

# ATTACHMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANWAR, et al.,

MASTER FILE NO.

09-CV-0118 (VM) (FM)

Plaintiffs,

-against-

FAIRFIELD GREENWICH LIMITED,

et al.,

Defendants.

This Document Relates To: All Actions

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**REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE PURSUANT TO  
THE HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF  
EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS**

**LETTER OF REQUEST FOR DEPOSITION**  
**TESTIMONY TO BE USED AT TRIAL**

**In conformity with Article 3 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, the undersigned has the honor to submit the following request:**

The Honorable Frank Maas, United States Magistrate Judge, United States District Court, Southern District of New York, presents his compliments to the Norwegian Central Authority and requests international judicial assistance pursuant to the Hague Convention of 18 March 1970 on the Taking of Evidence in Civil or Commercial Matters, 23 U.S.T. 2555, T.I.A.S. No. 7444 (the "Hague Evidence Convention") to obtain third-party witness testimony from Jan Naess, a resident of Oslo, Norway, for use at trial in the lawsuit described herein, which is currently pending before this Court.

This Request has been made upon the application of Defendants Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Fund Services (Bermuda) Limited, Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., and The Citco Group Limited (collectively, the “Citco Defendants”), who have advised the Court that the evidence sought from Mr. Naess is relevant and necessary for the due determination of the matters in dispute between the parties in this case which involves, *inter alia*, highly complex securities fraud claims raised under the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*) Having considered the submissions of the parties, this Court has found that this Request is necessary in the interests of justice and for the purpose of a full and fair determination at trial of the matters in issue among the parties to the pending proceedings.

The firm of Stabell & Co. has been retained by the Citco Defendants, and is hereby authorized to make the application to the Norwegian Central Authority, the Royal Ministry of Justice and Police on behalf of this Court.

**I. This Request is made and sent by the following Requesting Judicial Authority:**

The Honorable Frank Maas  
United States Magistrate Judge  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 660  
New York, New York 10007-1312  
United States of America

**II. The Central Authority of the Requested State is:**

Norwegian Central Authority  
The Royal Ministry of Justice and Police  
Postboks 8005 Dep  
0030 Oslo  
Norway

**III. The Executed Request is to be returned to:**

Bendik Falch-Koslung  
ADVOKATFIRMAET  
STABELL & Co  
Postboks 599, Sentrum  
0106 Oslo

**IV. The identity and address of the individual to be deposed is:**

Jan Naess  
Munthes gate 27  
0260 Oslo  
Norway

**V. The names and addresses of the litigants and their respective counsel are:**

**A. Names and addresses of the Plaintiffs and their respective counsel:**

The names and addresses of the Plaintiffs and their respective counsel are set forth on the attached Exhibit A.

**B. Names and addresses of the Defendants and their respective counsel:**

The names and addresses of the Defendants and their respective counsel are set forth on the attached Exhibit B.

**VI. Nature and purpose of the proceedings and a summary of the case:**

**Nature of the Action**

This pending civil lawsuit arises out of a securities fraud scheme allegedly perpetrated by Bernard L. Madoff (“Madoff”) and his company, Bernard L. Madoff Investment Securities LLC (“BLMIS”). The Plaintiffs claim to bring their suit on behalf of certain registered shareholders and/or equity holders in one or more of four investment funds managed by defendant entities informally referred to collectively as the Fairfield Greenwich Group. The funds at issue are two offshore funds, Fairfield Sentry Limited (“Fairfield Sentry”) and Fairfield Sigma Limited (“Fairfield Sigma”), and two domestic funds, Greenwich Sentry, L.P. and Greenwich Sentry Partners, L.P. (collectively, the “Funds”). The Funds placed assets either directly or indirectly

with BLMIS. The Plaintiffs allege that they lost their investments in the Funds' shares/equity, and they seek to recover these alleged losses as well as other monetary relief from the Defendants.

**Amount in controversy**

As alleged by the Plaintiffs, the amount in controversy exceeds five billion dollars (\$5,000,000,000).

**Summary of the Proceedings and Need for Deposition Testimony**

The Plaintiffs bring their suit as a putative class action naming as Defendants the investment manager of the offshore Funds and General Partner of the domestic Funds, as well as the auditors, administrators, and custodians of the Funds, and various other entities and individuals. The Plaintiffs allege that they made their decisions to purchase and hold the Funds' shares/equity in reliance on alleged misrepresentations by certain of the Defendants. According to the Plaintiffs, the Defendants also breached duties allegedly owed to registered shareholders of the Funds. They have brought claims against some or all of the Defendants for securities fraud, common law fraud, aiding and abetting fraud, gross negligence, negligence, negligent misrepresentation, third-party beneficiary breach of contract, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and unjust enrichment. The Defendants deny these allegations and have asserted various defenses to the claims.

This Court is advised by the Citco Defendants that Mr. Naess is a critical witness in this case regarding complex investment fund matters involving individuals and entities on an international scope. Mr. Naess is a former member of the Board of Directors of two of the funds at issue, Fairfield Sentry and Fairfield Sigma, and was previously named as a defendant in the Consolidated Amended Complaint ("CAC") filed in this action on April 24, 2009. Plaintiffs

alleged that as a board member of Fairfield Sentry and Fairfield Sigma, Mr. Naess had overall management responsibility for the funds, including establishing investment, dividend and distribution policy, and had the authority to select and replace the Funds' investment manager, administrator, custodian, sub-custodian, officers of the Funds and other persons or entities with management or administrative responsibilities to the Funds. (CAC ¶ 48.) Plaintiffs further alleged that even after the Madoff fraud was revealed, Mr. Naess failed to take action to recover lost assets, including the fees paid to the other Defendants. (*Id.* at ¶ 49.)

Additionally, Mr. Naess was omitted as a defendant in the operative complaint, the Second Consolidated Amended Complaint ("SCAC") filed in this action on September 29, 2009, in exchange for his agreement to appear and give an informational interview to Plaintiffs' counsel in London regarding his personal knowledge of the Funds, which interview took place in January 2010. Prior to the interview, Mr. Naess also provided to the Plaintiffs' counsel all non-privileged documents in his possession, custody or control relating to any of the entities, persons or events identified in the SCAC.

## **VII. Evidence to be obtained or other judicial act to be performed:**

### **Request for deposition testimony**

As set forth more fully above, this request for deposition testimony is directed to a former defendant who, as a director of Fairfield Sentry and Fairfield Sigma, was personally involved in the events at issue in this lawsuit. His testimony is relevant and necessary to disprove certain essential elements of the Plaintiffs' claims in this matter, and to establish certain defenses of the Citco Defendants. Accordingly, the assistance of the Norwegian Central Authority is hereby sought. It is respectfully requested that, in the interest of justice and for the purpose of discovering evidence for use at trial in the judicial proceeding now being litigated before this

Court and for the due determination of the matters in dispute between the parties hereto, the Norwegian Central Authority, the Royal Ministry of Justice and Police direct, through competent authority, the entry of such orders as the law of Norway permits, that Mr. Naess be produced for testimony.

**VIII. Matters upon which examination is requested:**

The examination of Mr. Naess will focus on the following topics:

1. Mr. Naess's place of residence, higher education, work history, and professional background.
2. The tenure and terms and conditions, including remuneration, of Mr. Naess's directorship of Fairfield Sentry and Fairfield Sigma and any communications regarding same.
3. Any knowledge of or communications regarding the initial retention of Madoff and BLMIS to perform services on behalf of the Funds.
4. All steps taken by Mr. Naess and/or other members of the Funds' Board or Directors to monitor the activity and conduct of BLMIS regarding any matter related to the services performed by BLMIS for the Funds, including but not limited to:
  - (a) any instances in which Mr. Naess and/or other members of the Funds' Board or Directors requested to or did visit BLMIS's offices or communicated with Madoff or any agent or employee of BLMIS;
  - (b) all communications between Mr. Naess and/or other members of the Funds' Board or Directors and anyone else regarding meetings with Madoff or any other agent or employee of BLMIS, including, but not limited to, communications with Jeffrey Tucker, a founding-member and principal of the Funds, regarding Mr. Tucker's March 2003 meeting with Madoff or any other agent or employee of BLMIS;
  - (c) any information gathered during, or reports generated in connection with, any meeting with Madoff, including but not limited to Mr. Tucker's March 2003 meeting; and
  - (d) all communications Mr. Naess and/or other members of the Funds' Board or Directors had with anyone regarding review of BLMIS's trade tickets, statements, Depository Trust Company ("DTC") receipts, or any other purported evidence of existence of the assets of the Funds.

5. Any communications with investors or potential investors in the Funds regarding the due diligence performed by the Funds in relation to Madoff.
6. All representations made in the Funds' offering materials, including but not limited to representations regarding Madoff.
7. Any communications following the articles published in Mar/Hedge and Barron's relating to Madoff.
8. Any communications regarding report(s) prepared by Gil Berman, a former option trader retained by the Funds, regarding the Funds' Madoff trades.
9. Any knowledge of and information obtained regarding meetings between the Funds' auditors and Madoff or any other agent or employee of BLMIS.
10. Any knowledge of and information obtained regarding an investigation by former New York Attorney General Elliot Spitzer regarding preferential treatment in market making and the relation, if any, to Madoff.
11. The obligations and role of Citco Fund Services (Europe) B.V. and/or Citco (Canada) Inc. under the contracts they entered into to provide administrative services to the Funds and any communications with investors in the Funds or prospective investors relating to these services.
12. Any communications among the Board of Directors or Board Resolutions regarding the Citco administrators.
13. The obligations and role of Citco Bank Nederland N.V. Dublin Branch and/or Citco Global Custody N.V. under the contracts they entered into to provide custodial services to the Funds and any communications with investors in the Funds or prospective investors relating to these services.
14. Any communications among the Board of Directors or Board Resolutions regarding Citco Bank Nederland N.V. Dublin Branch and/or Citco Global Custody N.V.
15. The substance of Mr. Naess's "informational interview" with Plaintiffs' counsel.
16. Any other assistance or information provided by Mr. Naess to Plaintiffs' counsel, including, but not limited to, any other assistance or information provided in exchange for being omitted as a defendant from the SCAC or in exchange for the Agreement to Toll Statute of Limitations.
17. Mr. Naess's personal knowledge of any other underlying facts relevant to this lawsuit as discussed during his "informational interview" with Plaintiffs' counsel or encompassed within the documents he has previously produced to the Citco Defendants.



**IX. Any requirement that the evidence be given on oath or affirmation and that any specific form be used:**

It is respectfully requested that the evidence sought be given pursuant to the following oath: "Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?"

In addition, in order to ensure the preservation of Mr. Naess's testimony and to be able to introduce his testimony as evidence in the trial of this matter, it is important that the Norwegian Central Authority, the Royal Ministry of Justice and Police or other appropriate judicial authority permit a United States stenographer and videographer to be present at Mr. Naess's oral testimony in order to record verbatim and in its entirety the oral testimony of Mr. Naess.

**X. Special methods or procedures to be followed:**

Additionally, it is respectfully requested that the following procedures be applied for the witness, Mr. Naess, to the extent they are permissible under the law of Norway:

1. Mr. Naess be directed to attend at such time and place as the Norwegian Central Authority, the Royal Ministry of Justice and Police or other appropriate judicial authority shall appoint, before such person who, according to the procedure of this Central Authority is competent to preside over the examination of witnesses under oath, to be examined upon oath, or affirmation by oral interrogatories or otherwise;
2. The parties, their counsel or their designees, and a United States stenographer and videographer selected by the Citco Defendants be permitted to be present during and throughout the examination of the witness;
3. Counsel for the Citco Defendants and counsel for the other Defendants, and then counsel for the Plaintiffs be permitted to examine the witness under oath, according to the United States Federal Rules of Civil Procedure unless incompatible with the law of Norway;
4. The United States stenographer be permitted to record verbatim and in its entirety the examination of the witness and prepare a video recording thereof;
5. The United States videographer be permitted to record verbatim and in its entirety the examination of the witness and prepare a video recording thereof;

6. That any document produced by the witness or presented to the witness at the deposition be annexed to the witness' deposition to be identified in the certificate sealed with the seal of the Norwegian Central Authority, the Royal Ministry of Justice and Police or other appropriate judicial authority for use out of the jurisdiction; and
7. That the Norwegian Central Authority, the Royal Ministry of Justice and Police make such further order pursuant to this request as is necessary and appropriate.

**XI. Suggested date for oral testimony:**

Pursuant to the Eighth Order Amending the Amended Case Management Plan and Scheduling Order, this Court entered a scheduling order that requires the parties to complete all fact discovery by June 30, 2013. The Citco Defendants respectfully request the oral testimony of Mr. Naess be scheduled during the months of May or June, 2013.

**XII. Request for notification of the time of the execution of the Request and the identity and address of any person to be notified about the examination:**

Please notify the following persons when and where the examination of Mr. Naess is to be conducted:

1. Plaintiffs (through their respective counsel as set forth in Exhibit A).
2. Defendants (through their respective counsel as set forth in Exhibit B).
3. Bendik Falch-Koslung  
ADVOKATFIRMAET  
STABELL & Co  
Postboks 599, Sentrum  
0106 Oslo  
Norway

**XIII. Specification of the privilege or duty to refuse to give evidence under the law of the State or origin:**

Under the laws of the United States of America and the State of New York, a witness may refuse to give any evidence that would subject the witness to a real and appreciable danger

of criminal liability. If any testimony is withheld on such grounds, a statement to that effect must be made at the time of the examination seeking such testimony.

A witness also may refuse to give evidence that discloses any communication or information that is protected by the attorney-client privilege or the attorney work-product doctrine. If any testimony is withheld on such grounds, a statement to that effect must be made at the time of the examination.

Should an issue of privilege arise, the applicable laws in the jurisdiction of the Norwegian Central Authority, the Royal Ministry of Justice and Police will control.

**XIV. The fees and costs incurred pursuant to this Request that are reimbursable under the second paragraph of article 14 or under any other article of the Hague Evidence Convention that is applicable to Norway will be borne by:**

Defendants, Citco Fund Services (Europe) B.V.; Citco (Canada) Inc.; Citco Fund Services (Bermuda) Limited; Citco Bank Nederland N.V. Dublin Branch; Citco Global Custody N.V.; and The Citco Group Limited

In care of counsel for the Citco Defendants:

Lewis N. Brown, Esquire  
Brown and Heller, P.A.  
One Biscayne Tower  
2 South Biscayne Boulevard, 15<sup>th</sup> Floor  
Miami, Florida 33131

**CLOSING**

The Court expresses its appreciation to the Norwegian Central Authority, the Royal Ministry of Justice and Police for its courtesy and assistance in this matter. It is the understanding of this Court that the granting of assistance of the type herein requested is authorized by the law of Norway and, in particular, by the Hague Evidence Convention.

Dated:           New York, New York  
                  \_\_\_\_\_, 2013.

\_\_\_\_\_  
Frank Maas  
United States Magistrate Judge  
United States District Court  
Southern District of New York

DEN AMERIKANSKE DISTRIKTSRETEN  
SØNDRE NEW YORK

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ANWAR, m. fl.,

HOVEDFIL NO.  
09-CV-0118 (VM) (FM)

Saksøkere.

-mot-

FAIRFIELD GREENWICH LIMITED,  
m fl.,

Saksøkte.

Dette dokumentet er tilknyttet: Alle søksmål

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**FORESPØRSEL OM INTERNASJONAL, JURIDISK ASSISTANSE I HENHOLD TIL  
THE HAGUE CONVENTION AV 18. MARS 1970, OM BEVISOPPTAK  
I UTLANDET I SIVILE ELLER KOMMERSIELLE SAKER**

**FORESPØRSEL OM VITNEFORKLARING**  
**VITNEFORKLARINGEN SKAL BRUKES I RETTEN**

**I henhold til paragraf 3 i The Hague Convention fra 18. mars 1970 om bevisopptak i utlandet i sivile eller kommersielle saker, fremsetter undertegnede følgende forespørsel:**

Frank Maas, amerikansk hjelpedommer i Den Amerikanske Distriktsretten, Søndre New York, ber norske myndigheter om internasjonal juridisk assistanse i henhold til The Hague Convention fra 18. mars 1970 om bevisopptak i utlandet i sivile eller kommersielle saker, 23 U.S.T. 2555, T.I.A.S. No. 7444 (den "Hague Evidence Convention") for å innhente en tredjepart vitneforklaring fra Jan Næss, beboer i Oslo, Norge, for bruk i retten under rettsaken som beskrives heri, og som nå går for denne domstolen.

Denne forespørselen utføres på grunnlag av søknad fra de Saksøkte Citco Fund Services (Europa) B.V., Citco (Canada) Inc., Citco Fund Services (Bermuda) Limited, Citco Bank

Nederland N.V. Dublin-avd., Citco Global Custody N.V. og The Citco Group Limited (samlet kalt "Citco-Saksøkte"), som har forklart domstolen at beviset som ønskes fra Jan Næss er relevant og nødvendig for avgjørelsen i de omtvistede sakene mellom partene i denne rettsaken, som involverer, *blant annet*, svært kompliserte påstander om aksjesvindler under Securities Exchange Act of 1934 (loven om verdipapirbytte) (15 U.S.C. § 78a *et seq.*) Etter å ha vurdert partenes anførsler har denne domstolen funnet at denne forespørselen er nødvendig av juridiske interesser og for å få en fullstendig og rettfærdig avgjørelse i de aktuelle anliggender mellom partene i den pågående rettsaken.

Firmaet Stabell & Co. har blitt engasjert av de Citco-Saksøkte, og er herved godkjente til å inngi søknaden til norske myndigheter i form av Justis- og beredskapsdepartementet, på vegne av denne domstolen.

**I. Denne forespørselen er inngitt og sendt av følgende rettsinstans:**

Frank Maas  
Amerikansk Hjelpedommer,  
Den Amerikanske Distriktsretten  
Søndre New York  
500 Pearl Street, Room 660  
New York, New York 10007-1312  
De Forente Stater

**II. De aktuelle myndighetene er:**

Norske myndigheter  
Justis- og beredskapsdepartementet  
Boks 8005 Dep  
0030 Oslo  
Norge

**III. Utført forespørsel skal returneres til:**

Bendik Falch-Koslung  
ADVOKATFIRMAET  
STABELL & Co  
Postboks 599, Sentrum  
0106 Oslo

**IV. Identiteten og adressen til personen som skal avgi vitneforklaring er:**

Jan Næss  
Munthes gate 27  
0260 Oslo  
Norge

**V. Navn og adresser til den prosederende parten og deres respektive advokater er:**

**A. Navn og adresser til den Saksøkte parten og deres respektive advokater er:**

Navn og adresser til de Saksøkte og deres respektive advokater er fremsatt i det vedlagte bevis A.

**B. Navn og adresser til Saksøkerne og deres respektive advokater er:**

Navn og adresser til de Saksøkte og deres respektive advokater er fremsatt i det vedlagte bevis B.

**VI. Rettsakens natur og formål og en oppsummering av saken:**

**Søksmålets natur**

Denne pågående sivile rettsaken skriver seg fra aksjesvindel som påstås utført av Bernard L. Madoff ("Madoff") og hans firma, Bernard L. Madoff Investment Securities LLC ("BLMIS"). De Saksøkte påstår å føre saken på vegne av visse registrerte aksje- eller verdipapireiere i ett eller flere av fire investeringsfond som forvaltes av Saksøktes instanser som samlet uformelt refereres til som Fairfield Greenwich Group. Fondene det gjelder er to offshore-fond, Fairfield Sentry Limited ("Fairfield Sentry") og Fairfield Sigma Limited ("Fairfield Sigma"), og to innenlandske fond, Greenwich Sentry, L.P. og Greenwich Sentry Partners, L.P. (samlet referert til som den "Fondene"). Fondene plasserte aktiva enten indirekte eller direkte hos BLMIS. De

Saksøkende påstår at de mistet sine investeringer i Fondenes aksjer/verdipapirer, og de ønsker erstatning for disse påståtte tapene samt annen økonomisk erstatning fra de Saksøkte.

### **Omtvistet beløp**

I følge Saksøkerne overstiger det omtvistede beløpet fem milliarder dollar (\$5,000,000,000).

### **Oppsummering av rettsaken og behovet for vitneforklaring**

Saksøkende fremlegger rettsaken som et putativt gruppesøksmål, og oppgir Saksøkte som kapitalforvalter i offshore-Fondene og ansvarlig partner i de innenlandske Fondene, samt revisorer, administratorer og bestyrere i Fondene, og andre forskjellige instanser og individer. Saksøkerne påstår at de tok sine beslutninger om å kjøpe og eie Fondenes aksjer/verdipapirer på grunnlag av påståtte feilaktige fremstillinger av visse personer blant de Saksøkte. I følge Saksøkerne oppfylte i tillegg ikke de Saksøkte sine påståtte forpliktelser overfor registrerte aksjeeiere i Fondene. De har fremsatt krav mot enkelte eller alle de Saksøkte for akjsesvindel, brudd på sedvanerett, medskyldighet i tilrettelegging av svindel, grov uaktsomhet, uaktsomhet, uaktsom feilaktig fremstilling, kontraktsbrudd for personlig vinning, manglende oppfylting av forpliktelser av tillitsperson, medskyldighet i tilrettelegging av mangel på oppfyllelse av forpliktelser av tillitsperson, og uberettiget berikelse. De Saksøkte bestrider disse beskyldningene og har fremsatt forskjellige forsvar for kravene.

Denne domstolen har fått informasjon av de Citco-Saksøkte om at Jan Næss er et viktig vitne i denne saken når det gjelder kompliserte investeringsfondsanliggender som involverer individer og instanser i internasjonalt omfang. Jan Næss er tidligere styremedlem i to av de aktuelle Fondene, Fairfield Sentry og Fairfield Sigma, og var tidligere navngitt som saksøkt under Consolidated Amended Complaint (“CAC”) anlagt i dette søksmålet 24. april 2009.



Saksøkerne påsto at Jan Næss, som styremedlem av Fairfield Sentry og Fairfield Sigma, hadde det generelle forvaltningsansvaret for Fondene, inkludert fastsetting av retningslinjer for investering, utbytte og distribusjon, og hadde myndighet til å velge og skifte ut Fondene forvalter, administrator, bestyrer, underbestyrer, funksjonærer og andre personer eller instanser med administrativt eller ledelsesansvar for Fondene. (CAC ¶ 48.) Saksøkerne påstår videre at selv etter at Madoff-svindelen var avslørt, gjorde Jan Næss ingenting for å gjenvinne tapt aktiva, inkludert honorar utbetalt til de andre Saksøkte. (*Id.* på ¶ 49.)

I tillegg ble Jan Næss utelatt som saksøkt i den operative forklaringen fra saksøker, Second Consolidated Amended Complaint (“SCAC”), som ble anlagt i dette søksmålet 29. september 2009, i bytte for hans samtykke til å være tilstede og gi et informativt intervju til Saksøkernes advokater i London angående hans personlige kunnskap om Fondene. Dette intervjuet fant sted i januar 2010. Før intervjuet overga også Jan Næss alle dokumenter uten rettigheter i hans besittelse, forvaring eller kontroll tilknyttet instanser, personer eller hendelser som er identifisert i SCAC til Saksøkernes advokater.

## **VII. Bevis som skal innhentes eller annen juridisk handling som skal utføres:**

### **Forespørsel om vitneforklaring**

Som fremsatt mer detaljert over, er denne forespørselen om vitneforklaring rettet mot en tidligere saksøkt som, i kraft av sin rolle som styremedlem i Fairfield Sentry og Fairfield Sigma, var personlig involvert i hendelsene i denne rettsaken. Hans vitneforklaring er relevant og nødvendig for å motbevise enkelte viktige elementer i de Saksøkendes påstand i denne saken, og for å etablere enkelte forsvar for de Citco-Saksøkte. I denne sammenheng søker vi herved om assistanse fra norske myndigheter. For å oppnå rettferdighet og avdekke bevis for bruk i retten under den juridiske rettergangen som nå føres for denne domstolen og for å få en riktig

avgjørelse i de omtvistede forholdene mellom partene, bes det nå om at norske myndigheter, i form av Justis- og beredskapsdepartementet, beordrer, gjennom riktig myndighet og i henhold til norsk lov, at Jan Næss fremstilles for vitneforklaring.

### **VIII. Anliggender som krever avhør:**

Avhøret av Jan Næss vil fokusere på følgende emner:

1. Jan Næss' bosted, utdanningsnivå, arbeidshistorikk og profesjonelle bakgrunn.
2. Eiendomsforhold, vilkår og betingelser, inkludert godtgjørelser tilknyttet Jan Næss' styremedlemskap i Fairfield Sentry og Fairfield Sigma og all kommunikasjon tilknyttet dette.
3. All kunnskap om eller kommunikasjon angående den innledende retensjonen til Madoff og BLMIS til å utføre tjenester på vegne av Fondene.
4. Alt som ble gjort av Næss og/eller andre styremedlemmer i Fondene for å overvåke aktiviteten og opptreden til BLMIS angående saker tilknyttet tjenestene som ble utført av BLMIS for Fondene, inkludert, men ikke begrenset til:
  - (a) alle tilfeller der Næss og/eller andre styremedlemmer i Fondene ba om å få komme til, eller kom til, BLMIS' kontorer eller kommuniserte med Madoff eller en agent eller ansatt i BLMIS,
  - (b) all kommunikasjon mellom Næss og/eller andre styremedlemmer i Fondene eller andre angående møter med Madoff eller annen agent eller ansatt i BLMIS, inkludert, men ikke begrenset til, kommunikasjon med Jeffrey Tucker, et stiftelsesmedlem og bestyrer i Fondene, angående Tuckers møte med Madoff eller agent eller ansatt i BLMIS i mars 2003.
  - (c) all informasjon som er innsamlet i løpet av, eller rapporter som er generert i forbindelse med, møter med Madoff, inkludert, men ikke begrenset til Tuckers møte i mars 2003, og
  - (d) all kommunikasjon som Jan Næss og/eller andre styremedlemmer i Fondene hadde med noen angående gjennomgåelsen av BLMIS' trade tickets, erklæringer, Depository Trust Company ("DTC")-kvitteringer eller annet bevis på eksistensen av Fondene aktiva.
5. All kommunikasjon med investorene eller potensielle investorer i Fondene angående den rimelige selskapsgjennomgangen som ble utført av Fondene tilknyttet Madoff.

6. Alle representasjoner som er fremstilt i fondets tilbudsmateriale, inkludert, men ikke begrenset til, representasjoner tilknyttet Madoff.
7. All kommunikasjon som etterfulgte artiklene som er utgitt i Mar/Hedge og Barron's tilknyttet Madoff.
8. All kommunikasjon angående rapport(er) som er utarbeidet av Gil Berman, en tidligere opsjonshandler engasjert av Fondene, tilknyttet Fondene Madoff-handling.
9. All kunnskap om og informasjon innhentet angående møter mellom Fondene revisorer og Madoff eller annen agent eller ansatt i BLMIS.
10. All kunnskap om og informasjon som er innhentet angående en undersøkelse av tidligere justisminister i New York, Elliot Spitzer, angående preferensiell behandling i markedspleie og eventuell tilknytning til Madoff.
11. Forpliktelsene og rollen til Citco Fund Services (Europe) B.V. og/eller Citco (Canada) Inc. under kontraktene de inngikk for å levere administrative tjenester til Fondene og all kommunikasjon med investorer i Fondene eller eventuelle investorer tilknyttet disse tjenestene.
12. All kommunikasjon blant styrmedlemmene eller styrevedtak angående Citco-administratorer.
13. Forpliktelsene og rollen til Citco Bank Nederland N.V. Dublin Branch og/eller Citco Global Custody N.V. under kontraktene de inngikk for å levere forvaltningstjenester til Fondene og eventuell kommunikasjon med investorer i Fondene eller eventuelle investorer tilknyttet disse tjenestene.
14. All kommunikasjon blant styrmedlemmene eller styrevedtak angående Citco Bank Nederland N.V. Dublin Branch og/eller Citco Global Custody N.V.
15. Innholdet i Jan Næss "informative intervju" med de Saksøkendes advokater.
16. Eventuell annen assistanse eller informasjon som er gitt av Næss til Saksøkernes advokat, inkludert, men ikke begrenset til, eventuell annen assistanse eller informasjon som er gitt i bytte for å bli utelatt som saksøkt fra SCAS eller i bytte for avtalen om Toll Statute of Limitations (Avgiftslov med begrensninger).
17. Næss' personlige kunnskap om andre underliggende fakta som er relevante for dette søksmålet, som diskutert i løpet av hans "informative intervju" med Saksøkendes advokater eller innbakt i dokumentene som han tidligere har gitt til Citco-Saksøkte.

## **IX. Krav om at beviset gis under ed eller forsikring og at en spesifikk form brukes:**

Det bes om at beviset som ønskes gis i henhold til følgende ed: "Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?" ("Sverger eller forsikrer du om at du forteller sannheten, hele sannheten og ingenting annet enn sannheten?")

I tillegg, for å sikre bevarelsen av Næss' vitneforklaring og for å kunne introdusere hans vitneforklaring som bevis i denne rettsaken, er det viktig at norske myndigheter i form av Justis- og beredskapsdepartementet eller annen hensiktsmessig juridisk myndighet, tillater at en amerikansk stenograf og videograf er tilstede under Næss' muntlige vitneforklaring for å kunne registrere hele Næss' vitneforklaring ordrett og i sin helhet.

## **X. Spesielle metoder eller prosedyrer som skal følges:**

Det bes også om at følgende prosedyrer brukes for vitnet, Næss, i den utstrekning de tillates av norsk lov;

1. Næss beordres til å møte til den tiden og på det sted som norske myndigheter i form av Justis- og beredskapsdepartementet eller annen hensiktsmessig juridisk myndighet fastsetter, at han møter for en person som, i henhold til denne myndighetens fremgangsmåte, er kompetent til å lede vitneforklaringen under ed, og avhøres under ed eller forsikring, gjennom muntlige avhør eller på annen måte;
2. Partene, deres advokater eller deres utpekte, og en amerikansk stenograf og videograf utvalgt av Citco-Saksøkte, kan være tilstede i løpet av hele vitneavhøringen;
3. Advokatene for de Citco-Saksøkte og advokatene for de andre Saksøkte, og deretter advokatene for Saksøkerne, gis tillatelse til å avhøre vitnet under ed, i henhold til amerikanske regler for rettspleieregeler, hvis de er kompatible med norsk lov;
4. En amerikansk stenograf gis tillatelse til å skrive ned avhøret av vitnet ordrett og i sin helhet og utarbeide et videoopptak fra dette;
5. En amerikansk stenograf gis tillatelse til å skrive ned avhøret av vitnet ordrett og i sin helhet og utarbeide et videoopptak fra dette;

6. Alle dokument som leveres av vitnet eller leveres til vitnet under vitneforklaringen blir vedlagt vitnets vitneforklaring og identifiseres med stempel fra norske myndigheter i form av justis- og beredskapsdepartementet eller annen hensiktsmessig juridisk myndighet for bruk utenfor jurisdiksjonen, og;
7. Norske myndigheter i form av Justis- og beredskapsdepartementet gir de ordrene det søkes om i denne forespørslen på nødvendig og hensiktsmessig måte.

**XI. Foreslått dato for muntlig vitneforklaring:**

I henhold til Eighth Order Amending the Amended Case Management Plan and Scheduling Order, har denne domstolen utarbeidet en plan som krever at partene fullfører all fremskaffelse av fakta innen 30. juni 2013. De Citco-Saksøkte ber om at Næss' muntlige vitneforklaring berammes i løpet av mai eller juni 2013.

**XII. Forespørsel om varsel for tidspunktet avhøret skal foregå, og identitet og adresse til personer som skal varsles om avhøret :**

Vennligst varsle følgende personer om når og hvor avhøret av Næss skal utføres:

1. Saksøkere (via deres respektive advokater som fremsatt i bevis A).
2. Saksøkte (via deres respektive advokater som fremsatt i bevis B).
3. Bendik Falch-Koslung  
ADVOKATFIRMAET  
STABELL & Co  
Postboks 599, Sentrum  
0106 Oslo  
Norge

**XIII. Spesifikasjon av rettighet eller forpliktelse til å nekte å avgi vitneforklaring under lov fra stat eller opprinnelse:**

I henhold til amerikansk lov og loven i New York, kan et vitne nekte å avgi vitneforklaring dersom det vil eksponere vitnet for en reell og vesentlig fare for kriminelt straffeansvar. Hvis en vitneforklaring holdes tilbake på slikt grunnlag, må en erklæring gis på det tidspunktet det søkes om slik vitneforklaring.

Et vitne kan også nekte å avgi vitneforklaring som avslører kommunikasjon eller informasjon som er beskyttet av taushetsplikten mellom advokat og klient eller "advokatenes arbeidsprodukt doktrine". Hvis en vitneforklaring holdes tilbake på slikt grunnlag, må en erklæring gis på tidspunktet for vitneforklaringen.

Hvis det skulle oppstå et rettighetsproblem, vil de gjeldende lovene fra norske myndigheter i form av Justis- og beredskapsdepartementet kontrollere dette.

**XIV. Honorarene og kostnadene som skriver seg fra denne forespørselen og som skal refunderes under andre paragraf i artikkel 14 eller annen artikkel i Hague Evidence Convention om bevisopptak i sivile eller kommersielle saker som gjelder for Norge, skal bæres av:**

Saksøkte, Citco Fund Services (Europe) B.V.; Citco (Canada) Inc.; Citco Fund Services (Bermuda) Limited; Citco Bank Nederland N.V. Dublin Branch; Citco Global Custody N.V. og The Citco Group Limited

Advokat for Citco-Saksøkte:

Lewis N. Brown, Esquire  
Brown and Heller, P.A.  
One Biscayne Tower  
2 South Biscayne Boulevard, 15<sup>th</sup> Floor  
Miami, Florida 33131

**AVSLUTNING**

Domstolen uttrykker sin takknemlighet overfor norske myndigheter i form av Justis- og beredskapsdepartementet for deres hjelp i denne saken. Det er i domstolens tro at innvilgelsen av typen hjelp som bes om i dette dokumentet er godkjent av norsk lov, og, spesielt av Haag-konvensjonen om bevisopptak i utlandet i sivile eller kommersielle saker.

Datert:           New York, New York  
                    \_\_\_\_\_, 2013.

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Frank Maas  
Hjelpedommer,  
United States District Court  
Southern District of New York

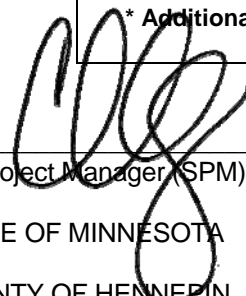
**Certification of Translation**

**Company: Brown & Heller Law**

**Client: Keisha Jones**

KJ International Resources, Ltd, (Company), being first duly sworn under oath, deposes and states the following: The Company has retained the services of an independent contractor who has represented to the Company that such contractor is fluent in both the **English, Norwegian and French -EU** language/s. Such contractor represented to the Company that the contractor has made the attached translation from the annexed document/s into the **English, Norwegian and French -EU** language/s and has certified to the Company that the translation is true and complete to the best of the contractor's knowledge, ability and belief. The Company makes no other representations regarding the attached translation. **THE COMPANY SHALL NOT BE LIABLE FOR ANY INACCURACY IN OR ANY DAMAGES OR LOSSES WITH RESPECT TO THE ATTACHED TRANSLATION. THE COMPANY SPECIFICALLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE TRANSLATION.**

<b>By:</b>	Cathryd Vang
<b>Its:</b>	Project Manager
<b>Date :</b>	February 27, 2013
<b>Document Part No. Document Name/Project</b>	French EU/ Norwegian Translation
<b>KJI Proj. No.</b>	35035
<b>Notes:</b>	Client confirmed that the use of "Fondenenes" vs. "Funds" was approved.
<b>* Additional Disclaimer</b>	KJI will certify any/all documents in full only if the translation, validation and/or DTP was completed by KJI.

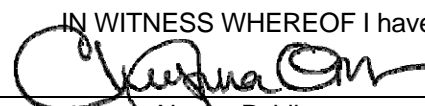
  
 \_\_\_\_\_  
 Sr. Project Manager (SPM) / Project Manager (PM)

STATE OF MINNESOTA     )  
   )SS.  
 COUNTY OF HENNEPIN     )

\_\_\_\_\_ February 27, 2013  
 Date

On this **27** day of **Februar**, 2012, before me, **Christina Orton** the undersigned officer, personally appeared **Cathryd Vang** known personally to me to be the SPM/PM of KJ International Resources, Ltd, and that she/he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by herself/himself as such officer.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

  
 \_\_\_\_\_  
 Notary Public

My Commission expires: 1/31/2015





# **EXHIBIT A**

Plaintiff Name and Address	Plaintiff Counsel
20/20 Investments c/o Stuart H. Singer, Esq. Sashi Boruchow, Esq. Boies, Schiller & Flexner LLP 401 E. Las Olas Blvd., Suite 1200 Fort Lauderdale, Florida 33301 USA T: 954-356-0011 F: 954-356-0022	Stuart H. Singer, Esq. Sashi Bach Boruchow, Esq. Boies, Schiller & Flexner LLP 401 E. Las Olas Blvd., Suite 1200 Fort Lauderdale, Florida 33301 USA T: 954-356-0011 F: 954-356-0022
ABR Capital Fixed Option/Income Strategic Fund LP c/o Stuart H. Singer, Esq. Sashi Bach Boruchow, Esq. Boies, Schiller & Flexner LLP 401 E. Las Olas Blvd., Suite 1200 Fort Lauderdale, Florida 33301 USA T: 954-356-0011 F: 954-356-0022	Stuart H. Singer, Esq. Sashi Bach Boruchow, Esq. Boies, Schiller & Flexner LLP 401 E. Las Olas Blvd., Suite 1200 Fort Lauderdale, Florida 33301 USA T: 954-356-0011 F: 954-356-0022
Akenaton Inversiones Sicav, S.A. c/o Stuart H. Singer, Esq. Sashi Bach Boruchow, Esq. Boies, Schiller & Flexner LLP 401 E. Las Olas Blvd., Suite 1200 Fort Lauderdale, Florida 33301 USA T: 954-356-0011 F: 954-356-0022	Stuart H. Singer, Esq. Sashi Bach Boruchow, Esq. Boies, Schiller & Flexner LLP 401 E. Las Olas Blvd., Suite 1200 Fort Lauderdale, Florida 33301 USA T: 954-356-0011 F: 954-356-0022
Aldeneik B.V.B.A. c/o Stuart H. Singer, Esq. Sashi Bach Boruchow, Esq. Boies, Schiller & Flexner LLP 401 E. Las Olas Blvd., Suite 1200 Fort Lauderdale, Florida 33301 USA T: 954-356-0011 F: 954-356-0022	Stuart H. Singer, Esq. Sashi Bach Boruchow, Esq. Boies, Schiller & Flexner LLP 401 E. Las Olas Blvd., Suite 1200 Fort Lauderdale, Florida 33301 USA T: 954-356-0011 F: 954-356-0022
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Plaintiff Name and Address	Plaintiff Counsel
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<p>Alfonso Villanova Torres  c/o Stuart H. Singer, Esq.  Sashi Bach Boruchow, Esq.  Boies, Schiller &amp; Flexner LLP  401 E. Las Olas Blvd., Suite 1200  Fort Lauderdale, Florida 33301  USA  T: 954-356-0011  F: 954-356-0022</p>	<p>Stuart H. Singer, Esq.  Sashi Bach Boruchow, Esq.  Boies, Schiller &amp; Flexner LLP  401 E. Las Olas Blvd., Suite 1200  Fort Lauderdale, Florida 33301  USA  T: 954-356-0011  F: 954-356-0022</p>
<p>Arie Gruber and Dafua Gruber  c/o Steven Toll, Esq.  S. Douglas Bunch, Esq.  Cohen Milstein Sellers &amp; Toll PLLC  1100 New York Avenue, N.W. Suite 500, West Tower  Washington, D.C. 20005  USA  T: 202-408-4600  F: 202-408-4699</p>	<p>Steven Toll, Esq.  S. Douglas Bunch, Esq.  Cohen Milstein Sellers &amp; Toll PLLC  1100 New York Avenue, N.W. Suite 500, West Tower  Washington, D.C. 20005  USA  T: 202-408-4600  F: 202-408-4699</p>
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Plaintiff Name and Address	Plaintiff Counsel
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<p>Banca Sella Holding S.P.A.  c/o Stuart H. Singer, Esq.  Sashi Bach Boruchow, Esq.  Boies, Schiller &amp; Flexner LLP  401 E. Las Olas Blvd., Suite 1200  Fort Lauderdale, Florida 33301  USA  T: 954-356-0011  F: 954-356-0022</p>	<p>Stuart H. Singer, Esq.  Sashi Bach Boruchow, Esq.  Boies, Schiller &amp; Flexner LLP  401 E. Las Olas Blvd., Suite 1200  Fort Lauderdale, Florida 33301  USA  T: 954-356-0011  F: 954-356-0022</p>
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Calwell Investment S.A. c/o Stuart H. Singer, Esq. Sashi Bach Boruchow, Esq. Boies, Schiller & Flexner LLP 401 E. Las Olas Blvd., Suite 1200 Fort Lauderdale, Florida 33301 USA T: 954-356-0011 F: 954-356-0022	Stuart H. Singer, Esq. Sashi Bach Boruchow, Esq. Boies, Schiller & Flexner LLP 401 E. Las Olas Blvd., Suite 1200 Fort Lauderdale, Florida 33301 USA T: 954-356-0011 F: 954-356-0022

Plaintiff Name and Address	Plaintiff Counsel
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<p>Carlos Mattos  c/o Stuart H. Singer, Esq.  Sashi Bach Boruchow, Esq.  Boies, Schiller &amp; Flexner LLP  401 E. Las Olas Blvd., Suite 1200  Fort Lauderdale, Florida 33301  USA  T: 954-356-0011  F: 954-356-0022</p>	<p>Stuart H. Singer, Esq.  Sashi Bach Boruchow, Esq.  Boies, Schiller &amp; Flexner LLP  401 E. Las Olas Blvd., Suite 1200  Fort Lauderdale, Florida 33301  USA  T: 954-356-0011  F: 954-356-0022</p>
<p>Carmel Ventures Ltd.  c/o Stuart H. Singer, Esq.  Sashi Bach Boruchow, Esq.  Boies, Schiller &amp; Flexner LLP  401 E. Las Olas Blvd., Suite 1200  Fort Lauderdale, Florida 33301  USA  T: 954-356-0011  F: 954-356-0022</p>	<p>Stuart H. Singer, Esq.  Sashi Bach Boruchow, Esq.  Boies, Schiller &amp; Flexner LLP  401 E. Las Olas Blvd., Suite 1200  Fort Lauderdale, Florida 33301  USA  T: 954-356-0011  F: 954-356-0022</p>
<p>Catalina Mejia  c/o Stuart H. Singer, Esq.  Sashi Bach Boruchow, Esq.  Boies, Schiller &amp; Flexner LLP  401 E. Las Olas Blvd., Suite 1200  Fort Lauderdale, Florida 33301  USA  T: 954-356-0011  F: 954-356-0022</p>	<p>Stuart H. Singer, Esq.  Sashi Bach Boruchow, Esq.  Boies, Schiller &amp; Flexner LLP  401 E. Las Olas Blvd., Suite 1200  Fort Lauderdale, Florida 33301  USA  T: 954-356-0011  F: 954-356-0022</p>
<p>Centro Inspection Agency  c/o Stuart H. Singer, Esq.  Sashi Bach Boruchow, Esq.  Boies, Schiller &amp; Flexner LLP  401 E. Las Olas Blvd., Suite 1200  Fort Lauderdale, Florida 33301  USA  T: 954-356-0011  F: 954-356-0022</p>	<p>Stuart H. Singer, Esq.  Sashi Bach Boruchow, Esq.  Boies, Schiller &amp; Flexner LLP  401 E. Las Olas Blvd., Suite 1200  Fort Lauderdale, Florida 33301  USA  T: 954-356-0011  F: 954-356-0022</p>

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# **EXHIBIT B**

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