

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.,
PALM BEACH FINANCE II, L.P.,

Case No. 09-36379-PGH
Case No. 09-36396-PGH
(Jointly Administered)

Debtors.

**LIQUIDATING TRUSTEE’S MOTION FOR (1) APPROVAL OF SETTLEMENT
WITH KBC FINANCIAL PRODUCTS (CAYMAN ISLANDS) LTD. AND ASSOCIATED
COUNTER-PARTIES AND (2) PAYMENT OF CONTINGENCY FEE**

Any interested party who fails to file and serve a written response to this motion within 21 days after the date of service stated in this motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be cancelled.

Barry E. Mukamal, in his capacity as liquidating trustee (“*Liquidating Trustee*”) for the Palm Beach Finance Partners Liquidating Trust and Palm Beach Finance II Liquidating Trust (collectively, the “*Liquidating Trusts*”), by and through undersigned counsel, and pursuant to *Fed. R. Bankr. P.* 9019, seeks an Order from this Court approving a settlement of claims asserted against KBC Financial Products (Cayman Islands) Ltd. (“*KBC*”); Agile Sky Alliance Fund, LP (“*ASAF*”); The Stillwater Market Neutral Fund II, LP (“*Stillwater*”) and Karasel II, LP (“*Karasel II*”). For purposes of this stipulation, ASAF, Stillwater and Karasel II are individually and collectively referred to as the “*Counterparties*.” In support of this relief, the Liquidating Trustee states the following:

I. Factual Background

A. *The Pre-Petition Activities of the Palm Beach Funds*

1. The Liquidating Trusts are the successors in interest to Palm Beach Finance Partners, L.P. (“**PBF**”) and Palm Beach Finance II, L.P. (“**PBF II**” and together with PBF, the “**Palm Beach Funds**”).

2. The Palm Beach Funds were formed to lend monies in purchase financing transactions supposedly brokered by Thomas Petters and his company, Petters Company, Inc. (“**PCI**”) in the consumer goods business. The idea was that the funds and other lenders would supply bridge financing to PCI and then later, once goods were received by a particular big box retailer, the retailer would remit the payment to the lender or PCI.

3. In reality, the Palm Beach Funds’ investments in PCI were worthless - PCI’s purchase and financing transactions were fictitious and part of an elaborate, multi-billion dollar *ponzi* scheme perpetrated by Mr. Petters, Deanna Munson a/k/a Deanna Coleman, Robert White and others. No retailer ever made any payment on the purchase and sale of goods because the deals never existed.

4. On September 24, 2008, federal agents raided Mr. Petters’ offices. Thereafter, Mr. Petters’ companies were placed into federal receivership. Ultimately, Mr. Petters was convicted of his crimes and sentenced to 50 years in prison. Other persons complicit in the fraud were sentenced to prison sentences as well.

5. On November 30, 2009 (“**Petition Date**”), the Palm Beach Funds commenced Chapter 11 bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida (“**Bankruptcy Court**”).

6. On October 21, 2010, the Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation [ECF No. 444], creating the Liquidating Trusts and appointing the Liquidating Trustee as liquidating trustee.

B. Transfers Made to or for the benefit of KBC, the Counterparties and Others

7. As part of its business operations, KBC provided leverage financing to hedge fund of funds in connection with their investments in other hedge funds. This leverage was documented in the form of an in the money call option between KBC and each of the fund of funds (“*Confirmation Agreement*”).

8. This form of leverage financing was utilized by several hedge fund of funds, including the Counterparties and Palm Beach Diversified Income, LP (“*PBDI*”),¹ when they invested in one or both of the Palm Beach Funds.

9. Altogether, the Liquidating Trustee asserts that KBC received approximately \$126 million from the Palm Beach Funds in connection with 12 separate investments made by KBC at the direction of the Counterparties, PBDI or other fund of funds in one or both of the Palm Beach Funds. Typically, the monies received from the Palm Beach Funds by KBC, or a custodian acting on its behalf, were used to pay down the leverage provided to the fund of funds under its Confirmation Agreement, with the remainder then flowing to the fund of funds.

10. As for the Counterparties, the Liquidating Trustee asserts that on a cash in, cash out basis, they received the following amounts in excess of the principal amount invested by KBC on each of their behalves in one or more of the Palm Beach Funds:

- a) Karasel II - PBF \$143,966.99; PBF II \$201,880.82.
- b) Stillwater - PBF \$282,905.59; PBF II \$216,250.94.

¹ PBDI was a fund of funds that was affiliated with Bruce Prevost and David Harrold.

c) ASAF - PBF \$1,620,777.94.

11. Finally, the Liquidating Trustee initially asserted that KBC and Karasel II received, or were the beneficiaries of, approximately \$13 million in transfers from PBDI as a result of an investment made by KBC in PBDI at the direction of Karasel II (“*PBDI Investment*”).

12. In November of 2011, the Liquidating Trustee sued KBC, the Counterparties and PBDI (“*KBC Litigation*”). With respect to transfers made by the Palm Beach Funds, the Liquidating Trustee sued (a) the Counterparties to recover the cash profits realized for each investment; (b) KBC to recover all transfers made to it and (c) PBDI to recover all transfers made to it by the Palm Beach Funds. As for the PBDI Investment, the Liquidating Trustee sued both KBC and Karasel II to recover all transfers made to them or for their benefit.²

13. After filing this litigation, the parties engaged in extensive discovery. The discovery revealed that as to the PBDI Investment, the amount of transfers made to or for the benefit of KBC and Karasel II were significantly lower than set forth in the Liquidating Trustee’s complaint.

14. Based upon a review of the produced materials and the evolution of the applicable case law, the parties have reached a global settlement of the KBC Litigation. The sole defendant that is not settling is PBDI and the Liquidating Trustee anticipates that a default judgment will be entered against this entity in the two adversary proceedings commenced against it.

² The KBC Litigation is the following adversary proceedings: 11-2823-PGH; 11-2824-PGH; 11-2825-PGH; 11-2827-PGH; 11-2829-PGH; 11-2830-PGH; 11-2833-PGH; 11-2836-PGH; 11-2865-PGH; 11-2866-PGH; 11-2867-PGH; 11-2868-PGH and 11-03025-PGH.

II. Settlement Terms

15. The key aspects of the stipulation of settlement between the parties (“*Stipulation*”) are the following:³

- a) Upon approval of the Stipulation, KBC and the Counterparties shall pay or cause to be paid \$2,350,000 to the Liquidating Trusts (“*Settlement Payment*”).
- b) The Liquidating Trustee and KBC, through a third party broker, shall market KBC’s \$37 million position in Palm Beach Offshore Ltd. (“*Offshore Interest*”). In the event of the sale of this offshore position, KBC and the Liquidating Trustee, net of expenses, shall apportion the realized net proceeds as follows: the first \$425,000 will be turned over to the Liquidating Trustee and any amounts in excess of \$425,000 will be shared equally between KBC and the Liquidating Trustee.
- c) KBC and Karasel II, along with affiliated parties, shall be entitled to a limited bar order barring any claim that PBDI could assert against them in connection with litigation brought by the Liquidating Trustee against PBDI.
- d) The parties shall exchange mutual, general releases.
- e) Karasel II and Stillwater shall not be entitled to any distribution from the Liquidating Trusts. ASAF shall not be entitled to any distribution from the Palm Beach Finance Partners Liquidating Trust, however, ASAF reserves the right to file a claim in the Palm Beach Finance II Liquidating Trust and the Liquidating Trustee preserves the right to challenge such claim. KBC shall not be entitled to any distribution from the Liquidating Trusts except as set forth in the Stipulation.

16. Pursuant to the Second Amended Joint Plan of Liquidation (“*Plan*”), approved by this Court’s Order dated October 21, 2010 [ECF No. 444], all monetary consideration received by the Palm Beach Liquidating Trusts in conjunction with the Settlement will be allocated as follows: 18% to Palm Beach Finance Partners Liquidating Trust and 82% to Palm Beach Finance II Liquidating Trust (“*Pro Rata Allocation Formula*”).

³ A copy of the Stipulation is attached as Exhibit 1. To the extent the terms of the agreement differ with the terms set forth in this Motion, the agreement shall control.

III. Relief Requested

17. The Liquidating Trustee seeks an Order from this Court (a) approving the Stipulation and (b) approving the Contingency Fee (as defined below).

18. Federal Rule of Bankruptcy Procedure 9019 provides in relevant part that [o]n motion . . . and after a hearing on notice to creditors; the debtor . . . and to such other entities as the Court may designate, the Court may approve a compromise or settlement.”

19. Approval of a settlement in a bankruptcy proceeding is within the sole discretion of the Court and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion. *In re Arrow Air*, 85 BR 891 (Bankr. S.D. Fla. 1988).

20. The standards for approval are well settled and require the Court to inquire into the reasonableness of the proposed settlement. *See, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). The inquiry need only determine whether the settlement falls below the lowest point of the range of reasonableness. *See W.T. Grant Co.*, 699 F.2d at 608; *see also In re Martin*, 91 F.3d 389 (3rd Cir. 1996); *In re Louise's Inc.*, 211 B.R. 798 (D. Del. 1997) (setting forth considerations by the Court for approval of a settlement, including: (i) the probability of success in litigation, (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors.

A. *The Stipulation Ought to be Approved*

21. Based upon the above legal principles, the Liquidating Trustee asserts that the Stipulation falls well above the lowest point of the range of reasonableness and thus, should be approved.

Probability of success in litigation

22. There is significant litigation risk that is the ultimate driver of the Liquidating Trustee's settlement of his claims against KBC.

23. KBC's primary defense will be 11 U.S.C. § 546(e) & (g), which in sum provide that the Liquidating Trustee cannot avoid and recover transfers made to KBC in connection with a "swap agreement" or "securities contract" or that are "settlement payments," as all such terms are defined under the Bankruptcy Code. Namely, KBC would argue that the Confirmation Agreements or the subscription agreements entered into with the Palm Beach Funds are securities contracts or swap agreements, and thus, transfers made to KBC in connection with such agreements are insulated from avoidance. Alternatively, KBC would argue that the transfers made to it are settlement payments, and thus again, insulated from avoidance.

24. Although the Liquidating Trustee would assert that the transfers made to KBC in connection with the Confirmation Agreement were fundamentally loan payments, over the past several years, a significant body of non-binding case law has developed that is favorable to KBC. Recently, the Seventh Circuit affirmed a bankruptcy court's ruling on arguably similar facts that the transfers made to KBC and other leverage providers were insulated by the safe harbor provisions found in 11 U.S.C. §546(e) & (g).⁴

25. Based on this litigation risk, including potential appellate review by a district court or the Eleventh Circuit, the Liquidating Trustee significantly discounts the value of his claims against KBC.

26. As for the Counterparties, the Liquidating Trustee does not believe that 11 U.S.C. §546(e) & (g) would apply to them under the facts presented in the KBC Litigation, and thus, the

⁴ *Peterson v. Somers Dublin Ltd.*, 2013 WL 4767495 (7th Cir. Sept. 6, 2013).

Liquidating Trustee asserts that he will likely be successful if he litigates his claims against them. Nonetheless, as set forth below, collectability is a significant concern as it relates to the Counterparties.

Collectability

27. Collectability is not a meaningful consideration as it relates to KBC.

28. Collectability is a meaningful consideration as it relates to the Counterparties.

29. Based upon confidential financial information provided by each of the Counterparties, the financial meltdown of 2008 has limited significantly the assets which are available to pay any judgment or settlement of the Liquidating Trustee's claims.

Complexity of litigation and attendant expense, inconvenience and delay

30. This is a meaningful consideration that militates in favor of approval of the Stipulation.

31. In sum, although many of the claims outlined above are typical claims litigated before this Court, they still potentially require retention of experts and extensive fact discovery before a trial could take place. Coupled with the legal hurdles to the Liquidating Trustee's most meaningful claims against KBC, the result of these efforts will be substantial fees of professionals that could exceed any recovery against KBC or the Counterparties.

32. The Stipulation addresses these concerns. The parties avoid litigating fact specific claims, with the attendant expense and delay of litigation and appellate review being nullified.

Paramount interest of creditors

33. The Settlement Payment represents an appropriate resolution of claims that have significant legal and collectability concerns, gives certainty to the estate and avoids the risk, expense and delay attendant with litigation. As such, the Stipulation is in the paramount interest of the Palm Beach Funds' creditors and should be approved.

B. The Contingency Fee Ought to be Approved

34. Pursuant to the Plan and this Court's Order Approving the Trustee's Motion to Approve Hybrid Form of Compensation [ECF No. 223], Meland Russin & Budwick, P.A. ("**MRB**") is entitled to a contingency fee of 10% for any affirmative recovery it obtains on behalf of the Liquidating Trust without further order of the Court ("**Contingency Fee**").

35. As such, MRB requests that the Contingency Fee be paid from (i) the Settlement Payment and (ii) the net proceeds received by the Debtor in connection with the sale of the Offshore Interest, without further Order from this Court.

WHEREFORE, the Liquidating Trustee requests that this Court enter an Order (similar in form to the Order attached as Exhibit 2) (1) approving the Stipulation; (2) approving entry of the bar Order; (3) approving payment of the Contingency Fee and (4) granting such other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 24, 2013, a true and correct copy of the foregoing was served via the Court's Notice of Electronic Filing on those parties listed on the attached Exhibit 3, and via U.S. Mail upon James Bendernagel, Esq., Sidley Austin LLP, 1501 K Street, N.W. Washington, D.C. 20005; Bryan Krakauer, Esq., Sidley Austin LLP, One South Dearborn, Chicago, IL 60603; Palm Beach Diversified Income, L.P., by and through David Harrold, its officer, 963 Evergreen Drive, Delray Beach, FL 33483; and Palm Beach Diversified Income, L.P., by and through David Harrold, its officer, 712 NE 71st Street, Boca Raton, FL 33487-2434.

s/ Jonathan S. Feldman
Jonathan S. Feldman, Esquire
Florida Bar No. 12682
jfeldman@melandrussin.com
MELAND RUSSIN & BUDWICK, P.A.
3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 358-6363
Telecopy: (305) 358-1221
*Attorneys for Barry E. Mukamal,
Liquidating Trustee*

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("*Stipulation*") is entered into as of September 17, 2013 by and among (a) Barry E. Mukamal, in his capacity as liquidating trustee ("*Liquidating Trustee*") of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance II Liquidating Trust ("*Liquidating Trusts*"); (b) KBC Financial Products (Cayman Islands) Ltd. ("*KBC*"); (c) Agile Sky Alliance Fund, LP ("*ASAF*"); (d) The Stillwater Market Neutral Fund II, LP ("*Stillwater*"); and (e) Karasel II, LP ("*Karasel II*"). For purposes of this stipulation, ASAF, Stillwater and Karasel II are individually and collectively referred to as the "*Counterparties*"; the Counterparties, together with KBC, are referred to as the "*Defendants*" and the Liquidating Trustee and the Defendants are at times individually referred to as a "*Party*" or collectively, the "*Parties.*" The terms of this Stipulation are as follows:

RECITALS

A. On November 30, 2009 (the "*Petition Date*"), Palm Beach Finance Partners, L.P. and Palm Beach Finance II, L.P. ("*Palm Beach Funds*") commenced Chapter 11 bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida ("*Bankruptcy Court*");

B. On October 21, 2010, the Bankruptcy Court entered its Order Confirming Second Amended Plan of Liquidation, creating the Liquidating Trusts and appointing the Liquidating Trustee as liquidating trustee;

C. Prior to the Palm Beach Funds filing for bankruptcy, pursuant to contractual agreements with the Counterparties, KBC, at the request of each of the Counterparties, made investments through its custodian in the Palm Beach Funds ("*Investments*");

D. The Liquidating Trustee, on behalf of the Liquidating Trust, filed lawsuits against the Defendants in the Bankruptcy Court seeking to avoid and recover transfers allegedly made to or for their benefit in connection with the Investments in the following adversary proceedings:

11-2823-PGH; 11-2825-PGH; 11-2827-PGH; 11-2829-PGH; 11-2830-PGH; 11-2833-PGH; 11-2836-PGH; 11-2865-PGH; 11-2866-PGH; and 11-2868-PGH (collectively, the “*Counterparties Litigation*”);

E. Prior to the Petition Date, KBC, at the request of Palm Beach Diversified Income, L.P. (“*PBDI*”), made investments through its custodian in the Palm Beach Funds (“*PBDI Investments*”);

F. The Liquidating Trustee, on behalf of the Liquidating Trusts, filed two lawsuits against KBC and PBDI in the Bankruptcy Court seeking to avoid and recover transfers allegedly made to or for their benefit in connection with the PBDI Investments in the following adversary proceedings: 11-2824-PGH and 11-2867-PGH (“*PBDI Litigation*”);

G. Prior to the Petition Date, KBC, at the request of Karasel II, made an investment through its custodian in PBDI (“*Karasel II Investment*”);

H. The Liquidating Trustee, on behalf of the Liquidating Trust, filed a lawsuit against KBC and Karasel II in the Bankruptcy Court, Adv. Case No. 11-3025-PGH, seeking to avoid and recover transfers allegedly made by PBDI to or for their benefit in connection with the Karasel II Investment (“*PBDI Transferee Litigation*”); and together with the PBDI Litigation and Counterparties Litigation, the “*Litigation*”);

I. Prior to the Petition Date, KBC, at the request of a third-party, made an investment through its custodian in Palm Beach Offshore, Ltd. (“*Offshore*”) (“*Offshore Interest*”);

J. The Defendants expressly deny the claims that are asserted against them in the Litigation;

K. The Parties have engaged in discussions in an attempt to resolve any and all issues, including the claims asserted in the Litigation;

L. To avoid the continued expense and risk of adverse outcome arising from the Litigation, as well as incurring costs and expenses associated therewith, among other reasons, the Parties have agreed to resolve the Litigation pursuant to the terms and conditions of this Stipulation.

NOW, WHEREFORE, it is stipulated, consented to and agreed, by and among the Parties as follows:

1. **No admission of liability.** The Parties acknowledge that this Stipulation is a compromise and settlement of a controversy. No Party admits, and each expressly denies, any liability on its part, and nothing in this Stipulation shall constitute an admission of any facts supporting such liability.

2. **Entire agreement.** This Stipulation constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and there are no other stipulations, agreements, representations, or warranties other than those specifically set forth herein. All prior agreements and understandings between the Parties concerning the subject matter hereof are superseded by the terms of this Stipulation.

3. **Consideration.**

A. **Settlement Payment.** KBC shall pay, or cause to be paid, \$2,350,000 to the Liquidating Trustee ("**Settlement Payment**"). The Settlement Payment shall be made within 5 business days from the date that an Order by the Bankruptcy Court approving this Stipulation becomes final and non-appealable. The Settlement Payment may be made via (i) wire transfer pursuant to written instructions to be provided by the Liquidating Trustee or his counsel or (ii) check made payable to "Barry E. Mukamal, Liquidating Trustee" and delivered to Jonathan S. Feldman, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Blvd., Suite 3200, Miami, Florida 33131.

B. **Offshore Interest.** Within 45 days after the date that an Order by the Bankruptcy Court approving this Stipulation becomes final and non-appealable, KBC shall retain a broker acceptable to the Liquidating Trustee ("**Broker**") to market and sell the Offshore Interest. The Trustee shall inform KBC of at least 2 Brokers acceptable to it prior to execution of this Agreement. The Broker may be compensated solely from the sale proceeds on a market based commission basis and may have authority to solicit and consummate the sale upon the terms set forth in his retention agreement without the need for further approval by KBC or the Liquidating Trustee; **provided that** the Liquidating Trustee will have the right to prior notice of and to veto any proposed sale. KBC shall execute and deliver all papers necessary to quitclaim the Offshore Interest to any purchasing party. KBC shall not be required to make any warranties or representations of any kind or nature to the purchaser or the Broker in connection with the sale of the Offshore Interest except that KBC, through its custodian, is the holder of the Offshore Interest consisting of common shares which arise from a (US)\$37 million investment made in Offshore and as to which investment no distribution or payment has been made by or on behalf of Offshore to KBC. Without limitation, KBC need not make any representation or warranty as to the value, marketability, enforceability or allowance of the Offshore Interest. Except as specifically set forth in this paragraph **3.B.** KBC is not required to take action in connection with the sale of the Offshore Interest and KBC is not assuming any responsibility or obligation as to when or if such sale occurs. To the extent the sale does not occur within one (1) year after the Broker is retained, KBC may abandon and transfer the Offshore Interest to the Liquidating Trustee.

C. For purposes of this Stipulation, the term "**Net Proceeds**" shall mean the gross proceeds realized from the disposition of the Offshore Interest minus any (a) commission or expenses owing to the Broker, (b) transfer taxes, custodial fees or other related expenses

associated with the transfer of the Offshore Interest and (c) attorney fees and costs incurred by KBC related to obtaining approval of the transfer of the Offshore Interest by a court in the Cayman Islands; **provided, however** that such attorneys fees and costs incurred by KBC related to obtaining approval of the transfer of the Offshore Interest by the Cayman court are capped at \$10,000.

D. The Net Proceeds of any disposition of, or remittance hereafter arising from, the Offshore Interest shall be apportioned as follows: (i) the Liquidating Trustee, for the benefit of the Liquidating Trusts, shall be entitled to the first \$425,000 and (ii) any amounts in excess of \$425,000 shall be shared equally between KBC and the Liquidating Trustee.

4. **No entitlement to distribution.** Upon approval of this Stipulation by final order of the Bankruptcy Court which is no longer subject to appeal and payment of the Settlement Payment:

A. Karasel II and Stillwater agree they shall not be entitled to any monetary distribution whatsoever from the Liquidating Trusts or the Palm Beach Funds. To the extent Karasel II and Stillwater have scheduled or filed any proof of claim or proof of interest in the Palm Beach Funds' bankruptcy cases, each such claim or interest shall be deemed disallowed in its entirety and be stricken.

B. ASAF agrees that it shall not be entitled to any monetary distribution whatsoever from the Palm Beach Finance Partners Liquidating Trust or Palm Beach Finance Partners, L.P. To the extent ASAF has scheduled or filed any proof of claim or proof of interest in the Palm Beach Finance Partners, L.P. bankruptcy case, each such claim or interest shall be deemed disallowed in its entirety and be stricken. Nothing in this Stipulation shall release, limit, impair, or modify any defenses or rights of setoff the Liquidating Trustee on behalf of Palm Beach Finance II Liquidating Trust, Palm Beach

Finance II, L.P. or any other parties in interest may have with respect to such claims that ASAF may now assert or in the future assert against Palm Beach Finance II Liquidating Trust or Palm Beach Finance II, L.P.

C. KBC agrees that, except as provided herein with respect to Net Proceeds of the Offshore Investments and with respect to recovery of fees and costs pursuant to Section 3.C, it shall not be entitled to any monetary distribution whatsoever from the Liquidating Trusts or the Palm Beach Funds with respect to the Investments, and to the extent KBC has scheduled or filed any proof of claim or proof of interest in the Palm Beach Funds' bankruptcy cases, each such claim or interest shall be deemed disallowed in its entirety and be stricken: **provided, however**, that nothing in this Stipulation shall release, limit, impair, modify, disallow or strike any right or claim to receive a distribution, to the extent such right or claim exists, from the Liquidating Trusts or the Palm Beach Funds as to investments (individually and collectively, the "*Separate Investments*") made by or for the benefit of KBC in the Palm Beach Funds at the request of the four (4) KBC counterparties (none of which are the Counterparties whom are parties to this Stipulation) whose names are set forth in a side letter which KBC has provided to the Trustee contemporaneously with KBC signing and delivering this Stipulation, and nothing in this Stipulation shall release, limit, impair, or modify any defenses or rights of setoff the Liquidating Trustee, on behalf of Liquidating Trusts and the Palm Beach Funds, or any other parties in interest may have with respect to such claims or rights of distribution in connection with the Separate Investments.

5. **General releases between the Parties.**

A. For purposes of this Stipulation, the term "*Claims*" shall mean any obligations, claims, causes of action, demands of any type that a party may presently have, may have

or have had in the past, upon or by reason of any matter, cause or thing whatsoever, including without limitation any and all obligations, claims, causes of actions and demands of any kind whatsoever, at law or in equity, indirect, derivative, or direct, known or unknown, discovered or undiscovered.

B. Upon approval of this Stipulation by final order of the Bankruptcy Court which is no longer subject to appeal and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Liquidating Trusts and the Palm Beach Funds, waives and releases, now and forever, KBC, KBC's affiliates (KBC and its affiliates, individually and collectively, the "**KBC Entities**"), Citco Global Custody (N.A.) NV ("**Citco**"), in its capacity as custodian to or for the benefit of KBC and/or the Counterparties, ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Solutions Custodial Services (Ireland) Ltd.) ("**ABN**"), in its capacity as custodian to or for the benefit of KBC or the Counterparties, and all officers, agents, employees, attorneys, and advisors of the foregoing entities (collectively, the "**KBC Released Parties**"), from any and all Claims that the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds may have against the KBC Released Parties; **provided, however**, that with respect to the KBC Released Parties other than the KBC Entities, such waiver and release is limited to matters which arise from or relate to the KBC Entities, and, **provided, further, that** with respect to Citco and ABN and their officers, agents, employees, attorneys, and advisors, such release is limited to matters relating to Citco and ABN in their capacities as custodians (x) to the Counterparties in connection with the Investments, or (y) to or for the benefit of KBC; and, **provided, further**, that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising in this Stipulation. The scope of the release in this paragraph shall not release, impact, impair or alter in any

manner any Claims whatsoever that the Liquidating Trustee, on behalf of the Liquidating Trusts or the Palm Beach Funds, may have against any parties other than the KBC Released Parties, including, but not limited to, Claims against any alleged concurrent or consecutive tortfeasors, if any.

C. Upon approval of this Stipulation by final order of the Bankruptcy Court which is no longer subject to appeal and payment of the Settlement Payment and dismissal of the Litigation as provided in paragraph 8 herein, KBC waives and releases, now and forever, the Liquidating Trustee, the Liquidating Trusts and the Palm Beach Funds from any and all Claims that KBC may have against the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds; **provided that** this provision does not release, waive or otherwise limit any rights or obligations arising out of this Stipulation; and, **provided, further**, this release does not release, waive, or otherwise limit, modify, or impair any rights or claims arising out of or related to the Separate Investments. The scope of the release in this paragraph shall not release, impact, impair or alter in any manner any Claims whatsoever that KBC may have against any parties other than the Liquidating Trustee, the Liquidating Trusts and the Palm Beach Funds, including, but not limited to, Claims against any alleged concurrent or consecutive tortfeasors, if any.

D. Upon approval of this Stipulation by final order of the Bankruptcy Court which is no longer subject to appeal and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Liquidating Trusts and the Palm Beach Funds, waives and releases, now and forever, Stillwater, and all officers, agents, employees, attorneys, and advisors of Stillwater (collectively, the "*Stillwater Released Parties*"), from any and all Claims that the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds may have against Stillwater Released Parties; **provided, however**, that with respect to the

Stillwater Released parties other than Stillwater, such waiver and release is limited to matters which arise from or relate to the Counterparties Litigation; and, **provided, further,** that nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation. The scope of the release in this paragraph shall not release, impact, impair or alter in any manner any Claims whatsoever that the Liquidating Trustee, on behalf of the Liquidating Trusts or the Palm Beach Funds, may have against any parties other than the Stillwater Released Parties, including but not limited to Claims against any alleged concurrent or consecutive tortfeasors, if any.

E. Upon approval of this Stipulation by final order of the Bankruptcy Court which is no longer subject to appeal and payment of the Settlement Payment, Stillwater waives and releases, now and forever, the Liquidating Trustee, the Liquidating Trusts and the Palm Beach Funds from any and all Claims that Stillwater may have against the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds; **provided that** this provision does not release, waive or otherwise limit any rights or obligations arising out of this Stipulation. The scope of the release in this paragraph shall not release, impact, impair or alter in any manner any Claims whatsoever that Stillwater may have against any parties other than the Liquidating Trustee, the Liquidating Trusts and the Palm Beach Funds, including, but not limited to, Claims against any alleged concurrent or consecutive tortfeasors, if any.

F. Upon approval of this Stipulation by final order of the Bankruptcy Court which is no longer subject to appeal and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Palm Beach Finance Partners Liquidating Trust and Palm Beach Finance Partners, L.P. waives and releases, now and forever, ASAF, and all officers,

agents, employees, attorneys, and advisors of ASAF (collectively, the "*ASAF Released Parties*"), from any and all Claims that the Liquidating Trustee, on behalf of the Palm Beach Finance Partners Liquidating Trust and the Palm Beach Finance Partners, L.P., may have against the ASAF Released Parties; **provided, however**, that with respect to the ASAF Released Parties other than ASAF, such waiver and release is limited to matters which arise from or relate to the Counterparties Litigation; and, **provided, further**, nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation; and, **provided, further**, nothing herein shall be deemed to release, waive or otherwise limit any Claims, including, without limitation, any defenses or rights of setoff, that the Liquidating Trustee, on behalf of the Palm Beach Finance II Liquidating Trust and Palm Beach Finance II, L.P. may have against the ASAF Released Parties. The scope of the release in this paragraph shall not release, impact, impair or alter in any manner any Claims whatsoever that the Liquidating Trustee, on behalf of the Liquidating Trusts or the Palm Beach Funds, may have against any parties other than the ASAF Released Parties, including but not limited to Claims against any alleged concurrent or consecutive tortfeasors, if any.

G. Upon approval of this Stipulation by final order of the Bankruptcy Court which is no longer subject to appeal and payment of the Settlement Payment, ASAF waives and releases, now and forever, the Liquidating Trustee for the Palm Beach Finance Partners Liquidating Trust, the Palm Beach Finance Partners Liquidating Trust, and Palm Beach Finance Partners, L.P. from any and all Claims that ASAF may have against the Liquidating Trustee for the Palm Beach Finance Partners Liquidating Trust, the Palm Beach Finance Partners Liquidating Trust, and Palm Beach Finance Partners, L.P.; **provided that** this provision does not release, waive or otherwise limit any rights or

obligations arising out of this Stipulation; and, **provided, further**, that the foregoing release shall not waive, release, limit, impair, or modify any Claims, if any, or interests that ASAF may have against or in Palm Beach Finance II, L.P. and nothing herein shall release, limit, impair, or modify any defenses or setoffs ASAF may have in respect of Claims by or on behalf of the Palm Beach Finance II Liquidating Trust and Palm Beach Finance II, L.P. The scope of the release in this paragraph shall not release, impact, impair or alter in any manner any Claims whatsoever that ASAF may have against any parties other than the Liquidating Trustee for the Palm Beach Finance Partners Liquidating Trust, the Palm Beach Finance Partners Liquidating Trust, and Palm Beach Finance Partners, L.P. or Claims, if any, against Palm Beach Finance II, L.P., including, but not limited to, Claims against any alleged concurrent or consecutive tortfeasors, if any.

II. Upon approval of this Stipulation by final order of the Bankruptcy Court which is no longer subject to appeal and payment of the Settlement Payment, the Liquidating Trustee, on behalf of the Liquidating Trusts and the Palm Beach Funds, waives and releases, now and forever, Karasel II, and all officers, agents, employees, attorneys, and advisors of Karasel II (collectively, the "*Karasel II Released Parties*"), from any and all Claims that the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds may have against the Karasel II Released Parties; **provided, however**, that with respect to the Karasel Released II Parties other than Karasel II, such waiver and release is limited to matters which arise from or relate to the Counterparties Litigation or the PBDI Transferee Litigation; and, **provided, further**, nothing herein shall be deemed to release, waive or otherwise limit any rights or obligations arising out of this Stipulation. The scope of the release in this paragraph shall not release, impact, impair or alter in any manner any

Claims whatsoever that the Liquidating Trustee, on behalf of the Liquidating Trusts or the Palm Beach Funds, may have against any parties other than Karasel II, including but not limited to Claims against any alleged concurrent or consecutive tortfeasors, if any.

I. Upon approval of this Stipulation by final order of the Bankruptcy Court which is no longer subject to appeal and payment of the Settlement Payment, Karasel II waives, releases and holds harmless, now and forever, the Liquidating Trustee, the Liquidating Trusts and the Palm Beach Funds from any and all Claims that Karasel II may have against the Liquidating Trustee, the Liquidating Trusts or the Palm Beach Funds; **provided that** this provision does not release, waive or otherwise limit any rights or obligations arising out of this Stipulation. The scope of the release in this paragraph shall not release, impact, impair or alter in any manner any Claims whatsoever that Karasel II may have against any parties other than the Liquidating Trustee, the Liquidating Trusts and the Palm Beach Funds, including, but not limited to, Claims against any alleged concurrent or consecutive tortfeasors, if any.

6. **PBDI Injunction.** The Court order approving this Stipulation shall contain a bar order (the "**Bar Order**") providing, in form attached hereto as Exhibit "A" or such other form as is reasonably acceptable to KBC, that to the extent that the Liquidating Trustee asserts any claims against PBDI then PBDI shall be precluded from asserting any resulting contribution, indemnity, or other claims against the KBC Released Parties and the Karasel II Released Parties (such resulting claims instead being capable of being asserted by PBDI solely as a set-off against the claims of the Liquidating Trustee against PBDI). The entry and continuation of such Bar Order shall be a condition precedent to KBC's obligations pursuant to this Stipulation.

7. **Suspension of discovery and scheduling obligations.** The Parties agree that all discovery obligations and applicable scheduling deadlines in the Litigation shall be suspended

pending the entry of an Order by the Bankruptcy Court approving this Stipulation becoming final and non-appealable. The Parties further agree that if this Settlement Agreement shall not become effective and final then the Parties shall jointly seek a revised schedule consistent with such suspension during the intervening time period.

8. **Dismissal of the Litigation.** After an Order by the Bankruptcy Court approving this Stipulation becomes final and non-appealable, the Liquidating Trustee shall promptly cause the dismissal of the Counterparties Litigation and PBDI Litigation with prejudice and the dismissal of KBC and Karasel II from the PBDI Transferee Litigation with prejudice.

9. **Authorization to bind.** The individuals signing below represent and warrant that they have the authority to execute this Stipulation on behalf of the applicable Party and bind them to its terms.

10. **Review/No Duress.** Each of the Parties acknowledges that he, she or it has read all of the terms of this Stipulation, has had an opportunity to consult with counsel of his, her or its own choosing or voluntarily waived such right, and enters into those terms voluntarily and without duress.

11. **Attorneys' fees and costs.** Each Party shall bear its own attorneys' fees and costs in connection with the negotiation of this Stipulation and motions and orders as may be necessary to obtain the approval of this Stipulation by the Bankruptcy Court: **provided that** in the event of any litigation between the Parties under this Stipulation or arising as a result of a default under this Stipulation, the prevailing Party shall be entitled to reasonable attorneys' fees and costs related thereto from the party who defaulted, including, but not limited to, those incurred at all trial and appellate levels.

12. **No waiver of modification.** This Stipulation and any of the specific items, covenants, and conditions contained herein, may not be waived, changed, altered or modified

except by an instrument in writing signed by the Party against whom enforcement of such change is sought.

13. **Effective date.** This Stipulation shall be effective upon execution by all of the Parties hereto, subject only to approval of this Stipulation by final order of the Bankruptcy Court approving this Stipulation which is no longer subject to appeal and payment of the Settlement Payment. Upon it becoming effective, this Stipulation shall be binding on all of the Parties' successors or assigns and, with regard to the Bar Order, PBDI and its successors and assigns.

14. **No effect.** If the Bankruptcy Court does not approve this Stipulation, then the Stipulation shall be of no further force or effect, and the Parties shall be restored to their rights as they existed prior to the execution of this Stipulation. Notwithstanding the foregoing, if the Bankruptcy Court does not approve this Stipulation because any of the Parties have failed to provide the Bankruptcy Court with adequate information to rule on the merits of the Stipulation, the Parties will use their reasonable efforts to seek reconsideration of any order declining to approve the Stipulation, or to file an amended motion to approve the Stipulation.

15. **Controlling law.** This Stipulation shall in all respects be construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed wholly within the State of Florida and by federal law, including bankruptcy law, to the extent the same has preempted the laws of the State of Florida.

16. **Counterparts.** This Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Stipulation. Delivery of an executed counterpart of a signature page to this Stipulation by facsimile or by email of a signature in pdf electronic format shall be effective as delivery of a manually executed counterpart of this Stipulation.

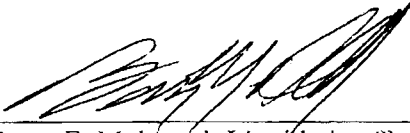
17. **Construction.** This Stipulation shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Stipulation, no provision shall be construed and interpreted for or against any of the Parties because such provision or any other provision of the Stipulation as a whole is purportedly prepared or requested by such Party.

18. **Jurisdiction.** The Bankruptcy Court shall retain non-exclusive jurisdiction to enforce the terms of this Stipulation.

19. **Return of Documents.** Promptly upon dismissal of the Litigation pursuant to paragraph 8 herein, the Trustee shall return or destroy all material provided by KBC to the Trustee in connection with the Litigation which KBC has designated confidential.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

STIPULATED AND AGREED TO BY:



Barry E. Mukamal, Liquidating Trustee

Date: 9/20/13

KBC Financial Products (Cayman Islands) Ltd.

By: _____ Date: _____
Its Authorized Officer

Agile Sky Alliance Fund, LP

By: Investment Law Group of Gillett Mottern & Walker LLP,
as its attorney in fact under that Administrative Oversight
Agreement dated July 12, 2012, as amended on February 6, 2013

By: _____ Date: _____
Robert J. Mottern
Vice President

Karasel II, LP

By: _____ Date: _____
Its Authorized Representative

By: _____ Date: _____
Gary Busel, its Authorized Officer

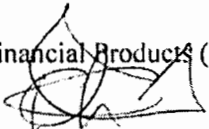
Stillwater Market Neutral Fund II, LP

By: Stillwater Capital Partners, LLC, its
General Partner and Authorized Representative

By: _____ Date: _____
Jack Doueck, its General Partner and
Authorized Representative

STIPULATED AND AGREED TO BY:

Barry E. Mukamal, Liquidating Trustee Date: _____

KBC Financial Products (Cayman Islands) Ltd.
By:  _____ Date: _____
Its Authorized Officer

Agile Sky Alliance Fund, LP
By: Investment Law Group of Gillett Mottern & Walker LLP,
as its attorney in fact under that Administrative Oversight
Agreement dated July 12, 2012, as amended on February 6, 2013
By: _____ Date: _____
Robert J. Mottern
Vice President

Karasel II, LP
By: _____ Date: _____
Its Authorized Representative
By: _____ Date: _____
Gary Busel, its Authorized Officer

Stillwater Market Neutral Fund II, LP
By: Stillwater Capital Partners, LLC, its
General Partner and Authorized Representative
By: _____ Date: _____
Jack Doueck, its General Partner and
Authorized Representative

STIPULATED AND AGREED TO BY:

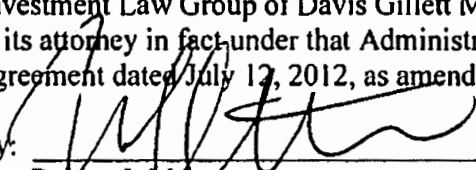
Barry E. Mukamal, Liquidating Trustee Date: _____

KBC Financial Products (Cayman Islands) Ltd.

By: _____ Date: _____
Its Authorized Officer

Agile Sky Alliance Fund, LP

By: Investment Law Group of Davis Gillett Mottern & Sims, LLC,
as its attorney in fact under that Administrative Oversight
Agreement dated July 12, 2012, as amended on February 6, 2013

By:  _____ Date: 9/17/13
Robert J. Mottern
Vice President

Karasel II, LP

By: _____ Date: _____
Its Authorized Representative

By: _____ Date: _____
Gary Busel, its Authorized Officer

Stillwater Market Neutral Fund II, LP

By: Stillwater Capital Partners, LLC, its
General Partner and Authorized Representative

By: _____ Date: _____
Jack Doueck, its General Partner and
Authorized Representative

STIPULATED AND AGREED TO BY:

Barry E. Mukamal, Liquidating Trustee Date: _____

KBC Financial Products (Cayman Islands) Ltd.

By: _____ Date: _____
Its Authorized Officer

Agile Sky Alliance Fund, LP

By: Investment Law Group of Gillett Mottern & Walker LLP,
as its attorney in fact under that Administrative Oversight
Agreement dated July 12, 2012, as amended on February 6, 2013

By: _____ Date: _____
Robert J. Mottern
Vice President

Karasel II, LP

By: KARASEL ASSET Management Date: 9/17/13
~~Its Authorized Representative~~ General Partner

By: [Signature] Date: 9/17/13
Gary Busel, its ~~Authorized Officer~~
Managing Partner

Stillwater Market Neutral Fund II, LP

By: Stillwater Capital Partners, LLC, its
General Partner and Authorized Representative

By: _____ Date: _____
Jack Doueck, its General Partner and
Authorized Representative

STIPULATED AND AGREED TO BY:

Barry E. Mukamal, Liquidating Trustee
Date: _____

KBC Financial Products (Cayman Islands) Ltd.

By: _____ Date: _____
Its Authorized Officer

Agile Sky Alliance Fund, LP

By: Investment Law Group of Gillett Mottern & Walker LLP,
as its attorney in fact under that Administrative Oversight
Agreement dated July 12, 2012, as amended on February 6, 2013

By: _____ Date: _____
Robert J. Mottern
Vice President

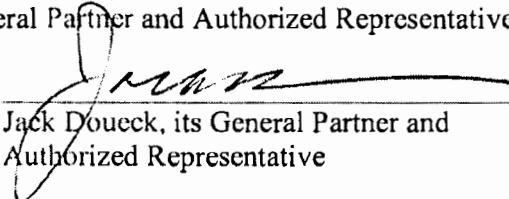
Karasel II, LP

By: _____ Date: _____
Its Authorized Representative

By: _____ Date: _____
Gary Busel, its Authorized Officer

Stillwater Market Neutral Fund II, LP

By: Stillwater Capital Partners, LLC, its
General Partner and Authorized Representative

By:  _____ Date: 9/17/13
Jack Doueck, its General Partner and
Authorized Representative

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.,
PALM BEACH FINANCE II, L.P.,

Case No. 09-36379-PGH
Case No. 09-36396-PGH
(Jointly Administered)

Debtors.

**ORDER GRANTING MOTION FOR (1) APPROVAL OF SETTLEMENT WITH KBC
FINANCIAL PRODUCTS (CAYMAN ISLANDS) LTD. AND ASSOCIATED
COUNTER-PARTIES AND (2) PAYMENT OF CONTINGENCY FEE**

THIS MATTER comes before the Court upon the *Liquidating Trustee's Motion to Approve Settlement with KBC Financial Products (Cayman Islands) Ltd. and Counterparties* [ECF No. _____] (the "*Motion*").¹ The Court has reviewed the Motion, considered the arguments of counsel and is otherwise duly advised in the premises.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

In its Motion, the Liquidating Trustee, on behalf of the Liquidating Trusts, Debtors and their respective bankruptcy estates, seeks entry of an order barring certain claims against KBC Financial Products (Cayman Islands) Ltd. (“*KBC*”) and affiliated parties and Karasel II, LP (“*Karasel II*”) as described in detail below (the “*Bar Order*”).

The Court has noted that notice of the Motion and the request for a Bar Order was given to those potentially interested parties identified on the service list referenced in the Motion. The Court has reviewed and considered the Motion, any other submissions to this Court and provided an opportunity to be heard to all persons requesting to be heard. Accordingly, it is:

ORDERED as follows:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and authority to enter this Order pursuant to 11 U.S.C. § 105(a).

2. The Motion is **GRANTED**.

3. The Court finds that the Liquidating Trustee is authorized to enter into and be bound by the Stipulation in accordance with its terms.

4. The Settlement is **APPROVED** and the terms and provisions of the Stipulation shall be binding upon all the parties thereto as set forth therein.

5. The Settlement Payment will be allocated and apportioned among the estates as follows: 18% to Palm Beach Finance Partners Liquidating Trust and 82% to the Palm Beach Finance II Liquidating Trust (the “*Pro Rata Allocation Formula*”).

6. MRB’s initial contingency fee resulting from the Settlement Payment in the amount of \$235,000 is approved (“*Initial Contingency Fee*”). The Liquidating Trustee is authorized and directed to make payment of the Initial Contingency Fee without the need for further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of the Settlement Payment.

7. MRB’s subsequent contingency fee resulting from the sale of the Offshore Interest is approved (“*Subsequent Contingency Fee*”). The Liquidating Trustee is authorized

and directed to make payment of the Subsequent Contingency Fee from the net proceeds received by the Liquidating Trusts from the sale of the Offshore Interest without the need for further Court Order, in accordance with the Pro Rata Allocation Formula, promptly upon receipt of such net proceeds.

8. The form and means of the notice of the Bar Order and the Motion are determined to have been the best notice practicable under the circumstances and to be good and sufficient notice to all persons whose interests would or could be affected by this Order.

9. The Court has been apprised of the negotiations that preceded the Stipulation and finds that the Motion and request for Bar Order is a result of arms'-length bargaining among the parties. There is no evidence that the settlement reached by the Liquidating Trustee with the Defendants is the result of collusion among the parties or that there has been any intent to prejudice any interested parties.

10. The Court finds that entry of this Order is appropriate in order to achieve the finality and repose that is contemplated as a term of the proposed settlement and that good cause therefore exists for the entry of this Order, and is fair and equitable. *See In re U.S. Oil & Gas Litigation*, 967 F.2d 489, 495-96 (11th Cir. 1992); *Munford, Inc. v. Munford, Inc.*, 97 F.3d 449, 454-55 (11th Cir. 1996); *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991); *Eichenholtz v. Brennan*, 52 F.3d 478 (3d Cir. 1995).

11. The following additional definitions apply to the provisions of this Order barring certain claims as set forth in paragraph 12 below:

a. “**PBDI**” shall mean Palm Beach Diversified Income, L.P., together with any and all of its successors and assigns, including, without limitation, any successor receiver, administrator, liquidator, or trustee in such capacity.

b. “**Claim**” or “**Claims**” shall mean any obligations, causes of action, demands of any type that a party may presently have, may have or have had in the past, upon or by reason of any matter, cause or thing whatsoever, including

without limitation any and all obligations, claims, causes of actions and demands of any kind whatsoever, at law or in equity, indirect, derivative, or direct, known or unknown, discovered or undiscovered that relate in any manner whatsoever to Petters Company, Inc. or the Debtors or KBC.

c. **“Released Entities”** shall mean (i) KBC; (ii) the parent, sister, and direct and indirect subsidiary companies of KBC (**“KBC Affiliates”**); (iii) current and former employees, officers, directors, agents and attorneys of KBC or the KBC Affiliates, and each of their respective spouses, heirs, executors and assigns; and (iv) Karasel II.

12. To the extent the Liquidating Trustee or the Debtors, or any of their successors or assigns, either directly or in any other capacity, asserts any Claims against PBDI (a **“PBDI Adversary”**), PBDI is permanently barred and enjoined from commencing, prosecuting, or asserting either directly or in any other capacity any Claims that PBDI now has, ever had, or may assert to have in the future, against the Released Entities for contribution, indemnity or otherwise resulting from any such Claims asserted against PBDI.

13. In connection with any PBDI Adversary, upon request of PBDI, the court or tribunal determining such claim shall determine whether the Released Entities would have been liable to PBDI in the absence of this Bar Order (a **“Barred Claim”**). If the court or tribunal so determines, it shall reduce any judgment against PBDI in an amount equal to the amount the Released Parties would have been liable on a Barred Claim in the absence of this Bar Order. Nothing herein shall prejudice or operate to preclude the right of PBDI to (i) provide notice of this Bar Order to the court or tribunal hearing the PBDI Adversary at any point, or (ii) raise any other issues, claims or defenses regarding judgment reduction or proportionate share of fault in the court or tribunal hearing the PBDI Adversary at any point in accordance with applicable law or procedure.

14. The Court retains jurisdiction to enforce or interpret this Order.

###

Submitted By:

s/ Jonathan S. Feldman, Esq.

Jonathan S. Feldman, Esquire

Florida Bar No. 12682

jfeldman@melandrussin.com

MELAND RUSSIN & BUDWICK, P.A.

3200 Southeast Financial Center

200 South Biscayne Boulevard

Miami, Florida 33131

Telephone: (305) 358-6363

Telecopy: (305) 358-1221

Attorneys for the Liquidating Trustee

Copies Furnished To:

Jonathan S. Feldman, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

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 email notice/service for this case.

- Geoffrey S. Aaronson gaaronson@aspalaw.com, tdmckeown@mckeownpa.com;sbeiley@aspalaw.com
- Melissa Alagna mma@segallgordich.com, jxp@segallgordich.com;skm@segallgordich.com
- Vincent F Alexander vfa@kttlaw.com, lf@kttlaw.com
- Keith T Appleby kappleby@hwlaw.com, lbecker@hwlaw.com
- Paul A Avron pavron@bergersingerman.com, efile@bergersingerman.com
- Scott L. Baena sbaena@bilzin.com, eservice@bilzin.com;lflores@bilzin.com
- Marc P Barmat ndixon@furrcohen.com, mbarmat@furrcohen.com
- Steven M Berman sberman@slk-law.com, bgoodall@slk-law.com
- Mark D. Bloom bloomm@gtlaw.com, MiaLitDock@gtlaw.com;miaecfbky@gtlaw.com
- Noel R Boeke noel.boeke@hklaw.com, wendysue.henry@hklaw.com
- Michael S Budwick mbudwick@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com
- Michael S Budwick mbudwick@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com
- Dennis M. Campbell dcampbell@campbelllawfirm.net, gschmied@campbelllawfirm.net;lartigas@campbelllawfirm.net
- Rilyn A Carnahan rilyn.carnahan@gmlaw.com, efileu1092@gmlaw.com;efileu1089@gmlaw.com;efileu1435@gmlaw.com;efileu1094@gmlaw.com
- Francis L. Carter flc@katzbarron.com, lcf@katzbarron.com
- Lisa M. Castellano lcastellano@becker-poliakoff.com, thenry@becker-poliakoff.com;fritz@becker-poliakoff.com
- Helen Davis Chaitman hchaitman@beckerny.com;lblanco@beckerny.com;cdavis@beckerny.com
- Helen Davis Chaitman hchaitman@beckerny.com, jgorchkova@beckerny.com;lblanco@beckerny.com;cdavis@beckerny.com
- Franck D Chantayan franck@chantayan.com
- Daniel DeSouza ddesouza@bplegal.com, cgeellman@bplegal.com
- John R. Dodd doddj@gtlaw.com, miaecfbky@gtlaw.com;mialitdock@gtlaw.com
- John D Eaton jeaton@shawde-eaton.com
- Darren D. Farfante dfarfante@fowlerwhite.com, deborah.lester@fowlerwhite.com
- Heidi A Feinman Heidi.A.Feinman@usdoj.gov
- Jonathan S. Feldman jfeldman@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com
- G Steven Fender efileu1113@gmlaw.com, efileu1094@gmlaw.com;efileu1092@gmlaw.com;efileu1435@gmlaw.com;lauren.baio@gmlaw.com
- David S Foster david.foster@lw.com, chefiling@lw.com
- Robert G Fracasso Jr rfracasso@shutts.com, jgoodwin@shutts.com
- Robert C Furr bnasralla@furrcohen.com
- Solomon B Genet sgenet@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com
- John H Genovese jgenovese@gjb-law.com, hburke@gjb-law.com;gjbecf@gjb-law.com
- Michael I Goldberg michael.goldberg@akerman.com, charlene.cerda@akerman.com
- Lawrence Gordich LAG@segallgordich.com, jxp@segallgordich.com;mma@segallgordich.com
- Scott M. Grossman grossmansm@gtlaw.com, rosr@gtlaw.com;MiaLitDock@gtlaw.com;MiaLitDock@gtlaw.com;FTLLitDock@GTLaw.com;miaecfbky@gtlaw.com
- Jennifer Hayes jhayes@foley.com, KCavanaugh@foley.com
- Kenneth M Jones kjones@moodyjones.com
- Michael A Kaufman michael@mkaufmanpa.com, diamondmk@aol.com;kaufmanesq@gmail.com;tpatykula@mkaufmanpa.com;gstolzberg@mkaufmanpa.com;samkraut@mkaufmanpa.com;jhochberg@mkaufmanpa.com
- Stephen J Kolski Jr stevekolski@catlin-saxon.com
- Harris J. Koroglu hkogroglu@shutts.com, jgoodwin@shutts.com
- James A Lodoen jlodoen@lindquist.com
- Joshua A Marcus jmarcus@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com
- Paul J McMahon pjmc@pjmlawmiami.com
- Brian M Mckell brian.mckell@wilsonelser.com, lourdes.riestra@wilsonelser.com
- Barry E Mukamal bankruptcy@marcumllp.com, FL64@ecfcbis.com
- Barry E Mukamal bankruptcy@marcumllp.com, FL64@ecfcbis.com
- David J Myers myers@fsblegal.com
- Office of the US Trustee USTPRegion21.MM.ECF@usdoj.gov
- Paul L. Orshan paul@orshanpa.com, maria@orshanpa.com;estone@orshanpa.com
- Leslie S. Osborne rappaport@kennethrappaportlawoffice.com
- John E Page jpage@sfl-pa.com, scusack@sfl-pa.com;lrosetto@sfl-pa.com
- Chad S Paiva chad.paiva@gmlaw.com, katrina.bankert@gmlaw.com
- Kristopher E Pearson kpearson@stearnsweaver.com, mmasvidal@stearnsweaver.com;bank@stearnsweaver.com;ross@stearnsweaver.com;dillworthcdp@ecf.epiqsystems.com;larrazola@stearnsweaver.com;sanderson@stearnsweaver.com
- Jennifer H Pinder jpinder@foley.com, KCavanaugh@foley.com
- Chad P Pugatch cpugatch.ecf@rprslaw.com
- Christopher S Rapp csrapp@jones-foster.com
- Patricia A Redmond predmond@stearnsweaver.com, jmartinez@stearnsweaver.com;bank@stearnsweaver.com;ross@stearnsweaver.com;dillworthcdp@ecf.epiqsystems.com;sanderson@stearnsweaver.com;nlevine@aking.com
- Jason S Rigoli jrigoli@furrcohen.com, ndixon@furrcohen.com
- Kenneth B Robinson krobinson.ecf@rprslaw.com
- Joseph Rodowicz bankruptcy@rodowiczlaw.com, rodowiczlaw@gmail.com
- Robin J. Rubens rjr@lklaw.com, cag@lklaw.com
- Peter D. Russin prussin@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com
- Franklin H Sato fsato@wickersmith.com, alazaro@wickersmith.com
- Bradley M Saxton bsaxton@whww.com, scolgan@whww.com;rweinman@whww.com;breece@whww.com
- Michael L Schuster mschuster@gjb-law.com, gjbecf@gjb-law.com
- Michael D. Seese mseese@seeselaw.com, sseward@seeselaw.com
- Steven E Seward sseward@seeselaw.com
- Bradley S Shraiberg bshraiberg@sfl-pa.com, dwoodall@sfl-pa.com;vchapkin@sfl-pa.com;lrosetto@sfl-pa.com;scusack@sfl-pa.com;blee@sfl-pa.com
- Paul Steven Singerman singerman@bergersingerman.com, mdiaz@bergersingerman.com;efile@bergersingerman.com
- James S Telepman jst@fcohenlaw.com
- Charles W Throckmorton cwt@kttlaw.com, lf@kttlaw.com;ycc@kttlaw.com
- Trustee Services Inc 2 court@trusteeservices.biz, sandirose.magder@gmail.com
- Skipper J Vine jonathan.vine@csklegal.com
- Jessica L Wasserstrom jwasserstrom@melandrussin.com, ltannenbaum@melandrussin.com;mrbnfs@yahoo.com
- Morris D. Weiss morrisw@hts-law.com, sherris@hts-law.com;annmariej@hts-law.com

EXHIBIT 3

- George L. Zinkler gzinkler.ecf@rprslaw.com