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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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: :  
In re: : :  
: Chapter 15  
TRADE AND COMMERCE BANK (IN LIQUIDATION) : :  
: Case No. 05-  
Debtor, : :  
: :  
----- X

**AFFIRMATION OF ALISTAIR J. WALTERS**

ALISTAIR J. WALTERS, affirms the truth of the following under penalty of perjury as follows:

1. I qualified as a solicitor of the Supreme Court of England and Wales and in 1990. I am now practicing as an attorney at law of the Cayman Islands and have been since 1999. I am a partner with the firm of Campbells, and am past President of the Cayman Islands Compliance Association (2000 to 2003), a Certified Fraud Examiner, member of the US National Society of Compliance Professionals (NSCP) and Cayman Islands Law Society as well as the Association of Business Recovery Professionals R3. I have been involved in litigation for clients concerning financial, banking and trust matters, asset recovery as well as advising trustees, liquidators and creditors in relation to local and international corporate and investment fund bankruptcies and restructuring.

2. I have acted, and continue to act, as the primary Cayman Islands legal advisor to the Joint Official Liquidators ("JOLs") of Trade and Commerce Bank (in Liquidation)

("TCB") with respect to the liquidation proceedings in the Grand Court of the Cayman Islands (the "Cayman Grand Court"), Cause No. 496 of 2002 (the "TCB Liquidation") and am fully familiar with the TCB Liquidation. I submit this Affirmation in support of the Petition for recognition made pursuant to Chapter 15 of Title 11 of the United States Code (the "Bankruptcy Code") by Richard Fogerty, the duly authorized Foreign Representative of the Company (the "Petitioner").

3. TCB has commenced this case seeking recognition as a Foreign Main Proceeding, pending in the Grand Court of the Cayman Islands, and seeking relief as of right under § 1520 and further relief available under § 1521, or in the alternative, if the Court finds that the foreign proceeding is not eligible for recognition as a Foreign Main Proceeding, seeking recognition as a Foreign Nonmain Proceeding and seeking relief under § 1521 of the Bankruptcy Code.

### **FACTUAL BACKGROUND**

#### **A. Trade & Commerce Bank**

4. TCB was created in March 1988 as a bank with a class "B" license granted by the Cayman Islands Monetary Authority ("CIMA"), to act as an offshore bank on behalf of the Velox Group. TCB was created as a full service bank, intended to offer a full range of banking productions available, including call accounts, payable through accounts, custody accounts, Gold Visa products, term deposit accounts, loan accounts, fixed term loans, investment banking, and exterior commerce services. TCB's clients were predominantly individuals or companies resident in Argentina, Uruguay and Paraguay, with a small representation of customers from Chile and Brazil. TCB does not have a branch or agency (as defined in section 1(b) of the International Banking Act of 1978) in the United States.

5. Until January 2002, type "B" banks were not required to have a physical presence in the Cayman Islands. The only requirements were to have a bank with a type "A" license (authorized to conduct business with persons and companies in the Cayman Islands) to act as an agent bank before CIMA, and to present an annual audited balance with CIMA. In September 2001, TCB established a physical presence in the Cayman Islands, and opened an office in the Grand Pavilion, West Bay Road, George Town, to comply with the amended Banks and Trust Companies Law of the Cayman Islands.

6. The operations of TCB were processed through Latinur S.A., (a company incorporated in Uruguay) ("Latinur") in leased premises at Zona Franca de Montevideo, a free trade zone in the outskirts of Montevideo, Uruguay. Latinur was responsible for the processing, opening and closing of all accounts, including Visa cards, maintaining the records, reconciliation of the books, approving credit applications and reviewing documentation with respect to the operations of exterior commerce.

7. The movement of funds of TCB was accomplished through correspondent banks in New York, including Citibank, Bank of America, UBS, Standard Chartered, Brown Brothers Harriman, First Union Bank, Barclays Bank and Banco Atlantico.

**B. The Velox Group**

8. The Velox Group is not in itself a separate legal entity but comprises or has comprised, *inter alia*, substantial banking, consumer retail operations and other investments in the Southern Cone of Latin America that are owned and controlled by members of the Peirano family, and in particular Juan Peirano and his late father Jorge Peirano Facio. The Velox Group, of which TCB is a part, is extensive and has, or had, two main areas of business:

- (a) Financial Services, consisting of Banco de Montevideo in Uruguay, Banca Caja Obrera in Uruguay, Banco Velox in Argentina, Banco Aleman in

Paraguay, TCB and one or more exchange houses and financial advisors in South America. All of the banking institutions have been the subject of intervention by their respective regulators or have been placed into a form of liquidation.

(b) Retail Operations. The Velox Group had an interest in the Disco and Santa Isabel supermarket chains in South America. In 1998, this was consolidated through a joint venture with a Dutch food company, Royal Ahold. The interest in the Disco-Ahold joint venture had been used as security for borrowings in excess of US\$450M and due to default by the relevant Velox Group companies, the security has been enforced.

9. It appears that from the inception of the relationship between the Velox Group and TCB, the Peirano family caused TCB to operate two separate sets of accounts. In essence, one set of accounts was disclosed to the regulators and auditors. The second set of accounts recorded the fact that the Peirano family withdrew the deposits made by customers of TCB in order to fund the activities of the Velox Group and their own personal lifestyles. This was generally done through what was designated the "5000" account in the name of the Velox Group, accounts in the name of Peirano family members, Velox Group company accounts and fictitious or codenamed accounts. The deposits held by TCB on behalf of its customers were taken without any security being given in return and such was a fraud on TCB and its customers by its owners and management.

**C. Cayman Islands Liquidation Proceeding**

10. In April 2002, a request was made by a customer of TCB (the "Petitioning Creditor") to repay the balance of a deposit held by TCB. The deposit was not repaid and it became apparent that there were other customers of TCB that had made similar demands for repayment of monies that had not been acted upon by TCB.

11. Accordingly, the Petitioning Creditor presented a petition for the winding-up of TCB and applied to the Cayman Grand Court for the appointment of provisional liquidators on July 5, 2002 on the grounds that it was insolvent and unable to pay its debts.

12. Mr. Justice Graham of the Cayman Grand Court heard that application on July 5, 2002 and by Order dated July 5, 2002, appointed G. James Cleaver and H. Jonathan Kahlberg as the Joint Provisional Liquidators of TCB (*in the Matter of the Companies Law (2001 Second Revision) and in the Matter of Trade & Commerce Bank (the "Company")*, Cause No. 496 of 2002, In the Grand Court of the Cayman Islands). A true and correct copy of the order appointing the Joint Provisional Liquidators is annexed to the Petition as Exhibit C.

13. By order dated August 29, 2002 (the "Liquidation Order"), Mr. Justice Sanderson of the Cayman Grand Court ordered that TCB be wound up under the provisions of the Companies Law (2002 Revision) (the "TCB Liquidation"). The Liquidation Order appointed Messrs. Cleaver and Kahlberg as Joint Official Liquidators (each a "JOL" and together the "JOLs") in the TCB Liquidation, and further appointed Christopher Johnson as Third Official Liquidator of TCB for certain limited investigational purposes. A true and correct copy of the Liquidation Order is annexed to the Petition as Exhibit D.

14. By Order dated June 6, 2003, Mr. Kahlberg was replaced as JOL by Don Wayne Ebanks, and by Order dated March 18, 2004, Mr. Ebanks was replaced as JOL by Richard Fogerty. True and correct copies of these orders are annexed to the Petition as Exhibits E and F, respectively.

**D. The Liquidation of the Group Companies**

15. TCB, in its position as a creditor of certain other entities of the Velox Group (the "Group Companies"), caused these entities to be placed into liquidation in the Cayman Grand Court. Messrs. Cleaver and Fogerty are the JOLs for the Group Companies, in

addition to being JOLs for TCB. The Group Companies which were placed into liquidation by TCB, as petitioning creditor, and the dates of the orders winding up the companies and appointing the JOLs are:

<u>Company</u>	<u>Date of Order</u>
Velox International Investments (" <u>VII</u> ")	August 29, 2002
Velox Real Estate (" <u>VRE</u> ")	December 13, 2002
Velox Venture Capital (" <u>VVC</u> ")	December 13, 2002
Velox Capital Markets Inc. (" <u>VCM</u> ")	December 13, 2002
Peabody Ltd. (" <u>Peabody</u> ")	July 30, 2003
Terrace Corp. (" <u>Terrace</u> ")	July 30, 2003

16. On June 6, 2003, an Order was entered by the Grand Court of the Cayman Islands (the "First Pooling Order") pooling the funds, property and assets of VII, VRE, VVC, and VCM with TCB in one liquidation estate account (the "General Pool"). On July 24, 2003, an Order was entered pooling the funds property and assets of Peabody and Terrace into the General Pool with TCB (the "Second Pooling Order" and together with the First Pooling Order, the "Pooling Orders"). True and correct copies of the First and Second Pooling Orders are annexed to the Petition as Exhibits G and H, respectively.

17. By Order dated July 19, 2004 (the "Asset Order"), Mr. Justice Sanderson issued a declaration to assist in the protection and administration of assets of TCB which were located in jurisdictions other than the Cayman Islands. The Asset Order extended the power of the JOLs under the Liquidation Order to "take possession or, collect in and get in all property (of whatever nature) to which the Company is or appears to be entitled" to "all assets of the Company whether in the Cayman Island or in another jurisdiction." A true and correct copy of the Asset Order is annexed to the Petition as Exhibit I.

18. Under the laws of the Cayman Islands and in circumstances such as those presented here, the JOLs have authority to make pari passu distributions to creditors having allowed claims as identified in the Pooling Orders. (In other words, there is no statutory requirement for a more formal scheme than that set forth in these orders.) Henceforth, the Liquidation Order and Pooling Orders are the authority pursuant to which the assets of TCB will be administered by the JOLs for the benefit of the creditors of TCB.

**E. The Progress of the Liquidation**

19. Upon entry of the Liquidator Order, the JOLs began their investigation of the assets and liabilities of TCB. The Liquidators were able to obtain restricted access to review, catalog and remove relevant documentation and records of the TCB transactions which had been processed through Latinur, and which were held at the Latinur offices. The JOLs were also given limited access to the computers of Latinur and to subsequently obtain forensic images of the hard drives. Certain books and records of TCB had been placed in storage but before the JOLs could obtain access to these records they were seized by the Criminal Courts in Uruguay in connection with criminal prosecutions of members of the Peirano family. These records are now in the custody of the Central Bank of Uruguay and recent limited access has been granted to the JOLs. The JOLs have been unsuccessful in attempts to secure computer records for periods prior to January 1, 1999 and these records are believed to be held by Jose Peirano.

20. The JOLs have been reconciling, as far as possible, the different sets of accounts which were maintained by TCB and the Peirano family and has identified transactions through which it appears the assets of TCB have been transferred to other identities and Peirano family members. The JOLs have also identified certain loans due from customers of TCB on loan and call accounts and have retained attorneys in Argentina, Brazil and Uruguay to pursue these recoverable debts.

21. Several actions were commenced by the JOLs in the Cayman Grand Court against members of the Peirano family in an attempt to recover assets of TCB:

(a) Proceedings were commenced against Juan Peirano and his wife Letizia Vejo Mailhos, claiming repayment of a balance due. A Mareva injunction was obtained and assets were restrained. Additionally, a judgment was obtained against Letizia Vejo Mailhos upon default, and a summary judgment against Juan Peirano, in the amount of approximately US\$14-million.

(b) An action was commenced against Dante Peirano Basso (Juan Peirano's brother) seeking recovery of money owed to TCB. No Mareva injunction was sought.

(c) A third action was commenced in the name of Velox International Investments against Jorge Peirano Facio seeking recovery of shareholders loans. A Mareva injunction was obtained and assets were restrained, and a summary judgment in the approximate amount of US\$48-million was obtained.

22. As part of their investigation, the JOLs identified multiple transactions between TCB and other Group Companies, and with other member companies of the Velox Group (which are not the subject of any liquidation proceedings in the Cayman Grand Court). By way of example, these include transactions between TCB and Establishment for International Investments and Baystand International Limited.

23. The JOLs have also met with Juan Peirano and have taken his sworn deposition. Peirano has confirmed that TCB essentially funded the activities of the Velox Group without receiving any security in return. The results of the investigation conducted thus far by



the JOLs confirms that TCB is by far the largest creditor of the Velox Group and the Group Companies.

24. The JOLs now wish to continue their investigation into the assets of TCB which were transferred through the United States and which may still be located in the United States, or which may have been moved into other jurisdictional territories. Accordingly, the JOLs seek recognition of the TCB Liquidation as a Foreign Main Proceeding in order to seek the United States Bankruptcy Court's assistance in identifying and properly administering the assets of TCB for the benefit of its creditors.

WHEREFORE, I respectfully request that this Court enter an Order, substantially in the form of the Proposed Order annexed to the Petition, granting the relief requested herein and such other and further as may be just and proper.

/s/ Alistair Walters  
ALISTAIR WALTERS

Sworn to this 5<sup>th</sup> day of December, 2005 before the undersigned, a person duly authorized to witness and attest to the execution of documents of this nature within the Cayman Islands.

/s/ Vincent Broadbent  
Notary Public  
Cayman Islands

**Miscellaneous:**

05-60279 Trade and Commerce Bank (in Liquidation)

**U.S. Bankruptcy Court**

**Southern District of New York**

Notice of Electronic Filing

The following transaction was received from Brock, Timothy T. entered on 12/21/2005 at 7:30 PM and filed on 12/21/2005

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**Docket Text:**

*Affidavit /Affirmation of Alistair J. Walters in Support of Chapter 15 Petition* filed by Timothy T. Brock on behalf of Trade and Commerce Bank (in Liquidation). (Brock, Timothy)

The following document(s) are associated with this transaction:

**Document description:**Main Document

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**05-60279 Notice will be electronically mailed to:**

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