C.J., Dawson, Toohey and Gaudron JJ. describes the rationale as one of necessity:

> "It may be that the various categories of absolute privilege are all properly to be seen as grounded in necessity, and not on broader grounds of public policy. Whether or not that is so, the general rule is that the extension of absolute privilege is 'viewed with the most jealous suspicion, and resisted, unless its necessity is demonstrated.' Certainly, absolute privilege should not be extended to statements which are said to be analogous to statements in judicial proceedings unless there is demonstrated some necessity of the kind that dictates that judicial proceedings are absolutely privileged."

Thus the test is a strict one; necessity must be shown, but the decision on whether immunity is necessary for the administration of justice must have regard to the cases in which immunity has been held necessary in the past, so as to form part of a coherent principle.

Approaching the matter on this basis, I find it impossible to identify any rational principle which would confine the immunity for out of court statements to persons who are subsequently called as witnesses. The policy of the immunity is to enable people to speak freely without fear of being sued, whether successfully or not. If this object is to be achieved, the person in question must know at the time he speaks whether or not the immunity will attach. If it depends upon the contingencies of whether he will be called as a witness, the value of the immunity is destroyed. At the time of the investigation it is often unclear whether any crime has been committed at all. Persons assisting the police with their inquiries may not be able to give any admissible evidence; for example, their information may be hearsay, but none the less valuable for the purposes of the investigation. But the proper administration of justice requires that such people should have the same inducement to speak freely as those whose information subsequently forms the basis of evidence at a trial.

When one turns to the position of investigators, it seems to me that the same degree of necessity applies. It would be an incoherent rule which gave a potential witness immunity in respect of the statements which he made to an investigator but offered no similar immunity to the investigator if he passed that information to a colleague engaged in the investigation or put it to another potential witness. In my view it is necessary for the administration of justice that investigators should be able to exchange information, theories and hypotheses among themselves and to put them to other persons assisting in the inquiry without fear of being sued if such ***215** statements are disclosed in the course of the proceedings. I therefore agree with the test proposed by Drake J. in Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184, 192:

> "the protection exists only where the statement or conduct is such that it can fairly be said to be part of the process of investigating a crime or a possible crime with a view to a prosecution or a possible prosecution in respect of the matter being investigated."

This formulation excludes statements which are wholly extraneous to the investigation - irrelevant and gratuitous libels - but applies equally to statements made by persons assisting the inquiry to investigators and by investigators to those persons or to each other.

As the policy of the immunity is to encourage freedom of expression, it is limited to actions in which the alleged statement constitutes the cause of action. In Marrinan v. Vibart [1963] 1 Q.B. 528 the Court of Appeal held that the immunity in respect of statements made in court or with a view to a prosecution could not be circumvented by alleging that it formed part of a conspiracy with other witnesses to give false evidence. That seems to me to be right. On the other hand, the immunity does not apply to actions for malicious prosecution where the cause of action consists in abusing legal process by maliciously and without reasonable cause setting the law in motion against the plaintiff. It does not matter that an essential step in setting the law in motion was a statement made by

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the defendant to a prosecuting authority or even the court: see Roy v. Prior [1971] A.C. 470.

Actions for defamation and for conspiracy to give false evidence plainly fall within the policy of the immunity and actions for malicious prosecution fall outside it. In between, there is some disputed ground. In Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184 Drake J. held that it precluded reliance on the statement in an action for negligence in which it was alleged that a carelessly prepared post mortem report had led to the plaintiff being unjustifiably arrested and charged with murder. I express no view on this case, which I think might nowadays have been decided on the ground that the defendants owed the plaintiff no duty of care. There is also some dispute over whether it applies to the emergent tort of abuse of public office. In Silcott v. Commissioner of Police of the Metropolis (1996) 8 Admin.L.R. 633 and again in Docker v. Chief Constable of West Midlands Police, The Times, 29 April 1998; Court of Appeal (Civil Division) Transcript No. 472 of 1998, the Court of Appeal decided that it did while in Bennett v. Commissioner of Police for the Metropolis (1997) 10 Admin.L.R. 245 Sir Richard Scott V.-C. decided that it did not. The point has not been argued before your Lordships and I therefore likewise express no view. But I am satisfied that the Court of Appeal was right in holding that the statements relied upon in this case were protected by absolute immunity and for that reason also I would dismiss the appeal.

Lord Hope of Craighead.

My Lords, the plaintiffs in this case are Mr. Taylor, who is an English solicitor practising in the Isle of Man, and Monarch Assurance Plc., an Isle of Man company of which ***216** Mr. Taylor is the managing director. Their action is one of damages for defamation. It is based entirely upon the contents of two documents.

The first document is a letter dated 4 May 1994 which was sent by the second defendant Katherine McKenzie, an investigating lawyer employed by the first defendant, the Serious Fraud Office, to the Attorney-General of the Isle of Man. It was a letter of request which was written in connection with an investigation which was being carried out by the S.F.O. into an allegation of fraud committed within the United Kingdom by Charles Deacon and James Fuller and by another man named John Patrick Savage who later died. The request was for assistance to enable inquiries to be undertaken in the Isle of Man under the Criminal Justice Act 1990 (Isle of Man). The second document is a file note which was prepared on 14 May 1994 by the second defendant following a meeting which took place on that date as part of the same investigation at the Solicitors' Complaints Bureau. At that meeting the second defendant was accompanied by Detective Inspector Hulse of the Staffordshire Police. They had gone to see the fourth defendant, an employee of the third defendant, the Law Society, to obtain information from him about how the compensation fund could be expected to work in the circumstances of the alleged fraud. The plaintiffs maintain in their statement of claim that the letter and the file note contain words which, in their natural and ordinary meaning, are defamatory of them because they allege that they were involved in the fraudulent activity which was being investigated.

A copy of the letter was retained within the office of the S.F.O. together with the file note as part of the papers relating to the investigation. Some months later the criminal proceedings which had been commenced against Deacon and Fuller were transferred to the Crown Court. On 24 October 1994 the solicitors for Deacon and Fuller received from the S.F.O. under the common law disclosure rules material falling within the category of "unused material" which included these two documents. In May 1995 Mr. Taylor was asked by counsel representing Fuller whether he would be willing to assist him with his defence. A meeting with him was then arranged, and in order to enable him to prepare for it he was shown a number of documents. These included the copy letter and the file note which had been disclosed to the solicitors by the S.F.O. In January 1996 Deacon and Fuller were convicted of conspiracy to defraud after a trial in which Mr. Taylor did not, in the event, give evidence. Neither of the two documents were produced or referred to at the trial. The second and fourth defendants were not called upon either by the Crown or by the defence to attend the trial as witnesses.

Two points emerge clearly from this brief narrative. The first is that, had it not been for the obligation which rested on the S.F.O. under the common law disclosure rules, these two documents would never have been seen by Mr. Taylor or by anyone else who was not involved in the investigation by the S.F.O. into the alleged fraud. The copy letter and the file note would have remained on the S.F.O.'s files. There would have been no dissemination to anybody outside its office of any defamatory material which was contained in them. The second is that, as none of the defendants were witnesses or potential witnesses at

the trial, they do not have the protection of the absolute privilege which is available in respect of what is ***217** said in court by witnesses and in statements which are taken when the case is being prepared for trial by potential witnesses: Watson v. M'Ewan [1905] A.C. 480.

Two further points need to be made about the common law disclosure rules in order to set these issues into their proper context. The first point relates to the scope of these rules. They have provided the basis for the rules which have now been introduced by statute: see sections 1-21 of the Criminal Procedure and Investigations Act 1996. By October 1994, when the material which is relevant to this case was disclosed by the S.F.O., it was no longer enough to disclose details of the evidence which the prosecution proposed to use at the trial. The duty extended to "unused" material as well, namely to material which the prosecution had decided not to use but which might be useful to the defence. It extended to statements taken from witnesses whom the prosecution had decided not to call at the trial, to items which the prosecution had decided not to exhibit but which the defence might wish to use in support of the defence case and to all manner of other material, irrespective of whether it would be admissible in evidence, which might possibly be helpful to the defence or damaging to the prosecution case. In the interests of ensuring a fair trial the duty had been extended far beyond the original concept of giving fair notice to the defendant of the case which he had to meet. and the consequences of non-disclosure had become so serious for the administration of justice - the setting aside of a conviction, with the prospect of much adverse publicity - that in practice the duty extended to everything on the prosecutor's files which could not be made the subject of a specific request for non-disclosure. Thus the correspondence, file notes and working papers of investigators, which in the past would have been regarded as purely internal to the prosecutor and not available at all for defence scrutiny, had now become disclosable.

The second point is the recent origin of this development. It first found expression in the Attorney-General's guidelines (Practice Note (Criminal Evidence: Unused Material) [1982] 1 All E.R. 734). But the extent of the modern common law rules was not clearly established until a series of cases in which the Court of Appeal held that a failure to disclose what ought to have been disclosed was an irregularity in the course of the trial. This enabled the court to hold that the conviction was unsafe: Reg. v. Maguire [1992] Q.B. 936; Reg. v. Ward (Judith) [1993] 1 W.L.R. 619 and Reg. v. Davis [1993] 1 W.L.R. 613. The history of the matter was described in Reg. v. Brown (Winston) [1994] 1 W.L.R. 1599; [1998] A.C. 367. The fact that the development is so recent is important, as one compares the modern law rules about disclosure with the absolute immunity which is given to witnesses for things said in court and in statements taken from potential witnesses. Central to the present case is the question whether the law about the immunity of witnesses and potential witnesses, which was settled by authority long before the evolution of the modern disclosure rules, is in need of some adaptation or adjustment in order to keep pace with the widening of the disclosure rules.

In my opinion it is necessary here, as in so many matters affecting the criminal law, to balance the public interest in the administration of justice against the interests of the individual. The history of the evolution of the ***218** disclosure rules shows that the balance has swung a long way towards the interests of the individual who is being prosecuted. This is in recognition of the fact that the defendant in criminal proceedings has the right to insist on a fair trial. Fairness to the defendant demands the widest possible disclosure. In practice, to avoid the risk of unfairness and because the prosecutor does not have the time or the resources to edit out every item which need not be disclosed, disclosure under the modern rules tends to provide the defence with more material than is strictly necessary.

But the administration of justice is not all about fairness to the defendant. It is also about the interests of those individuals who may be affected by dissemination of the material. There is a public interest also, in the detection and punishment of crime. If that interest is put at risk because of the consequences of the disclosure rules, the balance between the public interest and the interests of the individual is disturbed. It needs to be adjusted in favour of the public interest. This cannot be done by reducing the scope of the disclosure rules. That would prejudice the right of the defendant to a fair trial, which is always paramount. What can be done is to increase the protection to those who may be affected by the disclosure rules against the collateral use of such material - that is to say, against its use for purposes other than to ensure that the defendant has a fair trial.

I consider that Mr. Caldecott for the respondents took your Lordships to the heart of the matter when he submitted that the public interest required that all those involved in a criminal investigation should be able to communicate freely without being inhibited by the threat of proceedings for defamation such as those which have

been brought in the present case. Those who give or may give evidence at the trial are protected by the traditional witness immunity when they are in the course of preparing their evidence. But the traditional protection has until now been applied only to persons who fall within that category. Yet the typical criminal investigation involves many other people who are not witnesses or potential witnesses. They include those who simply provide information to the investigators. The information which they give may be useful as background but not worth investigating further for use at the trial. It may not even be admissible as evidence. But it may nevertheless be worth putting on record, perhaps to close one line of inquiry or to open up one which has not yet been investigated. As soon as it has been recorded, perhaps in a file note to ensure that it is not lost sight of should further reference to it become necessary, it is at risk now of being disclosed to the defence. Then there are the investigators themselves and the prosecuting officials with whom they are required to communicate. They are likely to be members of a team, perhaps working from various offices. The memberships of the team may change from time to time. The efficiency of the investigation may be dependent upon the completeness and accuracy of the information which has been committed to paper by the investigators. Yet anything which is committed to paper, whether by the official or the investigator, is now at risk of being disclosed under the disclosure rules.

The risk to the administration of justice lies in the inhibiting effect of collateral use of this material. A criminal investigation may travel in various directions before it settles down and concentrates on the activities ***219** of those against whom the prosecutor believes there is sufficient evidence. Those who provide information to investigators usually do so in the belief, which may or may not be expressed by them, that the information is being given out of a sense of public duty and in confidence. That information may, if it is to be useful to the investigator, contain material which is defamatory. So long as the information goes no further, no harm is done to anybody. But disclosure releases the defamatory material from the control of the prosecutor. Unless protected, it may be disseminated further and become actionable.

It requires little imagination to appreciate the damaging effects on the supply of information if those who supply it are to be subjected to claims for damages for defamation arising from what they have said. The process of investigation is likely to be inhibited if the investigator is at risk of such a claim because of something which he has recorded for his own use, or for use by others in his team, in a file note. As Lord Keith of Kinkel remarked in Hill v. Chief Constable of West Yorkshire [1989] A.C. 53, 63d, in a different but analogous context, the imposition of liability in such circumstances may lead to the exercise of the investigatory function being carried on in a detrimentally defensive frame of mind. This may prejudice the defendant, because other possible lines of inquiry which might assist his defence will not appear anywhere in writing lest they should be thought, following disclosure, to be defamatory. I do not think that it is possible to overstate the importance, in the public interest, of ensuring that material which is disclosed in criminal proceedings is not used for collateral purposes.

Under the existing rules all those who participate in a criminal investigation in good faith are entitled to claim the protection of qualified privilege. But that is an imperfect protection, because qualified privilege requires to be pleaded and established as a defence. No action can be struck out on the ground of qualified privilege. The requirement therefore is to extend to informants, investigators and prosecutors whose statements are revealed by the operation of the disclosure rules the benefit of the absolute privilege in respect of the statements made which is already accorded to witnesses and potential witnesses. and it is necessary to extend to them the same absolute immunity against actions for conspiracy or for negligence based upon disclosed material as has already been recognised in the case of the police: see Marrinan v. Vibart [1963] 1 Q.B. 528 and Hill v. Chief Constable of West Yorkshire [1989] A.C. 53. Such material may however still be actionable on other grounds where malice and lack of reasonable and probable cause can be established. Just as proceedings for perjury are available to deal with the witness who would otherwise be protected against statements made in the witness box, so also the public interest requires that a remedy for malicious prosecution should remain available against those who would be entitled to the benefit of the absolute privilege but who have acted maliciously and without reasonable and probable cause during the investigation process. But that is a quite separate matter as it is the malicious abuse of process, not the making of the statement, which provides the cause of action. The public policy argument for extending the absolute privilege, consistently with established principles, seems to me to be unanswerable.

***220**

I see the two solutions as complementary to each other. If the absolute privilege and the consequent immunity are to be kept within the limits which are necessary for the

administration of justice, they must be accompanied by a rule which restricts the use and dissemination of disclosed material. The purpose of the immunity is to ensure the integrity of the investigation process. The disclosure should extend no wider than is necessary to serve the public interest in the administration of justice. It should not be accompanied by risks to the good name of those who are not on trial from whom the protection of defamation proceedings has been removed by the immunity. So a restriction on the release and collateral use of the disclosed material by means of the implied undertaking can be seen as a necessary balance against the possible harm which might flow from the absolute nature of the immunity.

For these reasons as well as those given in the speech of my noble and learned friend, Lord Hoffmann, which I have had the benefit of seeing in draft and with which I agree, I would dismiss the appeal.

Lord Hutton.

My Lords, I have had the advantage of reading in draft the speeches of my noble and learned friends, Lord Hoffmann and Lord Hope of Craighead, with which I am in agreement, and will only add a few observations of my own in relation to the principle of immunity from suit. Under this principle it is settled that no action can be brought against the judge, counsel, witnesses, jurors and parties for words spoken or written in the course of a trial, and this immunity is absolute and cannot be defeated by proof of malice. In Munster v. Lamb, 11 Q.B.D. 588, 604 Brett M.R. stated:

> "The rule of law is that what is said in the course of the administration of the law, is privileged; and the reason of that rule covers a counsel even more than a judge or a witness. To my mind it is ill ogical to argue that the protection of privilege ought not to exist for a counsel, who deliberately and maliciously slanders another person. The reason of the rule is, that a counsel, who is not malicious and who is acting bona fide, may not be in danger of having actions brought against him. If the rule of law were otherwise, the most innocent of counsel might be unrighteously harassed with suits, and therefore it is better to make the rule of law so large that an innocent counsel shall never be troubled, although by making it so large counsel are included who have been guilty of malice and misconduct."

The immunity was extended by this House in Watson v. M'Ewan [1905] A.C. 480 to statements made by a witness to a party and his solicitor in preparing for a trial, Lord Halsbury L.C. stating, at p. 487:

> "It is very obvious that the public policy which renders the protection of witnesses necessary for the administration of justice must as a necessary consequence involve that which is a step towards and is part of the administration of justice - namely, the preliminary examination of witnesses to find out what they can prove. It may be that to some extent it seems to impose a hardship, but after all the hardship is not to be compared with that which would arise if it were impossible to ***221** administer justice, because people would be afraid to give their testimony."

In recent years the procedure has developed whereby very full disclosure is given to the defendant in a criminal case, so that he will become aware, and others may become aware, of what has been said by investigators and those who speak to them in the course of the investigation which preceded the prosecution. Therefore, just as the preliminary examination of a witness by a party's solicitor out of court is a step towards the administration of justice which requires to be protected, I consider that the investigation of a suspected crime is a step towards the administration of justice so that the protection of absolute privilege should be given to those who, in the course of their public duty in investigating a suspected crime, speak or write to persons who may be able to provide relevant information, and to such persons in respect of what they say or write to the investigators, and to the giving of information by investigators to their colleagues who are

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also concerned with the investigation. If this protection were not given police officers and investigators, such as officers of the Serious Fraud Office, who had conducted investigations into suspected crimes and persons who gave information to them "might be unrighteously harassed with suits" and, as Fry L.J. stated in Munster v. Lamb, 11 Q.B.D. 588, 607, there would be the risk that "numerous actions would be brought against persons who were merely discharging their duty."

In my opinion the argument should not prevail that the defence of qualified privilege would give adequate protection to investigators and those who spoke to them because I consider that there would be a real risk that an unfounded allegation of malice made by a plaintiff bringing an action for defamation would subject an investigator or informant to harassment to which he should not be subjected.

I am in agreement with the statement of Drake J. in Evans v. London Hospital Medical College (University of London) [1981] 1 W.L.R. 184, 192c in respect of witnesses and possible witnesses that

> "the protection exists only where the statement or conduct is such that it can fairly be said to be part of the process of investigating a crime or a possible crime with a view to a prosecution or possible prosecution in respect of the matter being investigated."

I would also apply this requirement to an investigator or a person who gives him information so that the protection will not apply to a gratuitous defamatory remark made by an investigator to a third party or by a third party to an investigator.

In D. v. National Society for the Prevention of Cruelty to Children [1978] A.C. 171 this House held that a similar immunity from disclosure of their identity should be given to those who gave information about neglect or ill treatment of children to a local authority or the N.S.P.C.C to that which the law allowed to police informers. In rejecting an argument that such an immunity could give protection to a malicious informant Lord Simon of Glaisdale said, at p. 233:

> "I cannot leave this particular class of relevant evidence withheld from the court without noting, in view of an argument for the ***222** respondent, that the rule can operate to the advantage of the untruthful or malicious or revengeful or self-interested or even demented police informant as much as of one who brings information from a high-minded sense of civic duty. Experience seems to have shown that though the resulting immunity from disclosure can be abused the balance of public advantage lies in generally respecting it."

In this case, whilst the immunity may on occasions benefit a malicious investigator or informant, I consider that the balance of public advantage lies in allowing it to the defendants.

I would dismiss the appeal.

Representation
Solicitors: Jeffrey Green Russell; Treasury Solicitor; Crockers Oswald Hickson.

Petition: 29 January 1998. The Appeal Committee of the House of Lords (Lord Goff of Chieveley, Lord Hoffmann and Lord Saville) allowed a petition by the plaintiffs for leave to appeal. ([Reported by Shiranikha Herbert, Barrister])

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EXHIBIT DD

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March 18, 2016

VIA E-MAIL

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Re: *Picard v. Ceretti et al.*
Adv. Pro No. 09-01161 (SMB)

Dear Gerry:

I write in response to your letter from March 15, and to confirm that all of the voluntary productions will be produced to the Trustee on March 21, 2016, with however *two* exceptions.

First, as you acknowledge the Funds will not produce FIM documents to the Trustee to the extent the Trustee already has these materials in his possession. As we explained at the March 7 Court conference, a substantial portion of the FIM voluntary production is subject to a confidentiality agreement, which prevents the Funds from disclosing to any person documents produced to the Trustee by order of the English court. Although FIM represented that all of the documents received by the Funds under the English order were also produced to the Trustee, based on our review of documents in the Trustee's third-party data room, that representation appears to be incorrect. To that end, the Funds will remove all documents containing a FIM custodian value from their March 21 production. Once the Funds' FIM production has been reconciled with the Trustee's, the Funds will produce to the Trustee any FIM document that the Trustee does not already have. We suggest that the parties work together to reconcile the two differing FIM productions. Please let us know your availability for a telephone discussion on this topic.[1]

[1] We note our frustration with this exercise, given that the Funds are ultimately withholding documents that the Trustee already has, but we are hopeful that by confirming the document sets we see in the Trustee's third-party data room the Funds will be a position to produce the remaining FIM documents to the Trustee soon after our discussion takes place.

Geraldine E. Ponto, Esq.
March 18, 2016

Second, as stated at the Court conference the Funds will not produce documents to the Trustee that post-date the Funds' liquidations. The Funds raised this date restriction at the outset of this litigation in their responses and objections to the Trustee's first set of document requests and since then you have not offered any explanation as to how documents dated after May 9, 2009 are relevant.[2] Indeed, this is the very same type of date limitation that the Trustee has applied to his own productions to the Funds. Further, many of the Funds' post-liquidation documents are protected from disclosure by the work product doctrine, given that most, if not all, such documents were generated in anticipation of claims by and against the Funds. The Funds therefore stand by this date restriction and will not produce documents dated after May 9, 2009.

Finally, as you know the Funds are holding boxes of hard copy documents in storage in Bermuda. While the Funds believe that the burden of reviewing these documents far outweighs their relevance, we are willing to make them available for inspection. As promised in our letter of December 23, we include with this letter an un-redacted index of those boxes held in storage. To the extent the Trustee would like to conduct review of these documents, we will make them available in Bermuda at a time that is mutually convenient for both parties. The Trustee will be responsible for any cost associated with making scans and/or copies of those documents he identifies for production in this case.

Sincerely,

Lindsay M. Weber

Enclosure

Cc: David J. Sheehan
Gonzalo S. Zeballos
Karin S. Jenson
Robert Loigman
Rex Lee

[2] Although you mentioned at the Court conference that the Funds previously produced "relevant" documents to the Trustee that fall outside of this timeframe, we suspect that your confusion may relate to the fact that some of the metadata document dates were manually altered by the Funds during the course of their review of the voluntary productions. We direct your attention to the "Main Date/LK–Date" field for an accurate reflection of the date of the document.

EXHIBIT EE

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March 28, 2016

BY E-MAIL

Lindsay M. Weber, Esq.
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51 Madison Avenue, 22nd Floor
New York, NY 10010-1601

Dear Lindsay:

We confirm receipt on March 21, 2016, of the Funds' partial production of documents.

With respect to the documents you withheld because they contain a FIM custodian value, we knew that the FIM production to the Trustee was incomplete, and agree to cooperate with you on reconciling what we received as compared with FIM's production to the Funds. We are available for a telephone call on Tuesday, March 29 or Wednesday, March 30, to discuss this. We believe it would be useful to have our respective litigation support analysts participate in that call.

Regarding your position fixing a cutoff date of May 9, 2009, for production, as we previously indicated, that is unacceptable. Documents created by or coming into the possession of the Kingate Funds post-liquidation that concern the non-Fund defendants, the Kingate Funds' operations, their shareholders, their knowledge of the fraud, their transfers, their relationships with their service providers, the Trustee's claims and the Funds' affirmative defenses are all relevant. Only privileged documents may be withheld. Your letter inaccurately notes that "this is the very same type of date limitation that the Trustee has applied to his own production to the Funds." You have previously represented that to the Court as well. We refer you to the Trustee's Responses and Objections to the Kingate Funds' First Request for Production, which states, in relevant part:

> **Materials Prepared Post-December 11, 2008:** The Trustee will not produce or log Documents prepared by and/or received by him, his counsel his professionals and/or other agents from on or after December 11, 2008 that are not relevant, and/or protected by the

attorney work product doctrine, the attorney-client privilege, and/or any other applicable privileges or protections.

Your date restriction is unfounded. We repeat our request that you produce these documents and ask that you respond by no later than Wednesday, March 30. There were several comments made on this issue at the March 7, 2016 discovery conference, including by the Court, and based upon those comments, we should not have to bring this before the Court a second time.

Finally, the Trustee's representatives will review the hard copy documents held in storage in Bermuda. We are prepared to begin doing so next week, and will follow up with you to iron out the details.

Sincerely,

Geraldine E. Ponto

Copy: Robert S. Loigman
Rex Lee
David J. Sheehan
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EXHIBIT FF

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February 10, 2016

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Re: Picard v. Ceretti, et al., Adv. Pro. No. 09-1161 (SMB)

Dear Counsel:

Baker & Hostetler LLP is counsel to trustee Irving H. Picard (the "Trustee"). The Trustee writes to request that the Non-Fund Defendants[1] consent to entry of the proposed Stipulation and Order Setting Initial Pretrial Conference Between the Trustee and the Non-Fund Defendants (the "Stipulation"), a copy of which is enclosed.

On October 27, 2015, the Court entered an order approving a Case Management Plan submitted jointly by the Trustee and defendants Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd. (the

[1] The "Non-Fund Defendants" are the defendants in this proceeding other than defendants Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd., namely defendants Federico Ceretti, Carlo Grosso, Kingate Management Limited, FIM Advisers LLP, FIM Limited, Citi Hedge Fund Services Limited, First Peninsula Trustees Limited (individually and as trustee of The Ashby Trust), The Ashby Trust, Ashby Investment Services Limited, Alpine Trustees Limited (individually and as trustee of El Prela Trust), Port of Hercules Trustees Limited (individually and as trustee of El Prela Trust), El Prela Trust, El Prela Group Holding Services, Ashby Holdings Services Limited, El Prela Trading Investments Limited, and HSBC Bank Bermuda Limited.

"Funds"), which, among other things, established pretrial deadlines for fact and expert discovery and summary judgment briefing as between the Trustee and the Funds. Prior to entry of the October 27 case management order (the "CMO"), the Trustee and the Funds conferred on several occasions as required by Civil Rule 26(f). The Non-Fund Defendants did not participate in those Civil Rule 26(f) conferences and are not parties to the CMO.

Although the Non-Fund Defendants previously resisted party discovery under the federal rules, any such continued resistance would be misguided. The Extraterritoriality Order entered by the Court on December 10, 2014 (the "ETO") neither expressly nor implicitly stays discovery against the Non-Fund Defendants. Paragraph 12 of the ETO simply links the Non-Fund Defendants' time to respond to the Trustee's Fourth Amended Complaint to the Court's decision on the Extraterritoriality Motion. That language does not even refer to discovery in this proceeding, let alone stay it. By its plain terms, therefore, paragraph 12 does not stay discovery against the Non-Fund Defendants.

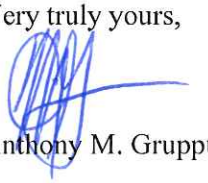
Paragraph 12 does not, moreover, cause by operation of law a stay of discovery. The discovery process between the Trustee and the Non-Fund Defendants commences upon the Court's entry of an order setting an initial pretrial conference under Local Bankruptcy Rule 7016-2. Scheduling the conference initiates the time for the Trustee and the Non-Fund Defendants to confer according to Civil Rule 26(f). Once the Trustee and the Non-Fund Defendants have conferred, any party may seek discovery under Civil Rule 26(d)(1). The right to obtain discovery is not conditioned on the filing by any Non-Fund Defendant of an answer to the Trustee's Fourth Amended Complaint.

The pending Extraterritoriality Motion likewise does not allow the Non-Fund Defendants to avoid discovery. The federal rules do not automatically stay discovery upon filing of a motion to dismiss. And, as a practical matter, discovery from the Non-Fund Defendants is necessary and appropriate irrespective of the Court's disposition of the Extraterritoriality Motion. The Court has previously ruled, as a matter of law, that the Trustee has sufficiently pleaded facts to permit the knowledge and conduct of the Non-Fund Defendants to be imputed to the Funds. The Trustee may conduct discovery on all aspects of the Non-Fund Defendants' relationship with the Funds for purposes of proving his claims. There is no sound reason to delay that discovery.

Accordingly, to begin that process, the Stipulation proposes March 31, 2016, as the date for the initial pretrial conference with the Court. We are available on March 1, 2016, March 2, 2016, and March 3, 2016, to confer with the Non-Fund Defendants in accordance with Civil Rule 26(f). Please advise of your availability on those dates.

Thank you for your attention to this matter, and we look forward to hearing from you.

Very truly yours,



Anthony M. Gruppuso

Enclosure

cc: Robert S. Loigman, Esq.
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Lindsay M. Weber, Esq.

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Attorneys for Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FEDERICO CERETTI, *et al.* Defendants.	Adv. Pro. No. 09-1161 (SMB)

STIPULATION AND ORDER SETTING INITIAL PRE-TRIAL CONFERENCE BETWEEN THE TRUSTEE AND THE NON-FUND DEFENDANTS

WHEREAS, on October 27, 2015, the Court entered a Case Management Plan (the "CMP") submitted jointly by plaintiff Irving H. Picard (the "Trustee") and defendants Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd. (the "Fund Defendants");

WHEREAS, the CMP establishes deadlines for fact and expert discovery, among other things, between the Trustee and the Fund Defendants;

WHEREAS, defendants Federico Ceretti, Carlo Grosso, Kingate Management Limited, FIM Advisers LLP, FIM Limited, Citi Hedge Fund Services Limited, First Peninsula Trustees Limited (individually and as trustee of The Ashby Trust), The Ashby Trust, Ashby Investment Services Limited, Alpine Trustees Limited (individually and as trustee of El Prela Trust), Port of Hercules Trustees Limited (individually and as trustee of El Prela Trust), El Prela Trust, El Prela Group Holding Services, Ashby Holdings Services Limited, El Prela Trading Investments Limited, and HSBC Bank Bermuda Limited (collectively, the "Non-Fund Defendants") are not parties to the CMP; and

WHEREAS, the Trustee and the Non-Fund Defendants have jointly submitted this Stipulation and Order for the Court's consideration.

On this ____ day of _____, 2016, it is hereby

ORDERED, that the Court will conduct an initial pretrial conference between the Trustee and the Non-Fund Defendants on March 31, 2016 at 10:00 a.m.; and it is further

ORDERED, that the Trustee and the Non-Fund Defendants will submit, no later than March 24, 2016, the report required by Fed. R. Civ. P. 26(f).

_____
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

The Trustee and the Non-Fund Defendants, through their undersigned counsel, stipulate and agree to the provisions of this Order.

BAKER & HOSTETLER LLP

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