



IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 3 OF 2019 ()

IN THE MATTER OF SECTION 131 COMPANIES LAW (2018 REVISION)

AND IN THE MATTER OF ASCOT FUND LTD. (IN VOLUNTARY LIQUIDATION)



PETITION



To the Grand Court

The humble petition of Mike Penner and Tim Derksen both of Deloitte, Citrus Grove, Goring Avenue, George Town, Grand Cayman KY1-1109, Cayman Islands (the "**Petitioners**") as Joint Voluntary Liquidators of Ascot Fund Ltd. (in voluntary liquidation) (the "**Company**" or "**Ascot**") shows that:

- 1 The Company was incorporated as an exempted company on 10 February 1992 under registration number 41963.
- 2 The current registered office of the Company is c/o Deloitte & Touche, P.O. Box 1787, One Capital Place, Shedden Road, Grand Cayman, Cayman Islands.
- 3 The Company is the feeder fund in a "master-feeder" structure. The master-fund is Ascot Partners L.P., a Delaware-based limited partnership (the "**Master Fund**").
- 4 The Company issued ordinary shares and founders' shares, only the latter of which had voting rights. The Company's sole founder shareholder is DMS Bank & Trust (such shares being held pursuant to the terms of the Ascot Fund Limited STAR Trust).
- 5 The Company was placed into voluntary liquidation on 24 October 2018. The following written resolutions of the sole founder shareholder were passed on 24 October 2018 (the first and second as special resolutions and the third and forth as ordinary resolutions):

- 5.1 That the Company be placed in voluntary winding up in accordance with Section 116(c) of the Cayman Islands' Companies Law (2018 Revision) and that the Petitioners be appointed joint voluntary liquidators of the Company;
 - 5.2 That the Petitioners be authorised to make a distribution in specie and / or in cash of all or any part of the remaining assets of the Company;
 - 5.3 That any one of the Petitioners be authorised to do any act or thing considered by the Petitioners to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs; and
 - 5.4 That in accordance with Order 13, Rule 9 of the Cayman Islands' Companies Winding Up Rules 2018 (as amended), the basis of the Petitioners' remuneration be fixed on a time and material basis, in accordance with the terms of the engagement letter dated 22 October 2018, signed and authorised by the Director of the Company.
- 6 In the premises:
- 6.1 the Company has duly resolved by special resolution that it be wound up voluntarily pursuant to section 116(c) of the Companies Law (2018 Revision) (the "Law"); and
 - 6.2 the voluntary winding up of the Company is deemed to have commenced on 24 October 2018 pursuant to section 117(1)(a) of the Law.
- 7 The Directors of the Company as at the date of the commencement of the voluntary liquidation were Mr Don Seymour and Ms Lori Griffith (both of DMS Management Services Ltd.)
- 8 The Company has been affected by the Madoff fraud. In particular, in and prior to 2008, it was managed by Gabriel Capital Corporation, the principal of which was Mr Ezra Merkin. Materially all of the Company's assets were invested in the Master Fund, which in turn invested materially all of its assets in or through Bernard L. Madoff Investment Securities LLC ("**BLMIS**"). It came to light in December 2008 that BLMIS was a Ponzi scheme.

- 9 The Company is solvent on both a balance sheet and a cash flow basis, and a declaration of solvency was signed by each of the Directors and duly filed with the Registrar of Companies within 28 days of the appointment of the Joint Voluntary Liquidators being appointed.
- 10 The material assets of the Company are:
- 10.1 cash of approximately \$1.324 million held in a bank account under the control of the voluntary liquidators; and
- 10.2 its limited partnership interest in the Master Fund.
- 11 The Master Fund (through its receiver, appointed by the Supreme Court of New York) has recently reached a settlement with Trustee of BLMIS. It is anticipated that this will result in one or more significant distributions of cash to the Company (the "**BLMIS Settlement Proceeds**"). The exact timing(s) and amount(s) of those distributions remain uncertain.
- 12 Bringing this liquidation under the supervision of the Court will facilitate a more effective, economic or expeditious liquidation of the Company in the interests of the contributories such that supervision of the Court should be ordered pursuant to section 131(b) of the Law. In particular:
- 12.1 At least one aspect of this liquidation is very likely to be contentious. That is the question of what distribution methodology should be employed with respect to the distribution of the Company's net assets (including the BLMIS Settlement Proceeds, once received) to the Company's shareholders. Bringing the liquidation under the supervision of the Court will provide access to a more structured process which is better suited to more complex and contentious liquidations than is the voluntary liquidation regime.
- 12.2 Because of this additional complexity and controversy, it is also appropriate that the liquidators' fees going forward be scrutinised and approved by a liquidation committee and the Court.

12.3 It may also assist the administration of the Company's estate for the liquidators to seek recognition under Chapter 15 of the United States Bankruptcy Court, which first requires that the liquidation be brought under the supervision of the Court.

12.4 The relatively marginal additional costs associated with Court supervision are outweighed by the above benefits.

13 The Petitioners meet the independence, residency, professional and insurance requirements of the Insolvency Practitioners Regulations (as amended), and are willing and able to accept appointment as joint official liquidators of the Company, if such is approved by this Honourable Court.

Your Petitioners therefore humbly pray that:

- (1) The liquidation of the Company be continued under the supervision of the Court.
- (2) Mike Penner and Tim Derksen both of Deloitte, Citrus Grove, Goring Avenue, George Town, Grand Cayman KY1-1109, Cayman Islands be appointed as joint official liquidators of the Company with the power to act jointly and severally (the "**Joint Official Liquidators**").
- (3) The Joint Official Liquidators shall not be required to give security for their appointment.
- (4) In addition to their powers prescribed in Part II of the Third Schedule to the Companies Law (2018 Revision) which are exercisable without sanction of the Court, the Joint Official Liquidators are hereby sanctioned to exercise the following powers set out in Part I of the Third Schedule to the Companies Law (2018 Revision):
 - (a) The power to engage staff (whether or not as employees of the Company) to assist in the performance of their functions, and the power to engage attorneys and other professionally qualified persons to assist them in the performance of their functions, in each case, the Cayman Islands and in the United States of America; and
 - (b) The Power to seek recognition of their appointment in the United States of America pursuant to Chapter 15 of the United States Bankruptcy Code).

(5) The Petitioners' costs of this Petition shall be paid out of the assets of the Company as an expense of the liquidation.

AND your Petitioners will ever pray etc.

Dated the 16th day of January 2019.

Maples and Calder

Maples and Calder