1	IN THE GRAND COURT OF THE CAYMAN ISLANDS						
2	·		CAUSE NO: 46 & 47 OF 2009				
3 4							
5							
6	IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)						
7							
8	AND IN THE MATTER OF RYE SELECT BROAD MARKET XL PORTFOLIO						
9 10	LIMITED						
11	AND IN THE MAT	TER OF RYE SELECT BI	ROAD MARKET INSURANCE				
12	AND IN THE MATTER OF RYE SELECT BROAD MARKET INSURANCE PORTFOLIO LDC						
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14							
15		my II Ma Tankina III and	·				
16	Coram:	The Hon. Mr. Justice Hend	erson				
17 18	Appearances:	Marit Hudson of Appleby f	or the Joint Official Liquidators				
19	Appearances.	of Rye Select Broad Market Insurance Portfolio LDC and					
20		Rye Select Broad Market X	L Portfolio Limited ("the applicants")				
21		•					
22		Also in attendance Mr. Jam	es Eldridge of Maples and Calder for				
23		Fortis Prime Fund Solution	s Bank (Ireland) Limited				
24	•		AND COUR				
25 26	Heard on July 21st 2	000					
20 27	nearu on July 21 2		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1				
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29			CAN ISU				
30	•	RULING					
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32	t (Ph 1:	to and Joint Official Liquidate	ors of two funds, the Rye Select Broad				
33	I the applican	is are joint Official Liquidad	of two funds, are try o correct assume				
34	Market XL F	Portfolio Limited and Rye Se	elect Broad Market Insurance Portfolio				
35	LDC. They	apply for directions in rela	tion to the formation of a liquidation				
36	committees	ınder the Companies Windin	g Up Rules 2008 ("the Rules"). The				
37	relevant prov	isions are found in Order 9 of	the Rules and read:				
38	Establishment of Liquidation Committee (0.9, r.1)						

1 2 3		1.	(1)	Unless the Court otherwise directs, a liquidation committee shall be established in respect of every company which is being wound up by the Court.		
4						
5 6 7 8 9			(3)	The liquidation committee shall comprise not less than three nor more than five creditors (if the official liquidator has determined that the company should be regarded as insolvent) or contributories (if the official liquidator has determined that the company should be regarded as solvent).		
11		*** ***				
12 13 14 ,15 16 17 18			(6)	In the case of a company determined by its official liquidator to be of doubtful solvency, the liquidation committee shall comprise not less three nor more than six members, of whom a majority shall be creditors elected at a meeting of creditors and at least one of whom shall be a contributory elected at a meeting of contributories.		
20	Mem	Membership of Liquidation Committee (0.9, r.2)				
21 22 23		2.	(1)	A liquidation committee cannot be established unless and until it has the minimum number of members required by Rule 1.		
24				17.11. (0.0.11)		
25 26	Proce	eedings	of Liqu	uidation Committee (O.9, r.4)		
27 28		4.	(2)	The quorum for a meeting of the liquidation committee shall be the official liquidator (or his representative) and at least two members.		
29 30 31 32 33 34 35 36		••••	<i>(8)</i>	If the liquidation committee comprises both creditors and contributories, a resolution is passed only when a majority of the creditor members and a majority of contributory members present or represented (either in person or by telephone) have voted in favour of it.		
37	2.	The funds are of doubtful solvency; it is unclear at present whether the liquidation				
38		committees should be composed of creditors or contributories but the Rules state				
39		that the majority should be creditors in these circumstances. The funds have just				
40		1 cred	litor and	3 contributories.		

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3.

The quoted provisions express in mandatory language the requirement that a Liquidation Committee must comprise at least 3 creditors or 3 contributories, as the case may be. O.9, r.2(1) prohibits the establishment of any Liquidation Committee at all unless the minimum number of members has been appointed to it. Order 9, r.1(1) gives the Court an express power to dispense with the establishment of a Liquidation Committee but does not confer a power to permit the formation of a Committee which deviates from these mandatory requirements. If the Rules are applied literally, I have two choices: I may conclude (contrary to the preliminary views of the JOLs) that the funds are solvent and appoint the 3 contributories to the Liquidation Committee; alternatively, I could conclude (as seems more likely) that the funds are insolvent and direct that no committee be established. Neither alternative is attractive. Both the creditor and the 3 contributories wish to sit on a Liquidation Committee and the JOLs support that.

4.

The insolvency regime in the Cayman Islands and, in particular, the Rules, exist for the protection and assistance of creditors and contributories. The Rules deserve and should receive a purposive interpretation which recognizes the commercial interest of those with a financial stake in the winding up in any given case. That can be achieved here by giving a relatively broad and liberal interpretation to the opening words of O.9, r.1(1). I consider that these words ("unless the Court otherwise directs") permit the Court in appropriate cases to allow the constitution of a Liquidation Committee which fails to meet one or

1		more of the mandatory requirements. In a case where a company to be wound up
2		is neither clearly insolvent nor clearly solvent and the creditors and contributories
3		express a wish to work together, it may well be appropriate, as it is here, to
4		appoint representatives from both groups to the Liquidation Committee. Where
5	,	there are fewer than 3 creditors or contributories (as the case may be) that should
6		not stand as a bar to the formation of a Liquidation Committee if the Court
7		determines that such a Committee would be beneficial.
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9	5.	I am satisfied that the Liquidation Committees for the two funds should be
10		constituted now and should comprise the sole creditor and the 3 contributories.
11		The JOLs are at liberty to apply for a direction altering the composition of the

Liquidation Committees if, in the future, that becomes necessary.

Dated: 31st July 2009

 The Hon. Mr. Justice Alexander Henderson Judge of the Grand Court