

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JON RICHARD B. LOWE, Jr.
Justice

PART 56

People of the State of New York
- v -
J. Ezra Merkin

INDEX NO. 450879/09
MOTION DATE 6/16/10
MOTION SEQ. NO. 004
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED DECISION AND ORDER.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 7/30/10

JON RICHARD B. LOWE, Jr.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

- against -

J. EZRA MERKIN and GABRIEL CAPITAL
CORPORATION,

Defendants,

and

ARIEL FUND LIMITED, ASCOT FUND LIMITED,
ASCOT PARTNERS, L.P., GABRIEL ALTERNATIVE
ASSETS, LLC, GABRIEL ASSETS, LLC and
GABRIEL CAPITAL, L.P.,

Relief Defendants.

RICHARD B. LOWE III, J.:

In the instant motion, filed by Order to Show Cause, the relief defendants Ariel Fund Limited (Ariel Fund), Gabriel Capital, L.P. (Gabriel Fund), Gabriel Alternative Assets, LLC, and Gabriel Assets, LLC (together the Ariel & Gabriel Receivership Entities) seek to: (1) set a claims bar date, (2) fix the manner of notice of the claims bar date, and (3) establish procedures for the resolution of both disputed claims and objections to a proposed procedures and plan for a first interim distribution.

Background

On or about April 6, 2009, the New York State Attorney General (Attorney General) commenced the above-captioned action (NYAG Action) against J. Ezra Merkin (Merkin) and Gabriel Capital Corp. (GCC). Within the instant NYAG Action, the Ariel & Gabriel Receivership Entities were named as relief defendants.

Bart M. Schwartz, Esq. (Receiver) was appointed as the receiver of the assets of the Ariel & Gabriel Receivership Entities, pursuant to the Stipulation and Order Appointing Receiver, dated June 10, 2009 (the Receivership Order). Pursuant to the Receivership Order, this court directed the Receiver to marshal and preserve the assets of the Ariel & Gabriel Receivership Entities, with the ultimate goal of distributing the residual assets to the Ariel Fund Gabriel Fund investors.

In the instant motion, which is unopposed, the Receiver represents that he has diligently reviewed the books and records of the Ariel & Gabriel Receivership Entities in an attempt to identify all of their assets, creditors, and investors, and, in fact, has identified assets for each of Gabriel Fund and Ariel Fund (together, the Funds); and that, additionally, he has taken possession of those assets (which remain under the control of this court for the benefit of the Funds' creditors and investors).

The Receiver avers that, as of March 31, 2010 (the

Calculation Date), the unaudited, estimated value of Gabriel Fund is \$602,692,016, and the unaudited, estimated value of Ariel Fund is \$652,720,432. Additionally, the Receiver asserts that he has liquidated certain of the Funds' more liquid investment positions, and currently maintains in the aggregate more than \$298,000,000 of cash or cash equivalents in U.S. bank accounts belonging to the Funds (Cash or Cash Equivalents).

The Receiver maintains that \$26,700,000 is a reasonable reserve for ongoing capital requirements and expenses of the Funds, which leaves more than \$271,000,000 in available cash or cash equivalents (Presently Available Cash) for a possible interim distribution. Based upon all information available at this time and subject to the forthcoming submission date for all interested parties to submit claims against the Funds, any objections thereto, and ultimately approval by the court, the Receiver avers that additional reserves totaling approximately \$20,000,000 are necessary for disputed claims in respect of Ariel Fund and additional reserves totaling approximately \$49,000,000 are necessary for disputed claims in respect of Gabriel Fund.¹

The Receiver, therefore, estimates that close to

¹According to the Receiver, the total aggregate reserves is approximately \$95,000,000. However, it appears that the amount is approximately \$95,700,000, which is comprised of \$ 26,700,000 for capital requirements and Funds expenses, \$20,000,000 reserves for Ariel Fund claims, and \$49,000,000 in reserves for Gabriel Fund claims.

\$203,000,000 will be available for a first interim distribution to investors (First Interim Distribution to Investors), including approximately \$167,000,000 available for distribution to known investors of Ariel Fund (the Net Ariel Presently Available Cash), and approximately \$36,000,000 available for distribution to known investors of Gabriel Fund (the Net Gabriel Presently Available Cash and, together with the Net Ariel Presently Available Cash, the Aggregate Net Presently Available Cash).

The Receiver additionally estimates, that in addition to the Cash or Cash Equivalents, the Funds have other assets which are comprised of relatively illiquid investment positions, and which have an unaudited, estimated value as of the Calculation Date of approximately \$1,000,000,000 (the Funds' Remaining Assets).

In the instant motion, The Ariel & Gabriel Receivership Entities seek to fix a date (the Bar Date) by which any party with a claim against any of the Ariel & Gabriel Receivership Entities, other than as specifically set forth in Paragraph 7 below, must submit a claim to the Receiver. The movants aver that this will ensure that all claims (hereinafter, the Claims) made by those with an interest in the assets of any of the Ariel & Gabriel Receivership Entities (Claimants) are asserted in a timely and orderly manner, so that this court, with the aid and assistance of the Receiver, can properly administer the assets of the Funds and the other Ariel & Gabriel Receivership Entities.

Finally, the Receiver has set forth a proposed Procedures and Plan under which the proposed First Interim Distribution to Investors will take place, and seeks to establish procedures under which objections to the proposed Procedures and Plan will be resolved.²

Conclusions and Order

It appears that the limited relief requested by the movants is in the best interests of the Ariel & Gabriel Receivership Entities' estates and of all interested parties. With good and sufficient cause existing to grant the relief requested in the Application, it is hereby

ORDERED that:

1. Sufficient notice of the limited relief sought in the instant motion--specifically setting the bar date, fixing the manner of notice of the Bar Date, and the setting of the procedures for the resolution of disputed claims and objections to the proposed Procedures and Plan for First Interim Distribution (proposed Procedures and Plan)--has been provided, and no further notice is necessary.

2. The Bar Date for all claims shall be September 20, 2010.

3. Within five (5) days after the entry of this Order (the

²Although the movants seek to establish procedures to resolve any objections to the proposed Procedures and Plan, they are not, at this time, seeking an order adopting the proposed Procedures and Plan.

Bar Date Notice Transmission Date), the Receiver shall give notice of the Bar Date (the Bar Date Notice), entry of this Order, and the proposed Procedures and Plan to all known investors and to all known holders of creditor Claims, as well as to any other potential Claimants of the Ariel & Gabriel Receivership Entities, by the means directed herein.

4. The Bar Date Notice shall be served, by First Class U.S. Mail, on all investors or creditors known by the Receiver to assert a Claim for payment against any or all of the Ariel & Gabriel Receivership Entities. In the case of known investor Claimants in any or all of the Ariel & Gabriel Receivership Entities, such Bar Date Notice shall be substantially in the form attached hereto as Exhibit A. In the case of those known to assert entitlement to payment as creditor Claimants of any or all of the Ariel & Gabriel Receivership Entities, such Bar Date Notice shall be substantially in the form attached hereto as Exhibit B. In all cases, the applicable Bar Date Notice shall be served on known Claimants at their last known address reflected on the Funds' books and records as of the Calculation Date. Should any transmission to a known Claimant be returned to the Receiver as undeliverable, the Receiver shall make all commercially reasonable best efforts to locate the Claimant and to complete service of the Bar Date Notice as far in advance of the Bar Date as is reasonably possible. Should the Receiver be

unable to complete service on any known Claimant by August 13, 2010, he shall promptly submit to this Court an affirmation detailing his efforts to locate the Claimant and complete service of the Bar Date Notice on such Claimant, as well as a complete copy of the Bar Date Notice.

5. Each Bar Date Notice sent to holders of known investor Claims and holders of known creditor Claims shall include an individual exhibit notice (Individual Bar Date Notice Exhibit), stating the presently allowed amount, if any, of the investor's or potential creditor's Claim against either or both of the Funds, as reflected on the Funds' books and records as of the Calculation Date. In addition, each Bar Date Notice shall include the amount proposed to be distributed to the investor from the Presently Available Cash, and/or the amount of any reserve proposed to be set aside from the Presently Available Cash in respect of any claim.

6. For purposes of completing each Individual Bar Date Notice Exhibit to known investors, the Receiver shall calculate any proposed distribution to known investors based upon each of the known investors' pro rata holdings as recorded in the respective Fund's books and records on the Calculation Date; provided, however, that, although funds may be reserved from Presently Available Cash for amounts that otherwise could be payable to Merkin or his affiliates, neither Merkin nor his

affiliates shall receive any portion of the proposed First Interim Distribution to Investors.

7. Any Claimant against any of the Ariel & Gabriel Receivership Entities that does not receive a Bar Date Notice, and any known investor or holder of a known creditor Claim that asserts its Claim(s) is/are not fully and accurately reflected on such party's Individual Bar Date Notice Exhibit, must, by no later than the Bar Date, deliver to the Receiver, in writing, verified proof of its Claim (Proof of Claim), substantially in the form attached hereto as Exhibit C, including the basis of the Claim and any supporting documentation, as well as the liquidated amount and any contingent or unliquidated amount thereof as of the date of submission. Recipients of Bar Date Notices are not required to submit a Proof of Claim to the Receiver if, but only if, they do not dispute the amounts, proposed treatment, reserve or any other information reflected in the Individual Bar Date Notice Exhibit that they receive.

8. Any Proof of Claim submitted to the Receiver shall promptly be submitted by the Receiver to the Court for in camera review. Any Proof of Claim from an investor also shall promptly be forwarded by the Receiver to counsel for the other parties to this action, provided that all such parties shall treat such Proof of Claim as confidential, and not disclose any information therein to any third party or to their client, absent leave of

this Court.

9. The Receiver also shall provide notice of the Bar Date and entry of this Decision and Order by submitting a notice of the Bar Date, substantially in the form annexed hereto as Exhibit D, for publication at least once per week, for no fewer than four consecutive weeks, in each of the WALL STREET JOURNAL, the FINANCIAL TIMES, and JEWISH WEEK; and in no fewer than two consecutive issues of the CAYMAN ISLANDS GAZETTE. The first such notice shall be submitted for publication within ten (10) days after entry of this Order. Additionally, the Receiver shall publish with at least one commercial news wire service, and shall post on his website, a press release noting entry of this Decision and Order, with contact information for the Receiver and his legal counsel. The Receiver also shall use commercially reasonable efforts to maximize internet exposure of the aforementioned release.

10. The Receiver (or his designee) shall promptly establish and maintain a website, which can be accessed at www.guidepostpartners.com, that contains all relevant information and documentation concerning the proposed Procedures and Plan, including, among other information, a Bar Date Notice (substantially in the form attached hereto as both Exhibits A & B), a copy of the Proof of Claim form, a full copy of the proposed Procedures and Plan (as attached hereto as Exhibit E), and a prominent notification of the Bar Date.

11. Each Proof of Claim must be submitted to the Receiver, so that it is actually received by the Receiver, by no later than 5:00 p.m. prevailing New York time, on the Bar Date. Proofs of Claim should not be filed with the Court.

12. Any Claimant that objects to any of the relief sought in the proposed Procedures and Plan (Objection to the First Interim Distribution to Investors), including without limitation, any proposed disposition of the Presently Available Cash or any reserves from Presently Available Cash proposed to be set, must, by no later than the Bar Date, file with this Court and serve upon the Receiver a detailed statement in support of any objection to the disposition of the Presently Available Cash of either of the Funds proposed by the Procedures and Plan. Such Objection to the First Interim Distribution to Investors must either include the claimant's Proof of Claim as an exhibit thereto, or contemporaneously file a motion to submit such Proof of Claim under Seal.

13. Other than Bar Date Notice recipients that do not dispute the amounts or any other information reflected in their Individual Bar Date Notice Exhibit, any party failing to submit a Proof of Claim by the Bar Date shall be deemed for all purposes to forever waive any right to collect on its Claim or interest from the assets of the Ariel & Gabriel Receivership Entities, to the extent any such Claim or interest is based upon facts or

rights existing as of the Bar Date.

14. Notwithstanding any other provision herein, with regard to any Claimant that is a debtor in a proceeding under 11 U.S.C. § 101, *et seq.* (Bankruptcy Debtor Claimant), and has filed a complaint against any of the Ariel & Gabriel Receivership Entities before a U.S. Bankruptcy Court, such complaint will be deemed to be such Bankruptcy Debtor Claimant's Proof of Claim, and no further action will be required by such Bankruptcy Debtor Claimant to assert its Claim. If any such Bankruptcy Debtor Claimant wishes to assert an Objection to the First Interim Distribution to Investors, such Bankruptcy Debtor Claimant shall file with this Court a simple statement of its objection and the grounds therefor.

15. The Court hereby appoints Leslie Treff, Esq., as Special Master to hear and report on any disputes concerning Proofs of Claim and any Objections to the First Interim Distribution to Investors. Subject to further Order of this Court, the proceedings set forth in this section shall occur before the Special Master.

16. As respects Proofs of Claim, within 30 days following the Bar Date (the Claims Evaluation Period), the Receiver shall attempt in good faith to reach a consensual resolution with any party whose Proof of Claim he disputes. Should such negotiation fail to result in a consensual resolution within the Claims

Evaluation Period, the Receiver shall file with the Court and serve upon the relevant Claimant an objection to the disputed Proof of Claim (Objection to Proof of Claim) by the conclusion of the Claims Evaluation Period. Any opposition to an Objection to Proof of Claim must be served on the Receiver and filed with the Court within 15 days of the conclusion of the Claims Evaluation Period.

17. As respects Objections to the First Interim Distribution to Investors, within 45 days following the Bar Date (the Objections Evaluation Period), the Receiver will attempt in good faith to reach a consensual resolution with any party whose Objection to the First Interim Distribution to Investors he intends to oppose. Should such negotiation fail to result in a consensual resolution within the Objections Evaluation Period, the Receiver shall file with the Court a response in opposition to the Objection to the First Interim Distribution to Investors (Response in Opposition), by the conclusion of the Objections Evaluation Period.

18. Following the Receiver's filing of an Objection to Proof of Claim or Response in Opposition, the Court or Special Master shall decide the disputed issue on the papers, schedule oral argument on the issue, or direct such discovery and/or further briefing as the Court or Special Master believes prudent under the circumstances.

19. The Receiver's time to submit an Objection to Proof of Claim or Response in Opposition may be extended by agreement of the Receiver and the opposing party for up to 30 days, or may otherwise be extended by the Court or Special Master upon a showing of good cause.

20. Except as may be expressly provided for herein, the Receiver shall continue to administer the assets of the Ariel & Gabriel Receivership Entities in accordance with the Receivership Order and subject to further Orders of this Court.

Dated: July 30, 2010

ENTER:



HON. RICHARD B. LOWE, II
J.S.C.

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10

THE PEOPLE OF THE STATE OF NEW YORK

Index No.
450879/09

Plaintiff,

- against -

J. EZRA MERKIN and GABRIEL CAPITAL
CORPORATION,

Defendants,

and

ARIEL FUND LIMITED, ASCOT FUND LIMITED,
ASCOT PARTNERS, L.P., GABRIEL ALTERNATIVE
ASSETS, LLC, GABRIEL ASSETS, LLC and
GABRIEL CAPITAL, L.P.,

Relief Defendants.

**NOTICE TO KNOWN INVESTORS OF ORDER
SETTING A CLAIMS BAR DATE; FIXING MANNER OF
NOTICE OF THE CLAIMS BAR DATE; AND ESTABLISHING
PROCEDURES FOR RESOLUTION OF DISPUTED
CLAIMS AND OBJECTIONS TO PROCEDURES AND PLAN**

PLEASE TAKE NOTICE that on June 10, 2009, the New York State Supreme Court (the "Receivership Court") entered a Stipulation and Order appointing Bart M. Schwartz as Receiver (the "Receiver") of Ariel Fund Limited, Gabriel Capital, L.P. (together with Ariel Fund Limited, the "Funds"), Gabriel Alternative Assets, LLC, and Gabriel Assets, LLC (collectively

with the Funds, the "Ariel & Gabriel Receivership Entities"), and directed the Receiver to collect and preserve all of their assets (the "Receivership Property").

On July 30, 2010 the Receivership Court signed an Order Setting a Claims Bar Date; Fixing Manner of Notice of the Claims Bar Date; And Establishing Procedures for Resolution of Disputed Claims and Objections to Procedures and Plan (the "Distribution Motion Procedures Order"),¹ pursuant to which the Receivership Court has, among other things, set September 20, 2010 at 5:00 p.m., prevailing New York Time (the "Bar Date") as the last date and time for claimants to submit a proof of claim ("Proof of Claim") against any of the Ariel & Gabriel Receivership Entities. The Bar Date is enforceable notwithstanding any otherwise applicable law that could govern the timing of the assertion of a claim against any of the Ariel & Gabriel Receivership Entities. A copy of the Distribution Motion Procedures Order is enclosed herewith. Also enclosed is a copy of the Receiver's proposed Procedures and Plan for First Interim Distribution to Investors (the "Procedures and Plan").²

The Receiver has reviewed the books and records of the Ariel

¹ Nothing in the Distribution Motion Procedures Order affects the rights of any party asserting a claim against and/or an interest in the assets of Ascot Fund Limited or Ascot Partners, L.P.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Procedures and Plan.

& Gabriel Receivership Entities to determine the amount of your interest in either or both of the Funds. Annexed hereto as **Exhibit 1** is a calculation made by the Receiver of the amount of your interest in each of the Funds, which will be used to calculate any distribution to you from each of the Funds' Presently Available Cash (the "Individual Bar Date Notice Exhibit").

YOU DO NOT NEED TO SUBMIT A PROOF OF CLAIM IF YOU AGREE WITH THE AMOUNTS AND PROPOSED TREATMENT SET FORTH ON EXHIBIT 1 TO THIS NOTICE.

HOWEVER, IF YOU BELIEVE THAT EXHIBIT 1 TO THIS NOTICE DOES NOT ACCURATELY REFLECT YOUR INTEREST IN EITHER OR BOTH OF THE FUNDS, YOU MUST DELIVER TO THE RECEIVER A VERIFIED PROOF OF CLAIM PURSUANT TO THE INSTRUCTIONS CONTAINED IN THIS NOTICE BY THE BAR DATE.

FURTHER, IF YOU OBJECT TO ANY OF THE RELIEF PROPOSED IN THE PROCEDURES AND PLAN, INCLUDING, WITHOUT LIMITATION, ANY PROPOSED DISPOSITION OF THE PRESENTLY AVAILABLE CASH, YOU MUST, BY NO LATER THAN THE BAR DATE, FILE WITH THE COURT, WITH A COPY TO THE RECEIVER, A DETAILED STATEMENT IN SUPPORT OF ANY OBJECTION TO THE DISPOSITION OF THE PRESENTLY AVAILABLE CASH OF EITHER OF THE FUNDS, EITHER ATTACHING YOUR VERIFIED PROOF OF CLAIM AS AN EXHIBIT THERETO, OR CONTEMPORANEOUSLY FILE A MOTION TO SUBMIT

SUCH PROOF OF CLAIM UNDER SEAL.

Verified Proof of Claim forms must be submitted so as to be **actually received by no later than 5:00 p.m., prevailing New York Time, on September 20, 2010,** by the Receiver at the following address:

Bart M. Schwartz
Receiver
c/o Reed Smith LLP
Attn: Nicole O'Sullivan, Esq.
599 Lexington Avenue
New York, New York 10022

Proof of Claim forms may also be submitted to the Receiver by email at ArielGabrielReceivership@reedsmith.com.

A Proof of Claim will be deemed timely submitted only if **actually received** by the Receiver on or before the Bar Date. Proof of Claim forms may be obtained from the Receiver's website located at www.guidepostpartners.com, or by contacting Reed Smith LLP, Attn: Nicole O'Sullivan, Esq., by mail (599 Lexington Avenue, New York, New York 10022); phone (212-521-5400); or email (ArielGabrielReceivership@reedsmith.com), and requesting same.

Responses to Frequently Asked Questions will be posted on the Receiver's website.

YOU SHOULD CONSULT AN ATTORNEY IF YOU HAVE ANY QUESTIONS, INCLUDING WHETHER YOU SHOULD SUBMIT A PROOF OF CLAIM. PLEASE NOTE THAT THE RECEIVER AND HIS PROFESSIONALS, REED SMITH LLP AND GUIDEPOST PARTNERS LLC, ARE NOT PERMITTED TO GIVE LEGAL ADVICE

TO ANY INVESTOR.

1. WHAT TO SUBMIT

Each Proof of Claim must be complete, signed under penalty of perjury, and must include appropriate documentary evidence in support thereof. A Proof of Claim must be completed in English and stated in lawful currency of the United States (to the extent known and determinable). To receive an acknowledgment from the Receiver of the submission of a Proof of Claim, you must provide the Receiver with a duplicate of the Proof of Claim and enclose a stamped, self-addressed envelope. The Receiver will mark the duplicate Proof of Claim "Received" with a date stamp and return it to you for your records.

2. CONSEQUENCES OF FAILURE TO SUBMIT PROOF OF CLAIM BY BAR DATE

If you disagree with the information in the Individual Bar Date Notice Exhibit but fail to submit a Proof of Claim in compliance with the procedures set forth herein by the Bar Date, you shall be forever barred, estopped and enjoined from asserting a claim (and from submitting a Proof of Claim with respect to such claim) against any of the Ariel & Gabriel Receivership Entities and from receiving any distribution from the Receivership Property, other than as set forth in the Individual Bar Date Notice Exhibit.

Dated: July 30, 2010

New York, New York

ARIEL FUND LIMITED

EXHIBIT 1

[INSERT NAME AND ADDRESS OF INVESTOR]

Dear [INSERT]:

The Receiver has reviewed the books and records of Ariel Fund Limited ("Ariel Fund"), and has determined that the net capital account of your investment in Ariel Fund as of March 31, 2010 (the "Calculation Date") is \$[___]. Your *pro rata* share of Ariel Fund's estimated asset value as of the Calculation Date is [___]%, which percentage shall be used to calculate any distribution to you on account of your investment in the Ariel Fund.

IF YOU DISPUTE THE INFORMATION CONTAINED IN THIS INDIVIDUAL BAR DATE NOTICE EXHIBIT, YOU MUST SUBMIT A PROOF OF CLAIM PURSUANT TO THE INSTRUCTIONS CONTAINED IN THE ENCLOSED NOTICE BY THE BAR DATE.

The Receiver reserves his rights to supplement and/or update the information in this Individual Bar Date Notice Exhibit.

GABRIEL CAPITAL, L.P.

EXHIBIT 1

[INSERT NAME AND ADDRESS OF INVESTOR]

Dear [INSERT]:

The Receiver has reviewed the books and records of Gabriel Capital, L.P. ("Gabriel Fund"), and has determined that the net capital account of your investment in Gabriel Fund as of March 31, 2010 (the "Calculation Date") is \$[___]. Your *pro rata* share of Gabriel Fund's estimated asset value as of the Calculation Date is [___]%, which percentage shall be used to calculate any distribution to you on account of your investment in the Gabriel Fund.

IF YOU DISPUTE THE INFORMATION CONTAINED IN THIS INDIVIDUAL BAR DATE NOTICE EXHIBIT, YOU MUST SUBMIT A PROOF OF CLAIM PURSUANT TO THE INSTRUCTIONS CONTAINED IN THE ENCLOSED NOTICE BY THE BAR DATE.

The Receiver reserves his rights to supplement and/or update the information in this Individual Bar Date Notice Exhibit.

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10

THE PEOPLE OF THE STATE OF NEW YORK

Index No.
450879/09

Plaintiff,

- against -

J. EZRA MERKIN and GABRIEL CAPITAL
CORPORATION,

Defendants,

and

ARIEL FUND LIMITED, ASCOT FUND LIMITED,
ASCOT PARTNERS, L.P., GABRIEL ALTERNATIVE
ASSETS, LLC, GABRIEL ASSETS, LLC and
GABRIEL CAPITAL, L.P.,

Relief Defendants.

**NOTICE TO HOLDERS OF KNOWN CREDITOR CLAIMS
OF ORDER SETTING CLAIMS BAR DATE; FIXING MANNER
OF NOTICE OF THE CLAIMS BAR DATE; AND ESTABLISHING
PROCEDURES FOR RESOLUTION OF DISPUTED
CLAIMS AND OBJECTIONS TO PROCEDURES AND PLAN**

PLEASE TAKE NOTICE that on June 10, 2009, the Supreme Court of the State of New York, County of New York (the "Receivership Court") entered a Stipulation and Order appointing Bart M. Schwartz as Receiver (the "Receiver") of Ariel Fund Limited, Gabriel Capital, L.P. (together with Ariel Fund Limited, the "Funds"), Gabriel Alternative Assets, LLC, and Gabriel Assets, LLC (collectively with the Funds, the "Ariel & Gabriel

Receivership Entities"), and directed the Receiver to collect and preserve all of their assets (the "Receivership Property").

On July 30, 2010, the Receivership Court signed an Order Setting a Claims Bar Date; Fixing Manner of Notice of the Claims Bar Date; And Establishing Procedures for Resolution of Disputed Claims and Objections to Procedures and Plan (the "Distribution Motion Procedures Order"),¹ pursuant to which the Receivership Court has, among other things, set **September 20, 2010 at 5:00 p.m., prevailing New York Time** (the "Bar Date") as the last date and time for claimants to submit a proof of claim ("Proof of Claim") against any of the Ariel & Gabriel Receivership Entities. The Bar Date is enforceable notwithstanding any otherwise applicable law that could govern the timing of the assertion of a claim against any of the Ariel & Gabriel Receivership Entities. A copy of the Distribution Motion Procedures Order is enclosed herewith. Also enclosed is a copy of the Receiver's proposed Procedures and Plan for First Interim Distribution to Investors (the "Procedures and Plan").²

The Receiver has reviewed the books and records of the Ariel & Gabriel Receivership Entities to determine the amount, if any,

¹ Nothing in the Distribution Motion Procedures Order affects the rights of any party asserting a claim against and/or an interest in the assets of Ascot Fund Limited or Ascot Partners, L.P.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Procedures and Plan.

of your claim against either of the Funds. Annexed hereto as **Exhibit 1** is a statement of the amount, if any, that the Receiver proposes to distribute or reserve from either or both of the Funds' Presently Available Cash on account of any claim you may have against either or both of the Funds (the "Individual Bar Date Notice Exhibit").

YOU DO NOT NEED TO SUBMIT A PROOF OF CLAIM IF YOU AGREE WITH THE AMOUNTS AND PROPOSED TREATMENT SET FORTH ON EXHIBIT 1 TO THIS NOTICE.

HOWEVER, IF YOU BELIEVE THAT EXHIBIT 1 TO THIS NOTICE DOES NOT ACCURATELY REFLECT YOUR CLAIM AGAINST EITHER OR BOTH OF THE FUNDS, YOU MUST DELIVER TO THE RECEIVER A VERIFIED PROOF OF CLAIM PURSUANT TO THE INSTRUCTIONS CONTAINED IN THIS NOTICE BY THE BAR DATE.

FURTHER, IF YOU OBJECT TO ANY OF THE RELIEF PROPOSED IN THE PROCEDURES AND PLAN, INCLUDING, WITHOUT LIMITATION, ANY PROPOSED DISPOSITION OF THE PRESENTLY AVAILABLE CASH, YOU MUST, BY NO LATER THAN THE BAR DATE, FILE WITH THE COURT, WITH A COPY TO THE RECEIVER, A DETAILED STATEMENT IN SUPPORT OF ANY OBJECTION TO THE DISPOSITION OF THE PRESENTLY AVAILABLE CASH OF EITHER OF THE FUNDS, EITHER ATTACHING YOUR VERIFIED PROOF OF CLAIM AS AN EXHIBIT THERETO, OR CONTEMPORANEOUSLY FILE A MOTION TO SUBMIT SUCH PROOF OF CLAIM UNDER SEAL.

Verified Proof of Claim forms must be submitted so as to be **actually received by no later than 5:00 p.m., prevailing New York Time, on September 20, 2010**, by the Receiver at the following address:

Bart M. Schwartz
Receiver
c/o Reed Smith LLP
Attn: Nicole O'Sullivan, Esq.
599 Lexington Avenue
New York, New York 10022

Proof of Claim forms may also be submitted to the Receiver by email at ArielGabrielReceivership@reedsmith.com.

A Proof of Claim will be deemed timely submitted only if **actually received** by the Receiver on or before the Bar Date. Proof of Claim forms may be obtained from the Receiver's website located at www.guidepostpartners.com, or by contacting Reed Smith LLP, Attn: Nicole O'Sullivan, Esq., by mail (599 Lexington Avenue, New York, New York 10022), phone (212-521-5400); or email (ArielGabrielReceivership@reedsmith.com), and requesting same.

Responses to Frequently Asked Questions will be posted on the Receiver's website.

YOU SHOULD CONSULT AN ATTORNEY IF YOU HAVE ANY QUESTIONS, INCLUDING WHETHER YOU SHOULD SUBMIT A PROOF OF CLAIM. PLEASE NOTE THAT THE RECEIVER AND HIS PROFESSIONALS, REED SMITH LLP AND GUIDEPOST PARTNERS LLC, ARE NOT PERMITTED TO GIVE LEGAL ADVICE

TO ANY CLAIMANT.

1. WHAT TO SUBMIT

Each Proof of Claim must be complete, signed under penalty of perjury, and must include appropriate documentary evidence in support thereof. A Proof of Claim must be completed in English and stated in lawful currency of the United States (to the extent known and determinable). To receive an acknowledgment from the Receiver of the submission of a Proof of Claim, you must provide the Receiver with a duplicate of the Proof of Claim and enclose a stamped, self-addressed envelope. The Receiver will mark the duplicate Proof of Claim "Received" with a date stamp and return it to you for your records.

2. CONSEQUENCES OF FAILURE TO SUBMIT PROOF OF CLAIM BY BAR DATE

If you disagree with the information in the Individual Bar Date Notice Exhibit but fail to submit a Proof of Claim in compliance with the procedures set forth herein by the Bar Date, you shall be forever barred, estopped and enjoined from asserting a claim (and from submitting a Proof of Claim with respect to such claim) against any of the Ariel & Gabriel Receivership Entities and from receiving any distribution from the Receivership Property other than as set forth in the Individual Bar Date Notice Exhibit.

Dated: July 30, 2010

New York, New York

EXHIBIT 1

[INSERT NAME AND ADDRESS OF KNOWN CREDITOR]

Dear [INSERT]:

The Receiver has reviewed the books and records of Ariel Fund Limited ("Ariel Fund") and Gabriel Capital, L.P. ("Gabriel Fund" and, together with Ariel Fund, the "Funds"), and it appears that you assert a claim against Ariel Fund in the amount of \$[X] and Gabriel Fund in the amount of \$[Y] as of March 31, 2010. While the Receiver has not yet determined the allowability as to the specific amount, if any, of your claim, the Receiver is reserving \$[Z] on account of your claim should it become an allowed claim.

Should you wish to submit additional information to the Receiver in support of your claim, please send the additional information, along with a copy of this Individual Bar Date Notice Exhibit, to the Receiver c/o Reed Smith LLP, Attn: Nicole O'Sullivan, Esq., 599 Lexington Avenue, New York, New York 10022, or by email to ArielGabrielReceivership@reedsmith.com.

IF YOU DISPUTE THE INFORMATION CONTAINED IN THIS INDIVIDUAL BAR DATE NOTICE EXHIBIT, INCLUDING THE AMOUNT THE RECEIVER INTENDS TO RESERVE ON ACCOUNT OF YOUR CLAIM, YOU MUST SUBMIT A PROOF OF

CLAIM PURSUANT TO THE INSTRUCTIONS CONTAINED IN THE ENCLOSED
NOTICE BY THE BAR DATE.

IF YOU DO NOT FILE A PROOF OF CLAIM ON OR PRIOR TO THE BAR DATE,
YOU WILL BE DEEMED TO HAVE FILED A PROOF OF CLAIM IN THE AMOUNT
SET FORTH ABOVE. IN THAT EVENT, SUCH DEEMED PROOF OF CLAIM MAY
EITHER BE ALLOWED OR SUBJECT TO OBJECTION BY THE RECEIVER.

The Receiver's rights to supplement this Individual Bar Date
Notice Exhibit and to challenge the allowability of your claim
are expressly reserved.

EXHIBIT C

PROOF OF CLAIM

FOR CLAIMS AGAINST
ARIEL FUND LIMITED, GABRIEL CAPITAL, L.P.,
GABRIEL ALTERNATIVE ASSETS, LLC, AND GABRIEL ASSETS, LLC

THE PEOPLE OF THE STATE OF NEW YORK V. J. EZRA MERKIN, ET AL.

Supreme Court of the State of New York, Index No. 450879/2009

PLEASE COMPLETE, SIGN AND RETURN THIS FORM IMMEDIATELY,

IF BY U.S. MAIL OR OTHERWISE TO:

BART M. SCHWARTZ
RECEIVER
c/o REED SMITH LLP
ATTN: NICOLE O'SULLIVAN, ESQ.
599 LEXINGTON AVENUE
NEW YORK, NEW YORK 10022

OR IF BY EMAIL TO: ARIELGABRIELRECEIVERSHIP@REEDSMITH.COM

EACH PROOF OF CLAIM MUST BE RECEIVED BY NO LATER THAN:

September 20, 2010

The undersigned hereby submits a claim against the Receivership entity identified below and in support of such claim hereby affirms the statements made herein to be true under penalty of perjury:

Identify the entity against which you assert a claim (*check only one box - if you have claims against more than one entity, submit separate forms for each*):

Ariel Fund Limited

- Gabriel Capital, L.P.
- Gabriel Alternative Assets, LLC
- Gabriel Assets, LLC

1. NAME(S) AND ADDRESS OF CLAIMANT(S) :

Name(s) :

If Applicable, Name of Nominee or Custodian:

Current Address:

Telephone No.: _____ Email: _____

Address at time of investments / time claim arose (*if different than above*):

2. THIS CLAIM IS BASED ON:

- () Investment () Money Loaned () Services Performed
- () Goods Sold () Taxes () Other _____

DATE(S) : INVESTMENT(S) MADE / CLAIM(S) AROSE:

3. AMOUNT OF CLAIM: \$ _____

4. BASIS FOR CLAIM: (describe basis for claim(s) and attach

documentary support)

(ATTACH ADDITIONAL PAGES AND SUPPORTING DOCUMENTS AS NECESSARY)

5. The undersigned is duly authorized to submit this Proof of Claim on behalf of the creditor/investor identified in paragraph 1 of this Proof of Claim.

6. The undersigned acknowledges and agrees that the filing of this Proof of Claim constitutes a submission of the amount of this claim to the jurisdiction of the Supreme Court of the State of New York that is administering this Receivership proceeding, and agrees that the claim shall be adjudicated, determined and paid as ordered by that Court.

The undersigned further consents to and acknowledges that the Court will determine (a) the right to any money from any of Ariel Fund Ltd., Gabriel Capital, L.P., Gabriel Assets, LLC and Gabriel Alternative Assets, LLC (collectively, the "Ariel & Gabriel Receivership Entities"), if any is available, (b) the priority of said claim(s), if any, and (c) the scheduling and allocation of the assets to be distributed. All objections and disputes to the allowance of my claim by the Receiver, if any, shall be submitted to and the subject of review by the Court for a final ruling thereon, upon motion, without a jury, subject to whatever right

to appellate review may exist under applicable law.

7. I have not sold, assigned, transferred, hypothecated or in any way conveyed my interest in or my claim against the Ariel & Gabriel Receivership Entities, or any portion thereof. I further agree not to sell, convey, assign, transfer or hypothecate hereafter, prior to the date(s) of distribution, my interest in my claim(s) against the Ariel & Gabriel Receivership Entities, in any manner. In the event my interest is transferred hereafter prior to the date(s) of distribution, except by operation of law, I agree that any such assignment or transfer shall be deemed null and void and unenforceable by any successor third party as between the undersigned, on the one hand, and the Ariel & Gabriel Receivership Entities, the Receiver and the Court, on the other hand.

8. The amount set forth above constitutes the amount due after application of all prior payments and credits received.

9. I further understand and agree that: (a) any disbursement check to me will be made payable jointly to me and to each of my co-claimants named herein below; (b) it will be our individual and collective responsibility for said check's deposit and collection *en gross* and later division between us, if any; (c) that the Receiver will not prorate the amount due me or to us under separate checks; and (d) my correct Social Security Number or Federal/Employer Identification Number is set forth adjacent

to my signature below.

10. I represent that I am not and have never been affiliated with the Ariel & Gabriel Receivership Entities as a principal or officer, or in any other manner.

Executed under penalty of perjury on: _____, 2010, at

_____.

(City or Town)

_____.

(State, Zip Code)

PRINT FULL NAME AND TITLE	CLAIMANT SIGNATURE	TAX IDENTIFICATION NUMBER

Sworn to and subscribed before me this ____ day of _____, 2010.

Notary Public

YOU SHOULD NOT FILE THIS PROOF OF CLAIM WITH THE COURT.

Mailing or otherwise delivering an executed Proof of Claim as directed above so that the Proof of Claim is **actually received no later than September 20, 2010**, shall constitute the Claimant's timely submission of the Proof of Claim.

To receive an acknowledgment from the Receiver of his receipt of your Proof of Claim, you must provide the Receiver with a duplicate of the original Proof of Claim and a self-addressed, postage prepaid envelope. The Receiver will mark the duplicate

Proof of Claim "Received" with a date stamp and return it to you for your records.

EXHIBIT D

NOTICE OF CLAIMS BAR DATE AND PROCEDURES FOR RESOLUTION
OF DISPUTED CLAIMS AND OBJECTIONS TO PROCEDURES AND PLAN
TO CREDITORS AND INVESTORS IN:

Ariel Fund Limited

Gabriel Capital, L.P.

Gabriel Alternative Assets, LLC

Gabriel Assets, LLC

On July 30, 2010, the Receivership Court signed an Order Setting a Claims Bar Date; Fixing Manner of Notice of the Claims Bar Date; And Establishing Procedures for Resolution of Disputed Claims and Objections to Procedures and Plan (the "Distribution Motion Procedures Order"), pursuant to which the Receivership Court has, among other things, set **September 20, 2010 at 5:00 p.m., prevailing New York Time** (the "Bar Date") as the last date and time for claimants to submit a proof of claim ("Proof of Claim") against any of the Ariel & Gabriel Receivership Entities identified above. The Bar Date is enforceable notwithstanding any otherwise applicable law that could govern the timing of the assertion of a Proof of Claim form against any of the Ariel & Gabriel Receivership Entities.

A complete set of instructions for submitting a Proof of Claim, a copy of the Distribution Motion Procedures Order, and all

relevant documents, are available on the Receiver's website, which can be accessed at www.guidepostpartners.com. Responses to Frequently Asked Questions will also be posted on the Receiver's website.

YOUR RIGHTS MIGHT BE AFFECTED BY THE DISTRIBUTION MOTION PROCEDURES ORDER. YOU SHOULD CONSULT AN ATTORNEY IF YOU HAVE ANY QUESTIONS, INCLUDING WHETHER YOU SHOULD SUBMIT A PROOF OF CLAIM.

Dated: (DATE OF PUBLICATION)

New York, New York

EXHIBIT E

**PROPOSED PROCEDURES AND PLAN FOR FIRST INTERIM DISTRIBUTION TO
INVESTORS**

The following Procedures and Plan for First Interim Distribution to Investors (the "Procedures and Plan"), having been approved by an Order of the Supreme Court of the State of New York, entered on the _____ day of _____, 2010 shall be implemented by Bart M. Schwartz, Receiver (the "Receiver") for Ariel Fund Limited ("Ariel Fund"), Gabriel Capital, L.P. ("Gabriel Fund" and together with Ariel Fund, the "Funds"), Gabriel Alternative Assets, LLC ("Gabriel Alternative"), and Gabriel Assets, LLC ("Gabriel Assets" and, collectively with the Funds and Gabriel Alternative, the "Ariel & Gabriel Receivership Entities"), for purposes of making a first interim distribution to investors in the Funds (the "First Interim Distribution to Investors").

The following Procedures and Plan for First Interim Distribution to Investors (the "Procedures and Plan") shall be implemented by Bart M. Schwartz, Receiver (the "Receiver") for Ariel Fund Limited ("Ariel Fund"), Gabriel Capital, L.P. ("Gabriel Fund" and together with Ariel Fund, the "Funds"), Gabriel Alternative Assets, LLC ("Gabriel Alternative"), and Gabriel Assets, LLC ("Gabriel Assets" and, collectively with the Funds and Gabriel Alternative, the "Ariel & Gabriel Receivership Entities"), for purposes of making a first interim

distribution to investors in the Funds (the "First Interim Distribution to Investors").

WHEREAS, as set forth in the Affirmation of Bart M. Schwartz, as Receiver, dated May 24, 2010 (the "Schwartz Affirmation" or "Schwartz Aff."), the estimated unaudited asset value as of March 31, 2010 (the "Calculation Date") of Gabriel Fund is \$602,692,016, and the estimated unaudited asset value of Ariel Fund as of the Calculation Date is \$652,720,432. Schwartz Aff. at ¶ 11.¹ The Receiver has liquidated certain of the Funds' more liquid investment positions, and currently maintains more than \$298,000,000 of cash or cash equivalents in U.S. bank accounts belonging to the Funds. From this amount, the Receiver has taken prudent reserves for ongoing investment commitments and operating expenses of the Funds of approximately \$26,700,000, leaving available a total of approximately \$270,000,000 in cash or cash equivalents (the "Presently Available Cash"), subject to payments to, or reserves for, certain parties ("Claimants") asserting a right to payment or distribution from the Funds; and,

¹The value of the Funds' illiquid positions is estimated as a result of a regular position-by-position valuation process conducted by Cerberus, which is reviewed in the normal course of audit work performed by Cerberus' external auditors, and then reviewed by a qualified third-party price validation service. The third-party price validation service review is conducted twice annually. At each month-end, in the interim months, price estimates are reviewed by Cerberus and appropriately adjusted. The prices are then provided to the Funds, which may or may not agree with the valuations provided. No disagreements have occurred since commencement of the Receivership.

WHEREAS, as of the Calculation Date, the Presently Available Cash of Gabriel Fund totals approximately \$84,650,000; and of Ariel Fund totals approximately \$186,650,000. *Id.* at ¶¶ 12. In addition to the Presently Available Cash, the Funds' remaining assets have an unaudited, estimated value of approximately \$1,000,000,000 (one billion dollars) (the "Funds' Remaining Assets"). *Id.* at ¶ 14.

I. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

The Receiver will make a First Interim Distribution to Investors from a portion of the Funds' Presently Available Cash. Before doing so, reserves will be set for certain classes of Claimants asserting a right to payment from the Funds that the Receiver has been able to identify based upon Claims that have been asserted, the Funds' books and records, and other available information, as well as Claims that may be asserted and become allowed in the future.

Claimants and investors with Claims against the Funds' assets have been classified as follows:²

(i) holders of contingent claims asserted in pending legal proceedings against which the Receiver is presently defending, consisting of claims arising out of the Actions (as defined in

²The term "Claim" shall mean any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

Section II(A)(ii), below) (the "Known Contingent Claims");

(ii) holders of contingent, unliquidated claims that may be asserted against the Ariel & Gabriel Receivership Entities, which presently consist of claims for indemnity by the Funds' counterparties to various indemnity agreements, or claims pursuant to statutory indemnity rights (the "Known Potential Indemnity Claims");³

(iii) one known disputed creditor Claim, asserted by former Cayman Islands counsel to the Ariel Fund, Maples & Calder, in the amount of \$10,000 (the "Maples Claim");

(iv) unknown creditor Claimants that are not evident from the books and records of the Ariel & Gabriel Receivership Entities (the "Unknown Creditor Claims");⁴

(v) investors that invested monies with the Funds, whose interests are reflected on the Funds' books and records (the "Known Investors"); and

(vi) unknown investor Claimants that are not evident from the Ariel & Gabriel Receivership Entities' book and records (the

³ If, notwithstanding the Receiver's diligent review of the Ariel & Gabriel Receivership Entities' books and records, and his investigation, any party holding a potential indemnity claim that is unknown as of the date hereof should be discovered, such party's claims would be covered under "Unknown Creditor Claims", as set forth below.

⁴ As noted above, the Receiver's investigation to date has not revealed any claims against Gabriel Assets or Gabriel Alternative.

"Unknown Investor Claims" and, together with the claims of Unknown Creditor Claims, Known Disputed Creditor Claims, Known Potential Indemnity Claims and Known Contingent Claims, comprise the "Claims Subject of Reserves").

II. TREATMENT OF CLASSES OF CLAIMS AND EQUITY INTERESTS

Each class of Claims is treated in the most fair and equitable manner possible, as set forth below.

A. Reserves

Reserves shall be set aside as follows in respect of the Claims Subject of Reserves:

(i) Reserve for Ongoing Investment Obligations and Operating Expenses of the Ariel & Gabriel Receivership Entities

A reserve will be set for the Funds' ongoing investment obligations and expenses, including reasonable projections for potential reinvestment or cash call requirements of the Funds, in the amount of \$15,350,000 for Ariel Fund, and \$11,350,000 for Gabriel Fund, for total operating reserves of \$26,700,000 (the "Funds' Operating Reserve"). The Funds' Operating Reserve is not included in the calculation of Presently Available Cash.

(ii) Reserves for the Known Contingent Claims

The Receiver shall set aside from the Presently Available Cash and reserve certain sums, as set forth below, on account of the Known Contingent Claims, to satisfy such Claims to the extent they become allowed, liquidated Claims against one or more of the

Funds:

- In respect of the action styled *SEC v. Bernard L. Madoff Investment Securities LLC, et al.*, No. 08 CV 10791 (the "Madoff Trustee Action"), \$19,400,000 from the Presently Available Cash of Gabriel Fund, and \$18,200,000 from the Presently Available Cash of Ariel Fund be will be reserved within each of the Funds' respective receivership estates.
- In respect of the avoidance action (Adv. Pro. No. 08-51402 (KG)) commenced by Mervyn's LLC ("Mervyn's"), acting through its Official Committee of Unsecured Creditors, against, among others, Gabriel Fund (the "Mervyn's Action"), \$18,817,688 from the Presently Available Cash of Gabriel Fund will be reserved within the Gabriel Fund's receivership estate.
- In respect of the action styled *Morris Fuchs Holdings, LLC v. Gabriel Capital, L.P., et al.*, No. 09-6483 (DAB), which is pending in the United States District Court for the Southern District of New York (the "Fuchs Action"), \$7,962,036 from the Presently Available Cash of Gabriel Fund will be reserved within Gabriel Fund's receivership estate.
- In respect of the action styled *Croscill, Inc. v. Gabriel Capital, L.P., et al.*, No. 09-6031 (DAB), which is pending in the United States District Court for the Southern District of New York (the "Croscill Action," and together with the Fuchs Action, Mervyn's Action and Madoff Trustee Action, the "Actions"),

\$1,800,000 from the Presently Available Cash of Gabriel Fund will be reserved within the Gabriel Fund's receivership estate.

The aggregate of the reserves for the Actions, totaling \$66,179,724 (the "Known Contingent Claims Reserves"), shall be reserved by the Receiver, as applicable, within the Funds, subject to further Order of the Court, solely to satisfy potential liability in the Actions until such time as either (i) a final, non-appealable judgment is entered in the relevant Action, or (ii) the Court directs that the reserved amounts be released from the Known Contingent Claims Reserves, or otherwise distributed.

(iii) Reserves for Known Potential Indemnity Claims

To ensure that there are sufficient cash reserves to satisfy the Known Potential Indemnity Claims, to the extent they become allowed, liquidated Claims against one or more of the Funds, the Receiver shall set aside from the Presently Available Cash and reserve the following sums:

- In respect of BDO, \$500,000 from the Presently Available Cash of each of the Funds, for a total reserve of \$1,000,000 (the "BDO Reserve"). BDO reserves its rights to seek release of some or all of the BDO Reserve at any time, by application to the Court, and to seek further indemnity payments in the future from the Funds' Remaining Assets. The Receiver reserves his rights to oppose any entitlement by BDO to any payment whatsoever, be it

from the BDO Reserve or otherwise;

- In respect of Gabriel Capital Corp. ("GCC") and J. Ezra Merkin ("Mr. Merkin"), the Funds will not reserve any amount from the Presently Available Cash for these parties' Known Potential Indemnity Claims. GCC and Mr. Merkin reserve their rights to seek indemnity payments in the future from the Funds' Remaining Assets. The Receiver reserves his rights to oppose any entitlement by GCC or Merkin to any payments whatsoever; and
- In respect of Fortis Prime Fund Solutions (Cayman) Limited ("Fortis"), Ariel's share registrar and transfer agent, Ariel Fund will reserve \$1,000,000 from its Presently Available Cash in respect of Fortis' Known Potential Indemnity Claims (the "Fortis Reserve"). Fortis reserves its rights to seek release of some or all of the Fortis Reserve at any time, by application to this Court, and to seek further indemnity payments in the future from the Ariel Fund's Remaining Assets. The Receiver reserves his rights to oppose any entitlement by Fortis to any payment whatsoever, be it from the Fortis Reserve or otherwise.

(iv) Reserves for the Maples Claim

A reserve in the full amount of the Maples Claim (i.e., \$10,000) will be established on account of the Maples Claim (the "Maples Reserve").

(v) Reserves for Unknown Creditor Claims

The Receiver will reserve \$250,000 from the Presently

Available Cash of each of the Funds for payment of any Unknown Creditor Claims that may in the future be discovered and become allowed Claims, creating an aggregate reserve from all Presently Available Cash of \$500,000 (the "Unknown Creditor Claims Reserve").

(vi) Reserves for Unknown Investor Claims

The Receiver will reserve \$250,000 from the Presently Available Cash of each of the Funds for payment of any Unknown Investor Claims that may in the future be discovered and become allowed Claims, creating an aggregate reserve from all Presently Available Cash of \$500,000 (the "Unknown Investors Claim Reserve"; and together with the Known Contingent Claims Reserve, the BDO Reserve, the Fortis Reserve, the Maples Reserve, and the Unknown Creditor Claims Reserve, the "Reserves From Presently Available Cash").⁵

(vii) The Aggregate Net Presently Available Cash

Based upon all information available at this time, and subject to forthcoming submission of Proofs of Claim and any Objections to Proofs of Claim (as defined below), the Receiver estimates that the aggregate reserves for the Ariel Fund will be

⁵As noted above, Presently Available Cash is an amount that already nets out Funds' Operating Reserve, i.e., the cash reserve determined by the Receiver to be prudent for ongoing administration of the Ariel & Gabriel Receivership Entities. The Funds' Operating Reserve also will be subject to approval by the Court.

\$35,000,000, and the aggregate reserves for the Gabriel Fund will be \$60,000,000, for total aggregate operating, claim and investor reserves of \$95,000,000. Net of the currently contemplated Reserves From Presently Available Cash, the Receiver estimates that approximately \$167,000,000 will be available for distribution to Known Investors of the Ariel Fund (the "Net Ariel Presently Available Cash"), and approximately \$36,000,000 million will be available for distribution to Known Investors of the Gabriel Fund (the "Net Gabriel Presently Available Cash" and, together with the Net Ariel Presently Available Cash, the "Aggregate Net Presently Available Cash").

(viii) The Funds' Remaining Assets Will Continue to be Available to Satisfy Any Claims Beyond the Amounts of Specific Reserves Set Pursuant to the Procedures and Plan

To the extent that any party believes the Reserves From Presently Available Cash in aggregate, or any specific reserve that may be set in respect of an individual Claim Subject of Reserves, may be insufficient, the full amount of the Funds' Remaining Assets remains available to satisfy any amounts that could theoretically be payable in respect of any such Claim, to the extent it becomes an allowed, liquidated Claim against one or more of the Funds.

B. Calculation of Cash to be Distributed to Known Investors as a First Interim Distribution to Investors

The portion of the Presently Available Cash that will be used to make a First Interim Distribution to Investors in each of the Funds will be based upon each of the Known Investors' holdings as recorded in each respective Fund's books and records on the Calculation Date. The amount to be distributed to all Known Investors in each of the Funds from the Net Ariel Presently Available Cash and the Net Gabriel Presently Available Cash will be allocated on a *pro rata* basis.

No amount will be distributed to Mr. Merkin, to GCC, or to any party known to be employed by or affiliated with them, pursuant to the Procedures and Plan as a First Interim Distribution to Investors or otherwise. While reserves will be set for Mr. Merkin and GCC employees and affiliates with investments in the Funds from the Net Ariel Presently Available Cash and the Net Gabriel Presently Available Cash in the amounts that otherwise would be distributable to them in respect of their investment interests reflected on the Funds' books and records, such amounts will not be released unless and until such time as the Court enters an Order directing such distribution, and such Order should become a final, non-appealable Order.

III. MEANS FOR IMPLEMENTATION OF THE PROCEDURES AND PLAN

On July 30, 2010, after the initial hearing on the Distribution Motion Procedures, the Court signed an Order (the "Distribution Motion Procedures Order") approving: (a) the

setting of a date by which all Claims against the Ariel & Gabriel Receivership Entities must be filed or forever be barred (the "Bar Date"); (b) fixing the manner of notice of the Bar Date; (c) procedures for service of the Procedures and Plan; (d) the setting of a deadline for filing and serving objections to the Procedures and Plan; and (e) procedures for resolution of disputed Claims, objections to proposed reserves, and objections to the Procedures and Plan.

The Receiver gave notice in accordance with the Distribution Motion Procedures Order, and has filed proof thereof with the Court, and has otherwise complied with the requirements of the Distribution Motion Procedures Order. Thereafter, at a hearing on approval of the Procedures and Plan, the Court entered an Order Approving Procedures and Plan for First Interim Distribution to Investors (the "Order Approving Procedures and Plan").

A. Proofs of Claim

Any party who fails to timely submit a Proof of Claim on or before the Bar Date is deemed for all purposes to forever waive any right to collect any amount from the Ariel & Gabriel Receivership Entities that is not reflected on the books and records of the Ariel & Gabriel Receivership Entities as due and owing to such party. Any party who fails to timely file an objection to any of the relief sought in the Procedures and Plan,

including, without limitation, any proposed disposition of the Presently Available Cash ("Objection to the First Interim Distribution to Investors") by the Bar Date shall be deemed for all purposes to consent to, and to forever waive any objections to, the proposed disposition of the Presently Available Cash. Holders of Known Creditor Claims and Known Investors SHALL NOT be required to submit Proofs of Claim, so long as they do not dispute the amounts represented in the respective Individual Bar Date Notice Exhibits they receive.

Should any Known Investor or holder of Known Creditor Claims dispute the amounts or any other information reflected in the Individual Bar Date Notice Exhibit, or wish to object to any aspect of the Procedures and Plan, then such Known Investor or holder of Known Creditor Claims shall be required to (i) deliver to the Receiver a Proof of Claim; and (ii) file with the Court, and serve upon the Receiver, an Objection to the First Interim Distribution to Investors, in both instances on or before the Bar Date. Notwithstanding any requirement herein, the complaints already filed by Mervyn's and the Madoff Trustee are deemed to be their respective Proofs of Claim, and no further action is required by either to assert such Claim.

Should either Mervyn's or the Madoff Trustee wish to assert an Objection to the First Interim Distribution to Investors, they will merely be required to file with this Court a simple

statement of their objection and the grounds therefor.

The Receiver has established and will maintain a website (accessible at www.guidepostpartners.com) that will contain all relevant information and documentation concerning the Procedures and Plan.

B. Procedures for Addressing Disputed Proofs of Claim and Objections to the First Interim Distribution to Investors

The Court has appointed Leslie Treff, Esq. as Special Master to hear and report regarding any disputes concerning Proofs of Claim and Objections to the First Interim Distribution to Investors. Subject to further Order of the Court, all proceedings described herein shall be before such Special Master.

Within 30 days following the Bar Date (the "Claims Evaluation Period"), the Receiver will attempt in good faith to reach a consensual resolution with any party whose Proof of Claim he disputes, and should such negotiation fail to result in a consensual resolution within the Claims Evaluation Period, the Receiver shall file with the Court an Objection to Proof of Claim by the conclusion of the Claims Evaluation Period. Any opposition to an Objection to Proof of Claim shall be filed with the Court within fifteen (15) days thereafter. Within 45 days following the Bar Date (the "Objections Evaluation Period"), the Receiver will attempt in good faith to reach a consensual resolution with any party whose Objection to the First Interim

Distribution to Investors he intends to oppose, and should such negotiation fail to result in a consensual resolution within the Objections Evaluation Period, the Receiver shall file with the Court a response in Opposition by the conclusion of the Objections Evaluation Period.

The Court or Special Master, as the case may be, may, in its discretion, decide the disputed issues on the papers, schedule oral argument on the issue, or direct such discovery and/or further briefing as the Court or Special Master believes prudent in the circumstances. The Receiver's time to submit an Objection to Proof of Claim or Response in Opposition may be extended, by agreement of the Receiver and the Opposing Party, for up to 30 days.

IV. DISTRIBUTIONS UNDER THE PROCEDURES AND PLAN

By seeking entry of the Order Approving Procedures and Plan, the Receiver has requested authorization to make the distributions contemplated by the Procedures and to exercise such other powers as may be vested in him by the Court, or as necessary and proper to implement the provisions of the Procedures and Plan.

All distributions to any holder of a Claim that becomes allowed, and all distributions to Known Investors, will be made at the address of such holder or investor set forth in the Funds' books and records as of the Calculation Date, unless the Receiver

has been notified in writing of a change of address, including without limitation, by the submission of a Proof of Claim by such holder or investor that contains an address different from the address reflected on the Funds' books and records for such holder or investor as of the Calculation Date.

V. MODIFICATION OF THE PROCEDURES AND PLAN

The Procedures and Plan are intended to be final and binding upon all parties having an interest in the Ariel & Gabriel Receivership Entities. The Procedures and Plan may be modified only by the Court on motion of the Receiver (with notice to all affected parties), or on the Court's own motion, as may be necessary to carry out the fair and efficient interim distribution of the Presently Available Cash.

VI. NOTICES

All notices, requests and demands to or upon the Receiver shall be in writing and shall be deemed to have been duly given or made when actually delivered to the Receiver, addressed as follows:

Bart M. Schwartz
Receiver
c/o Guidepost Partners LLC
1185 Avenue of the America
Suite 1750
New York, New York 10036

Tel: (212) 205-4189
Email: bschwartz@guidepostpartners.com

With a copy to counsel for the Receiver:

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022
Attn: James C. McCarroll
Lance Gotthoffer
Nicole O'Sullivan
Tel: (212) 521-5400
Fax: (212) 521-5450
Email: ArielGabrielReceivership@reedsmith.com

Any delivery after 5:00 p.m., prevailing New York Time, on a Business Day, or on a day that is not a Business Day, shall be deemed to have been made on the immediately following Business Day.

Dated: July __, 2010

REED SMITH LLP

James C. McCarroll
Lance Gotthoffer
Michael J. Venditto
599 Lexington Avenue
New York, NY 10022
Telephone: (212) 521-5400
Facsimile: (212) 521-5450

*Attorneys for Bart M. Schwartz,
Receiver and Joint Voluntary Liquidator of
Ariel Fund Limited, and Receiver of
Gabriel Capital, L.P., Gabriel
Alternative Assets, LLC, and
Gabriel Assets, LLC; and for
Geoffrey Varga, Joint Voluntary Liquidator
of Ariel Fund Limited*