

In the Grand Court of the Cayman Islands

Financial Services Division

Cause No: FSD 111, 112 and 113 of 2013 (ASCJ)

Soundview Premium Ltd – in Official Liquidation

Soundview Star Ltd – in Official Liquidation

Soundview Elite Ltd – in Official Liquidation

Fifth Report of the Official Liquidator to the Grand Court of the Cayman Islands

The Companies Law (2016 Revision)

STRICTLY PRIVATE & CONFIDENTIAL

FIFTH REPORT OF THE OFFICIAL LIQUIDATOR TO THE GRAND COURT OF THE CAYMAN ISLANDS

Soundview Premium Ltd
Soundview Star Ltd
Soundview Elite Ltd
(all in Official Liquidation) (collectively the "Companies")

Dated: 30 April 2017



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1. Introduction

Scope of Report

- 1.1 Matthew Wright of RHSW (Cayman) Limited, Windward 1, Regatta Office Park, PO Box 897, West Bay Road, Grand Cayman, KY1-1103, Cayman Islands, as official liquidator (the "OL") of Soundview Premium Ltd ("Premium"), Soundview Star Ltd ("Star") and Soundview Elite Ltd ("Elite", and together with Premium and Star the "Companies") (all in Official Liquidation) submits this fifth report (the "Report") to advise the Grand Court of the Cayman Islands (the "Grand Court") of developments in the liquidation of the Companies since the submission of the joint official liquidators'¹ ("JOLs") first, second, third and fourth reports to the Grand Court dated 4 December 2013, 31 October 2014, 31 October 2015 and 30 April 2016 respectively (the "First Report", "Second Report", "Third Report" and "Fourth Report").

Disclaimer

- 1.2 This Report should not be copied or disclosed to any third party or otherwise be quoted or referred to, in whole or in part, without the prior written consent of the OL.
- 1.3 In the event that this Report is obtained by a third party or used for any purpose other than in accordance with its statutory purpose of informing the Grand Court, any such party relying on the report does so entirely at their own risk and shall have no right of recourse against the OL, RHSW (Cayman) Limited, RHSW Caribbean Limited, their partners, directors, employees, professional advisers or agents.
- 1.4 The OL, RHSW (Cayman) Limited, RHSW Caribbean Limited, their partners, directors, employees, professional advisers or agents do not accept any liability or assume any duty of care to any third party (whether it is an assignee or successor of another third party or otherwise) in respect of this Report and any such party who receives a copy of this Report whether from the OL or any other source shall have no right of recourse against the OL, RHSW (Cayman) Limited, RHSW Caribbean Limited, their partners, directors, employees, professional advisers or agents.

¹ On 30 November 2016 Peter Anderson resigned as a joint official liquidator of the Companies. Further details of Mr. Anderson's resignation are set out at paragraphs 1.8 to 1.11.

- 1.5 In undertaking this Report, the OL has relied upon information, documentation or records pertaining to the Companies provided by third parties and have been unable to verify the accuracy of all the information received. The scope of the work that the OL has undertaken therefore differs to that of an audit and so cannot be relied upon to provide the same level of assurance.
- 1.6 Any reference to legal advice in this Report shall not constitute a waiver of any applicable legal advice privilege, attorney-client privilege, common interest privilege or any other legal privilege howsoever arising.

Background

- 1.7 The Grand Court will be familiar with the background to the liquidation from the JOLs' First, Second, Third and Fourth Reports, the Cross Border Insolvency International Protocol (the "Protocol"), the Addendum to the Protocol (the "Addendum") and the inter-fund settlement agreement (the "Inter-Fund Settlement"), copies of which have previously been filed with the Grand Court.

Resignation of Official Liquidator

- 1.8 Effective 30 November 2016, as a result of his retirement from RHSW (Cayman) Limited, Peter Anderson resigned as official liquidator of the Companies.
- 1.9 In accordance with Order 5, Rule 4(4) of the Companies Winding Up Rules 2008 (as amended), and in the absence of a validly constituted liquidation committee relating to the Companies, Mr Anderson wrote to all stakeholders on 30 November 2016 to notify them of his resignation.
- 1.10 By way of the same letter, it was noted that Mr Matthew Wright would remain in office as official liquidator. In the interests of avoiding unnecessary expenses in the liquidation of the Companies, and on the basis that Mr Wright (who had acted as lead liquidator in the liquidation of the Companies) was remaining in office, it was proposed that Mr Anderson would not prepare a report and/or accounts, unless required to do so by any creditor or contributory of the Companies. No such request was made.
- 1.11 It is intended that the OL will file an application with the Grand Court which seeks the appointment of Mr Christopher Kennedy, a director of RHSW (Cayman) Limited, as an additional liquidator of the Companies. In the interests of avoiding unnecessary costs and to maximise the efficient use of the

Grand Court's time, the application for Mr Kennedy's appointment will be made together with the next routine fee approval application (which is anticipated to be made shortly after the filing of this Report).

2. Progress of the Chapter 11 Cases

- 2.1 By way of recap, the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") appointed Corinne Ball as chapter 11 trustee (the "**Chapter 11 Trustee**") of the Companies as well as their underlying SPV funds: Premium Designated, Star Designated and Elite Designated (the "**SPV Funds**").
- 2.2 On 13 April 2016, the Chapter 11 Trustee filed a motion seeking to subordinate "insider" claims against the Companies totalling \$196,747.30 to the claims of other creditors, including redemption creditors.
- 2.3 On 20 May 2016, the Bankruptcy Court entered an order subordinating the "insider" claims to the claims of other unsecured creditors.
- 2.4 On 6 February 2017, the Chapter 11 Trustee filed a Disclosure Statement related to a Chapter 11 Plan that included the Companies (the "**Plan**"). The OL had no prior notice of the Chapter 11 Trustee's intention to file the Plan and subsequently the OL, through counsel, discussed the level of disclosure regarding certain issues contained within the Plan, including the potential level of the Chapter 11 Trustee's compensation. The OL was otherwise content with the Plan, as it related to the Companies, implements the Protocol and Addendum under U.S. Law.
- 2.5 On 13 March 2017, the Bankruptcy Court scheduled a hearing for 19 April 2017 to consider the Chapter 11 Trustees motion for an award of attorneys' fees against Messrs. Fletcher, Ladner, Saunders and certain of Fletcher's affiliated management companies for contempt of court orders.
- 2.6 On 22 March 2017, the Chapter 11 Trustee filed an amended Disclosure Statement with respect to an Amended Chapter 11 Plan, which incorporated the OL's requested disclosures.
- 2.7 On 24 March 2017, the Chapter 11 Trustee filed further amended versions of the Disclosure Statement and Plan.

- 2.8 On 27 March 2017, the Bankruptcy Court approved the Disclosure Statement and scheduled a hearing on 21 June 2017 to consider confirmation of the Plan. If approved, the Trustee will continue litigation (as set out below), hold back a cash balance to cover costs and transfer the remaining cash to the OL.

US Litigation

- 2.9 It was agreed at Section 6.1 of the Protocol that where claims were to be *"pursued in the U.S., the (Chapter 11) Trustee will be responsible for pursuing the claims"*. Below is a brief summary of some of the main actions and filings that have taken place in the US since the Fourth Report.

Soundview Composite Ltd. and the Turnover Action

- 2.10 The Chapter 11 Trustee filed turnover proceedings pursuant to section 542 of the US Bankruptcy Code against Soundview Composite Ltd. ("**Composite**") demanding the turnover and accounting of estate property related to an unpaid redemption request for at least \$3.875 million payable to Elite (the "**Turnover Action**").
- 2.11 On 19 May 2014, the Chapter 11 Trustee filed a Motion for Summary Judgment in the Turnover Action (the "**SJ Motion**") which on 4 January 2016 the Bankruptcy Court issued a decision, granting a Preliminary Injunction and Partial Summary Judgement.
- 2.12 The Bankruptcy Court, in highlighting certain limitations to any orders which it could make in the proceeding, made a recommendation to the United States District Court for the Southern District of New York (the "**District Court**"), which was called upon to issue a final decision.
- 2.13 In May 2016 the Chapter 11 Trustee filed the Supplemental Summary Judgment Motion (the "**Supplemental SJ Motion**") to obtain a ruling on the three outstanding issues identified by Judge Gerber in his Summary Judgment Decision and Summary Judgment Order: (1) the extent to which other creditors hold claims against Composite; (2) the amount of any such claims; and (3) the extent to which such claims have priority over the amount owing to Elite.
- 2.14 On 28 November 2016, the Bankruptcy Court entered a decision on the Supplemental SJ Motion in favour of the Chapter 11 Trustee. In summary, the decision was that the Chapter 11 Trustee was entitled to recover the full amount of the funds held in the Wilmington Trust Account i.e. \$3.875

million, which represented less than the lowest amount Judge Gerber found Elite was entitled to recover as the Net Asset Value of its shares pursuant to its redemption request. Although the Supplemental SJ Motion was granted; because it was dispositive of the original complaint, it was determined that the Bankruptcy Court did not have the authority to enter a final order or judgment and therefore the Decision was treated as *proposed findings of fact and conclusions of law*, subject to the relevant objection procedures, and that final judgment must be entered by the District Court.

- 2.15 On 19 December 2016, the Bankruptcy Court proposed findings of fact and conclusions of law to the District Court.
- 2.16 On 6 February 2017, the District Court reviewed the Bankruptcy Court's proposed findings of fact and conclusion of law and, finding no clear error, adopted the Bankruptcy Court's decision in its entirety.
- 2.17 On 10 February 2017, the clerk of the District Court entered a judgment granting the Trustee's motion for summary judgment, which entitles the Trustee to recover the remaining assets currently held by Soundview Composite in the Wilmington Trust account.
- 2.18 On 30 March 2017, the Trustee and Wilmington Trust entered into a stipulation authorising Wilmington Trust to release the cash held in the Composite bank account after deducting its reasonable fees and expenses totalling \$46,392.07 incurred in connection with the Chapter 11 Cases and the Composite Proceeding.
- 2.19 On 6 April 2017, the Bankruptcy Court approved the Stipulation between the Trustee and Wilmington Trust.
- 2.20 On 11 April 2017, Wilmington Trust remitted \$3,679,478 from Composite's cash account to the Trustee for the benefit of Elite in settlement of the Bankruptcy Court order.

Citco Action, Pasig & Mediation

- 2.21 By way of recap:
- On 23 March 2015, Citco Global Custody (NA) NV Ref: Pasig, Ltd ("**Pasig**"), with its beneficial owners, filed a complaint (the "**Pasig Action**") against various Citco entities and related

individuals in the Superior Court of the State of California for the County of Los Angeles (the “State Court”) for various reasons including, but not limited to, breach of fiduciary duty; constructive fraud, negligent misrepresentation, fraud and unjust enrichment.

- On 23 September 2015, the Chapter 11 Trustee, on behalf of the Companies and the SPV Funds, and the liquidators of affiliated British Virgin Islands-domiciled funds (the “Richcourt Funds”) filed a complaint (the “Bankruptcy Action”) against the same defendants as the Pasig Action in addition the Alphonse “Buddy” Fletcher and his affiliated management companies and related individuals in the Bankruptcy Court for various causes of action including, but not limited to breach of fiduciary duty, turnover, fraudulent conveyance, preferential transfers, conversion and fraud.
- On 29 December 2015, the Citco defendants filed motions to dismiss, and certain of the Fletcher defendants filed answers to, the Bankruptcy Action.
- On 19 January 2016, an amended complaint was filed in the Bankruptcy Action.
- On 2 February 2016, the Citco defendants filed motions to dismiss the amended complaint.
- On 18 February 2016, the Chapter 11 Trustee, along with the joint liquidators of the Richcourt Funds (collectively the “Debtors”), filed a motion to enforce the automatic stay and to enjoin prosecution by Pasig and its beneficial owners of the Pasig Action because it asserts claims belonging to the Companies’ estates².
- On 19 April 2016, the Bankruptcy Court ordered mediation amongst all parties including but not limited to the Companies, the SPV Funds, the Richcourt Funds, Citco and Pasig and on 17 May 2016, the Bankruptcy Court entered an order appointing Mr Myron Trepper as mediator.

2.22 On 20 May 2016, the Chapter 11 Trustee retained Jones Day as mediation and settlement counsel. The mediation was not successful.

2.23 On 29 July 2016, the Citco defendants, including former Citco employees, filed motions to dismiss.

² The Second Amended Complaint filed in the Superior Court of California, case no. BC576379 against Citco Group Limited and certain of its affiliated entities [ECF No. 972]

- 2.24 On 14 September 2016, Pasig Ltd. filed an amended motion for relief from the automatic stay, to the extent applicable, to prosecute its second amended complaint filed in the State Action.
- 2.25 On 16 September 2016, the Bankruptcy Court ordered supplemental briefings on certain legal issues related to Citco's motion to dismiss.
- 2.26 On 11 October 2016, the parties filed their supplemental briefs.
- 2.27 On 28 November 2016, Pasig Ltd. notified the Bankruptcy Court that it had settled the State Action with Citco and that no claims asserted by the Chapter 11 Trustee were included in the settlement.
- 2.28 On 15 February 2017, the Bankruptcy Court entered orders of default against certain of the Fletcher management companies.
- 2.29 On 27 March 2017, the Bankruptcy Court entered a *Memorandum Opinion and Order on Competing Motions with Respect to Stay Relief* which ruled on the jointly filed motions by the Debtors, as detailed at 2.23 above, in favour of Pasig and against the Debtors.
- 2.30 In brief summary, the dispositive issue raised by the Debtors' motions was whether the claims by Pasig (and its beneficial owners, the Cormans) against Citco in the *Second Amended Complaint* were (i) non-derivative, individual claims that would establish particularized injuries to Pasig (and the Cormans) directly traceable to the defendants, or (ii) claims that belonged to the Debtors or sought derivatively to redress injury to the Debtors and/or the general creditor body. The Bankruptcy Court decided that the claims asserted by Pasig were independent of and did not trespass onto the claims of the liquidation estates. The Court therefore denied the Debtors' stay motion and granted the Pasig motion as detailed in the ruling, a copy of which is enclosed at Appendix II.
- 2.31 On 7 April 2017, the Trustee and Pasig submitted a stipulation order to the Bankruptcy Court resolving all litigation between them.
- 2.32 On 17 April 2017, the Bankruptcy Court approved the stipulation resolving all litigation between the Trustee and Pasig.

- 2.33 The Trustee's litigation against Citco is ongoing; a status conference in the Bankruptcy Action that was scheduled for 18 April 2017 was re-scheduled as an off-the-record telephonic conference for 20 April 2017.

US Settlement and Recovery Actions

- 2.34 DiConza Traurig Kadish LLP ("DTK"), having been engaged as special litigation counsel on a contingency fee basis by the Chapter 11 Trustee, has been mandated to enter into settlement discussions and commence Anti Avoidance Actions Adversary Proceedings (the "**Avoidance Actions**") against a number of parties who have either filed claims in the Cayman liquidation or US Bankruptcy proceedings.
- 2.35 As at the date of this Report DTK has achieved proof of claim reductions or waivers of \$983,696 and cash settlements of \$1,612,104.09.

3. Progression of the Companies' Liquidation

Non-Cash Assets

- 3.1 Section 5.2 of the Protocol allocates responsibility for the collection and realisation of assets based on their location. To avoid any ambiguity regarding the jurisdiction of the non-cash assets, which are detailed below, it was agreed under Section 3.3 of the Addendum that "*the JOLs shall primarily be responsible for the realization and collection of the non-Cash assets listed above [sic] wherever they are physically or legally situated and without that issue having to be determined*".
- 3.2 Save for the positions held by Premium and Star in Elite, all other non-cash asset positions are held by Elite.
- 3.3 Since the date of appointment, the OL has taken possession of, or is in the process of finalizing the transfer of, the following non-cash positions into their custody:

Fund	Shares
DBGM Offshore Ltd - USD	8.895228
Tudor BVI Global Fund Ltd.	43.8549
Caxton Global Investments Limited Class SI	15,460.00
TAO L Holdings, Ltd.	3.677573
72 Capital International Limited (various series)	139,473.0243

3.4 Through the receipt of distributions and/or the sale of assets, the OL has made the following recoveries:

Fund	Sale/Distribution	Shares	Value USD \$
Caxton Global Investments Limited Class SI	Sale	15,460	\$225,809.41
TAO L Holdings, Ltd.	Distribution	7.714273	\$105,250.80
DBGM Offshore Ltd.	Distribution	8.895228	\$50,553.57

3.5 On 4 March 2016, a final distribution in respect of the TAO L Holdings Ltd. in the amount of \$105,250.80 was received. This position is now fully redeemed and has been removed from the non-cash asset listing.

3.6 The OL entered into a marketing process to sell the Caxton Global Investments Limited Class SI ("Caxton") position through engaging with two intermediary brokers: Varcay Investments Limited ("Varcay") and Cattedgatt Secondaries ("Cattedgatt"), two well-established brokers who deal in secondary market fund of fund positions.

3.7 Varcay obtained three quotes ranging from 0.45c to 0.91c (of NAV) whereas Cattedgatt confirmed they had buyers at 0.90c (of NAV). The highest offer of 0.91c was accepted and a sale and purchase agreement for \$225,809.41 (based on a NAV as at 31 October 2016 of \$16.021797 or \$248,142.021 for the total position) was executed. On 30 March 2017, the confirmation was received that the Caxton shares had been successfully transferred to the purchasers with dealing date 1 March 2017. The Caxton position has therefore been sold in full and has been removed from the non-cash asset listing.

3.8 The following S.A.C. Capital, 72 Capital and Tudor BVI Global positions are held by HSBC Monaco both directly and indirectly as custodian or sub-custodian to Citco Global Securities Services Canada

Ltd. We understand that these positions are held at HSBC Monaco in an omnibus account on behalf of various investors and it is therefore not straightforward to withdraw from these positions. Any transfer/sale of these positions is further complicated by the “restricted investor” criteria in S.A.C. Capital and 72 Capital, which restrict the potential purchasers of the positions. The OL continues to work with HSBC Monaco, Citco Global Securities Services Canada Ltd. and secondary market brokers to both value and sell these positions.

Fund	Shares
S.A.C. Capital INTL Series E Class 13-01KW	15,192.575
S.A.C. Capital INTL Series E Class E11-12	41,772.797
S.A.C. Capital INTL CL. -E- SIES 13-01KW-20	1.749
S.A.C. Capital INTL Series D Class 13-01FF	69,184.522
S.A.C. Capital INTL Series E Class E11-12	19,575.123
S.A.C. Capital INTL Series D Class 13-01FF	420.504
72 Capital International Ltd. SR E CL 1301KW 72CILTD129720 RES	92.894
72 Capital International Ltd. SR E CL 1301KW 72CILTD129720 SI	6,885.447
Tudor BVI Global Fund Ltd Legacy Class	0.0056
Tudor BVI Global Fund Ltd PTG. Shs Legacy Class Illiquid	43.8493

Cash

- 3.9 On 22 December 2016 the Chapter 11 Trustee paid US\$608,496.85 into the OL’s liquidation account to cover fees and expenses following the reallocation of expenses between the Companies and the resulting recalculation of holdbacks.
- 3.10 The allocation of expenses, and the related holdbacks, as approved by the Grand Court, are currently calculated using the following:

Company	Fee Allocation	Holdback
Elite	79%	30%
Star	18%	30%
Premium	3%	100%

- 3.11 On 17 November 2016 US\$109,950.00 of a cash balance was recovered from HSBC Monaco.
- 3.12 As at 30 April 2017, the combined cash balance of the Companies, held by the OL, was \$414,242.75.