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70-10259

June 20, 2005

RECEIVED
JUN 21 2005
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

The Honorable Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

RE: Harbert Distressed Investment Master Fund, Ltd, File No. 070-10259 – Protest and Request for Hearing of Law Debenture Trust Company of New York

Dear Mr. Katz:

Enclosed on behalf of Law Debenture Trust Company of New York are an original and three copies of a Protest and Request for Hearing in the above-referenced proceeding. A copy of the Protest has been served on the Applicant, Harbert Distressed Investment Master Fund, Ltd.

Please stamp the extra copy enclosed and return it to the messenger. Please contact the undersigned with any questions.

Respectfully submitted,

Elizabeth W. Whittle

Elizabeth W. Whittle
Counsel to
Law Debenture Trust Company of New York

W658808.1

/

As filed with the Securities and Exchange Commission on June 20, 2005

FILE NO. 070-10259 70-10259

SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

PROTEST AND REQUEST FOR HEARING OF LAW DEBENTURE TRUST COMPANY OF NEW YORK AS TRUSTEE REGARDING FORM U-1 AND U-1A UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Law Debenture Trust Company of New York as Trustee
767 Third Avenue, 31st Floor
New York, NY 10017

The Commission is requested to send copies of all notices, orders and communications in connection with this matter to:

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Counsel to Law Debenture
Company of New York as Trustee

PROTEST AND REQUEST
FOR HEARING OF
LAW DEBENTURE TRUST COMPANY OF NEW YORK AS TRUSTEE

Law Debenture Trust Company of New York, acting in its capacity as successor Trustee (when acting in such capacity, "**Law Debenture**") under an Indenture which is more particularly described below, by and through its counsel, hereby seeks to comment on, and submits this protest to, the amended Form U-1 Application of Harbert Distressed Investment Master Fund, Ltd. ("**Harbert**") for an exemption from regulatory oversight under Section 3(a)(4) of the Public Utility Holding Company Act of 1935, as amended ("**PUHCA**" or the "**Act**")[1] in the above-referenced proceeding with respect to NorthWestern Corporation, a multistate public utility company ("**NorthWestern**"). In support of this Protest and Request for Hearing, Law Debenture submits the following:

I.

BACKGROUND:

1. **The Application.**

On October 26, 2004, Harbert filed a Form U-1 Application under PUHCA, seeking an exemption from registration as a holding company under Section 3(a)(4) of PUHCA.[2] According to its Application, Harbert has received more than 10% of the voting securities of the reorganized NorthWestern in exchange for "previously contracted bona fide debt of NorthWestern", pursuant to NorthWestern's Second Amended and Restated Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated August 18, 2004. See Application, pp. 1-2. Harbert alleges that it plans to hold these voting securities "for investment

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1 15 U.S.C. § 79, *et seq.*

2 15 U.S.C. § 79(c)(a)(4).

purposes only" and that it will reduce its interests to less than the 10% threshold "as soon as it is financially reasonable." Id. Harbert requests an exemption for three (3) years, but also indicates that it will seek to extend this three (3) year period, if necessary. See Application, pp. 8-9. Harbert also claims that it does not intend to control or affect the governance of NorthWestern and that it does not intend to cause any changes in policy of NorthWestern's management. See Application, p. 7. See also Harbert's SEC Form 13-D filed with the Commission on November 12, 2004, but see Harbert Amendment 1 to SEC Form 13-D filed with the Commission on February 15, 2005.

On November 9, 2004, the Securities and Exchange Commission (the "**Commission**") issued a Notice of Filing, establishing a comment date of December 6, 2004. On February 15, 2005, Harbert filed with the Commission an Amendment No. 1 to its Form U-1 Application (as so amended, "**Application**")[3].

2. Law Debenture.

Law Debenture is a banking corporation duly organized under the laws of the State of New York. Law Debenture is the successor Trustee to The Bank of New York as Trustee under an Indenture dated as of November 1, 1996 (as amended, the "**Indenture**"), pursuant to which The Montana Power Company, which subsequently became a subsidiary of NorthWestern ("**Montana Power Company**"), issued certain 8.45% Junior Subordinated Debentures (the "**Debentures**") to Montana Power Capital I, which then issued to qualified investors certain 8.45% Cumulative Quarterly Income Preferred Securities, Series A (the "**QUIPS**").

[3] The factual circumstances and evidence of Harbert's improper control have arisen after the expiration of the comment date specified by the Commission in its notice. Law Debenture respectfully requests the waivers necessary so that this protest and request for a hearing may be considered by the Commission.

3. **<u>NorthWestern</u>.**

NorthWestern is a public utility that generates, transmits, and distributes electricity and provides natural gas distribution service to approximately 608,000 customers in the States of Montana, South Dakota and Nebraska. NorthWestern is also the successor in interest to Northwestern Energy, L.L.C. (formerly known as The Montana Power L.L.C.) which is the successor by merger to Montana Power Company, the original issuer of the Debentures under which Law Debenture is successor Trustee.

On September 14, 2003 (the "**<u>Petition Date</u>**"), NorthWestern filed with the United States Bankruptcy Court for the District of Delaware (the "**<u>Bankruptcy Court</u>**") a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "**<u>Bankruptcy Code</u>**") (Bankruptcy Case No. 03-12872).

4. **<u>Harbert's Relationship with NorthWestern</u>.**

Harbert is a privately held firm that invests in securities of financially troubled businesses, including electric power companies. Prior to the Petition Date, Harbert began to purchase, either directly or through its affiliate, various amounts of senior notes issued by NorthWestern. See Application, p. 5.[4] Harbert also purchased, either directly or indirectly, various amounts of subordinated debt securities issued by NorthWestern. See Application, p. 5.

On August 27, 2004, NorthWestern filed with the Bankruptcy Court a Second Amended and Restated Plan of Reorganization, dated as of August 18, 2004 (the "**<u>Plan</u>**"), under which NorthWestern would continue to operate as a standalone public utility company, retaining all of

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4 According to Harbert's Application, Harbert and its affiliate, Alpha Sub US Fund VI, LLC ("**<u>Alpha</u>**"), acquired 7.85% of NorthWestern debt due 2007, 8.75% of NorthWestern debt due 2012, 6.95% of NorthWestern debt due 2028, 7.07% of Montana Power debt due 2006, 7.96% of Montana Power debt due 2026, and 7.875% of Montana Power debt due 2026. Harbert or its administered funds also own beneficially North Western's subordinated debt securities. See Application, p. 5.

its public utility lines of business. Under the Plan, the unsecured creditors of NorthWestern were entitled to receive pro rata distributions of all of the common stock of the reorganized NorthWestern. On October 12, 2004, the Bankruptcy Court issued an order confirming the Plan, which became effective on November 1, 2004 (the "**Effective Date**"). As a result of the Plan, and as stated in its Application, Harbert acquired approximately 26.5% of all of the outstanding shares of common stock of NorthWestern, when all of the shares underlying certain warrants issued by NorthWestern to Harbert are treated as being outstanding, in accordance with the provisions of Rule 13d-3(d), as enacted under the Securities Exchange Act of 1934, as amended. 17 CFR §240.13d-3(d). Harbert is now, and since the Effective Date has been, NorthWestern's largest stockholder.

In its Application, Harbert asserts that despite this exceedingly large ownership interest in a public utility, NorthWestern, it qualifies for an exemption from the registration requirements under PUHCA, because it is only "temporarily a holding company" and, as such, is entitled to the exemption contained in Section 3(a)(4) of PUHCA. See Application, p. 2. Law Debenture submits that Harbert does not meet the Commission's standards for an exemption under Section 3(a)(4) for the following reasons:

(a) It would not be in the public interest for the Commission to grant an exemption. Harbert is not a passive investor in NorthWestern, as suggested in Harbert's Application, but instead now exerts significant influence and control over the management and policies of NorthWestern; and

(b) Contrary to the statements made by Harbert in its Application, Harbert is not "temporarily a holding company" within the meaning of Section 3(a)(4) of PUHCA, and the case law thereunder, and therefore Harbert does not qualify for the exemption set forth therein.

Accordingly, Law Debenture respectfully requests that Harbert's Application be denied.

II.

ARGUMENT:

Under the provisions of PUHCA, if an entity is a "public utility holding company,"[5] then it must comply with the registration requirements contained therein. 15 U.S.C. § 79(e). However, Section 3(a)(4) of PUHCA provides that:

> The Commission … shall exempt any holding company … from any provision or provisions of [PUHCA], unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if –
>
> (4) such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities.

(emphasis added).[6] The Commission has expressly stated that the "unless and except clause" contained in Section 3(a) of PUHCA is intended to:

> prevent the exemption of any holding company which, though it might meet the formal conditions under Section 3(a), is essentially the type of company at which the purposes of [PUHCA] were directed.[7]

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5 Under PUHCA, a "public utility" is defined as "an electric utility company or a gas utility company." 15 U.S.C. § 79(b)(5). An "electric utility company" is defined as "any company which owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale. . . ." 15 U.S.C. § 79(b)(3). A "holding company" means:

> (A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public utility company ... unless the Commission ... declares such company not to be a holding company; and (B) any person which the Commission determines ... directly or indirectly to exercise ... such a controlling influence over the management or policies of any public utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon holding companies. 15 U.S.C. § 79(b)(7).

(emphasis added).

6 15 U.S.C. § 79(c).

7 *See Cities Service Co.*, 8 SEC 318, 335-36 (1940), citing S. Rep. No. 621, 74th Cong., 1st Sess. 24 (1935).

Harbert claims that it will be "temporarily a holding company" within the meaning of Section 3(a)(4) of PUHCA and therefore, it falls within the exemption contained therein. In support of its Application, Harbert claims that:

> … the facts of this matter demonstrate that <u>Harbert will not exercise such a controlling influence over the management or policies of the reorganized NorthWestern</u> as to make it necessary or appropriate to subject Harbert to regulation as a holding company. Although Harbert has acted to protect its rights as a creditor in bankruptcy, <u>its role will substantially diminish following the effective date of the reorganization</u>….
>
> <u>Harbert does not have any plans to control or affect the governance of NorthWestern. The firm does not intend to cause any changes in policy of NorthWestern</u>. It does not have an objective of owning large percentages of public utility companies.

See Application, pp. 6-7 (emphasis added). In direct contradiction of the foregoing statements, and as more particularly described below, Harbert, in fact, has exercised significant control and influence over the management and Board of Directors of NorthWestern. Moreover, this active investment strategy on the part of Harbert is not unique to its NorthWestern investment. As more particularly described below, Harbert has also purchased a large interest in another public utility, as well as interests in other electric power companies, and has influenced and directed the decisions and policies of the boards of directors of those companies. As such, Harbert is the very type of investor to which the registration requirements of PUHCA should, and do, apply. Accordingly, it is not in the public interest for the Commission to grant Harbert the requested Section 3(a)(4) exemption from the registration requirements of PUHCA.

1. <u>The Public Interest Does Not Support Granting an Exemption</u>.

1.1 <u>Since the Effective Date of the Plan, Harbert Has Been Influencing And Directing the Policies and Decisions of NorthWestern's Board of Directors</u>.

Although in its Application, Harbert claims that it will not cause changes in the policies of NorthWestern's management, since the Effective Date of the Plan, Harbert has been "actively raising concerns with [NorthWestern's] management" and involved "directly with the Board Chairman concerning the Plan." See Application, Exhibit 2, p. 2 (a copy of the February 15, 2005 letter to the Board of Directors and its Chairman is attached as **Exhibit A**). For example, since the Plan became effective, NorthWestern has attempted to resolve a number of its outstanding bankruptcy claims, including all of the claims asserted by (a) Law Debenture on behalf of the beneficial holders of the QUIPS securities and (b) Magten Asset Management Corporation which is the beneficial owner of more than 33% of the issued and outstanding QUIPS ("**Magten**"). On January 27, 2005, Law Debenture and Magten reached an agreement with NorthWestern to settle all of their respective claims (the "**Settlement**"), the terms of which were contained in a settlement agreement which was executed on February 9, 2005 by all of the parties thereto (including NorthWestern) and filed on February 10, 2005 with the Bankruptcy Court (the "**Settlement Agreement**").

The Settlement was negotiated among the parties at arms-length and resolved approximately ten lawsuits, appeals and objections. It fairly balanced the significant litigation risk facing all of the parties by providing a recovery to the beneficial holders of the QUIPS that was greater than that which was provided for in the Plan, but which was significantly less than the holders of the QUIPS would have received if they succeeded in their litigation claims.

After the Settlement Agreement was filed with the Bankruptcy Court, and publicly announced by NorthWestern, Harbert raised objections to the Settlement Agreement directly with the Chairman of the Board of Directors of NorthWestern and also publicly through its own press release. See **Exhibits A** and **B** attached hereto. In its communications with the Board, Harbert, as the largest stockholder of NorthWestern, claimed that the Settlement Agreement was contrary to the interests of NorthWestern and its shareholders, and demanded that

NorthWestern's Board of Directors promptly announce its disapproval of the Settlement Agreement and "instruct management not to take any further steps to consummate the Settlement." See **Exhibit A**, p. 4. Harbert further demanded that NorthWestern immediately approve Harbert's appointment to NorthWestern's plan committee which, under NorthWestern's Plan, is responsible for overseeing the settlement of the remaining claims against NorthWestern (the "**Plan Committee**"), including those claims which were the subject of the Settlement Agreement which Harbert was directing NorthWestern Management to reject. In response to Harbert's demand, NorthWestern not only jettisoned the Settlement Agreement, but also made Harbert a member of the Plan Committee.

On the day after Harbert's letter to the Board (i.e., February 16, 2005), NorthWestern received from counsel for the Plan Committee a letter stating that the Plan Committee also "strongly objected" to the terms of the Settlement Agreement. As a result of these objections, and even though the terms of the Settlement Agreement were binding upon the parties to the Settlement Agreement, NorthWestern, on the same day, rejected the Settlement Agreement.

In light of the foregoing, it is clear that Harbert is controlling decisions of NorthWestern management and is not a passive investor. Granting Harbert the requested Section 3(a)(4) exemption so that Harbert can continue to direct and influence the decisions of NorthWestern's Board of Directors, without the oversight required by PUHCA, would not be in the public interest.[8]

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8 Harbert alleges in its Application that regulation of NorthWestern by various state and federal regulatory agencies is adequate to protect the public interest. However, regulation of NorthWestern is not at issue here. Rather, it is the oversight of Harbert as required by PUHCA. Harbert is not subject to regulation by those state and federal regulatory agencies, and regulation of NorthWestern by certain state agencies is no substitute for adequate monitoring and control of Harbert by this Commission.

1.2 **<u>Harbert Has Been an Active Investor in Another Public Utility Company</u>**.

In its Application, Harbert expressly states that "[i]t does not have an objective of owning large percentages of public utility companies." See Application, p. 7. Harbert's actions are contrary to this stated objective and suggest that Harbert is not being forthright with the Commission as to its true intentions with respect to its ownership of NorthWestern. In addition to its large equity investment in NorthWestern, Harbert owns a significant equity investment in another public utility, Allegheny Energy, Inc. ("**<u>Allegheny</u>**").[9] In its own press release regarding its investment in Allegheny, Harbert describes itself as a "large investor in power companies" that "invests in securities of various companies in the electric power industry, including [Allegheny] and its utilities."[10]

With respect to its investment in Allegheny, Harbert has actively opposed before this Commission, Allegheny's application for waiver of certain requirements applicable to registered public utility holding companies. Harbert filed both a protest and request for a hearing on Allegheny's application and an answer to Allegheny's response to Harbert's protest. Harbert then issued a press release, in which it described its request to the Commission to hold hearings on Allegheny's ongoing need for waivers of PUHCA requirements. In an order issued April 29, 2005, the Commission rejected Harbert's claims. *Allegheny Energy,* SEC Release No. 35-27963; 70-10251 (April 29, 2005). These actions on the part of Harbert demonstrate its clear attempts to control and affect the management decisions of another public utility.

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9 See Press Release, dated February 23, 2005, of Harbert (a copy of which is attached hereto as **<u>Exhibit C</u>**).

10 <u>Id</u>.

Harbert has also invested in a number of other financially distressed energy companies, including (a) Gulfport Energy Corp. (beneficial owner of at least 10% of all capital stock),[11] (b) Mission Resources Corp. (beneficial owner of at least 10% of all capital stock)[12] and (c) James River Coal Company (beneficial owner of at least 10% of all capital stock).[13] Harbert is the owner of "a significant amount of both the 8 ⅞% bonds due October 2011 and the 8 ¾% bonds due October 2008" issued by Calpine Canada Energy Finance II ULC, an affiliate of Calpine Corporation ("**Calpine**").[14] Harbert has been aggressive in influencing the Calpine Board of Directors. Calpine is a large developer of power projects which are Exempt Wholesale Generators ("EWGs") under PUHCA or Qualifying Cogeneration or Small Power Production Facilities ("QFs") under the Public Utility Regulatory Policies Act of 1978.

With respect to its investment in Calpine, Harbert sent on April 13, 2005 a letter to Calpine's Board of Directors in which it openly questioned the Board's intention of honoring its legal commitments to its bondholders in connection with the sale by Calpine of a power generating facility, and accused the Board of attempting an "end run" around its obligations to its bondholders.[15] Harbert threatened to take legal action against Calpine's Board, if necessary. In an effort to maximum its influence over Calpine's Board on this matter, Harbert issued a press release[16] in which it published its letter to Calpine's Board. This press release was then republished in a number of newspapers, including the *Wall Street Journal*.[17] By putting the

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11 See SEC Form 3 filed on or about March 2, 2005 by Harbert with the Commission.

12 See SEC Form 4 filed on or about January 27, 2005 by Harbert with the Commission.

13 See SEC Form 4 filed on or about March 30, 2005 by Harbert with the Commission.

14 See Press Release, dated April 13, 2005, of Harbert (a copy of which is attached hereto as **Exhibit D**).

15 See Press Release, dated April 13, 2005, of Harbert (a copy of which is attached hereto as **Exhibit D**).

16 Id.

17 *Wall Street Journal*, May 2, 2005 (a copy of which is attached hereto as **Exhibit E**).

public spotlight on Calpine's Board, Harbert's actions had the intended effect of causing Calpine's Board to reconsider its actions regarding the sale, and to confirm that "it never had any intentions of not honoring its obligations to its bondholders."

To follow through on its threat, on May 5, 2005, Harbert filed an Originating Notice ("**Calpine Complaint**") in the Supreme Court of Nova Scotia against Calpine and its subsidiaries including Calpine Energy Finance II UCL. The Calpine Complaint alleges that Calpine and named subsidiaries violated Harbert's rights under Nova Scotia and Canadian Laws in connection with identified financing transactions. This litigation is disclosed in Calpine's most recent SEC Form 10-Q.

Based upon the foregoing, it is clear that Harbert has historically not acted as a passive investor but has taken aggressive actions to influence and direct the policies and decisions of the boards of directors of the public utility and energy companies it invests in. Harbert is, therefore, the type of investor to which the registration requirements of PUHCA were intended to apply, and to grant the requested Section 3(a)(4) exemption would not be in the public interest.

2. Harbert's Ownership in NorthWestern is Not Temporary and Therefore Harbert Does Not Qualify for Exemption Under Section 3(a)(4).

Harbert does not qualify for an exemption under Section 3(a)(4) of PUHCA because its ownership of these securities is not temporary. The Commission has stated that this:

> … exemption was intended to address a narrow set of circumstances in which holding company status was temporary, *inadvertent*, and unaccompanied by the intent to exercise control, so that abuses were unlikely to occur. The exemption has been granted where utility stock is held as collateral for a debt on which the debtor defaults, and where an investment bank acquires utility stock that it agrees to distribute within one year.

(emphasis and italics added).[18]

In fact, most of the cases arising under Section 3(a)(4) involve situations in which the ownership period of securities was *one year or less*. *See Northwest Utilities Co., Bear Stearns & Co.*, 22 SEC 454 (March 28, 1946) (SEC grants exemption for not more than one year from the date of the proposed acquisition); *Equitable Securities Corporation, T.J. Raney & Sons, Womeldorff & Lindsey*, 32 SEC 652 (1951)(SEC grants exemption so long as stock is disposed within one year of the date of acquisition); *Empire Southern Gas Company*, Release No. 6627 (May 10, 1946) (exemption sought and later withdrawn when merger/consolidation took place on same day, rendering application moot); *J.G. White and Co.*, Release No. 7104 (December 27, 1946) (exemption granted for a period of twelve months from the date of acquisition of common stock); *Southern Natural Gas Co. and Equitable Securities Corp.*, 30 SEC 798 (December 30, 1949) (exemption granted for twelve months from the date of acquisition); *Blyth & Co., Inc.*, Release No. 11959 (June 1, 1953) (exemption granted for a period of twelve months).

Harbert refers to various cases for its position that three years has been deemed by the Commission to be "temporary," and even suggests that it may seek to extend that three year period. However, those cases do not support Harbert's position. For example, in *Fidelity Management & Research Company, et al.*, SEC Release No. 35-26448 (January 5, 1996) ("**Fidelity**"), the Commission permitted the holding of voting securities for up to three years from the date of acquisition of the securities while the Fidelity-managed funds disposed of their interests in El Paso Electric Company ("**El Paso**"). In *Fidelity*, while the raw percentage ownership by the Fidelity funds approached 30%, there were twenty-one funds and accounts managed by Fidelity, *none of which alone* held more than 10% of the voting securities of El

18 "The Regulation of Public Utility Holding Companies" prepared by the Division of Investment Management, Securities and Exchange Commission, published June 1995, p. 102.

Paso. Thus, the Commission, in rendering its decision, relied on the fact that the holdings were not aggregated, making it less likely that Fidelity would be able to exercise control over El Paso.

Importantly, Fidelity wound up with the voting securities as a result of the termination of a merger and failure to implement a reorganization plan reached among creditors and equity holders.[19] It acquired these securities as a last resort, and Fidelity apparently did not plan to hold these securities at all, until the other alternatives failed. In addition, the Commission relied on representations that Fidelity did not intend to enter into any stand-alone transactions with the reorganized El Paso and represented to the New Mexico Public Service Commission that it "will not directly or indirectly cause any change in the policies or operations of the reorganized El Paso."[20] Even in light of these facts, the Commission imposed significant reporting requirements on Fidelity.[21]

In contrast to *Fidelity*, Harbert owns, either directly or indirectly, *through only two affiliates,* its entire equity position in NorthWestern. Unlike *Fidelity,* Harbert did not acquire its equity interest in NorthWestern as a last resort option or inadvertently, *but instead acquired its equity interest as part of an overall calculated effort to obtain these voting securities for its account*. Unlike *Fidelity,* Harbert is in the business of buying distressed public utility securities in reorganization proceedings, and was an active participant in crafting NorthWestern's Plan. Unlike *Fidelity,* Harbert has also not agreed to be bound by any particular regulatory reporting and is seeking an unrestricted exemption for three years or longer. All of these factors clearly make *Fidelity* case distinguishable from Harbert's case.

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19 52 SEC at 571.

20 52 SEC at 578.

21 52 SEC at 577.

CONCLUSION:

For all of the reasons set forth above, Law Debenture respectfully requests that Harbert's Application be denied.

NIXON PEABODY LLP

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202-585-8338
202-585-8080

Counsel to Law Debenture Trust Company of New York as successor Trustee

Exhibit A

70-10259 /

THE HARBERT DISTRESSED INVESTMENT MASTER FUND, LTD.
555 Madison Avenue, 16th Floor
New York, NY 10022

February 15, 2005

VIA FACSIMILE

Members of the Board of Directors
of NorthWestern Corporation
c/o Dr. Ernest Linn Draper, Jr.
Chairman of the Board
NorthWestern Corporation
125 S. Dakota Avenue
Sioux Falls, SD 57104-6403

Re: Failure to Adhere to the Plan of Reorganization and Objection to Flawed Settlement with Magten Asset Management Corporation and Law Debenture Trust Company of New York

Gentlemen:

Harbert Distressed Investment Master Fund, Ltd. ("Harbert") holds approximately 20% of the Class 7 prepetition claims against NorthWestern Corporation ("NorthWestern" or the "Company"), as well as approximately 20% of the common stock and approximately 33% of the warrants of reorganized NorthWestern. We received the latter securities by operation of the Second Amended and Restated Plan of Reorganization (the "Plan") in exchange for previously contracted bona fide debt of NorthWestern. We have been told by representatives of holders of what we believe are a majority of both the Class 7 prepetition claims and the new common stock that they share the concerns described in this letter.

In an effort to protect the interests of Class 7 creditors such as Harbert, as well as shareholders, warrant-holders and other stakeholders in NorthWestern as they were negotiated by the participants to the bankruptcy proceeding and set forth in the Plan, I am writing to express Harbert's strong objection to (i) the excessive consideration proposed to be paid in the settlement agreement in principle that NorthWestern management, on February 9, 2005, announced it had reached with Magten Asset Management Corporation ("Magten") and Law Debenture Trust Company of New York LLC ("Law Debenture"); (ii) management's and NorthWestern's outside counsel's continued objections to our repeated requests to add creditors to the Plan Committee created to review settlements proposed by management, notwithstanding the lack of a role of the Company under the Plan in constituting the Plan Committee and the ongoing attempts by Harbert in good faith to accommodate the Company's concerns; and (iii) the failure by the Company, after requests by Harbert first made in December, to distribute over 375,000 common shares with a current value of more than $10 million to their proper owners in Classes 7 and 9, and to cancel more than 700,000 highly dilutive warrants, both of which are required by the Plan.

We have been actively raising concerns with management and NorthWestern's outside counsel since December regarding compliance with the Plan. After the Company announced the settlement last week, we raised these concerns directly with the Board Chairman in an effort to resolve them before more events transpired. Yesterday our counsel received a letter from Paul Hastings, the Company's outside counsel, acknowledging our concerns and agreeing to further discuss them, and representing that no further action will be taken until we meet again. However, even this letter of yesterday raises yet another new objection to our serving on the Plan Committee, which we have considered and is without merit. Given the previous assurances we have received from Paul Hastings and the actions taken by management contrary to those assurances, and management's recent announcement of the Magten settlement without properly consulting with the Board or the Plan Committee, we believe a clearer statement of the position of the Board itself on these issues, which lie at the heart of implementing the Plan as approved by the Bankruptcy Court, is merited without further delay.

As discussed below, we believe that the proposed settlement violates the plain terms of NorthWestern's confirmed Plan, is contrary to the interests of NorthWestern and its shareholders, and is the product of a negotiation and approval process that appears to have been impaired by the existence of conflicts of interest on the part of management and Paul Hastings and a premature announcement only because of an unauthorized "leak" by management. We ask that the Board (i) promptly announce its disapproval of the proposed settlement; (ii) instruct management to comply promptly with the Company's obligations under the Plan with respect to distributing or canceling certain of the common stock and warrants proposed to be distributed in connection with this settlement; and (iii) take steps to protect against the potential future recurrence of the procedural flaws that appear to have contributed to management's execution and announcement of this proposed settlement without appropriate Board consultation and while raising unwarranted objections to our role on the Plan Committee.

The proposed settlement appears to be contrary to the interests of NorthWestern and its shareholders, and its negotiation and approval appear to have been tainted by conflicts of interest.

Harbert was active in the reorganization proceedings of NorthWestern and in negotiating for rights and value under the Plan that will be impaired by the Company's actions to date which are the subject of this letter. As of October 2004, Harbert was in a position to assess the low likelihood of a recovery by Magten under its litigation. We understand that little has changed regarding the facts of that litigation since the Company's Plan was confirmed in October. Moreover, we received assurances in December from Gary Drook, the Company's CEO, and in December and January from Paul Hastings that the litigation continues to be without merit. While we understand the desire to end the distraction and legal fees associated with litigation, the amount of consideration proposed in this settlement cannot be justified.

As described in NorthWestern's February 9, 2005 press release, the proposed settlement calls for NorthWestern to distribute to Law Debenture, on behalf of Magten and the other non-accepting Class 8(b) QUIPS holders, (i) approximately 870,000 shares of NorthWestern common stock that under the Plan's express terms were set aside in reserves established for Class 9 pending litigation claims, which the press release inaccurately characterizes as "worth $17.4 million" and which in fact are worth more than $24 million, and (ii) 382,732 shares of NorthWestern common stock and 710,449 warrants not distributed to Class 8(b) claimants because those holders had elected to litigate rather than settle.

The proposed settlement appears, on its face, to be contrary to the interests of NorthWestern, its shareholders, warrant-holders, and pre-petition creditors. As noted above, the settlement calls for NorthWestern to distribute to Law Debenture approximately 1.25 million shares of NorthWestern common stock, as well as more than 710,000 warrants. Using yesterday's closing price of $28.05, the common stock to be distributed has a total value of approximately $35 million. In addition, the value of the warrants to be distributed using yesterday's closing price of about $5 is in excess of $3.5 million, for a total settlement value of more than $38 million. By contrast, Magten is seeking to recover only approximately $50 million -- i.e., the full amount of the pre-petition debt (plus accrued interest) held by Magten and the other rejecting plaintiffs. In other words, the proposed settlement would pay Magten and the other plaintiffs a 75% recovery on their claim. A payment of this magnitude appears to be grossly excessive, particularly in light of what we understand to be Magten's very low chance of prevailing in its litigation. NorthWestern's chief executive officer, Gary Drook, informed me, during a December 21, 2004 meeting, that he understands Magten's chances of prevailing to be very low, a view that Paul Hastings confirmed with us last month. Furthermore, neither Mr. Drook nor Paul Hastings communicated any reason to believe a settlement was required on an expedited basis. Indeed, this lack of urgency in negotiating a settlement was the principal reason Harbert did not press the Company more forcefully until now on adding the appropriate members to the Plan Committee established to review settlements.

Finally, the disparity between the high amount of the settlement and the lack of merit of the litigation, as communicated by comments by the Company in public disclosure and by the creditors in bankruptcy court, will make it more difficult for the Company to negotiate reasonable settlements with the other litigation claimants that remain. The signal sent by this settlement, if not promptly rejected by the Board, is that the Company is willing to settle litigation at almost any cost.

Why did management announce a proposed settlement that appears to be so excessive in amount before properly vetting it with the Board and Plan Committee? We are concerned that the answer may rest, at least, in part, on the conflicts of interest that appear to have marred the process by which the settlement was negotiated and approved. These conflicts arose at several levels. First, it appears that management's interests in negotiating the settlement may not have been properly aligned with those of the Company, its shareholders generally and its creditors like Harbert whose rights and value were established under the Plan and are also now shareholders. We understand that at least one member of management, Michael Hanson, is a defendant in litigation brought by Magten, which the proposed settlement would have resolved. In addition, management may have been unduly influenced, in its settlement deliberations, by a desire to avoid the burden on management time and resources that a continuation of the Magten litigation might have entailed. Since the shares being proposed to be paid in the Magten litigation are already outstanding and are either held in reserve under the Plan for litigation or distributable to Class 7 and 9 creditors, payment of even a large amount of such shares is not dilutive to shares owned by management but is highly dilutive to most of the Company's shareholders. Finally, we understand that the Company's counsel, the Paul Hastings law firm, suffers from a conflict of its own, in that at least one of the suits that Magten is prosecuting and that the proposed settlement would have resolved names Paul Hastings as a defendant. As a defendant in the Magten litigation, and a direct beneficiary of any settlement, Paul Hastings is not in a position to evaluate and advise the Company objectively as to the merits of any proposed settlement of that litigation.

The proposed settlement violates the express terms
of the Company's confirmed Plan of Reorganization

Section 4.8 (b)(ii) of the Plan gives each member of Class 8(b) the right to elect either a settlement option, denominated "Option 1," or a litigation option, denominated "Option 2." Each holder who elects Option 1 is to receive its pro rata share of 1.4% of the new common stock of NorthWestern to be issued and outstanding on the Effective Date (prior to dilution), plus its pro rata share of warrants exercisable for an additional 2.3% of new common stock. Each holder who elects Option 2 is to receive its pro rata share of any recoveries eventually obtained upon resolution of the so-called QUIPS Litigation. As to each holder in Class 8(b) who chooses Option 2, Section 4.8(b)(ii) goes on to provide that

> any New Common Stock which otherwise would have been distributable to such holder if such holder had chosen Option 1, shall be distributed, pro rata to Class 7 and Class 9, and the Warrants which otherwise would have been distributable will be cancelled.

The proposed settlement would contravene NorthWestern's express obligations under Section 4.8(b)(ii) of the Plan -- specifically, its obligations (i) to distribute to members of Class 7 and Class 9 the new common stock that would have been distributed to holders electing Option 2 had they chosen Option 1, and (ii) to cancel the warrants that would have been distributed to such holders had they chosen Option 1. There is no basis in the Plan for NorthWestern's continued failure to distribute these shares and cancel these warrants.

The Board of Directors should disapprove the proposed settlement, instruct management to comply with the Company's obligations under the Plan, and take steps to cure the flaws that appear to have tainted the settlement process

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We are confident that, having been apprised of the flaws that mar both the proposed settlement and the process that led management to approve it, the Board of Directors will take prompt and effective corrective action. As a creditor entitled under the Plan to rights and value established thereunder, we ask that the Board take the following steps, in addition to whatever other steps it may deem appropriate:

1. The Board should disapprove the proposed Magten settlement, and should instruct management not to take any further steps to consummate the settlement or to seek Bankruptcy Court approval for it.

2. The Board should instruct management to cause the Company promptly to comply with its obligations under Section 4.8(b)(ii) of the Plan -- specifically, its obligations (i) to distribute to members of Class 7 and Class 9 the new common stock that would have been distributed to Class 8(b) had it not rejected the Plan, and (ii) to cancel the warrants that would have been distributed to such holders had they not rejected the Plan.

3. The Board should take proper steps to protect against the potential future recurrence of the flaws that appeared to have marred the negotiation and approval of the proposed Magten settlement. For example:

(a) In instances where (as appears to have been the case here) members of management suffer from a conflict of interest, the Board should ensure that the settlement is negotiated by members of the Board or management who are free of any such conflict.

(b) In instances where (as appears to have been the case here) the Company's counsel suffers from a conflict of interest, the Company should retain special counsel to advice it in connection with settlement negotiations and to advise the Board in connection with its review and approval of the settlement.

(c) We understand from the Company's outside counsel that, in the present case, the Company was compelled to issue a press release disclosing the terms of the proposed Magten settlement, prior to Board approval, in response to an unauthorized "leak" by the Company concerning that settlement. We urge the Board to investigate the source of this leak and to take proper steps to prevent future leaks of the terms of other settlements. In the event (which we trust is very unlikely) that the terms of any future proposed settlement were to be leaked before the Board had reviewed and approved it, any press release issued by the Company should be drafted so as to minimize public misperceptions concerning the Company's level of support for the settlement in question. Specifically, any such press release should disclose that the settlement in question is subject to the Board's review and approval and has not yet been approved; that the settlement is also subject to review and potential objection by the Plan Committee; and that the press release was occasioned by an inadvertent disclosure, to which the Company felt compelled to respond.

(d) Pursuant to Section 7.9 of the Plan, the Company is required to submit material proposed settlements to the Plan Committee for its review. For the past several months, Harbert -- as the Company's largest shareholder and one of the largest holders of its pre-petition debt -- has been requesting appointment to that Committee of itself and other creditors (most of which are also now shareholders) as contemplated by the Plan. This committee at present has only one member, Wilmington Trust. We understand that that Committee's one member has the power to appoint additional members of its choosing and is amenable to appointing Harbert. The Company and its counsel, however, has delayed Harbert's appointment by interposing a series of objections, which in our view lack merit. It is imperative that this process be completed without further delay, so that Harbert and/or one or more other appropriate creditor representatives can be added to the Plan Committee before any further material settlements are proposed.

We appreciate the Board's consideration of these issues and urge the Board to take prompt and appropriate action.

Sincerely,

Philip Falcone

Cc: Jesse Hibbard, HBK Investments, LP
Robert Platek, MSD Capital
Kevin Cavanaugh, Greenwich Capital
Robert Fraley, Fortress Investment
Robert Fields, MFP Investors LLC

Mike Embler, Franklin Mutual Advisors
Peter Faulkner, PSAM
John Barrett, Avenue Capital
Brett Haire, Brave Asset Management
Sandra Ortiz, Wilmington Trust
Alan Kornberg, Paul Weiss
Phil Bentley, Kramer Levin
Tom Knapp, NorthWestern General Counsel

Exhibit B

8 of 9 DOCUMENTS

PR Newswire US

February 16, 2005 Wednesday

LENGTH: 3147 words

HEADLINE: Harbert Master Fund Sends Letter to Board of Directors of NorthWestern Corporation

DATELINE: NEW YORK Feb. 15

BODY:

NEW YORK, Feb. 15 /PRNewswire/ -- Harbert Distressed Investment Master Fund, Ltd. today delivered the following letter to the Board of Directors of NorthWestern Corporation (NASDAQ:NWEC). Harbert sent the letter because it believes that NorthWestern has taken actions that violate the terms of the recently consummated NorthWestern bankruptcy reorganization plan and that are prejudicial to the interests of holders of claims against the bankruptcy estate, including Harbert.

Harbert Distressed Investment Master Fund, Ltd. is focused on high-yield (special situation) and distressed securities on both the long and short sides, including debt and equity investments in turnarounds, restructurings, liquidations, event driven situations and inter-capital structure arbitrage.

THE HARBERT DISTRESSED INVESTMENT MASTER FUND, LTD.
555 Madison Avenue, 16th Floor
New York, NY 10022

February 15, 2005

VIA FACSIMILE

Members of the Board of Directors
of NorthWestern Corporation
c/o Dr. Ernest Linn Draper, Jr.
Chairman of the Board
NorthWestern Corporation
125 S. Dakota Avenue
Sioux Falls, SD 57104-6403

Re: Failure to Adhere to the Plan of Reorganization and Objection to Flawed Settlement with Magten Asset Management Corporation and Law Debenture Trust Company of New York

Gentlemen:

Harbert Distressed Investment Master Fund, Ltd. ("Harbert") holds approximately 20% of the Class 7 prepetition claims against NorthWestern Corporation ("NorthWestern" or the "Company"), as well as approximately 20% of the common stock and approximately 33% of the warrants of reorganized NorthWestern. We received the latter securities by operation of the Second Amended and Restated Plan of Reorganization (the "Plan") in exchange for previously contracted bona fide debt of NorthWestern. We have been told by representatives of holders of what we believe are a majority of both the Class 7 prepetition claims and the new common stock that they share the concerns described in this letter.

In an effort to protect the interests of Class 7 creditors such as Harbert, as well as shareholders, warrant-holders and other stakeholders in NorthWestern as they were negotiated by the participants to the bankruptcy proceeding and set forth in the Plan, I am writing to express Harbert's strong objection to (i) the excessive consideration proposed to be paid in the settlement agreement in principle that NorthWestern management, on February 9, 2005, announced it had reached with Magten Asset Management Corporation ("Magten") and Law Debenture Trust Company of New York LLC ("Law Debenture"); (ii) management's and NorthWestern's outside counsel's continued objections to our repeated requests to add creditors to the Plan Committee created to review settlements proposed by management, notwithstanding the lack of a role of the Company under the Plan in constituting the Plan Committee and the ongoing attempts by Harbert in good faith to accommodate the Company's concerns; and (iii) the failure by the Company, after requests by Harbert first made in December, to distribute over 375,000 common shares with a current value of more than $10 million to their proper owners in Classes 7 and 9, and to cancel more than 700,000 highly dilutive warrants, both of which are required by the Plan.

We have been actively raising concerns with management and NorthWestern's outside counsel since December regarding compliance with the Plan. After the Company announced the settlement last week, we raised these concerns directly with the Board Chairman in an effort to resolve them before more events transpired. Yesterday our counsel received a letter from Paul Hastings, the Company's outside counsel, acknowledging our concerns and agreeing to further discuss them, and representing that no further action will be taken until we meet again. However, even this letter of yesterday raises yet another new objection to our serving on the Plan Committee, which we have considered and is without merit. Given the previous assurances we have received from Paul Hastings and the actions taken by management contrary to those assurances, and management's recent announcement of the Magten settlement without properly consulting with the Board or the Plan Committee, we believe a clearer statement of the position of the Board itself on these issues, which lie at the heart of implementing the Plan as approved by the Bankruptcy Court, is merited without further delay.

As discussed below, we believe that the proposed settlement violates the plain terms of NorthWestern's confirmed Plan, is contrary to the interests of NorthWestern and its shareholders, and is the product of a negotiation and approval process that appears to have been impaired by the existence of conflicts of interest on the part of management and Paul Hastings and a premature announcement only because of an unauthorized "leak" by management. We ask that the Board (i) promptly announce its disapproval of the proposed settlement; (ii) instruct management to comply promptly with the Company's obligations under the Plan with respect to distributing or canceling certain of the common stock and warrants proposed to be distributed in connection with this settlement; and (iii) take steps to protect against the potential future recurrence of the procedural flaws that appear to have contributed to management's execution and announcement of this proposed settlement without appropriate Board consultation and while raising unwarranted objections to our role on the Plan Committee.

The proposed settlement appears to be contrary to the interests of NorthWestern and its shareholders, and its negotiation and approval appear to have been tainted by conflicts of interest.

Harbert was active in the reorganization proceedings of NorthWestern and in negotiating for rights and value under the Plan that will be impaired by the Company's actions to date which are the subject of this letter. As of October 2004, Harbert was in a position to assess the low likelihood of a recovery by Magten under its litigation. We understand that little has changed regarding the facts of that litigation since the Company's Plan was confirmed in October. Moreover, we received assurances in December from Gary Drook, the Company's CEO, and in December and January from Paul Hastings that the litigation continues to be without merit. While we understand the desire to end the distraction and legal fees associated with litigation, the amount of consideration proposed in this settlement cannot be justified.

As described in NorthWestern's February 9, 2005 press release, the proposed settlement calls for NorthWestern to distribute to Law Debenture, on behalf of Magten and the other non-accepting Class 8(b) QUIPS holders, (i) approximately 870,000 shares of NorthWestern common stock that under the Plan's express terms were set aside in reserves established for Class 9 pending litigation claims, which the press release inaccurately characterizes as "worth $17.4 million" and which in fact are worth more than $24 million, and (ii) 382,732 shares of NorthWestern common stock and 710,449 warrants not distributed to Class 8(b) claimants because those holders had elected to litigate rather than settle.

The proposed settlement appears, on its face, to be contrary to the interests of NorthWestern, its shareholders, warrant-holders, and pre-petition creditors. As noted above, the settlement calls for NorthWestern to distribute to Law Debenture approximately 1.25 million shares of NorthWestern common stock, as well as more than 710,000 warrants. Using yesterday's closing price of $28.05, the common stock to be distributed has a total value of approximately $35 million. In addition, the value of the warrants to be distributed using yesterday's closing price of about $5 is in excess of $3.5 million, for a total settlement value of more than $38 million. By contrast, Magten is seeking to recover only approximately $50 million -- i.e., the full amount of the pre-petition debt (plus accrued interest) held by Magten and the other rejecting plaintiffs. In other words, the proposed settlement would pay Magten and the other plaintiffs a 75% recovery on their claim. A payment of this magnitude appears to be grossly excessive, particularly in light of what we understand to be Magten's very low chance of prevailing in its litigation. NorthWestern's chief executive officer, Gary Drook, informed me, during a December 21, 2004 meeting, that he understands Magten's chances of prevailing to be very low, a view that Paul Hastings confirmed with us last month. Furthermore, neither Mr. Drook nor Paul Hastings communicated any reason to believe a settlement was required on an expedited basis. Indeed, this lack of urgency in negotiating a settlement was the principal reason Harbert did not press the Company more forcefully until now on adding the appropriate members to the Plan Committee established to review settlements.

Finally, the disparity between the high amount of the settlement and the lack of merit of the litigation, as communicated by comments by the Company in public disclosure and by the creditors in bankruptcy court, will make it more difficult for the Company to negotiate reasonable settlements with the other litigation claimants that remain. The signal sent by this settlement, if not promptly rejected by the Board, is that the Company is willing to settle litigation at almost any cost.

Why did management announce a proposed settlement that appears to be so excessive in amount before properly vetting it with the Board and Plan Committee? We are concerned that the answer may rest, at least, in part, on the conflicts of interest that appear to have marred the process by which the settlement was negotiated and approved. These conflicts arose at several levels. First, it appears that management's interests in negotiating the settlement may not have been properly aligned with those of the Company, its shareholders generally and its creditors like Harbert whose rights and value were established under the Plan and are also now shareholders. We understand that at least one member of management, Michael Hanson, is a defendant in litigation brought by Magten, which the proposed settlement would have resolved. In addition, management may have been unduly influenced, in its settlement deliberations, by a desire to avoid the burden on management time and resources that a continuation of the Magten litigation might have entailed. Since the shares being proposed to be paid in the Magten litigation are already outstanding and are either held in reserve under the Plan for litigation or distributable to Class 7 and 9 creditors, payment of even a large amount of such shares is not dilutive to shares owned by management but is highly dilutive to most of the Company's shareholders. Finally, we understand that the Company's counsel, the Paul Hastings law firm, suffers from a conflict of its own, in that at least one of the suits that Magten is prosecuting and that the proposed settlement would have resolved names Paul Hastings as a defendant. As a defendant in the Magten litigation, and a direct beneficiary of any settlement, Paul Hastings is not in a position to evaluate and advise the Company objectively as to the merits of any proposed settlement of that litigation.

The proposed settlement violates the express terms of the Company's confirmed Plan of Reorganization

Section 4.8 (b)(ii) of the Plan gives each member of Class 8(b) the right to elect either a settlement option, denominated "Option 1," or a litigation option, denominated "Option 2." Each holder who elects Option 1 is to receive its pro rata share of 1.4% of the new common stock of NorthWestern to be issued and outstanding on the Effective Date (prior to dilution), plus its pro rata share of warrants exercisable for an additional 2.3% of new common stock. Each holder who elects Option 2 is to receive its pro rata share of any recoveries eventually obtained upon resolution of the so-called QUIPS Litigation. As to each holder in Class 8(b) who chooses Option 2, Section 4.8(b)(ii) goes on to provide that

> any New Common Stock which otherwise would have been distributable to such holder if such holder had chosen Option 1, shall be distributed, pro rata to Class 7 and Class 9, and the Warrants which otherwise would have been distributable will be cancelled.

The proposed settlement would contravene NorthWestern's express obligations under Section 4.8(b)(ii) of the Plan -- specifically, its obligations (i) to distribute to members of Class 7 and Class 9 the new common stock that would have been distributed to holders electing Option 2 had they chosen Option 1, and (ii) to cancel the warrants that would have been distributed to such holders had they chosen Option 1. There is no basis in the Plan for NorthWestern's continued failure to distribute these shares and cancel these warrants.

The Board of Directors should disapprove the proposed settlement, instruct management to comply with the Company's obligations under the Plan, and take steps to cure the flaws that appear to have tainted the settlement process We are confident that, having been apprised of the flaws that mar both the proposed settlement and the process that led management to approve it, the Board of Directors will take prompt and effective corrective action. As a creditor entitled under the Plan to rights and value established thereunder, we ask that the Board take the following steps, in addition to whatever other steps it may deem appropriate:

1. The Board should disapprove the proposed Magten settlement, and should instruct management not to take any further steps to consummate the settlement or to seek Bankruptcy Court approval for it.

2. The Board should instruct management to cause the Company promptly to comply with its obligations under Section 4.8(b)(ii) of the Plan -- specifically, its obligations (i) to distribute to members of Class 7 and Class 9 the new common stock that would have been distributed to Class 8(b) had it not rejected the Plan, and (ii) to cancel the warrants that would have been distributed to such holders had they not rejected the Plan.

3. The Board should take proper steps to protect against the potential future recurrence of the flaws that appeared to have marred the negotiation and approval of the pro posed Magten settlement. For example:

   (a) In instances where (as appears to have been the case here) members of management suffer from a conflict of interest, the Board should ensure that the settlement is negotiated by members of the Board or management who are free of any such conflict.

   (b) In instances where (as appears to have been the case here) the Company's counsel suffers from a conflict of interest, the Company should retain special counsel to advice it in connection with settlement negotiations and to advise the Board in connection with its review and approval of the settlement.

   (c) We understand from the Company's outside counsel that, in the present case, the Company was compelled to issue a press release disclosing the terms of the proposed Magten settlement, prior to Board approval, in response to an unauthorized "leak" by the Company concerning that settlement. We urge the Board to investigate the source of this leak and to take proper steps to prevent future leaks of the terms of other settlements. In the event (which we trust is very unlikely) that the terms of any future proposed settlement were to be leaked before the Board had reviewed and approved it, any press release issued by the Company should be drafted so as to minimize public misperceptions concerning the Company's level of support for the settlement in question. Specifically, any such press release should disclose that the settlement in question is subject to the Board's review and approval and has not yet been approved; that the settlement is also subject to review and potential objection by the Plan Committee; and that the press release was occasioned by an inadvertent disclosure, to which the Company felt compelled to respond.

(d) Pursuant to Section 7.9 of the Plan, the Company is required to submit material proposed settlements to the Plan Committee for its review. For the past several months, Harbert -- as the Company's largest shareholder and one of the largest holders of its pre-petition debt -- has been requesting appointment to that Committee of itself and other creditors (most of which are also now shareholders) as contemplated by the Plan. This committee at present has only one member, Wilmington Trust. We understand that that Committee's one member has the power to appoint additional members of its choosing and is amenable to appointing Harbert. The Company and its counsel, however, has delayed Harbert's appointment by interposing a series of objections, which in our view lack merit. It is imperative that this process be completed without further delay, so that Harbert and/or one or more other appropriate creditor representatives can be added to the Plan Committee before any further material settlements are proposed.

We appreciate the Board's consideration of these issues and urge the Board to take prompt and appropriate action.

Sincerely,

Philip Falcone

Cc: Jesse Hibbard, HBK Investments, LP
Robert Platek, MSD Capital
Kevin Cavanaugh, Greenwich Capital
Robert Fraley, Fortress Investment
Robert Fields, MFP Investors LLC
Mike Embler, Franklin Mutual Advisors
Peter Faulkner, PSAM
John Barrett, Avenue Capital
Brett Haire, Brave Asset Management
Sandra Ortiz, Wilmington Trust
Alan Kornberg, Paul Weiss
Phil Bentley, Kramer Levin
Tom Knapp, NorthWestern General Counsel

CO: Harbert Distressed Investment Master Fund, Ltd.; NorthWestern Corporation
ST: New York
IN: FIN MFD
SU: BCY

CONTACT: Howard Kagan, +1-212-508-3727, for Harbert Distressed Investment Master Fund, Ltd.

SOURCE Harbert Distressed Investment Master Fund, Ltd.

URL: http://www.prnewswire.com

LOAD-DATE: February 16, 2005

February 23, 2005 Wednesday

LENGTH: 949 words

HEADLINE: Harbert Distressed Fund Requests SEC Hold Hearings on Allegheny Energy's Ongoing Need for Waivers of PUHCA Requirements

DATELINE: NEW YORK Feb. 23

BODY:

NEW YORK, Feb. 23 /PRNewswire/ -- A large investor in power companies has requested that the Securities and Exchange Commission take steps to protect ratepayers and investors in the Allegheny Energy, Inc. (NYSE:AYE) utilities from the worst consequences of a potential bankruptcy of AYE.

Since 2002, AYE has not been in compliance with the SEC's minimum 30% equity requirement and, on numerous occasions, the reporting obligations required by the Public Utility Holding Company Act of 1935 ("PUHCA"). During this time the SEC has granted AYE numerous waivers to provide AYE reasonable flexibility to repair its financial condition. However, AYE has used this flexibility to support its highly leveraged unregulated affiliate, Allegheny Energy Supply Company, LLC, without adequately protecting its utility companies. Harbert Distressed Investment Master Fund, Ltd. believes that given the experiences of Enron and Northwestern Corporation, two PUHCA companies whose bankruptcies wiped out billions in equity and debt securities, including retirement funds of utility employees, the SEC should undertake a pro-active program to protect AYE's utility stakeholders. Otherwise, AYE may continue to encumber its utilities in an effort to prop up Supply. The Fund requests that, in response to AYE's most recent request for broad financing authority through mid-2007, the SEC condition any further waivers on establishing protections for utility investors and ratepayers, or hold hearings to determine reasonable conditions that would reduce AYE's ability to continue to burden its utility operations.

In its filing, the Fund expresses particular alarm at AYE's request for SEC approval through 2007 to temporarily dividend from its utilities 100% of the proceeds of certain regulated utility financings so that they may be passed through AYE's highly leveraged, sub-investment grade, unregulated Supply subsidiary which has negative $1.2 billion in retained earnings. This practice, referred to by AYE in a previous filing as "round tripping", appears to the Fund to be designed to comply with the letter, but not the spirit, of a complex financing arrangement put in place in 2003. AYE assures the SEC that "Any amounts paid to Allegheny by these Utility Applicants will be immediately contributed back to the applicable Utility Applicant so the dividends will have no effect on the Utility Applicant's paid-in capital account." The Fund believes that an important goal of the SEC's obligations under PUHCA is to ensure that utility investors and ratepayers are not abused by use of a complex, opaque holding company structure, and that the SEC should require more financial transparency by AYE and protection for its utilities before another PUHCA company and its utilities are forced into a complex bankruptcy with tangled affiliate transactions.

In its filing, the Fund points out that during this extended period of failing to meet PUHCA standards, AYE has repeatedly failed to deliver reliable financial statements or projections, ceased filing quarterly and annual reports of Supply, transferred the equity value of the utilities to Supply, petitioned state regulators to encumber the utilities with rate increases and environmental control expenditures to support investors in Supply and improve its power plants, and committed to use proceeds of its utilities' financings to make investments in Supply. While AYE has avoided bankruptcy to date and reduced outstanding total debt over the past year by selling assets, these asset sales have produced even greater equity losses and increased financial leverage at a time when its cash flows, liquidity and equity levels continue to be extremely weak compared to other PUHCA regulated companies. AYE's request to the SEC points out that most other distressed PUHCA companies in the past had equity levels which dropped as low as 28%, yet AYE now operates with only about 20% equity capitalization, after plummeting to 17% as recently as September 2004. This collapse in equity has been accompanied by repeated claims by AYE in its SEC filings that it is making progress in returning to the minimum standard of 30% equity, without making material actual progress in that regard.

The Fund requests that the SEC require that Supply be made "bankruptcy remote" from the other AYE businesses. This would require, among other prudent precautions, that contracts between Supply and the utilities be subject to competitive bidding, that the boards of directors of Supply and the utilities not be identical, and that financings at Supply would not be intertwined with those of the utilities.

Harbert Distressed Investment Master Fund, Ltd. invests in securities of various companies in the electric power industry, including AYE and its utilities. The Fund's investment positions are subject to change in the ordinary course of its business. The Fund is focused on high-yield (special situation) and distressed securities on both the long and short sides, including debt and equity investments in turnarounds, restructurings, liquidations, event driven situations and inter-capital structure arbitrage.

A copy of the Fund's filing can be viewed at the SEC's home page http://www.sec.gov/ under SEC Divisions; Investment Mgmt; Office of Public Utility Regulation (OPUR); Pending Filings and Notices Under the 1935 Act; File No. "070-10251: Allegheny Energy Inc. Request For Hearing" or by copying the following address to a web browser. http://www.sec.gov/divisions/investment/opur/filing/aei-021805.pdf

CONTACT: Jeff Harris for Harbert Distressed Investment Master Fund, Ltd., +1-205-987-5756

SOURCE Harbert Distressed Investment Master Fund, Ltd.

URL: http://www.prnewswire.com

LOAD-DATE: February 24, 2005

PR Newswire US

April 13, 2005 Wednesday 10:42 PM GMT

LENGTH: 1338 words

HEADLINE: Harbert Distressed Investment Master Fund Sends Letter to Boards of Directors of Calpine Corporation and Certain Subsidiaries

DATELINE: NEW YORK April 13

BODY:

NEW YORK, April 13 /PRNewswire-FirstCall/ -- Harbert Distressed Investment Master Fund, Ltd. today delivered the following letter to the Boards of Directors of Calpine Corporation (NYSE:CPN) and certain of its subsidiaries. The Fund sent the letter because it believes that Calpine has taken actions that impair the rights of the holders of the 8 7/8% bonds due October 2011 and the 8 3/4 % bonds due October 2008 of Calpine Canada Energy Finance II ULC, including the Fund.

Harbert Distressed Investment Master Fund, Ltd. is focused on high-yield (special situation) and distressed securities on both the long and short sides, including debt and equity investments in turnarounds, restructurings, liquidations, event driven situations and inter-capital structure arbitrage.

Harbert Distressed Investment Master Fund, Ltd.
c/o 555 Madison Avenue, 16th Floor
New York, New York 10022

April 13, 2005

VIA FACSIMILE

Directors of:
Calpine Canada Energy Finance II ULC
Calpine Canada Resources Ltd.
Calpine European Funding (Jersey) Limited
Calpine Corporation

RE: Harbert Distressed Investment Master Fund, Ltd. (the "Fund"): Bonds Issued by Calpine Canada Energy Finance II ULC

The Fund is writing to you as the holder of bonds issued by Calpine Canada Energy Finance II ULC ("Finance II"). The Fund holds a significant amount of both the 8 7/8% bonds due October 2011 and the 8 3/4% bonds due October 2008 (collectively, the "Bonds").

The Fund is concerned that your recent announcements concerning the sale of the Saltend Power Generating Facility (the "Saltend Facility") and the issuance of $260,000,000 in redeemable preferred shares by Calpine European Funding (Jersey) Limited ("Calpine Jersey") are evidence of an effort to strip the value of the Saltend Facility out of Calpine Jersey and, indirectly, its parent, Calpine Canada Resources Ltd. ("Resources"), to the prejudice of Finance II's bondholders.

If the value of the Saltend Facility is stripped away, Resources will be unable to meet its obligations to Finance II under the Term Debenture issued August 23, 2001 in the amount of euro 275,000,000 and Finance II will be unable to meet its obligations under the Bonds. The Saltend Facility is the commercial enterprise which supports Resources obligations to Finance II under the Term Debenture which, in turn, supports Finance II's ability to repay the Bonds.

The Fund is of the view that these actions are in breach of the legal obligations, public announcements and the expectations created by Finance II, Resources and Calpine Corporation ("Calpine").

The Term Debenture, made public by Calpine in November, 2004, provides that Resources would conduct its business "so as to preserve and protect its business and assets". The sale or financing of the Saltend Facility in circumstances where Resources does not receive adequate consideration is a breach of the obligations under the Term Debenture.

The Bonds were issued pursuant to a prospectus included in a registration statement filed with the United States Security and Exchange Commission registration number 333-67446 (the "Prospectus").

The Prospectus provided in part as follows:

"page 19 ... The right of Calpine's debt security holders to receive any assets of any of Calpine's subsidiaries or other affiliates upon Calpine's liquidation or reorganization will be subordinated to the claims of any subsidiaries' or other affiliates' creditors (including trade creditors and holders of debt issued by Calpine's subsidiaries or affiliates, including Energy Finance and Energy Finance II)."

Accordingly, it was intended and represented by Calpine that the creditors of Finance II, including holders of the Bonds, would (a) have recourse to the assets of Finance II (including the Term Debenture) in priority to the creditors of Calpine and (b) have a claim on any assets of any of Calpine's subsidiaries or other affiliates which claim is senior to Calpine's creditors. The Fund strongly suspects that Calpine initiated the sale of the Saltend Facility and preferred issuance by Calpine Jersey in an ongoing effort to address significant shortfalls in Calpine's liquidity. We strongly suspect that the proceeds are intended to be used to repurchase or refinance Calpine debt, and that these transactions are part of an ongoing de facto liquidation and reorganization of Calpine in contravention of these representations. We have serious and growing concerns over Calpine's solvency. The Fund believes that Calpine should not be permitted to liquidate or reorganize to the detriment of Finance II in contravention of these representations simply because it is in advance of a formal bankruptcy filing or out-of-court restructuring announcement.

It appears to us that the actions constitute an 'end run' around the obligations in the Term Debenture and the Prospectus and are an attempt to prefer the creditors of Calpine and certain affiliates over the bondholders. The value of the Saltend Facility must remain available to Resources and Finance II, at least to the extent of the principal and interest amounts outstanding under the two series of Finance II debt which include the Bonds.

This letter is notice that the Fund requires your public written confirmation that the cash proceeds of any sale or financing of the Saltend Facility continues to be and will be held in cash at Resources until the maturity of the Bonds in order to support:

(a) the obligations of Resources to Finance II under the Term Debenture; and

(b) the obligations of Finance II to its bondholders, including the Fund which are, at a minimum, sufficient to fund the principal and interest obligations under the Bonds.

In the event that the proceeds of the sale or any refinancing of the Saltend Facility have already been transferred to Calpine or any of its affiliates, we will require your public written confirmation that the proceeds will immediately be repaid to Resources and held in cash pending the maturity and repayment in full of the Bonds.

The Fund is advised by its counsel that the transactions which Calpine has or is about to conclude to upstream the proceeds of the sale or financing of the Saltend Facility are oppressive, unfairly prejudicial to and unfairly disregard the rights of the bondholders of Finance II, including the Fund, contrary to the provisions of the Nova Scotia Companies Act (the "Act"). The oppression remedy under the Act is designed to protect corporate stakeholders from conduct that is oppressive, unfairly prejudicial to or unfairly disregards the rights of the stakeholders. Under the Act, a court is empowered to make any order it sees fit to rectify the oppressive conduct including orders restraining oppressive conduct and setting aside or varying corporate contracts or transactions. Conduct which may be legal in the narrow sense can be found to be oppressive and remedy awarded.

In addition, under Canadian law the directors of Finance II and Resources owe a duty of care to the creditors of Finance II and Resources. Any transactions which strip the assets out of Finance II and Resources and render them unable to meet their obligations to their creditors, including the bondholders, are in breach of the directors' obligations to the creditors and could result in personal liability for the directors.

If you do not publicly announce your written confirmation as requested herein by April 26, 2005, we have instructed our counsel, ThorntonGroutFinnigan LLP, of Toronto, Canada to commence proceedings to enforce our rights.

Sincerely,

Harbert Distressed Investment Master Fund, Ltd.
By: HMC Distressed Investment Offshore Manager, L.L.C., as its investment manager

/s/ Philip Falcone
Philip Falcone
Vice President

Cc: John Finnigan, ThorntonGroutFinnigan LLP

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HEADLINE: Calpine Seeks NYSE Inquiry On Rumors About Its Finances

BYLINE: By Rebecca Smith

BODY:

Big electricity producer **Calpine** Corp. said it asked the New York Stock Exchange to investigate trading of its stock and "reckless and unfounded rumors" about its finances that have circled the company the past two weeks, pushing its stock down 35%.

Calpine sought to reassure investors on Friday that it is able to meet its obligations. The company said it will report first-quarter earnings Thursday that will be in line with earlier projections. Specifically, it said it will report a loss of 38 cents a share for the quarter and expects a loss of 80 cents to 90 cents a share for the year. On Friday, **Calpine** stock rose 34 cents to $1.79 at 4 p.m. in heavy trading.

Stock in the San Jose, Calif., company came under intense pressure about two weeks ago, after an investment firm, **Harbert** Distressed Investment Master Fund Ltd., challenged **Calpine's** ability to sell a power project in the United Kingdom.

In an unusual move, **Harbert** on April 13 publicly issued a letter that challenged **Calpine's** intentions to honor its legal **commitments to bondholders** and accused **Calpine** of attempting an "end run" around its obligations. The letter concluded with a threat of legal action.

Calpine spokesman Bill Highlander said Friday that **Calpine** is well aware of its legal and moral obligations to bondholders and never has had any intention but to honor them fully. A representative of **Harbert,** senior managing director Philip Falcone, didn't return a phone call Friday.

On April 22, trading in **Calpine** stock was briefly halted when rumors again pushed the stock down as low as $1.69 before the company put out a release reassuring investors it wasn't in default on any loan covenants. The stock closed that day at $2.19.

Christopher Ellinghaus, an equity analyst for Williams Capital Group, said that "normally an investor with a problem tries to work it out with the company privately and doesn't go around putting out press releases."

Calpine has said it doesn't have any intention or need to seek bankruptcy protection. It's the object of extensive short-selling interest, though, meaning that those investors stand to profit from drops in the stock, which may help to propel rumors.

NOTES:
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