

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: 106 of 2013

IN THE MATTER OF THE COMPANIES LAW (2012 REVISION)

AND IN THE MATTER OF PREMIUM DESIGNATED

("the Company")



WINDING UP PETITION



To the Grand Court

The humble petition of Optima Absolute Return Fund Ltd. whose registered office is Intertrust Corporate Services (BVI) Limited 171 Main Street, PO Box 4041, Road Town, Tortola, British Virgin Islands VG1110, shows that:

1. The Petitioner seeks orders winding up the Company on the grounds that it is just and equitable to do so because (a) it has been rendered insolvent by investments in insolvent companies related to their common directors and the persons who control their investment managers and (b) there has been a justifiable loss of confidence in the common management.
2. The Petitioner and the Company are companies that are part of the funds known as the *Richcourt Funds*. The Richcourt Funds are:-
 - (1) Richcourt Allweather Fund Inc.,
 - (2) America Alternative Investments Inc.;
 - (3) Optima Absolute Return Fund Ltd.;
 - (4) Richcourt Composite Inc.; ("the Petitioning Companies") and
 - (5) Soundview Elite Ltd.;
 - (6) Richcourt Euro Strategies Inc.;

- (7) New Wave Fund SPC;
- (8) Premium Designated;
- (9) Elite Designated;
- (10) Star Designated;
- (11) Soundview Star Ltd.;
- (12) Soundview Premium Ltd.;
- (13) Soundview Composite Ltd.;
- (14) Pitagora Fund Ltd.;
- (15) Richcourt Top Stars 1 Fund Ltd.

Soundview Elite Ltd. (SEL)

- 3. Soundview Elite Ltd. (“SEL”) was initially incorporated as an international business company in the Commonwealth of the Bahamas in October 2003 and its registered office and place of incorporation was transferred by way of continuation to the Cayman Islands in June 2005.
- 4. Accordingly, SEL is now an exempted company registered in the Cayman Islands under Part XII of the Companies Law. SEL’s corporate number is 151268. Its registered office is DMS Corporate Services Ltd. of PO Box 1344, DMS House, 20 Genesis Close, George Town, Grand Cayman.
- 5. SEL has been at all material times carrying on the business of an open-ended Investment Company. According to its Offering Memorandum “The Company’s investment objective is to give investors access to the hedge fund industry and achieve capital appreciation by investing a substantial portion of its assets among a group of money managers selected by the Investment Manager (the “Money Managers”).”
- 6. SEL commenced investment activities on November 1st, 2003 and has at all material times since it is believed about 2005 been registered with the Cayman

Islands Monetary Authority pursuant to the Mutual Funds Law (now 2009 Revision) of the Cayman Islands (the “Mutual Funds Law”).

New Wave Fund SPC

7. New Wave Fund SPC (“NWF”) was incorporated in the Cayman Islands as an exempted company on 17th September, 2007 with limited liability as a segregated portfolio company.
8. According to its Offering Memorandum dated February, 2008, “The primary investment objective of the Company is to achieve capital appreciation while attempting to limit investment risk.”
9. NWF’s number is 195409. Its registered office is DMS Corporate Services Ltd. of PO Box 1344, DMS House, 20 Genesis Close, George Town, Grand Cayman.
10. NWF commenced investment activities pursuant to its investment strategy in about 2007. It has only one segregated portfolio, Aliter Segregated Portfolio, in respect of which NWF has issued four share classes named “A” to “D”.
11. The Fund is registered with the Cayman Islands Monetary Authority pursuant to the Mutual Funds Law.

The Designated Entities

The Company

12. The Company was incorporated in the Cayman Islands on 19th March, 2009 as an exempted company registered in the Cayman Islands under the Companies Law. The Company’s corporate number is 224267. Its registered office is DMS Corporate Services Ltd. of PO Box 1344, DMS House, 20 Genesis Close, George Town, Grand Cayman.

13. The Company was established in order to restructure the then existing redemption debts of Soundview Premium, Ltd. (“Premium”) an open ended mutual fund registered with the Cayman Islands Monetary Authority.
14. According to Article 38 of its Articles of Association, “the purpose of the Company is to act as a closed-end investment fund housing the illiquid assets of [Premium]. In return for the transfer of assets to the Company, the Company shall issue shares to [Premium].”
15. Shareholders who had redeemed their investment in Premium were paid in part in kind with shares in the Company.
16. The Company received certain assets from Premium as described above in exchange for the issue of shares to Premium which were used to pay its redeeming shareholders in or about March 2009.
17. The Company has been at all material times carrying on the business of a closed end private investment fund, formed to hold the illiquid assets of Premium as described above. It is believed that the Company has at all material times since 2010 been registered with the Cayman Islands Monetary Authority pursuant to the Mutual Funds Law.
18. In July 2012, the Company was struck from the Register of Companies in the Cayman Islands for non-payment of fees, and has only very recently been restored to the Register in June 2013.

Elite Designated

19. Elite Designated (“ED”) was incorporated in the Cayman Islands on 19th March, 2009 and is now an exempted company under the Companies Law. ED’s corporate

number is 224275. Its registered office is DMS Corporate Services Ltd. of PO Box 1344, DMS House, 20 Genesis Close, George Town, Grand Cayman.

20. ED was established in order to restructure certain of the then existing redemption debts of SEL.
21. According to Article 38 of its Articles of Association, “the purpose of the Company is to act as a closed-end investment fund housing the illiquid assets of [SEL]. In return for the transfer of assets to the Company, the Company shall issue shares to [SEL]. Shares shall be freely transferrable by [SEL].”
22. The Petitioner believes that shareholders who had redeemed their investment in SEL were paid in part in kind with shares in ED.
23. ED received assets from SEL as described above in exchange for the issue of shares to SEL which were used to pay its redeeming shareholders it is believed in or about March 2009.
24. ED has been at all material times carrying on the business of a closed end private investment fund, formed to hold the illiquid assets of SEL as described above.
25. It is believed that ED has at all material times since 2010 been registered with the Cayman Islands Monetary Authority pursuant to Mutual Funds Law.
26. In July 2012, ED was struck from the Register of Companies in the Cayman Islands for non-payment of fees, and has only very recently been restored to the Register in June 2013.

Star Designated

27. Star Designated (“SD”) was incorporated in the Cayman Islands on 19th March, 2009 as an exempted company under the Companies Law. SD’s corporate number

is 224271. Its registered office is DMS Corporate Services Ltd. of PO Box 1344, DMS House, 20 Genesis Close, George Town, Grand Cayman.

28. SD was established in order to restructure the then existing redemption debts of Soundview Star, Ltd. ("Star") an open ended mutual fund registered with the Cayman Islands Monetary Authority.
29. According to Article 38 of its Articles of Association, "the purpose of the Company is to act as a closed-end investment fund housing the illiquid assets of. [Star]. In return for the transfer of assets to the Company, the Company shall issue shares to [Star]. Shares shall be freely transferrable by [Star]."
30. Shareholders who had redeemed their investment in Star were paid in part in kind with shares in SD.
31. SD received assets from Star as described above in exchange for the issue of shares to Star which would be used to pay its redeeming shareholders it is believed in or about March, 2009.
32. SD has been at all material times carrying on the business of a closed end private investment fund, formed to hold the illiquid assets of Star as described above. It is believed that SD has at all material times since 2010 been registered with the Cayman Islands Monetary Authority pursuant to the Mutual Funds Law.
33. In July 2012, SD was struck from the Register of Companies in the Cayman Islands for non-payment of fees, and has only very recently been restored to the Register in June 2013.

The Companies' Management

34. The current directors of SEL, NWF, Premium, Star and the Designated Entities are George Ladner and Alphonse Fletcher, Jr. ("Mr. Fletcher").

35. NWF's investment manager is New Wave Asset Management Ltd. ("NWAM"), incorporated in the Cayman Islands.
36. SEL's investment manager, Soundview Capital Management Ltd. ("SCM"), is an international business company incorporated in the Commonwealth of the Bahamas in 1999.
37. Mr. Fletcher controls both SCM and NWAM.
 - (1) Mr. Fletcher is also the principal and sole owner of the shares in Fletcher Asset Management Inc. ("FAM"), which appears to have carried out investment management services as agent for SCM and NWAM.
 - (2) The shares in the SCM and NWAM are held by Richcourt Holding, Inc. In 2008 Richcourt Holding, Inc. was acquired by companies owned or controlled by Mr. Fletcher or FAM.
38. SEL, NWF, Star, the Company and the Designated Entities have had common directors each of whom has had a close association over many years with Mr. Fletcher and/or FAM:
 - (1) one Denis Keily ("Mr. Keily") who has for many years been an associate of Mr. Fletcher, has served as FAM's Deputy Chief Executive Officer and an adviser to FAM including FIA Leveraged Fund Ltd) ("FIAL");
 - (2) one Stewart Turner ("Mr. Turner") who has been associated as employee of or independent contractor to FAM since approximately 1998 and served as a director of a number of other entities managed by FAM or associated with Mr. Fletcher including FIAL;

- (3) one Floyd Saunders (“Mr. Saunders”) who is also an employee of FAM, serves as Corporate Secretary for and a director of a number of other entities managed by FAM or associated with Mr. Fletcher.

The Shares

39. The Articles of Association of SEL and NWF provided that each company could issue non-voting, participating shares, which could be redeemed by investors at the Net Asset Value calculated for a redemption date and on the terms set out in the Offering Memorandum.
40. According to SEL’s Offering Memorandum all shares were redeemable on the last day of the calendar quarter by giving 30 days’ notice.
41. Richcourt Allweather Fund Inc. (“RAF”) is the holder of 1,503.4 Class “D” Shares issued by SEL, shown the Share Register of SEL to represent approximately 7.19% of the value of the Fund’s Class D Shares.
42. America Alternative Investments Ltd. (“AAI”) is the holder of the following shares:
 - (1) 1013.79 Class “D” Shares issued by SEL, shown in the Share Register of SEL to represent approximately 4.85% of the value of the Fund’s Class “D” Shares.
 - (2) 27,400 Class “A”, “C” and “D” shares issued by the NWF according to the values last published by the Company in December 2010.
 - (i) valued at a total of US\$2,335,250 (25,000 Class “A” Shares), US\$107,556 (1,200 Class “C” Shares) and EUR99,736 (Class “D” Shares).

- (ii) representing together with the shares in NWF held by SEL 100% of NWF's issued share capital.

43. In respect of the "Designated Entities" AAI was in 2009 a redemption creditor of SEL, Premium and Star and received payment in kind as a result of which it holds shares as follows:

- (1) Shares representing 305.74 shares valued at US\$277,241 of the Company's USD Class shares
- (2) Shares representing 199.59 shares valued at US\$199,621.93 of SD's USD Class shares (10.8%)
- (3) Shares representing 447.67 shares valued at US\$456,865.14 of ED's USD Class shares (12.6%)

44. The Petitioner was in 2009 a redemption creditor of SEL, Premium and Star and received payment in kind as a result of which it holds shares in the "Designated Entities" as follows:

- (1) Shares representing 290.89 shares valued at US\$263,776.14 of the Company's USD Class shares
- (2) Shares representing 190.50 shares valued at US\$190,530.48 of SD's USD Class shares (10.4%)
- (3) Shares representing 426.90 shares valued at US\$435,668.53 of ED's USD Class shares (12.03%)

45. Richcourt Composite Inc. ("Richcourt Composite") was in 2009 a redemption creditor of SEL, Premium and Star and received payment in kind as a result of which it holds shares in the "Designated Entities" as follows:

- (1) Shares representing 436.59 shares valued at US\$395,895.45 of the Company's USD Class shares
 - (2) Shares representing 291.56 shares valued at US\$291,606 of SD's USD Class shares (15.91%)
46. All shares in the companies (other than the Designated Entities) were redeemable according to their Offering Memoranda on the last day of the month or calendar quarter by giving 30 days' notice.

Failure by SEL to pay RAF's Redemption Proceeds

47. RAF sought to redeem its SEL shareholdings on 30 September 2011 (at which date the redemption value of its shareholding in SEL was recorded as US\$1,769,206.21). RAF was entitled to be paid its redemption proceeds on about 31 October 2011.
48. SEL has failed to pay the redemption monies due to RAF or any part thereof and at the date hereof the same remains unpaid.

SEL's Insolvency and Inability to Pay Redemptions

49. It is believed that the total number of outstanding redemptions in respect of the Class "D", Class "E", and Class "F" shares of SEL amounted in 2011 to US\$15,180,870 with a further US\$5,595,584 in 2012 and a further US\$1,050,825 in 2013. The company has failed to pay the same.
50. As at April 2013, SEL's balance sheet showed assets of about US\$18.3m against liabilities owing to the redemption creditors and others exceeding US\$20m.
51. However, the true asset value of SEL is likely to be less than US\$9 million for the following reasons. Although SEL had cash of about US\$5.5 million, its other investments were wholly illiquid:

- (1) It held shares in Class “A” and “B” shares in NWF Aliter Segregated Portfolio valued as at 31 March 2011 at \$4.26 million (representing 60% of NWF’s issued shares).
 - (i) SEL redeemed all of their shares in NWF in 2011 and was entitled to be paid on 30 September 2011
 - (ii) NWF has not reported a NAV since 31 March 2011
 - (iii) NWF’s assets consist entirely of shares in FIAL which is in insolvent supervised liquidation in the Cayman Islands.

- (2) SEL also held shares in Soundview Composite Ltd (“Soundview Composite”) Class “H”
 - (i) SEL placed a full redemption in Soundview Composite on 30 September 2011 but the same has not been paid;
 - (ii) Soundview Composite has not reported a NAV since 31 March 2011.
 - (iii) Soundview Composite’s assets consist entirely of its holding of shares in FIAL which is in insolvent or supervised liquidation.

- (3) SEL assets now also include US\$4m invested in some form in Fletcher International Ltd. (Bermuda) purchased from Fletcher International Inc (incorporated in Delaware, US) which is in insolvency proceedings.

52. Accordingly SEL is unable to meet its liabilities and has no reasonable prospect of being able to do so. The company is therefore unable to pay its debts and it is just and equitable that the company be wound up.

NWF's Insolvency

53. As stated above, SEL redeemed its investment in NWF on 30 September 2011. As a result US\$4.26m has been due and owing to SEL since at least 31 December 2011 but NWF has failed to pay the same.
54. Apart from ca. US\$129,000 cash NWF's sole asset is its investment in FIAL of US\$5.358 million. FIAL is in insolvent or supervised liquidation.
55. Accordingly NWF is unable to meet its liabilities and has no reasonable prospect of being able to do so.

Loss of Sub-Stratum of SEL, NWF and the Designated Entities

56. Neither SEL nor any of the Designated Entities has reported net asset values for any date later than 31 December 2010 and NWF has not done so since 31 March 2011 (prior to which each of them had done so regularly) and neither SEL nor NWF have given investors any or any proper explanation of the time and manner in which redemption might be paid.
57. Further, in contravention of Section 8 of the Mutual Funds Law (2009 Revision) no audited accounts have been prepared for the 4 years since 2008 by or on behalf of SEL, NWF sent to its investors or otherwise filed or, in the case of the Designated Entities for the three years since 2009 and again no explanation has been provided.
58. In January 2013 SCM, was struck off the register of companies in the Bahamas for non-payment of fees. Each of the Designated Entities were struck off the register of Companies for non-payment of fees in 2012 and not restored to the Register until about June 2013.

59. Redemptions have not been paid in full or in part for SCL or NWF since March 2011. Despite the fact that the Designated Entities have substantial amounts of cash none of them has attempted to pay shareholders:

(1) the Company has cash of about US\$2.994 million as at 11 June 2013 but has not made any payments to AAI, the Petitioner or Richcourt Composite or any other redemption creditor

(2) ED has cash of about US\$4.019 million as at 11 June 2013 but has not made any payments to AAI or the Petitioner or any other redemption creditor

(3) SD has cash of about US\$4.195 million as at 11 June 2013 but has not made any payments to AAI, the Petitioner or Richcourt Composite or any other redemption creditor

60. Neither SEL nor NWF has attempted to carry on the business of making investments in accordance with their respective Offering Memoranda.

61. The Designated Entities have not passed on the benefit of realization of assets in accordance with their respective Articles of Association but have instead been accumulating cash and making payments of fees to investment managers including FAM.

62. Further the sub-stratum of SEL and NWF have failed and it is just and equitable that they be wound up.

Justifiable Loss of Confidence

63. The Petitioner repeats the allegations above. The failure to provide Net Asset Value calculations or accounts or to give explanations of the failure to pay redemptions and, in the case of the Designated Entities, the failure to pass on the proceeds of

realisations amounted to breaches of fiduciary duty on the part of the directors and investment managers.

64. Despite its failure to pay redemptions SEL's directors and its investment manager have allowed SEL to continue to make payments from the company's accounts which payments appear to have been made for the direct or indirect benefit of FAM and/or Mr Fletcher.
- (1) In December 2012 SEL's directors and investment manager caused SEL to buy from an entity Fletcher International Inc. ("FII") 100% of the shares of another entity Fletcher International Ltd ("FIL") for \$4 million.
- (i) FII was controlled and managed by Mr. Fletcher and FAM and/or affiliates Mr. Fletcher or FAM owns.
- (ii) FIL, controlled and or managed by Mr. Fletcher and FAM, filed for chapter 11 protection from creditors US Bankruptcy Court in the Southern District of New York on June 29, 2012.
- (iii) On or about September 5, 2012, Richard J. Davis was appointed by the Bankruptcy Court to assume control of the FIL estate.
- (iv) FIL was at the time of purchase, therefore, and is currently under the control of Mr. Davis as chapter 11 trustee. Its value is not known but it is highly likely to be insolvent.
- (v) In about March 2013 FII made a payment of US\$2.2m to FIL's Chapter 11 Trustee to restore the like amount which FIL had made in 2012 to FIAL at the direction of Mr. Fletcher and/or FAM.
- (2) Approximately \$112,000 in investment management fees were paid in February 2013, and others such fees may have been paid since SEL ceased being able to report its NAV to shareholders.

- (3) FII's directors included Mr. Ladner and FIL's directors included Mr. Turner and both were managed by FAM and/or Mr Fletcher.

65. NWF and the Designated Entities each acquired investments in FIAL or FII in circumstances which are not known to the Petitioner but it is believed that such investments may have been made after statutory demands for payment were made by the petitioners of FIAL in about late 2011.

66. By virtue of the fact that SEL and Soundview Composite have common management the Soundview Composite directors' interest in not enforcing SEL's redemption rights conflicted with their duty to SEL to do so.

67. Despite its failure to pay redemptions the directors and SCM have allowed the Designated Entities to continue to pay investment management fees and make other payments which payments appear to have been made for the direct or indirect benefit of FAM and/or Mr. Fletcher.
 - (1) The Company paid approximately \$85,125.60 in investment management fees in February 2013, and other such fees may have been paid since the Company ceased being able to report its NAV to shareholders.
 - (2) SD paid approximately \$66,477.60 in investment management fees in February 2013, and other such fees may have been paid since SD ceased being able to report its NAV to shareholders.
 - (3) ED paid approximately \$108,410.40 in investment management fees in February 2013, and other such fees may have been paid since ED ceased being able to report its NAV to shareholders.

68. In the circumstances it is just and equitable to wind up SEL, NWF and the Designated Entities.
69. The Petitioner wishes to appoint Kenneth Krys and Margot MacInnis as joint official liquidators.
70. Your Petitioners therefore humbly pray that:-
- (1) The Company be wound up in accordance with the Companies Law.
 - (2) Kenneth Krys and Margot MacInnis both of PO Box 10663, Grand Cayman KY1-1008 (to hold their offices jointly and severally) be appointed as joint official liquidators of the Company.
 - (3) The Joint Official Liquidators are authorized jointly and severally to exercise any of the powers listed in Part II of Schedule 3 of the Companies Law (2012 Revision) without the further sanction or intervention of the Court.
 - (4) The Joint Official Liquidators be authorized to do any act or things considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of their affairs.
 - (5) The Joint Official Liquidators do file with the Clerk of Court a report in writing of the position of and progress made with the winding up of the Company with the realization of the assets thereof and to any other matters connected to the winding up of the Company as the Court may direct.
 - (6) The Joint Official Liquidators be at liberty to appoint counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit and remunerate them out of the assets of the Company.

- (7) The Joint Official Liquidators and their staff be remunerated out of the assets of the Company at their usual customary rates.
- (8) The Joint Official Liquidators be at liberty to apply generally.
- (9) The costs of the Petition and the Petitioner be paid out of the assets of the Company.
- (10) The Joint Official Liquidators cause a copy of this petition to be delivered to the Registrar of Companies and the Cayman Islands Monetary Authority.
- (11) Such further or other relief be granted as this Court deems appropriate.

Dated the 26th day of July 2013.



Giglioli & Company

Note: This petition is intended to be served on the Registrar of Companies, the Cayman Islands Monetary Authority, and the registered office of the Company.

FILED by Giglioli & Company whose address for service is 4th Floor Kirk House, PO Box 2505, Grand Cayman KY1-1104, Cayman Islands.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman on at 10:00 am.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 494, Grand Cayman KY1-1106, and telephone 345 949 4296.