IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

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

IN THE MATTERS OF	SOUNDVIEW ELITE LTD. SOUNDVIEW PREMIUM LTD. SOUNDVIEW STAR LTD.

IN CHAMBERS
BEFORE THE HON. CHIEF JUSTICE
THE 24TH SEPTEMBER AND 12th DAY OF DECEMBER 2013

APPEARANCES:	Mr. Andrew De La Rosa instructed by Ms. Janet Francis of Smeets Law for Citco Global Custody N.V. 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.
	Mrs. Gail Johnson-Goring for The Cayman Islands Monetary Authority
	Messrs. Anthony Akiwumi and Richard Annette of Stuarts Walker Hersant for all the companies which are the subjects of the Petition.

Petitions to wind-up based on unpaid debts – contemporaneous filings in U.S. Bankruptcy Court to put companies into Chapter 11 "debtor-in-possession" bankruptcy, determination of the proper forum for winding up Cayman Islands companies.

RULING

These are a number of petitions for winding up these three Fund Companies, all presented based upon "unpaid debts" within the meaning of section 92(d) of the Companies Law (2012 Revision) ("the Law"). The petitioners, who are all investor members of the Fund Companies, assert that the Companies are unable to pay their debts which are in the nature of unpaid redemption payments and are therefore liable to be wound up pursuant to section 93(c) of the Law. While Mr. Giglioli's clients bring their separate petitions to wind up the Companies, he acknowledges that in respect of the companies which are the subject of the petitions in Causes 111-113 of 2013[1], the petitions brought by Mr. De La Rosa's clients which were first in time, should be heard now. His clients would therefore support those petitions.

Mr. Giglioli also acknowledges that as summonses for directions must first be issued but have not yet been issued in furtherance of his clients' petitions in the other Causes[2], those petitions may not be heard now and must be adjourned. It is so ordered. I now proceed to the consideration of the petitions in Causes 111-113.

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

(1) Unpaid post June 2011 redemption payment.

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

- all of which were calculated on the last available net asset value calculations ("NAVs").

There is no dispute that the redemption notices were valid and that certain payments fell due as the result. The Funds each later purported to impose gates upon redemptions. But the gating of redemptions is not an issue on these petitions. Indeed, no issue has been

[1] That is: Soundview Elite Ltd; Soundview Premium Ltd and Soundview Star Ltd.
[2] That is: those in Causes 91 and 106-109.

raised. There is no response by way of explanation from the Funds. In each case what there are, are short payments – in each case 80% of redemptions instead of the 90% required by the constitutional documents of the Funds. The short payments are reflected in the petition claims as follows:

Soundview Premium - $243,801.07

Soundview Star - $554,845.67.

Soundview Elite - $711,725.30

Thus, the petitions are based on a series of unexplained and unremedied defaults within the meaning of section 93(c) of the Law.

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

It is therefore not surprising that CIMA supports the petitions for winding up and sees the intervention through counsel Mr. Akiwumi on behalf of the Funds today seeking to stay the petitions in deference to Chapter 11 bankruptcy proceedings in New York, as a delaying tactic by the management of the Funds.

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Given this background, including the fact that the filing of the petitions to wind-up has been notified to the Companies since the 22nd August 2013 when they were served at their registered offices[3]; Mr. Akiwumi's arguments against the granting of the petitions in deference to the proposed Chapter 11 proceedings, are to my mind unacceptable.

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

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

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

[3] Affidavit of Service of Michael Stewart filed in the proceedings on the 28th August 2013
[4] Section 100 subsection 2 of the Companies Law (2012 Revision)

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Again, despite Mr. Akiwumi's arguments to the contrary, the present circumstances are unlike those in the matter of The ***Lancelot Funds***[5] where a Chapter 7 trustee had already been appointed by a United States Bankruptcy Court and protested the appointment of a liquidator by this court, notwithstanding that the Fund company the subject of the petition, was a Cayman Islands entity[6].

While comity and the principle of universality[7] can be important considerations and have on occasions in the past, operated so as to persuade this Court to accede to and facilitate the appointment of United States Court appointed trustees[8] (and those officials appointed by other courts[9]), the present circumstances would instead indicate the need for the recognition of the Cayman court- appointed liquidators by the United States court.

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

The Chapter 11 proceedings cited by Mr Akiwumi appear to have been filed despite the Companies, and those acting on their behalf, having notice of these petitions and the legal

[5] Lancelot Funds, 2009 CILR 7

[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] As authoritatively explained in Cambridge Gas Transportation Corp v Official Committee of Unsecured Creditors of Navigator Holdings plc [2006] UKPC

[8] 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 a successful entity.

consequences that flow from the institution of winding up proceedings in this jurisdiction; which include an immediate and automatic prohibition against steps being taken to bring proceedings elsewhere against the Companies, without the leave of this Court.

The filing of Chapter 11 proceedings is, I am told, an electronic process, aimed in the circumstances of this case, merely at affording the debtors an automatic stay of proceedings which may be brought against them and without the need for judicial assessment of the merits of the filing. Being such a self-executing process, the filing, in my view, is not an event in and of itself, such as to oblige this Court to defer to it on grounds of comity.

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

Dated 13th day of December 2013

The Honourable Mr. Anthony Smellie, Chief Justice
Judge of the Grand Court

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[9] See for instance: In Re Straumer-Burduras Inv. Bank 2010 (2) CILR 146, where the Icelandic court appointed "moratorium assistance" recognised by this Court according to this application to stay all proceedings against the Bank or its assets in this Jurisdiction.