

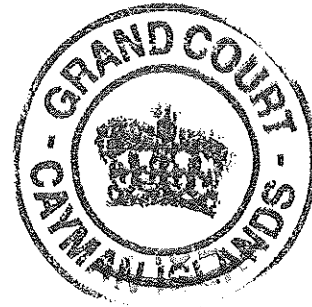
IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Cause Nos. FSD 118 and 131 of 2016

The Hon. Mr. Justice Andrew J. Jones QC

In Open Court, 12 and 16 December 2016



IN THE MATTER OF THE COMPANIES LAW (2013 Revision)

**AND IN THE MATTER OF PLATINUM PARTNERS VALUE ARBITRAGE FUND (INTERNATIONAL)
LIMITED (IN LIQUIDATION)**

AND IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP LAW 2014

AND IN THE MATTER OF PLATINUM PARTNERS VALUE ARBITRAGE FUND LP (IN LIQUIDATION)

Appearances:

Mr. Christopher Harlowe and Mr Christopher Levers of Mourant Ozanes on behalf of New Mountain Finance Corporation, a creditor of the Master Fund;

Mr. Mark Goodman of Campbells on behalf of the Beechwood entities (as previously defined), creditors of the Master Fund;

Mr. Nick Hoffman and Ms. Alice Carver of Priestley on behalf of the Master Fund's liquidation committee;

Mr. Mark Russell of HSM Chambers on behalf of the Offshore Feeder Fund's liquidation committee; and

Mrs. Lexa Hilliard QC, instructed by Mr. Matthew Dors of Collis Crill on behalf of the joint official liquidators of both the Offshore Feeder Fund and the Master Fund.

REASONS

1. This matter first came before the Court on 23 August 2016 when I heard a creditor's winding up petition in respect of Platinum Partners Value Arbitrage Fund (International) Limited ("the Offshore Feeder Fund") which is a company incorporated under the Companies Law on 25 October 2002 and subsequently registered as a mutual fund under the Mutual Funds Law. Together with a Delaware limited partnership called Platinum Partners Arbitrage Fund (USA) L.P. ("the Onshore Feeder Fund"), it forms part of a "master/feeder" structure. The business was commenced on 1 January 2003. The whole of the subscribed capital was invested in Platinum Partners Value Arbitrage Fund LP ("the Master Fund"), an exempted limited partnership established and registered under the Exempted Limited Partnership Law on 17 December 2002. (Another entity, referred to as "the Intermediate Fund", was subsequently interposed between the Feeder Funds and the Master Fund but its existence is not relevant for the purposes of the issues to be decided at this Combined Hearing). I shall use the expression "the Funds" to refer to the structure comprising the Feeder Funds and the Master Fund.
2. The Funds were promoted, controlled and managed by Platinum Management (NY) LLC ("the Investment Manager"), a company incorporated in Delaware which carries on its business in New York and is registered with the SEC as an investment adviser. The Investment Manager is majority owned and controlled by Mr. Mark Nordlicht ("Mr. Nordlicht"). The Funds are one of three master/feeder investment fund structures, collectively known as the "Platinum Group" or "Platinum Partners", which were promoted by Mr Nordlicht. The other two continue to be managed by the Investment Manager.

The petition against the Offshore Feeder Fund was presented by Parris Investments Ltd which is a redemption creditor to whom about US\$1.08 million is admittedly due and



owing. Its supporting affidavit refers to a series of articles published from October 2015 onwards by *Bloomberg News*, the *Wall Street Journal* and *Reuters* which contain highly critical comment about both the Platinum Group in general and the Master Fund in particular. Some of these articles refer to alleged malpractice on the part of persons associated with the Investment Manager which is the subject of an investigation by the United States Attorney's Office.

4. The petition came on for hearing on 23 August 2016. The Offshore Feeder Fund was represented by counsel who did not oppose the making of a winding up order. No evidence was filed on its behalf. The only argument concerned the identity of the qualified insolvency practitioners who would be appointed as official liquidators. The petitioner nominated Messrs. Mathew Wright and Christopher Kennedy of RHSW (Cayman) Ltd (whom I shall refer to as "RHSW"). Messrs. Geoffrey Vargo and Mark Longbottom of Duff & Phelps (Cayman) Limited (whom I shall refer to as "Duff & Phelps") were nominated by Kismetia Ltd which is both a shareholder and a redemption creditor to whom about US\$13.7 million is presently due and owing. Kismetia Ltd is also a creditor of the Master Fund by which it is owed about US\$9.8 million.
5. For the reasons explained in a brief oral ruling, I concluded that Duff & Phelps did not meet the independence requirement contained in regulation 6 of the Insolvency Practitioners' Regulations 2008 (as amended). In the absence of any challenge to the fitness and independence of RHSW, I made a winding up order and appointed them as official liquidators of the Offshore Feeder Fund. At this point, the Court had no evidence from the Investment Manager about the nature of the Master Fund's assets and the reasons why it is in financial difficulty.

6. Immediately after this winding up order was made on 23 August 2016, the Investment Manager (acting in its capacity as general partner) presented a winding up petition in respect of the Master Fund on the basis that it is cash flow insolvent. At the same time, an *ex parte* summons was issued pursuant to section 104(3) of the Companies Law for



the appointment of RHSW as provisional liquidators on the ground that the Master Fund intended to present a compromise or arrangement to its creditors. The application for the appointment of provisional liquidators was heard two days later, on 25 August 2016.

7. Mr. Nordlicht swore a lengthy affidavit in support of this summons. He said that, as at 30 May 2016, the Master Fund's total consolidated assets were valued at about US\$1,093 million and that its total liabilities were about US\$383 million. He described the Master Fund's liabilities in some detail but said practically nothing about the assets except that it is essentially a private equity fund. Whilst it may be said that the Funds constitute a typical master/feeder structure in a legal sense, it was apparent from Mr. Nordlicht's affidavit that they are far from typical in a commercial sense. Operating a private equity business owned by feeder funds which offer investors liquidity on 60 days' notice is an inherently problematic business model.
8. The Master Fund's case was presented on the basis that it is balance sheet solvent in that the *potential* realizable value of its investments is likely to exceed the amount of its liabilities by a substantial margin. It was said that the Investment Manager intended to negotiate a compromise whereby creditors (including redemption creditors of the Offshore Feeder Fund who had been issued with promissory notes and/or provided with security by the Master Fund) would be asked to accept a moratorium, provide additional working capital and/or subordinate their security so that working capital could be raised from third party lenders, thus enabling the Master Fund to avoid a "fire sale" of illiquid assets, some of which need injections of working capital in order realize their full value.
9. Mr. Nordlicht recognized (at paragraph 42 of his second affidavit) that the financial circumstances of the Master Fund have been negatively impacted by a number of regulatory issues and investigations on-going in the United States. He set out brief details of overlapping investigations currently being undertaken by the SEC and the US Attorney's Office into various transactions and operational issues relating to the Platinum Group. The Investment Manager is currently the subject of an SEC examination



(which is different from an investigation). The Platinum Group also has some involvement (at least to the extent of receiving a subpoena) in an investigation being conducted by the Commodities Futures Trading Commission.

10. The Court was urged to appoint provisional liquidators as a matter of urgency on the basis that certain secured creditors were threatening enforcement proceedings which would likely result in the destruction of value for creditors generally. I subsequently learned from RHSW's first report that the Master Fund and/or its subsidiaries are in fact party (either as plaintiff or defendant) to no less than 34 different proceedings pending before courts or arbitrators in the United States.
11. Having reached the conclusion that I should appoint provisional liquidators and that I should do so without first giving notice of the application to the stakeholders, I had no alternative but to appoint RHSW. In doing so, I made it clear that there were, in my view, grounds for appointing separate liquidators to the Offshore Feeder Fund and the Master Fund.
12. The order appointing RHSW as provisional liquidators limited their powers in a way that was designed to enable them to take control of the assets/subsidiaries and to impose a temporary moratorium upon the creditors until 27 October 2016 when a further hearing could take place on notice to all the stakeholders, including the redemption creditors and shareholders of the Offshore Feeder Fund and the creditors and limited partners of the Onshore Feeder Fund. I gave various other directions, including a direction that RHSW be authorized to seek recognition and relief under Chapter 15, Title 11 of the United States Bankruptcy Code. I declined to make a direction authorizing RHSW to engage or re-engage the Investment Manager without first establishing a liquidation committee and then applying for the Court's sanction on not less than five days' notice to the committee.



13. On 13 October 2016, RHSW issued a report to the Court, a redacted copy of which was made available to all the stakeholders. To the extent that I have not already referred to its content, it is unnecessary to give any further consideration to the details of this report. For present purposes, it is sufficient to say that RHSW concluded that there were "significant challenges" in the way of any compromise or arrangement of the kind suggested by the Investment Manager and recommended that a winding up order be made. This recommendation was accepted, both by the Investment Manager and the general body of stakeholders.
14. The petition came on for hearing on 27 October 2016 when counsel for New Mountain Finance Corporation ("New Mountain"), a creditor for about US\$35.5 million, took the lead in asking the Court to make a winding up order. Counsel for the Investment Manager (which is the petitioner in its capacity as general partner) concurred and there was no opposition, with the result that I pronounced that an immediate winding up order would be made. The only contested issue before the Court was who should be appointed as official liquidators.
15. New Mountain nominated Mr. Keiran Hutchinson and Ms. Claire Loebell of Ernst & Young (whom I shall refer to as "E&Y") and argued that it was not open to the Court to appoint RHSW as official liquidators of the Master Fund because of their prior appointment as official liquidators of the Offshore Feeder Fund. I accept that there are conflicts of interest between the Master Fund and the Offshore Feeder Fund. In particular, the Investment Manager caused them to enter into transactions, the validity of which is now open to challenge. Whilst it might be possible to find a way of adjudicating upon these issues without the participation of common liquidators, New Mountain's argument reinforced my original view that it would be wrong in the circumstances of this case to appoint RHSW as official liquidators of both Funds. However, I did not accept the argument that their prior appointment as official liquidators of the Offshore Feeder Fund necessarily leads to the conclusion that they are disqualified from being appointed as official liquidators of the Master Fund.



16. At this stage, all the members of the Liquidation Committee (apart from New Mountain) supported the appointment of RHSW and they claimed to do so with substantial support from the general body of stakeholders. Mr. Nordlicht swore an affidavit in which he said that he had arranged for a pro forma "letter of support" to be distributed on 20 October 2016 to "select stakeholders" in which he solicited their support for, *inter alia*, the appointment of RHSW. This pro forma letter stated "given that RHSW has already become acquainted with the assets of the Master, the undersigned believes the JPLs are the best candidates to be appointed official liquidators". His evidence is that, as at 26 October 2016, this letter of support had been signed by 32 creditors of the Master Fund (having total claims of US\$78.40 million in total); 38 limited partners of the Onshore Feeder Fund having total partnership claims of US\$143.60); 26 creditors of the Offshore Feeder Funds having total claims of US\$169.30 million; and 7 unredeemed shareholders of the Offshore Feeder Fund (3 of whom are also creditors) holding 6648.5645 participating shares.

17. One of the Liquidation Committee members, Mr Jeffrey Parker, also wrote a letter to the Court dated 24 October 2016 in which he said –

Since your wise appointment of RHSW Caribbean, their entire team has been a breath of badly-needed fresh air. With constant professionalism, they have regularly answered e-mails and phone calls at all hours of the day and night and provided responsive hand-holding to worried investors and creditors of the Master Fund. In the process of carrying out their responsibilities as Joint Provisional Liquidators, they have learned an enormous amount about the significant complexity of the investments of the Master Fund. Their knowledge and time invested cannot be replicated by anyone else without the shareholders/limited partners of the Fund incurring additional significant costs which would not be in anyone's best interest.

18. I came to the conclusion that RHSW could properly act as official liquidators of either the Offshore Feeder Funder or the Master Fund, but not both. I concluded that the Funds should have separate official liquidators advised by separate legal teams. Quite properly, RHSW took a neutral position and expressed a willingness to accept either appointment and a corresponding willingness to resign from either appointment. In



order to make separate appointments in respect of both Funds, I decided to have a combined hearing (of causes 118 and 131 of 2016) in which all the stakeholders were able to participate.

19. I was (and still am) conscious of the fact that the liquidation of the Master Fund will be a complicated and difficult task which is likely to continue for many years. I came to the conclusion at the hearing on 27 October 2016 that I did not have enough evidence upon which to be satisfied that RHSV will have sufficient and appropriate resources to perform this role. I assumed that E&Y would have appropriate resources available through its network in the United States and elsewhere, but I did not have any evidence about the way in which they would propose to approach the task. I emphasized that I was not simply concerned about RHSV's (or E&Y's) own human resources. The Court and the stakeholders need to know how RHSV or E&Y (or any other nominee) would propose to manage the liquidation. Those supporting RHSV's appointment were doing so on the basis that they would appoint the Investment Manager (or some other entity comprising the Platinum Group's existing management) as their investment adviser with power to manage the assets. In my view, it is not sufficient that those nominated for appointment as official liquidators meet the independence requirement. Those to whom the official liquidators will delegate important functions and those from whom they will take advice must also be independent and have the confidence of the general body of stakeholders.

20. I came to the conclusion that the Court did not have sufficient evidence upon which to decide whether the stakeholders would be best served by appointing RHSV or E&Y as official liquidators of the Master Fund. I could have adjourned the petition in which case RHSV would have continued in office as provisional liquidators until the next hearing but, having already pronounced that a winding up order would be made, I decided to appoint RHSV as official liquidators on an interim basis. The directions contained in paragraphs 8-10 of the winding up order were designed to provide the Court (and the stakeholders) with the evidence necessary to determine whether the appointment of an



"RHSW team" or an "E&Y team" would best serve the stakeholders. The directions are necessarily given to the officeholders, but I anticipated that the stakeholders would have regard to them in putting forward E&Y or any other nominees. A complimentary order for directions was made in the Offshore Feeder Fund proceeding on the Court's own motion so that appointments could be made in both proceedings at one combined hearing.

21. My approach to the matters before the Court today is that I am appointing separate insolvency practitioners as official liquidators to the two Funds. I do not regard it as a "removal application" as originally suggested by counsel for RHSW in her written submission. To the contrary, RHSW were and still are willing to resign from one or other of these appointments. No final decision was intended to be made at the last hearing and no party who participated in that hearing suggested that the Court's intention should be given effect by means of an adjournment rather than an interim appointment. In the event, I think that it was agreed that the Court should not approach this as a removal application although the fact that RHSW have been in office for about 12 weeks and the manner in which they have performed their task to date are factors to be taken into account in deciding how to exercise the Court's discretion.

22. On 21 November 2016, RHSW delivered their report which addresses all the matters identified in the order for directions, in particular paragraphs 8(d), (e) and (f). The following day, all five members of the Liquidation Committee signed a written resolution by which they resolved that E&Y be appointed as official liquidators as soon as reasonable practical and that RHSW be discharged. This resolution was passed without asking the official liquidators to convene a committee meeting and without the benefit of E&Y's written proposal which is dated 1 December 2016. Also on 22 November 2016, the liquidation committee of the Offshore Feeder Fund passed a unanimous written resolution that Ms. Margo MacInnis of Borrelli Walsh (Cayman) Limited and Ms. Nilani Perera of Borrelli Walsh (BVI) Limited be appointed as its official liquidators in place of RHSW. This was followed up with a summons issued on 28 November 2016 for an order



that RHSW be removed from office in any event, even if their interim appointment as official liquidators of the Master Fund is not confirmed.

23. The reason why the majority of the Liquidation Committee did an about-turn and decided to support E&Y and oppose the continued appointment of RHSW is that RHSW rejected the proposal to re-engage the former management as portfolio managers and decided to engage an independent firm. E&Y would propose do the equivalent work in-house, using the specialist services available within the Global E&Y Restructuring Team wherever possible and leaves open the possibility of re-engaging former management. Their proposal says (at page 40) that "At present we are not proposing to engage any external service providers as we will utilize internal resource" but goes on to say that they would review and, if appropriate, maintain the consultancy agreements made with certain key members of the former management team.
24. RHSW have conducted a thorough exercise by which to identify and engage suitable portfolio managers. Proposals were sought from fourteen candidates, ten of whom were interviewed. In the event proposals were received from eight of them, including a related party of New Mountain and Wykagyl Capital Advisors LLC ("Wykagyl") which comprises former principals of the Investment Manager/Platinum Group. I endorse the decision to reject these two proposals on the basis that, in all the circumstances of this case, portfolio management and advisory services should be provided by a firm or firms which are independent of former management and any particular creditor or shareholder group. Having carried out this selection process, RHSW came to the conclusion that GLC Advisors & Co should be appointed. I am satisfied that this exercise has been conducted properly and that GLC Advisers & Co have the appropriate qualifications, experience and resources to be appointed as portfolio managers/advisers.



Before turning to the reasons given by the majority of the Liquidation Committee for withdrawing support from RHSW, it is relevant to consider whether its composition is

such that it can be regarded as truly representative of the stakeholders as a whole. It has been constituted pursuant to paragraph 5 of the order of 25 August 2016 which was made on the assumption that the Master Fund is cash flow insolvent, but balance sheet solvent, and that the provisional liquidators would explore and facilitate the restructuring proposal then intended to be advanced by the Investment Manager. I directed that the committee should comprise three creditors plus a shareholder of the Offshore Feeder Fund and a limited partner of the Onshore Feeder Fund. (The Onshore Feeder Fund could not be represented by its official liquidator because that would have put RHSW in the position of "wearing two hats").

26. The Liquidation Committee comprises of three creditors, namely New Mountain, Mr. Nordlicht and Mr. Joel Edelstein. New Mountain is not a related party of the Platinum Group and is represented on the committee by one of its directors, Mr. Harris Kealy, who is a private equity/asset management industry professional. Mr. Nordlicht is appointed to the committee on the basis that he and his wife are creditors (for an undisclosed amount) but he is of course a related party in that he is the majority owner and chief investment officer of the Investment Manager. Mr. Joel Edelstein is appointed to the committee on the basis that he is a personal creditor in the sum of US\$150,000, but he also represents various family members and family trusts which hold debt of US\$0.9 million in the Master Fund and equity interests in the Feeder Funds having a reported value of US\$30.8 million. He is also a related party in that he was director of operations for one of the other Platinum Group entities for six years.

27. The Feeder Funds are represented on the Liquidation Committee by Mr. Leon Myers on behalf of the Offshore Feeder Fund and Mr. Jeffrey Parker on behalf of the Onshore Feeder Fund. Mr. Leon Myers has sworn two affidavits but the nature and extent of his financial interest (either personally or through Alaska Trust Company) is not disclosed. Mr. Jeffrey Parker has made an affirmation in which he describes himself (through a family owned limited partnership) as a long term investor and limited partner of the



Onshore Feeder Fund. His partnership interest had a reported value of US\$7.51 million as at 30 June 2016.

28. The weight which can be given to the criticism of RHSW's decision not to engage Wykagyl is diminished by the fact that two of its members are part of the Fund's former management. In my view the decision to engage GLC Advisers & Co is an unimpeachable one. It does not mean that Mr. Nordlicht and members of the former management will have no part to play. RHSW have engaged with members of the former management team at length. Some have been formally retained pursuant to consultancy agreements. The Investment Manager was responsible for nominating RHSW in the first place. Mr. Nordlicht made no criticism of RHSW's performance. Indeed, none of the parties represented at the last hearing made any criticism of RHSW's performance or the manner in which they interacted and worked with the former management. Mr. Jeffrey Parker actually gave RHSW a glowing reference.
29. I read and took into account a letter dated letter 7 December 2016 and written by Maples and Calder on behalf of Chuuk LP which owns 14,897.937 O Class shares and 41,192.4728 S Class shares in the Offshore Feeder Fund. It says that Chuuk LP is not affiliated with the Investment Manager and supports the continued appointment of RHSW.
30. I also read a letter dated 8 December 2016 and written by Smyser Kaplan & Veselka LLP on behalf of the court appointed trustee of the Black Elk Litigation Trust which is plaintiff in a proceeding pending against the Master Fund and other Platinum Group entities in the US Bankruptcy Court for the Southern District of Texas. I do not attach weight to the arguments made in this letter, although the mere fact that serious allegations of fraud are being made against the Master Fund tends to support the RHSW's decision not to engage Wykagyl or rely exclusively upon former manager for investment management and advisory services.



31. Based upon the information and proposals set out in their report dated 21 November 2016, I am now satisfied that RHSW will have the resources necessary to be able to conduct this liquidation in an efficient and effective way. There is no substance in Mr. Kealey's suggestion that RHSW will have insufficient staff and lack "geographical reach". I do not regard RHSW's decision to engage Singapore lawyers in connection with the repurchase agreement (referred to in paragraph 3.2.12 of their report) as evidence of any lack of resources or "geographical reach".
32. The Master Fund's records are maintained by its Investment Manager on a server which also houses the records of other entities within the Platinum Group. RHSW propose to engage LDM Global, rather than use its own in-house IT forensic technology staff, for the purpose of identifying and extracting these records. Having now been in office for some 12 weeks RHSW are well placed to decode how best to collect the data relating to the Master Fund and I do not attach any weight to the criticism of this decision made by Mr. Kealey.
33. There was never any question that E&Y would have available sufficient and appropriate resources for the purposes of this liquidation. However, I have concluded that the stakeholders will be best served by confirming the appointment of RHSW. The evidence suggests that they have performed their functions effectively to date. Their continuance in office had the support of the former management and the majority of the Liquidation Committee at the last hearing. That support has been withdrawn only because of what I regard as their unimpeachable decision not to engage Wykagyl. It seems to me that the Liquidation Committee have decided to support E&Y's appointment (which they positively opposed at the last hearing) only because it would leave open the prospect of giving a formal management and advisory role to former management, if not through Wykagyl, then in some other way. RHSW have put forward a coherent and comprehensive liquidation plan and there is nothing in E&Y's proposal to suggest that their appointment which produce any real advantage which would justify changing the officeholders at this stage.



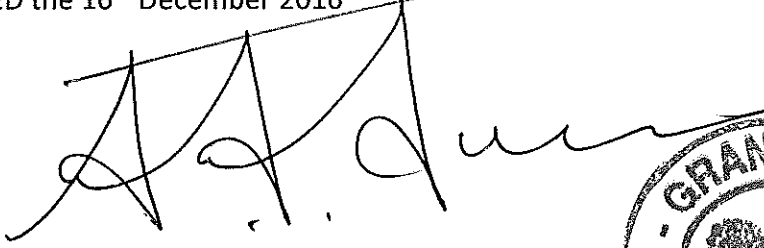
34. For these reasons, I will confirm the appointment of RHSW as official liquidators of the Master Fund. If counsel for RHSW were right that the matter should be characterized as a removal application, I would conclude that no good reason has been made out for removing RHSW from office. I will also make directions authorizing the engagement of DLA Piper, Singapore, GLC Advisors & Co and LDM Global on substantially the same terms as the draft contracts contained in the appendices to the report.
35. I now turn to deal with the appointment of new official liquidators to the Offshore Feeder Fund on the footing that RHSW have resigned. The Liquidation Committee has nominated Ms. Margot MacInnis of Borrelli Walsh (Cayman) limited and Nilani Perera of Borrelli Walsh (BVI) Limited. Ms. MacInnis is a qualified insolvency practitioner who meets the residency, insurance and independence qualifications of the Regulations. Ms. Perera is a foreign practitioner within the meaning of section 89 of the Companies Law who can be appointed jointly with Ms. MacInnis. In the absence of any objection from any stakeholders, I will appoint Messrs. MacInnis and Perera as joint official liquidators of the Offshore Feeder Fund with immediate effect. I will make the consequential direction that RHSW shall prepare a report and accounts in accordance CWR Order 5, rule 4 and Order 10, rule 2.
36. It follows that it is not necessary to consider the Liquidation Committee's removal summons issued on 28 November 2016. However, if it had been necessary to consider it, I would have dismissed the summons because there would have been no good reason for removing RHSW as official liquidators of the Offshore Feeder Fund if they had been replaced as official liquidators of the Master Fund.

37. Having given counsel an opportunity to make submission about costs, I made the following orders -



- (a) RHSV's costs of this application and the hearing on 27 October 2016 incurred in respect of the Master Fund shall be paid out of its assets as an expense of the liquidation (except that the added costs of engaging leading counsel shall be disallowed).
- (b) RHSV's costs this application (including the costs in respect of the removal summons) incurred in respect of the Offshore Feeder Fund shall be paid out of its assets as an expense of the liquidation.
- (c) The Master Fund liquidation committee's costs (limited to the fees charged by Priestly) shall be paid out of the assets of the Master Fund as an expense of its liquidation.
- (d) The Offshore Feeder Fund's liquidation committee's costs (limited to the fees charged by HSM Chambers) shall be paid out of the assets of the Offshore Feeder Fund as an expense of its liquidation.
- (e) No order in respect of New Mountain's costs.

DATED the 16th December 2016




The Honourable Mr. Justice Andrew J. Jones QC