IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANICIAL SERVICES DIVISION

Hon Mr Justice Andrew J. Jones QC
In Open Court
10th August 20010

Cause No FSD 82 of 2010 (AJJ)

IN THE MATTER of Section 92 of the Companies Law (2009 Revision)

AND IN THE MATTER of ICP STRATEGIC CREDIT INCOME FUND LTD

Appearances :

Mr Hector Robinson and Mr Nicholas Fox of Mourant Ozannes for the Petitioners

Ms Sandie Corbett of Walkers for ICP Strategic Credit Income Fund Ltd ("the Offshore Fund")

Ms Katie Brown of Appleby for Commonfund Credit Opportunities Company, a shareholder of the Offshore Fund

JUDGEMENT

INTRODUCTION

1. ICP Strategic Income Fund Ltd (the "Offshore Fund") forms part of a "master-feeder" structure, established in September 2005 and promoted by ICP Asset Management LLC, whose founder and chief executive officer is Mr Thomas Priore. The Offshore Fund was incorporated under the Companies Law on 8th September 2005 as the vehicle through which (a) non-US investors and (b) US tax-exempt investors would make their investments. ICP Strategic Credit Income LP ("the Onshore Fund"), a Delaware limited partnership, was established as the vehicle through which US taxable investors would make their investments. Both the Offshore and Onshore Funds (collectively "the Feeder Funds") invested substantially all of their capital (either directly or indirectly via an exempted limited partnership called ICP Strategic Credit Income Intermediate Fund L.P) in ICP Strategic Credit Income Master Fund

Ltd ("the Master Fund"), which is also incorporated under the Companies Law. I shall use the expression "ICP Funds" to refer to the Master Fund and its two Feeder Funds collectively.

2. The ICP Funds naturally have common management. ICP Asset Management LLC ("the Investment Manager") serves as the investment manager of the Offshore Fund and the Master Fund and an affiliated company serves as the general partner of the Onshore Fund. GlobeOp Financial Services LLC currently serves as the administrator of all three entities and is wholly independent of the ICP group of companies. The Offshore Fund and the Master Fund each have a board of directors comprising the same three individuals, namely Mr Thomas Priore, Mr Roger Hanson and Mr Ronan Guilfoyle. Messrs Hanson and Guilfoyle are officers of DMS Management Ltd which carries on business as an independent provider of administration and director services. They are chartered accountants by profession and both have extensive experience of the fund administration business. However, the key person in this management structure is clearly Mr Thomas Priore who was instrumental in founding the ICP group of companies and serves as the chief executive officer of all the relevant entities.

3. The investment objectives and strategies are described at pages 23-27 of the offering document (referred to as a *Confidential Memorandum*), the latest edition of which is dated September 2008. Put simply, the Master Fund was set up to invest in a variety of mortgage backed securities and similar debt instruments, the performance of which was highly dependent upon the US residential property market.

4. The effect upon the ICP Funds of the sharply declining property market, the credit crunch in the last quarter of 2008 and difficult market conditions prevailing in the first quarter of 2009 is not explained in the evidence before the Court. However, I infer that these market conditions must have had a serious adverse effect upon the ICP Funds because on 23 April 2009 the directors resolved, pursuant to article 61(e) of the Offshore Fund's articles of association, to suspend the shareholders' right to redeem their shares and defer the right of unpaid redeemed shareholders to receive their redemption proceeds based upon the NAV's determined for 31 December 2008 and 31 March 2009. This decision was communicated to the shareholders in a letter dated 1 May 2009. The directors sought to justify their decision on the basis of the high volume of year-end redemptions and current market conditions. In addition it was said that if the December redemption requests were paid, the ICP Funds would become subject to the regulatory requirements of the United States Employee Retirement Income Security Act of 1974, the directors sought to avoid. For all practical purposes, it seems to me that the ICP Funds had ceased to be viable as investment funds at least by April 2009, if not in the last quarter of the previous year.

5. On 1 February 2010 Mr Thomas Priore sent a letter to the investors in which he said that Barclays Bank Plc had terminated the financing facilities extended to a subsidiary of the Offshore Fund called Triaxx Funding Ltd. He concluded by saying, "Given the current circumstances, we feel the responsible course of

action is to conduct an orderly liquidation of the remaining assets of [the Offshore Fund], conduct a final audit and return the proceeds to investors. We expect this process will take a few months." This decision was reconfirmed by Mr Priore during the course of a conference call with investors on 1 March 2010 when he said "At this point it is really not viable to continue operating [the Offshore Fund] and the decision has been made to dissolve [the Offshore Fund]". However, during the course of this conference call Mr Roger Hanson made it clear that the directors would not take any steps to appointment independent liquidators.

6. The winding up petition was presented on 25th March 2010 by four shareholders acting jointly. UNC Investment Fund, LLC is an investment fund established for the purpose of investing part of the endowment and foundation assets of the University of North Carolina. It subscribed US$15 million on 1 November 2007 and a further US$5 million on 1 November 2008 for a total of 20,000 Class A shares of the Offshore Fund. The other three petitioners are also investment funds which I shall refer to collectively as the SEI Funds. Between 1 April and 1 September 2008 they invested a total of US$75 million for which they were issued both Class A and Class B shares in the Offshore Fund. The petitioners originally contended that it is just and equitable to wind up the Offshore Fund on two grounds. First, it is said that the directors acted in breach of their duties by failing to suspend redemptions in a timely manner and failing to prepare and distribute audited financial statements. Second, the petitioners rely upon the fact that, on the directors' own admission, the Offshore Fund is no longer viable and needs to be wound up. The petition was subsequently amended to add a third ground. Based upon the allegations made by the SEC in proceedings commenced against the Investment Manager and Mr Thomas Priore personally, it is said that the affairs of the company require to be investigated and that an investigation can only be properly performed by independent court appointed liquidators.

7. On 4 June 2010 I made an order for directions and set a timetable for the trial of the petition on the basis that the Offshore Fund was solvent (applying a balance sheet test) and that the petition would be defended by the company acting by its directors. I directed, inter alia, that the petition, the verifying affidavits, the supporting affidavits sworn by the insolvency practitioners nominated for appointment as official liquidators and my order be sent to all the registered shareholders and redeemed shareholders (who had not been paid and would claim to be creditors). A defence was served on 25 June 2010 in which it was denied that the Offshore Fund was in breach of duty and denied that it had ceased to be a viable entity such that a winding up order should be made. However, counsel for the Offshore Fund subsequently informed the parties and the Court that it would not oppose the making of a winding up order, with the result that the petition came on for hearing today unopposed.

PROCEEDINGS AGAINST THE INVESTMENT MANAGER

8. In the meantime, on 21 June 2010, the United States Securities and Exchange Commission commenced proceedings in the US District Court for the Southern District of New York against Mr Thomas Priore, the Investment

Manager and two other affiliated companies involved in the management of the ICP Funds. It is not necessary for the purposes of this judgment to examine the contents of the complaint any detail at all. Suffice it to say that the SEC alleges that Mr Thomas and his companies acted fraudulently in connection with various collateralized debt obligation transactions (referred to as the Triaxx CDO's). In particular, it is alleged that Mr Thomas misused $43.7 million belonging to the Master Fund for the purposes of meeting margin calls payable by Triaxx Funding Ltd. Counsel for the petitioners relies upon the mere existence of this proceeding as a ground for making a winding up order. The need for an investigation into the affairs of a company can constitute a freestanding basis for making a winding up order on the just and equitable ground. I accept the proposition that the mere fact that the SEC has seen fit to commence proceedings alleging fraud against the Offshore Fund's Investment Manager demonstrates that the affairs of all the ICP Funds do need to be investigated. In the circumstances of this case, I also accept that the need for such an investigation is a sufficient justification for making a winding up order.

FINANCIAL POSITION OF THE ICP FUNDS

9. In my judgment the current financial position of the ICP Funds is uncertain and requires investigation. The only audited financial statements ever issued by the Master Fund are for the period from inception to 31 December 2007. The balance sheet reflected an NAV of about $170 million of which about 51% was attributable to the Offshore Fund and 49% attributable to the Onshore Fund. On 4 June 2010 I made an order requiring the Offshore Fund to produce (a) audited financial statements or (if no audits have been completed) unaudited financial statements for the years ended 31 December 2008 and 2009 and (b) unaudited financial statements for the quarter ended 31 March 2010. The Offshore Fund's directors responded to my order by producing draft financial statements for the Master Fund for the year ended 31 December 2008 which reflect an NAV of approximately US$202 million of which it is said that approximately 23% is attributable to the Offshore Fund and 77% is attributable to the Onshore Fund. It is relevant to note that the Master Fund's NAV of $202 million is net after taking account of an accrual of $37 million in respect of unpaid redemption payments due to the Offshore and/or Onshore Funds. These financial statements are unsigned drafts. There is no evidence that they were ever approved by the Master Fund's board of directors and on 29 March 2010 KPMG resigned as auditors without ever having issued any audit opinion.

10. No draft financial statements have been produced for the year ended 31 December 2009 or the quarter ended 31 March 2010. Instead, the directors have produced a trial balance prepared by the administrator which reflects an NAV for the Master Fund of $152 million as at 31 December 2009, net after taking into account an accrual for unpaid redemption payments of $67 million due to the Offshore and/or Onshore Funds. The associated draft income statement reflects that the Master Fund expended directors' fees of $31,000, administration fees of $663,000, legal fees of $327,000 and management fees of $1,952,000 during the year. The trial balance as at 31 March 2010 reflects a

very different picture. The NAV of the Master Fund is reduced to US$4.5 million, net after taking into account the accrual for redemption payments which remains unaltered at US$67 million. The difference between 31 December 2009 and 31 March 2010 largely results from the recognition of an unrealized loss of $164 million "on HFT Securities" and the payment of a "miscellaneous fee" of $36 million. This sop-called fee appears to be part of the money which the SEC alleges to have been improperly used to meet margin calls made by Barclays Bank Plc against Triaxx Funding Ltd. The income statement also reflects that the Master Fund expended administration fees of $151,000, management fees of $2,779,000 and legal fees of $341,000 during the three months ended 31 March 2010. It should not be forgotten that the boards of directors of the Offshore Fund and the Master Fund are the same three people. They have not filed any affidavit evidence which seeks to explain the Master Fund's trial balances and the transactions reflected in the associated income statements. Nor have they produced *any* financial statements for the Offshore Fund itself as required by my order. Whilst it may be possible to extrapolate from the Master Fund's draft financial statements a reasonable estimation of the Offshore Fund's financial position as at 31 December 2008, it is not possible to do a similar exercise in respect of its financial position as at 31 December 2009 or 31 March 2010. I am therefore driven to the conclusion that the Offshore Fund's current financial position is uncertain and in urgent need of thorough investigation, which can best be done by official liquidators.

THE ICP FUNDS ARE NO LONGER VIABLE BUSINESSES

11. As I said in *Re Belmont Asset Based Lending Ltd* (FSD #15 of 2009), in principle a winding up order can be made in respect of an open ended corporate mutual fund if the circumstances are such that it has become impractical, if not actually impossible, to carry on its investment business in accordance with the reasonable expectations of its participating shareholders, based upon the representations contained in its offering document. In this case the Offshore Fund's directors have recognized that its business is no longer viable and concluded that it needs to be wound up. Even if there was no demonstrable need for an investigation of the ICP Funds' affairs based upon the allegations of fraud made by the SEC and the failure to produce audited financial statements, the mere fact that the Offshore Fund has ceased to be viable as an open ended mutual fund would be sufficient justification for making a winding up order.

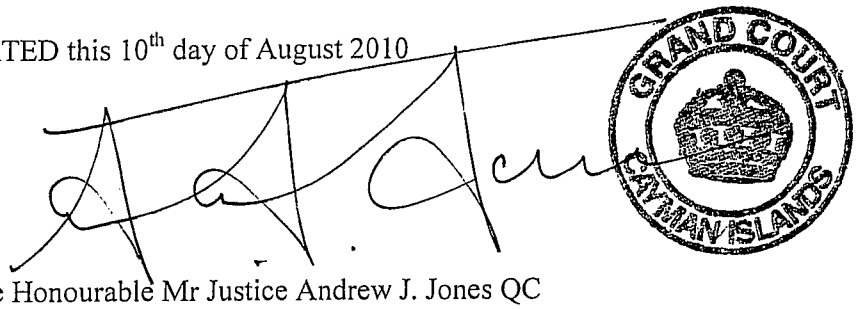
CONCLUSION

12. For these reasons I am satisfied that it is just and equitable to make a winding up order in respect of the Offshore Fund.

13. I am also satisfied that Messrs Dickson and Akers of Grant Thornton Specialist Services (Cayman) Limited are qualified insolvency practitioners who meet the requirements of the Insolvency Practitioners' Regulations in respect of the Offshore Fund. I therefore make an order that they be appointed as joint official liquidators.

14. Finally, I make the usual order for costs in favour of the petitioners.

DATED this 10th day of August 2010



The Honourable Mr Justice Andrew J. Jones QC