

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: 182 OF 2018 (RPJ)

IN THE MATTER OF the Companies Law (2018 Revision)

AND IN THE MATTER OF Assured Fund



---

**AMENDED WINDING UP PETITION\***

---

*[\*This Amended Winding Up Petition was amended on 30 May 2019 pursuant to paragraph 5 of the Consent Order dated 26 March 2019]*

To the Grand Court

The humble petition of:

OL Group Limited, c/-Intertrust Corporate Services (Cayman) Ltd, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands ("**OL**"); ~~and~~

~~Citico Bank and Trust Company (Bahamas) Limited, of One Montague Place, 1<sup>st</sup> Floor, East Bay Street, PO Box N-408, Nassau, Bahamas, on behalf of EnTrustPermal Select Opportunities Ltd., EnTrustPermal Select Opportunities II Ltd., EnTrustPermal Hedge Fund Opportunities Ltd. and EnTrustPermal Hedge Fund Opportunities II Ltd. (such funds collectively, the "**ETP Funds**"; and together with Citico Bank and Trust Company (Bahamas) Limited, "**ETP**").~~

~~(together~~the "**Petitioners**")

shows that: -

**INTRODUCTION**

1 The ~~Petitioners~~ presents this petition for:

- (a) the winding up of Assured Fund (the "**Fund**") pursuant to Sections 92 and 93 of the Companies Law (2016 Revision) on the grounds that:
  - (i) the Fund is insolvent and unable to pay its debts; and
  - (ii) it is just and equitable that the Fund be wound up;
- (b) the appointment of Geoffrey Varga and Mark Longbottom of Duff & Phelps as joint official liquidators of the Fund.

## THE PETITIONERS

- 2 OL was incorporated in the Cayman Islands on 17 October 2008 as an exempted company with registration number 218571.
- 3 ~~Citico Bank and Trust Company (Bahamas) Limited was incorporated in the Bahamas on 10 October 1997 and is a service provider and acts as custodian of certain shares in the Fund on behalf of the ETP Funds.~~
- 4 ~~EnTrustPermal Hedge Fund Opportunities Ltd. was incorporated in the British Virgin Islands ("BVI") on 28 October 2008 as a BVI business company. EnTrustPermal Hedge Fund Opportunities II Ltd. was incorporated in the BVI on 29 May 2009 as a BVI business company. EnTrustPermal Select Opportunities Ltd. was incorporated in the BVI on 8 September 2011 as a BVI business company. EnTrustPermal Select Opportunities II Ltd. was incorporated in the BVI on 4 September 2012 as a BVI business company.~~
- 5 Prior to becoming a creditors (as set out below) the Petitioners:
- (a) ~~were~~ was a shareholders of the Fund, ~~each~~ holding USD Class A redeemable non-voting participating shares; and
- (b) held the following number of shares in the Fund, ~~collectively~~ representing approximately 9 6.245% of issued shares in the Fund:

Name	Number of Class A Shares
OL	153,135.81
<del>ETP</del>	<del>64,150.58</del>

~~(the, "OL Shares" and "ETP Shares", respectively). ETP is currently in the process of selling and has agreed to sell 56,804.17975 of the ETP Shares to a third party, but that sale is yet to complete. Once that sale has completed, it is expected that ETP will retain 7,346.40 of the ETP Shares.~~

- 6 The Petitioners ~~have each~~ has submitted a redemption requests (the "**Redemption Requests**") in the appropriate form required by the Fund, in respect of ~~their~~ its shares in the Fund, but remains s unpaid.
- 7 As at the date of this petition, ~~each~~ the Petitioner's shares were allotted to and have been held by the ~~respective~~ Petitioner for a period longer than six months.
- 8 For the reasons set out below the Petitioners ~~seeks~~ seeks an order winding up the Fund on the basis that (i) the Fund is insolvent and/or in the alternative (ii) it is just and equitable for the Fund to be wound up.

## THE FUND

- 9 The Fund was incorporated in the Cayman Islands on 10 October 2003 as an exempted company with limited liability and registration number 129617 pursuant to the Companies Law (as amended) (the "**Companies Law**").
- 10 The registered office of the Fund is at SH Corporate Services Ltd, PO Box 61, 3rd Floor Harbour Centre, George Town, Grand Cayman, Cayman Islands KY1-1102.
- 11 The Fund is and has been at all material times a Cayman Islands Mutual Fund established in the form of an open-ended investment company and is regulated under the Mutual Funds Law (as revised) of the Cayman Islands.
- 12 The authorised share capital of the Fund is the aggregate of US\$50,000, GBP12,000, EUR15,000 and CHF15,000, with:
  - (a) the US\$50,000 divided into 4,990,000 redeemable non-voting participating shares of par value US\$0.01 per share and 100 voting shares of par value US\$1.00 per share;
  - (b) the GBP12,000 divided into 1,200,000 redeemable non-voting participating shares of par value GBP0.01 per share;
  - (c) the EUR15,000 divided into 1,500,000 redeemable non-voting participating shares of par value EUR0.01 per share; and
  - (d) the CHF15,000 divided into 1,500,000 redeemable non-voting participating shares of par value CHF0.01 per share.

## THE MANAGER, ADMINISTRATOR AND DIRECTORS

- 13 The Fund is, and has been at all material times, managed by Policy Selection Limited (the "**Manager**"). The Investment Director of the Manager is and was, at all material times, Mark Hindle.
- 14 The Fund is, and has been at all material times, administered by Maples Fund Services (Cayman) Limited (the "**Administrator**").
- 15 At the date of the Offering Memorandum dated December 2013 (the "**OM**"), the directors of the Fund were Michael Simmons, Mr Hindle and Alan Morgan-Moodie (the "**Directors**").

## THE FUND'S OBJECTIVES

- 16 The objects for which the Fund was established are unrestricted and at all material times the Fund has had full power to carry out any object not prohibited by law as provided by Section 7(4) of the Companies Law.

- 17 The OM provides that the investment objective of the Fund is to "*deliver consistent, long-term capital growth by investing in the returns from a portfolio of Life Settlements issued by life assurance companies scoring at least an 'A' rating with Standard & Poor's or an equivalent rating at the time of purchase [...]*" (OM, p 13).
- 18 Life Settlements are defined in the OM as Life Insurance Contract(s) sold into the Secondary Market (OM, p 7) and are referred to herein as the "**Policies**".

#### **THE FUND IS UNABLE TO PAY ITS DEBTS**

- 19 The Petitioners **have has** submitted **their its** Redemption Requests in accordance with the Fund's Restated and Amended Articles of Association (as adopted by special resolution passed on 16 December 2013) (the "**Articles**"). The redemption dates (as that term is defined in the Articles, p 5) (the "**Redemption Dates**") for each of the Redemption Requests under the Articles have passed, and no redemption payments (the "**Redemption Payments**") in respect of the same have been paid by the Fund. The Petitioners **are is** therefore **a** creditor**s** of the Fund.
- 20 In particular:
- (a) Art 5(h) of the Articles provides that the Redemption Payments shall be the "Net Asset Value" (the "**NAV**") per share on the Redemption Date;
  - (b) the Redemption Date is defined under the Articles as "*the dates on which Participating Shares may be redeemed, being the first Business Day after each Valuation Date [...] or as otherwise determined by the Directors [...]*" (Articles, p 5); and
  - (c) the Valuation Date is defined under the Articles as "*the date on which the Net Asset Value of each class of Participating Shares is calculated, being the last Business Day of each month or such other Business Day or Business Days as the Directors shall determine*" (Articles, p 6).

#### **REDEMPTION REQUESTS**

##### **OL**

- 21 OL made two Redemption Requests:
- (a) on 31 August 2015, OL requested the redemption of 77,420.092752 of the OL Shares (the "**First OL Redemption Request**"); and
  - (b) on 6 June 2016, OL requested the redemption of 75,715.717 of the OL Shares (the "**Second OL Redemption Request**").
- 22 As to the First OL Redemption Request:

- (a) the relevant Valuation Date was 30 September 2015;
  - (b) on that Valuation Date, the NAV was US\$104.51283942; and
  - (c) the relevant Redemption Date was 1 October 2015.
- 23 In the premises, (and in addition to paragraph 25 below) OL is and has been since the said Redemption Date a creditor of the Fund in the amount of US\$8,091,393.72, alternatively in such amount as the Fund may properly determine in accordance with the Articles.
- 24 As to the Second OL Redemption Request:
- (a) the relevant Valuation Date was 30 June 2016;
  - (b) on that Valuation Date, the NAV was US\$101.97181577; and
  - (c) the relevant Redemption Date was 1 July 2016.
- 25 In the premises (and in addition to paragraph 23 above), OL is and has been since the said Redemption Date a creditor of the Fund in the amount of US\$7,720,869.14, alternatively in such amount as due in accordance with the Articles.
- 26 To date the Fund has failed and refused to make any Redemption Payments pursuant to the First or Second OL Redemption Request or at all.

**ETP**

- 27 ~~On 8 July 2016, ETP requested the redemption of all the ETP Shares at the applicable NAV for each share (the "ETP Redemption Request").~~
- 28 ~~As to the ETP Redemption Request:~~
- ~~(a) — the relevant Valuation Date was 29 July 2016;~~
  - ~~(b) — on that Valuation Date, the NAV was US\$101.20465036; and~~
  - ~~(c) — the relevant Redemption Date was 1 August 2016.~~
- 29 ~~In the premises, ETP is and has been since the said Redemption Date a creditor of the Fund in the amount of US\$6,492,337.02, alternatively in such amount as due in accordance with the Articles. As noted at paragraph 5 above, ETP is in the process of selling the majority of the ETP Shares (and therefore its entitlement to the corresponding portion of the Redemption Payment) to a third party.~~
- 30 ~~To date the Fund has failed and refused to make any Redemption Payments pursuant to the ETP Redemption Request or at all.~~

## JUST AND EQUITABLE BASIS FOR WINDING UP

- 31 Alternatively, the fund should be wound up on the basis that it is just and equitable to do so in accordance with Section 92(d) of the *Companies Law* (2018 Revision) (the "**Companies Law**").

### **LOSS OF CONFIDENCE IN MANAGEMENT**

- 32 The Manager, while having calculated NAV and notified the Fund's shareholders of the same has refused to pay the Petitioner's<sup>1</sup> Redemption Requests on the basis of that NAV despite the Fund's obligation to do so under the Articles.

- 33 Further, the Fund has claimed that it is unable to pay Redemption Payments on the basis of NAV, but continues to strike NAV and pay its management fees on the basis of NAV.

- 34 In a letter to shareholders dated 19 January 2012, the Fund stated that it was restructuring the Fund (the "**Bonds Restructure**"). A stated aim of the Bonds Restructure was to realise liquidity by selling Bonds (defined below) to allow the Fund to return to processing redemptions at full NAV per share. The Fund stopped selling Policies to enable the processing of redemptions while it pursued the Bonds Restructure.

- 35 In letters to shareholders dated 19 January 2012 and 8 February 2013, the Fund stated that:

- (a) it would sell the majority of its portfolio of Policies to Settlements SA, a listed Belgian company, and subscribe, via wholly owned subsidiaries, for bonds issued by Settlements SA (the "**Bonds**");
- (b) the Fund would subscribe for the equity of Settlements SA (the "**Equity**");
- (c) the Bonds and the Equity would be listed on the NYSE Euronext Exchange in Brussels and traded publicly;
- (d) after the Bonds Restructure, redemptions would be processed either by the sale of Policies or by trading Bonds sold on the secondary market; and
- (e) it hoped that selling the Bonds would provide speedier redemptions at a price which was closer to the NAV per share.

- 36 The implementation of the Bonds Restructure has been unreasonably and unjustifiably protracted:

- (a) on 19 April 2016 (more than four years after the Fund announced the Bonds Restructure) the Fund announced that it had commenced the process of listing the Bonds on the NYSE Euronext Exchange. The listing did not take place until 23 December 2016 (almost five years after the Fund announced the Bonds Restructure); and

- (b) not one Bond has sold on the secondary market (or at least no sales have been reported to the Petitioners) despite multiple inquiries.
- 37 Further and/or alternatively, the Fund has failed to apply a NAV to the Petitioner's' Redemption Requests (despite its obligation to do so in accordance with the Articles) while it pursued the Bonds Restructure.
- 38 Yet further and/or alternatively, the Fund has failed to take any or any proper steps to realise liquidity or to calculate the amount due to the Petitioners.
- 39 In any event, the Manager has acted and continues to act in a manner that favours its own interests by continuing to pay itself management fees on the basis of NAV whilst refusing to apply that same NAV to the Petitioner's' Redemption Requests on the Valuation Date or at all, despite its obligation to do so in accordance with the Articles.
- 40 There is good reason to suspect (as the Petitioners do suspect) that the primary reason why the Bonds have not sold on the secondary market is that they are inherently unattractive to potential buyers as, amongst other things:
- (a) Settlements SA retains the right to convert the Bonds to equity on maturity should the company have insufficient capital to repay the Bonds;
  - (b) Settlements SA considers that the portfolio of Policies it acquired is now worth considerably less than the price paid for it to the Fund and it has considerable negative net equity; and
  - (c) Settlements SA intends to pursue the same failing investment strategy of the Fund and to continue to actively invest in the life settlements business.
- 41 In structuring the Bonds in this way, there is good reason to suspect (as the Petitioners do suspect) that the Manager has put its own interest in continuing the Fund's business through Settlements SA (and being able to extract its fees) ahead of providing liquidity to the Fund so as to be able to pay the Petitioner's' Redemption Payments (and those of other shareholders seeking to redeem their position in the Fund).
- 42 The Fund / Manager has not (or not adequately) engaged with the Petitioners, nor has it provided adequate or appropriate information on the progress of Restructure (or the lack thereof).
- 43 Further, the issue of the Bonds by Settlements SA has been unreasonably protracted, despite the Fund / Manager:
- (a) having initially assured investors in a letter dated 8 February 2013 that the Fund:
    - (i) was looking to complete the Bonds Restructure in the first quarter of 2013; and

- (ii) it hoped that trading the Bonds would provide speedier redemptions at a price which was closer to the NAV per share;
- (b) making promises to the Petitioners repeatedly over the years that the listing of the Bonds was imminent, including:
  - (i) various promises throughout 2014 that the listing would be completed by the end of 2014;
  - (ii) further promises in early 2015 that the listing would be completed by mid-February 2015, and again by mid-March 2015; and
  - (iii) further promises from March 2015 through December 2016 that the listing was imminent;
- (c) once the Bonds were finally listed on 23 December 2016 (almost five years after the Fund announced the Bonds Restructure), making numerous representations that the Bonds sales effort was progressing and the Fund was liaising with various bidders, with promises of 40-50% of NAV (in November 2015, October and December 2016, prior to the listing) and 33% of NAV (in May 2017), when in fact no sales appear to have ever occurred, including:
  - (i) a representation on 29 August 2016 that the Bond sales were progressing well;
  - (ii) a representation on 22 December 2016 that bids were hoped to be received by the end of January 2017 or mid-February 2017;
  - (iii) representations in January 2017 that the Manager was aiming for a bidding deadline by the end of February 2017 and it was working with a group with three buyers;
  - (iv) representations as to potential bidders and the timing of the Bond sales from March 2017 through July 2017;
  - (v) representations on 21 November 2017 that the Manager had been speaking to a number of credible parties who were interested in purchasing the Bonds with progress expected by year-end 2017;
  - (vi) representations on 30 January 2018 that that the Fund had received two firm offers in writing for a sale of Bonds and Equity and that it hoped to soon receive two further and better offers; and
  - (vii) representations on 27 April 2018 that the Manager had received letters of intent from three groups who were interested in purchasing the Bonds and the Fund "*fully expect[ed] a formal offer with a firm price shortly after that term ...*".

- 44 In the premises:
- (a) the Fund is not conducting its affairs in accordance with the Articles; and/or alternatively,
  - (b) there has been a complete breakdown in the Petitioner's<sup>2</sup> trust and confidence in the management of the Fund.

#### **LOSS OF SUBSTRATUM**

- 45 The circumstances are such that it has become impractical, if not actually impossible, to carry on the Fund's investment business in accordance with the reasonable expectations of its shareholders, in particular the Petitioners. It appears unable to adhere to the redemption process stipulated by the Articles.
- 46 The Fund represented, including through letters to shareholders and communications from the Manager, that:
- (a) the Fund would continue to benefit from the performance of the portfolio through investment in Bonds pursuant to the Bonds Restructure;
  - (b) there would be a secondary market for the assets on the NYSE Euronext Exchange which would enable the Fund to sell assets and raise liquidity more easily, and in so doing, help the Fund over time to resume making redemptions at the quoted NAV; and
  - (c) the Manager was liaising with various bidders for the Bonds with promises on at least one occasion of 33% of NAV, and 40-50% of NAV on another occasion.
- 47 However, to date, the Fund has not sold any Bonds (or at least no sales have been reported to the Petitioners) despite multiple inquiries, and it is unlikely any bidders will execute a trade of those Bonds. Without further capital, the Fund cannot continue to achieve its objectives set out in the Articles and OM or meet the reasonable expectations of the Petitioners.
- 48 The right to redeem shares is one of the Fund's key characteristics and the payment of Redemption Payments was one intended outcome of the Bonds Restructure, yet the Manager has failed to achieve that outcome, and in view of the delays to date there is no reasonable prospect of that outcome being achieved in the foreseeable future or at all.

#### **THE NEED FOR AN INDEPENDENT INVESTIGATION**

- 49 An independent investigation of the Fund's affairs by suitably qualified professionals is required on an urgent basis.
- 50 No contractual or other ability to remove or change the composition of the Fund's Board of Directors exists as an avenue of recourse for the Petitioners.

- 51 The Petitioners **have has** engaged in communications with the Manager on numerous occasions but the Manager has failed to provide clear or adequate answers to the requests made. Further, the Petitioners **have has** not been provided with a satisfactory explanation for the delay in effecting the Bonds Restructure, the failure to sell any of the Bonds or Policies to pay Redemption Payments, or indicate any timeframe for the payment of the outstanding Redemption Payments owed to the Petitioners.
- 52 Further, as the Fund has not sold any Bonds to date (or at least no sales have been reported to the Petitioners), the Petitioners **have has** no prospect of being paid **their its** Redemption Payments:
- (a) within the ordinary timescale envisaged by the Petitioners and the Fund at the time the Petitioners subscribed in the Fund; or
  - (b) at the NAV per share as prescribed by the Articles, or at all.
- 53 The Petitioners with debts due to **them it** by reason of **their its** Redemption Requests **hasve** a tangible interest in the Fund's liquidation.
- 54 In the premises it is just and equitable that the Fund be wound up in accordance with section 92(e) of the Companies Law.

**Your Petitioners therefore humbly prays that: -**

- 1 The Fund be wound up by the Court in accordance with sections 92(d) of the Companies Law.
- 2 Alternatively, the Fund be wound up in accordance with section 92(e) of the Companies Law.
- 3 In the alternative the Petitioners **seeks** orders:
  - (a) requiring the Fund to adhere to its obligation to confirm the amount due to each redeemed investor in accordance with the Articles;
  - (b) requiring the Fund to pay the Petitioners the amount due to **them it** pursuant to **its** respective redemption of shares, in accordance with the Articles; or
  - (c) such other orders as the Court deems appropriate in accordance with section 95(3) of the Companies Law.
- 4 Geoffrey Varga and Mark Longbottom of Duff & Phelps, LLC, 1<sup>st</sup> Floor, The Harbour Centre, 42 North Church Street, Grand Cayman, Cayman Islands KY1-1004, be appointed as joint official liquidators of the Fund (the "JOLs").
- 5 The JOLs be authorised to act jointly and severally in their capacity as liquidators of the Fund.

- 6 The JOLs shall not be required to give security for their appointment.
- 7 In addition to their powers prescribed in Part II of the Third Schedule to the Companies Law which are exercisable without sanction of this honourable Court, the JOLs may also without further sanction or intervention from this honourable 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 of Schedule 3 to the Companies Law and section 110(2) thereof, without further sanction or intervention of this honourable Court.
- 8 The JOLs be authorised to do any act or thing considered by them to be necessary or desirable in connection with the liquidation of the Fund and the winding up of its affairs in the Cayman Islands or elsewhere.
- 9 No disposition of the Fund's property by or with the authority of the JOLs 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.
- 10 The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and all such payments shall be made out of the assets of the Fund as an expense of the liquidation.
- 11 The Petitioner's<sup>1</sup> costs of and incidental to the Petition be paid forthwith from the assets of the Fund, to be taxed on the indemnity basis if not agreed.
- 12 The JOLs shall be at liberty to apply for further directions concerning their functions and the exercise or the proposed exercise of their powers.
- 13 Any such further order and directions may be granted as this honourable Court deems appropriate.

AND your Petitioners will ever pray etc.

Dated the 27<sup>th</sup> 30<sup>th</sup> day of ~~September 2018~~ May 2019

  
\_\_\_\_\_  
**Ogier**  
Attorneys for the Petitioners

**NOTE:** This petition is intended to be served on the Fund at its registered office.

This petition was presented by Ogier, attorneys for the Petitioners, whose address for service is 89 Nexus Way, Camana Bay, Grand Cayman, Cayman Islands KY1-9009.