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IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 46 & 47 OF 2009

IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)

AND IN THE MATTER OF RYE SELECT BROAD MARKET XL PORTFOLIO LIMITED

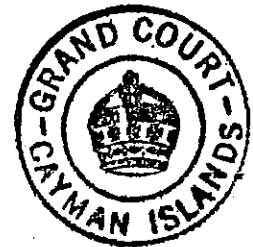
AND IN THE MATTER OF RYE SELECT BROAD MARKET INSURANCE PORTFOLIO LDC

Coram: The Hon. Mr. Justice Henderson

Appearances: Marit Hudson of Appleby for the Joint Official Liquidators of Rye Select Broad Market Insurance Portfolio LDC and Rye Select Broad Market XL Portfolio Limited ("the applicants")

Also in attendance Mr. James Eldridge of Maples and Calder for Fortis Prime Fund Solutions Bank (Ireland) Limited

Heard on July 21<sup>st</sup> 2009



RULING

1. The applicants are Joint Official Liquidators of two funds, the Rye Select Broad Market XL Portfolio Limited and Rye Select Broad Market Insurance Portfolio LDC. They apply for directions in relation to the formation of a liquidation committees under the Companies Winding Up Rules 2008 ("the Rules"). The relevant provisions are found in Order 9 of the Rules and read:

**Establishment of Liquidation Committee (O.9, r.1)**



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

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16 4. The insolvency regime in the Cayman Islands and, in particular, the Rules, exist  
17 for the protection and assistance of creditors and contributories. The Rules  
18 deserve and should receive a purposive interpretation which recognizes the  
19 commercial interest of those with a financial stake in the winding up in any given  
20 case. That can be achieved here by giving a relatively broad and liberal  
21 interpretation to the opening words of O.9, r.1(1). I consider that these words  
22 (“unless the Court otherwise directs”) permit the Court in appropriate cases to  
23 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  
12 Liquidation Committees if, in the future, that becomes necessary.



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22 Dated: 31<sup>st</sup> July 2009

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