

December 15, 2003

VIA FEDERAL EXPRESS

The Honorable Lewis A. Kaplan
United States District Court Judge
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Room 310 (c/o Mail Room)
New York, NY 10007-1312

Re: *Securities and Exchange Commission v. Beacon Hill Asset Management LLC, et al.*
Case No. 02 Civ. 8855 (LAK) (the "SEC Action")

Dear Judge Kaplan:

This letter is my first report as Receiver for Safe Harbor Fund, L.P. ("Safe Harbor") and will summarize for the Court the various developments in the conduct of the Receivership since my appointment on September 16, 2003.¹

BACKGROUND

From 1997 until January 2, 2002, Beacon Hill Asset Management, LLC ("BHAM") was a large hedge fund manager for three funds: Safe Harbor Fund, LP ("Safe Harbor"), a New Jersey limited partnership; Bristol Fund, Ltd ("Bristol"), a Cayman Islands corporation; and Milestone Plus Partners, LP ("Milestone"), a Delaware limited partnership. On January 2, 2002, BHAM re-organized Safe Harbor, Bristol and Milestone (collectively referred to as the "Feeder Funds") into a feeder fund structure in which investors invested in one of the three Feeder Funds which, in turn, invested in Beacon Hill Master, Ltd (the "Master Fund"), a Cayman Islands corporation, which conducted all trading.

The Securities and Exchange Commission (the "Commission") has alleged that, over the course of its management activity, BHAM invested the Feeder Funds' assets in asset-backed and

¹ This Report has been prepared for the period of September 16, 2003 to December 16, 2003 in accordance with Section II of the *Order Appointing Receiver for Safe Harbor Fund L.P. on Consent* (the "Appointment Order"), which directs the Receiver to report to the Court, the parties, the Commission and Safe Harbor investors within ninety (90) days of his appointment the financial condition of Safe.

mortgage-backed securities. As part of BHAM's investment model, the Feeder Funds and Master Fund (collectively the "Funds") held substantial "short" positions of Treasury securities in their portfolios to offset the interest rate exposure associated with long positions in mortgage-backed securities.² However, in mid-2002, Treasury securities increased in price and interest rates fell to their lowest point in almost 40 years. The Master Fund, which sold Treasury securities short during this period, lost substantial money on these transactions.

The Commission alleges that, although net asset values ("NAVs") had been declining for months, beginning at least in July 2002, NAVs and returns were materially overstated, and losses were materially understated. During this period, investors made redemptions from and numerous subscriptions to the Funds.

On October 8, 2002, BHAM reported that the NAVs of the Funds had declined by 25% from the NAVs reported as of August 31, 2002. On October 17, 2002, BHAM announced to investors that the value of the Funds had declined by approximately 54% of the NAVs reported as of August 31, 2002. Then, on November 27, 2002, Ellington Management Group LLC ("Ellington") (which had replaced BHAM as fund manager), disclosed that the NAVs of the Funds, as of early November 2002, had actually declined by 61.22% from the NAVs reported as of August 31, 2002.

On November 7, 2002, the Commission filed case number 02-cv-8855 against BHAM in the United States District Court for the Southern District of New York (the "SEC Action"). The Master Fund, the Feeder Funds and the general partners of Safe Harbor and Milestone were named as relief Defendants. Shortly thereafter, a *Stipulation and Order Granting Preliminary Injunction and Other Relief* ("Stipulation and Order") was entered which, among other things, provided that control of all fund assets would be transferred to a new fund manager, Ellington; prohibited all redemptions out of the fund; and, prohibited all payments outside the ordinary course of business without prior approval of the Court.

On September 16, 2003, this Court, presiding in the SEC Action, appointed me as Receiver for Safe Harbor.³ As the Court is aware, I am also a proposed Joint Official Liquidator, with Mr. Theo Bullmore of KPMG in the Cayman Islands, for the Master Fund. The Master Fund currently holds approximately \$321 million in an account at Bear, Stearns & Co. in the United States representing the vast majority of funds of the Master Fund.⁴ The hearing to

² A majority of the investments were in securities for which market quotations are not readily available and that are complex and illiquid.

³ 28 U.S.C.A. §754 provides that a federally appointed receiver "shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located." Since I am currently unaware of the scope and location of all Safe Harbor's assets, on September 22, 2003 I complied with §754 in each district in the United States.

⁴ Unfortunately, as discussed below, unavoidable legal complications, including indemnification demands from the manager and the administrator of the Funds, stand in the way of any immediate distributions.

appoint the official liquidators for Bristol and the Master Fund in the Cayman Islands is scheduled to occur in January 2004.

SUMMARY

- (1) **Requests for Assets and Information.** Pursuant to Article VI of the Appointment Order, every effort has been made to obtain the records and assets of Safe Harbor.⁵ However, while many institutions have been quite cooperative, BHAM and its principals and Ernst & Young, auditors of the Funds, have not responded to repeated requests for transfer of assets, information and documents. In fact, this Court has since ordered BHAM, its principals and Safe Harbor Asset Management to turn over all documents and information related to Safe Harbor to the Receiver, but they have failed to do so as of the date of this Report. Additionally, ATC Funds Services (Cayman), Ltd. (“ATC”), administrator of Safe Harbor (and former administrator for the Master Fund, Bristol and Milestone), which is believed to be in possession of many of Safe Harbor’s books and records, is negotiating a Severance Agreement as a condition of turning over these materials (see below).⁶
- (2) **Relationship with ATC.** In December, 2001, the Funds retained ATC to serve as their administrator. All of the Funds other than Safe Harbor severed this agreement in October 2002; soon after my appointment, I began negotiation of a proposed Severance Agreement with ATC.⁷
- (3) **Investor Communications and Database.** In addition to numerous communications by phone, letter and email with Safe Harbor investors, a Safe Harbor Receivership Website has been established to keep investors informed in a timely and cost-efficient way and an “Investor Response Form” (attached) requesting contact and detailed investment information has been posted on the website and mailed to all investors of record. A detailed Receivership Database is also being established, reflecting information obtained from the Investor Response Forms and other records of the receivership.
- (4) **Tax Issues.** Despite understandable concerns of investors concerning their K-1 partnership tax information for the year 2002, such 2002 K-1s cannot be issued at this time since Safe Harbor has not yet received its 2002 K-1 from the Master Fund. Safe Harbor’s own 2002 partnership tax return is also past due; however, current tax law does not permit me to file such a return, since I am not a “partner”

⁵ After contacting the United States Postal Service in October 2003, I began receiving Safe Harbor's mail in November 2003.

⁶ Safe Harbor is currently a Cayman Islands registered mutual fund and as such is required under Cayman Islands law to have a Cayman administrator.

⁷ Any such agreement would be subject to the approval of this Court.

of the Safe Harbor partnership. Possible options are being explored, including with the United States Internal Revenue Service.

- (5) **Cayman Islands Liquidations of the Master Fund and Bristol.** Petitions have been filed with the Grand Court of the Cayman Islands to place both the Master Fund and Bristol into court-supervised liquidation and Mr. Theo Bullmore of KPMG has been appointed Provisional Liquidator of both companies. The Grand Court has also requested that Mr. Bullmore and I serve as Official (permanent) Liquidators of the Master Fund; however, this Court has expressed concerns over possible conflicts of interest that could arise under the Cayman confidentiality laws. As permitted by this Court, on December 8, 2003, I accordingly filed a supplemental request addressing these concerns; and the Grand Court, which favors the joint appointment, has adjourned the hearing for the appointment of Official Liquidators for both the Master Fund and Bristol until January, 2004, to give this Court an opportunity to consider my supplemental application.
- (6) **Pending Litigation.** Two suits have been filed against BHAM and ATC among others by 34 investors, which, as addressed below, present serious complications for Safe Harbor and its investors based upon alleged liability of the Funds to BHAM and ATC for any recovery by those investors. As discussed, these suits are both delaying the ability to make distributions to investors and creating a potential for some investors securing a windfall while others realize little or nothing on their investments.
- (7) **Distributions to Investors.** Most Safe Harbor investors understandably favor an interim distribution of a substantial portion of the funds currently being held by the Master Fund in a brokerage account at Bear, Stearns & Co. in the United States. Unfortunately, at the present time this is not possible. To begin with, Safe Harbor's primary asset is its interest in the Master Fund. Until the Master Fund is placed into liquidation in the Cayman Islands, no distribution of funds from the Master Fund will occur and Save Harbor will have no funds to distribute. In addition, once Safe Harbor does receive funds from the Master Fund, a claims process will need to be implemented. Indemnification claims being asserted by BHAM and ATC, which could consume a disproportionate share of the assets otherwise available for distribution, also present obstacles to an immediate distribution.⁸ A protective course of action is being developed.
- (8) **Potential Litigation to Recover Additional Assets.** I am currently reviewing with counsel whether Safe Harbor has, and should assert, causes of action against third parties.

⁸ A potential indemnification claim of up to one *billion* dollars is being asserted by ATC.

- (9) **Safe Harbor's Assets and Liabilities.** Based upon the limited information received to date, Safe Harbor's most significant asset is its interest in the monies held by the Master Fund at its Bear, Stearns & Co account (presently estimated to have a worth of approximately US\$58 million) and its possible interest in all or a part of US\$281,000 in monies representing deferred quarterly incentive fees allegedly due BHAM and being held in a suspense account in the name of ATC at First Caribbean International, Cayman Islands.⁹

The only liability of Safe Harbor of which I am currently aware, other than the ATC/BHAM indemnification claims discussed above, is a claim of ATC for payment of claimed administration fees, which is being negotiated as a part of the Severance Agreement.¹⁰

REQUESTS FOR ASSETS AND INFORMATION

Section VI of the Appointment Order clearly requires that:

"the Defendants and the Relief Defendants and their officers, directors, agents, servants, employees and attorneys-in fact shall: (A) provide to the Receiver all non-privileged information requested relating to the past and present operations, activities and condition of Safe Harbor and shall cooperate fully with the Receiver or any other person engaged or employed by the Receiver to assist him in carrying out his duties and obligations herein; and (B) transfer as soon as is reasonably practicable to the Receiver all assets of Safe Harbor that they have in their current possession, custody or control."

Accordingly, upon my appointment I immediately endeavored to obtain the books, records, and assets of Safe Harbor, as well as all information pertaining to its assets and liabilities. In September and October, 2003, I sent correspondence to numerous individuals and entities requesting that all Safe Harbor assets in their possession, custody and control be transferred to me as Receiver, and all non-privileged information and documents in their possession, custody or control pertaining to Safe Harbor be forwarded to me immediately.

Admiral Administration, Ltd.; Asset Alliance Corporation; Ellington Management Group LLC; First Union Bank (now Wachovia); George Mazin at Dechert LLP; Milbank, Tweed, Hadley & McCloy, LLP; Milestone Global Advisors LP; Milestone Plus Partners LP; Paul,

⁹ Safe Harbor also has minimal equity and/or cash in accounts at Bear Stearns & Co. in New York and at Wachovia Bank NA in Philadelphia, Pennsylvania.

¹⁰ I presently anticipate that this liability will be approximately US\$29,795.79, plus a \$5,000 retainer for any future costs.

Weiss, Rifkind, Wharton & Garrison LLP on behalf of Bear, Stearns & Co.; and Simpson, Thatcher & Bartlett have been cooperative with my requests. However, none of the principals of BHAM have responded to my requests either personally or through counsel other than to tell me that they have sent documents to the Commission. I have received no materials from Ernst & Young other than Safe Harbor's 2001 tax return despite repeated requests that they provide me with all documents related to Safe Harbor including work papers and audit reports. Additionally, I have been informed by various sources that ATC is in possession of many of Safe Harbor's books and records. My extensive communications with ATC are detailed below.

I have also been unable to obtain any documents or information from BHAM, its principals, and Safe Harbor Asset Management, the general partner of Safe Harbor, despite repeated requests to Kevin H. Marino, P.C. and Miller & Wrubel, P.C., their attorneys. On September 16, 2003, Kevin H. Marino, counsel for BHAM, its principals and Safe Harbor Asset Management, stipulated to the Appointment Order which specifically provides that all Defendants and Relief Defendants in the SEC Action must provide all non-privileged documents and information to me. However, Mr. Marino still failed to turn over any information and documents regarding Safe Harbor in his clients' possession. Thereafter, this Court ordered BHAM, Safe Harbor Asset Management, and the principals of BHAM to turn over all information and documents relating to Safe Harbor to the Receiver. Despite the Court's order, I still have not received any documents or information from BHAM, its principals, or Safe Harbor Asset Management.

RELATIONSHIP WITH ATC FUND SERVICES (CAYMAN), LTD.

As discussed above, on January 2, 2002, BHAM re-organized the Feeder Funds into a structure in which investors invested in one of the three Feeder Funds which, in turn, invested in the Master Fund, which conducted all trading. Thereafter, the Master Fund and the Feeder Funds, including Safe Harbor, were registered as Cayman Islands registered mutual funds.

In order to be a registered Mutual Fund under the Cayman Islands Mutual Funds Law, the Funds were required to have a Cayman administrator; accordingly, on December 31, 2001, the Funds retained ATC to serve as their administrator pursuant to an Administration Agreement.¹¹

Soon after my appointment, I learned that many of Safe Harbor's books and records were in the possession of ATC, the fund administrator. Therefore, on September 30, 2003, I sent a written request to ATC requesting Safe Harbor's books and records and all Safe Harbor's assets in its possession, custody, or control, if any. In response to my inquiry, ATC sent me a list of Safe Harbor's limited partners with contact information and partnership shares (via e-mail), but did not otherwise comply with my request and advised me that it would not provide the documents unless I entered into a Severance Agreement with them.

¹¹ After October 2002, the Master Fund, Bristol and Milestone severed their Administration Agreement with ATC and, instead, retained Admiral Administration, Ltd., a Cayman Islands corporation, as their fund administrators.

On October 21, 2003, I met with Wilfred van Dam and Peter Goddard of ATC in the Cayman Islands to discuss the transmission of Safe Harbor's books and records to my Cayman counsel, Hunter & Hunter.¹² However, ATC was adamant that ATC and Safe Harbor enter into a Severance Agreement prior to any transfer of books and records. Since I had previously determined that Safe Harbor should sever ATC as fund administrator due to pending litigation, I acquiesced. Over the last several weeks, I have been negotiating such a Severance Agreement with ATC which generally provides that ATC must turn over all Safe Harbor books and records to counsel for the Receiver within seven days in return for a payment to ATC of US\$29,795.79 in satisfaction of all outstanding administration fees and a retainer of \$5,000 for any future costs. Negotiation of the Severance Agreement is nearly complete and, once it is complete, I will present it to the Court for approval.

Bristol and the Master Fund, both Cayman entities, have retained the services of Admiral Administration to take over the duties of ATC as fund administrator. In order to remain a registered mutual fund in the Cayman Islands it would also be necessary for me to retain the services of a fund administrator in the Cayman Islands. At the appropriate time, I will petition the Court for instructions as to whether or not to engage the services of a Cayman administrator to preserve Safe Harbor's mutual fund status in the Cayman Islands.

INVESTOR COMMUNICATIONS AND DATABASE

Since my appointment, my office has been contacted by numerous investors and their representatives. My staff has expended numerous hours responding to investor inquiries. In an effort to keep Safe Harbor investors informed in a timely and cost-efficient manner concerning developments relating to the receivership, as well as to coordinate responses to investors and to minimize the delay and expense from calls on commonly asked questions, I have developed a Safe Harbor Receivership Website, www.SafeHarborFund-Receivership.com.¹³ The Safe Harbor Receivership Website has posted copies of the Investor Response Form and contact information for my office. In addition, a copy of this Report and other key documents will be posted on the Website as appropriate.

Additionally, in an effort to obtain specific information from each Safe Harbor investor in a standard format, I prepared an Investor Response Form to be sent to all Safe Harbor investors to notify them of the Receivership, request contact information, and request detailed investment information. The Investor Response Form was mailed on October 17, 2003 to all investors

¹² Article I(F) of the Appointment Order authorizes me to employ various professionals to assist me in the performance of my duties. I have retained a Cayman Islands law firm to act as my counsel in matters involving the Cayman Islands.

¹³ The following additional "URLs" have also been reserved for use by the receivership: BeaconHillAssetManagement.net, BeaconHillAssetManagement.com, SafeHarborFund-Receivership.net, and SafeHarborFund-Receivership.com.

currently known to me.¹⁴ To date, 30 Investor Response Forms have been completed by investors and returned to my office. A sample Investor Response Form is enclosed as **Attachment A** to this report.

I am also maintaining a detailed Receivership Database which tracks information obtained from each Investor Response Form.

TAX ISSUES

One of the main inquiries posed by investors who contact my office is when K-1 statements for 2002 will be issued to Safe Harbor investors. There are several issues that prevent me from issuing 2002 K-1s at this time. Primarily, Safe Harbor has not yet received a 2002 K-1 from the Master Fund. I have received no estimate regarding the time frame in which the Master Fund will be in a position to issue K-1s to the Feeder Funds. As discussed below, the Master Fund is currently in provisional liquidation in the Cayman Islands. Once permanent liquidators have been appointed, the Master Fund will be in a better position to address tax issues.

Additionally, the 2002 partnership returns for Safe Harbor have not been filed. In fact, it is believed that the returns, which were due on or about April 15, 2003, have not been extended and are past due causing the possible imposition of penalties. However, the IRC and related Treasury Regulations provide that only a partner of a partnership may sign a return.¹⁵ Furthermore, there is no provision in the IRC to permit a receiver to sign a partnership return. In fact, a Private Letter Ruling has been issued directly to the contrary.¹⁶ While the Appointment Order clearly states that the receiver shall "acquire, retain and exercise all rights and powers which Safe Harbor or its general partner, has to manage or control Safe Harbor's business . . .", it does not directly address the Receiver's responsibility to make and file Safe Harbor's 2002 partnership returns.

I am currently considering various options,¹⁷ including determining what approaches would be the acceptable to the Internal Revenue Service.

CAYMAN ISLANDS LIQUIDATIONS OF THE MASTER FUND AND BRISTOL

¹⁴ Based upon presently available information, Safe Harbor would appear to have approximately 58 investors with funds currently invested in Safe Harbor.

¹⁵ Safe Harbor is a New Jersey limited partnership whose sole general partner is Safe Harbor Asset Management, LLC ("SHAM"). SHAM is a relief defendant in the SEC Action and is controlled by BHAM, a 99% owner of SHAM. I have not been appointed receiver for SHAM.

¹⁶ 1994 WL 701890 (IRS PLR). While a Private Letter Ruling is not binding authority, it is a good indication of how the Internal Revenue Service ("IRS") will rule on a given factual scenario.

¹⁷ These include seeking a court order compelling SHAM, the general partner, to sign a completed partnership return that I have prepared; requesting authority to sign the return "on behalf of", "with permission of" or "in the name of" SHAM; seeking appointment as receiver for SHAM; or coordinating with the Safe Harbor investors to oust SHAM as general partner.

On September 11, 2003, the Board of Directors of Bristol filed a petition with the Grand Court in the Cayman Islands to place Bristol into court-supervised liquidation pursuant to the Cayman Islands Companies Law (2003 Revision). The hearing on that petition was initially scheduled for November 28, 2003. At the request of Chief Justice Smellie of the Grand Court and the Cayman Islands Monetary Authority ("CIMA"), on or about October 28, 2003, the directors of Bristol filed a petition requesting that Theo Bullmore of KPMG be appointed as "Provisional" Liquidator of Bristol with immediate effect pending the hearing on appointment of an Official Liquidator, and that Mr. Bullmore act as Official (or permanent) Liquidator after such a hearing. On October 28, 2003, Chief Justice Smellie appointed Mr. Bullmore as Provisional Liquidator of Bristol pending his anticipated appointment as Official Liquidator.

Likewise, Chief Justice Smellie and CIMA also requested that the Board of Directors of the Master Fund file a petition to place the Master Fund in liquidation with Mr. Bullmore as Provisional Liquidator and Mr. Bullmore and myself as Joint Official Liquidators. Such a petition was filed on October 28th and Mr. Bullmore was appointed as Provisional Liquidator on that date.¹⁸ The hearing for the appointment of the Joint Official Liquidators for the Master Fund and Bristol were initially scheduled to occur on November 28, 2003.

As the Court is aware, when asked if I would serve as the co-liquidator of the Master Fund, I indicated that I would need to seek approval from this Court prior to accepting such an appointment. Subsequently, on November 13, 2003, I filed a letter with this Court requesting authority to accept an appointment as co-liquidator for the Master Fund. On November 25, 2003, a hearing was held in which the Court indicated that it was troubled by the fact that, as co-liquidator of the Master Fund, I may gain access to confidential information related to Safe Harbor which, as Receiver for Safe Harbor, I would be unable to disclose to the Court presiding in this matter. Accordingly, the Court permitted me to supplement my request to the Court specifically addressing these concerns. On December 8, 2003, I filed a supplemental request to this Court for authority to accept an appointment as co-liquidator of the Master Fund,¹⁹ explaining in detail that information related to Safe Harbor was not subject to confidentiality laws and, therefore, there was no bar to disclosures of that information. To the extent I would obtain confidential information about Bristol or the Master Fund in my role as Joint Official Liquidator for the Master Fund, as explained in my December 8, 2003, submission, gateways such as Section 4 Applications and the Mutual Legal Assistance Treaty exist to facilitate onward disclosure in appropriate cases.

At the November 28, 2003 hearing in the Grand Court of the Cayman Islands regarding the appointment of Official Liquidators for the Master Fund and Bristol, my counsel advised the Cayman Court that I was unable to accept an appointment as co-liquidator for the Master Fund at

¹⁸ It is the duty of a Provisional Liquidator in the Cayman Islands to maintain the status quo and to file a report with the Court regarding the financial condition of the entity in provisional liquidation and whether the provisional liquidator believed permanent liquidation was necessary.

¹⁹ For the Court's convenience, copies of my letters are attached as **Attachment B**.

that time based upon this Court's concerns raised at the November 25, 2003 hearing. Consequently, the Grand Court adjourned the appointment of liquidators for Bristol and the Master Fund until January 2004 to give this Court time to consider and render a decision on my supplemental application. The Grand Court of the Cayman Islands has made it clear that it is strongly in favor of my appointment as co-liquidator of the Master Fund as it sees my mutual appointment as Receiver for Safe Harbor and co-liquidator of the Master Fund as the best way of promoting comity between the United States and the Cayman Islands.

PENDING LITIGATION

On April 8, 2003, thirty-two investors in the Feeder Funds filed suit against BHAM, BHAM's principals, ATC, and Asset Alliance in this Court (the "Alteram Action"). A Corrected and Supplemental Complaint was filed in the Alteram Action on June 25, 2003. Upon information and belief, the Plaintiffs in the Alteram Action allegedly have made total investments in the Feeder Funds of approximately US\$81 million. On October 3, 2003, two additional institutional investors, Banc One Opportunity Fund LP and Banc One Capital Corporation, filed an almost identical action against BHAM, its principals, ATC, and Asset Alliance (the "Banc One Action").

DISTRIBUTIONS TO INVESTORS

Most Safe Harbor investors who have communicated with my office have expressed a desire to receive an interim distribution of at least a portion of their investments. However, there are several issues that must be addressed prior to any distribution to Safe Harbor investors. First, Safe Harbor currently has no funds available for distribution. The vast majority of funds which Safe Harbor has a claim to are currently held by the Master Fund in its brokerage account at Bear, Stearns & Co. As detailed above, the Master Fund is currently in Provisional Liquidation in the Cayman Islands and will not go into Official Liquidation until, at least, January 2004. Only after the Master Fund is placed in Official Liquidation, will any distribution be made from the Master Fund to Safe Harbor.

Further, until I have identified all Safe Harbor investors who will be participating in a distribution, the total value of their claims, and the basis upon which each investor will be paid, I will not be in a position to make any distributions. Although I have received an investor list from ATC, which indicates that there are approximately 58 investors currently in Safe Harbor, to date only 30 completed Investor Response Forms have been filed with my office by Safe Harbor investors. I have not yet petitioned for nor has this Court sanctioned a claims bar date and a detailed claims procedure.

Moreover, there is a substantial issue in the Receivership regarding the basis upon which each investor will participate in any distribution. There are three, and perhaps more, methods upon which Safe Harbor investors could receive payment. First, distributions could be made

based upon the limited partnership share of each investor as shown in Safe Harbor's records. Second, distributions could be made based upon the actual net cash or principal loss each investor incurred which would require verification only of the amount of cash invested and the amount of redemptions received. Third, distributions could be made based upon a revaluation of NAVs for each subscription and redemption. Until these issues are resolved, it would be impossible to make a distribution of Safe Harbor's assets. Of course, any distribution plan is subject to Court-approval.

Finally, the Administration Agreement between ATC and the Funds provided, *inter alia*, that the Funds would indemnify ATC against any liability arising from any claim asserted by a third party in connection with ATC's duties as fund administrator. The Funds also have an Investment Management Agreement with BHAM that contains putative exculpation and indemnification clauses.

ATC has notified the Funds that that they may have an indemnity claim of up to \$1 billion for any liability and attorneys' fees it may incur as a result of the Alteram Action and the Bank One Action (collectively the "Investor Actions"). Specifically, ATC has made a claim against the Funds for indemnification and legal costs associated with successfully defending the Investor Actions and any additional third party actions; a claim against the Funds for indemnification and damages incurred if held liable to the plaintiffs in the Investor Actions or any third parties; and contribution to any damages for which they are held liable to the plaintiffs in the Investor Actions or any third parties. BHAM and its principals have also claimed an indemnity from the Funds based upon the Investment Management Agreement for legal costs incurred in defending proceedings brought against them by third parties as a result of its role as investment manager for the Funds. In addition to potential indemnification liability for the pending Investor Actions, if additional investor actions are filed, indemnification claims will likely be raised for those actions, as well.

POTENTIAL LITIGATION BY THE RECEIVER AND/OR CO-LIQUIDATORS TO RECOVER ADDITIONAL ASSETS

In an effort to maximize the funds available for distribution to Safe Harbor investors, I am currently reviewing, with counsel, whether Safe Harbor may have, and should pursue, causes of action against any third parties. I would apply to the Court for instructions before filing any litigation.

SAFE HARBOR'S ASSETS AND LIABILITIES

Based upon the limited information I have received to date, Safe Harbor owns or has an ownership interest in the following assets:

- A. The funds held by Master Fund at its account at Bear Stearns & Co. in New York, with approximate balance of US\$321,757,644 as of October 31, 2003. Based upon the Master Fund's unadjusted NAVs as of October 31, 2003 (for which I have not determined reliability), Safe Harbor owns 18.1% of the NAV of the Master Fund (123,158.2113 of its outstanding shares) worth \$58,248,759.
- B. Approximately US\$281,000 in funds that represent deferred quarterly incentive fees due to BHAM during 2002 that were paid into a suspense account pursuant to individual agreements concluded by certain investors in Safe Harbor during the course of 2002 pending a final calculation of incentive fees at year end. These funds are held in a bank sub-account with First Caribbean International, Cayman Islands in the name of "ATC Fund Admin: Bristol # 2."
- C. Minimal equity in Safe Harbor's account at Bear Stearns & Co.
- D. Minimal cash in Safe Harbor's account at Wachovia Bank NA.

The only liability of Safe Harbor of which I am currently aware is a request from ATC for payment of administration fees from the period of August 2003 to December 2003. Pursuant to the Severance Agreement I am currently negotiating with ATC, I anticipate that Safe Harbor's liability to ATC will be in the amount of US\$29,795.79 plus a retainer of \$5,000 for any future costs. In addition, Safe Harbor's distributable assets could be seriously jeopardized as a result of ATC/BHAM's indemnification claims, discussed above.

* * *

I hope this Report has been informative. My next quarterly report is due to be filed by March 16, 2004. In the interim, I would be happy to discuss any aspect of this Report with the Court, the Commission, counsel for the parties, or the Safe Harbor investors.

Very truly yours,

STENGER & STENGER, P.C.

/s/

Phillip S. Stenger, Receiver (PS9969)

Attachments:

Attachment A: Investor Response Form

Attachment B: Receiver's November 13, 2003 Letter to the Court

Attachment B: Receiver's December 8, 2003 Letter to the Court

The Honorable Lewis A. Kaplan

December 15, 2003

Page 13

cc: To the following parties via Federal Express

Kevin O'Rourke, SEC

David Kagan-Kans, SEC

Theo Bullmore, KPMG

cc: To the following parties via U.S. Mail:

Simpson, Thacher & Bartlett c/o Tom Bell

Skadden Arps Slate Meagher & Flom LLP c/o Seth Schwartz

Gibbons Del Deo Dolan Griffinger & Vecchione c/o Lawrence Lustberg

United States Attorney's Office c/o Amy Winkleman

Michael Critchley & Associates c/o Michael Critchley

Kevin H. Marino, P.C. c/o Kevin Marino

Greenbaum, Rowe, Smith, Ravin, Davis & Himmel c/o Michael Himmel

Miller & Wrubel c/o Joel Miller

Brown Rudnick Berlack Israels, LLP c/o Scott Berman

Schindler Cohen & Hochman, LLP c/o Jonathan Hochman

Janvey Gordon Herlands Randolph Roxenberg & Cox, LLP c/o Richard Janvey

Law Offices of Robert G. Stahl, LLC c/o Robert G. Stahl

Kornstein, Veisz, Wexler & Pollard, LLP c/o Daniel J. Kornstein

All Safe Harbor investors of record