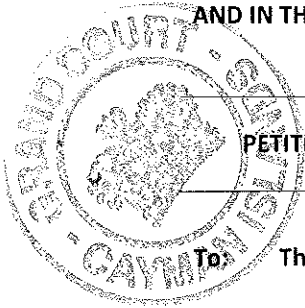


IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



CAUSE NO. FSD 116 of 2017 ()

IN THE MATTER OF SECTION 159 OF THE COMPANIES LAW (2016 REVISION)
AND IN THE MATTER OF SECTION 92 OF THE COMPANIES LAW (2016 REVISION)
AND IN THE MATTER OF EBULLIO FAR EAST COMMODITY FUND INC



PETITION FOR RESTORATION TO THE REGISTER OF COMPANIES AND WINDING UP



To: The Grand Court of the Cayman Islands

The humble petition of Yukio Miyamae of 27 Oxley Walk #01-28, Singapore 238596 (*Mr Miyamae*) and Gen Kato of 26 Farrer Road #02-03, Singapore 268830 (*Mr Kato*) (together the *Petitioners*) shows that:

BACKGROUND

- 1 Ebullio Far East Commodity Fund Inc (the *Company*) is an exempted company which was registered on 10 November 2011 under the laws of the Cayman Islands (Reg. No. 264136).
- 2 The Company currently has no registered office, having been struck off the Register of Companies on or around 31 October 2016.
- 3 The objects for which the Company was established are unrestricted, and it has full power and authority to carry out any object not prohibited by any law as provided by section 7(4) of the Companies Law (2016 Revision) (the *Companies Law*).
- 4 The Company is an investment company that was engaged in long-term investment in the commodities sector, including in various mining projects in Turkey. The Petitioners are redemption creditors of the Company. Prior to their redemptions

from 2016 onwards, details of which are set out below, the Petitioners' holdings in the Company were as follows:

- (a) **Mr Miyamae** – Account Number EBF0022 – 2,317.6915 shares
- (b) **Mr Kato** – Account Number EBF0027 – 53.8149 shares

Redemption procedure

5 The terms of the Company's Articles of Association (**Articles**) and Private Placement Memorandum (**PPM**) provide, *inter alia*, that:

- (a) The deadline for serving a notice of redemption (**Redemption Notice**) is 30 days before the relevant "dealing date" (**Dealing Date**).
- (b) The Dealing Date is the first business day of each calendar month or such other day as the Company's directors may in their absolute discretion determine.
- (c) Redemption is deemed to have taken place at the close of business on the relevant Dealing Date for a validly served Redemption Notice.
- (d) Upon redemption being effected, the redeeming shareholder ceases to be entitled to any rights as a shareholder, his name is removed from the register, and he becomes a redemption creditor.
- (e) The Net Asset Value (**NAV**) of the Company, and hence its shares, is normally determined at each "Valuation Day" (**Valuation Day**).
- (f) Valuation Day means such day or days as the Company's directors may from time to time determine.

5.2 The Company has never notified the Petitioners of any changes to the Valuation Day or Dealing Date.

5.3 The last NAV issued by the Company, dated 22 February 2016, stated that the NAV per share as at 31 December 2015 was US\$ 2,357.5419 (the **31 December NAV**).

Correspondence from the Company

6 By a letter dated 21 January 2016 (the **January 2016 Letter**) from the Company's Executive Managing Partner, Lars H Steffensen (**Mr Steffensen**), to the Company's investors, including the Petitioners, it was announced that the Company would be "effect[ing] an orderly wind down" due to the likelihood of breaching the compliance requirements of the United Kingdom's Financial Conduct Authority.

Redemption of Mr Miyamae's shares

7 Mr Miyamae submitted a redemption request in respect of part of his shareholding, with value US\$ 1,350,000, on 8 January 2016. The dealing date specified on the redemption request form was 11 January 2016. The Company did not reject Mr Miyamae's redemption request or his requested dealing date. In the circumstances, Mr Miyamae became a redemption creditor of the Company on 11 January 2016.

8 Mr Miyamae submitted a redemption request in respect of the remainder of his holding in the Company on 1 May 2017 (a value of US\$ 4,114,054.75 at the 31 December NAV). Alternatively, if Mr Miyamae did not become a redemption creditor on 11 January 2016, upon the Company being restored to the Register of Companies he will be deemed to have become a redemption creditor on 1 June 2017.

Redemption of Mr Kato's shares

9 The Company agreed for Mr Kato to redeem his shares at the 31 December NAV price and expressly waived the requirement for him to submit a redemption request in correspondence. Mr Kato accordingly became a redemption creditor of the Company on 5 October 2016.

10 As a precautionary measure, Mr Kato submitted a redemption request in respect of his entire holding in the Company on 1 May 2017. Alternatively, if Mr Kato did not become a redemption creditor on 5 October 2016, upon the Company being restored to the Register of Companies he will be deemed to have become a redemption creditor on 1 June 2017.

RESTORATION APPLICATION

- 11 The Company was struck off the Register of Companies by the Registrar on or around 31 October 2016. The Petitioners did not receive any notice of the same either before or after the Company was struck off.
- 12 The Petitioners seek that the Company be wound up under the provisions of the Companies Law. The Petitioners require the Company to be restored to the Register in order that the Company may be wound up by the Court.
- 13 The Petitioners rely on the further grounds in relation to restoration set out in the affidavit of Mr Miyamae filed in support of this Petition.

STATUS OF THE PETITIONERS

- 14 The Petitioners became redemption creditors of the Company before the Company was struck off the Register of Companies, on 5 October 2015 and 11 January 2016 respectively. The Petitioners therefore have standing as creditors of the Company to petition for its winding up.
- 15 If, in the alternative, the Petitioners became redemption creditors on 1 June 2017, then by virtue of section 159 of the Companies Law, upon the restoration of the Company to the Register of Companies, the Company will be deemed to have been in existence for the period up to and including 1 June 2017. Accordingly, the Petitioners will have become redemption creditors on 1 June 2017 and will have standing to petition for the winding-up of the Company.

INSOLVENCY OF THE COMPANY

- 16 The Company owes the following sums to the Petitioners (together the *Outstanding Debts*), which are calculated based on the 31 December NAV:
- (a) Mr Miyamae – US\$ 5,464,054.75
(2,317.6915 shares at US\$ 2,357.5419 per share)

- (b) **Mr Kato** – US\$ 126,870.95
(53.8149 shares at US\$ 2,357.5419 per share)

17 As at the date of this Affidavit:

- (a) The Company has paid no part of the Outstanding Debts to the Petitioners, nor has the Company secured or compounded for the same to the Petitioners' satisfaction or at all;
- (b) The Company has not disputed the Outstanding Debts; and
- (c) The Outstanding Debts remain unsatisfied, due and immediately payable in full to the Petitioners.

18 The Petitioners, as creditors of the Company for the Outstanding Debts, present this Petition pursuant to Section 92(d) (*inter alia*) of the Companies Law on the grounds that the Company is unable to pay its debts.

JUST AND EQUITABLE GROUNDS

19 Further or alternatively, the Petitioners seek a winding up Order in respect of the Company on the grounds that it is just and equitable that the Company be wound up. The Petitioners rely on the following grounds:

- (a) In light of the conduct of Mr Steffenson, the Petitioners have justifiably lost all trust and confidence in his ability to act in the best interests of the Company and to carry out the fiduciary responsibilities arising from his position.
- (b) It is clear from the January 2016 Letter and subsequent correspondence that the Company is no longer carrying out its function as an investment fund but is in the process of "winding down".
- (c) In the circumstances, the original purposes of the Company can no longer be pursued, and its substratum is gone. By Mr Steffensen's own admission the

sole remaining purpose of the Company is to realise its assets and wind up its affairs, functions that ought properly to be pursued by a liquidator.

- (d) The management of the Company since 2016, and the conduct of Mr Steffenson in particular, evidence the need for an investigation by independent liquidators (as officers of this Honourable Court) into the affairs of the Company.
- (e) There is no alternative or other remedy or cause of action available to the Petitioners in order to satisfactorily protect their interests as creditors of the Company.

CONCLUSION

20 In the circumstances, the Petitioners seek an Order from this Honourable Court that the Company be restored to the Register of Companies and immediately thereafter wound up. The Petitioners nominate the Liquidators (defined below) to be the joint and several Official Liquidators of the Company.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

- (1) The Company be restored to the Register of Companies pursuant to section 159 of the Companies Law;
- (2) The Company immediately thereafter be wound up by the Court under the provisions of the Companies Law;
- (3) Keiran Hutchison and Claire Loebell of EY Cayman Islands, 62 Forum Lane, Camana Bay, P.O. Box 510, Grand Cayman, KY11106, Cayman Islands be appointed as joint Official Liquidators of the Company (the *Liquidators*);
- (4) The Liquidators shall not be required to give security for their appointment;
- (5) The Liquidators shall be authorised to exercise any of the powers conferred on them by Section 110(2) and Parts I and II of the Third Schedule of the Companies Law without the further sanction or intervention of the Court;

- (6) The Liquidators be authorised to carry out any act or exercise any power considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs and to prevent the dissipation of the Company's assets;
- (7) No suit, action or other proceeding shall be proceeded with or commenced against the Company except with the leave of this Honourable Court and subject to such terms as this Honourable Court may impose;
- (8) No disposition of the Company's property by or with the authority of the Liquidators in carrying out their duties and functions and exercise of their powers under this Order shall be voided by virtue of section 99 of the Companies Law;
- (9) The Liquidators be at liberty to appoint counsel, attorneys and/or any other 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 to remunerate them out of the assets of the Company;
- (10) The Liquidators and their staff be remunerated out of the assets of the Company at the usual customary rate;
- (11) The Liquidators shall have the power, without requiring the sanction of this Honourable Court, to do the following things in the Cayman Islands or elsewhere:
 - (a) To exercise any and all rights that the Company may have as a shareholder of its subsidiaries or any other entities in which it has invested in the name of and on behalf of the Company, including but not limited to exercising voting rights of the Company and its subsidiaries;
 - (b) To seek recognition and/or the appointment of the Liquidators in any jurisdiction they consider necessary, together with such other relief as they may consider necessary for the proper exercise of their functions in those jurisdictions; and

(c) To prepare and negotiate any international protocol with any officer appointed by a foreign court of competent jurisdiction in order to set out the terms upon which the Provisional Liquidators will co-operate and co-ordinate the affairs and investigations in respect of the Company or any related entity or individual with that foreign officer. Any final agreement arising out of such preparation and negotiation to be subject to the leave of this Honourable Court;

(12) The Liquidators be at liberty to apply generally;

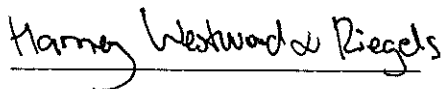
(13) The costs of the Petition and the Petitioners be paid out of the assets of the Company as an expense of the liquidation;

(14) Such further or other relief be granted as the Court deems appropriate.

AND your Petitioners will ever pray, etc.

Dated the 13th day of June 2017

Filed the 13th day of June 2017



Harney Westwood & Riegels

Attorneys-at-Law for the Petitioners

THIS PETITION is filed by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioners, whose address for service is 4th Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1001, Cayman Islands (CAR/LBG/048238.0002)

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD 116 OF 2017 (NSJ)

**IN THE MATTER OF SECTION 159 OF THE COMPANIES LAW (2016 REVISION)
IN THE MATTER OF SECTION 92 OF THE COMPANIES LAW (2016 REVISION)
AND IN THE MATTER OF EBULLIO FAR EAST COMMODITY FUND INC**

NOTICE OF HEARING

TO: Ebullio Far East Commodity Fund Inc (the Company)

TAKE NOTICE that the Petition for Restoration to the Register of Companies and Winding Up of the Company issued by Yukio Miyamae and Gen Kato (the **Petitioners**) will be heard at the Law Courts, George Town, Grand Cayman, Caymans Islands on 21 September 2017 at 10 am.

THIS NOTICE was filed by Harney Westwood & Riegels, Attorneys-at-Law for the **Petitioners**, whose address for service is 4th Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: CAR/LBG/048238.0002).