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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	Case No. 09-50026 (REG)
Debtors.	:	(Jointly Administered)
MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST, by and through the Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee,	:	Adversary Proceeding
Plaintiff,	:	Case No. 09-00504 (REG)
vs.	:	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for various lenders party to the Term Loan Agreement described herein, <i>et al.</i> ,	:	
Defendants.	:	

**DECLARATION OF ELLIOT MOSKOWITZ IN SUPPORT OF THE MOTION TO
DISMISS OF NONPARTY GLOBAL FUNDS TRUST COMPANY, SOLELY IN ITS
CAPACITY AS THE FORMER TRUSTEE OF DEFENDANT MACKAY SHORT
DURATION ALPHA FUND**

1. I am an attorney admitted to practice before this Court and a partner in the law firm of Davis Polk & Wardwell LLP, counsel for the Global Funds Trust Company in its capacity as former trustee of MacKay Short Duration Alpha Fund. I submit this Declaration in

support of The Motion to Dismiss of Nonparty Global Funds Trust Company, solely in its capacity as the former trustee of Defendant MacKay Short Duration Alpha Fund's Motion to Dismiss the Amended Complaint.

2. Attached hereto as Exhibit A is a true and correct copy of the Declaration of Trust known as MacKay Short Duration Alpha Fund, dated November 2, 2005.

3. Attached hereto as Exhibit B is a true and correct copy of *The North London Mosque Trust v. The Policy Exchange and Anor* [2010] EWCA (Civ) 526.

4. Attached hereto as Exhibit C is a true and correct copy of a resolution of the Global Funds Trust Company dated December 21, 2012.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: November 20, 2015

/s/ Elliot Moskowitz
Elliot Moskowitz

EXHIBIT A

THIS DECLARATION OF TRUST known as **MacKay Short Duration Alpha Fund** is made on **2nd November, 2005**.

BY: Global Funds Trust Company of Ugland House, South Church Street, PO Box 309GT, George Town, Grand Cayman, Cayman Islands (hereinafter called "the Trustee"), a trust company duly incorporated, validly existing and licensed to undertake trust business pursuant to the provisions of the Banks and Trust Companies Law (2003 Revision) of the Cayman Islands.

WHEREAS:

The Trustee has declared the sum of AUD\$100 to be held upon the trusts hereof.

NOW THIS DEED WITNESSETH:

Definitions

1. (a) In this Deed and in the Schedules unless the context otherwise requires:

"Accounting Date"

means the last Business Day of December in each year commencing in December 2005 or such other date or dates in each year as the Trustee may from time to time determine.

"Accounting Period"

means a period ending on and including the Accounting Date and commencing from the commencement of the Trust or from the Business Day next following the preceding Accounting Date (as the case may be).

"Administrator"

means Nomura Bank (Luxembourg) S.A. of 6, avenue Emile Reuter, L-2420 Luxembourg, or such other person or institution as may be appointed as such by the Trustee in accordance with the provisions hereof from time to time.

"Australian Dollars" and "AUD"

means the lawful currency of Australia.

"Business Day"

means a day on which banks in each of Luxembourg, New York, Tokyo and the Cayman Islands are open for business, excluding 24th December in each year, or such other places as the Trustee may from time to time determine upon giving notice to the Unitholders.

"Certificate"

means a certificate evidencing the title of the registered holder thereof to the number of Units specified therein and issued in accordance with Clause 18.

"Custodian"

means Nomura Bank (Luxembourg) S.A. of 6, avenue Emile Reuter, L-2420 Luxembourg, or such other person or institution as may be appointed as such by the Trustee in accordance with the provisions hereof from time to time.

"Dealing Day"

means the Valuation Day, or if such Valuation Day is not a Business Day, the immediately preceding Business Day or such other Business Day as notified to the Unitholders on which the Trustee may from time to time determine in its discretion to accept any subscription or repurchase of Units.

"this Deed"

includes any deed of amendment supplemental hereto.

"Duties and Charges"

means all stamp and other duties, taxes, governmental charges (including any charges relating to the acquisition, holding or disposal of foreign currency) brokerage, bank charges, transfer fees, registration fees and other duties and charges whether in connection with the constitution of the Trust Fund, the increase of the Trust Fund, the creation, issue, sale, conversion or repurchase of Units, or the purchase, sale or acquisition of Investments or in respect of Units or otherwise which may have become or may be payable in respect of or prior to or upon the occasion of the transaction or dealing in respect of which such Duties and Charges are payable, but does not include commission, if any, payable to agents on the issue and repurchase of Units.

"Eligible Investor"

means a person described in Schedule Two hereto as such.

"Expenses"

includes the remuneration (if any) and expenses of the Trustee, the Investment Adviser, the Custodian and the Administrator and any sub-custodian appointed by the Custodian as agreed between the respective parties from time to time as set out in the Offering Circular and all other costs, charges, expenses, interest and other liabilities which are permitted or required by applicable accounting standards to be charged to income paid, payable or accrued of the Trust.

"Foreign Currency"

means a currency or unit other than Australian Dollars.

"Income"

means all the net income of the Trust in respect of an Accounting Period as determined by the Trustee on an accrual basis in accordance with the applicable generally accepted accounting principles and determined by adding:

- (i) the total net amount of all interest, dividends, discounts and premiums of an income nature applicable including net gains and other receipts or accruals

deemed by the Trustee to be in the nature of income; and

- (ii) the amount, if any, received by way of repayment of tax on monies received as aforesaid;

and deducting from the resulting sum the aggregate of:

- (1) the amount, if any, paid or estimated to be payable in accordance with the applicable generally accepted accounting principles by way of taxation on the amount of the income mentioned in sub-paragraph (i) above of this definition of "Income"; and
- (2) the amount, if any, of any other Expenses which the Trustee has determined shall be charged against or provided for out of Income pursuant to Clause 9; and
- (3) the amount, if any, which, but for foreign exchange or other governmental regulations, restrictions or instructions (other than taxation) of the country in which the sum arose or is deposited, would have been received by the Trustee.

"Initial Issue"

means the initial issue of Units of the Trust by the Trustee in accordance with Clause 6 and as described in the Offering Circular and "Initial Closing" shall mean the date of completion of the Initial Issue of Units.

"Investment"

means any investment which the Trustee could make and any property which the Trustee could acquire if it were the absolute beneficial owner of the Trust Fund including, without limitation, any share, bond, note, debenture, debenture stock, warrant, option, convertible bond, loan stock, unit or sub-unit of a unit trust, interest in a limited partnership, futures or forward contract, commodity derivative including options and index swaps, commodity index performance linked notes, exchange contract or other currency exchange transaction for hedging purposes, financial or money market instrument or security of investment grade quality (including short term government obligations, commercial paper, time deposit, certificate of deposit, banker's acceptances and other bank obligations), repurchase agreement, treasury bill, note or security of any kind whatsoever issued by, or any loan (or participation therein) made to any person, body (whether or not incorporated), fund, trust, government or agency of any country, state or territory in the world and any participation in a mutual fund or similar scheme and includes any short term investments, securities or deposits earning money market returns as more particularly described in the Offering Circular.

"Investment Adviser"

means MacKay Shields LLC of 9 West 57th Street, 33rd Floor, New York, NY 10019, U.S.A. or such other institution as may be appointed as such in accordance with the terms hereof from time to time.

"Market Practice"

means a practice which in the opinion of the Trustee is common in the U.S. domestic or international securities market.

"Net Asset Value"

means the Value of all assets of the Trust as the case may be less all liabilities.

"Offering Circular"

means the Offering Circular prepared in connection with the Initial Issue of Units of the Trust and as amended or supplemented from time to time thereafter.

"Purchase Price"

means the price per Unit calculated pursuant to Clause 7(b).

"Record Date"

means such date as may be agreed from time to time between the Trustee and the Unitholders on which distributions will be made pursuant to Clause 11.

"Register"

means the register of Unitholders required to be kept under the terms of Clause 17.

"Repurchase Notice"

means the notice referred to in Clause 13.

"Repurchase Price"

means the price calculated pursuant to Clause 13.

"Trust"

means the trusts of **MacKay Short Duration Alpha Fund** as constituted by this Deed.

"Trustee"

means the said Global Funds Trust Company or such other institution as may be appointed as trustee in accordance with the provisions hereof from time to time.

"Trust Fund"

means the initial sum of AUD100 held by the Trustee upon the trusts hereof together with the proceeds of issue of the Units, all the cash and other property and assets for the time being held or deemed to be held by the Trustee upon the trusts of the Trust as in this Deed set forth.

"Trust Period"

means the period beginning on the date of the establishment of the Trust and ending on the date of its termination.

"Unit"

means one equal undivided share into which the beneficial interest of the Trust shall

be divided from time to time and includes fractions of such Units.

"United States", "U.S." and "U.S.A."

means the United States of America, its territories and possessions.

"Unitholder"

means the registered holder for the time being of a Unit in the Trust including persons jointly so registered.

"Unitholders Resolution"

means a resolution consented to in writing by the holders of a majority in Net Asset Value of the Units in issue of the Trust or passed at a general meeting of the Unitholders of the Trust on the record date for the meeting in question present in person or by proxy and with regard to the passage of which resolution the provisions of Schedule One shall apply.

"Valuation Day"

means the last calendar day of each month, or such other day as the Trustee may from time to time determine upon giving notice to the Unitholders, with the first Valuation Day being the last calendar day of November, 2005 or such other date as the Trustee may determine.

"Value"

means in relation to an Investment the value of each Investment based on a determination by the Administrator, with advice from the Investment Adviser, as to the broadest and most representative market for such Investment. In principle, the Investments of the Trust will be valued as follows:

(a) securities listed on a stock exchange or traded on any other regulated market will be valued at the closing market price on such exchange or market; if there is no such market price available, they will be valued at the most recent indicative market quotation on such exchange or market; (b) securities for which the market price or quotation to be determined under (a) above is not available, or securities not listed on any stock exchange or traded on any regulated market, will be valued at the quotation from an appropriate securities dealers' organisations or any other internationally recognised association; (c) securities for which the quotation to be determined under (b) above is not available will be valued at the theoretical value; (d) securities for which the theoretical value to be determined under (c) above is not available will be valued at the quotation from a market maker of such securities; (e) securities or other assets for which a quotation from a market maker of such securities under (d) above is not available will be valued at their fair value as determined in good faith in accordance with procedures adopted by the Administrator, with advice from the Investment Adviser; (f) short-term investments that have a remaining maturity of sixty (60) days or less may be valued at (i) market value; or (ii) by amortising the difference between the market value and the face amount on the sixty-first (61st) day prior to maturity or (iii) where market value is not available, at amortised cost; (g) cash and other liquid assets will be valued at their face value with interest accrued; and (h)

loans will be valued at their average bid price.

PROVIDED THAT in calculating the Net Asset Value and in dividing such Net Asset Value by the number of Units in issue upon the relevant Valuation Day:

- (1) Where Investments have been agreed to be purchased (or otherwise acquired) or agreed to be sold (or otherwise disposed of) but such acquisition or disposal has not been completed, such Investments shall be included (in the case of the former) or excluded (in the case of the latter) and the gross acquisition or net disposal consideration excluded (in the case of the former) or included (in the case of the latter) as if such acquisition or sale had been duly completed in accordance with its terms.
- (2) There shall be taken into account such sum as in the determination of the Trustee will be paid or reclaimed in respect of taxation related to income or gains arising prior to the date on which the Net Asset Value or any part thereof is being calculated.
- (3) There shall be deducted:
 - (i) the amount of the Expenses (not provided for above) which have accrued but remain unpaid on the relevant Dealing Day;
 - (ii) any amounts not provided for above which are payable or estimated due to be paid pursuant to Clause 9.

PROVIDED FURTHER THAT any such amount to be deducted which is or will in the determination of the Trustee be a liability payable in a Foreign Currency may if the Trustee so determines be deducted from the Value of any Investment or cash of the same currency as such amount before the translation pursuant to (4) below.

- (4) Any Value or amount (whether of an Investment or of cash or amounts on current or deposit account or an amount to be deducted pursuant to (3) above which is not deducted under the proviso to that paragraph) in a Foreign Currency shall be translated into the currency or unit in which the Trust is denominated at the rate which the Trustee shall determine appropriate to the circumstances having regard to any premium or discount which may be relevant or may be liable to be surrendered and to costs of exchange.
 - (b) Words importing the singular number only shall include the plural and vice versa. Words importing persons shall include corporations and other bodies corporate and not corporate. The words "written" or "in writing" shall include printing, engraving, lithography, facsimile or other means of reproducing words in a visible form or partly in one manner and partly another. References to any statutory enactment or instrument or regulation made thereunder shall be deemed to be references to that statute as from time to time amended, modified or re-enacted.

(c) The marginal notes and headings of this Deed are for convenience only and shall not affect the construction of this Deed.

(d) All figures that include fractions shall be rounded to two decimal places.

Name and Constitution of Trust

2. The Trust constituted by this Deed shall be known as **MacKay Short Duration Alpha Fund** or such other name as the Trustee shall determine in its discretion. Notwithstanding the foregoing, in the event that MacKay Shields LLC is no longer the Investment Adviser, the Trustee shall take immediate action to delete "MacKay" from the name of the Trust.

Declaration of Trust

3. (a) The Trustee shall stand possessed of the Trust Fund for the Trust Period upon trust for the holders from time to time of the Units and upon the terms and with and subject to the powers and provisions of this Deed.

(b) The number of Units to be issued in the Trust shall be unlimited as the Trustee shall determine and shall be without par value.

(c) No Unit shall confer upon a Unitholder any interest or undivided share in a particular part of the Trust Fund.

Trust Deed to bind and benefit Unitholders and other persons

4. The terms and conditions of this Deed shall enure for the benefit of and be binding on each Unitholder and all persons claiming through or under it (including all persons on whose behalf such Unitholder holds Units) as if each Unitholder and other such person had been a party to and had executed this Deed, and as if each Unitholder and other such person had covenanted to observe and be bound by all the provisions of this Deed and had thereby authorised the Trustee to do all such acts and things as this Deed may or shall require the Trustee to do or which the Trustee shall do in accordance with the provisions hereof.

Investment of the Trust Fund

5. (a) All subscription proceeds received by the Trustee in respect of the issue of Units, Investments, income, profits or gains arising from or attributable thereto shall form part of the Trust Fund and shall be paid or transferred to, or vested in the Trustee to be held in a segregated fiduciary account exclusively for the benefit of the Unitholders.

(b) The Trustee may, but shall not be obliged to, and as it may determine, incorporate a limited liability subsidiary company through which the Trust may trade.

Initial Issue

6. The offering price for Units for the Initial Issue is AUD1,000 per Unit (with no sales charge thereon). The minimum purchase amount per investor is 1 Unit and thereafter in integral multiples of 1 Unit. All payments for Units shall be made in Australian Dollars.

Issue of Units after Initial Issue

7. (a) After the Initial Closing, further Units may be issued by the Trustee to any Eligible Investor upon application in writing in such form as the Trustee may from time to time decide on each Dealing Day with a minimum purchase amount of 1 Unit and thereafter in integral multiples of 1 Unit per Unitholder. The Trustee shall issue Units to such Unitholder for cash at the Purchase Price (with no sales charge thereon) and the Trustee may determine to reject any subscription without stating any reason therefor.

(b) For purchases of Units after the Initial Issue the Purchase Price per Unit shall be calculated by dividing the Net Asset Value of the Trust Fund on the relevant Valuation Day by the number of Units in issue on such Valuation Day.

(c) Any application for Units shall be received by the Administrator no later than 14:00 hours Luxembourg time on the relevant Dealing Day and payment must be received by the Administrator no later than five (5) Business Days from and excluding the day the relevant calculation of the Net Asset Value is completed. The Trustee reserves the right to decline any order to purchase Units in whole or in part and may cancel any order for which payment as described above is not timely received.

Currency of Subscription Monies

8. The price of Units shall, for all purposes, be calculated and paid in Australian Dollars and accordingly if payment is tendered in a Foreign Currency the amount of such funds shall be determined with reference to the telegraphic transfer, selling and buying rate offered to ordinary customers in Luxembourg on the second Business Day prior to the date of issue of the relevant Unit or at such other exchange rate as the Trustee, after consultation with the Investment Adviser deems appropriate.

Payments out of Capital and Income

9. The Trustee shall subject to Clause 10 ensure that each item of capital expenditure and each Expense is charged to the Trust Fund and:

- (a) there shall be payable out of the capital of the Trust Fund:
 - (i) all stamp and other duties payable from time to time on or in respect of this Deed;
 - (ii) all costs of and incidental to the preparation of supplemental deeds

either pursuant to Clauses 34, 35 or 38 or for the purpose of ensuring that this Deed conforms to relevant legislation coming into force after the date of this Deed;

- (iii) all Duties and Charges;
- (iv) all costs, if any, paid in relation to the registration of Investments;
- (v) all costs paid in connection with the holding of meetings of Unitholders or in soliciting a written consent;
- (vi) all other fees of a capital nature or otherwise, properly incurred payable or accruable in accordance with accepted accounting principles in connection with the management and administration of the Trust.

(b) the whole or any part of any Expenses or taxation in respect of Investments relating to an Accounting Period shall be charged against or provided for out of Income of the Trust Fund as the Trustee determines for the Accounting Period.

Assets and Liabilities of the Trust

10. All subscription proceeds received by the Trustee for the issue or sale of Units, all income, profits or gains arising from or attributable thereto shall be held for the benefit of the Unitholders exclusively. In accordance with Clause 9 the Investments of the Trust shall be charged with the liabilities of the Trust.

Distributions

11. (a) The Trustee may from time to time after consultation with the Investment Adviser make distributions to the Unitholders recorded in the Register on such agreed date (together with 31st October and 30th April each year, the "Record Date") based on the Net Asset Value of the Trust as of the preceding Valuation Day which shall be paid firstly out of net income and thereafter capital of the Trust.

(b) Distributions will be made to the person in whose name Units are registered in the Register on the Record Date and in Australian Dollars at such time or times as the Trustee shall determine.

(c) The Trustee shall not be liable to account to any Unitholder or otherwise for any payment made or suffered by the Trustee in good faith and in the absence of wilful default, fraud or negligence to any duly empowered fiscal authority of any jurisdiction for Duties and Charges or other taxes or charges or other assessments in any way arising out of or relating to any transaction of whatsoever nature pursuant to the provisions of this Deed, notwithstanding that such payments ought not to be or need not have been made or suffered.

Transfers of Units

12. (a) Every Unitholder may, subject to the provisions of this Clause, transfer any Unit held by it by an instrument in writing in such form as the Trustee may from time to time approve, provided that the transferee shall first supply such information as may be required by the Trustee or the Administrator in order to comply with any statutory provision or governmental or other requirement or regulation of any relevant or applicable jurisdiction or policy of the Trustee for the time being in force or otherwise as may be required by the Trustee and provided also that the Trustee or the Administrator shall first give its prior consent to such transfer. Further the transferee will be required to represent to the Trustee or the Administrator in writing that (i) the transfer of Units is to an Eligible Investor and (ii) the transferee is acquiring the Units for its own account.

(b) Every instrument of transfer shall be required by the Trustee to be signed by or on behalf of the transferor and the transferee. The transferor shall be deemed to remain a Unitholder and to be entitled to the Units the subject of the transfer until such time as the transfer is registered and the name of the transferee is entered as Unitholder in the Register in respect thereof.

Repurchase of Units

13. (a) A Unitholder may serve a Repurchase Notice (in such form as the Trustee may from time to time approve) which shall be received by the Administrator no later than 14:00 hours Luxembourg time on the relevant Dealing Day requesting that the Trustee repurchase the Units specified in the Repurchase Notice, subject to a minimum repurchase amount of 1 Unit and thereafter in multiples of 1 Unit per Unitholder.

(b) The Repurchase Price per Unit pursuant to (a) above shall be calculated by dividing the Net Asset Value of the Trust Fund on the relevant Dealing Day as at the time determined by the Trustee on such Dealing Day by the number of Units in issue on such Dealing Day.

(c) The repurchase of Units may be suspended in the circumstances set out in Clause 14.

(d) Subject to paragraph (a) of this Clause, remittances of repurchase proceeds will be effected by wire transfer in Australian Dollars no later than five (5) Business Days from and excluding the day the relevant calculation of the Net Asset Value is completed. No such repurchase proceeds will bear interest prior to actual distribution.

Suspension of issues and repurchases

14. The determination of Net Asset Value and the issue and repurchase of Units pursuant to Clauses 7 and 13 hereof may be suspended by the Trustee during:

(a) any period when any market or stock exchange, which is the principal market

or stock exchange, on which a material part of the Investments or transactions for the time being are quoted or referenced, is closed, otherwise than for ordinary holidays, or during which dealings are substantially restricted or suspended; or

(b) the existence of any state of affairs which constitutes an emergency as a result of which disposal of Investments of the Trust by or on behalf of the Trustee or the Investment Adviser would be impracticable; or

(c) any breakdown in the means of communication normally employed in determining the price of any of the Investments of the Trust or the current prices on any market or stock exchange; or

(d) any period when remittance of moneys which will or may be involved in the realisation of, or in the payment of, any of the Investments of the Trust is not possible; or

(e) upon the occurrence of any event causing the Trust to liquidate substantially (as determined in the discretion of the Trustee) or terminate or upon the order of a Cayman Islands authority.

All Unitholders will be notified in writing of any such suspension within seven (7) days of the suspension and will be promptly notified upon termination of such suspension.

Compulsory Repurchase

15. In the event that the Trustee shall determine that a Unit is being held by or for the benefit of a person who is not an Eligible Investor or that such holding is unlawful under the laws of any relevant jurisdiction then the Trustee may repurchase such Unit at Net Asset Value calculated on the next Valuation Day without notice.

Unitholder to be treated as Absolute Owner

16. A Unitholder as determined on the Register shall be the only person recognised by the Trustee as having any right, title or interest in or to a Unit provided that the Trustee shall in its determination be entitled to consider at any time whether Units are held by or for the benefit of an Eligible Investor. Subject thereto the Trustee shall be entitled to recognise the Unitholder recorded on the Register as the absolute owner of such Units and shall not be bound by or compelled in any way to recognise (even when having actual or constructive notice thereof and notwithstanding any enquiries which the Trustee shall be required to make or shall have made concerning the beneficial ownership of Units registered or to be registered in the name of a nominee) any equitable, contingent, future or partial interest in any Units except as required by law or by order of some court of competent jurisdiction.

Ownership and Register

17. (a) A Register of Unitholders shall be kept by or on behalf of the Trustee or the Administrator which shall contain the following information:

- (i) the full names, facsimile numbers and addresses of the Unitholders;
 - (ii) the number of Units of the Trust held by every Unitholder; and
 - (iii) the date on which each Unitholder was entered in the Register as Unitholder.
- (b) The Register shall be kept by or under the control of the Administrator.
- (c) The receipt of a Unitholder, or, if there are joint Unitholders, of any one of them for any monies payable in respect of any Unit shall be a good discharge to the Trustee.
- (d) Any change of the name or address of any Unitholder shall forthwith be notified in writing to the Administrator who shall, upon compliance with any formalities it may require, alter the Register accordingly.
- (e) Upon any Unitholder becoming resident in the Cayman Islands or if an individual domiciled in the Cayman Islands or a nominee or trustee for such person the Unitholder shall forthwith notify the Administrator in writing of that fact.

Certificates

18. The Trustee shall if specifically requested by a Unitholder, issue or cause to be issued a Certificate in such form as it shall from time to time designate evidencing the title of the registered holder thereof to the number of Units specified thereon. A Certificate shall be prima face evidence of the entitlement of a Unitholder only and shall upon issue contain such information as is consistent with the Register maintained in accordance with Clause 17 which Register shall be conclusive evidence as to the persons respectively entitled to the Units entered therein. No notice of any trust expressed, implied or constructive shall be entered on the Register in respect of any Unit.

Principal Office

19. The Trustee may maintain a principal office for the Trust in the Cayman Islands.

Fees and Commissions

20. The Trustee in respect of the Trust shall be entitled to pay such reasonable commission, finders fees, management consultancy fees or similar payments as may be agreed in writing in advance to persons who introduce potential Investments to the Trust.

Power of the Trustee to act and to employ Agents

21. (a) The Trustee, if a corporation, may in the execution and exercise of all or any of the trusts, powers and discretions vested in it by this Deed act by or through its responsible officers for the time being.

(b) The Trustee may, at the expense of the Trust, employ attorneys-at-law, accountants, bankers, brokers or other agents including, without limitation, the Custodian, the Financial Intermediary and the Investment Advisers to transact any business required to be done in the execution of the trusts relating thereto.

The Trustee and Information

22. The Investment Adviser, the Custodian and the Administrator shall supply the Trustee with all such information as the Trustee may reasonably require in respect of any dealing with the Trust Fund or other transaction or act relating to or concerning the Trust and any proposed personal commitment of the Trustee. The Trustee shall not be obliged to enter into any personal commitment which in its determination (such determination to be binding upon the Unitholders) is not sufficiently secured by the indemnity out of the Trust Fund given under the provisions of this Deed.

Trustee to have full power to deal with the Trust Fund

23. The Trustee shall have full powers to invest in any Investment and to deal in any way with or dispose of (including powers to sell, mortgage, pledge or charge and whether or not in favour of any affiliate of the Trustee) the Trust Fund or any part thereof as if it were the beneficial owner thereof provided that the Trustee shall ensure that the Trustee shall comply at all times with such principal investment objectives and policies and investment restrictions and policies with regard to Investments as are contained in the Offering Circular under "Principal Investment Objective and Policies" which may be changed by the Trustee after consultation with the Investment Advisers, if and as the Trustee may deem it to be in the best interests of Unitholders and after the Trustee gives fourteen days' notice thereof to all the Unitholders.

Exculpation for Trustee

24. (a) The Trustee shall be under no liability on account of anything done or omitted to be done unless done or omitted to be done with the wilful default, fraud or negligence of the Trustee.

(b) The Trustee will not be responsible for any loss resulting from the Trust's acquisition of investments approved by Unitholders.

(c) The Trustee shall not be under any obligation to appear in, prosecute or defend any action or suit in respect of the provisions of this Deed or in respect of the Trust Fund or any part thereof which in its opinion would or might involve it in expense or liability, unless

the Trustee shall be satisfied that it will have adequate recourse to the Trust Fund in respect of any such expenses or liability as aforesaid.

Power of the Trustee to Delegate

25. (a) Subject to the terms of this Deed the management and administration of the Trust Fund and all or any of the rights, privileges, powers, duties, trusts and discretions vested in the Trustee by virtue of this Deed may be delegated to any person, institution, firm or body corporate approved by the Trustee.

(b) Any such delegation may be upon such terms and conditions, for such periods and at such remuneration and be subject to such regulations including power to sub-delegate as the Trustee determines.

(c) The Trustee shall be bound to supervise the conduct of any delegate or sub-delegate but the Trustee shall not be responsible for any loss incurred by reason of any misconduct or default on the part of any delegate or sub-delegate unless occasioned by the actual wilful default, fraud or negligence of the Trustee as the case may be.

(d) The provisions of this Deed relieving the Trustee from liability whether for doing or not doing some act or thing or for the acts or omissions of some other person or in respect of any other matter or thing shall apply equally to and for the benefit of any person to whom any delegation or sub-delegation has been made pursuant to this Clause. Subject thereto, where there has been a delegation or sub-delegation pursuant to this Clause the delegate or sub-delegate shall have the same responsibilities in relation to the matter which has been delegated to him as the Trustee would have had the powers of delegation and sub-delegation contained in this Clause not been exercised.

Custody of Investments

26. Investments and other property or assets acquired by the Trust shall be deposited with the Custodian for the purpose of providing for their safekeeping provided that the Custodian may appoint sub-custodians at its discretion.

Restriction on Borrowing

27. The Trustee shall not have the power to borrow, mortgage, pledge or charge assets of the Trust Fund save in accordance with the Principal Investment Objective and Policies contained in the Offering Circular which may be amended from time to time in accordance with Clause 23.

Participating in Current Market Practices

28. Notwithstanding Clause 27, the Trustee in respect of the Trust may undertake any other Market Practice which may, in the determination of the Trustee, be usual or customary.

Accounts and Notification of Net Asset Value

29. (a) The Trustee shall keep or cause to be kept proper books of account and records in which shall be entered all transactions for the account of the Trust. The Trustee shall cause to be prepared accounts of the Trust as of the Accounting Date. The first accounts shall be for the period from the inception of the Trust to the Accounting Date in December 2005. The accounts of the Trust shall show the amount of any Expenses or other remuneration paid to any person or institution to which the Trustee has delegated powers hereunder or has received payments.

(b) A copy of the accounts of the Trust shall be sent by the Administrator to each Unitholder within one hundred and eighty (180) days of the end of the Accounting Period. Upon a Unitholder's request, semi-annual accounts of the Trust, which will be available within 120 days of the end of the 6-month period ending in June each year will be sent to that Unitholder.

(c) The Net Asset Value shall be computed as at each Valuation Day in accordance with the provisions set out in the Offering Circular and shall be made available at the office of the Administrator within nine (9) Business Days in Luxembourg following each Valuation Day.

(d) The Net Asset Value as at each Valuation Day shall be certified by an authorised officer or representative of the Trustee or the Administrator, and any such certification shall be conclusive, except in the case of manifest error.

Voting Rights

30. (a) All rights of voting conferred by an Investment shall be exercised by or on behalf of the Trust in such manner as the Trustee may in writing direct. The Trustee may refrain at its own discretion from giving directions concerning the exercise of any voting rights. No Unitholder shall have any right to interfere or complain.

(b) The Trustee shall direct the exercise of any voting rights in what it shall consider to be the best interests of the Unitholders, but the Trustee shall be under no liability or responsibility in respect of the management of the Investment in question. Subject to Clause 24, neither the Trustee nor any representative, proxy, or attorney of the Trustee shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval voted or given or withheld.

(c) The phrase "rights of voting" or the word "vote" used in this Clause shall be deemed to include not only a vote at a meeting but any consent to or approval of any arrangement, scheme or resolution or any alteration in or abandonment of any rights attaching to any Investments and the right to requisition or join in a requisition to convene any meeting or to give notice of any resolution or to circulate any statement.

Remuneration of Trustee

31. (a) The Trustee for the time being shall be entitled to receive out of the assets of the Trust, a fee payable in Australian Dollars quarterly in arrears on a calendar year basis of an amount equivalent to 0.02 per cent. per annum of the average of the Net Asset Values of the Trust as at the close of business in Luxembourg on each Valuation Day in each quarter. The initial fee for the period (and including) the Initial Closing to 31st March, 2006 will be paid to the Trustee on a prorated daily basis based on the average of the Net Asset Values of the Trust as at the close of business in Luxembourg on each Valuation Day during such period. A fee payable for each quarter will be paid on the 25th day of the month following the end of the relevant quarter (but if such a day is not a Business Day, it will be paid on the preceding Business Day).

(b) The Investment Adviser, the Administrator and the Custodian for the time being shall be entitled to receive such remuneration (if any) on a schedule and for an amount as may be agreed from time to time with the Trustee as set out in the Offering Circular.

(c) Any such remuneration shall be deemed to accrue from day to day and shall continue to be payable until retirement or the Trust hereof shall be finally wound up or shall be in course of administration by or under the direction of the Court.

(d) In the event that the Trustee shall propose any amendment to the foregoing remuneration arrangements as set forth in Clauses 31(a) and (b) then the Trustee shall obtain the approval to such amendment prior to its taking effect by Unitholders Resolution and absent such Unitholders Resolution no amendment shall be permitted.

(e) In the event that the Trustee shall act as banker in respect of the funds of the Trust then it shall, in such capacity, be entitled to retain all normal banking profit.

Termination

32. (a) The Trust shall be terminated on the happening of the first to occur of any of the following events:

- (i) if it becomes illegal or, in the opinion of the Trustee, impractical or inadvisable or contrary to the interests of the Unitholders either to continue the Trust or to remove it to another legal jurisdiction as provided in Clause 35;
- (ii) if the Unitholders by Unitholders Resolution shall so determine;
- (iii) upon the termination of the period which shall commence on the date of this Deed and terminate one hundred and fifty years thereafter; or
- (iv) if the Trustee shall have given written notice of its intention to retire under Clause 34, or if the Trustee shall be placed in compulsory or voluntary liquidation (otherwise than a voluntary liquidation for the

purposes of reorganisation approved in advance by Unitholders Resolution), and the Trustee as provided in Clause 34 shall be unable to appoint or procure the appointment of another corporation ready to accept the office of trustee of the Trust as a replacement for the Trustee within two hundred and seventy (270) days after the giving of such notice.

(b) If the Trust shall be terminated under the provisions of this Clause the Trustee shall forthwith give notice of such termination to all Unitholders.

Trustee to Realise Investments

33. (a) Upon the Trust being terminated:

- (i) All Repurchase Notices previously lodged with the Trustee and not effected shall be deemed withdrawn.
- (ii) The Trustee shall in respect of the Trust realise all Investments sufficient (together with any cash on current or deposit account) to repay all borrowings effected by the Trust (together with interest thereon) and to meet all costs, Duties and Charges, Expenses, and demands referred to in Clause 33(b). Such realisation, and any repayment of borrowings, shall be carried out and completed in such manner and within such period after the termination of the Trust as the Trustee determines.
- (iii) The Trustee shall from time to time and at such time or times as it shall deem convenient (but subject to Clauses 33(a)(i) and 33(b)) distribute to the Unitholders pro rata to the number of Units held by them on the date of termination all net cash proceeds derived from the realisation of the Trust Fund and any other cash then forming part thereof and available for the purpose of such distribution.

(b) The Trustee shall be entitled to retain out of any money in its hands under the provisions of this Clause full provision for all Duties and Charges, Expenses and other costs, charges, expenses, claims and demands incurred, made or apprehended by the Trustee in connection with or arising out of the termination of the Trust.

Retirement, Removal and Appointment of New Trustee

34. (a) A Trustee may retire and be discharged from the trusts hereof upon giving no less than one hundred and eighty (180) days' prior written notice to all Unitholders. Such retirement and discharge shall only take effect upon the appointment of a successor trustee as provided in this Clause 34. If the Trustee has given such written notice of its intention to retire, or in the event of the Trustee going into liquidation (whether compulsory or voluntary), and if the Trustee is able to find another corporation incorporated in the Cayman Islands which is ready to accept the office of Trustee and which the Trustee determines is suitable in

all other respects as a replacement for the Trustee, the serving Trustee shall, by deed supplemental hereto which the successor trustee shall be a party, appoint such successor trustee as trustee of the Trust hereunder.

(b) In the event that the Trustee having given written notice of retirement as aforesaid is unable to locate and appoint a successor trustee within one hundred and eighty (180) days of the date of such notice then the Trustee shall forthwith convene a meeting of all Unitholders in accordance with Schedule One hereof. The meeting of Unitholders shall be charged with the responsibility by Unitholders Resolution of appointing a successor trustee, incorporated in the Cayman Islands, and upon selecting such successor trustee and having notified the Trustee in writing of the same the Trustee shall, by deed supplemental hereto to which the successor trustee shall be a party, appoint such successor trustee as trustee of the Trust hereunder.

(c) The Unitholders by Unitholders Resolution may at any time by notice in writing notify the Trustee of its removal and designate a successor trustee and upon receipt of such notice the Trustee shall, by deed supplemental hereto to which the successor trustee shall be a party, appoint such successor trustee as trustee of the Trust hereunder.

(d) After retirement a Trustee shall continue, in respect of the period of its trusteeship of the Trust, to be entitled to the benefit of all indemnities, powers, privileges and rights of recourse against the Trust Fund conferred upon the Trustee by this Deed that were available to the Trustee during such period in addition to the indemnities, powers, privileges and rights of recourse given by law to a retired trustee.

Removal of the Trust to another jurisdiction

35. (a) If at any time the Trustee determines that it would be in the interests of the Unitholders to remove the Trust to the jurisdiction of some other country or place then, subject to the fulfilment of the conditions set out in Clause 35(b), the Trustee may by deed executed declare that, from the date of the deed or any later date specified therein, this Trust shall take effect in accordance with the law of some other country or place in any part of the world. The forum for the administration of the Trust shall thenceforth be conducted under the jurisdiction of the courts and in accordance with the laws of the country or place named in the declaration of the Trustee.

- (b) The Trustee may only exercise the power contained in Clause 35(a) if:
- (i) the law of such other country or place to which jurisdiction it is proposed to move the administration of the Trust recognises the existence of trusts and enforces the rights of beneficiaries under trusts and would grant the Trustee a valid discharge from its obligations and would not result in the imposition of any material taxes on the Trust Fund or the Unitholders; and
 - (ii) a suitable and substantial trust company or institutional trustee incorporated or carrying on business in such other country or place and

qualified under any applicable laws of such other country or place to act as trustee hereof and approved by the Trustee for the purpose is willing to be appointed Trustee hereof; and

- (iii) the Trustee has first obtained a Unitholders Resolution to approve the exercise of such power.

(c) Upon the execution of the deed, the trust company or institution and trustee approved by the Trustee shall be appointed trustee of the Trust in place of the Trustee who shall thereupon retire and shall transfer and pay over the assets comprising the Trust Fund and the amount (if any) credited to but at that time undistributed in respect of distributions.

(d) Subject always to the provisions of Clause 38 so often as any such deed shall be made, the Trustee may by such deed or at any time or times thereafter by deed make such consequential alterations or additions to the Trustee's powers and the other provisions of this Deed as the Trustee may consider necessary or desirable to the intent that the Trustee's powers and the other provisions of this Deed shall mutatis mutandis be as valid and effective as they are under the laws of the Cayman Islands.

Discretion of Trustee

36. Except if and so far as herein otherwise expressly provided, the Trustee shall, as regards all the trusts, powers, authorities and discretions vested in the Trustee with regard to determinations hereunder, have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of and time for the exercise thereof, and in the absence of wilful default, fraud or negligence the Trustee shall not be in any way responsible for any loss damage or inconvenience that may result from the exercise or non-exercise thereof.

Indemnity for Trustee

37. The Trustee shall be entitled, for the purpose of indemnity against actions, costs, claims, damages, expenses or demands to which it may be put as Trustee in connection with the Trust (in the proper performance of its powers and duties under this Deed), to have recourse to the Trust Fund (subject always to Clause 10) save in respect of any action, cost, claim, damage, expense or demand which results from any act or omission occasioned by the wilful default, fraud or negligence of the Trustee. The Trustee shall not be entitled to any indemnity from any Unitholder past or present.

Amendment of Trust Deed

38. Upon ten (10) days written notice to the Unitholders, the Investment Adviser, the Administrator and the Custodian, the Trustee shall be entitled by Deed supplemental hereto to amend, modify, alter or add to the provisions of this Deed in such manner and to such extent as it may consider to be in the best interests of the Unitholders provided that (i) unless the Trustee shall certify in writing that, in its opinion, such amendment, modification, alteration or addition does not materially prejudice the interests of the then existing Unitholders and

does not operate to release the Trustee from any responsibility to Unitholders, no such amendment, modification, alteration or addition shall be made without the Trustee having first obtained a Unitholders Resolution to approve such amendment, modification, alteration, or addition, and (ii) that no such amendment, modification, alteration or addition shall impose upon any Unitholder any obligation to make any further payment in respect of its Units or to accept any liability in respect thereof.

Notices

39. Any notice or other document required to be served upon or sent to a Unitholder shall be deemed to have been duly given or served if sent by postage prepaid registered airmail to its address, or by facsimile to the number (with postage prepaid airmail confirmation to be posted by the next following Business Day), as appearing in the Register. Any notice or other document required to be served upon or sent to the Trustee, Investment Adviser, Administrator or Custodian shall be deemed to have been duly given or served if sent by posted prepaid registered airmail or by internationally recognised overnight courier to its address as appearing in the Offering Circular. Unless otherwise specified herein, any notice or document served or sent by postage prepaid registered airmail shall be deemed to have been served or received on the seventh day after it was posted (not including the day of posting). In proving such service or receipt it shall be sufficient to prove that the envelope or wrapper containing such notice or document was properly addressed, stamped and posted.

Other Trusts

40. The Trustee shall be at liberty to establish or act as Trustee, for other trusts separate and distinct from the trusts established hereunder provided that the operations of and information related to the Trust shall be deemed confidential and proprietary thereto.

Confidentiality

41. Unless required to disclose the same by a competent governmental, regulatory or judicial authority the Trustee shall keep confidential all information relating to the Trust.

Proper Law

42. Subject to the provisions of Clause 35 this Deed shall in all respects be governed by and construed in accordance with the laws of the Cayman Islands and the Cayman Islands shall be the forum for the administration hereof.

SCHEDULE ONE

MEETINGS OF UNITHOLDERS

1. The Trustee shall when required to do so by the provisions of this Deed or at the request in writing of Unitholders registered as holding not less than one-tenth of the Net Asset Value of the Units for the time being in issue with respect to the Trust convene a meeting of Unitholders at such time and place set forth in such notice and the following provisions of this Schedule shall apply to that meeting.

2. A written notice of every meeting, specifying the place, day and hour of the meeting and the terms of any resolution to be proposed at the meeting, shall be posted to each Unitholder by the Trustee on the record date for the meeting which shall be at least twenty-one (21) days before the date specified in the notice for the meeting. The accidental omission to give notice to or the non-receipt by any Unitholder shall not invalidate the proceedings at any meeting. Any director or other authorised official of the Trustee shall be entitled to attend and speak at any meeting.

3. The Net Asset Value calculation with regard to the Unitholders Resolution shall be undertaken on the next preceding Valuation Day to the meeting, but subject thereto, there shall be no quorum requirements.

4. A person (who need not be a Unitholder) nominated in writing by the Trustee shall act as Chairman of a meeting and if no such person is nominated or if at any meeting the person nominated shall not be present within fifteen minutes after the time appointed for holding the meeting the Unitholders present shall choose one of their number to be Chairman.

5. The Chairman may with the consent of any meeting and shall if so directed by the meeting adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.

6. At any meeting any resolution put to the vote of the meeting shall be decided by a poll which shall be taken in writing and if approved by Unitholders representing a majority of the Net Asset Value of the Trust the result of a poll shall be deemed to be the resolution of the meeting.

7. On a poll votes may be given either personally or by proxy.

8. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a corporation either under the common seal or under the hand of an officer or attorney authorised in writing. A person appointed to act as a proxy need not be a Unitholder.

9. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a certified copy of such power or authority shall be presented at the meeting at which the person named in the instrument proposes to vote and in default

the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date named in it as the date of its execution.

10. An instrument of proxy may be in the following form or in any other form which the Trustee shall approve:

"I/We _____ of _____ being a Unitholder of the Unit Trust known as **MacKay Short Duration Alpha Fund** hereby appoint of as my/our proxy to vote for me/us and on my/our behalf at the meeting of Unitholders of and in the said Trust to be held on the _____ day of _____, 20____ and at any adjournment thereof.

As witness my/our hand this _____ day of _____, 20____."

11. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous revocation of the proxy or of the power of attorney or other authority under which the proxy was signed or the transfer of the Units in respect of which the proxy is given provided that no intimation in writing of such revocation or transfer shall have been received by the Trustee before the commencement of the meeting or adjourned meeting at which the proxy is used.

12. Minutes of all resolutions and proceedings at every meeting shall be made and duly entered in books to be from time to time provided for that purpose by the Trustee at the expense of the Trust Fund and any such minutes as aforesaid if purporting to be signed by the Chairman of the meeting shall be conclusive evidence of the matters therein stated and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat to have been duly passed.

13. A Unitholders Resolution shall be binding upon all Unitholders whether present or not present at the meeting and each of the Unitholders and the Trustee shall subject to the provisions relating to indemnity in this Deed contained be bound to give effect thereto accordingly.

SCHEDULE TWO

ELIGIBLE INVESTOR


Definition. An "Eligible Investor" shall be any person, corporation or entity which is not (i) a citizen or resident of the U.S., a partnership organised or existing in any state, territory, commonwealth or possession of the U.S., or any corporation, trust or other entity organised under the laws of or existing in the U.S. or any state, territory, commonwealth or possession thereof; (ii) a citizen or resident of the Cayman Islands or a person or entity domiciled in the Cayman Islands (excluding any exempted or nonresident entity incorporated in the Cayman Islands); or (iii) a custodian, nominee, or trustee for any person or entity described in (i) or (ii) above.

IN WITNESS WHEREOF the Trustee has executed this Deed the day and year first before written.

EXECUTED AS A DEED)
for and on behalf of)
Global Funds Trust Company)
not individually but solely as Trustee)
MacKay Short Duration Alpha Fund)
in the presence of:)



Mr. Yoshikazu CHONO
Director
Global Funds Trust Company



Witness

EXHIBIT B

Judgments

CA, CIVIL DIVISION



Case No: A2/2010/0065

Neutral Citation Number: [2010] EWCA Civ 526

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM QUEEN'S BENCH DIVISION

THE HONORABLE MR JUSTICE EADY

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: Wednesday 21st April 2010

Before:

LORD JUSTICE SEDLEY

Between:

THE NORTH LONDON MOSQUE TRUST

Appellant

- and -

THE POLICY EXCHANGE AND ANOTHER

Respondent

(DAR Transcript of

WordWave International Limited

A Merrill Communications Company

165 Fleet Street, London EC4A 2DY

Tel No: 020 7404 1400 Fax No: 020 7831 8838

Official Shorthand Writers to the Court)

Ms Adrienne Page QC and **Mr Richard Munden** (instructed by Farooq Bajwa and Co) appeared on behalf of the **Appellant**.

The Respondent did not appear and was not represented.

Judgment

(As Approved by the Court)

Crown Copyright ©Lord Justice Sedley:

1. This is a renewed application for permission to appeal following refusal by Sir Richard Buxton of permission on sight of the papers. It is made by Ms Page QC in an action for libel brought initially in the name of the North London Central Mosque Trust against critics who, as I will readily accept for present purposes, have unjustifiably and unfairly defamed it.

2. Although the point was taken late, it was eventually asserted by the defendants, and is now accepted by the appellants, that such an action cannot be maintained in the name of the Trust, firstly because a trust is not a legal person, but an equitable relationship; and, secondly, because there is no legal provision which gives it *locus* or deems it to be a legal person.

3. The application before Eady J, this being conceded, therefore took the form of the appellants' application to substitute themselves, namely the Trustees, as claimants. Importantly and logically, no relevant amendment was proposed to the pleaded case itself because the explicit purpose of the proposed substitution was still to vindicate the charity's -- that is the Trust's -- reputation, not the reputations of the Trustees themselves. Put another way the object was to constitute the Trustees representative claimants on behalf of the Trust, although that of course could not in strict terms be done.

4. This was the critical point which led Eady J to refuse the application and accordingly to strike out the claim:

"In my judgment the lack of capacity is a fundamental problem of substance, rather one of form, which cannot be cured by putting up individuals who do not wish to sue on their own account, as was at one stage contemplated, but to do so in a representative capacity. Who or what is it that they wish to represent?"

5. Ms Page submits that the problem is not one of substance but one of form, and that the form which she seeks to adopt is adequate for the pursuit of the action. Much of her and Mr Munden's skeleton argument is devoted to establishing that there is no good reason why, in one form or another, an unincorporated association cannot sue for libel. That is without doubt arguable, but what makes it arguable is that it treats such an association as the totality of its members, each of whom does have standing to sue. Similarly, I would have no difficulty in accepting that, provided the pleaded facts warranted it, the Trustees of a charitable Trust, albeit unincorporated, could be actionably defamed as individuals by a slur against the Trust itself. But neither of those is a principle of which Ms Page is now seeking to take advantage. Her aim is precisely not to make any claim on behalf of the Trustees themselves, albeit that they might well have been able to say that a slur on the Mosque Trust was a slur on them.

6. I have explored with Ms Page in argument the reasons for seeking to make this distinction. While it is not necessary for me to make any finding about it, it seems to me likely that, while in the event of defeat the Trustees, even on the amended version of the action, would be liable for costs, they would, if they were suing to vindicate the Trust's reputation and not their own, have a claim for indemnification out of the Trust's funds. That is something that they would not expect to have if they were suing solely to vindicate their own reputations.

7. That, however, is not a matter upon which the court is required to pass judgment; it is merely an explanation of why this apparently arid distinction is sought to be made. Its basis is perhaps most crisply summarised at paragraph 11 of the skeleton argument in these four propositions:

"11.1 That a charitable trust is an entity possessing sufficient of the attributes of legal personality to have an existence in law and a reputation of its own, separate and distinct from its trustees, capable of being the subject of a defamation claim. This is sometimes referred to as 'quasi corporate' status.

11.2 By analogy with any of: a corporate charity, an unincorporated commercial entity, a trade union or other quasi corporate entity, the distinct character of goodwill of a charitable trust can be injured and its operations impaired, to its financial detriment, by the publication of defamatory matter.

11.3 It follows that, in the absence of any express statutory prohibition, there is no reason in law for a charitable trust to be refused access to the Court in a claim for libel upon itself.

11.4 In the absence of any procedural rule providing for it to sue or be sued in its registered name, the charity's libel claim is properly brought in the name of its trustees."

8. In support of those propositions Ms Page has submitted that there is a line of passing-off cases which is of assistance to her because the kind of property that passing off protects is not dissimilar to the kind of property that libel protects. One is the decision of, as he then was, Mr Lawrence Collins QC in Artistic Upholstery Limited v Art Forma (Furniture) Limited [1999] 4 AER 277. I am very doubtful whether that decision is more than a rehearsal of the uncontroversial proposition that an injury to an unincorporated association may sound in damages as an injury to its individual members. Perhaps more assistance is derived by Ms Page from the decision of this court in Burge v Haycock [2001] EWCA Civ 900. That case was brought on behalf of an unincorporated charitable organisation, but in the names of the Chief and Deputy Chief Executive of it. The headnote includes at paragraph (6) of the holdings this proposition:

"A claimant in a passing off action could be a charitable organisation or a professional institution which did not carry on commercial activity in the ordinary sense of the word, but which nonetheless had a valuable property in the sense of its goodwill. If the elements of passing off were made out, the claimant was entitled to protect that goodwill."

A panoply of authority is cited for that proposition. Given that that was an unincorporated association, it may be that there is a scintilla of an argument there to support Ms Page's position in the present case.

9. If I were deciding this on the ordinary basis of whether there was a realistic prospect of oversetting Eady J's decision, I would have to say that I do not think there is such a prospect. But it may be nevertheless that what Ms Page has advanced merits the attention of this court, because we have reached the stage where very fine lines are having to be drawn about the constitution and status of libel claimants, and it may be that a degree of clarity about the matter at this level would be of general assistance. Ms Page and her clients understand very well what the cost implications are of bringing an appeal and losing it. It will be a matter for them to decide whether to pursue it, but it seems to me that, on the residual ground afforded by Rule 52.36, I am justified in giving permission to appeal for the reasons I have given, but no others.

10. Ms Page, you wanted a continuing stay on the costs order. I will grant that but with liberty to the defendants to apply to me in writing if they wish to secure any other order in relation to costs.

Order: Application allowed with continuing stay on costs order

EXHIBIT C

GLOBAL FUNDS TRUST COMPANY

Registered Office: PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands

Trustee Resolutions

We, Global Funds Trust Company, as the trustee (the "Trustee") of **MacKay Short Duration Alpha Fund** (the "Trust"), established by a Declaration of Trust dated 2 November 2005 (the "**Declaration of Trust**"), hereby note that:

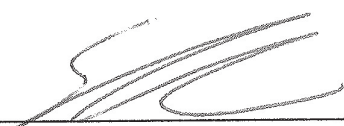
- 1 The Trustee has received repurchase notices (together, the "**Repurchase Notices**") from all the holders of Units requesting the repurchase of all the outstanding issued Units on 31 August 2012 (the "**Redemption**"). All remittances in respect of the Redemption were paid out on 19 December 2012 in accordance with the terms of the Declaration of Trust.
- 2 Capitalised terms not otherwise defined herein shall have the meaning ascribed to them in the Declaration of Trust.
- 3 Clause 32(a)(i) of the Declaration of Trust provides for the termination of the Trust where, among other things, in the opinion of the Trustee, it is impractical to continue the Trust.
- 4 Clause 33 of the Declaration of Trust states that, upon termination of the Trust:
 - (a) Upon the trust being terminated:
 - (i) All Repurchase Notices previously lodged with the Trustee and not effected shall be deemed withdrawn.
 - (ii) The Trustee shall in respect of the Trust realise all Investments sufficient (together with any cash on current or deposit account) to repay all borrowings effected by the Trust (together with interest thereon) and to meet all costs, Duties and Charges, Expenses, and demands referred to in Clause 33(b) of the Declaration of Trust. Such realisation, and any repayment of borrowings, shall be carried out and completed in such manner and within such period after the termination of the Trust as the Trustee determines.
 - (iii) The Trustee shall from time to time and at such time or times as it shall deem convenient (but subject to Clauses 33(a)(i) and 33(b)) distribute to the Unitholders pro rata to the number of Units held by them on the date of termination all net cash proceeds derived from the realisation of the Trust Fund and any other cash then forming part thereof and available for the purpose of such distribution.
 - (b) The Trustee shall be entitled to retain out of any money in its hands under the provisions of this Clause full provision for all Duties and Charges, Expenses and other costs,

charges, expenses, claims and demands incurred, made or apprehended by the Trustee in connection with or arising out of the termination of the Trust.

- 5 The Trustee proposes to terminate the Trust in accordance with Clause 32(a)(i) of the Declaration of Trust on 19 December 2012 (the "**Termination Date**").

Accordingly, **IT IS RESOLVED:**

- 1 **THAT** as a result of the Redemption, it is impractical to continue the Trust thereafter and the Trust be terminated pursuant to Clause 32(a)(i) of the Declaration of Trust on the Termination Date (the "**Termination**"); and
- 2 **THAT** the Termination be carried out in accordance with the provisions of Clause 33 of the Declaration of Trust.



Koichi SUDO
Director
Global Funds Trust Company

for and on behalf of
Global Funds Trust Company
as Trustee of MacKay Short Duration Alpha Fund

Date: 21 December 2012