

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
www.flsb.uscourts.gov

In re:

Chapter 11

PALM BEACH FINANCE PARTNERS, L.P.,  
a Delaware limited partnership, *et al.*,<sup>1</sup>

Case No. 09-36379-BKC-PGH

Jointly Administered

Debtors.

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LIQUIDATING TRUST MONITOR'S  
APPLICATION FOR APPROVAL OF EMPLOYMENT  
OF KINETIC PARTNERS (CAYMAN) LTD. AS  
CONSULTANT, *NUNC PRO TUNC* TO NOVEMBER 1, 2010

Pursuant to this Court's Order Confirming Second Amended Joint Plan of Liquidation, the Liquidating Trust Agreement for Palm Beach Finance II, L.P., 11 U.S.C. §327, Fed. R. Bankr. P. 2014 and Local Rule 2014-1, Geoffrey Varga, the Joint Official Liquidator for Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd., in his capacity as the Liquidating Trust Monitor for Palm Beach Finance II, L.P. (the "Monitor"), respectfully requests that the Court enter an Order substantially in the form attached hereto as **Exhibit "A,"** approving the employment of Geoffrey Varga ("Varga") and Kinetic Partners (Cayman) Ltd. ("Kinetic") (collectively, the "Applicant") as consultant to the Monitor, *nunc pro tunc* to November 1, 2010, the date services were first rendered. In support of this Application, the Monitor submits the Affidavit of Geoffrey Varga (the "Varga Affidavit"), which is attached hereto as **Exhibit "B."** In further support of this Application, the Monitor states as follows:

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<sup>1</sup> The address and last four digits of the taxpayer identification number for each of the Debtors follows in parenthesis: (i) Palm Beach Finance Partners, L.P., 3601 PGA Blvd., Suite 301, Palm Beach Gardens, FL 33410 (TIN 9943); and (ii) Palm Beach Finance II, L.P., 3601 PGA Blvd., Suite 301, Palm Beach Gardens, FL 33410 (TIN 0680).

1. On November 30, 2009, Palm Beach Finance Partners, L.P. (“PBF I”) and Palm Beach Finance II, L.P. (“PBF II”) (collectively, the “Debtors”), through their Chief Restructuring Officer, Kenneth A. Welt, each filed a voluntary Chapter 11 bankruptcy petition in this Court and by Order dated December 1, 2009, the Court approved the joint administration of the Debtors’ cases.

2. On February 2, 2010, upon motion filed by the U.S. Trustee, the Court entered an Order approving the selection of Barry Mukamal as the Chapter 11 Trustee for both Debtors.

3. Geoffrey Varga is the Joint Official Liquidator (“JOL”) of Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd. (the “Offshore Funds”), which are in formal liquidation proceedings in the Cayman Islands. The Offshore Funds represent substantially all of the creditors of PBF II, both having loaned money to PBF II, which issued demand promissory notes to the Offshore Funds with an aggregate amount of principal and interest due and owing in excess of \$700 million.

4. On September 3, 2010, the JOL and the Chapter 11 Trustee, as Co-Plan Proponents, filed the Second Amended Joint Plan of Liquidation [ECF No. 245] (“Plan”), which the Court approved by Order Confirming Second Amended Joint Plan of Liquidation dated October 19, 2010 [ECF No. 444] (the “Confirmation Order”).

5. Paragraph 7.1.7 of the confirmed Plan states that the JOL shall be the Monitor with the power and authority set forth in the Liquidating Trust Agreement for Palm Beach Finance II, L.P. (the “PBF II Liquidating Trust Agreement”).

6. Paragraph 7.1.11 of the confirmed Plan contains the following provisions regarding the process for, and payment of, compensation to the Monitor’s professionals (hereinafter referred to as “Liquidating Trust Compensation Provisions”): (i) the professionals retained by the Monitor

shall be entitled to monthly interim compensation for fees and expenses incurred in carrying out their duties consistent with the confirmed Plan and Liquidating Trust Agreements, as long as notice of the fees and expenses are provided on a monthly basis to the Liquidating Trustee and United States Trustee; (ii) if no written objections to the fees and expenses sought are received within 10 business days, then 100% of the professional's fees and expenses shall be paid by the Liquidating Trustee from Trust Assets of the Liquidating Trusts; (iii) if objections to the fees and expenses are timely made by e-mail or facsimile and cannot be resolved amicably, then the Court will hear and resolve the objections; and (iv) professionals are required to submit applications to the Court for final approval of reimbursement of fees and expenses previously paid to them, no less than once every four (4) months.

7. The effective date of the Plan occurred on November 1, 2010 ("Effective Date") and on that date, Liquidating Trusts for PBF I and PBF II were established pursuant to the Confirmation Order and Liquidating Trust Agreements for PBF I and PBF II signed by Barry Mukamal in his capacity as Chapter 11 Trustee and Liquidating Trustee. The PBF I and PBF II Liquidating Trust Agreements provide the framework and mechanism for recoveries by both estates post-confirmation.

8. The Monitor desires to retain the Applicant as consultant because the Applicant served as the JOL's consultant pre-confirmation and, therefore, has extensive knowledge and has already conducted substantive analysis to ascertain the viability of claims against third parties for pursuit by the Liquidating Trusts. The Applicant also has experience and expertise in the areas of restructuring and insolvency and is qualified to act as consultant for the Monitor in these cases.

The Monitor respectfully submits that the retention of the Applicant is necessary and in the best interests of creditors, the Debtors' estates and the Liquidating Trusts and their Beneficiaries.<sup>2</sup>

9. Except as disclosed in the Varga Affidavit attached hereto as **Exhibit "B,"** to the best of the Monitor's knowledge: (i) Varga and Kinetic are "disinterested" persons within the meaning of Section 101(14) of the Bankruptcy Code as required by Section 327(a) of the Bankruptcy Code; (ii) neither Varga nor Kinetic have any connections with the Debtors, creditors, Beneficiaries or any other parties in interest, their respective attorneys and accountants, the United States Trustee or any person employed in the Office of the United States Trustee; and (iii) neither Varga nor Kinetic hold or represent any interest adverse to the Debtors, the Debtors' estates, creditors, the Liquidating Trusts and their Beneficiaries or other interested parties as to the matters for which the Applicant is to be employed. Kinetic will periodically review its files during the pendency of these cases to ensure that no conflicts or other disqualifying circumstances exist or arise. In the event any new relevant facts or relationships are discovered or arise, Kinetic will use reasonable efforts to identify such further developments and will promptly file a supplemental declaration as required by Bankruptcy Rule 2014(a).

10. The services of Applicant are necessary to enable the Monitor to faithfully and completely execute his duties under the PBF II Liquidating Trust Agreement. Subject to Order of this Court, Applicant will be required to render, among others, the following services to the Monitor:

- a. Analyze and advise the Monitor as to which PBF II Litigation Claims should be pursued and the extent to which litigation or settlement of said claims is appropriate;
- b. Provide forensic and litigation support to the Monitor in connection with PBF II Litigation Claims being pursued;

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<sup>2</sup> Capitalized terms used herein that are not otherwise defined herein shall have the meanings assigned to them in the Plan.

- c. Assist the Monitor in analyzing the claims of the Debtors' creditors;
- d. Provide forensic and litigation support to the Monitor in connection with objections to claims of the Debtors' creditors; and
- e. Perform all other necessary consulting, forensic and litigation support services to the Monitor in connection with these cases.

11. Since the Applicant has rendered services and incurred costs on behalf of the Monitor as the Monitor's consultant since the November 1, 2010 Effective Date, this Application requests that Applicant's employment as consultant for the Monitor be approved *nunc pro tunc* as of November 1, 2010.

12. The Monitor proposes that the Applicant comply with, and be compensated pursuant to, the Liquidating Trust Compensation Provisions and that, otherwise, Applicant seek final approval of fees and expenses previously paid by the Liquidating Trustee in accordance with applicable provisions of the Bankruptcy Code including Sections 327 and 330, the Bankruptcy Rules, the Local Rules, the Court's Orders and procedures and the Office of the United States Trustee's guidelines.

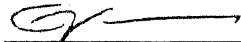
13. Throughout the course of the representation, if instances occur where the Applicant's fees and expenses should be allocated between the Liquidating Trusts and the Offshore Funds, the Applicant will appropriately allocate such fees and expenses and will note such allocations in the notice of fees and expenses provided on a monthly basis to the Liquidating Trustee and the United States Trustee. In order to avoid duplication, all professionals retained by the Liquidating Trustee and the Monitor will coordinate all matters and services they are responsible for, as authorized by the Liquidating Trustee and the Monitor pursuant to the Plan.

**WHEREFORE**, the Monitor respectfully requests that the Court enter an Order substantially in the form attached hereto as **Exhibit "A,"** approving the employment of the Applicant as consultant for the Monitor in these cases *nunc pro tunc* to November 1, 2010.

Respectfully submitted,

The PBF II Liquidating Trust Monitor

Dated: December <sup>22</sup>  , 2010.



By: Geoffrey Varga, as the Joint Official Liquidator  
of Palm Beach Finance Offshore, Ltd. and Palm Beach  
Offshore II, Ltd.

## Exhibit "A"

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
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In re:

Chapter 11

PALM BEACH FINANCE PARTNERS, L.P.,  
a Delaware limited partnership, *et al.*,<sup>1</sup>

Case No. 09-36379-BKC-PGH

Jointly Administered

Debtors.

\_\_\_\_\_/

**[PROPOSED] ORDER GRANTING  
LIQUIDATING TRUST MONITOR'S  
APPLICATION FOR APPROVAL OF EMPLOYMENT OF  
KINETIC PARTNERS (CAYMAN), LTD. AS CONSULTANT,  
NUNC PRO TUNC TO NOVEMBER 1, 2010**

THIS MATTER came before the Court at a duly noticed hearing on \_\_\_\_\_  
\_\_\_\_\_, 2011 upon the *Liquidating Trust Monitor's Application for Approval of Employment of  
Kinetic Partners (Cayman), Ltd. as Consultant, Nunc Pro Tunc to November 1, 2010* (the

<sup>1</sup> The address and last four digits of the taxpayer identification number for each of the Debtors follows in parenthesis: (i) Palm Beach Finance Partners, L.P., 3601 PGA Blvd., Suite 301, Palm Beach Gardens, FL 33410 (TIN 9943); and (ii) Palm Beach Finance II, L.P., 3601 PGA Blvd., Suite 301, Palm Beach Gardens, FL 33410 (TIN 0680).

"Application") filed by Geoffrey Varga, the Joint Official Liquidator for Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd., in his capacity as the Liquidating Trust Monitor for Palm Beach Finance II, L.P. (the "Monitor") [ECF No. \_\_\_\_]. The Application seeks entry of an Order, pursuant to the confirmed Plan, Liquidating Trust Agreement for Palm Beach Finance II, L.P. (the "PBF II Liquidating Trust Agreement") and 11 U.S.C. §327(a), authorizing the Monitor to employ and retain Geoffrey Varga and Kinetic Partners (Cayman), Ltd. ("Kinetic") as consultant to the Monitor; and upon the Affidavit of Geoffrey Varga (the "Varga Affidavit"), and it appearing to the Court that representations have been made in the Application and in the Varga Affidavit sufficient to demonstrate that neither Varga or Kinetic hold nor represent any interest adverse to the Debtors, the Debtors' estates, creditors, the Liquidating Trusts and their Beneficiaries or other interested parties, that they are disinterested persons as that term is defined under Section 101(14) of the Bankruptcy Code, that Kinetic's employment is necessary and would be in the best interests of the Debtors' estates, creditors, the Liquidating Trusts and their Beneficiaries, that all connections to the Debtors, creditors, Beneficiaries or any other parties in interest have been sufficiently disclosed, that proper and adequate notice has been given and that no other or further notice is necessary; upon the record herein and after due deliberation thereon, the relief should be granted as set forth below. Accordingly, it is

ORDERED as follows:

1. The Application is GRANTED;
2. Pursuant to the confirmed Plan, PBF II Liquidating Trust Agreement and Section 327(a) of the Bankruptcy Code, the Monitor is authorized to employ and retain Geoffrey Varga and Kinetic as its consultant *nunc pro tunc* to November 1, 2010 in accordance with the terms and conditions set forth in the Application.

3. Geoffrey Varga and Kinetic are authorized to render professional services to the Monitor as set forth in the Application.

4. Kinetic shall be compensated in accordance with the confirmed Plan and PBF II Liquidating Trust Agreement (summarized and defined in the Application as the Liquidating Trust Compensation Provisions). Kinetic shall, otherwise, seek final approval of fees and expenses previously paid by the Liquidating Trustee in accordance with applicable provisions of the Bankruptcy Code including Sections 327 and 330, the Bankruptcy Rules, the Local Rules, the Court's Orders and procedures and the Office of the United States Trustee's guidelines.

5. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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Submitted by:

Robin J. Rubens, Esq.

LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP

Miami Center – 34<sup>th</sup> Floor

201 South Biscayne Blvd.

Miami, Florida 33131-4301

Telephone: 305.403.8788

Facsimile: 305.403.8789

E-Mail: [rjr@LKLlaw.com](mailto:rjr@LKLlaw.com)

Copies to:

Robin J. Rubens, Esq. (Attorney Rubens shall serve a copy of this Order on all interested parties upon receipt and shall file a Certificate of Service reflecting such service).

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
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In re:

Chapter 11

PALM BEACH FINANCE PARTNERS, L.P.,  
a Delaware limited partnership, *et al.*,<sup>1</sup>

Case No. 09-36379-BKC-PGH

Jointly Administered

Debtors.

**AFFIDAVIT OF GEOFFREY VARGA IN SUPPORT OF  
LIQUIDATING TRUST MONITOR'S APPLICATION  
FOR APPROVAL OF EMPLOYMENT OF KINETIC PARTNERS  
(CAYMAN) LTD., AS CONSULTANT, *NUNC PRO TUNC* TO NOVEMBER 1, 2010**

STATE OF NEW YORK        )  
                                  ) ss:  
COUNTY OF NEW YORK    )

Geoffrey Varga, being duly sworn, says:

1. I am a Director of Kinetic Partners (Cayman) Ltd. ("Kinetic") and I lead Kinetic's Insolvency and Corporate Recovery practices in both New York and the Cayman Islands. Kinetic is a firm that specializes in restructuring, corporate recovery and forensic services. I currently work primarily from Kinetic's New York office located at 675 Third Avenue, 10<sup>th</sup> Floor, New York, New York 10017.

2. I am familiar with, and have knowledge regarding, the matters set forth herein and make this Affidavit in support of the *Liquidating Trust Monitor's Application for Approval of*

<sup>1</sup> The address and last four digits of the taxpayer identification number for each of the Debtors follows in parenthesis: (i) Palm Beach Finance Partners, L.P., 3601 PGA Blvd., Suite 301, Palm Beach Gardens, FL 33410 (TIN 9943); and (ii) Palm Beach Finance II, L.P., 3601 PGA Blvd., Suite 301, Palm Beach Gardens, FL 33410 (TIN 0680).

*Employment of Kinetic Partners (Cayman) Ltd. As Consultant, Nunc Pro Tunc to November 1, 2010 ("Application").*

3. In preparing this Affidavit, I have reviewed the creditor matrices prepared for the above-captioned jointly administered bankruptcy cases (hereinafter "Matrix"), I instructed one of my staff to compare all of the entities listed on the Matrix to our client listing (using our billing system) to determine if any connections, relationships and/or representations of individuals and/or entities listed on the Matrix existed.

4. From that search, only the entries for Mondiale Partners, Fortis Prime Fund Solutions and Zimmer Lucas Capital on the Matrix were identified as possible relationships. In all instances, those relationships (past or present) would have been related to the provision of *ad hoc* consulting services by Kinetic that were unrelated to the Debtors or this matter generally.

5. Consequently, based on the foregoing searches, neither I nor Kinetic hold or represent any interest adverse to the Debtors, the Debtors' estates, creditors, the Liquidating Trusts and their Beneficiaries or other interested parties and we are disinterested persons within the meaning of Section 101(14) of the Bankruptcy Code as required by Section 327(a) of the Bankruptcy Code, except that I am the Joint Official Liquidator ("JOL") for Palm Beach Offshore, Ltd. and Palm Beach Offshore II, Ltd (collectively, the "Offshore Funds"), which represent substantially all of the creditors of Debtor Palm Beach Finance II, L.P. ("PBF II"). Both of the Offshore Funds loaned money to PBF II, which issued demand promissory notes to the Offshore Funds with an aggregate amount of principal and interest due and owing in excess of \$700 million. The Offshore Funds are in formal liquidation proceedings in the Cayman Islands. My work as JOL for the Offshore Funds is accomplished through Kinetic.

6. Neither I nor Kinetic has had or presently has any connection with any of the Debtors, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee, except that: (i) prior to confirmation of the Plan and post-confirmation, Kinetic acted and continues to act as consultant to the JOL of the Offshore Funds; and (ii) I am the JOL of the Offshore Funds and accomplish my work as JOL through Kinetic.

7. Neither I nor Kinetic has or will represent any other entity in connection with these cases except the JOL for the Offshore Funds and neither I nor Kinetic will accept any fee from any other party or parties in these cases except as provided in the confirmed Plan and Liquidating Trust Agreement for Palm Beach Finance II, L.P. (the "PBF II Liquidating Trust Agreement") as to matters pertaining to the Monitor or, as agreed with the JOL for the Offshore Funds, as to matters pertaining to the JOL and Offshore Funds.

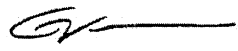
8. The payment of professional fees and costs to be incurred by Kinetic in the course of its representation of the Monitor in these cases shall be pursuant to the confirmed Plan and PBF II Liquidating Trust Agreement (summarized and defined in the Application as the Liquidating Trust Compensation Provisions). Kinetic will, otherwise, seek final approval of fees and expenses previously paid by the Liquidating Trustee in accordance with applicable provisions of the Bankruptcy Code including Sections 327 and 330, the Bankruptcy Rules, the Local Rules, the Court's Orders and procedures and the Office of the United States Trustee's guidelines.

9. The range of hourly rates for professionals at Kinetic are as follows: (i) Partners - \$600 to \$725; (ii) Directors/Managers - \$250 to \$550; and (iii) Support Staff - \$75 to \$125. My hourly rate on these cases is \$725. Kinetic reserves the right to increase its hourly rates in accordance with its normal and customary business practices.

10. There is no agreement of any nature as to the sharing of any compensation to be paid to Kinetic in these bankruptcy cases.

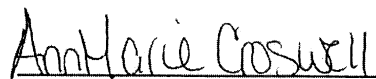
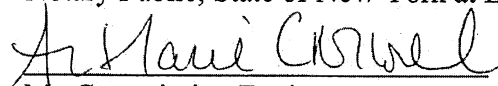
11. With the exception that I am the JOL of the Offshore Funds and accomplish my work as JOL through Kinetic, neither Kinetic nor I are a creditor, an equity security holder or an insider of the Debtors, creditors or Beneficiaries in these cases nor have any members of Kinetic nor I been an officer, director or employee of said Debtors, creditors or Beneficiaries or served as a financial advisor for the Debtors, creditors or Beneficiaries.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Geoffrey Varga

SWORN TO AND SUBSCRIBED before me this 23 day of December, 2010 by  
Geoffrey Varga, who is personally known to me and who took an oath.

ANNMARIE CROSWELL  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02CR6025256  
Qualified in Kings County  
My Commission Expires July 24, 2011

  
\_\_\_\_\_  
Print Name  
Notary Public, State of New York at Large  
  
My Commission Expires: July 24, 2011

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Application and all exhibits thereto were served on the 27th day of December, 2010 via the Court's CM/ECF filing system to recipients registered to receive notices of electronic filings generated by CM/ECF for case no. 09-36379-BKC-PGH as listed on attached Exhibit I, and that upon the docketing of a notice of hearing on the Application, undersigned counsel will serve the foregoing Application, all exhibits thereto, and said notice of hearing to all addressees who do not receive electronic filings for this case and a supplemental certificate of service will be filed to reflect such service.

LEVINE KELLOGG LEHMAN  
SCHNEIDER + GROSSMAN LLP  
*Proposed Local Counsel for Monitor*  
201 South Biscayne Blvd.  
Miami Center – 34<sup>th</sup> Floor  
Miami, Florida 33131-4301  
Telephone: 305.403.8788  
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By: /s/ Robin J. Rubens  
Robin J. Rubens, Esq.  
Florida Bar. No. 959413  
E-mail: rjr@LKLaw.com

## Mailing Information for Case 09-36379-PGH

### Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive e-mail notice/service for this case.

- **Geoffrey S. Aaronson** gaaronson@aaronsonpa.com, tdmckeown@mckeownpa.com
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