



## THE BENEFITS OF ORGANIC GROWTH

### NEW PARTNERS FOR LONDON, SINGAPORE & BRITISH VIRGIN ISLANDS

Conyers Dill & Pearman, is pleased to announce the appointment of Kieran Loughran, Janice Oh and Mark Forté to the partnership of the firm.



Kieran Loughran joined Conyers Dill & Pearman in 2002 to spearhead the growth of the Firm's Cayman practice in London, with particular emphasis on funds work. Prior to joining Conyers Dill & Pearman in London he spent four years in the Cayman Islands working on corporate and funds matters and before that spent several years working in the banking and finance teams of Ashurst and Norton Rose.

Kieran's appointment to the partnership, in conjunction with the recent relocation of the London office to larger quarters on Dominion Street and the opening of the Firm's Moscow office, is a strong indicator of the continued growth of UK, European and Russian interest in the key offshore markets.



Janice Oh joined Conyers Dill & Pearman's Singapore office in 2003. She has undertaken a wide range of corporate work covering Bermuda, British Virgin Islands and the Cayman Islands and has built a thriving mutual funds practice in the Singapore office.

Janice obtained her LLB from the National University of Singapore in 1990 and was admitted as an Advocate and Solicitor in Singapore in 1991. Janice started practice in Singapore with the firm of Cooma Lau & Loh and was a junior partner when she left the firm. She worked in the Singapore and Hong Kong offices of the Kuok Group as legal counsel prior to joining Conyers Dill & Pearman. In 2007 Janice was admitted as a solicitor in the British Virgin Islands.



Mark Forté joined the Firm in 2004 and heads the litigation team in the British Virgin Islands. Mark specialises in Restructuring and Insolvency; Insolvency Act Litigation, Shareholder disputes; Cross-Border Asset Tracing and Commercial Litigation.

Mark obtained an LLB (Hons) from Manchester Metropolitan University in 1988 and was admitted to the Bar of England and Wales in 1989.

Before joining the Firm, he was a Barrister at 8 King Street Chambers in Manchester, England.

### MOSCOW OFFICE OPENS



In March this year we proudly opened our Moscow office. Located by the famous Garden Ring and headed by Caroline O'Hare, the Moscow office will initially concentrate on general corporate work with a focus on financings. We will continue to work with outward investment by Russian companies such as international IPOs and public offerings as well as acquisitions of foreign assets and businesses by Russian companies. We will also be occupied with inward investment by western businesses by way of acquisition of Russian businesses, and bank financing transactions by western banks of Russian businesses. Aircraft financing and registrations are also expected to continue to gain momentum.

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### LONDON OFFICE MOVES



After ten years of steady growth, including an expansion into another floor of office space, our old building can no longer contain us. In order to accommodate our expanding London practice, the office has moved to:

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# LONDON STOCK EXCHANGE LAUNCHES A NEW PUBLIC MARKET FOR SPECIALIST FUNDS



## What is the Specialist Fund Market?

On 1 November 2007 the London Stock Exchange (“LSE”) launched the Specialist Fund Market (the “SFM”) – a newly created market dedicated and tailored to the needs of investment funds targeted at an audience of institutional, professional and highly knowledgeable sophisticated investors. The SFM is designed for specialist “alternative” funds and offers managers of closed-end investment vehicles a new opportunity to raise permanent capital in the investment markets centred in London.

## Does London need a new public market?

The growth of more complex investment vehicles together with the well publicised listing of certain high profile private equity funds on Amsterdam’s NYSE Euronext exchange (including major funds managed by KKR Private Equity Investors LLP and Apollo Management Corporation) and the explosion of sophisticated fund structures being listed on AIM - a market originally intended for smaller trading and entrepreneurial companies - led the LSE to identify a gap in the market between the Main Market and AIM.

By working in conjunction with market participants in both London and New York, the SFM was developed by the LSE as an EU regulated market under the Markets in Financial Instruments Directive (“MiFID”) that is compliant with the EU’s Financial Services Action Plan. The SFM is intended to operate with a regulatory framework capable of balancing the need for flexibility with sound market practice and investor protection, and to provide funds with the “London badge” of enhanced credibility together with access to the deep pool of investment capital in London and more crucially, through the EU passporting system of mutual recognition, access to investment capital in the finance centres of Europe.

## Key reasons for using the SFM

The key attractions of the SFM to investment funds include:

- access to Europe’s deepest pool of globally based institutional capital
- access to permanent capital to support longer term investment strategies
- investor liquidity through provision of entrance and exit routes for closed ended investments
- no requirement for a listing sponsor or nomad
- enhanced credibility through the “London badge”
- demonstration of the willingness of managers to operate within a regulated market thus sending a positive message to investors
- price quotation in a London regulated market and access to LSE trading platform

## Fund Suitability

The SFM is suitable for a wide variety of investment funds including those with one or more of the following features:

- complex legal structures
- unconventional investment strategies
- limited diversification of risk
- unusual share rights and corporate governance
- flexibility to adapt the investment strategies and policies following listing

The SFM is not suitable for retail funds, funds wishing to participate in the FTSE indices, index tracker funds and funds where access to UK tax efficient PEP and ISA portfolios is sought.

## Regulatory Status

The SFM is treated as both an EU-regulated market under MiFID and a regulated market for the purposes of the UCITS Directive. The UCITS Directive requires securities admitted to trading on the SFM to be transferable securities. This enhanced regulatory framework (as compared to that of AIM) brings the SFM within the scope of the European single capital market through the application of harmonised standards to each applicant seeking a listing relating to prospectus approval, disclosure and transparency, market abuse and ongoing compliance. Securities admitted to trading on the SFM will offer managers and investors new opportunities to fulfil most institutional investment mandates by providing viable alternatives to Main Market securities.

However, as securities admitted to trading on the SFM are not eligible for admission to the UK’s Financial Services Authority’s (“FSA”) Official List, the SFM operates as an unlisted market under a so-called “directive minimum” regulatory regime. Admittance to the Official List requires higher standards of disclosure, transparency and control over and above those required as a minimum standard under EU directives and regulations – the so-called “super equivalent” regulatory regime.

## Acceptance of sophisticated legal structures

The specialist funds and/or investment entities that the SFM is seeking to attract is limited to those funds/investment entities defined as collective investment undertakings of the closed-end type. The SFM is not open to trading companies nor it is intended to offer a platform for retail investment products targeted at non-professional non-institutional investors.

Examples of the types of structures for which the SFM is best suited include: single strategy hedge funds, private equity funds, property funds, infrastructure funds, feeder funds, funds of private equity/hedge funds, specialist sector funds, specialist geographical funds and limited partnership structures. Acceptance of a wide variety of sophisticated legal structures (including limited partnership structures and non-voting share structures) allows applicants for admission to trading on the SFM the flexibility to create structures that comply with market practice in their country of incorporation/operation whilst also allowing access to permanent capital.

## Admission criteria and process

Admission to the SFM is a two stage process requiring approval of the applicant’s prospectus by an EEA Competent Authority, and following such approval, submission to the LSE of an application to trade on the SFM, in the prescribed form, through the process outlined in the Admission and Disclosure Standards published by the LSE.

Applicants are required to publish prospectuses in compliance with the various European standards promulgated under the EU’s Financial Services Action Plan, including the Prospectus Directive. The EEA Competent Authority in the UK is the UK Listing Authority (“UKLA”), which is part of the FSA. In cases where a prospectus has been approved by an EEA Competent Authority other than the UKLA, the applicant can request that its Competent Authority submit the relevant documents to the UKLA

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## LONDON STOCK EXCHANGE LAUNCHES A NEW PUBLIC MARKET FOR SPECIALIST FUNDS *continued*

– a system known as “passporting”. Co-operation between EEA member states (being the twenty-seven member states of the European Union, Norway, Iceland and Lichtenstein) in this way also reinforces the inclusive nature of the SFM and may avoid criticisms based on a “fortress London” style financial market.

In addition to compliance with the rules governing the preparation and approval of prospectuses, applicants are also required by the LSE to comply with various initial and ongoing obligations relating to minimum standards of disclosure and transparency under the Disclosure and Transparency Rules published by the FSA. Adherence by applicants to a higher standard of disclosure and ongoing obligations than may be the case on certain other markets, including AIM, adds a degree of credibility to the investment entities admitted to the SFM and demonstrates a willingness by managers to operate within a regulated market.

### Trading and liquidity

Securities admitted to trading on the SFM must be freely

transferable and freely negotiable and will be traded on dedicated segments of the LSE’s electronic trading platforms. These platforms are described by the LSE as “one of the fastest, most reliable and technologically advanced equity markets in the world”. To be admitted to trading, securities must be eligible for electronic settlement through CREST or other pre-approved central securities depositories.

As the current legislative framework of Bermuda, the British Virgin Islands and the Cayman Islands does not allow for direct electronic share settlement, arrangements must be made for settlement of shares issued by companies incorporated in those jurisdictions to be conducted through the use of depository instruments. Similar arrangement must be made for the settlement of limited partnership interests.

The established trading system proposed for the SFM intends to offer investors transparent entrance and exit routes and is in direct contrast to criticisms levied at Euronext where

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	SFM	Main Market	AIM
<b>Incorporation</b>	Worldwide	Worldwide	Worldwide
<b>Investment Structures</b>	Highly specialised closed-ended funds only	Closed-ended and certain open-ended funds eligible	Typically plain vanilla [closed ended] funds
<b>Investor Audience</b>	Narrow (institutional, professional and highly knowledgeable)	Very wide (institutional and retail)	Typically institutional
<b>Regulated Status</b>	EU-regulated market, subject to EU Financial Services Action Plan	EU-regulated market, subject to EU Financial Services Action Plan	Exchange-regulated market, not subject to EU Financial Services Action Plan
<b>Prospectus Disclosure</b>	Reviewed by UKLA based on prospectus rules	Reviewed by UKLA based on prospectus rules	Nomad is responsible for signing off on AIM admission document and company suitability
<b>Specific Portfolio Disclosure</b>	None	None	None
<b>Investment Policy</b>	No restrictions or requirements for risk spreading	Must have primary object of managing assets with a view to risk spreading	Must disclose how widely investments will be spread and business sectors, geographic areas and types of investment
<b>Operating History</b>	No minimum trading record required	3 year minimum trading record requirement	No minimum trading record required
<b>Free Float</b>	No minimum free float requirement	Minimum 25% shares in public hands	No minimum free float requirement
<b>Minimum Market Capitalisation</b>	No minimum market capitalisation	£700,000	No minimum market capitalisation
<b>Corporate Governance</b>	No formal requirements, including independent directors	Combined Code applies to UK funds and some non-UK funds adopt all/part of the Combined Code voluntarily	No formal governance code - but subject to QCA guidelines
<b>Director Dealings</b>	No formal restrictions	Model Code on directors’ dealings applies	Restrictions on directors’ dealings during closed periods
<b>Sponsor/Adviser Regime</b>	None required	Sponsor required	Nomad required at all times
<b>Related Party Transaction Rules</b>	None apply	Shareholder approvals required	Notification only required
<b>Class Transaction Rules</b>	None apply	Shareholder approvals required	Notification only required
<i>Information sourced from materials provided by the London Stock Exchange at its inaugural SFM Conference of January 2008.</i>			

## LONDON STOCK EXCHANGE LAUNCHES A NEW PUBLIC MARKET FOR SPECIALIST FUNDS *continued*

investors and managers have commented on a certain lack of transparency as regards its trading platform. The LSE's ability to develop a dynamic system that addresses current concerns is another example of why the London markets are so attractive to international applicants, investors and managers.

### Comparisons between the SFM, the Main Market and AIM

As mentioned above, the SFM is intended to fill a gap between London's Main Market and AIM, offering a new trading platform to a new breed of highly specialised fund managers and investors. The table on page three summarises certain key elements of all three markets which demonstrates that the SFM has been structured to harness the benefits of both the Main Market and AIM.

### Conclusion

Specialist "alternative" funds are now an essential feature of many investment portfolios, including those of traditionally conservative investors such as pension funds. Diversification of portfolio risk and the robust growth of the emerging markets in times of uncertainty in the Western capital markets have aided the rise of highly specialised funds and their managers as key market players.

The LSE has recognised the value of a specific public securities

market to address the needs of this growing investment community and has provided them with an appropriate platform on which to operate. As at the date of this article no funds have been admitted to the SFM but we understand from the LSE that the first listing is in progress and due to be launched shortly.

The jury is still out on whether the SFM will be a success and its ability to play a useful role in the global markets is dependent upon the players in the alternative fund market (including managers, investors and professional advisers) working together to create opportunities to allow the SFM to flourish. As offshore advisers to a large number of funds (a large number of which are Cayman domiciled and some of which could be categorised as specialist funds) Conyers Dill and Pearman is well placed to work with investment managers to capitalise on opportunities to showcase and enhance the SFM's place in both London's and Europe's capital markets.



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## AVIATION ASSETS AND A SAFE PAIR OF HANDS



Lenders and operators involved in the field of aviation finance are aware of the advantages of financing properly maintained aircraft engines independently of the airframe to which they may be attached. In most circumstances, an aircraft engine is an identifiable stand alone asset with a separate manufacturer's serial number (an msn). If the asset is properly maintained, it retains a substantial independent value and a theoretically unlimited useful life span. In 2007 an average new engine purchase price was eight million USD and double digit engine values are not unusual. Values of engines are cyclical in nature and this is not primarily due to international economic conditions.

One of the keys to understanding aviation asset value is to appreciate where in the maintenance cycle the relevant assets find themselves at any given time. Pre a major check, value is low, post a major check, value rises substantially. This is an industry where lenders not only need to understand legal structures but also need to understand the life cycles of the

assets they finance.

Most engines are detachable and, as a practical matter, are readily interchanged for use on other airframes whether such airframes be part of an individual operator's fleet or that of an international alliance partner. Both informal and formal interchange arrangements are commonly referred to as pooling. Further, several types of engines consist of valuable detachable modules which may be removed and replaced. Maintenance and pooling arrangements are also applied to these modules and this practical approach of the aviation operator only exacerbates the potential problems for an owner seeking their property or a lender their security. Replacement of parts or modules of an engine will in most circumstances increase or decrease the value of that engine as will replacement of engines on an airframe affect the value of the aircraft which they collectively become.

It is no wonder that in this world of actively moving and moveable property, engine owners (head-lessors) and lenders alike seek consistency and clarity in the law in relation to the ownership, financing and registration arrangements by which their aviation

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# AVIATION ASSETS AND A SAFE PAIR OF HANDS

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assets are managed and controlled. On the practical front, there is a battle to prohibit, or at the very least circumscribe, engine pooling and minimise the risk of a wide number of loss of control situations.

Quite often, the head-lessor or a lender who has provided financing for an aircraft (which includes specified engines) or separate financing for an individual engine or engines, will find their property (in the former case) or their securing asset (in the latter case) attached to an airframe owned by or mortgaged to an unrelated and unknown third party and possibly controlled by the laws of an unknown jurisdiction. For example, though not a local law rule of wide application, in jurisdictions such as Greece, engines attached to an airframe are considered to be the property of the airframe owner. Avoiding the applicability of such local law rules can be of great concern to both head-lessors and lenders alike when by the application of the rules of conflict of laws, the law governing an asset at the time of a particular crisis turns out not to be the law initially within the contemplation of the parties. The applicable law, for example, may be found to be that of the jurisdiction in which the asset is situated at the relevant time (the *lex situs*) or some other law linked to the asset's place of registration or otherwise.

Practical efforts to minimise risk are possible. These include entering into recognition of rights agreements, retaining rights to physical inspection and prior approval of pooling partners and maintenance providers, to the extent legally possible, retention of or taking security over extensive maintenance reserves, prohibition of operation in or through risky jurisdictions and enforcement of important financial covenants. These are all important tools of control and protection for those with interests in an aircraft or its primary component parts of airframe and engines.

Most financing lessors in today's environment want to hold assets in international well respected jurisdictions which clearly recognise their ownership rights based on common law principles. Increasingly, to enable them to release capital and equity tied-up in expensive but critical equipment, they also wish to have available to them sale and leaseback options which may also minimise their residual value exposure. Lenders involved in asset based finance transactions also want the ownership rights of a borrower and security rights of a lender clearly and consistently applied. Lenders want to register their rights in moveable equipment in a manner which is universally understood and recognised.

\*Bermuda is the jurisdiction of choice for the incorporation of the Aviation Working Group (AWG), representative body for manufacturers, key operating lessors and key financiers in the aviation field. AWG began work in 1994, at the request of the International Institute for the Unification of Private Law (UNIDROIT), as an ad hoc industry group to contribute to the development of the Cape Town Convention. Since that time, its scope of activity has significantly expanded and now addresses a wide range of topics affecting international aviation financing. In 2002, it formalised itself as a not-for-profit legal entity. For more information see [www.awg.aero](http://www.awg.aero).



Bermuda continues to play an important role in the creation of asset holding entities and the structuring of individual or portfolio securitisations using exempted company special purpose vehicles (SPVs). Political and economic stability as well as a respected and consistent judicial system, a favourable legislative framework and tax regime, a government issued assurance certification regarding a corporation tax free environment, application of structural bankruptcy remoteness techniques and the absence of exchange control and currency restrictions, make Bermuda the ideal jurisdiction to play a consistent and reliable role in ownership and securitisation structures. This environment works particularly well in relation to aviation assets when linked with the professionalism, responsiveness and experience of the Bermuda Department of Civil Aviation (the BDCA) and the implementation of forward thinking legislation such as the Bermuda Mortgaging of Aircraft and Aircraft Engines Act 1999.

Once widely in force, the Cape Town Convention on International Interests in Mobile Equipment (the Cape Town Convention) and the related Aircraft Equipment Protocol (the Protocol) will facilitate the cross-border financing and leasing of, amongst other aviation assets, aircraft engines. There will be an ability to register international interests in such assets. Until such time, owners and financiers alike will look to traditional methods of control over the use of their asset. They will use a full range of backstops, both legal and practical, to ensure their valuable security is available in an expected and acceptable location at the time enforcement and repossession is contemplated.

In Bermuda the Mortgaging of Aircraft and Aircraft Engines Act 1999 and related regulations have been in place since 1 July 1999. Under this legislation, a Register of Aircraft Mortgages and a Register of Aircraft Engine Mortgages is maintained to assist in the registration of security interests in both aircraft and aircraft engines (with certain minimum thrust or horsepower levels matching those set in the Protocol) and owned by or otherwise in the lawful possession of a company incorporated in Bermuda. In both instances, the priority of a mortgage can be fixed by acceptance of a Priority Notice by the BDCA pursuant to which the priority of a yet to be executed mortgage can be fixed for a 14 day renewable period. Fees are reasonable and set on a sliding scale up to a maximum of eight hundred USD.

Whether for aircraft or engines, Bermuda continues its role as an important participant in the international aviation primary and secondary financing and leasing markets. Bermuda has the legislative framework, professional infrastructure and individuals with the transactional experience and international understanding required by operators, lessors and lenders worldwide in the structuring and management of their high value aviation assets and interests.

Bermuda truly is a safe pair of hands.



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