

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 FINANCIAL SERVICES DIVISION

3
4 CAUSE NOS. 91, 106, 107, 108, 109 and 111,112 and 113 of 2013

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6 IN THE MATTERS OF SOUNDVIEW ELITE LTD.
7 SOUNDVIEW PREMIUM LTD.
8 SOUNDVIEW STAR LTD.
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16 IN CHAMBERS
17 BEFORE THE HON. CHIEF JUSTICE
18 THE 24TH SEPTEMBER AND 12TH DAY OF DECEMBER 2013
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21 APPEARANCES:

Mr. Andrew De La Rosa instructed by Ms. Janet Francis of Sweets Law for Citco Global Custody N.V. ("CITCO") in the 3 petitions in Cause FSD 111-113 of 2013; Mr. Giglioli for Ritchcourt Allweather Fund Inc.; in Causes FSD 91/2013; in Cause 106-107 for Optima Absolute Return Fund Ltd.; and in Cause 108-109 for America Alternative Investments Inc.

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29 Mrs. Gail Johnson-Goring for The Cayman Islands
30 Monetary Authority ("CIMA").
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32 Messrs. Anthony Akiwumi and Richard Annette of Stuarts
33 Walker Hersant for all the companies which are the
34 subjects of the Petition.
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38 **RULING**
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40 These petitions for winding up are all presented based upon "unpaid debts" within the
41 meaning of section 92(d) of the Companies Law (2012 Revision) ("the Law"). The
42 petitioners, who are all investor members of these Fund Companies, assert that the
43 companies are unable to pay their debts which are in the nature of unpaid redemption

1 payments and are therefore liable to be wound up pursuant to section 93(c) of the Law.
2 While Mr. Giglioli's clients bring their separate petitions to wind up the Companies, he
3 acknowledges that in respect of the companies which is the subject of the petitions in
4 Causes 111-113 of 2013¹, the petitions brought by Mr. De La Rosa's clients which were
5 first in time, should be heard. His clients would therefore support those petitions.

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7 Mr. Giglioli's also acknowledges that as summonses for directions must first be issued
8 but have not yet been issued in furtherance of his clients' petitions on the other Causes²,
9 those petitions may not be heard now but must be adjourned. It is so ordered. I now
10 proceed to the consideration of the petitions in Causes 111-113.

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12 In respect of each Company there are two heads of claim which are unchallenged:

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14 (1) Unpaid post-June 2011 redemption payments.

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16 (2) Shortfalls in pre – June 2011 redemption payments.

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18 - all of which were calculated on the last available net asset value calculations
19 (“NAV’s”).

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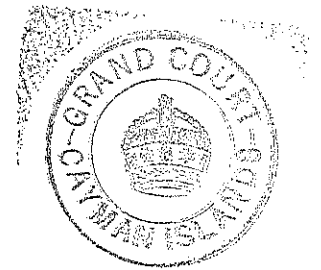
22 There is no dispute that the redemption notices were valid and that certain payments fell
23 due as the result. The Funds each later purported to impose gates upon redemptions. But
24 the gating of redemptions is not an issue on these petitions. Indeed, no issue has been
25 raised. There is no response by way of explanation from the Funds. In each case what

¹ That is: Soundview Elite Ltd; Soundview Premium Ltd and Soundview Star Ltd.

²That is: those in Causes 91 and 106-109.

1 there are, are short payments – in each case 80% of redemptions instead of the 90%
2 required by the constitutional documents of the Funds as follows:

3 Soundview Premium - \$243,801.07
4 Soundview Star - \$554,845.67.
5 Soundview Elite - \$711,725.30



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7 Thus, the petitions are based on a series of unexplained and unremedied defaults.

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9 Regard must be had also to the concerns of CIMA as regulator of the Funds. CIMA's
10 report reveals that for four years no audited accounts have been filed and CIMA regards
11 this as a serious matter that could involve criminal sanctions. The Funds simply have
12 done nothing about it, although CIMA raised its concerns with them.

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14 It is therefore not surprising that CIMA supports the petitions for winding up and sees the
15 intervention through counsel on behalf of the Funds today seeking to stay the petitions, as
16 a delaying tactic by the management of the Funds.

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18 Given this background including the fact that the filing of the petitions to wind-up has
19 been notified to the Companies since the 22nd August 2013 when they were served at
20 their registered offices³ Mr. Akiwumi's arguments against the granting of the petitions in
21 deference to proposed Chapter 11 proceedings in the United States, are unacceptable.

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³ Affidavit of Service of Michael Stewart filed in the proceedings on the 28th August 2013

1 As he acknowledges, those Chapter 11 proceedings were filed only recently and
2 notwithstanding that the Funds were already on notice of these winding-up proceedings –
3 proceedings which are deemed to have commenced once the petitions were presented to
4 this Court⁴.

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6 No less unattractive is Mr. Akiwumi's further suggestion that the Chapter 11 filing will
7 inevitably operate to render these proceedings an exercise in futility, simply because the
8 filing was managed to be made before the making of the formal order for winding up in
9 these proceedings.

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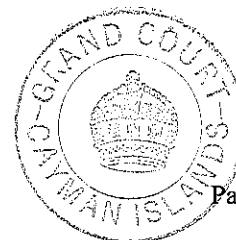
11 The reality is that no trustee has, as yet, been appointed by the Bankruptcy Court in the
12 Chapter 11 proceedings and so the principles of comity do not operate to oblige this
13 Court to stay these proceedings and the appointment of a liquidator here, in deference to
14 such an appointment. Indeed, the circumstances presented here would suggest that the
15 United States Court would wish to recognise the earlier operation of Cayman Islands law
16 in these proceedings in respect of the winding up of these Companies which are Cayman
17 Islands entities.

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19 Again, despite Mr. Akiwumi's arguments to the contrary, the present circumstances are
20 unlike those in the matter of *Re Lancelot Funds*⁵ where a Chapter 7 trustee had already
21 been appointed by the United States Bankruptcy Court and protested the appointment of

⁴ Section 100 subsection 2 of the Companies Law (2012 Revision)

⁵ *Lancelot Funds*, 2009 CILR 7



1 a liquidator by this court, notwithstanding that the Fund company was a Cayman Islands
2 entity⁶.



3
4 While comity can be an important consideration and has on occasions in the past operated
5 so as to require this Court to accede to and facilitate the appointment of United States
6 court appointed trustees⁷ (and those officials appointed by other courts⁸), the present
7 circumstances would instead indicate the need for the recognition of the Cayman court -
8 appointed liquidators by the United States court.

9
10 I am satisfied that the debts as pleaded in the petitions are owed and remain outstanding
11 despite the statutory demands for payment. There are also serious concerns raised by
12 CIMA about the management of the Funds of which I must take notice because of their
13 regulatory nature.

14
15 The Chapter 11 proceedings appear to have been filed despite the Companies, and those
16 acting on their behalf, having notice of these petitions and the legal consequences that
17 flow from the institution of winding up proceedings in this jurisdiction; which include an
18 immediate and automatic prohibition against steps being taken to bring proceedings
19 elsewhere against the Companies without the leave of this Court.

⁶ It is to be noted nonetheless that in Lancelot a protocol was entered into and successfully operated between the Cayman Court appointed liquidator and the Chapter 7 Trustee.

⁷ See, for instance: In Re Fruit of the Loom, 2000 CILR N.7 where provisional liquidation proceedings in the Cayman Islands were stayed to allow Chapter 11 debtor-in-possession proceedings to progress eventually allowing the debtor, Fruit of the Loom, to emerge from bankruptcy and continue to operate as successful entity.

⁸ See for instance: In Re Straumer – Barchuras Inv. Bank 2010 (2) CILR 146, where the Icelandic court appointed “moratorium assistant” recognised by this Court according to this application to stay all proceedings against the Bank or its assets in this jurisdiction.

1 The Chapter 11 proceedings being aimed in the circumstance of this case, merely at
2 affording the debtors an automatic stay and being a self-executing process, is not such as,
3 in my view, to oblige this Court to defer to them on grounds of comity.

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5 I am satisfied that the petitions for the winding up of Soundview Premium, Soundview
6 Star and Soundview Elite should be granted and I so order and the liquidators, nominated
7 on behalf of the petitioners, are appointed accordingly.

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9 Dated and reissued on 13th day of December 2013

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15  The Honourable Mr. Anthony Smellie

16 Chief Justice

17 The Cayman Islands

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