

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. [ 112 ] / 2013

IN THE MATTER OF THE COMPANIES LAW (2012 REVISION)

AND IN THE MATTER OF SOUNDVIEW STAR LIMITED



**WINDING UP PETITION**



To: The Grand Court of the Cayman Islands

The humble Petition of Citco Global Custody (N.A.) N.V. of De Ruyterkade 62,  
P.O. Box 707, Curaçao, Netherlands Antilles

Shows as follows:

1. Soundview Star Limited ("the Company") was initially incorporated as an international business company in the Commonwealth of the Bahamas in May 2002 and was transferred by way of continuation to the Cayman Islands in June 2005. Accordingly the Company is now an exempted company registered in the Cayman Islands under the provisions of the Companies Law (2012 Revision) ("the Law"). The Company is a mutual fund registered with the Cayman Islands Monetary Authority pursuant to section 4(3) of the Mutual Funds Law (2012 Revision).

2. The registered office of the Company is at Stuarts Corporate Services Ltd., 4<sup>th</sup> Floor Cayman Financial Services Centre, 36A Dr. Roy's Drive, PO Box 2510, Grand Cayman KY1-1104, Cayman Islands.
3. The share capital of the Company (as defined in its Memorandum and Articles of Association) is US\$17,500, €17,500 and CHF 15,000 divided into 100 voting, non-participating class B Management Shares with a par value of US\$ 0.01 per share, 1,749,900 Class D Participating Shares with a par value of US\$ 0.01 per share, 1,750,000 Class E Participating Shares of €0.01 per share and 1,500,000 Class F Participating Shares of CHF 0.01 per share, with power for the Company, subject to the provisions of the Law and the Articles of Association ("the Articles"), to increase the said capital and to redeem any of its shares.
4. The objects for which the Company is established are unrestricted.
5. The investment manager of the Company is and at all material times has been Soundview Capital Management Limited of One Montague Place, 1<sup>st</sup> Floor, East Bay Street, P.O. Box N-4906, Nassau, Bahamas ("the Investment Manager").
6. On or about 1 June 2005, the Company offered for subscription up to the provisions of the Articles and generally on the terms described in a Confidential Private Placement Memorandum ("the June 2005 PPM") of that date.
7. On or about 1 September 2005, your Petitioner subscribed for 3,797.41 such Class D shares and paid a subscription price of US\$4,000,000 to the Company for them.

8. On or about 14 June 2007, the Company offered for subscription Class D shares, Class E Shares and Class F Shares, subject to the provisions of the Articles and generally on the terms described in a Confidential Private Placement Memorandum (“the July 2007 PPM”) of that date. The Minimum subscription for Class D shares that was solicited by the Company on this occasion was US\$ 50,000.
9. On or about 2 July 2007, your Petitioner subscribed for 842.79 such Class D shares and paid a subscription price of US\$ 1,196,664.68 to the Company for them.
10. On or about 12 June 2008, a consortium led by Fletcher Asset Management Incorporated (“FAM”), a New York corporation, acquired 85% majority control of the group of companies then known as the Richcourt Group, which included the Investment Manager and, through its ownership of the management shares, the Company, as well as certain other companies operating in the mutual funds industry. Such acquisition was made through the vehicle of a British Virgin Islands company, Richcourt Acquisition Incorporated, an affiliate of FAM. The acquisition was subject to a put option under which the remaining 15% of the Richcourt Group ownership would also be acquired by the FAM-led consortium. The said option has been exercised but to date the consortium has failed to complete the acquisition as required.
11. On 26 May 2010, your Petitioner submitted to the Company a Redemption Request in respect of the whole of its holding of 4,640.2 Class D Participating Shares in the Company. Such Redemption

Request was effective in relation to the next following Redemption Day (as defined in the Articles and the June 2005 PPM and the July 2007 PPM), which was the quarter day 30 September 2010.

12. Article 29 of the Articles provides in material part as follows:
  - 12.1 Subject to the Articles and the Law, a holder of Participating Shares in the Company may request redemption of such shares (subject to a minimum number not here relevant) as of any Redemption Day.
  - 12.2 The Redemption Request must be lodged at least 45 days before the Redemption Day on which redemption is requested.
  - 12.3 Once received a Redemption Request may only be withdrawn with the consent of the Company's Directors.
  - 12.4 Per Article 29(j), if Redemption Requests of an amount equal to or greater than 10% of the Net Asset Value ("NAV") of the Company, or of any Master Fund in which it has invested, are received in respect of any given Redemption Day, the Directors of the Company have a discretion whether to determine to reduce each such Redemption Request *pro rata* so that the Redemption Requests so received and relating to the Redemption Day in question amount to no more than 10% of the NAV of the Company or any such Master Fund.

- 12.5 Article 29(j) further provides that, in the event that the Directors exercise such discretion, *“The partial Amounts of the Redemption Request which remain unsatisfied shall be carried forward to the next Redemption Day and satisfied in priority to any Redemption Requests received in relation to such Redemption Day until the prior Redemption Requests shall have been satisfied in full”* (Article 1(c) provides that the word *“shall”* is to be construed as imperative).
13. Article 31 of the Articles provides in material part as follows:
- 13.1 Payment of the Redemption Price of Participating Shares *“shall be made in such manner as the Directors of the Company may from time to time determine in respect of each Class, as set out in the Offering Memorandum.”*
- 13.2 Both the June 2005 PPM and the July 2007 PPM provide (in the sections thereof headed *“Redemptions and Transfers of Shares”*) that payment of not less than 90% of the estimated value of Participating Shares the subject of redemption will be made by the Company within 40 days following the Redemption Day.
- 13.3 On the true construction of these provisions, the Company was obliged to make payment of the balance of the Redemption Price within a reasonable time of the initial 90% payment and such reasonable time is not later than one month after the initial payment or the next following quarter day, whichever is the earliest to occur.

14. Article 25(b)(ii) of the Articles provides that *“Participating Shares to be redeemed pursuant to Articles 29 and 31 shall be deemed to remain in issue until and including the close of business on the Redemption Day on which they are to be redeemed, and from that time until paid the Redemption Price shall be deemed to be a liability of the Company.”*
  
15. In the premises, once your Petitioner’s Redemption Request had expired and close of business on the Redemption Day (30<sup>th</sup> September 2010) had passed, your Petitioner was a creditor or potential or contingent creditor of the Company for the amount of the Redemption Price payable in respect of the Participating Shares the subject of the Redemption Request. Alternatively, and having regard to the terms of Article 29(j) providing for the carrying forward of unsatisfied Redemption Requests, the latest date on which your Petitioner became a creditor or potential or contingent creditor of the Company for the amount of the Redemption Price payable in respect of Participating Shares for which no payment was made in the circumstances referred to in paragraphs 19, 23 and 25 hereof was either 31 March 2011 or 30 June 2011.
  
16. Neither as at 30 September 2010 nor at any later stage relevant for present purposes had the Directors declared and duly notified to your Petitioner in accordance with the Articles, in particular Articles 26 to 28, any suspension by the Company of the calculation of NAV per Participating Share. The last such NAV notified to your Petitioner was as at 28 February 2011 in the amount of \$1,284.74.

17. By a letter dated 8 November 2010 and purporting to be written on behalf of the Company over the signature of two directors, Mr Stuart Turner and Mr Denis Kiely ("the First Gating Letter"), it was stated that the Company was in receipt of Redemption Requests *"as of September 30, 2010 in an amount that exceeded 10% of the Net Asset Value of the Fund on that date. Pursuant to the Fund's Confidential Private Placement Memorandum, the maximum Net Asset Value of shares that may be redeemed on any Redemption Date is 10% of the Net Asset Value of the Fund on such Redemption Date, unless such limitation is waived by the Directors in their sole discretion . . . the Directors do not consider it appropriate to waive this limitation . . ."*
18. The said letter did not refer to the provisions of Article 29(j) of the Articles referred to in paragraph 12.4 above and demonstrates that the Directors did not exercise, either validly or at all, the discretion conferred on them by it, but proceeded on the false basis that there was a limitation on redemptions that they were only authorised to waive.
19. As respects the 30 September 2010 quarter date, your Petitioner was paid the net sum of US\$774,023.90 in respect of the redemption price of approximately 647.77 of its Participating Shares in the Company. Even if the First Gating Letter was effective to impose the gate referred to in it (which is not admitted), payment of the Redemption Price in respect of the balance of your Petitioner's Participating Shares that were the subject of the 26 May 2010 Redemption Request was by virtue of Article 29(j) automatically carried forward to the next following Redemption Day, 31 December 2010.

20. Subsequent to that date, by an unsigned letter dated 28 February 2011 over the typewritten name of the Investment Manager (“the Second Gating Letter”), it was stated that *“the Fund had outstanding redemption requests as of September 30, 2010 and as of December 31, 2010 in an amount that each exceeded 10% of the Net Asset Value of the Fund on each respective date. Pursuant to the Fund’s Confidential Private Placement Memorandum, the maximum Net Asset Value of shares that may be redeemed on any Redemption Date is 10% of the Net Asset Value of the Fund on such Redemption Date, unless such limitation is waived by the Directors in their sole discretion . . . the Directors do not consider it appropriate to waive this limitation . . .”* The letter went on to state that *“The gate will remain in place until further notice, which will be communicated through a letter by the Directors.”*
21. The said letter did not refer to the provisions of Article 29(j) of the Articles referred to in paragraph 12.4 above and demonstrates that even if (which is not admitted), it records a decision in fact taken by the Directors, they did not exercise, either validly or at all, the discretion conferred on them by that Article, but proceeded on the false basis that there was a limitation on redemptions that they were only authorised to waive.
22. Further, under the provisions of Article 29(j), such discretion falls to be exercised in respect of each Redemption Day and accordingly a gate on redemptions cannot be declared in advance or for an indefinite period as the letter purported to do; the Company had no power under Article 29(j) to take such a course.

23. As respects the 31 December 2010 quarter date, your Petitioner was paid the net sum of US\$534,391.66 in respect of the Redemption Price of approximately 528.99 of its Participating Shares in the Company. However the said sum represented approximately 80% of the Redemption Price payable in respect of such shares, leaving a sum of US\$132,587.53 due as the balance. No explanation was given by the Company for the payment of that proportion as opposed to the 90% payable pursuant to the provisions referred to in paragraph 13 hereof.
24. Even if the gate declared by the Second Gating Letter as respects the December 2010 quarter date was effective (which is not admitted), payment for the balance of your Petitioner's Participating Shares that were the subject of the 26 May 2010 Redemption Request was by virtue of Article 29(j) automatically carried forward to the next following Redemption Day, 31 March 2011.
25. As respects that quarter date, your Petitioner was paid the net sum of US\$1,689,032.57 in respect of the Redemption Price of approximately 1,651.62 of its Participating Shares in the Company. The said sum represented approximately 80% of the Redemption Price payable in respect of such shares, leaving a sum of US\$422,258.14 due as the balance. No explanation was given by the Company for the payment of that proportion as opposed to the 90% payable pursuant to the provisions referred to in paragraph 13 hereof.
26. Since such payment, the Company has failed to pay your Petitioner any further sums in respect of the Participating Shares the subject of 26 May 2010 Redemption Request. The Company's failure to make payment extends to (a) the whole of the sums payable in respect of

those Participating Shares which had not been the subject of the payments referred to in paragraphs 19, 23 and 25 hereof and (b) the balances referred to in paragraphs 23 and 25 hereof.

27. By a letter dated 7 November 2012 and sent by your Petitioner to the Company, your Petitioner made and required by 28 November 2012 answers to certain inquiries, including the following:

27.1 Your Petitioner pointed out that it had only been provided with estimated statements of the Company's NAV since the quarter ended 30 September 2010 and no information on the Company's NAV since 30 June 2011, and asked for an explanation of why no final statements of NAV had been provided since 30 September 2010 and a statement of the Company's current NAV.

27.2 Your Petitioner referred to the Second Gating Letter and pointed out that under the Articles, the Company is not entitled to impose a gate for a "blanket" or indefinite period. Your Petitioner asked the Company to clarify whether gating restrictions were still in place and if so, on what basis.

27.3 Your Petitioner stated that no redemption payments had been made to it since that referred in paragraph 25 hereof and asked for an explanation of the Company's delay in making the remaining redemption payments.

27.4 Your Petitioner further asked for (a) details of the Company's current administrator, (b) a copy of the

Company's most recent audited accounts, together with copies of the Company's audited accounts for the financial years ending in 2009, 2010 and 2011, (c) details of the current directors of the Company, with a certified copy of the Register of Directors of the Company and (d) confirmation that the Company is in good standing with the Registrar of Companies and the Cayman Islands Monetary Authority.

28. The said letter stated that your Petitioner is a creditor of the Company in respect of sums payable in redemption of its Participating Shares and demanded that the Company pay to it the unpaid redemption sums due to it.
29. Your Petitioner has received no acknowledgement of or response to the said letter from the Company.
30. Your Petitioner believes that the Company was without a fund administrator after December 2011 and without a fund custodian since January 2012 and no purported notice of appointments of a new fund administrator and new fund custodian was given by the Company to your Petitioner until the letter referred to in paragraph 31 below. Between March 2012 and June 2012, inquiries were made by employees of the Citco group of companies as to whether certain redemption payments due to your Petitioner would be made and what was the current status of the Company's fund administration arrangements. The responses to those inquiries were made by employees of the FAM group by email messages dated 5 April, 11 April, 15 May and 18 June 2012, respectively, and were that "*Payments outstanding on all funds cannot be made until a new admin is official*", "*A*

*new admin is required to process all outstanding payments. A new admin appointment has still not been made”, “The Richcourt/Soundview funds are all in the same situation in regards to their status on appointing the new administrator. Their status has not changed” and “We are awaiting the appointment of an administrator. Your request will be addressed at that time.”*

31. In or about early January 2013, your Petitioner received a letter dated 1 January 2013 purporting to be sent by the Company. The letter purports to give notice that (a) a company called Pinnacle Fund Administration LLC with offices in Charlotte, North Carolina assumed administration duties with respect to the Company as from 1 January 2013 and *“will calculate NAVs for all capital activity going back to January 1, 2011,”* and (b) that a new custodian agreement had been executed with Wilmington Trust Company (for which no address was given) on 6 November 2012. No indication was given in the said letter whether any redemption payments due from the Company to your Petitioner will be made and if so when. No indication was given as to when NAVs would be calculated.
  
32. On 29 January 2013, your Petitioner wrote to Pinnacle Fund Administration LLC making certain inquiries, including whether calculations of final NAV for the period since the quarter ended 30 September 2010 are or will be available and when the outstanding redemption payments due to the Petitioner will be made. On the same date Pinnacle Fund Administration LLC responded by an email message confirming that your Petitioner’s letter had been passed to the Investment Manager for response and stating that *“any response would be forthcoming from the Investment Manager, not ourselves, as this is solely*

*an issue for the Investment Manager.* Your Petitioner has received no information from the Investment Manager or the Company in response to such inquiries.

33. Your Petitioner believes that no audited annual accounts have been prepared and/or filed by the Company with the Cayman Islands Monetary Authority since 2008 in breach of the requirements of sections 8(1) - (3) of the Mutual Funds Law (2012 revision).
34. According to the Company's Register of Directors and Officers filed as at 3<sup>rd</sup> July 2013, the directors of the Company were Alphonse Fletcher Jr (appointed 4<sup>th</sup> September 2012) and George Ladner (appointed 12<sup>th</sup> June 2013). It therefore appears that all former directors of the Company have resigned, Mr Ladner having been appointed on the same date that a former corporate director, Solon Group Inc., a business development and restructuring specialist, resigned. Both Mr Fletcher and Mr Ladner are associated with FAM.
35. In the premises, the Company is unable to pay its debts and ought to be compulsorily wound up.
36. Further or alternatively, in view of:
  - 36.1 the Company's default in its regulatory obligations to prepare and file audited accounts since 2008;
  - 36.2 the absence of any interim or final NAV calculations since the times referred to in paragraph 27.1 hereof;

36.3 the fact that the Company did not have either a fund administrator or fund custodian for the periods referred to in paragraph 30 hereof;

36.4 the absence of any confirmation from the Company or the Investment Manager of when final NAV calculations will be available and outstanding redemption payments will be made; and

36.5 the resignation of all previous directors and their replacement by the two individuals named in paragraph 34 hereof,

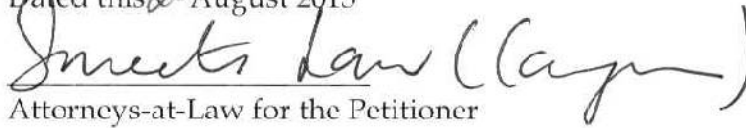
it is also just and equitable that the Company be wound up pursuant to section 92(e) of the Law so that an Official Liquidator or Official Liquidators may investigate the Company's affairs and take control of its assets.

**YOUR PETITIONER THEREFORE PRAYS THAT:**

1. The Company may be wound up by the Court under the provisions of the Companies Law (2012 Revision).
2. Matthew Wright and Peter Anderson of RHSW (Cayman) Limited, PO Box 897, Windward 1, Regatta Office Park, Grand Cayman KY1-1103, Cayman Islands be appointed as Joint Official Liquidators of the Company with power to act jointly and severally.
3. The Official Liquidators shall not be required to give security for their appointment.

4. In addition to the powers prescribed in Part II of the Third Schedule to the Companies Law, the Official Liquidators may also without further sanction or intervention from this Court:
  - (a) exercise the powers set out in Part I of the Third Schedule to the Companies Law; and
  - (b) take any such action as may be necessary or desirable to obtain the recognition of their appointment in any other relevant jurisdictions and to make applications to the courts of such jurisdictions for that purpose,and for the avoidance of doubt the powers bestowed on the Official Liquidators may be exercised by them within and outside the Cayman Islands
5. The costs of the petitioner of and incidental to the Petition be paid forthwith from the assets of the Company, to be taxed on the indemnity basis if not agreed.
6. Such other orders and/or directions may be made as the Court thinks fit.

Dated this <sup>20</sup> August 2013

  
Attorneys-at-Law for the Petitioner

**NOTE: It is intended to serve this Petition on (a) Soundview Star Limited and (b) the Cayman Islands Monetary Authority.**

INDORSEMENT

This Petition having been presented to the Court on 2013  
will be heard at the Law Courts, George Town, Grand Cayman on  
2013 at a.m./p.m. or as soon  
thereafter as the Petition can be heard.

This petition was filed by Smeets Law (Cayman), Attorneys-at-Law for the  
Petitioner, whose address for service is Suite 2206, Cassia Court, 72 Market  
Street, Camana Bay, PO Box 32302, Grand Cayman KT1-1209, Cayman Islands.