EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YUKOS CAPITAL S.A.R.L.,	:	
Plaintiff,	:	09 Civ. 09-7905 (AKH)
-against-	:	SECOND AMENDED COMPLAINT
OJSC OIL COMPANY ROSNEFT, ARTIO GLOBAL INVESTMENT FUNDS, THE CENTRAL EUROPE & RUSSIA FUND, INC., J. & W. SELIGMAN & CO. INCORPORATED, SELIGMAN GLOBAL FUND SERIES, INC., MARKET VECTORS ETF TRUST, VAN ECK GLOBAL CORP,	:	
Defendants.	:	

Plaintiff Yukos Capital S.a.r.l. ("Yukos Capital"), by its attorneys, Gibson, Dunn & Crutcher LLP, hereby respectfully alleges as follows:

1. This action seeks confirmation, pursuant to the Federal Arbitration Act, of four separate arbitral awards (collectively, the "Awards") rendered by a Russian Arbitral Tribunal in Moscow pursuant to the rules of the International Court of Commercial Arbitration at the Chamber of Commerce and Industry of the Russian Federation in favor of Yukos Capital, on September 19, 2006.

2. This action further seeks recognition, pursuant to the Uniform Money-Judgments Recognition Act, as codified at Article 53 of the New York Civil Practice Law and Rules, of a final, conclusive and enforceable judgment of the Amsterdam Court of Appeal (the "Dutch Appellate Court"), rendered April 28, 2009, allowing enforcement of the Awards in the Netherlands (the "Dutch Judgment").

3. This action further seeks attachment or levy, pursuant to New York Debtor and Creditor Law, of property fraudulently conveyed by Defendant OJSC Oil Company Rosneft ("Rosneft") to Defendants Artio Investment Funds, The Central Europe and Russia Fund, Inc., J. & W. Seligman & Co., Incorporated, Seligman Global Fund Series, Inc., Market Vectors ETF Trust, Van Eck Global, subsequent to the commencement of the Russian arbitral proceeding on December 27, 2005.

4. Certified copies of the four foreign arbitral awards sought to be enforced, together with their certified English translations, are annexed hereto as Exhibits A-H and incorporated as if fully set forth herein.

5. Certified copies of the arbitration agreements, together with their certified translations, are annexed hereto as Exhibits I-L and incorporated as if fully set forth herein.

6. A duly certified copy of the Dutch Judgment, together with its certified English translation, is annexed hereto as Exhibit M and incorporated as if fully set forth herein.

THE PARTIES

7. Plaintiff Yukos Capital is a company organized and existing under the laws of Luxembourg, with its registered office at 1, Allée Scheffer, L-2520 Luxembourg, Luxembourg.

8. Upon information and belief, Defendant Rosneft is an open joint stock company organized and existing under the laws of the Russian Federation with its principal place of business in Moscow, Russia.

9. 75% of the shares of Rosneft are held by OJSC Rosneftegaz, an entity which is wholly-owned by the Russian Federation.

10. Defendant Artio Global Investment Funds (f/k/a Julius Baer Investment Funds) is a business trust organized and existing under law of The Commonwealth of Massachusetts with its principal place of business at 330 Madison Avenue, New York, New York.

11. Defendant The Central Europe & Russia Fund, Inc. is a corporation organized and existing under law of the State of Maryland with its principal place of business at 345 Park Avenue, New York, New York.

12. Defendant J. & W. Seligman & Co. Incorporated is a corporation organized and existing under the law of the State of Delaware with its principal place of business at 100 Park Avenue, New York, New York.

13. Defendant Seligman Global Fund Series, Inc. is a corporation organized and existing under the law of the State of Maryland with its principal place of business at 100 Park Avenue, New York, New York.

14. Defendant Market Vectors ETF Trust is a statutory trust organized and existing under the law of the State of Delaware with its principal place of business at 99 Park Avenue, New York, New York.

15. Upon information and belief, Defendant Van Eck Global Corp. is a Delaware corporation with its principal place of business at 335 Madison Avenue, 19th Floor, New York, New York.

JURISDICTION AND VENUE

16. This action to confirm the Awards arises under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the "New York Convention") as codified in 9 U.S.C. § 201, *et seq.* as codified under the Federal Arbitration Act and specifically 9 U.S.C. § 201, 202, 207. This Court has original jurisdiction over the subject matter of this action pursuant to 9 U.S.C. §§ 203 and 207, and 28 U.S.C. § 1331. This Court

has supplemental jurisdiction over Plaintiff's claims under the Uniform Foreign Money-Judgments Recognition Act and New York Debtor and Creditor Law pursuant to 28 U.S.C. § 1367. Venue has been properly laid in this district pursuant to 28 U.S.C. §§ 1331 and 9 U.S.C. § 201.

17. This Court has original jurisdiction over this action by virtue of the following: Defendant is a foreign commercial entity engaged in international commerce and the transactions that relate to the underlying business transactions and arbitral awards constitute international commerce; the Parties have agreed in writing to arbitration in the Russian Federation (a State that is a signatory to the New York Convention); and the Parties are from signatory states (the Russian Federation and Luxembourg).

18. Personal jurisdiction is not required to domesticate the Dutch Judgment pursuant to Section 5305 of the New York Civil Practice Law and Rules because Rosneft appeared voluntarily and fully participated in the proceedings giving rise to the Dutch Judgment.

19. This Court has in personam jurisdiction over Rosneft pursuant to Sections 301, 302 and 311 of the New York Civil Practice Law and Rules, or, in the alternative, Rules 4(h) and 4(k) of the Federal Rules of Civil Procedure, by virtue of the following facts:

20. Rosneft has been engaged in a purposeful, systematic, and continuous course of business in New York and elsewhere in the United States, including the regular sale, marketing and distribution of oil. According to declarations filed with the Department of Homeland Security, in the last two years Rosneft shipped more than $3 billion of oil into the U.S. This oil has been shipped to New York, as well as to Texas, Louisiana, Maine, Massachusetts, California, Connecticut, and Pennsylvania.

21. Specifically, on January 2, 2009, two shipments of Rosneft oil, valued at approximately $1.3 million and $6.6 million respectively, were delivered to New York. On

February 13, 2007, a shipment of Rosneft oil valued at approximately $1.6 million was delivered to New York. On February 23, 2009, a shipment of Rosneft oil valued at approximately $2.8 million was delivered to New York.

22. On information and belief, Rosneft directly or through its agents presented documents to banks in New York to obtain payment for shipments of oil delivered in the U.S.

23. Rosneft has engaged in its continuous and substantial course of business in the U.S. principally though its agent, Gunvor International Ltd., including, on information and belief, through Gunvor's affiliate Gunvor America, a Texas corporation.

24. Gunvor is responsible for trading, marketing, and transporting 30%-40% of Rosneft's crude oil. Gunvor has engaged in these purposeful acts in New York and elsewhere in the United States for the benefit of, and with the full knowledge and consent of its principal, Rosneft, in order to sell Rosneft's oil to U.S. customers. For example, the January 2, 2009 shipments of Rosneft oil delivered to New York (referenced above) were shipped by Gunvor. The bills of lading for each of these two shipments list the shipper as "Gunvor International from Resources of JSC Oil Company Rosneft."

25. Gunvor negotiated transactions for the purchase of Rosneft's oil with U.S. customers on behalf of Rosneft.

26. According to Reuters, Gunvor leases a supertanker to store 2 million barrels of crude oil off the U.S. Gulf Coast. On information and belief, oil stored by Gunvor off the U.S. Gulf Cost includes oil owned by Rosneft.

27. Gunvor serves as Rosneft's agent to market a significant portion of its oil production into the United States and elsewhere, and, on information and belief, Rosneft has exercised and continues to exercise significant control of Gunvor and its affiliates, including Gunvor America.

28. In the Initial Public Offering Prospectus for Rosneft's July 2006 public offering (the "IPO Prospectus"), Rosneft stated that it had created "proprietary" value chains linking Rosneft's upstream assets (i.e. crude oil) "directly" to export markets. The United States is a large export market for Rosneft, absorbing more than $3 billion of Rosneft's oil in the last two years alone. The Prospectus also states that Rosneft has marketing subsidiaries or export facilities that it either controls or in which it has a significant equity share at the end of these "value chains." Gunvor is part of Rosneft's "proprietary value chain" and is controlled in whole or in part by Rosneft.

29. Nikolai Tokarev, the former general director of the Russian state-owned oil company Zarubezhneft, stated in a February 2008 interview that the Russian state approved of oil companies selling through their own traders, and disapproved of them selling through independent traders, since the latter were liable to "create agitation and speculate with prices." Mr. Tokarev described Gunvor as comparable to Litasco, the wholly owned selling agent of the Russian Lukoil group of companies.

30. Following Rosneft's acquisition of Yukos' assets, Rosneft made no announcement as to how it would trade its oil. It did not seek the best price for this oil by tender or otherwise. Instead it allocated all or substantially all of the Yukos oil to Gunvor, leading to a wholesale transformation in Gunvor's business. In 2004 Gunvor offtook 1.25 million metric tons (mt) for Rosneft from Novorosiisk; in 2005 it offtook 5.85 million mt for Rosneft from the same port. In Primorsk – another Russian port – the equivalent figures leapt from 1.38 million mt in 2004 to 7.82 million mt in 2005. Its share of seaborne exports from these two ports also rose dramatically. Rosneft is, by far, the largest contributor to Gunvor's trading volume. The Russian state would not permit the offtaking and marketing of Yukos' assets by Gunvor if Gunvor was truly an independent oil trader.

31. Gunvor recently won a tender offer of even more of Rosneft's business, prevailing in a proceeding that has attracted widespread protest for its lack of transparency and openness. On information and belief, Gunvor is not simply Rosneft's agent, but functions as a subsidiary of Rosneft. Indeed, as reported by Reuters, Rosneft stated in a Russian court that its dealings with Gunvor are a commercial secret.

32. On information and belief, Gunvor functions essentially as Rosneft's in-house trading arm, over which Rosneft exercises dominion and control.

33. In addition to selling and marketing billions of dollars worth of oil in the U.S., Rosneft deliberately and systematically seeks financing and equity from financial institutions located in New York and elsewhere in the U.S. Rosneft solicits investors in New York and elsewhere in the U.S. through its English-language website, and by traveling to New York for the purpose of making presentations to investors designed to solicit investors to purchase Rosneft's Global Depository Receipts.

34. Rosneft's July 2006 public offering consisted, among other things, of an institutional offering of ordinary shares offered in the United States to qualified investment brokers in reliance on Rule 144A of the U.S. Securities Exchange Act of 1934, as amended (the "Securities Act"), through registered U.S. broker-dealer affiliates. As noted in the IPO Prospectus, Rosneft established custodial and depositary links between itself and clearing houses in New York State "to facilitate the initial issue of the GDRs and cross-market transfers of the GDRs associated with secondary market trading." A true and correct copy of the IPO Prospectus is attached as Exhibit N.

35. Specifically, Rosneft established custodial and depositary links with the Depository Trust Company (DTC), a limited purpose trust company organized under the laws of the State of New York, a "banking corporation" within the meaning of the New York Banking

Law, a member of the United States Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Act. DTC facilitates distributions of dividends and other payments from Rosneft to holders of Rosneft's GDRs in the United States.

36. Rosneft also applied for the GDRs being offered and sold in the United States to be designated as eligible for trading in The PORTAL Market of The Nasdaq Stock Market, Inc. ("PORTAL"), with trading in GDRs on PORTAL to commence on or about the date on which the GDRs were offered to the public.

37. The GDRs offered and sold in the United States ("Rule 144A GDRs") are evidenced by a Master Rule 144A Global Depositary Receipt registered in the name of Cede & Co. as nominee for DTC in New York. According to the IPO Prospectus, transfers of interests in Rule 144A GDRs corresponding to the Master Rule 144A GDR must be made in accordance with the Securities Act, including Rule 903 or Rule 904 of Regulation S thereunder. In the Underwriting Agreement, as defined in the IPO Prospectus, Rosneft and certain selling shareholder agreed to indemnify the financial institutions acting as managers of the offering against certain liabilities, including liability under the Securities Act.

38. Rosneft has appointed Law Debenture Corporate Services Limited ("Law Debenture"), a United Kingdom investment trust, as its agent for service of process in any suit, action or proceeding with respect to the GDRs. At the time that Rosneft appointed Law Debenture as its agent for service of process, Law Debenture maintained, and continues to maintain, a permanent office in New York through its U.S. subsidiaries, Law Debenture Trust Company of New York and Law Debenture Corporate Services Inc. Each Law Debenture office has authority to execute service of process documentation, and Law Debenture is

authorized to "act as agent for service of process through its offices in . . . New York." *See* http://www.lawdeb.co.uk/process/.

39. Rosneft placed no geographic limitation on service on its agent Law Debenture in the IPO Prospectus. Rosneft specifically contemplated the problem of service in the United States and United Kingdom, disclosing in the IPO Prospectus that under the laws of Russia "it may not be possible . . . to [e]ffect service of process within the United Kingdom or the United States upon the Company or most members of its Board of Directors or Management Board," and appointing Law Debenture as its agent, thereby providing investors with a mechanism to bring suits in the United Kingdom and United States "in respect of" the GDRs.

40. Rosneft actively solicits investors in New York and elsewhere in the U.S through its website. The Rosneft website is in English, posts financial statements in U.S. dollars, and represents that results are in accord with U.S. GAAP. The website includes interactive features such as a stock profits calculator and hyperlinks to e-mail addresses for Rosneft, including an e-mail address designated for institutional investors.

41. The Rosneft website includes a calendar for shareholder meetings and investor presentations, including presentations in New York and elsewhere in the U.S.

42. According to the Rosneft website, Rosneft has made presentations to investors in New York, including presentations made by Rosneft's Vice President for Finance and Investments at the Renaissance Capital investor conference held in New York in October 2007 and at a Rosneft roadshow held in New York in March 2009. The New York roadshow presentation – which trumpets Rosneft's relationships with numerous U.S. companies – is also available on the website.

43. Additionally, Rosneft's Vice President for Finance and Investments made a presentation at the Credit Suisse Energy Summit in Vail, Colorado in February 2009.

44. According to Marketwatch.com, 36% of Rosneft's Global Depository Receipts were purchased by investors in the U.S., Europe and Asia in Rosneft's July, 2006 IPO.

45. According to publicly filed Forms 13F, NQ and N-CSR, more than 70 U.S.-based institutional investors hold or have held Rosneft Global Depository Receipts during the last year. Numerous institutional investors doing business in New York hold or have held Rosneft Global Depository receipts during the last year, including the following: Ameriprise Financial Inc., Baillie Gifford & Co., Forward Management, LLC, Loomis Sayles & Co. LP, Seligman J & W & Co. Inc., and Weiss Multi-Strategy Advisers LLC, Goldman Sachs Trust, Artio Global Equity Fund Inc., Legg Mason Partners Equity Trust, Sanford C. Bernstein Fund, Inc., Neuberger Berman Equity Funds, and UBS Pace Select Advisors Trust; Van Eck Global Corp., and Norges Bank Investment Management.

46. JP Morgan Chase Bank, N.A. administers Rosneft's GDR program from an office in Delaware.

47. Rosneft has paid dividends to holders of its Global Depository receipts located in New York and elsewhere in the U.S. Rosneft has paid approximately $5 million dollars to shareholders located in New York since the commencement of the Russian arbitration proceedings.

48. On information and belief, Rosneft maintains or maintained an account at the Bank of New York Mellon, Barclay Street Branch, in New York.

49. Rosneft has used a correspondent account at the Bank of New York Mellon to be used by the purchaser to make payments for at least some of its contracts to sell oil.

50. Rosneft entered into a $22 billion loan agreement "unprecedented for a borrower on the Russian market" with a syndicate of banks including U.S. banks headquartered in New York, including Citibank, Goldman Sachs, J.P. Morgan Chase and Morgan Stanley.

51. Rosneft is a partner in a joint venture with ConocoPhillips Timan-Pechora Inc., a Delaware corporation.

52. Rosneft participates in an oil production sharing agreement with Exxon Neftegas Limited, a Delaware corporation.

53. This Court has in personam jurisdiction over Rosneft pursuant to Sections 302(a)(2) of the New York Civil Practice Law and Rules, by virtue of the fact that Rosneft has committed tortious acts within the state, and pursuant to Section 302(a)(3) of the New York Civil Practice Law and Rules, by virtue of the fact that Rosneft has committed tortious acts without the state causing injury to persons or property within the state.

54. This Court has in personam jurisdiction over Defendants Artio Investment Funds, Central Europe & Russia, Inc., J. & W. Seligman & Co., Incorporated, Market Vectors ETF Trust, Van Eck Global Corp., pursuant to Sections 301 and 302 of the New York Civil Practice Law and Rules, by virtue of the fact that each is a resident of New York; maintains its principal place of business within the state; has appointed an agent for service of process within the state; has transacted business within the state giving rise to this suit; has been engaged in a purposeful, systematic, and continuous course of business within the state; and/or owns, uses or possesses property situated within the state that relates to the claims in this suit.

INTRODUCTION

55. On September 19, 2006, a Russian Arbitral Tribunal (the "Tribunal") awarded Yukos Capital a total of RUR 12.93 billion (approximately USD 419 million) against Defendant Rosneft's predecessor Yuganskneftegaz ("YNG"), representing monies owed to Yukos Capital pursuant to four separate loan agreements together with accrued interest, arbitration costs, and legal fees (the "Awards"). The arbitration proceeding was conducted before a

prominent tribunal of Russian arbitrators. YNG vigorously defended against the claims with Rosneft's knowledge and involvement. YNG appointed an arbitrator, Yukos Capital appointed an arbitrator, and together the two arbitrators appointed the third. YNG's attorneys appeared before the tribunal, and repeatedly requested and received extensions of time to respond to Yukos Capital's claims. YNG's attorneys submitted papers and participated fully in the proceeding. After a full hearing on the merits of Yukos Capital's claims, the Tribunal issued decisions under each of the four loan agreements.

56. In late 2006, after the applicable three month statute of limitations for challenging the Awards under Russian law had run, Yukos Capital commenced enforcement proceedings in the Netherlands. This act triggered the filing by Rosneft of a clearly time-barred challenge to the Awards in the Russian courts. Through decisions that are devoid of any legitimate basis under Russian law, the Russian courts purported to annul the Awards (the "Annulment"). This decision reflected the pervasive and improper influence of the executive branch over the Russian courts in any matter involving assets of the Yukos Oil Company ("Yukos" or "Yukos Oil"), as detailed below.

57. Rosneft fully participated in the prior-filed Dutch enforcement proceeding, contending that the Awards should not be enforced based on the purported Annulment by the Russian court. In all respects, Rosneft voluntarily submitted to the jurisdiction of the Dutch courts and fully contested Yukos Capital's enforcement proceeding, as well as participating extensively in a series of related proceedings. Rosneft retained the law firm of Boekel de Neree and that firm submitted papers on Rosneft's behalf. The Dutch Appellate Court, by Judgment dated April 28, 2009 (the "Dutch Judgment"),[1] rejected Rosneft's defense based on

[1] Yukos Capital S.a.r.l. v. OAO Rosneft, Amsterdam Court of Appeal, Case No. 200.005.269/01, Decision (28 April 2009).

the purported Annulment in the later-filed Russian action. (Ex. L). The Dutch Appellate Court determined that the Awards totaling RUR 12.93 billion are enforceable, and conferred exequatur upon them in the Netherlands.

58. The Dutch Appellate Court considered the long history of the Russian State's abuse of power in relation to Yukos and determined the following:

- "There is a close interwovenness between Rosneft and the Russian State. It is a matter of fact that the Russian state owns the vast majority of the shares in Rosneft and that the majority of Rosneft's executives are politically appointed people, who combine their position at Rosneft with Russian governmental functions."
- "Moreover, it apears from the established facts that there is an unambiguous relationship between the present dispute between Yukos Capital and Rosneft and the intrigues in Russia that have led to the dismantling and bankruptcy of Yukos Oil Company and the detention of [former Yukos CEO] Khodorovski [sic]. . ."
- "Rosneft objected insufficiently that the Russian judicial power is not impartial and independent, in matters related to (parts of) the (then) Yukos concern or the (then) executives thereof and for which there are interests that the Russian state considers as its own, but is led by interests of the Russian state and instructed by the executive power."

The Dutch Appellate Court therefore concluded that the judgments of the Russian civil court in which the arbitral awards were set aside "are the result of this judgment which must be qualified as partial and dependent, and therefore that *these verdicts cannot be recognized* in the Netherlands." (Emphasis added.)

59. The Dutch Appellate Court also considered the merits of Rosneft's other defenses to enforcement in order to decide whether an exequatur could be granted. This principally focused on the allegation that YNG was not given an opportunity to substantiate its defense

that the Loan Agreements were fraudulent and therefore void. In granting exequatur, the Amsterdam Court of Appeal addressed this defense as follows:

> The court rejected this counter-plea because it was not stated nor did it appear that Yuganskneftegaz was in any way limited in performing the relevant counter-plea, neither in its statement of defence of May 5th, 2006, nor in its supplementary counter-plea dated June 20, 2006 . . . Moreover, it is worth mentioning that, without additional information, it must be assumed that the Yuganskneftegaz counter-plea being referred to also concerned the arrears in interests claimed by Yukos Capital with its introductory request dated December 27th, 2005 and that therefore there was no good reason justifying why Yuganskneftegaz did the mentioned counter-plea only along with the supplementary counter plea of June 20th, 2006, in response to the claim increase for Yukos Capital with the supplementary statement of defence dated May 9, 2006. Against this background the court passes judgment that the fact that the arbitrators did not grant any additional detention to Yuganskneftegaz to support the relevant counter-plea after June 20th, 2006, does not mean that it has been impossible for Yuganskneftegaz to defend its cause under article V paragraph 1 sub b.[of the New York Convention].

60. The Dutch Judgment by its terms is immediately enforceable, and there is no stay in place. Rosneft sought a stay of enforcement in the Netherlands pending its appeal to the Dutch Supreme Court, and the District Court of Amsterdam ordered that a stay of enforcement would be entered on the condition that Rosneft post a bank guarantee in the amount of EUR 350 million. However, Rosneft failed to post the required amount. Accordingly, no stay of enforcement has been entered pending an appeal by Rosneft to the Dutch Supreme Court. Rosneft has failed to satisfy any amount of the Dutch Judgment.

61. In sharp contrast to the decision of the Russian court, the Dutch Appellate Court rendered an impartial decision based on ample evidence. Accordingly, Yukos Capital seeks recognition of the Dutch Judgment and/or confirmation of the Awards in order that it may recover the sums rightfully owed to it by Defendant. This represents but a minute fraction of the Yukos property now illegally in the hands of Rosneft, which property represents fully two-thirds of Rosneft's current production assets.

YUKOS AND YUKOS CAPITAL

62. Plaintiff Yukos Capital is a former, indirect, wholly-owned subsidiary of Yukos Oil. The story of Yukos Oil is that of a classic expropriation: The Russian Federation took the company from its owners, jailed its executives, paid no compensation and awarded its assets to Defendant Rosneft, a state-owned enterprise. This expropriation was accomplished through abuse of police power and regulatory authority by the Russian State, including (i) issuing a series of confiscatory tax levies on Yukos that were unprecedented and contrary to Russian law, (ii) freezing Yukos' assets to prevent it from satisfying its outstanding debts, (iii) auctioning Yukos' most valuable asset, Yuganskneftegaz ("YNG"), for a bargain basement price in a rigged proceeding and (iv) orchestrating a sham bankruptcy whereby a Kremlin-approved administrator oversaw the dismantling of the company.

63. Yukos Oil Company was founded by the Russian State in 1993 and was subsequently privatised in 1995-1996. Group Menatep Ltd. became the majority shareholder of Yukos; Mikhail Khodorkovsky, one of the most successful entrepreneurs in Russia, was the indirect majority shareholder and CEO.

64. In the years 1995-2003, the Yukos group experienced considerable growth, becoming owner of substantial oil and gas reserves, pipelines and refineries (both in Russia and internationally). Yukos and its subsidiaries were the largest producers of crude oil in Russia and the largest exporters of crude oil from Russia. As late as April 2004, Yukos' market capitalization was estimated at over USD 40 billion.

65. In 2001, Yukos issued depositary receipts in regard to 15% of its shares, was subject to SEC regulation and, when the events described below commenced, Yukos was in the process of complying with the Sarbanes-Oxley Act of 2002 in preparation for listing on the New York Stock Exchange. Yukos was the only large Russian company to comply with American accountancy standards. In early 2004, the industry periodical *Energy Compass* ranked Yukos' corporate governance practices second among the world's top 20 publicly

traded oil and gas companies.[2] Yukos achieved in all respects a transparency unprecedented in Russia. As the Russian journalist Anna Politkovskaya - who was murdered in October 2006 – wrote in "*Putin's Russia*", Yukos was:

> the most transparent company in our corrupt country, the first to function in accordance with internationally accepted financial practice. It operated 'in the white' as people say in Russia, and what is more it donated over 5 per cent of its gross annual profit to financing a large university, children's homes and an extensive programme of charitable work.[3]

66. Plaintiff Yukos Capital is a former, indirect, wholly-owned subsidiary of Yukos Oil. Yukos Capital was incorporated in Luxembourg on 31 January 2003 as a "*société à responsabilité limitée*". Its intended purpose was to serve as a vehicle to provide financing to international companies within the Yukos group engaged in merger and acquisition activities. While Yukos Capital engaged in certain such activities, as events transpired, by far the largest recipient of financing from Yukos Capital was Yukos Oil and, in the case of the loans at issue herein, Yukos Oil's primary production subsidiary YNG.

67. At its formation, Yukos Capital's parent was Yukos Finance BV, a Dutch holding company wholly owned by Yukos Oil. In April 2005, a restructuring was carried out whereby protective measures were implemented in an effort to prevent the foreign assets of Yukos Oil from being confiscated by the Russian State. These measures included transferring ownership of Yukos Capital to Yukos International UK B.V., a Dutch holding company which holds certain of the former international assets of Yukos Oil, and interposing a Dutch trust between Yukos International and Yukos Finance.

68. To date, this strategy has succeeded, in large part due to the refusal of the Dutch courts to recognize the Yukos bankruptcy in the Netherlands:

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[2] Corporate Governance: How Big Oil Stacks Up, Energy Compass, Jan. 8, 2004.

[3] Anna Politkovskaya, Putin's Russia, UK: Harvill, 2004, p. 276.

> the Russian bankruptcy order in which Rebgun was appointed receiver in the bankruptcy of Yukos Oil was effected in a manner not in accordance with the Dutch principles of due order of process and is thus in violation of the Dutch public order. For that reason, the bankruptcy order cannot be recognised and the receiver's powers that ensue from it under Russian law cannot be exercised by Rebgun in the Netherlands.[4]

69. The above-mentioned protective measures, coupled with the Dutch court's rulings, have preserved Plaintiff's status as an independent entity and permit it to bring this action.

YUKOS CAPITAL'S LOANS AND THE RUSSIAN ARBITRATIONS

70. In August 2004, Yukos Capital extended financing in the aggregate amount of RUR 11,233,000,000 to YNG. This financing was reflected in four substantially identical agreements (the "Loan Agreements") pursuant to which YNG was obligated to pay quarterly interest at the rate of 9% per annum, with the Loans maturing on December 31, 2007. (Exs. I-L). The Loan Agreements provided that "[s]hould the Parties fail to come to an agreement by negotiations then such unsettled dispute shall be submitted to International Commercial Arbitration Court at the Chamber of Trade and Industry of the RF in accordance with its rules and procedures."

71. By letters dated October 19, 2004 and January 20, 2005, Yukos Capital reminded YNG of its obligations to pay interest for the period ending December 31, 2004. When these letters went unanswered, Yukos Capital sent a letter to YNG dated April 25, 2005 demanding "immediate and full repayment of the loans and accrued interest." This demand was repeated by letter dated November 11, 2005.

72. When Yukos Capital's demand letters also went unanswered, a formal complaint was sent to YNG dated December 5, 2005. Therein, Yukos Capital recited the history of communications described above, noted that YNG had "committed repeated material

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[4] Godfrey et al. v. Rebgun et al., District Court of Amsterdam, Case No. 355622/HA ZA 06-3612, Judgment of October 31, 2007, ¶ 3.21.

breaches of your obligations" and gave YNG seven days to, among other things, repay the Loans together with all accrued interest. Yukos Capital emphasized that: (i) "[i]n the event the means of resolving this disagreement referred to above are not taken up, please consider this letter a proposal to terminate the loan agreements" and (ii) should no reply be received, it would have no choice but to commence arbitration "for recovery of the debts, penalties for late performance of monetary obligations under the agreements, termination of the agreements, and recovery of our losses."

73. No response was received and Yukos Capital filed Statements of Claim, pursuant to the Loan Agreements, with the International Court of Commercial Arbitration at the Chamber of Commerce and Industry of the Russian Federation (the "ICCA") dated December 23, 2005. These Statements of Claim were received by the ICCA in late December and communicated to YNG by letter dated February 7, 2006. Four separate proceedings were commenced; one under each Loan Agreement (bearing Case Numbers 143-146/2005). The four cases were consolidated for purposes of the hearings.

74. The arbitrations were administered by the ICCA pursuant to its rules. Yukos Capital appointed Mr. M.G. Rosenberg as its arbitrator. YNG appointed Mr. S.N. Lebedev and the two party-appointed arbitrators appointed Mr. O.N. Sadikov as chairperson of the Tribunal. Each of the arbitrators was a prominent member of the Russian arbitral community.

75. The Statements of Claim alleged that YNG had repeatedly defaulted on its obligations to pay quarterly interest under the Loan Agreements. Yukos Capital sought payment of (i) all accrued interest due under the loans through December 2005 and (ii) interest on the delayed interest.

76. By letters dated March 23, 2006, the ICCA notified the parties that the evidentiary hearings would be held on May 18-19, 2006. On April 3, 2006, YNG submitted its response

to the arbitration demand and requested an extension to the term for the submission of evidence and arguments as provided by the rules, which request was granted.

77. YNG submitted its written pleadings on May 5, 2006. Therein, it asserted that Yukos Capital was not entitled to claim for interest on delayed interest, but YNG did not otherwise raise any objections to Yukos Capital's claims and did not challenge in any respect Yukos Capital's claim for the payment of all accrued interest due under the loans.

78. On May 11, 2006, Yukos Capital submitted an updated interest claim and further supplemented its claims to seek recovery of all outstanding principal. The claim to loan principal was made on two legal theories (as YNG was notified in prior correspondence and in Yukos Capital's December 5, 2005 formal complaint). First, it was asserted that, under Section 2.4 of the Loan Agreements, Yukos Capital was entitled to demand repayment of loan principal where there were legitimate reasons to question YNG's financial ability to pay. Second, Yukos Capital argued that the payment of quarterly interest was an essential condition of the loans and YNG's continuing default on that essential obligation permitted termination of the loans and recovery of all outstanding principal.

79. A session before the arbitrators was held on May 18, 2006, at which YNG requested to postpone the evidentiary hearing in order to have time to evaluate the legal merits of the supplemented claim. The Tribunal granted this request, agreed to postpone the hearing until June 20, 2006 and gave YNG until June 13, 2006 to submit its pleadings.

80. By letter dated June 14, 2006, Yukos Capital received YNG's written pleadings in response to its supplemented claims. YNG reiterated its objection to Yukos Capital's claim for interest on unpaid interest, but did not object to the updating of the claim for accrued interest in order to account for further defaults. YNG raised two objections with respect to Yukos Capital's amended/supplemented claims for loan principal. First, YNG contended that

a failure to pay interest was not itself sufficient to demonstrate an inability to pay; no argument was presented on the separate ground for termination (i.e., default in essential condition). Second, YNG argued on procedural grounds that in seeking the recovery of loan principal, Yukos Capital had changed the subject matter and grounds for its claims in contravention of Section 32 of the ICCA arbitration regulations. In making this argument, YNG suggested that analogous Russian court procedural rules should govern (i.e., Article 49 of the Russian Federation Arbitral Procedural Code).

81. In its written submissions, YNG did not in any respect challenge the validity of the loans.

82. The evidentiary hearing was held on June 20, 2006. In addition to submitting argument on the various issues set forth in the written pleadings, YNG made three new motions to adjourn and delay the proceeding. First, YNG stated that it needed more time to consider and respond to Yukos Capital's evidence on its legal costs. This request was granted and YNG was given one month to make a further submission.

83. Second, adjournment was requested on the stated bases that (i) the authority of the persons that signed the arbitration demand had not been verified and (ii) because Yukos Capital's claims were said to be mutually exclusive (i.e., one based upon termination and the others not necessarily so), "YNG was not able to fully define its position on the case." These requests were denied.

84. Third, YNG submitted, for the first time, that because it was part of the vertically integrated Yukos group when the loans were made and all material decisions were controlled by the parent Yukos Oil:

> YNG is justified in believing that the funds lent to it are the funds received by OJSC NK YUKOS from the sale of oil produced by OJSC YNG. In this conjunction, the claim lodged by the Claimant is misuse of its right.

In light of this "belief," YNG requested time to provide "evidence proving that the monetary funds lent to OJSC YNG are returns from the sale of the oil produced by the same . . . ."

85. This request was also denied on the grounds that:

> [T]his objection of the Defendant is declaratory and is not supported by concrete evidence with regard to the grounds, obligatoriness and the money amounts of the in-house payment transactions used within the system of the 'Yukos' holding between its structures. Moreover, there are no legal grounds for the examination by the arbitration court of the circumstances named by the Defendant, and even less, for passing the judgment thereof, since this would have been beyond the scope of the arbitration clause agreed upon by the Parties: the arbitration clause covers the disputes, exclusively concerning the Loan agreement and the legitimacy and validity of the latter is not challenged by the disputing Parties.

86. The Tribunal's Awards were issued September 19, 2006. (Ex. A-H). The Tribunal made the following findings, among others:

- Yukos Capital is a foreign legal entity under the law of Luxembourg, which foreign legal status created jurisdiction under the ICCA Rules. Neither party made any objection to the ICCA's jurisdiction;
- The Regulations of the ICCA permit the plaintiff to amend and supplement its claims, which is consistent with Russian arbitration law;
- Yukos Capital had fully performed its obligations under the Loan Agreements as corroborated by the evidence, which performance was not contested by YNG;
- While objecting to the payment of interest, YNG never contested the validity of the loans;
- YNG's defaults under the loan agreements were not contested;
- Under applicable Russian law, a contract may be terminated by one party upon its substantial violation by the other. YNG's "default in interest payment ... on seven quarterly payment dates ... and the unwillingness to pay debts demonstrated by the Defendant during the course of the hearing, need to be regarded as substantial violation [given that] ... the regular interest payment under the Loan agreement is the significant condition of the named Loan agreement.

87. In the Awards, the Tribunal awarded Yukos Capital all outstanding principal and accrued interest due under the Loans, together with arbitration costs and legal fees. These amounts in the aggregate total RUR 11,233,000,000.00 (USD 364,684,489.72) in loan

principal, RUR 1,702,858,470.69 (USD 55,284,025.03) in accrued interest through the date of the Awards, USD 785,566.26 in arbitration costs and USD 71,941.00 in legal fees.

THE PURPORTED ANNULMENT OF THE AWARDS

88. In late January 2007, apparently in response to Yukos Capital's Dutch enforcement proceedings, Rosneft commenced proceedings in the Moscow Arbitration Court to annul the Awards. This proceeding was commenced approximately one month after expiration of the three month deadline for such actions set forth in Russian law.

89. Pursuant to an ex parte proceeding, Rosneft claimed that due to the reorganization occasioned by its merger with YNG, it did not receive the Awards until December 21, 2006, after the time for challenging the Awards had expired. The Russian court accepted this excuse despite the fact that, upon learning of it, Yukos Capital pointed out that Rosneft both knew of the Awards as a matter of law (i.e., any reorganization was consummated on October 1, 2006) and as a matter of fact due to its own lawyers' participation in the arbitrations and many other related proceedings in Russia and elsewhere.

90. As grounds for annulment, Rosneft claimed in its petition that, in violation of Russian arbitration law, it had been denied an opportunity to present its case on the source of the funds loaned by Yukos Capital to YNG. According to Rosneft, the loan to YNG of funds received from the sales proceeds of oil produced by it "is the abuse of rights and the basis for rejecting the claims". Rosneft submitted that, given Yukos Capital's claim was amended in May 2006 to include termination of the Loans, "the Defendant did not have the opportunity to collect all necessary evidence in the period before the hearing appointed for 20.06.2006, taking into account that such evidence related to legal entities registered in foreign countries". Rosneft also alleged that the claim amendment itself was procedurally defective.

91. In response to Rosneft's petition for annulment, Yukos Capital submitted that there was no merit to Rosneft's suggestion that it had required more time. Yukos Capital noted

that Rosneft had more than three months to prepare its case and none of its written submissions "contain a slightest mention of the fact that the Defendant has had any other objections or evidence the obtaining of which would have taken more time." Nor did YNG's written submissions mention anything about an alleged "abuse of rights."

92. Yukos Capital emphasized that, in fact, the tribunal gave Rosneft more time and it was not until the oral hearing on June 20, 2006, after other requests to delay the proceeding were denied, that Rosneft claimed it needed still further time to adduce evidence on the source of the loan proceeds. With respect to Rosneft's additional arguments, Yukos Capital noted that the supplementation of its claims was done in full accordance with the ICCA Rules (Rule 32) and that "the arguments in support of the claim ... have not been modified as far as every claim of the Plaintiff was based on the Defendant's breach of the commitments taken under the Loan Agreement[s] . . . ."

93. Following the initial exchange of pleadings, Rosneft submitted a "Statement ... concerning additional grounds for a reversal of decisions made by the ICCA . . . ." Rosneft claimed to have discovered during the preparation of the case that the law firm representing Yukos Capital (Nomos) had in early 2005 co-sponsored a conference entitled "The UN Convention on Contracts for the International Sale of Goods: 25 years of practice" and that two of the arbitrators had spoken at this conference. Further, Nomos was involved in organizing a seminar in November 2004 entitled "Relevant issues in East-West arbitration" at which one of the arbitrators had spoken. Rosneft contended that this "is in itself sufficient to reverse the decision taken by the ICCA" because:

> The above circumstances should have been disclosed to the parties to the arbitration as they created doubt about the arbitrators' impartiality ... [T]he [Nomos] firm should not have represented a party in its dispute at the ICCA under the COIC RF where said arbitrators were involved as this creates reasonable doubt about the impartiality of the arbitration court's membership.

94. The Moscow Arbitration Court announced its decision on May 18, 2007, with the full written text prepared on May 23. Therein, the court confirmed its restoration of the time period for commencing the proceeding despite expiration of the statute of limitations and held that:

- The tribunal's denial of YNG's request for a postponement to assemble evidence on the source of the loan proceeds "deprived the defendant ... of the opportunity to submit its explanations" and "deprived it of the opportunity to obtain relevant evidence that was directly related to the dispute under review";
- Yukos Capital's claim for termination of the Loans "had different grounds and subject and could not be considered as supplements or revisions to the initial statement of claims" and "the RF CTI ICAC Procedures ... does not allow new claims to be filed";
- The arbitrators' failure to disclose their past speaking engagements at conferences/seminars organized in part by the Nomos firm "deprived the latter [Defendant] of the opportunity to exercise its procedural right to request removal of the arbitrator";
- The Nomos firm's participation in the case "is incompatible with the founding principles of Russian [law] ... and is a violation of Russian Federation public policy" (a finding made sua sponte); and
- The above findings mandated that the Awards be vacated and set aside.

95. On 15 June, 2007, Yukos Capital filed a cassation appeal from the Court's decision to the Moscow District Federal Arbitration Court. This appeal was denied by decision dated August 13, 2007, wherein the court largely repeated and ratified the reasoning of the lower court (with the exception of the public policy issue). Yukos Capital's attempt to obtain a further review was denied by the Russian Supreme Arbitration Court by decision dated December 10, 2007.

96. Russian arbitration law is based on the UNCITRAL Model Law, as is the arbitration law in many jurisdictions around the world. The UNCITRAL Model Law, like U.S. arbitration law, is designed to encourage and support the arbitral process and, like arbitration law worldwide, the grounds on which arbitral awards may be challenged are limited. The Russian courts wholly disregarded Russian law in connection with the Annulment in that: (i)

a Russian court may not second guess arbitrators on a procedural question like an extension of time in anything but the most extreme circumstances; (ii) a Russian court may not second guess the arbitrators' grant of leave to amend a claim in anything but the most extreme circumstances; and (iii) the commonplace occurrence of arbitrators speaking at a professional conference cannot somehow render them tainted and subject to removal--indeed, the presiding judge in Yukos Capital's appeal of the Annulment spoke at the very same conference said to give rise to the arbitrators' "conflict".

97. As found by the Dutch Appellate Court in proceedings fully litigated and contested by Rosneft, "the judgments of the Russian civil court in which the arbitral awards were set aside were the result of a judicial process that must be qualified as partial and dependent" and, therefore, they "must be ignored." The explanation for the Russian courts' actions is not difficult to find: where Yukos is concerned, or in any case where the Russian State takes or has a real interest, independence and impartiality of the Russian judiciary takes a back seat to the directives of the State.

CONDEMNATION OF THE RUSSIAN JUDICIARY'S ACTION'S

98. The Bankruptcy Court for the Southern District of Texas has already roundly condemned the actions of the Russian judiciary in proceedings involving Yukos, finding that "the appearance to the plaintiff, and its investors, of such a confiscation [of YNG], is created by what appears, on the evidence before this court, to be the inconsistent application of Russian law within the Russian legal system."[5]

99. The independence and impartiality of the Russian courts was addressed comprehensively in a recent decision of the English High Court,[6] wherein it was concluded

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[5] Yukos Oil Co. v. Russian Federation, Case No. 04-47742-H3-11, Adv. no. 04-3952 (S.D. Tex. Bnkr.).

[6] Cherney v. Deripaska, [2008] EWHC 1530 (Comm).

on the basis of testimony from a number of the world's foremost experts that in matters where the Russian State has a material interest, "there is a significant risk of improper government interference . . . such that substantial justice may not be done . . . ." This finding was affirmed by the English Court of Appeal, with Lord Justice Moore-Bick commenting that Yukos represents an "obvious example" of the Russian State's tendency in cases "which do engage Russia's national interest . . . to manipulate the judicial process . . . ."[7]

100. The Dutch courts have concluded that the Russian bankruptcy of Yukos was "effected in a manner not in accordance with the Dutch principles of due order of process."[8] The English courts have concluded that "[t]he uncontested expert evidence suggests the judiciary in a case such as this [i.e., Yukos] will be pressured to support the prosecution . . . [and] the judiciary lacks independence."[9] The Swiss courts have likewise found that "[a]ll of the evidence clearly corroborates the suspicion according to which the criminal proceeding would be, in the case in question [i.e., Yukos], manipulated by the power in place . . . ."[10]

101. Numerous commentators and government officials have come to the same conclusion. Among others, the United States State Department has remarked that the Yukos affair "raises serious concerns about the rule of law as applied in Russia and the way that justice is perhaps politically or selectively applied" and that conduct of the Yukos case "has raised serious concerns at the lack of transparency and independence of Russia's investment and tax laws and the courts."[11]

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7 Cherney v. Deripaska, [2009] EWCA Civ 849.

8 Godfrey et al. v. Rebgun et al., District Court of Amsterdam, Case No. 355622/HA ZA 06-3612, Judgment of October 31, 2007, ¶ 3.21.

9 The Government of the Russian Federation v. Andei Borisovich Azarow, City of Westminster Magistrates' Court, Judge N. Evans (December 19, 2007).

10 Mikhail Khordorkovski v. The Office of the Attorney General of the Swiss Federation, 1A.29/2007/col, Judgment of Tribunal Fédéral Suisse (August 13, 2007).

11 Federal News Service, State Department Briefing, Dec. 20, 2004.

102. President Bush expressed concern that "it appeared to us – at least to people in my administration – that it looked like [Khodorkovsky] had been judged guilty prior to having a fair trial."[12]

103. In November 2005, the U.S. Senate passed a resolution co-sponsored by then Senators Obama and Biden, and Senator McCain, condemning the trial and conviction of Khodorkovsky and observing that "Secretary of State Condoleeza Rice has remarked that the arrest of Khodorkovsky and the dismantling of his company have 'raised significant concerns' about the independence of the judiciary in Russia." The Senate called upon the Russian Federation to take action to address the concern that the Russian judiciary answers to the Kremlin and is not truly independent.[13]

104. In a State Department report released in January 2007, the State Department concluded that the Russian courts are "subject to undue influence" from the Kremlin, particularly with respect to Yukos:

> The [Russian] judiciary remains seriously impaired by a shortage of resources and by corruption, and is still subject to undue influence from the executive branch and does not act as an effective counterweight to other branches of government. . . . Ongoing legal actions against the private oil company Yukos, its former CEO Mikhail Khodorkovskiy [sic], and other company officials raise serious concerns about the Russian Government's commitment to promote transparency and rule of law and its willingness to ensure that legal cases are judged fairly and in accordance with due process.[14]

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12 The White House, President's Press Conference, May 31, 2005.

13 S. Res. 322, 109th Cong. (2005).

14 U.S. Department of State, U.S. Government Assistance to and Cooperative Assistance with Eurasia FY 2005, Annex A: Assessments of Progress in Meeting the Standards of Section 498A of the Foreign Assistance Act of 1961 – Russia (Jan. 2006), available at http://www.state.gov/p/eur/rls/rpt/63195.htm.

105. More recently, President Obama observed that new charges brought against Khodorkovsky are "odd" coming as they do several years after he was incarcerated and just as he was becoming eligible for parole.[15]

106. A proposed House Resolution (H. Res. 588) also condemns the new proceedings more directly, citing "the selective disregard for the rule of law by Russian officials" and observing that they are part of a politically motivated campaign pursuant to which "Russian authorities confiscated Yukos assets and assigned ownership to a state company [Rosneft] that is chaired by an official in the Kremlin, harassed, exiled, persecuted, and imprisoned many Yukos officers and legal representatives, and issued a series of court rulings against Khodorkovsky and Lebedev that violate both Russian domestic law and international legal norms."[16]

107. In sum, the Annulment represents a gross misapplication of Russian law and is the product of a judiciary squarely under the improper influence of the Russian State and, directly or indirectly, Defendant Rosneft.

108. As described above, the Dutch Appellate Court recognized that the Annulment was the product of a partial and dependent judicial process when it held that the Annulment "cannot be recognised in the Netherlands."

THE DISMANTLING AND DESTRUCTION OF YUKOS

109. The purported annulment of the Awards was merely the latest in a series of unlawful actions taken by the Russian State against the Yukos entities in its ongoing campaign to gain control of all of the Yukos assets. This campaign began in 2003 when the Russian State initiated a series of politically motivated attacks against officers and directors of Yukos.

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15 "Obama Raises Concerns About Freedom and Judicial Independence in Russia," New York Times (Jul. 7, 2009).

16 See also proposed Senate Resolution S. Res. 189.

110. In July 2003, a series of searches and seizures, often conducted by armed SWAT teams, were conducted at the offices of Yukos and its affiliates. Criminal proceedings were instituted against persons linked with Yukos and its directors and, on October 25, 2003, Khodorkovsky was arrested at gunpoint, charged and later convicted after a trial likened by commentators to Stalin- and Czarist-era show trials.

111. The motive behind the Russian State's attacks are aptly summarized in European Parliamentary Assembly Resolution 1418 (2005), adopted following an extensive investigation:

> - Facts pointing to serious procedural violations committed by different law-enforcement agencies against Mr Khodorkovsky, Mr Lebedev and Mr Pichugin, former leading Yukos executives, have been corroborated during fact-finding visits ... On the whole, the findings call into question the fairness, impartiality and objectivity of the authorities, which appear to have acted excessively in disregard of fundamental rights of the defence ...
> - The Assembly notes that the circumstances surrounding the arrest and prosecution of the leading Yukos executives strongly suggest that they are a clear case of non-conformity with the rule of law and that these executives were – in violation of the principle of equality before the law – arbitrarily singled out by the authorities.
> - Intimidating action by different law-enforcement agencies against Yukos and its business partners and other institutions linked to Mr Khodorkovsky and his associates and the careful preparation of this action in terms of public relations, taken together, give a picture of a co-ordinated attack by the state.
> - [T]he Assembly considers that the circumstances of the arrest and prosecution of leading Yukos executives suggest that the interest of the state's action in these cases goes beyond the mere pursuit of criminal justice, and includes elements such as the weakening of an outspoken political opponent, the intimidation of other wealthy individuals and the regaining of control of strategic assets.

112. Most recently, former Russian Prime Minister Mikhail Kasyanov submitted testimony to the European Court of Human Rights in which, according to his head of press services, he confirmed unequivocally that "political motives were the original reason for Khodorkovsky's

persecution, and that all the allegations were artificially created . . . [and] complemented by the desire to take Yukos owners' assets away from them."[17]

113. The Russian State assault on Khodorkovsky and individuals associated with Yukos was accompanied by an equally vicious assault on Yukos itself. The assault on Yukos used as its vehicle a series of purported tax re-assessments and related enforcement proceedings which ultimately resulted in the forced auction of YNG and the sham bankruptcy of Yukos Oil.

The Tax Reassments

114. In April 2004, after a highly irregular "re-audit" of Yukos, the tax authorities issued The 2000 Tax Assessment, asserting against Yukos an additional liability to tax, penalty interest and fines for the year 2000 of RUB 99.4 billion (approximately USD 4 billion).

115. These assessments were based on tax optimization practices which were not prohibited, but positively allowed by Russian law. As the European Parliamentary Assembly reflected in its Resolution 1418 (2005):

> In particular, the allegedly abusive practices used by Yukos to minimize taxes were also used by other oil and natural resource companies operating in the Russian Federation, which have not been subjected to a similar tax reassessment, or its forced execution, and whose leading executives have not been criminally prosecuted. Whilst the law was changed in 2004 and the alleged 'loophole' thus closed, the incriminated acts date back to 2000 and retrospective prosecution started in 2003.
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> * * *
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> Making criminal charges against persons who made use of the possibilities offered by the law as it stood at the time of the incriminated acts, following a retroactive change of the tax law, raises serious issues . . . .

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17 BBC Monitoring Former Soviet Union, "Yukos trial was politically motivated, Russian ex-PM testifies to European Court", 21 July 2009.

116. The 2000 Assessment was just the first in a series of massive "re-assessments." In 2003, 2004 and 2006, the Russian tax authorities re-assessed Yukos approximately RUB 692 billion (approximately USD 28 billion) of additional tax liabilities in respect of the 2000-2004 tax years, all on the basis of the same "theories" propounded in the 2000 Tax Assessment. The tax re-assessments were entirely without basis – indeed, according to Andrei Illarianov, former Chief Economic Advisor to President Putin, "purely fabricated."

117. On the same day as the 2000 Tax Assessment was issued, April 14, 2004, the Russian Tax Ministry issued Orders to Pay requiring that Yukos pay the purported taxes, fines and penalties described therein. The Orders to Pay specified that the total amounts said to be due (RUB 99.4 billion) should be paid by April 16, 2004, the second day after the 2000 Tax Assessment and Orders to Pay had been adopted.

118. On April 15, 2004, even before the ludicrous two-day period to pay the 2000 Tax Assessment had expired (and not having properly served Yukos), the Tax Ministry commenced legal proceedings with the Moscow Court of Arbitration to recover the RUB 99.4 billion in re-assessed taxes, fines and penalties. On the very same afternoon, the Ministry also applied ex parte for an injunction order securing payment of the amounts at issue. Having given Yukos no opportunity to respond to the Assessment and Orders to Pay, the Ministry nonetheless represented to the court that "the taxpayer does not intend to pay the taxes." On this basis, the Ministry sought to freeze all of Yukos Oil's assets.

119. Before the close of business on April 15, 2004, the Moscow Court of Arbitration accepted jurisdiction of the enforcement proceeding, issued the requested injunction and issued writs of execution (again, all on an ex parte basis before Yukos was given an opportunity to respond to the 2000 Tax Assessment and before the two-day voluntary payment period had run). On April 16, 2004, writs of execution were issued by the City of Moscow court bailiff.

120. On April 22, 2004, Yukos challenged the injunction on the basis that it was grossly disproportionate, covering assets worth approximately 5.5 times the amount of the total tax liability asserted in the 2000 Tax Assessment. The Moscow Court of Arbitration rejected this challenge the next day.

121. The hearing on the Tax Ministry's enforcement proceeding began on May 21, 2004 and concluded on May 26, following which the court granted the petition for the recovery of taxes. As with virtually all proceedings relating to Yukos, the hearing was a sham and the result predetermined. Among other things, the Tax Ministry filed approximately 24,000 pages of documents with the court on May 17, 2004, a further approximately 45,000 pages on May 18 and another 2000 late on May 20, the eve of the hearing. These materials were not evaluated by the court, which simply adopted the submissions of the tax authorities, and Yukos was given virtually no opportunity to review, assess and respond to them.

122. Thereafter, through procedural maneuverings the Tax Ministry caused the courts to shorten the time period that should have been available to Yukos to appeal the result of the enforcement proceeding, and the courts rejected Yukos' applications for more time. On June 29, 2004, the Appeal Instance of the Moscow Court of Arbitration rejected the appeals and confirmed a total tax liability, inclusive of fines and penalties, of RUB 99.4 billion.

123. The Tax Ministry continued to assess additional penalties against Yukos. By August-September 2004, the Russian State had assessed Yukos approximately RUB 220 billion (approximately USD 7 billion) in trumped up tax liabilities for 2000-01 and ensured that Yukos would be unable to pay those liabilities through (i) multiple orders freezing its assets and (ii) refusing its proposals to sell liquid assets. By early December 2004, the 2002-03 tax years had been added in, increasing the total liability to approximately RUB 585 billion (approximately USD 18 billion). All of this was done in gross violation of Russian and international law.

The Forced Auction of YNG

124. With the stage thus set, the Russian State proceeded with the next phase of its plan: the gutting of Yukos by the illegal taking of YNG, its principal production subsidiary, and engineering its "sale" to a State-owned company.

125. On August 12, 2004 the Russian State commissioned Dresdner Kleinwort Wasserstein ("*DKW*") to perform a valuation of the participation to be sold in YNG. DKW's report, dated October 6, 2004, valued the share capital of YNG at USD 15.7-18.3 billion. Yukos Oil commissioned a separate valuation by JPMorgan. In JPMorgan's report, dated October 7, 2004, YNG's shares were valued at USD 16.1-22.1 billion. Reports from other neutral observers valued YNG in excess of USD 30 billion.

126. In early November 2004, Yukos announced that it would hold a shareholders meeting on December 20, 2004 to consider whether the company should file for bankruptcy. Among other things, a bankruptcy filing would have acted to stay legal proceedings against Yukos, including enforcement against its assets.

127. On November 18, 2004, the Chief Directorate of the Ministry of Justice of the Russian Federation for Moscow and the Russian Federal Property Fund ('the RFPF'), a specialised State institution, concluded a contract according to which the RFPF undertook to sell Yukos' shares in YNG "*in an amount no less than 246,735,447,000.18 roubles*" (approximately USD 8 billion). This price bore no relation to any of the available valuations, but rather corresponded to the total outstanding tax liability at that time. On the same day, by order of the acting Chairman of the RFPF, an auction commission was appointed.

128. In an issue of *Rossiyskaya gazeta* dated November 20, 2004, an information notice was published concerning the auction to sell the frozen shares in YNG. The notice indicated the number of shares to be sold, i.e. 43 ordinary shares, and the starting sale price, i.e.

246,753,447,303.18 roubles. The date for the auction was set for December 19, 2004, the day before the scheduled meeting of Yukos shareholders (and, incidentally, a Sunday).

129. Yukos challenged the planned auction in the Russian courts, which challenges were rejected, and Yukos was enjoined from holding an emergency meeting of its shareholders in advance of the auction.

130. Yukos sought the protection of the United States Bankruptcy Court for the Southern District of Texas. By judgment dated December 16, 2004,[18] Yukos obtained an order from the Bankruptcy Court temporarily restraining the auction. The Bankruptcy Court noted that the evidence before it suggested that "the Debtor [i.e., Yukos] has assets other than YNG from which to begin to satisfy the amount assessed by the tax authorities, as commonly permitted under Russian law ... [and] that the authorities refused to consider other assets, and insisted on the sale of YNG." In granting the injunction, the court found that:

> Participants in international commerce, in Russia, in the United States, and elsewhere, need to have an expectation that when they invest in foreign enterprises they may do so without fear that their investments may be subject of confiscatory action by agencies of the foreign government. In the instant case, the appearance to the plaintiff, and its investors, of such a confiscation, is created by what appears, on the evidence before this court, to be the inconsistent application of Russian law within the Russian legal system.

131. Notwithstanding the U.S. federal court injunction, the Russian Government proceeded with the YNG auction on December 19, 2004. According to the official protocol there were two participants, OOO Baykalfinansgrup (or Baikal Finance Group) and OOO Gazpromneft. As reported in the Addendum to the European Parliamentary Assembly Report, "other potential bidders, including from abroad, were discreetly 'discouraged' from participating." Gazpromneft was, until the day before the auction (when it was sold to an unknown third

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[18] Yukos Oil Co. v Russian Federation, Case No. 04-47742-H3-11, Adv no. 04-3952 (S.D. Tex. Bankr.)

party), a wholly-owned subsidiary of OAO Gazprom, the largest gas company in the world and largely controlled by the Russian State. At the time of the auction, the CEO of Gazpromneft was Sergey Bogdanchikov, the President of Rosneft. As was later revealed Baikal Finance Group was a shell company controlled by Rosneft and was formed solely for purposes of the auction.

132. While there were officially two participants in the auction, only one of the participants actually bid, Baikal Finance Group. In the course of a ten-minute auction Baikal Finance Group made two bids (i.e., bid against itself) before arriving at its final bid of approximately USD 9 billion, half of YNG's conservatively estimated value.

133. Two days later, on December 23, 2004, Rosneft Oil Company purchased Baikal Finance Group for the same price Baikal had paid for YNG. It was later revealed that Rosneft had provided the financing for the YNG purchase. At the time, Rosneft was entirely owned by the Russian State and no less than 10 of its 11 directors combined their directorial duties with State office, either in the Russian Government or the Presidential Administration.

134. President Putin's then Chief Economic Advisor, Mr. Illarianov, remarked at a press conference held on December 28, 2004 that:

> The sale of YNG to the mystical company Baykalfinansgrup, as well as all the operation surrounding the merger of Gazprom and Rosneft, *could be called the swindle of the year.* Before now we saw such actions by confidence tricksters, but now we see companies with 100% State capital doing this. [This story] clearly shows that the game has no rules, whereas the rules change according to the needs of the moment."
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> These actions have inflicted colossal damage on the country. . . . They were conducted in a monstrously incompetent way . . . *It's becoming clear that there was no reason behind this other than a great desire to expropriate private property.*[19]

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19 The Moscow Times, 11 January 2005 (emphasis added); BBC News, 28 December 2004; The Wall Street Journal, 31 December 2004-January 2, 2005.

135. As summed up in the Resolution of the European Parliament, the auction of YNG yielded "a price far below the fair market-value" and was the result of Yukos being "forced to sell off its principal asset, by way of trumped-up tax reassessments leading to a total tax burden far exceeding that of Yukos' competitors, and for 2002 even exceeding Yukos' total revenue for that year." The result, as stated concisely in the Addendum to the Parliamentary Assembly Report: "Yugankneftegaz has effectively been re-nationalised."

The Sham Bankruptcy of Yukos Oil

136. With Yukos Oil's principal production subsidiary taken and its remaining assets frozen as security for the outstanding tax "liabilities", the stage was set for the Russian State end game. Less than a year after the illegal taking of YNG, the State commenced the final phase of its plan to do just that.

137. One of Yukos Oil's largest creditors was a group of Western lenders under a USD 1 billion syndicated loan agreement dated September 24, 2003. By agreement with this group of banks dated December 13, 2005, Rosneft orchestrated the commencement of bankruptcy proceedings for Yukos. Essentially, the agreement worked as follows: Rosneft agreed to purchase the debt held by the lenders, thus satisfying the lenders' claims and stepping into their shoes, provided the lenders agreed to first (i) "endeavour to file and have accepted the Application for Bankruptcy ... as soon as is reasonably practicable" and (ii) take whatever steps were then required to substitute Rosneft for the lenders in the bankruptcy case.

138. Pursuant to the above agreement, the banks made a formal application for a bankruptcy order on March 6, 2006, Rosneft was substituted for the banks as applicant on March 14, 2006 and insolvency proceedings were opened on March 28, 2006. In its initial stage, the proceedings were "supervisory", with E.K. Rebgun appointed as temporary receiver and the Yukos board retaining certain authority.

139. On July 25, 2006, a creditors' meeting was held to determine whether, among other things, a financial rehabilitation plan should be instituted for Yukos or, on the other hand, a court petition should be filed requesting that Yukos be declared bankrupt and formal liquidation proceedings commenced. Twenty-four creditors were permitted to participate and vote, with votes allocated based upon the size of each creditor's claim. Representatives for Yukos made a presentation demonstrating that its market value was estimated at approximately USD 38 billion, more than USD 20 billion in excess of its purported liabilities (including the tax re-assessments). Applying wholly inappropriate "fire sale" discounts ranging as high as 40%, and discounting further for a 24% profit tax said to be payable on any liquidation sales, Mr. Rebgun arrived at a valuation of USD 18 billion and took the position that "The current activities of OAO 'YUKOS Oil Company' may be carried out without losses, but the aggregate proceeds from the sale of property and proceeds from the current activities would not cover its obligations to the creditors."

140. Votes were then taken. Sixteen creditors present voted for the proposal to institute a rehabilitation plan for Yukos and against filing a petition declaring the company bankrupt. Four creditors took the opposite position, with the remainder abstaining. Nonetheless, the proposal to file a petition declaring Yukos bankrupt was approved and rehabilitation rejected because the four creditors wishing to bankrupt and dissolve Yukos controlled 93.87% of the votes. Those creditors included the Russian tax authorities, Rosneft, and YNG (now owned by Rosneft).

141. By court order dated August 1, 2006, Yukos was formally declared bankrupt and liquidation proceedings commenced. Rebgun was appointed liquidator. Yukos appealed from this judgment but, employing his new powers as liquidator, Rebgun withdrew the required powers of attorney from Yukos' lawyers so no representative of Yukos could appear at the hearing of the appeal and it was, not surprisingly, rejected.

142. During the period March-August 2007, auctions of Yukos Oil's remaining assets were organized and conducted under Rebgun's supervision. The auctions were, in most respects, similar to the YNG auction--staged events with straw man bidders conducted in violation of domestic and international law where the auctioned assets found their way into the hands of the Russian State. The assets obtained by Rosneft generated over 80% of the total auction proceeds.

143. Despite the "fire-sale" prices resulting from the corrupt auctions, the assets marshaled by Rebgun totaled in excess of RUB 877 billion (approximately USD 35 billion), almost double the USD 18 billion valuation used by Rebgun to justify bankruptcy proceedings and far in excess of even the trumped-up tax claims. Put another way, Yukos remained solvent.

144. Rosneft played an important role in solving this "problem", managing to come up with somewhere in the range of USD 7-10 billion in so-called claims against Yukos that it asserted in the bankruptcy. All of Rosneft's claims in the Yukos bankruptcy were recognized and paid in full--according to Rosneft financial statements in the total amount of approximately USD 10 billion.[20] This amounts to a refund of almost half the entire bargain-basement price it paid for Yukos assets in the purported auctions. The result:

> By taking over YUKOS, [Rosneft] the state-run company bypassed its Russian producing and refining competitors, jumping from eighth to first in Russia, where the former YUKOS assets account for over 70% ... The acquisition of YNG, Tomskneft and Samarneftegaz enables Rosneft to almost quadruple its reserves ...[21]

145. In financial terms, the benefit to Rosneft resulting from the theft of Yukos assets is staggering. Solely by way of example, in July 2006 Rosneft raised USD 10.6 billion in an initial public offering priced at USD 7.55/share. This suggests a valuation for Rosneft of

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[20] OJSC Oil Company Rosneft, Interim Condensed Consolidated Financial Statements, Three and six months ended June 30, 2007 and 2006.

[21] Irina Reznik, 'Prosecutor's Discount', Financial Times (25 September 2007).

approximately USD 80 billion. And Rosneft saw its revenue climb from USD 5.2 billion at the end of 2004 to USD 49.2 billion by the end of 2007, an increase of approximately 940 percent.

146. In late October 2007, Rebgun filed an application to terminate the bankruptcy and dissolve Yukos. By order dated November 15, 2007, this application was granted by the court, the bankruptcy concluded and Yukos dissolved. Yukos Capital appealed against the judgment terminating the bankruptcy and at the same time – and in timely fashion – asked for a suspension of the decision to dissolve Yukos. Rebgun took no notice of that request and, on November 22, 2007, Yukos Oil Company was deregistered from the Russian register of enterprises. As a result, it ceased to exist under Russian law and, in a fitting conclusion, Yukos Capital's appeal was rejected by the courts on the circular reasoning that Yukos Oil Company had ceased to exist.

The Fraudulent Conveyance of Rosneft Assets

147. Yukos Capital commenced Russian arbitration proceedings against Defendant Rosneft's predecessor YNG on December 27, 2005.

148. By a prospectus dated May 17, 2006 (the "IPO Prospectus"), Rosneft offered to the public 1,126,357,616 previously issued ordinary shares of Rosneft, including ordinary shares in the form of global depositary receipts ("GDRs"), and 253,874,997 newly issued ordinary shares in the form of GDRs (collectively, the "First Global Offering"). Each GDR represents one ordinary share. The First Global Offering consisted, among other things, of an institutional offering of ordinary shares in the United States to qualified investment brokers through registered U.S. broker-dealer affiliates. Shares of Rosneft represented by GDRs are traded on the London Stock exchange. According to publicly filed Forms 13F, NQ and N-

CSR, more than 70 U.S.-based institutional investors hold or have held Rosneft Global Depository Receipts during the last year, including several located in New York.

149. The IPO Prospectus provided a detailed description of the Russian arbitral claims. The IPO Prospectus noted that:

> Yukos Capital . . . has filed four arbitral claims against [YNG] in the International Court of Commercial Arbitration (the "ICCA") at the Russian Federation Chamber of Commerce and Industry. These arbitral claims allege that Yuganskneftegaz defaulted on four ruble-denominated long-term loans in an aggregate principal amount of approximately RUB 11,233 million (USD 405 million) from Yukos Capital S.a.r.l. The loans bear interest at 9% per annum and mature in 2007. . . . The arbitration hearings ended in June 2006, and the decision is anticipated in August-September 2006.

150. On September 19, 2006, the Tribunal awarded Yukos Capital a total of RUR 12.93 billion (approximately USD 419 million) against YNG, representing monies owed to Yukos Capital pursuant to four separate loan agreements together with accrued interest, arbitration costs, and legal fees.

151. The Dutch Appellate Court, in its Judgment dated April 28, 2009, determined that the Tribunal awards totaling RUR 12.93 billion are enforceable, and conferred exequatur upon them in the Netherlands. The Dutch Judgment by its terms is immediately enforceable, and there is no stay in place. Rosneft has failed to satisfy any amount of the Dutch Judgment.

152. Rosneft has paid a total of more than $2 billion in dividends to holders of its GDRs since the commencement of the Russian arbitration proceedings on December 27, 2005, including an estimated $5 million to Defendants Artio Global Investment Funds, The Central Europe & Russia, Fund, Inc., J. & W. Seligman & Co., Incorporated, Seligman Global Fund Series, Inc., Van Eck Global Corp., and Market Vectors ETF Trust, New York shareholders who are required to publicly disclose their holdings.

153. The IPO Prospectus provided specific notice to prospective participants in the First Global Offering and prospective holders of Rosneft GDRs that "disposition of these claims against Rosneft could adversely affect Rosneft's operating results and financial condition and could have a material adverse effect on Rosneft and the value of the Securities," that that shareholders of Yukos "may seek to enforce [arbitral] award[s] against Rosneft, which may expose Rosneft to substantial liability," and that Rosneft "is facing and could continue to face efforts to attach assets in aid of existing or future claims."

COUNT I

154. Plaintiff repeats and realleges, as though fully incorporated herein, Paragraphs 1-153.

155. The Dutch Judgment is a foreign country judgment which is final, conclusive and enforceable where rendered.

156. Rosneft voluntarily and fully participated in the Dutch proceeding.

157. The decision of the Dutch Appellate Court was impartial and was supported by ample evidence.

158. Pursuant to the Uniform Foreign Money-Judgments Act as codified under Sections 5302 and 5303 of the New York Civil Practice Law and Rules, the Dutch Judgment is entitled to recognition and enforcement.

159. To the extent that Rosneft raises the Russian Annulment as a defense to recognition and enforcement of the Dutch Judgment, it should be estopped from doing so because it has already fully litigated this issue and the Dutch Appellate Court determined that the Awards are enforceable.

160. The Russian Annulment is not entitled to recognition in this Court because Plaintiff was not accorded due process by the Russian courts and recognition would be contrary to public policy.

COUNT II

161. Plaintiff repeats and realleges, as though fully incorporated herein, Paragraphs 1-160.

162. The Awards fall under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the "New York Convention").

163. This Petition is brought within three years after the Awards were made.

164. None of the grounds for refusal or deferral of recognition or enforcement as specified in the New York Convention exist. To the extent that Rosneft raises the Russian Annulment as a defense to confirmation, recognition and enforcement of the Awards, it should be estopped from doing so and the Russian Annulment in any event is not entitled to recognition in this Court and should be disregarded.

165. Pursuant to Sections 201 and 207 of the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and Article IV of the New York Convention, the Awards are entitled to confirmation, recognition and enforcement.

COUNT III

166. Plaintiff repeats and realleges, as though fully incorporated herein, Paragraphs 1-165.

167. The Russian arbitration proceeding qualifies as an action for money damages under New York Debtor and Creditor Law.

168. Rosneft has failed to satisfy the Dutch Judgment.

169. Since the commencement of the Russian arbitration on December 27, 2005, Rosneft has paid dividends of over $2 billion, which dividends lack fair consideration under New York Debtor and Creditor Law. Approximately $5 million of these have been paid to shareholders located in New York.

170. Pursuant to Section 273-a of the New York Debtor and Creditor Law, such dividends were fraudulently conveyed from Rosneft to the Fraudulent Transferees.

171. Pursuant to Section 278 of the New York Debtor and Creditor Law, Yukos Capital is entitled to attach or levy any property so conveyed, or have such fraudulent conveyances set aside.

COUNT IV

172. Plaintiff repeats and realleges, as though fully incorporated herein, Paragraphs 1-171.

173. Rosneft paid dividends during the pendency of the Russian arbitration and following entry of the Dutch Judgment with actual intent to hinder, delay, or defraud Yukos Capital's ability to collect on the Arbitral Awards and the Dutch Judgment.

174. Rosneft's fraudulent transfers wear many "badges of fraud" under New York law.

175. The transfers were made during the pendency of an action for money damages. Rosneft failed to satisfy the resulting Dutch Judgment and has refused to post a bond in the Netherlands.

176. The transfers were made without fair consideration. Under New York Debtor and Creditor Law, the payment of dividends is a transfer made for no consideration.

177. The transfers were made to insiders – Rosneft's shareholders.

178. The Fraudulent Transferees received the dividends with knowledge of they were subject to unresolved claims by Yukos Capital and that they could be subject to attachment and levy, as described *supra* at Paragraphs 146-152.

179. Pursuant to Section 276 of the New York Debtor and Creditor Law, such dividends were fraudulently conveyed from Rosneft to the Fraudulent Transferees.

180. Pursuant to Section 278 of the New York Debtor and Creditor Law, Yukos Capital is entitled to attach or levy any property so conveyed, or have such fraudulent conveyances set aside.

WHEREFORE, Yukos Capital S.a.r.l. respectfully requests that: (a) an order be made (i) recognizing the Dutch Judgment and/or (ii) confirming the Awards and (iii) authorizing attachment or levy of fraudulently conveyed Rosneft assets; (b) judgment be entered in accordance therewith; and (c) Yukos Capital S.a.r.l. be granted such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 15, 2009

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YUKOS CAPITAL S.A.R.L., Plaintiff, v. O.J.S.C. OIL COMPANY ROSNEFT, Defendant.	09 Civ. 09-7905 (AKH) ECF Case **NOTICE OF MOTION FOR LEAVE TO AMEND**

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Anne Coyle, dated March 15, 2010, together with the exhibits annexed thereto, and the accompanying memorandum of law, the Declaration of Jean-Luc Schaus, dated March 15, 2010, the Declaration of Drew Patrick Holiner, dated March 15, 2010, and upon all the pleadings and other papers in this action, the undersigned will move this Court in Courtroom 14D, 500 Pearl Street, New York, New York, at a date and time to be determined by the Court, for an order pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, granting leave to amend Yukos Capital's Amended Complaint on the grounds that such leave should be freely given in the absence of undue delay, bad faith, futility, and undue prejudice to the opposing party, and for such other relief as the Court deems just and proper.

Dated: New York, New York
March 15, 2010

Respectfully submitted,

GIBSON, DUNN & CRUTCHER, LLP

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