EXHIBIT A (PART 1)

Oude Elferink

Gerechtsdeurwaarders & Incasso

REGISTERED LETTER

Pricewaterhousecoopers LLP
Chartered Accountants
PwC Tower 18 York Street Suite 2600
Toronto, Ontario M5J 0 B2 (CANADA)

H. Oude Elferink
Gerechtsdeurwaarder

N. Bicker
E.J. Bruin
(t.k.-) Gerechtsdeurwaarders

mr. C.S.M. Kruik - van Straaten
Jurist

A.M. Bogaard
Chef de Bureau

Bezoekadres
Hilversumstraat 336
Amsterdam

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ING Bank
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Derdengelden/
kwaliteitsrekeningen

BTW nr. NL8500.09.819.B01

KvK nr. 51428520

Kantoorbezoek na afspraak
Betalingen uitsluitend per bank.

Amsterdam, 23 oktober 2012

Inzake : forwarding legal documents ex art. 55 lid 2 Rv (HccH)
Uw referentie :
Dossiernummer : L1200856 / JMS

Dear Sir, Madam,

According to the Law of the Netherlands on the service of judicial and extrajudicial documents, I hereby enclose one copy of a judicial document, this day served by me.

With kind regards, I remain,

Bailiff

Oude Elferink
Gerechtsdeurwaarders en Incasso

H. OUDE ELFERINK
AMSTERDAM

Oude Elferink

Gerechtsdeurwaarders & Incasso

L1200856 / JMS

Pricewaterhousecoopers LLP
Chartered Accountants
PwC Tower 18 York Street
Suite 2600
Toronto, Ontario M5J 0B2 Canada

herstelexploot

Informatie & correspondentie: CMS Derks Star Busmann N.V., Newtonlaan 203, 3584 BH Utrecht
T:030-2121 451 F:030-2121 158 mr. D. Castelijns

Heden, de tweeduizend twaalf,

H. Oude Elferink
Gerechtsdeurwaarder

N. Bicker
E.J. Bruin
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nr. C.S.M. Kruik - van Straaten
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Op verzoek van de rekwiranten:

1. de rechtspersoon naar het recht van de Britse Maagdeneilanden **Colima International Limited** gevestigd op de Britse Maagdeneilanden, Palm Grove House, P.O. Box 438, Road Town, Tortola;
2. de stichting **Stichting Fairfield Compensation Foundation** gevestigd en kantoorhoudende te (1077 ZX) Amsterdam aan het adres Strawinskylaan 3051

beiden voor deze zaak woonplaats kiezende te (3584 BH) Utrecht aan het adres Newtonlaan 203 op het kantoor van de advocaat mr. P.J. Soede (CMS Derks Star Busmann N.V.), die door rekwiranten tot advocaat wordt gesteld om als zodanig voor hen in rechte op te treden,

aan:

de gerekwireerde: de rechtspersoon naar het recht van Canada **Pricewaterhousecoopers LLP Chartered Accountants** gevestigd en kantoorhoudende te Toronto, Ontario M5J 0B2, Canada in de PwC Tower, 18 York Street, Suite 2600, zonder bekende plaats van vestiging of kantoor in Nederland, mitsdien uit kracht van artikel 55 Rv mijn exploot doende aan het parket van de ambtenaar van het openbaar ministerie van de Rechtbank Amsterdam te (1076 AV) Amsterdam aan de Parnassusweg 220 en aldaar mijn exploot doende en twee afschriften dezes alsmede twee vertalingen daarvan in de Engelse taal, alsmede na te melden dagvaarding plus Engelse vertaling daarvan latende aan:

aldaar werkzaam,

welke betekening is vergezeld van het formulier als bedoeld in artikel 7, eerste lid, van het Verdrag van 15 november 1965 inzake de betekening en de kennisgeving in het buitenland van gerechtelijke en buitengerechtelijke stukken in burgerlijke en handelszaken, door mij, (t.k.) gerechtsdeurwaarder ingevuld in de Engelse taal,

aan de ontvangende instantie heb ik verzocht om dit exploot aan gerekwireerde te betekenen overeenkomstig de artikelen 3 tot en met 6 van het Verdrag van 15 november 1965 inzake de betekening en de kennisgeving in het buitenland van gerechtelijke en buitengerechtelijke stukken in burgerlijke en handelszaken, door eenvoudige afgifte of – zo dit niet mogelijk is –

Oude Elferink

Gerechtsdeurwaarders & Incasso

door betekening volgende de wet van de aangezochte staat, in beide gevallen onder afgifte van een bewijs van ontvangst.

terwijl voorts nog een derde afschrift van dit exploot alsmede de Engelse vertaling daarvan door mij, (t.k.) gerechtsdeurwaarder per aangetekende post met ontvangstbevestiging heden zal worden toegezonden aan gerekwireerde op haar voormeld adres.

Uit een aan dit exploot gehecht betalingsbewijs blijkt dat door voornoemde gerechtsdeurwaarder inmiddels de in verband met de uitreiking van het exploot verschuldigde kosten ad Can $ 50,00 zijn overgemaakt op de bankrekening van Ministry of the Attorney General, Ontario Court of Justice 393 Main Street, Haileybury, Ontario, P0J 1K0, Canada.

aangezegd:

dat gerekwireerde op verzoek van rekwiranten blijkens aangehecht exploot d.d. 15 augustus 2012 door de daarin genoemde (t.k.-) gerechtsdeurwaarder, is gedagvaard om op woensdag 26 september 2012, des voor middags te 10:00 uur, niet in persoon, doch vertegenwoordigd door een advocaat te verschijnen op de terechtzitting van de Rechtbank Amsterdam, alsdan gehouden wordende in het gerechtsgebouw te Amsterdam, aan de Parnassusweg 220, ter zake en teneinde als in het exploot omschreven:

dat gerekwireerde abusievelijk op een te korte termijn is gedagvaard. Er is een termijn van vier weken in acht genomen;

dat dit echter een termijn van drie maanden had moeten zijn en de rechtbank heeft toegestaan het voormelde te herstellen door kennisgeving middels een (herstel)exploot aan de gerekwireerde;

dat gerekwireerde hierbij wordt opgeroepen tegen een nieuwe rechtsdag;

vervolgens heb ik (t.k.-) gerechtsdeurwaarder, de gerekwireerde bij dit exploot, onder uitdrukkelijke handhaving van het voormelde exploot van 15 augustus 2012, voor zover hierbij niet uitdrukkelijk gewijzigd;

opgeroepen:

Om op **woensdag dertig januari tweeduizenddertien**, des voormiddags om 10.00 uur, niet in persoon doch vertegenwoordigd door een advocaat, te verschijnen op de terechtzitting van de Rechtbank Amsterdam, alsdan zitting houdende in één der lokalen van het Gerechtsgebouw aan de Parnassusweg 220, te Amsterdam;

H. Oude Elferink
Gerechtsdeurwaarder

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Oude Elferink

Gerechtsdeurwaarders & Incasso

met aanzegging

a. indien gedaagde verzuimt advocaat te stellen of het hierna te noemen griffierecht niet tijdig betaalt, en de voorgeschreven termijnen en formaliteiten in acht zijn genomen, de rechter verstek tegen gedaagde zal verlenen en de hierna omschreven vordering zal toewijzen, tenzij deze hem onrechtmatig of ongegrond voorkomt;
b. indien ten minste één van de gedaagden advocaat heeft gesteld en het griffierecht tijdig heeft voldaan, tussen alle partijen één vonnis zal worden gewezen, dat als een vonnis op tegenspraak wordt beschouwd;
c. bij verschijning in het geding van ieder van de gedaagden een griffierecht van € 575,00 zal worden geheven, te voldoen binnen vier weken te rekenen vanaf het tijdstip van verschijning;
d. van een persoon die onvermogend is, een lager griffierecht wordt geheven, namelijk van € 73,00, indien hij op het tijdstip waarop het griffierecht wordt geheven heeft overgelegd:
1e een afschrift van het besluit tot toevoeging, bedoeld in artikel 29 van de Wet op de rechtsbijstand, of indien dit niet mogelijk is ten gevolge van omstandigheden die redelijkerwijs niet aan hem zijn toe te rekenen, een afschrift van de aanvraag, bedoeld in artikel 24, tweede lid, van de Wet op de rechtsbijstand, dan wel
2e een verklaring van de raad als bedoeld in artikel 1, onder b, van die wet, waaruit blijkt dat zijn inkomen niet meer bedraagt dan de bedragen, bedoeld in artikel 35, derde en vierde lid, telkens onderdelen a tot en met d dan wel in die artikelleden, telkens onderdeel e, van die wet;
met dien verstande dat als gevolg van een inmiddels van kracht geworden wijziging van de Wet op de rechtsbijstand nu geldt dat de verklaring wordt verstrekt door het bestuur van de raad voor rechtsbijstand, bedoeld in artikel 2 van die wet, terwijl de bedragen waaraan het inkomen wordt getoetst zijn vermeld in artikel 2, eerste en tweede lid, van het Besluit eigen bijdrage rechtsbijstand;
e. van gedaagden die bij dezelfde advocaat verschijnen en gelijkluidende conclusies nemen, op basis van artikel 15 van de Wet griffierechten burgerlijke zaken slechts eenmaal een gezamenlijk griffierecht wordt geheven;

ter berechting:

van de met voormelde, op 15 augustus 2012 aan gerekwireerde betekend exploot van dagvaarding aanhangig gemaakte zaak.

De kosten dezes zijn nihil

H. Oude Elferink
Gerechtsdeurwaarder

N. Bicker
E.J. Bruin
(t.k.-) Gerechtsdeurwaarders

nr. C.S.M. Kruik - van Straaten
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BTW nr. NL8500.09.819.B01

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Kantoorbezoek na afspraak
Betalingen uitsluitend per bank.

amended writ

On this day of in the year two thousand and twelve, at the request of

I. **Colima International Limited**, incorporated under the laws of the British Virgin Islands and having its registered office at Palm Grove House, P.O. Box 438, Road Town, Tortola, British Virgin Islands; and
II. **Stichting Fairfield Compensation Foundation**, established and having its registered office at Strawinskylaan 3051, 1077 ZX Amsterdam, the Netherlands;

both for the purposes of these proceedings choosing to reside at Newtonlaan 203, 3584 BH Utrecht, at the offices of CMS Derks Star Busmann N.V., Lawyers, Notaries and Tax advisers, from which office Mr. P.J. Soede is appointed counsel in this case and as such shall appear,

TO:

Respondent: **PricewaterhouseCoopers LLP Chartered Accountants**, incorporated under the laws of Canada, having its registered offices at PwC Tower, 18 York Street, Suite 2600, Toronto, Ontario M5J 0B2, Canada, with no known address or address in the Netherlands, wherefore pursuant to Article 55 of the Dutch Code of Civil Procedure I have delivered my writ to the office of the official of the public ministry of the District Court of Amsterdam at Parnassusweg 220, 1076 AV Amsterdam, there delivering two copies of my writ together with two English translations thereof to:

said writ being accompanied by the form referred to in Article 7, section 1 of the Treaty of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, completed by me, the bailiff, in English,

and I have asked the receiving authority to deliver this summons to defendant sub III in accordance with Articles 3 to 6 inclusive of the Treaty of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, by simple delivery or, if this is not possible, by communicating in accordance with the law of the state applied to, in either case against an acknowledgement of receipt,

and a third copy of this writ together with an English translation thereof will today be sent by me, the bailiff, by registered post with acknowledgement of receipt to defendant sub III at its abovementioned address.

A receipt is attached to this writ which showes that Oude Elferink Gerechtsdeuwaarders mentioned above has made payment of the costs for service of this writ of CAN $ 50,- on the bank account of Ministry of the Attorney General, Ontario Court of Justice, 393 Main Street, Haileybury, Ontario, P0J 1K0, Canada.

WITH NOTICE:

that respondent at the request of claimants according to the attached summon dated 15 August 2012 by the (assigned junior) bailiff mentioned, is summoned to appear on Wednesday the twenty-sixth (26th) of September two thousand and twelve, at 10 a.m., not in person but represented by a lawyer, before the District Court of Amsterdam sitting in one of the courtrooms of the Court House at Parnassusweg 220, 1076 AV Amsterdam, to the point and for the purpose of in the writ mentioned:

that respondent mistakenly has been summoned within a too short term. A term of four weeks has been observed.

that a term of three months should have been observed and that the Court House allowed claimants to correct afore-mentioned by notice of an amended writ to respondent;

that respondent hereby is summoned to appear on a new date of the hearing;

subsequently, I (assigned junior) bailiff have, the respondent by this writ, on express upholding of the afore-mentioned writ dated 15 August 2012, in so far as hereby not explicitly amended;

SUMMONED TO APPEAR:

on Wednesday the thirtieth of January two thousand and thirteen, at 10 a.m., not in person but represented by a lawyer, before the District Court of Amsterdam sitting in one of the courtrooms of the Court House at Parnassusweg 220, 1076 AV Amsterdam;

THEY BEING INFORMED:

a. that if a defendant delays in appointing a lawyer or fails to pay the court fee referred to below in a timely manner, and the prescribed terms and formalities have been observed, the judge will declare the defendant in default and grant the request described hereunder, unless he deems it unwarranted or groundless;

b. that if at least one of the defendants has appointed a lawyer and paid the court fee in a timely manner, a single ruling shall be made as regards all parties, which shall be considered to be judgement after trial;

c. that each defendant appearing in the proceedings shall be charged a court fee of €575.00 to be paid within four weeks of the appearance;

d. that any person who is indigent shall be charged a reduced court fee of €73.00 providing such person produces, within the time in which the court fee is due:
   1. a copy of the resolution to provide aid as referred to in Article 29 of the Legal Aid Act, or if this is impossible due to circumstances not reasonably attributable to such person, a copy of the application referred to in Article 24, section 2 of the Legal Aid Act, or

2. a declaration of the Legal Aid Council as referred to in Article 1 b) of said Act to the effect that his income is not more than the amounts referred to either in subsections a) to d) inclusive, or in subsection e), of sections 3 and 4 of Article 35 of said Act;

on the understanding that as a result of an amendment to the Legal Aid Act which has meanwhile come into effect, the declaration will now be made by the Board of the Legal Aid Council as referred to in Article 2 of the Act, while the amounts against which the income is measured are as mentioned in Article 2, sections 1 and 2 of the Decree on own contributions to legal aid;

e. that, on the basis of Article 15 of the Law on Court Fees in Civil Cases, defendants appearing with the same lawyer and pleading similarly are charged a joint, once-only court fee;

IN ORDER:

to adjudicate the above-mentioned by writ served on respondent on 15 August 2012 commenced proceedings.

The costs of this writ are nil

SUMMONS AND INCIDENTAL DEM 43A OF THE DUTCH CODE OF

verlating dag-vaarding Colima en St. Fairfield (PwC N.V.)

On this day of vijftiende augustusin the ye t the request of

I. **Colima International Limited**, incor he British Virgin Islands and having its registered office . Box 438, Road Town, Tortola, British Virgin Islands; an

II. **Stichting Fairfield Compensation Fou** ving its registered office at Strawinskylaan 3051, 1077 ZX Amsterdam, the Netherlands;

both for the purposes of these proceedings choosing to reside at Newtonlaan 203, 3584 BH Utrecht, at the offices of CMS Derks Star Busmann N.V., Lawyers, Notaries and Tax advisers, from which office Mr. P.J. Soede is appointed counsel in this case and as such shall appear,

Heb ik, Hendrikus Oude E[illegible]ink
gerechtsdeurwaarder te Amsterdam.
kantoor houdende aldaar
aan de Hilversumstraat 336;

I HAVE SUMMONED:

I. **PricewaterhouseCoopers N.V.** having its registered offices at Thomas R. Malthusstraat 5, 1066 JR Amsterdam, choosing to reside at the office of Mr. D.F. Lunsingh Scheurleer of NautaDutilh N.V, Strawinskylaan 1999, 1077 XV Amsterdam for the purposes of these proceedings, at which address I have delivered my writ and copy thereof to:

II. **PricewaterhouseCoopers Accountants N.V.** having its registered offices at Thomas R. Malthusstraat 5, 1066 JR Amsterdam, choosing to reside at the office of Mr. D.F. Lunsingh Scheurleer of NautaDutilh N.V, Strawinskylaan 1999, 1077 XV Amsterdam for the purposes of these proceedings, at which address I have delivered my writ and copy thereof to:

III. **PricewaterhouseCoopers LLP Chartered Accountants**, incorporated under the laws of Canada, having its registered offices at PwC Tower, 18 York Street, Suite 2600, Toronto, Ontario M5J 0B2, Canada, with no known address or address in the Netherlands, wherefore pursuant to Article 55 of the Dutch Code of Civil Procedure I have delivered my writ to the office of the official of the public ministry of the District Court of Amsterdam at Parnassusweg 220, 1076 AV Amsterdam, there delivering two copies of my writ together with two English translations thereof to:

said writ being accompanied by the form referred to in Article 7, section 1 of the Treaty of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, completed by me, the bailiff, in English,

and I have asked the receiving authority to deliver this summons to defendant sub III in accordance with Articles 3 to 6 inclusive of the Treaty of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, by simple delivery or, if this is not possible, by communicating in accordance with the law of the state applied to, in either case against an acknowledgement of receipt,

and a third copy of this writ together with an English translation thereof will today be sent by me, the bailiff, by registered post with acknowledgement of receipt to defendant sub III at its abovementioned address.

A receipt is attached to this writ which showes that Oude Elferink Gerechtsdeuwaarders mentioned above has made payment of the costs for service of this writ of CAN $ 50,- on the bank account of Ministry of the Attorney General, Ontario Court of Justice, 393 Main Street, Haileybury, Ontario, P0J 1K0, Canada.

TO APPEAR:

on Wednesday the twenty-sixth (26th) of September two thousand and twelve, at 10 a.m., not in person but represented by a lawyer, before the District Court of Amsterdam sitting in one of the courtrooms of the Court House at Parnassusweg 220, 1076 AV Amsterdam;

THEY BEING INFORMED:

a. that if a defendant delays in appointing a lawyer or fails to pay the court fee referred to below in a timely manner, and the prescribed terms and formalities have been observed, the judge will declare the defendant in default and grant the request described hereunder, unless he deems it unwarranted or groundless;

b. that if at least one of the defendants has appointed a lawyer and paid the court fee in a timely manner, a single ruling shall be made as regards all parties, which shall be considered to be judgement after trial;

c. that each defendant appearing in the proceedings shall be charged a court fee of €575.00 to be paid within four weeks of the appearance;

d. that any person who is indigent shall be charged a reduced court fee of €73.00 providing such person produces, within the time in which the court fee is due:

1. a copy of the resolution to provide aid as referred to in Article 29 of the Legal Aid Act, or if this is impossible due to circumstances not reasonably attributable to such person, a copy of the application referred to in Article 24, section 2 of the Legal Aid Act, or
2. a declaration of the Legal Aid Council as referred to in Article 1 b) of said Act to the effect that his income is not more than the amounts referred to either in subsections a) to d) inclusive, or in subsection e), of sections 3 and 4 of Article 35 of said Act;

   on the understanding that as a result of an amendment to the Legal Aid Act which has meanwhile come into effect, the declaration will now be made by the Board of the Legal Aid Council as referred to in Article 2 of the Act, while the amounts against which the income is measured are as mentioned in Article 2, sections 1 and 2 of the Decree on own contributions to legal aid;

e. that, on the basis of Article 15 of the Law on Court Fees in Civil Cases, defendants appearing with the same lawyer and pleading similarly are charged a joint, once-only court fee;

IN ORDER:

To hear the conclusions and demands as follows:

I. OVERVIEW

1.1 The summons is composed as follows:

II. INTRODUCTION

II.1 Madoff fraud

2.1 The now globally notorious fraud perpetrated by New York investment guru Bernard Madoff ("Madoff") and his firm Bernard L. Madoff Investment Securities Inc. ("BMIS") came to light at the end of 2008. Unless otherwise indicated hereafter, Madoff and BMIS are hereinafter to be identified as being one and the same.

2.2 Madoff's modus operandi has meanwhile become sufficiently well known. He generated his money both through direct clients (mainly from the United States) and via so-called feeder funds. These feeder funds (investment funds) attracted money from private individuals, companies and other funds, and then let these assets almost entirely managed by Madoff, who moreover obtained exclusive and full control of these assets. The feeder funds enabled Madoff to attract even more money – tens of billions according to available sources – from all over the world. Investors' money entrusted to Madoff was actually not invested, as subsequently came to light. Payments to redeeming investors (redemptions) were paid from new investors' subscriptions. The amounts redeemed were equal to (i) the money initially invested and (ii) the "fictitious profits" accumulated to date (there were no regular dividend payments). Such a scheme works well as long as the newly attracted capital exceeds the pay-outs. When the increase in new investors tails off, as it did in this case because of the credit crisis, the scheme gets stuck and the Ponzi fraud is exposed. Madoff has been sentenced to 150 years in jail for this fraud.

II.2 Core of the dispute

2.3 In essence, this case concerns the defendants' liability, as auditors of a number of investment funds – the "Funds", as further defined hereunder – which allowed their money to be managed by Madoff, towards defrauded investors because of the defective and negligent performance of their task, as a result of which investors

suffered losses. By not exercising the degree of care that external auditors must observe in their activities as regards the standards of care applicable to corporate affairs, they wrongly issued unqualified opinions on financial statements containing material misstatements. Had no such unqualified opinions been given, it would not have been possible for the Fairfield Funds to attract or continue attracting investors' money – including that of the Plaintiffs – worldwide, and the Plaintiffs would not have lost their investment.

II.3 Parties

PwC

2.4 Defendants sub I and sub II (individually "PricewaterhouseCoopers N.V." and "PricewaterhouseCoopers Accountants N.V." respectively, and collectively "PwC Nederland"), and Defendant sub III ("PwC Canada") form part of the worldwide network of member firms of PricewaterhouseCoopers International Limited, a private company limited by guarantee, incorporated in the United Kingdom (PwC Nederland and PwC Canada are referred to collectively as "PwC").

2.5 PwC acted as auditor to the Madoff funds relevant to these proceedings. PwC wrongly issued unqualified opinions on the financial statements of these investment funds without any qualification. Exceptional importance is attached to auditors' statements. The auditor's report is supposed to present a true and fair picture. In this case the importance of reliable audit of the financial statements by an auditor was even greater, because these controls were the only form of effective external and independent supervision of the Funds. As will be described in more detail in discussing the Funds, the Funds' investment performance and portfolio were not subject to any form of supervision by a market authority. This was even presented as a risk in Fund documentation:

"***Absence of Regulatory Oversight***. *While the fund may be considered similar to an investment company, it does not intend to register as such under the U.S. Investment Company Act of 1940, as amended, in reliance upon an exemption available to*

privately offered investment companies, and, accordingly, the provisions of that Act (which, among other matters, require investment companies to have disinterested directors, require securities held in custody to at all times be individually segregated from the securities of any other person and marked to clearly identify such securities as the property of such investment company and regulate the relationship between the adviser and the investment company) will not be afforded to the Fund or the shareholders." (**Exhibit 2**, p. 21).
Exhibit 2 and the exhibits mentioned hereafter will be submitted on the day on which the case will come up.

This meant that PwC's audits of the Funds' financial statements were the only form of external and independent oversight. The financial statements constituted – together with the monthly NAV (Net Asset Value) calculations – the basic information on the results and assets of the Fairfield Funds. The fact that there was an auditor who was entrusted with carrying out audits of the financial information of these funds was therefore an essential guarantee and comfort to all third parties. It is clear that the fraud perpetrated over a number of years led to the Funds' financial statements presenting a misleading picture of the Funds' financial position.

Colima

2.6 Plaintiff sub I ("Colima") was incorporated under the laws of the British Virgin Islands on 4 January 2000. Colima invested money (in)directly in Sentry, one of the funds discussed hereinafter. Colima's Articles of Association are enclosed as **Exhibit 3**.

The Foundation on behalf of the victims collectively

2.7 Plaintiff sub II (hereinafter the "Foundation") is a Dutch *stichting* (foundation) incorporated on 6 July 2009 by Deminor Nederland B.V., a private limited liability company.

2.8 According to its Articles of Association, the Foundation's aim is to recover losses suffered by investors on their investments in the Sentry and/or Sigma and/or Lambda investment funds as discussed hereunder (**exhibit 4**). Investors in these funds can join the Foundation by signing a participation agreement with the Foundation (**exhibit 5** is a specimen participation agreement; the (remaining) participation agreements will be filed with the Clerk of the Court) in which the participant declares that he (i) holds shares in Sentry and/or Sigma and/or Lambda, (ii) assigns his claim under mandate within the meaning of Article 7:414 of the Dutch Civil Code to the Foundation for prosecution, (iii) grants the Foundation an exclusive power of attorney to take judicial and/or other measures in its own name or in that of the participant and (iv) authorises the Foundation to settle the dispute collectively in accordance with the Dutch Collective Settlements Act as it applies to mass damage cases (those who have signed or shall have signed a participation agreement being collectively referred to as the "Participants"). The Foundation thus appears in these proceedings as proxy holder, and based on the power of attorney granted to it to this end, brings the claims in its own name on behalf of the Participants.

2.9 The Foundation is a foundation with full legal capacity, whose purpose according to its Articles of Association is to defend the interests of investors in the Funds – including, but not limited to, the Participants – so that, in view of the legal claim brought by it, to that extent it complies with the requirements laid down by Article 3:305a of the Dutch Civil Code. In this case the Foundation represents the interests of the Participants, and in general of the investors, who invested in Sentry and/or Sigma and/or Lambda. The Foundation's collective action is aimed at obtaining a declaratory judgment to the effect that PwC acted wrongfully and, for the Participants, a finding of joint and several liability on the part of PwC to pay indemnification in an amount to be determined subsequently. The Participants (and Colima) accuse PwC, in short, of having failed to fulfil its (legal) task as auditor of Madoff funds by not complying with standards regarding the performance of its task and by carrying out audits in an inadequate manner and with insufficient professional skepticisim. If PwC had acted as should be expected of a diligent and reasonable auditor, then no unqualified opinions would have been issued, and it would then have been impossible for the Funds to

attract or continue to attract money from investors worldwide – including from the Plaintiffs – and the Plaintiffs would not have lost their investment. Since PwC did not act in this way, the investors in the Funds, including the Participants (and Colima) have suffered losses. That is a sufficient similar interest for the Foundation to be heard in a collective action under the terms of Article 3:305a of the Dutch Civil Code. The Foundation accordingly brings the claim primarily as a collective action based on Article 3:305a of the Dutch Civil Code on behalf of all investors in the Funds, regardless of whether or not they are Participants; and subsidiarily on behalf of, and as mandate holder of, the Participants.

2.10 In these proceedings the only matter to be ruled on is whether or not PwC's conduct was wrongful. In answering this question, special circumstances relating to the Participants can be set aside. Such circumstances are relevant only to questions regarding such matters as (size of) damages, causation and own fault and therefore circumstances that can be taken into account in establishing any indemnification that might be awarded to the Participants. Accordingly, this also provides an effective and efficient legal protection, since, amont other things, contradictory decisions regarding the question of wrongfulness can be avoided, which is also in PwC's interests.

2.11 Colima and the Foundation are referred to jointly as the "Plaintiffs".

II.4 Funds

2.12 In these proceedings the Foundation is defending the collective interests of the victims, including approximately 700 Participants who, like Colima, invested and on 10 December 2008 (based on the last available NAV) represented a total investment of approximately €190 million, in the following investment funds:

- Fairfield Lambda Limited ("Lambda"), incorporated on 7 December 1990;
- Fairfield Sigma Limited ("Sigma"), incorporated on 20 November 1990; and
- Fairfield Sentry Limited ("Sentry"), incorporated on 30 October 1990.

The Plaintiffs, like the other investors in the Funds, are the beneficial owners of the investments in the Funds. This means that they are those who bear the risks of any loss on the investment and they are entitled to claim indemnification in compensation for the damage suffered because of PwC's misconduct.

2.13 Lambda, Sigma and Sentry are collectively referred to as the "Funds".

2.14 The Funds are all incorporated in the British Virgin Islands. Fairfield Greenwich (Bermuda) Limited ("Fairfield") is the investment manager of the Funds. All monies invested by investors in Lambda and Sigma were invested by Lambda and Sigma in Sentry. Thus Lambda and Sigma are feeder funds of Sentry. In fact, for investors it makes no difference whether they invested in Sigma and/or Lambda on the one hand or in Sentry on the other, since their money was ultimately invested in Sentry, whether directly or indirectly.

2.15 As regards involvement and supervision by market authorities, the following applies (**exhibit 2**, p. iv; see also **exhibit 1**, p. iv):

"*The Fund is incorporated as an International Business Company under the International Business Companies Act of the British Virgin Islands. The Fund constitutes a "professional fund" as defined in the Mutual Funds Act, 1996 (as amended) of the British Virgin Islands (the "BVI Act") and as such is required to be and is recognized as a "professional fund" under the provisions of the BVI Act. Such recognition does not entail supervision of the investment performance or portfolio of the Fund by the Financial Services Commission of the British Virgin Islands (the "BVI"), which accepts no responsibility for the financial soundness of the Fund or the correctness of any statements or opinions expressed herein. (...)*

As an entity regulated under the BVI Act, the Fund will be subject to the supervision of the Financial Services Commission in the BVI, which is authorized by the BVI Act to direct the Fund to furnish information or provide access to any records, books or

other documents which it deems necessary to ascertain compliance with the BVI Act or any regulations made under the BVI Act."

2.16 Sentry was listed on the Irish Stock Exchange, in Dublin, under SEDOL number 0330934. There was however no public trading on the stock exchange, and the shareholders' redemption rights were not affected by the listing (**exhibit 2**, p. 3; see also **exhibit 1**, p.3). The Fund's administrator, Citco Fund Services (Europe) B.V., was responsible among other things for calculating the Net Asset Value ("NAV"), or the net worth of the Funds per share and informing the Irish Stock Exchange directly (**exhibit 2**, p. 12; see also **exhibit 1**, p.11). So far as is known there were no other obligations whatsoever for Sentry regarding the listing on the Irish Stock Exchange based on which more control was exercised over Sentry. The lack of oversight by a market authority also appears from the Fund's basic documentation (Private Placement Memorandum): "*Absence of Regulatory Oversight.*" (**Exhibit 2**, p. 21).

2.17 Up until the end of November 2008 Lambda and Sigma (indirectly), together with Sentry (directly), entrusted approximately USD7.2 billion to BMIS, of which the approximate equivalents of EUR720 million originated from Sigma and EUR29 million from Lambda. As well as Lambda and Sigma, Sentry thus also had its own investors unrelated to Sigma or Lambda. Sentry was one of the biggest if not the biggest fund among BMIS' clients.

2.18 While investors, including the Plaintiffs, had entrusted their money to Sentry, Lambda and/or Sigma, which in turn had entrusted it to Citco as depository and custodian, the money invested ultimately went to Madoff who, as will be explained later, had direct, total and exclusive control of it, which made it possible for him to set up and maintain his Ponzi scheme.

III. FACTUAL BACKGROUND

III.1 Ponzi scheme at BMIS

3.1 In December 2008 it came to light that Madoff, founder and owner of BMIS, had defrauded the investors whose assets had been entrusted to BMIS over the years, by using a so-called Ponzi scheme.

3.2 In a Ponzi scheme, a group of investors is offered the chance to invest money in a given fund or through a given intermediary. The prospect of unusually high and/or unusually stable returns is often held out to these investors. These returns are usually explained by reference to a 'secret' investment strategy that can be found only with this fund or intermediary. In reality the money invested is hardly used or not used at all to make investments but to pay back exiting investors' funds plus fictitious profits. Meanwhile the perpetrator of the fraud receives remunerations for the services supposedly provided.

3.3 Upon exiting a Ponzi scheme (redemption), investors – particularly those who invested in it relatively early on – generally receive a (fictitious) return on their 'investment'. However these amounts are financed from new investors' subscriptions. This creates the illusion of a successful investment, certainly in the minds of existing investors, but also of potential ones, enhancing the credibility of the investment strategy (and of the fund or intermediary implementing it). This in turn entices more and more new investors to invest in the same strategy. This snowball effect repeats itself until it becomes widely evident that a Ponzi scheme is at work. Investors then usually try to withdraw their money from the fund – all too often in vain, as a result of the bankruptcy of the fund or the intermediary.

3.4 An important difference between the above example of a Ponzi scheme and the present case is that the latter involved not a fund of BMIS itself in which other funds or investors invested, but funds that held accounts with BMIS and had their assets managed by BMIS through these accounts. These BMIS-managed funds showed

fictitious gains, which the operation of the Ponzi scheme made possible to pay out. For years BMIS carried on in this way, until Madoff confessed and it became painfully clear that there was a large-scale Ponzi scheme behind BMIS. The exact size of this fraud is still not known, but it is certainly in the tens of billions of US dollars. Not long after the Ponzi scheme at BMIS was unveiled, BMIS filed for bankruptcy, as did many funds, including Sentry, Lambda and Sigma, whose assets had been entrusted to and managed by BMIS.

3.5 The bankruptcy of BMIS thus led to the Funds, which had entrusted practically all their assets directly or indirectly to BMIS as manager and sub-custodian, also going into liquidation (a situation comparable to that of bankruptcy under Dutch law). Consequently investors in the Funds, including the Plaintiffs, suffered enormous losses; they are expected to lose virtually their entire investment in the Funds. It is highly unlikely that they will ever recover anything of their investment. In any case they will never recover their full investment.

3.6 As the main person responsible for this fraud, Madoff was sentenced on 29 June 2009 by a US judge to a term of imprisonment of 150 years.

III.2 Structure of the Funds, service-providers of the Funds and implications as regards risk factors

3.7 The Funds are investment funds incorporated in the British Virgin Islands. Investments in Lambda were made in Swiss francs, those in Sigma in euros and those in Sentry took place in US dollars. All monies invested by investors in Lambda and Sigma were invested by Lambda and Sigma in Sentry. Thus Lambda and Sigma are feeder funds of Sentry.

Fairfield was the manager of the Funds. Various entities were involved with the Funds as service providers. These separate roles are detailed hereunder. A graph summarizing the relations between the aforementioned entities and their investments is attached as **exhibit 6**.

A. Managers/directors of the Funds

3.8 The managers of the Funds had "*overall management responsibility*" for the Funds, including "*establishing investment, dividend and distribution policy, and having the authority to select and replace the Fund's administrator, registrar and transfer agent, custodian, any officers of the Fund and other persons or entities with management or administrative responsibilities to the Fund. None of the Fund's Directors own an equity interest in the Fund.*" (**exhibit 1**, p. 5 and **exhibit 2**, p. 6).

3.9 The board of directors of the Funds consisted of three individuals: Messrs. Walter M. Noel Jr., Jan R. Naess and Peter P. Schmid (**exhibit 1**, p. 5; see also **exhibit 2**, p. 6). Mr. Noel was also a director of the investment manager of the Funds.

B. Investment manager of the Funds

3.10 Fairfield was the investment manager of the Funds (**exhibit 2**, p. 7; see also **exhibit 1**, p. 6). As manager of the Funds, Fairfield had – in summary – the following obligations (**exhibit 1**, p. 6; see also **exhibit 2**, p. 7):

"*It is responsible for the management of the Fund's investment activities, the selection of the Fund's investments, monitoring its investments and maintaining the relationship between the Fund and its custodian, administrator, registrar and transfer agent.*"

3.11 The Funds' investment policy was as follows (**exhibit 1**, p. 8) and **exhibit 2**, p. 9):

"*The Fund seeks to obtain capital appreciation of its assets principally through the utilization of a non-traditional options trading strategy described as "split strike conversion", to which the Fund allocates the predominant portion of its assets*"

and (**exhibit 1**, p. 9 and **exhibit 2**, p. 10):

"*The Investment Manager, in its sole and exclusive discretion, may allocate a portion of the Fund's assets (never to exceed, in the aggregate, 5% of the Fund's Net Asset Value, measured at the time of investment) to alternative investment opportunities other than its "split strike conversion" investments (the "Non-SSC Investments")*"

3.12 **Exhibit 7** is the Investment Management Agreement between Fairfield and Sentry of 1 October 2004. **Exhibit 8** is the Investment Management Agreement between Fairfield and Sigma of 1 October 2004. By virtue of these agreements Fairfield undertook, inter alia:

- to manage the investments in the manner described in the Private Placement Memorandum (Article 1); and
- "*to perform or oversee the day-to-day investment operations of the Fund*" (Article 2 b));
- "*to provide information in connection with the preparation of all reports to the Funds' shareholders described in the memorandum in connection with the investment decisions*" (Article 2 d)); and
- "*send to the Fund weekly and monthly valuations of the SSC Investments and Non-SSC Investments*" (Article 3)

C. Custodian and administrator of the Funds

3.13 The Citco group performed an important function within the Funds. Various Citco entities, namely Citco Global Custody N.V. ("CGC"), Citco Bank Nederland N.V., Dublin Branch ("CBN") and Citco Fund Services (Europe) B.V. ("CFS") (the Citco entities being referred to collectively as "Citco") acted inter alia as custodian, depository and administrator for the Funds. The use of these entities to perform fundamental tasks such as those of depository, custodian and administrator was aimed at enhancing the credibility of the Funds and thus the trust of third parties such as investors.

(i) Citco entities as bank and custodian for the Funds

3.14 From Sentry's PPM of 2004 it appears that CBN acted as bank and that CGC acted as custodian (**exhibit 1**, p. 14):

"The Funds' escrow account is maintained at Citco Bank Nederland N.V. ("Citco Bank"). Citco Global Custody ("Citco Custody") has agreed to act as custodian of the Fund's assets."

3.15 It further appears from Sentry's 2006 PPM that by virtue of a custodian agreement, CBN and CGC agreed to provide 'custodial services' (**exhibit 2**, p. 16):

"Pursuant to a custodian agreement (the "Custody Agreement"), Citco Bank Nederland N.V., Dublin Branch ("Citco Bank") and Citco Global Custody N.V. ("Citco Depository") have agreed to provide custodial services to the Fund."

3.16 CBN is an investment company based in the Netherlands with a licence from DNB (*De Nederlandsche Bank*, the Dutch Central Bank) for the conduct of banking business. CGC is a wholly-owned subsidiary of CBN. As regards the custodian business carried on by CGC and CBN through their Dublin branch, these activities also fall under Dutch supervision. This follows from Article 4:1 of the Wft (*Wet financieel toezicht*, the Dutch Financial Supervision Act, hereinafter "Wft") which declares the 'Supervision of conduct of financial undertakings' section of the Wft applicable to investment companies having their head office in the Netherlands. No exception to this is made for Article 4:87 of the Wft which applies here. Pursuant to Article 4:87 of the Wft, CBN and CGC are obliged to take adequate measures to safeguard their clients' rights regarding financial instruments held for clients. Compliance with the rules on segregation of assets must first and foremost prevent financial instruments belonging to clients from being considered part of the investment company's assets in the event of the latter's bankruptcy.

3.17 Article 4:87, section 3 of the Wft forms a basis for establishing further rules on the protection of clients' rights regarding financial instruments and money held by investment companies. This concerns Articles 58-58d and 165-165d of the Bgfo (*Besluit gedragstoezicht financiële ondernemingen* or Decree on the Supervision of Conduct of Financial Companies) of the Wft (hereinafter "Bgfo"). The relevant Article here is Article 165a of the Bgfo. From Article 165a of the Bgfo it follows specifically that CBN and CGC must exercise the necessary care, competence and vigilance in selecting, appointing and controlling sub-custodians such as BMIS. Moreover, these tasks and duties were explicitly mentioned in Sentry's PPMs of 2004 and 2006.

3.18 Furthermore, pursuant to Article 6:14 of the Nrgfo (*Nadere regeling gedragstoezicht financiële ondernemingen* or Further Regulations on the Supervision of Conduct of Financial Companies, hereinafter "Nrgfo") CBN and CGC are obliged to make such arrangements regarding clients' financial instruments in order to provide adequate protection for those clients' rights. In this respect Article 6:18 of the Nrgfo is also relevant:

"An investment firm holding a licence granted by [DNB] to conduct the business of a bank, may comply with the requirements of Article 6:14 by concluding an agreement with the client, stipulating at least that a credit or debit to the financial instruments account of the client held with the credit institution only takes place together with a simultaneous debit or credit of the amount to be received or due as a result of the note regarding financial instruments note to the designated cash account of the client and:
a. the financial instruments are held and managed in accordance with the Securities Bank Giro Transactions Act, if the financial instruments are subject to the Securities Bank Giro Transactions Act and the investment firm is a member of Necigef (the Dutch Central Securities Depository); or
b. the financial instruments are held by a depository and the following conditions have been met:
– the depository firm is a legal entity under Dutch law;
– any person who represents the depository firm pursuant to its Articles of Association or regulations or determines its day-to-day policy, must be sufficiently knowledgeable

regarding the conduct of the business of the depository firm. The reliability of the persons referred to in the preceding sentence and of the persons who are directly or indirectly authorised to appoint or dismiss those persons must also be beyond doubt;
– persons who perform work for the depository firm may not be employed by the business unit of the investment firm, holding a licence to conduct the business of a bank granted by [DNB], that performs transactions in financial instruments;
– the depository firm performs no other activities than the safekeeping of financial instruments;
– the depository firm has an equity capital of at least €125,000;
– the sum of the units in financial instruments held by clients equals the sum of the financial instruments held by the depository firm for clients;
– the fulfilment of the obligations of the depository firm is guaranteed by the investment firm;
– the AFM (Netherlands Authority for the Financial Markets) can make all the enquiries at the depository firm, or have others make these enquiries, that in the opinion of the AFM are necessary for the proper performance of its statutory duties and powers;
– the depository firm only acts in the interests of the clients of the investment firm on whose behalf financial instruments and moneys are deposited with the depository firm;
– the depository firm is liable to the clients for any damage suffered by them, insofar as this damage is caused by imputable non-compliance with its obligations;
– the depository firm provides for a procedure, should the depository firm announce its intention to end its role; and
– The depository firm organises its operations in such a way as to guarantee the controlled and sound conduct of its business, in accordance with sections 31(1), (2) and (3), 31(b), 35(1), (2) and (4) and 165(1) a) to c) inclusive, of the Bgfo."

3.19 Pursuant to the aforementioned Article, CBN and CGC were obliged amongst other things to act exclusively in the interests of their clients (i.e. the Funds), for which financial instruments and money had been entrusted for safekeeping by the custodian. Thus Citco, as custodian, was obliged by the aforementioned Dutch financial supervision rules to keep the Funds' assets (i.e. the investments of, amongst others, the

Plaintiffs) legally segregated from the other assets in custody and in this way to ensure that monies entrusted to it as custodian were protected from the consequences of fraud, abuse or bankruptcy. The solvency of the custodian is thus of great importance.

3.20 The custodian agreement(s) between the Funds and Citco provide further understanding of the contractual relationship between the Funds and Citco. The Plaintiffs have a number of agreements in their possession. In summary, the following can be stated as regards the contractual relations with Citco.

3.21 The 2004 PPM for Sentry shows that CGC acted as custodian for Sentry, at least since an agreement dated 20 September 1994. The same PPM also shows that CBN held an escrow account for Sentry. Sigma's 2004 PPM shows that CGC had also been appointed as custodian for Sigma. Apparently CGC also acted as custodian for Lambda in the same period. These appointments were the subject matter of agreements. **Exhibit 9** relates to the Brokerage & Custody Agreement of 1 September 2003 between CBN, CGC and Sentry. **Exhibit 10** relates to the Brokerage & Custody Agreement dated 12 August 2003 between CBN, CGC and Sigma.

3.22 Sentry's 2006 PPM shows once again that CBN and CGC had agreed to provide custodial services to Sentry. This was also the subject matter of agreements. **Exhibit 11** relates to the Custodian Agreement of 3 July 2006 between CBN, CGC and Sentry. This Custodian Agreement replaced the aforementioned Brokerage & Custody Agreement of 1 September 2003 (see above).

3.23 The tasks and duties of CBN and CGC as described in these agreements are summarised as follows in the PPM for Sentry and Sigma:

For Sentry:

- *"All assets under custody will be held by Citco Custody and/or a Sub-Custodian, as the case may be, in a **separate client account** and will be **separately designated***

in the books and records *of Citco Custody and the Sub-Custodians.*" (**Exhibit 1**, p.15, emphasis added)

- "*Sub-custodians may be appointed by Citco Custody provided that* ***Citco Custody shall exercise reasonable skill, care and diligence in the selection of a suitable sub-custodian*** *and* ***shall be responsible to the Fund for the duration of the sub-custody agreement for satisfying itself as to the ongoing suitability of the sub-custodians to provide custodial services to the Fund****. Citco Custody will also* ***maintain an appropriate level of supervision over the sub-custodians*** *and* ***will make appropriate inquiries periodically*** *to confirm that the obligations of the sub-custodians continue to be completely discharged.*" (*Ibid.*, emphasis added)
- "*Citco Bank shall, to the extent it deems necessary, appoint and Citco Depository shall make use of sub-custodians with respect to certain securities of the Fund. Citco Bank will not be liable for any act or omission or for the solvency of such sub-custodians,* ***provided Citco Bank exercised due care in selecting the sub-custodians****. Citco Depository will not be liable for any act or omission or for the solvency of such sub-custodians.* ***Citco Bank will exercise reasonable skill, care and diligence in the selection of a suitable sub-custodian*** *and* ***shall be responsible to the Fund for the duration of the sub-custody arrangement for satisfying itself as to the ongoing suitability of the sub-custodian to provide custodial services to the Fund****. Citco Bank will* ***maintain an appropriate level of supervision over the sub-custodian(s) and make appropriate enquiries, periodically, to confirm that the obligations of the sub-custodian(s) continue to be competently discharged.***" (**Exhibit 2**, p.16, emphasis added)

For Sigma:

- "*Citco Global Custody N.V. has been appointed as Custodian by the Fund. The Custodian will be entrusted with the safe custody of certain financial investments of the Fund pursuant to a custody agreement made and entered into between the Fund and the Custodian. (...) The Custodian may make use of sub-custodian and depositories in the exercise of its functions. (...) Where sub-custodians are appointed,* ***the Custodian must exercise reasonable skill, care and diligence in***

the selection of sub-custodians *and is* ***responsible to the Fund for the duration of the appointment of each sub-custodian, for satisfying itself as to the ongoing suitability of the sub-custodians to provide custodial services to the Fund****. In addition, the Custodian must* ***maintain an appropriate level of supervision over the sub-custodians and make appropriate enquiries, from time to time, to confirm that the obligations of the sub-custodians continue to be completely discharged****."* (**Exhibit 12**, p. 15; see also **exhibit 13**, p. 16 emphasis added.)

(ii) Citco entities as administrator for the Funds

3.24 In addition to being a custodian, Citco entities were also actively involved with funds as an administrator. Sentry's 2004 PPM shows that CFS acted as administrator (**exhibit 1**, p. 15):

"*Pursuant to an agreement between Citco Fund Service (Europe) B.V. and the Fund, Citco serves as the administrator for the Fund, under the overall direction of the Funds' Board of Directors*"

3.25 As administrator, Citco was responsible inter alia for calculating and publishing the Net Asset Value (NAV) or the net asset value per share of the Funds (**exhibit 2**, p. 12):

"*The Net Asset Value of the Fund will be calculated on a monthly basis by the Funds' Administrator, Citco Fund Services (Europe) B.V., which will promptly notify the Irish Stock Exchange of the results of each such Net Asset Value calculation.*"

The tasks and duties of CFS as administrator for the Funds were also described in agreements. **Exhibit 14** relates to the Administration Agreement of 20 February 2003 between CFS and Sentry. **Exhibit 15** relates to the Administration Agreement of 20 February 2003 between CFS and Sigma. The tasks ("Services") of CFS involved the following, inter alia (Schedule 2 to the Administration Agreement):

"The Services

Part 1

Financial and Accounting Services

(a) Maintenance of the Fund's customary Financial and accounting books and records including, but not limited to:

- processing of trade-related transactions and corporate actions;

- processing of non-trade related transactions (cash movements, etc.);

- monitoring and processing of capital subscriptions/redemptions;

- reconciliation of cash and other balances at brokers;

- reconciliation of bank accounts;

- calculation of income and expense accruals;

- calculation of management and incentive/performance fees with supporting schedules;

- independent reconciliation of the Fund's portfolio holdings;

***- calculation of the Net Asset Value and Net Asset Value per Share on a monthly basis** in accordance with the Fund Documents.*

*(b) **Preparation of monthly financial statements, in conformity with the International Accounting Standards**, such financial statements to include:*

- Statement of Assets and Liabilities;

- Statement of Operations;

- Statement of Changes in Net Assets;

- Statement of Cash Flows (if desired); and

- Portfolio listings.

*(c) **Preparation of books and records** (including specific schedules and analysis) **to facilitate external audit, and liaising with the Fund's auditors in their review and preparation of the annual financial statements.***

(d) Provision of accounting or accounting related reports and/or support schedules as agreed between the Administrator and the Investment Manager.

(...)

Part 2
Administrative and Registrar and Transfer Agency Services

In accordance with the applicable provisions of the Fund Documents:
(...)
(f) reconciliation of information provided by the Fund's prime broker and custodian with information provided by the Investment Manager (...)" (**Exhibit 14**, p. 18 and 19; see also **exhibit 15**, p. 18 and 19, emphasis added)

From the foregoing it appears sufficiently that the Citco entities took a large number of essential tasks and duties upon themselves, particularly with regard to the assets and investment transactions of the Funds. All these tasks and duties were clearly written on paper (in agreements), but the question is and remains whether these entities performed their tasks and duties properly and whether PwC performed the necessary audits and controls on this.

D. Sub-custodian, sub-investment manager and broker/ dealer of the Funds

3.26 Despite the fact that all these service providers were, on paper, involved with the Funds, the Plaintiffs wish to stress that virtually all tasks of these service providers were delegated to BMIS. It has been established that there was a legal relationship between Citco as custodian and BMIS as sub-custodian (**exhibit 1**, p. 14):

"*Bernard L. Madoff Investment Securities LLC ("BLM" and, together with other qualified entities with which sub-custodial arrangements may be made, the "Sub-Custodians", and each, singularly, a Sub-Custodian") serves as a sub-custodian for certain assets of the Fund*"

and (**exhibit 2**, p. 16):

"*BLM will be a sub-custodian of the Fund*"

3.27 See also **exhibit 13**, p. 16):

"*As a result of the Investment Manager's selection of Bernard L. Madoff Investment Securities, LLC ("BLM") as execution agent of the split strike conversion strategy, substantially all of FSL's* (Fairfield Sigma Limited; added by lawyer) *assets will be held in segregated accounts at BLM, a U.S. registered broker-dealer and qualified custodian. Accordingly BLM will be a sub-custodian of FSL.*"

3.28 The content of the agreement(s) relating to these legal relationships (the Sub-custodian Agreement) is not known to the Plaintiffs nor, they understand, is it known to the Funds themselves, their managers and now their liquidators. Citco refused to disclose the Sub-custodian Agreement or even to confirm or deny the existence of such agreement(s) during an earlier *kort geding* ("summary proceedings") brought by the Plaintiffs with a view to obtaining the Sub-custodian Agreement. Whether PwC was familiar with the Sub-custodian Agreement(s) at the time of its audits remains to be seen, from the audit files. This is important, among other reasons, in order to be able to determine whether and if so to what extent the Citco entities fulfilled their duties with respect to the supervision of the sub-custodians of the Funds and whether PwC effectively incorporated this into its own audit assignments.

3.29 The Plaintiffs have however managed to acquire a sub-custodian agreement – which though being unsigned, certainly points to Citco - which very probably reflects the legal relationship between Citco as custodian and BMIS as sub-custodian (**exhibit 16**).

Signed variants of the agreements with other custodians for feeder funds to which BMIS provided sub-custodian services are known, with virtually the same content, except as regards applicable law, which in **exhibit 16** is Dutch law. This single difference is almost certainly due to the involvement of the Dutch Citco entities.

3.30 BMIS also acted as sub-investment manager for at least 95% of Sentry's assets, and also as broker/dealer for Sentry (**exhibit 1**, p. 15). Fairfield (the actual investment manager of Sentry) gave BMIS, as sub-manager, the mandate to implement the "split strike conversion strategy" ("SSC Strategy") as the Funds' investment strategy. In this capacity BMIS was supposed to execute investment transactions for the Funds in line with this SSC Strategy. BMIS took the investment decisions independently – indeed delimited by certain "guidelines", but in fact autonomously (**exhibit 2**, p. 9):

"*The Split Strike Conversion strategy is implemented by Bernard L. Madoff Investment Securities LLC ("BLM"), a broker-dealer registered with the Securities and Exchange Commission, through accounts maintained by the Fund at that firm. The accounts are subject to certain guidelines which, among other things, impose limitations on the minimum number of stocks in the basket, the minimum market capitalization of the equities in the basket, the minimum correlation of the basket against the S&P100 Index, and the permissible range of option strike prices. Subject to the guidelines, BLM is authorized to determine the price and timing of stock and option transactions in the account. The services of BLM and its personnel are essential to the continued operation of the Fund, and its profitability, if any.*"

and (**exhibit 2**, p. 16):

"*As a result of the Investment Manager's selection of Bernard L. Madoff Investment Securities, LLC ("BLM") as execution agent of the split strike conversion strategy, substantially all of the Fund's assets will be held in segregated accounts at BLM, a U.S. registered broker-dealer and qualified custodian. Accordingly, BLM will be a sub-custodian of the Fund*"

3.31 BMIS was thus de facto custodian, investment manager and broker/dealer for at least 95% of the Funds' assets, possibly more.

3.32 It can already be concluded that this structure was deliberately designed to give BMIS and Madoff complete, direct and exclusive control of the Funds' assets. This was

absolutely necessary for Madoff to be able to operate and protect his Ponzi scheme. It is noticeable that Madoff refused to have any 'official' direct contact with the Funds or any other funds. He always insisted on having an intermediary (here the Citco entities) between him and the Funds. In this way Madoff could continue to sit discreetly behind all the feeder funds (not only the Funds) without attracting too much attention. This was also necessary for keeping Madoff's Ponzi scheme afloat. This made it possible for Madoff to use money from one fund (subscriptions) to finance withdrawals from other funds (redemptions.)

This intermediation by BMIS was no secret (at least not based on the available documentation of the Funds), and is not in dispute. What matters in this case is whether PwC paid sufficient attention to it when auditing the Funds' financial statements. Madoff's intermediation was certainly seen as a risk factor: "*17. **Possibility of Misappropriation of Assets.** When FSL invests with Bernard L. Madoff Investment Securities or in a Non-SSC Investment vehicle, it will not have custody of the assets so invested. Therefore, there is always the risk that the personnel of any entity with which the Fund invests could misappropriate the securities or funds (or both) of the Fund.*" (**Exhibit 12**, p.20)

3.33 The fact that BMIS played a key role in the Funds can also be seen from Sentry's 2006 PPM (**exhibit 2**, p. 18, under the heading "Key risks"):

"*Dependence upon Principals and Key Employees of the Investment Manager and BLM* [BMIS, added by lawyer]. *The services of the Investment Manager's principals and key employees and BLM are essential to the continued operations of the Fund.*"

3.34 This combination of duties in a single legal entity was at that time and is today still not permitted under Dutch law. Pursuant to Article 6:18 of the Nrgfo a custodian may perform only the duties of custodian, the underlying logic behind this being that in view of the risks, including the risk of fraud, these duties should remain segregated. Because the custodial and trading activities were concentrated in a single legal entity -

BMIS - there was no clear separation of these essential duties, and BMIS had total control of the Funds' assets.

This concentration of all these duties (and safeguards) in a single entity (BMIS) should have prompted PwC to give greater attention to and adopt a attitude of more professional skepticism towards the Funds and BMIS. In fact PwC Nederland and thereafter PwC Canada had to audit three Funds which together, directly or indirectly, had approximately US$7.2 billion in assets under management, which they had entrusted entirely to BMIS since practically all management and control mechanisms had been delegated by the Funds and their service providers to BMIS.

E. Implications of this structure as regards risk factors

3.35 The Funds' Private Placement Memoranda mention various risk factors regarding parties involved with the Funds. The Private Placement Memoranda are the basic documents regarding investment in the Funds:

"*The Shares offered hereby (the "Shares") will be issued only on the basis of the information in this Private Placement Memorandum and any attachments thereto (the "Memorandum"). No other information about Fairfield Sentry Limited (the "Fund") has been authorized.*" (**Exhibit 2**, p. iii).

Regardless of whether or not these Private Placement Memoranda were actually made available to any or all investors, including the Plaintiffs, and, if so, whether or not they took or were able to have knowledge of them, it is in any case clear that Fairfield considered the abovementioned risk factors sufficiently significant to be mentioned. Moreover, one may assume from this that the other parties involved, including Citco and PwC, were or should have been equally aware of these risk factors.

3.36 Sentry's Private Placement Memorandum of 1 October 2004, ("PPM Sentry 2004"), Sentry's Private Placement Memorandum of 14 August 2006 ("PPM Sentry 2006")

and Sigma's Private Placement Memorandum of 1 October 2004 ("PPM Sigma 2004") mention the following risk factors, among others:

- "***3. Dependence upon Principals and Key Employees of the Investment Manager and BLM.*** *The services of the Investment Manager's principals and key employees and BLM are essential to the continued operations of the Fund. If their services were no longer available, their absence would have an adverse impact upon an investment in the Fund. The key employees of the Investment Manager will allocate a small portion of the Fund's assets between and among the Non-SSC Investment managers. The Fund will be dependent on the continued presence of these key employees in connection with identification of the recipients of these allocations and the monitoring of the Non-SSC Investments.*" (**Exhibit 1**, p. 17; **Exhibit 2**, p. 18, **Exhibit 12**, p. 17)
- "***15. Absence of Regulatory Oversight.*** *While the fund may be considered similar to an investment company, it does not intend to register as such under the U.S. Investment Company Act of 1940, as amended, in reliance upon an exemption available to privately offered investment companies, and, accordingly, the provisions of that Act (which, among other matters, require investment companies to have disinterested directors, require securities held in custody to at all times be individually segregated from the securities of any other person and marked to clearly identify such securities as the property of such investment company and regulate the relationship between the adviser and the investment company) will not be afforded to the Fund or the shareholders.*" (**Exhibit 2**, p. 21).
- "***17. Possibility of Misappropriation of Assets.*** *When FSL invests with Bernard L. Madoff Investment Securities or in a Non-SSC Investment vehicle, it will not have custody of the assets so invested. Therefore, there is always the risk that the personnel of any entity with which the Fund invests could misappropriate the securities or funds (or both) of the Fund.*" (**Exhibit 1**, p.19, **Exhibit 2**, p. 21, **Exhibit 12**, p. 20)

Since these risks were explicitly mentioned in the documentation of the Funds, it was impossible for PwC not to take such essential information into account in planning and executing its audit activities.

III.3 Role of PwC

3.37 PwC acted as auditor of the Funds.

3.38 For financial years 2000, 2001, 2002, 2003, 2004 and 2005 the Funds' financial statements were audited by PricewaterhouseCoopers N.V. or PricewaterhouseCoopers Accountants N.V., or PwC Nederland. For financial years 2006 and 2007 the annual audit of the financial statements was taken over by PwC Canada. PwC Canada further continued the mistakes of PwC Nederland. If PwC Nederland had done its work properly and thus had not issued the unqualified opinions, then PwC Canada would also not have issued unqualified opinions, at least not without qualifications. Furthermore, if no unqualified opinions had been given or qualifications had been made since 2000 at the latest, investors - including the Plaintiffs - would never have invested in the Funds.

3.39 The relevant financial statements of Sentry are attached as **exhibits 17 to 24 incl.**

3.40 The financial statements of Sigma for financial years 2003, 2004, 2005, 2006 and 2007 are attached as **exhibits 25 to 29 incl.** The financial statements of Sigma for the financial years 2000, 2001 and 2002 are not in possession of the Plaintiffs.

3.41 The financial statements of Lambda for financial years 2000 to 2007 inclusive are also not in the Plaintiffs' possession.

3.42 Despite the fact that the Plaintiffs do not have all the financial statements of the Funds for financial years 2000 to 2007 inclusive, based on the statements of the Funds' liquidators it can be established that PwC Nederland was the Funds' auditor for financial years 2000 to 2005 and that PwC Canada was the auditor for financial years 2006 and 2007. **Exhibit 30** concerns the "Declaration by Kenneth Krys", the liquidator, of 14 June 2010, in which the Funds are defined as the "debtors" (margin number 2, p. 3. para. 1):