

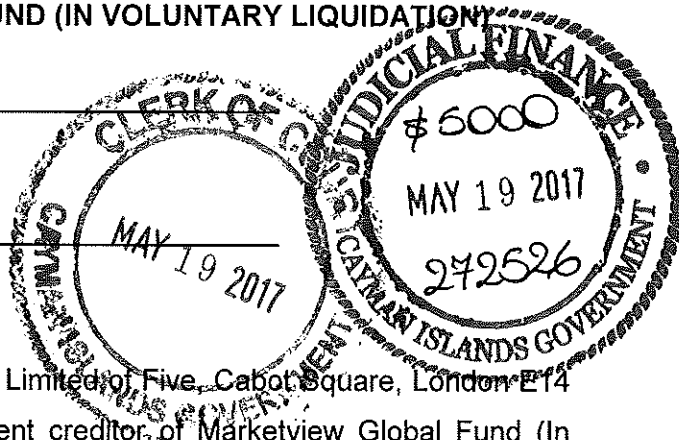
IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 97 OF 2017

IN THE MATTER OF SECTION 151(3) OF THE COMPANIES LAW (2016 REVISION)  
AND IN THE MATTER OF SECTION 131 OF THE COMPANIES LAW (2016 REVISION)  
AND IN THE MATTER OF MARKETVIEW GLOBAL FUND (IN VOLUNTARY LIQUIDATION)



PETITION



To the Grand Court

The humble petition of Credit Suisse London Nominees Limited of Five, Cabot Square, London E14 4QJ, United Kingdom (the "**Petitioner**"), as a contingent creditor of Marketview Global Fund (In Voluntary Liquidation) (the "**Company**"), shows that:

- 1 The purpose of this Petition is to seek the following orders:
  - 1.1 That the date on which the dissolution of the Company is to take effect, currently scheduled for 21 June 2017 (the "**Scheduled Dissolution Date**"), be deferred pursuant to Section 151(3) of the Companies Law (2016 revision) (the "**Companies Law**"); and
  - 1.2 That the voluntary liquidation of the Company be continued under the supervision of the Court pursuant to Section 131 of the Companies Law and Michael Penner and Timothy Derksen of Deloitte & Touche be appointed as joint official liquidators of the Company.
- 2 This Petition is being filed together with: (a) a petition seeking the same orders in respect of another Cayman Islands investment fund named Exten Investment Fund (the "**Exten Fund**") in which the Petitioner was the sole investor; and (b) petitions seeking to defer the dissolution dates of the Company's investment manager, Marketview Management (the "**Manager**") and

the investment manager of the Exten Fund, named Dynamic Core Capital. Each of the Exten Fund, the Manager and Dynamic Core Capital have purportedly been through voluntary liquidations in similar circumstances to the Company and are shortly scheduled to be dissolved. If the Court makes the orders sought in the petitions, it is anticipated that the official liquidators of the Company will then apply to bring the voluntary liquidation of the Manager under the Court's supervision.

### **Background to the Petition**

- 3 The Company was registered as an exempted company on 4 March 2011 with registration number 252989.
- 4 The registered office of the Company is C/- Bell Rock Corporate Services Limited, 2454 Centennial Towers, Suite 205C, West Bay Road, Grand Cayman KY1-9006, Cayman Islands.
- 5 Prior to its entry into voluntary liquidation, the Company carried on business as an open-ended mutual fund and its stated investment objective was to invest in financial instruments, equities, bonds and other marketable securities.
- 6 On ten occasions between May 2011 and May 2015, the Petitioner subscribed for USD participating non-voting shares in the Company. The Petitioner held the shares as nominee for clients of Credit Suisse AG. The Petitioner is a wholly owned indirect subsidiary of Credit Suisse AG.
- 7 The Petitioner was the only party to which participating non-voting shares in the Company were ever issued. Prior to their redemption on or about 13 January 2017, the Petitioner held 353,024 USD participating non-voting shares in the Company.
- 8 The only other shares issued by the Company are 100 management shares which carry voting rights issued by the Company to the Manager.

### **Investigation by Swiss authorities, the Petitioner's requests for financial reports and information and the redemption of the Petitioner's shares**

- 9 Between 2 March 2016 and 14 October 2016, the Petitioner wrote to the Company and the Manager via the Company's Administrator (the "**Administrator**") on at least nine occasions seeking information and financial reports relating to the Company to which the Petitioner was entitled under the Company's offering documents.
- 10 In June 2016, the Petitioner learned that the authorities in Switzerland were investigating certain payments made by the Manager to several companies between January 2012 and September 2014, which payments the Petitioner understands relate to the Company.
- 11 The only substantive responses to the Petitioner's above requests to the Administrator were:
- 11.1 An email dated 27 September 2016 referring the Petitioner to the monthly shareholding statements provided by the Administrator; and
- 11.2 An email dated 18 October 2016 providing the Petitioner with:
- (a) Audited financial statements for the Company for the following periods:
    - (i) 4 March 2011 to 31 December 2011;
    - (ii) the year ended 31 December 2012;
    - (iii) the year ended 31 December 2013;
    - (iv) the year ended 31 December 2014;
    - (v) the year ended 31 December 2015; and
  - (b) A report showing the Net Asset Value of the Company per USD participating share from 31 May 2011 to 30 September 2016.
- 12 The audited financial statements disclosed certain matters of concern to the Petitioner relating to the Company and its investments.
- 13 Accordingly, on 14 November 2016, the Petitioner wrote to the Administrator on behalf of the Company and the Manager setting out a number of questions arising out of the information contained in the Company's audited financial statements. On 15 November 2016, the

Administrator informed the Petitioner that it was liaising with the Manager to respond to these questions.

14 The Petitioner wrote to the Administrator pressing for responses to its questions on 23 November 2016, 2 December 2016 and 9 December 2016.

15 On 12 December 2016, the Administrator provided certain information which the Petitioner had requested, however, numerous questions which the Petitioner had raised on 14 November 2016 remained unanswered.

16 On 28 December 2016, the Petitioner therefore wrote to the Administrator to follow up on its outstanding questions. On 29 December 2016, the Administrator informed the Petitioner that it had advised the Manager of the Petitioner's follow up request.

17 On 9 January 2017, the Petitioner received a notice from the Manager dated 5 January 2017 (the "**9 January Notice**") which stated in part:

*"...in order to avoid subjecting the investors to extended time-horizons, lock-up periods or dilution, it has been decided to return all capital to the Fund's investors. You will receive notice with practical details pertaining to this over the coming weeks."*

18 The notice made no mention that there was any intention to place the Company into voluntary liquidation.

19 On or about 13 January 2017, the Petitioner received a payment from the Company which it understands represents the proceeds of the compulsory redemption of all of the Petitioner's shares in the Company.

20 After receiving the 9 January 2017 Notice, the Petitioner pressed the Administrator for responses to its outstanding questions on 10 January 2017 and 30 January 2017. On each occasion the Administrator informed the Petitioner that it had passed the Petitioner's requests to the Manager. No mention was made in those communications of the voluntary liquidation of the Company.

21 On 3 February 2017, the Administrator sent the Petitioner an email which included the following:

*"The response from the Fund related to your queries is as follows*

*"The statements to investors, dated January 5, 2017, which were sent to you were both statements and answers to your queries.*

*Therefore, although Credit Suisse London Nominees Ltd. is no longer an investor in either Fund as of December 31, 2016, please note that the respective 2016 audited financial statements are now in preparation. They are expected to be completed in the coming weeks and will be forwarded to you immediately when they become available."*

22 No mention was made in this email that the Company had been placed into voluntary liquidation on 13 January 2017 and that a final general meeting of the Company was shortly due to take place.

23 Following further requests from the Petitioner, on 2 May 2017 the Administrator provided the Petitioner with a copy of the audited financial statements for the Company for the year ended 31 December 2016.

24 At the date of filing this Petition, no other substantive responses to the Petitioner's outstanding questions relating to the Company and its investments have been provided to the Petitioner by or on behalf of the Company and the investigation referred to in paragraph 10 above remains in progress.

### **Voluntary liquidation of the Company**

25 The Company was placed into voluntary liquidation on 13 January 2017 and David Lloyd of Bell Rock Corporate Services Limited was appointed as voluntary liquidator of the Company ("VL"). The Petitioner does not know whether the voluntary liquidation was commenced pursuant to a resolution of the Manager as the holder of management shares, or by some other means.

- 26 The VL caused a notice dated 20 January 2017 of the final general meeting of the Company (the "FGM") to be placed in the 30 January 2017 edition of the Gazette.
- 27 The FGM took place on 22 February 2017 and publicly available information from the Registrar of Companies shows that the Company will be deemed to be dissolved on 21 June 2017 pursuant to section 151(2) of the Companies Law.

#### **Correspondence between the Petitioner's attorneys and the VL's attorneys**

- 28 Upon learning of the voluntary liquidation and the impending dissolution of the Company from its attorneys, Maples and Calder, in mid-March 2017, the Petitioner instructed Maples and Calder to write to the VL on 13 April 2017 requesting that the VL make an urgent application to defer the dissolution of the Company on the grounds that the affairs of the Company are not yet fully wound up.
- 29 Thereafter, in further correspondence between Maples and Calder and the VL's attorneys, Loeb Smith, during April 2017 the VL indicated that he was not prepared to make such an application and accordingly the Petitioner is bringing this application itself as a contingent creditor of the Company.
- 30 As of the date of filing this Petition, the VL has not confirmed his support for the Petition.

#### **Conclusion**

- 31 In light of the foregoing matters, the affairs of the Company cannot be fully wound up and the Company dissolved until a proper investigation has been completed into the payments referred to in paragraph 10 above and into the other issues raised by the Petitioner in its correspondence with the Company and the Manager prior to the commencement of the voluntary liquidation.
- 32 It is appropriate that such an investigation be conducted by suitably qualified and independent professional insolvency practitioners with the compulsory powers to obtain documents and information from the directors, officers and service providers of the Company provided for in the Companies Law.

33 Accordingly, the Petitioner seeks orders deferring the Scheduled Dissolution Date and bringing the voluntary liquidation of the Company under the Court's supervision.

**Your Petitioner therefore humbly prays that:**

- (1) The Scheduled Dissolution Date of the Company be deferred pursuant to section 151(3) of the Companies Law.
- (2) The liquidation of the Company be continued under the supervision of the Court pursuant to section 131 of the Companies Law.
- (3) Michael Penner and Timothy Derksen of Deloitte & Touche be appointed as joint official liquidators of the Company (the "JOLs") with the power to act jointly and severally.
- (4) The JOLs not be required to give security for their appointment.
- (5) The JOLs be authorised to exercise the powers specified in paragraphs 1, 7, 10 and 11 of Part I of the Third Schedule and section 110(2) to the Companies Law without further sanction of the Court.
- (6) Without limiting the generality of the powers specified in paragraph (5) above, the JOLs have the power if so advised to make an urgent application to the Court to bring the voluntary liquidation of the Manager under the Court's supervision.
- (7) The costs of the Petitioner of and incidental to the petition be paid out of the assets of the Company as an expense of the official liquidation, such costs to be taxed if not agreed with the JOLs.
- (8) Such further or other relief as the Court thinks fit.

**AND** your Petitioner will ever pray etc.

DATED this 19<sup>th</sup> day of May 2017

*Maples and Calder*

**Maples and Calder**  
**Attorneys for the Petitioner**

NOTE: This Petition is intended to be served on the Voluntary Liquidator of the Company.

THIS PETITION was filed by Maples and Calder, attorneys for the Petitioner, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: JSE/LRS/727803/5127598)

## NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on \_\_\_\_\_ 2017 at \_\_\_\_\_

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, PO Box 495, Grand Cayman, KY1-1106, telephone 345-949-4296.