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14 September 2016

Dear Sirs,

**DAVID COSGROVE**

1 We refer to the letter from the Financial Services Commission (the "**FSC**") to Mr. David Cosgrove ("**Mr. Cosgrove**") dated 24 August 2016 relating to purported notices under Section 53(3) of the Financial Services Act (the "**FSC Letter**"). We, together with Dev Erriah, represent Mr. Cosgrove. Capitalised terms not otherwise defined in this letter bear the meaning ascribed thereto in your Letter.

2 Mr. Cosgrove hereby applies to the FSRP for review of the decisions of the FSC set out in the FSC Letter on the grounds that –

2.1 the FSC has acted unreasonably and with an improper purpose;

2.2 the procedure adopted by the FSC was unfair, it offends basic principles of natural justice and Mr. Cosgrove's constitutional rights;

2.3 the FSC has not supplied proper reasons for the decisions nor provided access to key information relied upon by the FSC;

2.4 the FSC has not properly exercised its discretion; and

2.5 the decisions are manifestly harsh, unreasonable, irrational and based on errors of law and fact; and

2.6 the FSC has not acted proportionately in reaching its decisions

which reasons are expounded upon below.

3 At the outset, we are instructed to advise that Mr. Cosgrove strongly rejects the allegations made by the FSC in the FSC Letter. Mr. Cosgrove believes that the FSC was influenced by the press and a dishonest former client to believe that Mr. Cosgrove and his associates were operating a Ponzi Scheme and it intervened without properly applying its mind to the facts and without properly interrogating the evidence. The FSC's shortcomings were compounded by gross neglect in relation to the management of entities it had placed under administration and assumed responsibility for with resultant damages suffered by investors. It has since transpired that no such Ponzi Scheme existed and the FSC finds itself in the difficult position where, in reliance on information that has now been discredited, its intervention under the auspices of protecting investors has in fact caused those investors harm. Mr. Cosgrove believes that the FSC Letter and the related notices are an attempt by the FSC to justify its actions by engineering breaches of the law and by exaggerating minor issues.

4 None of the offences that the FSC has found Mr. Cosgrove, or any of his associated entities guilty of, justifies the steps that the FSC took. The losses that investors have suffered as a result of the FSC's actions cannot be excused by the contrived findings the FSC has reached – principally misdemeanours of record-keeping. Mr. Cosgrove understands that certain of the investors have already instructed attorneys to prepare a claim against the FSC in this regard. In addition, Mr. Cosgrove believes that the FSC Letter further evidences the FSC's lack of good faith in these investigations which has resulted in the FSC forfeiting its immunity from prosecution and Mr. Cosgrove intends to launch proceedings against the FSC to recover the damages suffered by him and his related entities – essentially the loss of his share in a multi-million Dollar financial services business. Mr. Cosgrove believes that the interests of the financial services industry and of the Mauritian government generally would be best served by the Review Panel overturning the FSC's decisions and by the FSC admitting its failings and seeking redress against those who sought to manipulate the FSC. The continuation of the witch hunt against Mr. Cosgrove and his entities stands only to further embarrass the FSC.

## 5 HISTORY OF ENGAGEMENT WITH THE FSC

5.1 The FSC's actions suggest to the reasonable observer that the process has been rigged to achieve the condemnation of Mr. Cosgrove and his associates and associated entities without paying any heed to due process. In this regard, we note that –

5.1.1 Our firm met with the FSC on 21 May 2015. We made proposals on behalf of our clients to address the central allegation of a Ponzi Scheme and to protect the investors by relinquishing any vestige of control over the investor assets in favour of the investors themselves. During that meeting, the FSC undertook to revert to us

before the end of May 2015. Despite polite reminders in this regard from our firm and from Mr. Dev Erriah, our clients' counsel in Mauritius and despite the evident hardship the investors were suffering, the FSC not only failed to engage with us but failed to provide any reason why they did not respect the undertaking given to us.

5.1.2 Had our proposal been discussed further and implemented, the investors would not have been prejudiced by the stasis induced by a drawn out administration process. It transpired that the FSC appointed administrators who, after a lengthy process, found no evidence that any investor assets were compromised. The administrator's mandate expired and despite the administrator's appeals to the FSC for instructions as to how to proceed, the FSC failed to appoint a replacement or to take over active management of the affected entities itself. The FSC appears in fact to have been under the mistaken belief that they bore no responsibility to protect investors in companies they had placed under administration. As a result, the investors' assets were not actively managed causing losses to the investors which could have been avoided. In a final twist of irony for the investors, on 9 June 2016, the Financial Services Commission finally passed orders effectively implementing the proposals we had made more than a year previously (FSC/COM09F2016/3). The FSC's actions in this regard have been transparent to all of the investors who knew at the outset that the Ponzi Scheme allegations were nonsense and have had to watch their investments devalue as a result of the FSC's incompetence. This leaves the FSC in a difficult position in relation to the investors and to the public at large since the implication is that in trying to catch a villain, the FSC became a villain. We understand that these investors are preparing a claim against the FSC for the losses they suffered as a result.

5.1.3 We note with concern that it appears that the FSC conspired to ensure that the FSC Letter was not received by Mr. Cosgrove. In this regard, we note that the FSC Letter was addressed to Mr. Cosgrove at an address that he left some six years ago, despite the fact that the FSC has been informed many times of his change of address. One might assume this persistent error was not the result of malice, but we note that the FSC's response was some eleven months in the drafting and that our firm and Mr. Erriah were on record with the FSC in this matter. The FSC Letter in fact specifically notes that it is a response to our firm's letter to the FSC on behalf of Mr. Cosgrove dated 20 October 2015. The FSC Letter also acknowledges that the FSC is aware that Dev Erriah, barrister at law in Mauritius, acts as counsel to Mr. Cosgrove. Nevertheless, the FSC did not copy the FSC Letter to either of the counsel on record in this matter – either Werksmans or Mr. Erriah.

5.1.4 In our letter of 20 October 2015, we requested certain documentation from the FSC that the FSC was required by the Act to have considered (see paragraph 2.2) in coming to its preliminary decisions. None of this information has been provided to us without any explanation (or indeed a response of any kind) having been provided for such failure.

## 6 FATALLY FLAWED LEGAL PROCESS

### 6.1 Invalid Notice

6.1.1 In our letter of 20 October 2015, notably at paragraph 2, we informed the FSC, on behalf of our client, that we believed that the notice issued on 30 September 2015 (the "**Notice**") was technically and legally defective and therefore equivocal and unclear, inter alia because the FSC had referred to sections of the Financial Services Act (the "**Act**") inconsistently. Set out below is an extract from the FSC's letter of 30 September 2015 alongside an extract from the FSC Letter of 24 August 2016. The

Panel will note that the original Notice was given under Section 53(2) while the FSC Letter of 24 August 2016 refers to a Notice under Section 53(3). No notice under Section 53(3) was ever served on Mr. Cosgrove.

| 30 September 2015 | 24 August 2016 |
|---|---|
| Mr David Dawson Cosgrove<br>No.2, D' Unienville<br>Calledyne<br>Grand Gaube | Mr David Dawson Cosgrove<br>No.2, D' Unienville<br>Calodyne<br>Grand Gaube |
| Dear Sir,<br>Notice under section 53 (2) of the Financial Services Act 2007 | Dear Sir<br>Notice under section 53 (3) of the Financial Services Act 2007 |

6.1.2 It is not competent for the FSC to commence a process under one section or sub-section of the FSA and purport to continue the same process under a different section or sub-section. The FSC appears to have realised that it made an error in the notice dated 30 September 2015 – possibly because we pointed the error out to the FSC. That error could not competently be corrected by simply referring to a different section in the FSC's next Letter nearly a year later. The FSC's choice to proceed in this way suggests bad faith.

## 6.2 Attribution of Conduct

6.2.1 The FSC presents no argument or basis whatsoever as to why the boards of directors of BML, LGP, FEP, TSP and RDL (the "**Companies**") are responsible for the alleged transgressions, which are entirely disputed by Mr. Cosgrove. It does not follow from the mere fact that there were alleged transgressions by the Companies that the directors are personally or otherwise liable. If this were the case, then every regulatory intervention by the FSC should result in the members of the boards of directors being declared not fit and proper. The FSC's Letter, and the findings made therein are unreasonable, illegal and invalid in breach of all legal considerations and rules of natural justice because they disclose no wrongdoing on the part of the boards of directors of the Companies and consequently no wrongdoing on the part of Mr. Cosgrove as a director.

6.2.2 Mr. Cosgrove, with reasons and based on evidence adduced, maintains that -

6.2.2.1 the boards of directors of the Companies (the "**Boards**"), acting as prudent and honest businessmen ("bon père de famille") took all reasonable and proper steps to ensure compliance with the requirements of all relevant legislation and regulations including, but not limited to, employing Mauritian auditors to compile all financial records in the legally mandated form, outsourcing compliance functions to professional service providers regulated by the FSC; and

6.2.2.2 Mr. Cosgrove, as 'prudent and honest business man ('bon père de famille'), in good faith, took all reasonable and proper steps to ensure that the Boards complied with the requirements of the relevant legislation and regulations where he could reasonably be expected to take such steps,

and notes that the FSC has not made any argument to the contrary let alone provided any evidence to suggest the contrary. As such, the members of the Boards do not bear personal responsibility for any alleged infringements by the Companies.

6.2.3 The FSC has arbitrarily and discriminatorily attributed the actions of the Company to certain directors of the Companies only. In this regard, we note that although Mr. Laval resigned from BML after Mr. Cosgrove, and although he was a director of the

other Companies throughout the relevant period, we understand that no steps have been taken against Mr. Laval in his capacity as a director of any of the Companies. Mr Ashwin Borthosow was a director of RDL until December 2014 when evidence emerged that he had stolen property from a company within the group and his employment was suspended. No action has been taken by the FSC against Mr Borthosow in his capacity as director of RDL. Although Mr. Borthosow was forced to resign his directorship only four months prior to RDL's suspension, Mr. Cosgrove understands that Mr. Borthosow has in fact been employed by the FSC as a consultant. The FSC's actions are not consistent with the law which Mr. Cosgrove understands attributes equal responsibility to each of the members of the board of directors. The FSC appears to be selectively applying the law against foreigners and thereby action in a bias, arbitrary and discriminatory manner all along in handling the alleged wrong doings.

6.3 **No Fair Hearing – Breach of Natural Justice**

6.3.1 Neither Mr. Cosgrove nor the Companies were given any opportunity to be hear nor make representation whatsoever, let alone a fair hearing, before they were found to have committed these breaches, thereby denying Mr. Cosgrove and the Companies to be heard in blatant breach of natural justice - essentially "audi alterem partem".

6.3.2 It is a basic principle of natural justice that individuals must not be penalised by decisions affecting their rights unless they have been given prior notice of the cases against them, a fair opportunity to answer them, and the opportunity to present their own cases. None of these requirements have been met in this case.

6.3.2.1 **Prior Notice** - The allegations against Mr. Cosgrove and the Companies are embarrassingly vague. Mr. Cosgrove and the Companies, directly and through their counsel, have sought clarification of the content of the FSC's prior correspondence, which clarifications were reasonably and necessarily required for Mr. Cosgrove and the Companies to be able to properly defend themselves. By way of example, we note that in our letter of 20 October 2015, we requested the FSC's confirmation that references in the Notice to the undefined terms "LGP" and "FEP" were references to Lancelot Global PCC Limited and Four Elements PCC Limited respectively. This was a simple request on our behalf that went to the heart of Mr. Cosgrove understanding who the allegations were being made against and yet we never received a response. By way of further example, the FSC also contends that FEP's accounting records were incomplete without saying which accounting records it is referring to, which time period it is referring to and in what way they are incomplete. Requests for copies of the record of the FSC's deliberations were ignored and there is no evidence that the FSC actually held a hearing or applied its mind to matter.

6.3.2.2 **Fair Opportunity to Answer** – Although Mr. Cosgrove and the Companies have been given the opportunity to respond, their rights were effectively extinguished by the FSC's failure to give proper information in relation to the allegations. In addition, the responses provided by Mr. Cosgrove and the Companies have been ignored.

6.3.2.3 **Opportunity to Make Representation and Present Its Case** – Neither Mr. Cosgrove, nor any of the Companies, was afforded an opportunity to defend itself at any FSC hearing, nor were they given an opportunity to see the evidence the FSC relied upon, to question that evidence or to cross-examine any of the witnesses the FSC may have relied upon. Given that Mr. Cosgrove has been deprived of a legal right through the FSC's action, natural justice

requires that he was given the opportunity to make oral representations at the hearing.

6.3.3 The lack of notice and hearing and the denial therefore to Mr. Cosgrove and the Companies amounts to a complete abuse of power which invalidates the proceedings (inter alia, *Cooper vs Wandsworth Board of Works* (1863) 14 C.B.N.S. 180, 143 E.R. 414 (England), *Local Government Board v. Arlidge* [1915] A.C. 120, H.L. (United Kingdom), *R. v. Leman Street Police Station Inspector, ex parte Venicoff* [1920] 3 K.B. 72, H.C. (K.B.) (England & Wales).

## 6.4 No Access to Information and Failure to Give Reasons

Despite numerous requests, Mr. Cosgrove has not been granted access to any of the documentation that it requested or that the FSC relied upon in coming to its findings. In this regard, we note specifically, that the FSC has not provided us or Mr. Cosgrove with a copy of the report prepared by PWC, the erstwhile administrators to RDL, FE and LGF even though RDL has been requested to pay a portion of the costs of the report and although it has requested a copy, RDL has also never received a copy.

## 6.5 Infringement of Constitutional Rights

The failure to give Mr. Cosgrove an opportunity to be heard and make representation could with the refusal to give reasons could amount to an infringement of Mr. Cosgrove's constitutional rights and a violation thereof by the FSC.

## 6.6 Delay

The FSC was aware that investors were prejudiced by delays in the administration of the Companies (because we had informed them of this in correspondence and in our meeting of 21 May 2015) and yet there is no logical explanation for the undue delay of more than a year between our meeting of 21 May 2015 and their order dated 9 June 2016 nor for the eleven months between the FSC's letters of 30 September 2015 and 24 August 2016.

# 7 BACKGROUND TO THE FSC ACTION

## 7.1 The Role of DeVere and Offshore Alert

7.1.1 Mr. Cosgrove believes that the FSC was persuaded in 2015 by the deVere Group and their legal counsel that our clients were operating a massive Ponzi Scheme and that the FSC acted without proper evidence in the belief that such evidence would be revealed during its investigation. As a result of the heavy-handed approach taken by the FSC, Mr. Cosgrove's businesses were destroyed. The investigation process revealed no evidence of any Ponzi Scheme.

7.1.2 The Ponzi Scheme rumour was started by Nigel Green and his deVere Group, who themselves claim to have presented these rumours to the FSC. See the website page attached hereto as Annexure A.

7.1.3 deVere also claims to have seeded the information with an ex-employee, David Marchant, who now operates an Internet newsletter, Offshore Alert. Mr. Marchant's Offshore Alert ran a series of stories alleging that our client had operated a massive Ponzi Scheme using fund platforms incorporated in Mauritius and Guernsey. Mr. Marchant claims to have supplied information to the FSC regarding the alleged Ponzi Scheme. The FSC has previously quoted the Marchant newsletter in correspondence with Mr. Cosgrove and the Companies (see for example page 2 of the FSC's letter to

dated 17 May 2016 (ENF/FEP&LGP/L17E16HH/LJ02) and in its Communiqué of 27 March 2015 (FSCCOM27C2015/1). It is therefore clear that the FSC was influenced by Mr. Marchant's claims, now proven to be untrue.

7.1.4 The FSC should have been aware that its sources for the information they received were unreliable and that the statements could not be true, inter alia, because -

7.1.4.1 Mr. Cosgrove met with the FSC and told the FSC that the article was incorrect. He also sent them that document attached hereto as Annexure B –

7.1.4.2 The FSC had approved the establishment of all of the CISs on the fund platforms operated by Mr. Cosgrove and the Companies. They knew that the funds were not controlled by Mr. Cosgrove but by independent, regulated investment managers, that the accounts for these funds had been independently audited and that the funds were independently administered.

7.1.4.3 The deVere website itself notes that the Group has been attacked by clients citing a failure to disclose fees at all levels of the structures that they advise on. Members of the deVere Group have had their financial services licences suspended in a number of jurisdictions including Belgium and most recently Hong Kong and the deVere Group has been fined in Singapore for breaching distribution rules before it abandoned that jurisdiction. The FSC is no doubt aware that the deVere Group has been investigated in at least 12 jurisdictions and has had to pay penalties or compensation to a number of regulators and investors. Nigel Green was subpoenaed in June 2016 by the South African FSB as part of their current investigation into deVere. There are also a number of websites which list complaints from deVere clients about the deVere Group and associated companies. The BBC has produced a documentary on the nefarious activities of this group.

7.1.4.4 Offshore Alert is not part of the recognised media but is in fact a subscription-based newsletter produced by KYC News Inc. ("**KYC News**"). KYC News has avoided the ethical obligations of a media house by incorporating itself as a "business supplies and equipment company". KYC News has been sued multiple times for slander. The information produced by KYC News in relation to "Belvedere" has been quite obviously inconsistent, manipulated and untrue. Most of the other press reports in relation to this matter have been rehashes of the information published by KYC News in their newsletter although recently the recognised international media has started reporting on the involvement of deVere in orchestrating the destruction of our client's business.

7.1.5 It transpires that deVere was motivated by a desire to keep their multiple layers of fees (including the fees they take through Providence Life and UAM) secret from their investors. When their clients started to ask questions about the SGF structure and the drop in the NAV of SGF, it became obvious that deVere clients would soon realise that SGF was an unnecessary structure that served only one purpose – to skim additional fees for deVere – and that deVere, as the investment manager of SGF, was responsible for the drop in NAV. deVere therefore took the decision to obfuscate their control over UAM and to engineer criminal proceedings against our client and his associates so that they could be blamed. The FSC has very ably (although presumably unwittingly) assisted Mr. Green in implementing this plan. The fact of the matter is, however, that no such Ponzi Scheme existed and that had the FSC dealt properly with the allegations made, our clients would not have lost their business and investors would not have suffered.

## 8 SPECIFIC RESPONSES TO THE FSC LETTER

8.1 In this paragraph we have responded on behalf of Mr. Cosgrove to some of the specific allegations made in the FSC Letter. Given the embarrassing lack of detail in that document (as described more fully below), it is impossible for Mr. Cosgrove to mount a full defence to the allegations, Consequently, this letter does not purport to be a full reply to the FSC Letter and we reserve the right, on behalf of Mr. Cosgrove and the Companies, to supplement this response when the FSC deigns to respond to the queries and clarifications that we have previously sought.

8.2 The FSC Letter amounts to an attribution to Mr. Cosgrove of responsibility for alleged contraventions committed by the Companies. The Companies themselves have denied the allegations and presented argument to refute the allegations to which the FSC has never responded. We do not intend to repeat the allegations made by the Companies and refer the FSC to previous correspondence (copies of which are attached). We point out below only the most obvious flaws in the FSC's original allegations.

8.3 As noted, the FSC has presented no evidence whatsoever of any wrongdoing on the part of Mr. Cosgrove (as distinct from that of the Companies) and there is therefore no case for Mr. Cosgrove to answer.

8.4 **Paragraph 3 of the FSC Letter**

8.4.1 The allegations raised in this paragraph are embarrassingly vague and cannot be actioned given their vagueness and the FSC's refusal to clarify them. Certain of the claims by the FSC appear to have prescribed.

8.4.2 Mr. Cosgrove has not been a director of BML since 23 December 2011. We attach the following documents confirming this –

8.4.2.1 Register of Directors of BML; and

8.4.2.2 Annotated Draft Inspection Report compiled by the FSC dated 27 March 2013 which confirms the resignation at paragraph 9. Because Mr. Cosgrove was not a director of BML at the time the Draft Inspection Report was compiled, he has limited access to documents. Mr. Cosgrove obtained this document from BML and understands from BML that the annotations were inserted by BML's legal counsel, CA Law, who addressed all of the concerns raised by the FSC in the Draft Report.

8.4.3 BML passed a regulatory review by the FSC in November 2013. To the extent that any of the issues dealt with in the FSC Letter were raised with BML in a regulatory context after such clear review, Mr. Cosgrove was no longer in a position to ensure that any direction the FSC might have issues was implemented and cannot therefore be responsible for any breaches.

8.4.4 **Paragraph 3.1(a) of the FSC Letter**

8.4.4.1 The FSC does not mention the date on which the alleged infringement is alleged to have occurred.

8.4.4.2 However, we note that it was not possible for Mr. Cosgrove to have played any part in any infringement of the Code. This is because the Code came into force on 1 April 2012 - some four months after Mr. Cosgrove had resigned as a director of BML.

8.4.4.3 The Code in any event provides that "Non-compliance with the Code will expose the Licensee to regulatory action i.e. a direction under section 7(1)(b), section 46 of the FS Act or section 93 of the Insurance Act 2005 to observe the Code. Failure to comply with the direction shall amount to an offence." Our client is not aware of any direction ever having been issued against BML and in the absence of such direction, no offence can have been committed by BML.

8.4.4.4 Mr. Cosgrove understands from BML that this issue was in fact raised for the first time with BML sometime after Mr. Cosgrove had resigned (at the end of 2013 or during 2014) and that it was successfully resolved with by BML's legal counsel, CA Law.

8.4.5 **Paragraph 3.1(b) of the FSC Letter**

8.4.5.1 The allegations made by the FSC in this paragraph are so vague as to render the hearing void for lack of due process. The FSC does not state how BML breached the Circular or when such breach occurred. The FSC does not state any grounds for attribution of the alleged breaches to Mr. Cosgrove who denies that he played any part in any alleged infringement.

8.4.5.2 Mr. Cosgrove understands from BML that this issue was raised for the first time by the FSC in 2014 and that it was resolved in discussions between the FSC and BML's legal counsel, CA Law.

8.4.5.3 We note that BML is accused of breaching a circular.

8.4.6 **Paragraph 3.1(c) of the FSC Letter**

8.4.6.1 Circular CL030303 (the "**Circular**") does not create any legal obligations for BML. It is therefore not possible for BML to have breached the Circular. Not only does this follow from the nature of a circular, but it also follows from the drafting of the Circular. The Panel will note from the extract from the Circular set out below that, in relation to licensees, the Circular merely sets out what the FSC "would like."

> Accordingly, the FSC would like all Licensees to continue to submit their accounts in the style agreed by their respective auditors ("standard version"). In addition, we would like Licensees to restyle their figures in accordance with the format set out in Appendix 1 and 2 and to submit the restyled version with the standard version. The auditor should confirm (on the restyled version) that he has reconciled the figures with the standard version on which he has reported in the audited financial statements. The date should be added by the auditor. Please note that the

8.4.6.2 The only actual obligations created (to the extent that a circular can create obligations) lie with the auditor. BML's board of directors acted reasonably in employing a professional auditor and to the extent that the auditor breached the Circular, the FSC should, in the first instance have proceeded against the auditor.

8.4.6.3 The alleged infringement is, in any event, trivial and the FSC's reliance on this alleged infringement to impose the penalty is contrived. The FSC received audited statements for each of the years in question. The allegation is simply that BML's auditors failed to reformat the information they prepared. Such a trivial issue perhaps merited a direction to BML auditors and/or BML and certainly does not merit a finding that Mr. Cosgrove was not fit and proper.

8.4.6.4 We also note that the Circular refers to section 24(4)(a) of the Financial Services Development Act ("**FSDA**") which was repealed in 2007. There is no provision in the FSDA for the attribution to a director of BML of a failure to supply accounting information in the form prescribed in the Circular. Indeed the penalty prescribed in the FSDA is revocation of the management licence. This amounts to an error in law and in fact.

8.4.6.5 Mr. Cosgrove understands from BML that this issue was raised for the first time by the FSC in 2014 and that it was resolved in discussions between the FSC and BML's legal counsel, CA Law.

## 8.5 Paragraph 3.2 of the FSC Letter

### 8.5.1 Paragraph 3.2(a) – (d)

8.5.1.1 The board of directors of LGP acted reasonably in outsourcing these functions to BML and the FSC has previously verified the services BML provided in this regard. There is consequently no logical reason to attribute any alleged contraventions by LGP to its board, let alone to specific non-Mauritian members of the board only.

8.5.1.2 Whilst minor issues were identified in investigations by the FSC, these should have been dealt with by the issuing of directions.

8.5.1.3 Mr. Cosgrove cannot properly respond to these allegations without details of the alleged transgressions being presented and without Mr. Cosgrove being giving access to LGP documentation to address the issues. Mr. Cosgrove notes, however, that he understands that the main issue related to due diligence information being received from certain Isle of Man life insurance companies. These life insurance companies were invested in some of the funds on the LGP fund platform. Although the registered investor in the funds was the life insurance company, the FSC sought due diligence information from the policy holders. LGP requested this information from the life insurance companies but in terms of Isle of Man law prevented them from supplying the information to LGP. BML obtained letters to confirm this point and also reliable introducer certificates from the life insurance companies in question. This is not an issue that affects only LGP or BML as every Mauritian entity that has received investment from an Isle of Man life insurance company would be in the same position. It is an issue that needs to be dealt with between the FSC and its counterpart in the Isle of Man. Mr. Cosgrove understood that this issue was either resolved or was in the process of being resolved in discussions between BML and the FSC.

### 8.5.2 Paragraph 3.2(e)

LGP has vehemently denied these allegations and provided evidence that the expenses were indeed disclosed in the offer document that was approved by the FSC prior to distribution. Mr. Cosgrove understands that the nature of the FSC's complaint was the payments to Mr. Kenneth Maillard were not disclosed in the offer document. LGP noted in its response that Mr. Maillard was paid director's fees and that director's fees were indeed disclosed in the offer document. The FSC has not responded to LGP.

8.6 **Paragraph 3.3 of the FSC Letter**

8.6.1 **Paragraph 3.3 (a)**

8.6.1.1 Despite having been requested to supply such information, the FSC still does not specify which accounting records were incomplete, what time period such accounting records relate to or in what manner the records were incomplete.

8.6.1.2 The allegations made, even if true (which our client denies) are minor transgressions that should be dealt with by the FSC issuing directions to the FEP's auditors and/or FEP itself. They do not justify the penalties imposed.

8.6.1.3 The board of directors of FEP acted reasonably and diligently in relying on employees of FEP and the auditors to produce proper accounts containing all of the information that the FSC required.

8.6.2 **Paragraph 3.3.(b), (c), (d) and (e)**

Whilst we note that in paragraph (b) and (d), the FSC refers to "in many instances", this wording is not present in paragraphs (c) or (e). Once again, the FSC's allegations are so vague that our client's right to a fair hearing has been infringed. Our client cannot respond effectively to these allegations without them being properly presented to our client.

8.6.3 **Paragraph 3.4(a)**

8.6.3.1 The FSC does not specify which transactions were not recorded, what time period is involved or what information the FSC relied upon.

8.6.3.2 The allegation made, even if true, which our client denies, is a minor transgression that should be dealt with by the FSC issuing directions to the TSP. It does not justify the penalties imposed.

8.6.3.3 We also note that our client dealt comprehensively with this allegation in our letter to the FSC dated 22 July 2015 (a copy of which is attached as Annexure C) to which we have received no response. In that letter, we noted that, "The allegation is also made in relation to the Company without specifying if this allegation is in relation to the Company's assets and liabilities or those of the protected cells (see paragraph 1). This allegation against the Company appears to be disproved by the Notice itself since there are various references in the Notice to records of business activity maintained by the Company, including records that have been independently audited." Once again, the FSC did not respond.

8.6.3.4 The board of directors of TSP acted reasonably and diligently in outsourcing record keeping to BML, a professional service provider regulated by the FSC.

8.6.4 **Paragraph 3.4(b)**

As noted in prior correspondence, the FSC's findings are nonsensical since they refer to an NAV (singular) when TSP was a fund platform with multiple funds utilising the platform, each of which had its own NAV and offering document (each of which was approved by the FSC prior to launch of the fund). That said, TSP has shown that payments to Mr. Kenneth Maillard were indeed disclosed.

8.6.5 **Paragraph 3.4(c)**

8.6.5.1 As noted by TSP in previous correspondence -

8.6.5.1.1 "Each cell produces a net asset value ("**NAV**"), the Company itself has no NAV and the reference to the Company's NAV is therefore nonsensical making it impossible for the Company to show cause against the suspension in this regard. Whilst our clients have responded to those allegations which contain sufficient detail for them to be able to respond, and whilst they have gone beyond the text of the Notice in an attempt to interpret the Commission's meaning, the preponderance of unsubstantiated and vague allegations, renders the Notice intrinsically unfair and irregular in administrative law."

8.6.5.1.2 "Our clients ... note that it is impossible for the Company to respond properly to the allegation regarding "the NAV" as there is no single NAV for the Company and the Commission does not specify which protected cell's NAV the Commission is referring to."

8.6.5.2 The board of directors of TSP acted reasonably and diligently in delegating the calculation and auditing of the NAV to professional auditors who have never raised any issue of NAV manipulation. Despite offers from TSP to explain the accounting to the FSC, the FSC failed to contact TSP, Mr. Cosgrove or any of their representatives. The only logical conclusion that can be drawn from the FSC's decision in this regard, is that it did not want to understand the issues because these might have derailed its agenda to convict the Companies and/or Mr. Cosgrove. The inference must be that the FSC is not acting in good faith and has consequently forfeited its immunity from prosecution.

8.6.6 **Paragraph 3.4(d)**

As noted in our letter to the FSC dated 22 July 2015, "it is impossible for the Company to respond properly to the allegation regarding transactions between connected persons without information as to which transactions the Commission is referring to. We respectfully request, on behalf of our clients, that the Commission provide the names of the parties, details of the transactions, the dates thereof and the amounts so that the Company can respond." The FSC failed to ever provide such documentation.

8.6.7 **Paragraph 3.4(e)**

8.6.7.1 We note our response on behalf of TSP dated 22 July 2015, "It is impossible for the Company to respond to this allegation as the Commission provides no detail of (1) which protected cell(s) it is referring to; (2) which application form it is referring to; and (3) which funds the Commission is referring to. On behalf of our clients, we respectfully request that you supply the Company with details of these transactions in order to enable our client to respond." The FSC never provided the requested details.

8.6.7.2 We also noted that "In the context of a multi-jurisdictional business with hundreds of investors who are reticent to provide information and a set of regulations in Mauritius that are unclear, our clients submit that absolute compliance at all times is very difficult, if not impossible. The Company also notes that it had taken legal advice form Mauritian counsel in relation to the

matters in question and was assured that it was in compliance with all Mauritian laws. The allegations of non-compliance stem mainly from a difference of opinion between the Company's local counsel and the Commission." The board of directors of TSP acted reasonably and diligently in taking legal advice and following that legal advice.

8.7 **Paragraph 3.5 of the FSC Letter**

8.7.1 **Paragraph 3.5 (a)**

8.7.1.1 Mr. Cosgrove notes that although all of the directors of RDL, over some period of time, were apparently found to have served their own interests to the detriment of those of the investors, the FSC has not sanctioned all of the individuals who were directors during that time period.

8.7.1.2 Despite requests by RDL and Mr. Cosgrove for such information, the FSC has not provided any details of which CIS the investors in question were invested in, how the directors of RDL benefitted personally and how the investors were detrimentally affected.

8.7.2 **Paragraph 3.5 (b)**

Despite requests by RDL for details of the "identified breaches", no such information, has been provided by the FSC. As noted, there were multiple funds on the LGP and FEP fund platforms and hundreds of investors. Without the requested information, it is impossible for the Companies or Mr. Cosgrove to respond.

8.7.3 **Paragraph 3.5 (c)**

Despite requests by RDL for details of the alleged contraventions of the CIS Regulations, no such information, has been provided by the FSC. As noted, thousands of investments were made in the entities managed by RDL. It is therefore necessary that the FSC provide more precise information if Mr. Cosgrove is to be able to exercise his rights.

8.7.4 **Paragraph 3.5 (d)**

The reference to "grounds to believe" in this paragraph is unclear. The FSC cannot find RDL guilty of any offence on the basis of a belief. The allegations against RDL would need to be proven on the basis of evidence. A comprehensive explanation of alleged manipulation has already been given by RDL in relation to one of the funds (MBMG) and Mr. Cosgrove strenuously resists the slanderous statement that there was any such manipulation. We note that none of the investors, nor the investment advisor, nor that auditors have raised any allegation of breach of the offering memorandum or that there was any manipulation of the NAV of any fund despite being aware of all related documents.

8.7.5 **Paragraph 3.5 (e)**

Mr. Cosgrove cannot exercise his rights in regard to these allegations without knowing which records are involved, when the breaches occurred and what directions the FSC issued to resolve these alleged breaches and which of the hundreds of cells that RDL managed are involved.

8.7.6 **Paragraph 3.5 (f)**

8.7.6.1 There appear to be typos in this paragraph which make it difficult to understand.

8.7.6.2 In its letter of 6 April 2015, RDL dealt comprehensively with issues surrounding certain loans by CIS's that it managed. The FSC has never reverted to RDL in relation to this information. Mr. Cosgrove cannot exercise his rights in regard to these allegations without having further details of the loans the FSC is referring to.

8.7.6.3 The allegations regarding the loans are nonsensical for the reasons already disclosed to the FSC. There are circumstances where a loan given on the terms listed in paragraph 3.4(e) are perfectly arm's length. This would, for example, be the case where the lender is also the beneficial owner of the CIS.

Yours faithfully
**WERKSMANS ATTORNEYS**

Per :
**LOUIS DU PREEZ**

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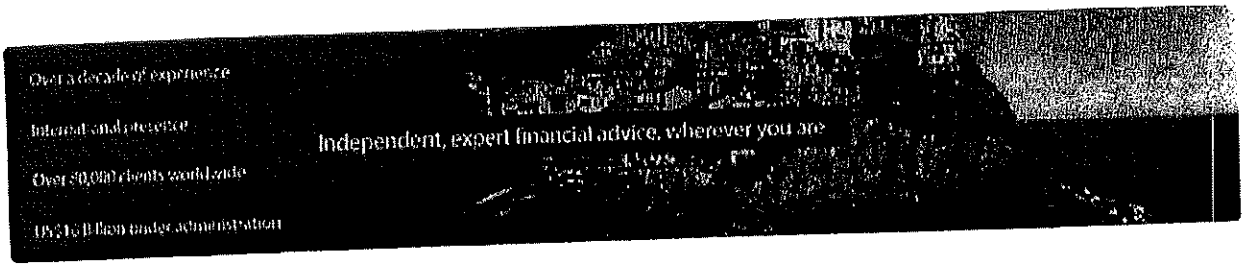


# News



25 Mar, 2015

## deVere reveals its role in exposing alleged investment fraud

One of the world's largest independent financial advisory organisations today revealed it helped a U.S. based investigative financial news service expose what could be one of the world's biggest-ever frauds in order to protect investors and try to recover assets

deVere Group confirmed it provided evidence of wrongdoing to Miami-based OffshoreAlert, run and managed by investigative journalist David Marchant, to highlight the alleged shady dealings of Mauritius-based Belvedere Management Group

OffshoreAlert describes Belvedere as "an essentially criminal enterprise" saying it has evidence of "funds that are blatantly fraudulent, including a current $130 million Ponzi scheme in Cayman" and "Funds that simply disappear or fail in dubious circumstances, including the £400 million Harlaquin Property Fund that has been unraveling over the last few years."

A deVere Group spokesperson says: "deVere Group welcomes the investigation into Belvedere Management Group. We're pleased to support the work being carried out by OffshoreAlert, championing the progress being made by the authorities and agencies investigating this matter, and are happy to continue to provide evidence of wrongdoing when we find it.

"We suspect that this case could turn out to be one of the largest financial scams in history and we will do whatever is necessary to recover value lost by investors worldwide."

He continues: "deVere, other brokerages, and clients across the world, have been badly let down by the custodians, namely the administrators and fund managers, of these funds.

"We are deeply concerned that alarm bells were not rung before now by those who had an overview of the situation. It has come to light that there were seemingly clear warning flags and that these seem to have been ignored by professional service providers trusted by deVere and other brokerages.

"We urge all those who have any information regarding this case to report it directly to the authorities.

"Additionally, we're calling on all stakeholders in the financial services industry to work more closely together to ensure that this does not, and cannot, happen again.

"This case must act as a catalyst to drive up client protection and wider industry standards."

The deVere spokesperson explains the reason for the organisation's interest: "Like many other international brokerages several years ago deVere was approached by the fund manager of a Belvedere-administered fund to invest in the Strategic Growth Fund.

"At the time, Strategic Growth Fund (SGF) was described as 'best of breed'. It was outperforming the market in the early years at the time of any client introductions and all due diligence was carried out by deVere, other brokerages and life companies.

"However, from 2011, the Strategic Growth Fund considerably underperformed and clients were advised to withdraw. In early 2013 the deVere CEO issued a memo to all his managers advising them to ask clients to withdraw from the Strategic Growth Fund. A few days later the fund administrator suspended the fund due to, it can be reasonably assumed, the many withdrawals from deVere clients.

"Some of this fund has since been released and some of our clients, fortunately, withdrew before the fund was frozen.

"We are hopeful that the reported police investigation will result in assets being recovered for the benefit of investors.

"From the in excess of a reported 120 or so funds, this is the only Belvedere-administered fund in which deVere clients were invested.

"Although a relatively small number of our clients have been affected by this, even one would have been one too many. We will continue to use our resources and best endeavours to help bring this situation to a satisfactory close for our clients."

Detailed information can be found in the original OffshoreAlert article.

deVere Group CEO Nigel Green, was interviewed on the main evening news on Business Day TV, a national news network in South Africa, to keep clients abreast of developments in the investigations into the alleged shady dealings of the Cobus

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| An offshore fund group that claims to have $16 billion of assets under administration, management and advisory is littered with red flags that suggest thousands of investors around the world are being swindled, OffshoreAlert can reveal.<br><br>Mauritius-based Belvedere Management Group administers at least 125 offshore hedge funds, manages or advises many more, and owns and operates dozens of other companies involved in fund administration, securities broking, life insurance, investment management and investing in several jurisdictions, including Mauritius, Guernsey, British Virgin Islands, Cayman Islands, Gibraltar, Switzerland, Seychelles, South Africa, Panama, and England.<br><br>The group is controlled by 54-year-old Irish consultant David Cosgrove, South African fund manager Cobus Kellermann, and 42-year-old Mauritian accountant Kenneth Maillard.<br><br>An investigation by OffshoreAlert indicates they head one of the biggest criminal financial enterprises in history. Assisting them are professional service providers who are willfully complicit or grossly negligent, leaving themselves exposed to massive liabilities when the group inevitably collapses. | First of all, there is no Belvedere Management Group and this entity must not be confused with Belvedere Management Limited.<br><br>Belvedere Management Limited ("BML"), holds a management licence from the FSC. It is not part of any group of companies. As a Management Company, it incorporates and provide administration and secretarial services to multiple companies.<br><br>Lancelot Global PCC and Four Elements PCC are clients of BML and for which BML acts as administrator.<br><br>More importantly, Lancelot Global PCC and Four Elements PCC are collective investment schemes and by law, i.e securities act, they must have a duly licenced administrator which is the Management Company. This is why BML acts as the administrator.<br><br>The reports of the Commission never refers to any act of swindling. The reports of the Commission is limited to issues of deficiencies in due diligence requirements, conflicts of interest and unsecured loans.<br><br>Moreover, all the Funds have been audited, and there have not been any negative audit comments.<br><br>Also, this is was not an investigation. It was an article published by OffshoreAlert against remuneration received.They were paid by competitors to publish this article.<br><br>This article centers around eye-catching allegations and general statements. The aim is to impress common people.<br><br>However, professionals in the sector would not be convinced and a careful examination of the article would reveal the baseless and unfounded allegations. |
| Evidence of wrongdoing uncovered by OffshoreAlert includes:<br><br>· Funds that are blatantly fraudulent, including a current $130 million Ponzi | The FSC has had the opportunity to review the files of Four Elements and Lancelot.<br><br>The FSC had full access to all bank accounts of the Companies and could see by itself flow of funds in the companies. This exercise |

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| scheme in Cayman;<br><br>· Funds that simply disappear or fail in dubious circumstances, including the £400 million Harlequin Property Fund that has been unraveling over the last few years;<br><br>· False Net Asset Values that deceive investors into believing their money is growing;<br><br>· Investors unable to make redemptions;<br><br>· Misappropriation of millions of dollars by insiders via a web of offshore companies;<br><br>· Related-party transactions that are used to strip out cash and artificially inflate assets;<br><br>· Conflicts of interest galore, which enable insiders to conceal their illegal activity;<br><br>· Material omissions and false statements in offering documents and marketing material; and<br><br>· Three years ago, a fund manager was shot and killed in South Africa by his ex-business partner who then committed suicide after a Belvedere-related R3.1 billion Ponzi scheme collapsed. | was being conducted since 2013. In all, the FSC must have conducted at least 3 inspections of the files of the Companies.<br><br>At no time, the matters revealed by Offshore Alert were picked up by the FSC.<br><br>GBP400 million i.e MUR 22 billion. How come MUR22 billion vanishes. In fact, the total amount of investment made by the Caldora Property Fund in the Harlequin Property Fund is less than USD1m.. This is purely speculative.<br><br>There was never an investment of MUR 22 billion in Harlequin and such amount cannot disappear without leaving any trace.<br><br>The Net Asset Values have all been audited and confirmed by an independent third party<br><br>All accounts of the Companies were audited.<br><br>The article refers to "evidence of wrongdoing". Where is the evidence? The articles contains only general statements.<br><br>We will deal in detail with each allegation further below.<br><br>Belvedere Management had NOTHING to do with the Pretorius scheme. One Fund administered by Belvedere Management co invested with Bassiliues and the partner of Bassiliues was shot by Pretorius. The way in which this was written suggested wrong doing by Belvedere Management but Belvedere Management had nothing to do with Pretorius |
| Operating since at least 2008, there are signs that Belvedere Management Group is on the verge of collapse.<br><br>Earlier this month, the City of London Police's fraud squad raided the London office of the group's forex division, CWM FX, as part of a criminal investigation into what a source said was a Ponzi scheme totaling at least £100 million. CWM is headed by London-based Anthony Constantinou, 33, who is a former "Financial Manager" of Belvedere Management, according to his | Mr. Anthony Constantinou is listed as being the former Financial Manager of Belvedere Management. This is totally false. Mr. Anthony Constantinou has never been employed by BML.<br><br>Mr. Anthony Constantinou is totally unrelated to BML, Four Elements PCC and Lancelot Global PCC.<br><br>In fact, the Minister of Financial Services and Good Governance has stated in Parliament that there is no link between the events that took place at CWM and the companies under BML. |

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| profile on LinkedIn. On the "Our Group" page of one of CWM's web-sites at www.cwmsecurities.com, CWM lists Mauritius-based fund administrator Belvedere Management Limited and several related companies in Mauritius, Guernsey and Switzerland.<br><br>Research by OffshoreAlert showed that, among other things, CWM operates 20 sub-funds within Cayman Islands-domiciled umbrella fund Brighton SPC, which was formed on May 15, 2014. All carrying the "CWM" prefix, there's a fund each for Albania, Asia, Dubai, Gibraltar, Gold, Gurkhas, Hong Kong, India, Ireland, Italy, Malaysia, Nepal, Philippines, Platinum, Silver, Singapore, Spain, Solutions, Thailand and Ventures. CWM also has five sub-funds in Guernsey under The Global Mutual Fund PCC | Also, there are various articles on the internet showing Mr. Anthony Constantinou as a high profile person. His company is the official sponsor of Chelsea Football Club. |
| Another sub-fund of Brighton SPC that is one of Belvedere Management Group's flagship funds and lauded in the financial media as a success story appears to be a crude Ponzi scheme. In promotional material, the Kijani Commodity Fund claims to have never had a losing month since it was launched in Mauritius in 2011, purportedly returning 44.18% in 2011, 19.36% in 2012, 16.24% in 2013, 21.44% in 2014 and 1.86% in the first two months of 2015, with investors shown a 'performance chart' that consists of a diagonal line trending upwards - which is a defining characteristic of a Ponzi scheme. The Fund claims to be $130 million in size.<br><br>Kijani moved from Mauritius to Cayman last November - one month after the Mauritius Financial Services Commission issued a "Warning" against two of Belvedere's main investment vehicles, Four Elements PCC, of which Kijani was a sub-fund, and Lancelot Global PCC, which have claimed in the recent past to have more than $600 million under administration on behalf of dozens of | We need to highlight that the author of the article uses the word "appears". This is explicit. It was just an appearance and stated at face value without any substantial evidence.<br><br>The author does not even mention the facts on which he relies to draw such conclusion. |

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| sub-funds. "On the basis of the findings of the investigation conducted at the registered office of the Company, and in accordance with its functions to protect consumers of financial services, the FSC Mauritius has initiated enforcement actions against the Company," stated the regulator in identically-worded public notices for Four Elements and Lancelot Global on October 20, 2014. | |
| The FSC's investigation began following a complaint the previous year by investors in one of the group's Guernsey-domiciled feeder funds, The Global Mutual Fund PCC Limited, that they could not make redemptions and their suspicions that approximately £18 million of their £30 million total investment may have been misappropriated. | It is correct to state that the FSC started its investigations as far back as July 2013.<br><br>Also, even if investors in the Global Mutual Fund PCC have made any complaints, the complaints were directed against that Fund and not the Mauritius Companies.<br><br>The FSC never raised any issue as to complaints from investors in a Cayman Fund. In fact the only complaint of the FSC relating to Global Mutual Fund PCC was that Lancelot Global PCC and the Four Elements PCC did not hold appropriate KYC documents on that Fund. |
| Investors discovered, among other things, that Belvedere Management Group conducted a related-party transaction in 2010 that appeared to grossly inflate an asset on the books of two of their funds, Kwanda African Growth Fund and Achilles High Yield Fund, as part of a scheme to defraud investors. In the transaction, one group company bought the asset - a 74,000 acre farm in Western Cape Province, South Africa - from another group company for R73 million, which, according to an independent valuation expert hired by investors, was at least 62% higher than its fair market price as of 2012. The Guernsey Financial Services Commission is also investigating the apparent fraud after investors complained | The article states that "investors discovered". Who are those investors? There has never been any complaint against the Mauritius Companies. Why would they launch an investigation if prior to that article, there were no cause for alarm?<br><br>Firstly the farm was not 74 000 acre farm. Secondly a full reconciliation has been provided to the FSC and also PWC. The valuation is standard practice and was approved by the South African and Mauritian auditors for the respective Fund/company<br><br>Now, no identification is given as to the group company involved. Just mere allegation.<br><br>**More importantly, 74000 acre for R73 million rand means that one acre cost R986 i.e RS 2500 per acre. And the author dares saying that this is exaggerated.** |

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| As part of its regulatory action, the Mauritius FSC prohibited Four Elements and Lancelot Global from accepting new business until further notice, apparently prompting Kijani to bolt for Cayman. In all, Kijani operates nine sub-funds through Brighton SPC in its new home. | |
| Despite the ban on new investors, when OffshoreAlert posed as a potential investor for The Swiss Asset Micro Assist Income Fund, which is a sub-fund of Lancelot Global PCC and also has a performance chart suggesting it is a Ponzi scheme, we were emailed the prospectus and subscription information in January of this year - nearly three months after the Fund was supposed to have been suspended.<br><br>Martin Bennett, the Hong Kong-based "Head of Distribution" for SAMAIF, Kijani Commodity Fund, and other Belvedere Management Group funds, told OffshoreAlert undercover that SAMAIF was "not accepting new direct applications" at that time but helpfully explained that we could get around this obstacle by investing "indirectly via one of the life companies or other such approved platforms". The platform he recommended was ePortfolio Solutions, which is a cell of Mauritius-domiciled Belvedere Life Limited PCC, one of Belvedere Management Group's many companies.<br><br>Conflicts of interest abound within the Belvedere Management Group and Bennett is no exception. On Kijani Commodity Fund's web-site, BVI-domiciled Drake Fund Advisors is described as Kijani's "Independent Administrator", yet the contact person for Drake is identified as none other than Martin Bennett, who describes himself as the "Head of Distribution at Kijani Commodity Fund" in his LinkedIn profile, while he is also listed as the contact person for Belvedere Management Ltd. on another | The author seems to suggest that BML, Lancelot Global PCC and Four Elements PCC had breach the restriction imposed by the FSC.<br><br>Attention is here drawn to the fact that the Article never says that Offshore Alert had actually been able to invest in the Companies.<br><br>In fact, there have never been any investments in the Funds from anyone directly or indirectly related to Offshore Alert. |

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| web-site. | |
| Meanwhile, Kijani's investment manager, investment adviser and administrator before it moved to Cayman were all controlled by David Cosgrove, who also served as a director of the Fund. There are similar conflicts in the hundreds of hedge funds that Belvedere Management Group has administered, managed or advised over the last seven years as Cosgrove and his accomplices rake in fees and attempt to avoid independent scrutiny.<br><br>In a Kijani Commodity Fund brochure created on May 5, 2012, it was claimed that "Daily Dealing and weekly Valuation of Fund Assets carried out by independent FSC regulated Fund Administrators, Belvedere Management Limited", notwithstanding the fact that Belvedere was not independent. In the same brochure, Belvedere was described as "a leading independent administrator for +/- 440 funds". | This paragraph revolves around potential conflicts of interest situation. There is nothing in the law which prohibits conflicts of interest from arising. What is important however is how one deals with such situations.<br><br>Disclosure is the rules. In the PPM of the Funds, the principals of the various functionaries of the Funds have been clearly disclosed.<br><br>More importantly, all functionaries are licenced by the FSC. When the licences were granted, the FSC was fully aware that the directors on BML, Lancelot Global PCC and Four Elements PCC and the CIS Manager of those funds were the same persons.<br><br>In fact, directors of Management Companies acts as directors of all GBCs under its administration. This is also a requirement of the law. The FSC is fully aware of this.<br><br>Directors of Management Companies acts as directors of client companies resulting in some people being directors of more than 600 companies. |
| One of the most bizarre incidents in a seemingly-endless history of fraud and failure for Belvedere Management Group occurred in South Africa in 2012 when Justin Williams, CEO of private equity firm Basileus Capital, was shot and killed by his former business partner, Herman Pretorius, who then shot himself dead. According to Moneyweb news service in South Africa, Pretorius had perpetrated a R3.1 billion Ponzi scheme. Belvedere Management Group was the majority investor in Johannesburg Stock Exchange-listed private equity fund BK One whose entire R200 million portfolio was invested with Basileus, reported Moneyweb. It appears that, on the day of the killings, a company controlled by Belvedere's Cobus Kellermann sold its entire stake in BK One to Belvedere's investors - | The articles starts by saying that this is the **most bizarre.** It should therefore be treated with caution.<br><br>This is false and there are documents to prove this is false. The FSC has sight of these including the liquidator of the Pretorius estate confirming that Belvedere Management had NOTHING to do with the Pretorius scheme. One Fund administered by Belvedere Management co invested with Basiliues and the partner of Basiliues was shot by Pretorius. The way in which this was written suggested wrong doing by Belvedere Management but Belvedere Management had nothing to do with Pretorius<br><br>The gist and purport of those allegations are irrelevant. Is the author suggesting that BML are behind the murder and suicide?? |

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| before the price collapsed. | What is the relevance of this paragraph to apparently a ponzi scheme in Mauritius?<br><br>To be noted: investment was made in a company listed on the Johannesburg Stock Exchange i.e not a fictitious company.<br><br>This again shows the inconsistency of the article. On the one hand, it talks about Ponzi and on the other hand, it refers to genuine investments. |
| In response to questions from OffshoreAlert asking about what we referred to as "essentially a criminal enterprise", David Cosgrove responded with: "Thank you for the email dated 17 March 2015 and note the contents raised. In the time deadline given to us we unable to provide a comprehensive response. However, we are obtaining the necessary materials in order to provide a comprehensive response which, we will provide shortly."<br><br>Cobus Kellermann, Kenneth Maillard and Anthony Constantinou did not respond to questions that were sent to them. | It is important note that we were given only two hours to reply to the email from Mr. Marchant. We have not tried to shirk the questions. What we have requested is some more time. Two hours was not enough.<br><br>However, Mr Marchant was not interested in our explanations. In fact, any explanation would have undermine the sensation that he intended to create. He needed to sell an article to **his paid subscribers.**<br><br>Whatever explanation that could have been given would in any case have been futile. |
| Despite an abundance of red flags, Belvedere Management Group has no problem persuading offshore firms to provide it with services.<br><br>For example, according to its prospectus, Brighton SPC's directors are David Egglishaw and John Cullinane, who own and operate Summit Management Limited in Cayman; its auditor is BDO Cayman Ltd., its legal advisor is Harney Westwood & Riegels (Cayman), its administrator is Drake Fund Advisors Limited, and its investment manager is Premier Capital Managers Ltd., both of which are domiciled in the BVI and, according to Brighton SPC's prospectus, are beneficially-owned by offshore services | The only conclusion to be drawn here is that only Mr Marchant is the intelligent guy.<br><br>The rest of the service providers, leading accounting and law firms and prominent personalities mentioned in the article are just sheep being brought to altar |

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| provider Osiris Group Holdings Ltd. Kijani's web-site at www.kijani.com identifies its custodian as Sparkasse Bank Malta Plc and its investment adviser as Straffan Asset Management Limited, a British firm, which is owned and operated by 43-year-old Irish national Conor McGrath.<br><br>Other service providers for the group's various funds have included The Mauritius Commercial Bank, Ernst & Young, HSBC, BDO, Mauritius International Trust Company, Eversheds, Mahons law firm, all of Mauritius; Deutsche Bank, Barclays Wealth, The Royal Bank of Canada, Fund Corporation of the Channel Islands, Bedell Cristin law firm, Collis Crill law firm, KPMG, Pannells auditors, Bordeaux European Managers Limited, Bordeaux Services (Guernsey) Limited, ATC Trustees, Praxis Fund Services, all of Guernsey; Pershing LLC, Castle Harbour Securities, both of England; and Leverate Financial Services Limited, of Cyprus, to name but a few. Belvedere Management Group-controlled funds have been listed on the Mauritius Stock Exchange, Channel Islands Stock Exchange, and Johannesburg Stock Exchange, while Kijani Commodity Fund has announced it intends to list on the Cayman Islands Stock Exchange.<br><br>Individual service providers who have served as directors of funds include Paul Everitt, Daryn Hutchinson, Donna Francis, Neal Meader, Ian Parry, Peter Radford, Christopher Meredith, John Mather, Stephen Cuddihee, all of Guernsey; while BVI-based British national Julie Lamberth-Dawson, who is an officer within the Osiris Group, is a director of Brighton SPC's/Kijani Commodity Fund's investment manager, according to an offering document. | |
| Belvedere Management Group comprises a sprawling web of companies in several jurisdictions, including, but not limited to: | The FSC has in the recent past conducted investigations/inspections on some of the Mauritius entities listed in this paragrapgh. |

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| Belvedere Management Limited, Belvedere Life Limited PCC, RDL Management Ltd., Teleraka Investments Ltd., Theseus Property Fund Limited, Belvedere Fund Manager Limited, CityGate Securities Ltd., Generation Life Ltd., E-Portfolio Solutions Ltd., The Caldora International Fund PCC Limited, and DRSL Management Ltd., all of Mauritius; London Asset Management Company Limited and Lancelot Management Limited, both of Guernsey; Brilliant Investment Group Sarl, United Asset Management Sarl, Lancelot Management SARL and Stonewood FX Management SARL, all of Switzerland; and Clarus Asset Managers (South Africa).<br><br>The group's umbrella funds and conventional funds include Abroad Spectrum PCC Limited, The Global Mutual Fund PCC Limited, The Universal Mutual Fund ICC Limited, and The Worldwide Mutual Fund PCC Limited, all of Guernsey; The Four Elements PCC, The Two Seasons PCC, Lancelot Global PCC, Venture Assets PCC, Rejuvenation PCC Limited, Melampus PCC Limited, Generation Life Benefit Fund, and Apollo Managed Strategies Fund Limited, all of Mauritius. | All those entities were cleared by the FSC. |
| Apart from David Dawson Cosgrove, Jacobus Everhardus Kellermann and Jean Georgy Kenneth Maillard, other individuals who hold or have held senior positions within the group include Laval Law How Hung, a 52-year-old software developer in Mauritius who is also identified as "Finance Director" of Belvedere Management Limited; Marie Michele Francess Henriette, Rajindersingh (Ashwin) Borthosow, Deepak Ruhee, Sachin Bundhoo, programmer; and Vishal Munisami, who has the dubious distinction of being Belvedere Management's "Compliance Officer". | One point to highlight is that Laval Law How Hung is not a software developer in Mauritius. |
| In an admission document dated November 12, 2014 by British 'medical research' firm Fulhold Pharma Plc, of which Cosgrove is a | How is this paragraph relevant or suggestive of a Ponzi scheme in Mauritius. |

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| non-executive director, to be quoted on the Over-The-Counter segment of GXG Markets, a European regulated market, Cosgrove's directorships, as of July 1, 2014, were listed as **Mauritius:** RDL Management Ltd., Teleraka Investments Ltd., Dawson Investments Limited, Belvedere Life Limited PCC, The Two Seasons PCC, The Four Elements PCC, Lancelot Global PCC, Blazingchilli Limited, Absolute Leisure, Soundview International Ltd., Caldora Asset Management Limited, Pelham International Limited, Medivic Limited, Caldora International Fund Limited PCC, Venture Assets PCC, MelampusAsset Management Limited, and Melampus Protected Cell Company Limited; **Guernsey:** Lancelot Management Limited, Abroad Spectrum PCC, Global Mutual Fund PCC, Universal Mutual Fund ICC Limited, Worldwide Mutual Fund PCC, Strategic Holdings Limited, and The Diversified International Markets Company Limited; **Switzerland:** Belvedere Management SARL, Lancelot Investments SARL, Stonewood FX Management SARL, Liquidite Capital Partners SARL, Independent Distribution Partners SARL, Belvedere Nominees Ltd., Selentium Capital SARL, Aeon Asset Management SARL, Ronson High Voltage SARL, Elequip Trading SA, High Voltage Diagnostics SARL, and Prosperitas Holdings SARL; **Jersey:** Helvezia Limited;**Seychelles:** Stonewood Holdings Limited; **British Virgin Islands:** Tristram Investments Limited, Kim Properties Limited, Podmore Investments Limited, Relative Investments Limited, Chesham Properties Holdings Limited, Opson (BVI) Limited, Foxglove Capital Resources Limited, Oxio Limited, Mabson Limited, Absolute Leisure Limited, Arneberg Limited, Densford Limited, International Assignments Limited, Worldwide Assignments Limited, Rainstone Investments Limited, Almanac Trade and Finance Limited, Trade Finance Company, Bellhouse Limited, Maybridge Investments | He is a director of various companies including prominent listed companies. Does the fact of holding numerous directorships mean that this is a Ponzi. |

| | |
|---|---|
| Limited, Building Solutions Limited, Ful Hold Limited PfeinsmitH Limited, Seprex Limited Benjamin Universal Limited, Vanjon Investments Limited, Venture Assets Cell No.19 Limited, Venture Assets FXCR VA 23 Limited, Venture Assets JS VA 31 Limited, Venture Assets NBVA 8 Limited, Venture Assets NK VA 32 Limited, and Venture Assets SAAE VA 28 Limited; **Gibraltar:** Wayne Enterprise Ltd.;**Cayman Islands:** Guilford Exploration Limited, and Guilford Limited; and **United Kingdom:** Fulhold Pharma Plc, Umex Trade Bridge Plc, Umex Trade Bridge Plc and First Fish Ventures Plc. | |
| | |

BELVEDERE
MANAGEMENT LIMITED

# Register of Directors

| | | | | |
|---|---|---|---|---|
| **Name:** | David Dawson Cosgrove | | **Name:** | Jean Georgy Kenneth Maillard |
| **Nationality:** | Irish | | **Nationality:** | Mauritian |
| **Residential Address:** | Unit C8, Cape Bay Beach Resorts | | **Residential Address:** | Froberville Lane |
| | Coastal Road, Bain Boeuf, | | | Allee Brillant |
| | Cap Malheureux | | | Phoenix |
| | Mauritius | | | Mauritius |
| **Occupation:** | Director | | **Occupation:** | Director |
| **Date of Appointment:** | 24th September 2008 | | **Date of Appointment:** | 24th September 2008 |
| **Date of Resignation:** | **23rd December 2011** | | **Date of Resignation:** | N/A |

D

*FSC Ref: S/GB/MC/ONSITE/MC/BELVEDERE/MC08000073-L27C13NN/JS1*
*Please quote our reference in your reply.*

27 March 2013

The Director
BELVEDERE MANAGEMENT LIMITED
7A, 7th Floor Ebene Mews
57 Ebene Cybercity
Ebene

Dear Sir

**BELVEDERE MANAGEMENT LIMITED ("the Management Company")**
**Draft Inspection Report 2012 (the 'Report')**

The Financial Services Commission (the 'Commission') conducted an on-site inspection at the premises of the Management Company on 16 October 2012 and noted several deficiencies that have implications on its good standing. The Commission also noted further deficiencies following an off-site review of the Management Company. The findings of the on-site inspection and off-site review are highlighted in the enclosed Report.

The Report is attached for two purposes - firstly to enable you to see the outcome of the inspection visit and secondly to enable you to comment on the findings of the inspection and the off-site review (please use the space in the soft copy provided for your comments). Any comments that you make (together with any counter comments that the Commission may make) will be incorporated in the final version of the report – a copy of which will be sent to you for your records. Please note that your comments should reach the Commission at the earliest.

***Lastly, please note that the report is confidential and its contents should not be disclosed to any third party without the prior written consent of the Commission.***

Yours faithfully

**S. Doongoor**
***Head, Surveillance (Global Business)***

**Belvedere Management Limited (the "Management Company")**
**Draft Inspection Report 2012**

1. The Financial Services Commission (the "Commission") conducted an on-site inspection at the Management Company on 16 October 2012.

## BACKGROUND

2. The Management Company was incorporated on 24 September 2008 and licensed by the Commission as a Management Company on 03 November 2008 under Section 77 of the Financial Services Act 2007 (the 'FSA').

3. As per our records as at the date of the on-site inspection, the shareholders of the Management Company were Mr. Maillard Jean Georgy Kenneth, Mr. Laval Law How Hung and Stonewood Holdings Limited.

4. The board of directors comprised two Executive Directors namely Mr. Maillard Jean Georgy Kenneth and Mr. Laval Law How Hung with Mr. Maillard Jean Georgy Kenneth also acting as the Company Secretary.

## STRUCTURE OF THE INSPECTION REPORT

5. The findings of the on-site inspection are highlighted in the inspection report and are categorized as follows:

   A. Non-compliance with the Financial Services Act 2007 (the "FSA");
   B. Non-Compliance with Circular Letter;
   C. Non-compliance with the Code on the Prevention of Money Laundering and Terrorist Financing; and
   D. Other discrepancies

6. The Examiners have hereunder highlighted the deficiencies under each of the above headings.

## (A) NON-COMPLIANCE WITH THE FINANCIAL SERVICES ACT 2007 (the 'FSA')

7. The Examiners noted with concern that the Management Company did not seek the Commission's prior approval for the appointment of Mr. Deepak Ruhee as Fund Operation Manager as required under 24(1) of the FSA.

8. The Commission requested for the particulars of the resignation of Mr. Cosgrove David Dawson as Director of the Management Company in its letter dated 11 January 2012 pursuant to Section 24(6) of the FSA. Since the Management Company did not attend to the Commission's letter, the Examiners queried about the said resignation and were informed that the latter resigned due to conflict of interest. The Commission would be grateful for the circumstances that gave rise to the conflict of interest.

9. Also, please inform the Commission about the effective date of the resignation of Mr. Cosgrove David Dawson as Alternate Money Laundering Reporting Officer.

Management Company's Comments

We shall ensure that the Commission prior approval is sought before the appointment of any officer as required under section 24(1) of the FSA going forward.

The conflict of interest relates mainly to the collective investment schemes under the administration of Belvedere Management Limited. Prior to Mr Cosgrove resignation from Belvedere Management Limited, Mr Cosgrove was a director of the Administrator (Belvedere Management Limited), the Manager (RDL Management Limited) as well as director on the several collective investment schemes administered by the Administrator. While the Board of the collective investment schemes had taken all precautions to avoid any potential conflicts through establish conflicts of interest procedures where inter alia Mr Cosgrove would abstain from voting or to take part in a decision where such involvement might lead to potential conflicts, Mr Cosgrove had requested that his resignation as director of the Administrator (i.e. Belvedere Management Limited) be accepted in the best interest of the investors of the collective investment scheme more particularly with regard to the perception of investors as regard Mr Cosgrove involvement in the decision making process of the Administrator.

The effective date of Mr Cosgrove resignation is 23 December 2011.

## (B) NON-COMPLIANCE WITH CIRCULAR LETTER

10. The Examiners noted with concern that the Management Company did not revert to its letter dated 26 July 2011 whereby it was required to submit Appendices for the years ended 31 December 2009 and 31 December 2010 as required by our Circular Letter - CL030303.

11. This issue was addressed during the on-site inspection and a copy of the Circular Letter was even sent by email to the Compliance Officer, Mr. Borthosow Rajindersingh, on 16 October 2012. However, the requested documents have still not been filed with the Commission.

12. The Management Company is required to submit the Appendices for the years ended 31 December 2009, 31 December 2010 and 31 December 2011 (duly dated and signed by the Auditor) **within 7 days of the date of this letter** and ensure in future that these Appendices are duly submitted along with the audited financial statements.

13. You are also required to submit **within 7 days of the date of this letter** the following:

    a) An explanation as to why the Management Company failed to submit the appendices; and
    b) Confirmation in writing that the Management Company is taking immediate action to remedy the breach and notify the Commission of any action taken.

Management Company's Comments

We enclose herewith the Appendices for the years ended 31 December 2009, 31 December 2010 and 31 December 2011 for your attention. We apologise for the failure to submit the previous years Appendices which was due to an oversight at our end. We will ensure that that these Appendices are duly submitted along with the audited financial statements in future.

## (C) NON-COMPLIANCE WITH THE CODE ON THE PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING (the "Code")

14. Under Section 3.3 of the Code, the designation of an Alternate MLRO must be duly notified to the Commission. However, the Examiners only came to know about the identity of AMLRO after the on-site inspection.

15. Under Section 4.1 of the Code, the Management Company must, when establishing a business relationship with an Applicant for Business and on an ongoing basis, apply appropriate Customer Due Diligence measures on the business relationship, including identifying and verifying the identity of the Applicant for Business. Further, FIAML Act requires the Management Company to verify the true identity of all customers and other persons with whom it conducts transactions.

16. The Examiners noted that no checks were carried out to confirm the existence of criminal records (if any) on beneficial owner ('BO') in the case of deVere Investment Advisory (Mauritius) Ltd.

Management Company's Comments

In the case Mr Green, the latter is well known in the finance community with several interviews on tv, finance magazine and newspapers. Based on the public profile and on the due diligence documents submitted (identity checks, proof of address, source of funds determination, bank reference) we have rated Mr Green as a low risk client. Further the PQ submitted by Mr Green contained no issues which would have raised suspicion in our minds for enhanced due diligence, hence the reason why no checks were carried out to confirm the existence of criminal records on Mr Green. We however accept the Commission view that criminal checks should be conducted on each and very client to which the Company will ensure compliance with.

**Recommendation**

17. Checks should be made to establish whether clients have any criminal records. We believe that it is important to consider whether an Applicant has been convicted of any criminal offence. Particular consideration should be given to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking, financial services, companies, insurance, consumer protection and money laundering. If such checks have been conducted by the intermediaries/introducers, the Management Company should hold a written

confirmation to that effect on file. Otherwise, it should ensure that those checks have been effectively carried out.

18. The need for Management Companies to know their customers is essential to the prevention of money laundering and combating the financing of terrorism. CDD is a key element of an internal AML/CFT system. The Management Company is recommended to keep on record documentary evidence of the checks performed.

19. The Management Company must also ensure that:

a) Its CDD checks include checking and obtaining relevant information and documents on the (ultimate) BO(s) and the principals of the client companies;
b) Copies of CDD documentation are kept on file and are readily available;
c) Passport copies of BO(s) are kept on file;
d) Documents relating to CDD checks are appropriately certified;
e) Documentary evidence on residential address of principals of client companies are kept on file;
f) References relating to the BOs are in all cases kept on file; and
g) Details of the occupation of the companies' principals (including BOs) must be recorded on file.

Management Company's Comments

We agree to the Commission recommendation and will seek to implement going forward as a general rule for all clients. We also wish to inform the Commission that all of the above are strictly being adhered to with ALL our clients.

**(D) OTHER DISCREPANCIES**

It is the duty of a Management Company to know its client adequately. During the on-site inspection, Mr. Borthosow stated that the Management Company is aware of all the activities carried out by its clients in Mauritius. However, upon being queried about the fact that deVere Investment Advisory (Mauritius) Ltd was soliciting clients in Mauritius, the Examiners were informed that the Management Company was not aware of same.

20. The Examiners noted that clients' money were recorded under liability in the Audited Financial Statements for the year ended 31 December 2011.

21. The Management Company's attention is drawn to our Circular letter CL030303 which stipulates that where a licensee handles clients' money, the sum of such money should be treated as an off-balance sheet item.

22. It is essential that all funds received from or on behalf of client companies, which do not represent an amount immediately due and payable to the Management Company, are paid into one or more segregated accounts kept solely for the purpose of handling client money.

23. As a general comment, the Management Company is required to comply with the regulatory framework applicable to Management Companies, at all times. The above breaches have been recorded for regulatory purposes. Henceforth, the Commission will closely monitor the business conduct of the Management Company.

Management Company's Comments

In the case of deVere Investment Advisory (Mauritius) Ltd (deVere), please note that the company was transferred to Appavoo Ltd on the 26th of March 2012 (please refer to our letter dated 28 March 2012). All the client's activities with regard to soliciting business in Mauritius were undertaken during the period when the company was administered by Appavoo Ltd. When deVere were transferred to us in August 2012, Appavoo Ltd did not communicate to Belvedere Management Ltd about deVere solicitation of business in Mauritius (please refer to our letter 5 November 2012).

While we agree that it is the duty of the Management Company to be aware of all the activities of its clients, yet in the case of deVere, we were not made aware of the deVere solicitation activities while the company was under Appavoo administration.

As regard the client's monies which were recorded under liability in the Audited 2011 financials, these have now been rectified and will be recorded as an off-balance sheet item in the 2012 accounts.

All funds received from or on behalf of clients are already being into segregated accounts kept solely for the purpose of handling client money by the Company.

**– END OF REPORT –**

E

WERKSMANS
ATTORNEYS

**DELIVERED BY EMAIL**

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Mauritius Financial Services Commission
FSC House
54 Cybercity, Ebene
Republic of Mauritius
fscmauritius@internet.mu
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EMAIL ADDRESS: ldupreez@werksmans.com

10 July 2015

Dear Sir,

**TWO SEASONS PCC**

We refer to our meeting at your offices on 21 May 2015 and to our letter of 4 June 2015 from which you will be aware that Werksmans and Erriah Chambers represent Stonewood Holdings, its shareholders and subsidiaries.

We note that the Commission undertook at that meeting to revert to us in relation to proposals made on behalf of our clients in the interests of safeguarding the investors and clients of the various group businesses. In our subsequent letter and in communications between the Commission and Dev Erriah, it was again noted that the matters raised were urgent and that there was ongoing prejudice to the investors and clients of the businesses as well as a risk to the jobs of the Mauritians employed by these entities. We had hoped that the Commission would actively engage with us, on behalf of our clients and are disappointed to note that we have still received no response whatsoever from the Commission.

The purpose of this letter is to respond to your letter dated 29 June 2015 (the "**Notice**") in which you notify Two Seasons PCC ("**the Company**") of your intention to suspend the Category I Business Licence issued to the Company. We are instructed by Two Seasons, Stonewood Holdings, its shareholders and subsidiaries ("**our clients**") to respond as set out below. The Annexures referred to below are too voluminous to transmit with this letter and the Company will supply hard copies of the Annexures to you during the course of the morning of 23 July 2015. For the avoidance of doubt, to the extent that our clients do not deal with any of the Commission's allegations hereunder, those allegations are denied.

In essence, our clients are of the view that the Notice is fatally flawed and that, should the Commission proceed to suspend the authorisation of the Company, it would not only be acting in contravention of the law but to the detriment of the investors in the Company.

## 1 PROTECTED CELL COMPANIES

1.1 The Notice is replete with statements that suggest a fundamental difference of understanding between the Company and the Commission in relation to the law regarding protected cell companies (each a "**PCC**"). In terms of the Protected Cell Companies Act 1999 ("**PCC Act**"), the assets and liabilities of each cell of a PCC are separate from those of the other cells and the general assets and liabilities of the Company.

1.2 One of the authorised uses for a PCC is as an "investment fund platform". As the Commission is no doubt aware, these structures are attractive to investment managers who are managing assets with a relatively small value where the costs of operating a dedicated collective investment scheme structure cannot be justified. This is a common structure in the CIS industry given the economies of scale that arise from using a single company for a number of CIS's and leveraging the relationships that company has with third party service providers. To all intents and purposes, each cell is a separate company and investors receive shares in the cell in which they invest. Those shares entitle the investors to all of the benefits of the assets. Unrelated investment professionals use separate cells to run their own collective investment schemes (each a "**CIS**"). Other third party service providers provide services such as administration, net asset value calculation and brokerage services to the cells. Such segregation of roles is designed to enhance the protection of the investors.

1.3 By way of putting the issues raised by the Commission into perspective, we are instructed by our clients that the Company at one time consisted of approximately twenty separate cells with approximately two hundred investors into those cells.

1.4 Given that it appears that none of the individual allegations justifies suspension, the Commission apparently considers that the aggregate of all of the issues raised by the Commission does warrant suspension. Our clients find the Commission's approach to dealing with the Company problematic in that, by aggregating the allegations against "the Company" rather than dealing with each separate cell individually, the Commission fails to recognise the nature of the Company as a PCC. Many of the queries that the Commission raises relate to investment decisions that were not taken by the Company but by the underlying managers and were taken in relation to portfolios of assets that are distinct by operation of law. The Commission's approach of aggregating the alleged failings in relation to investment decisions and suspending the entire Company rather than limiting action to particular cells only ignores the segregation of liabilities entrenched in the law which demands the cells are be treated as separate companies. Our clients note as an example of this issue, that the Commission refers to an issue with the "the modus operandi of Two Seasons" in paragraph D(ii) of the Notice when prior to that statement it has referenced an issue with the operation of the cell known as 21st Century Fund. 21st Century Fund is managed entirely separately from the Company and has its own distinct "modus operandi" as set out in its own offering document. Our clients believe that PCC regime would be undermined by the Commission's confusion of the operations of the Company with those of the cells and that this intermingling of cell liabilities is problematic for the protection of investors and the reputation of Mauritius.

## 2 SUSPENSION IS NOT AN APPROPRIATE REMEDY

2.1 Suspension is a drastic measure that invariably detrimentally affects the clients, investors and employees of the licensed entity. As such, it is our reading of Section 74(5) of the Financial Services Act 2007 (the "**FSA**") and our understanding of Mauritian administrative law that suspension of a licence is only competent when, not only has

there been a transgression, but suspension is also "necessary to protect the good repute of Mauritius as a centre for financial services ..."

2.2 In our clients' view, the Notice is fatally flawed in law in that the Commission does not allege that the proposed suspension is "necessary" as is required by the FSA. Not only does the Notice fail to make that essential allegation but it also contains no discussion of alternative, less drastic, remedies or their inadequacy nor does it provide any evidence whatsoever that suspension is necessary.

2.3 The unnecessary suspension of licences by the Commission itself poses significant risks to the good repute of Mauritius as a financial services centre. Our clients wish to note that financial services providers will be hesitant to establish or retain a presence in Mauritius if they have the impression that minor transgressions (such as client due diligence issues in relation to a small percentage of investors) or the Commission's lack of resources to properly investigate prior to taking action make the Commission susceptible to manipulation and might result in the suspension of those business which ultimately harms the business and its employees. The Commission's suspension of the licences of other companies within the same group as the Company have already resulted in significant prejudice to the clients of those entities and have had a serious impact on their business despite a lack of evidence having been presented to date of the kinds of serious breaches of the FSA that, in our clients view, would make such suspensions "necessary".

## 3 THE NOTICE IS ADMINISTRATIVELY UNFAIR FOR VAGUENESS

In the response to your letter below, we have indicated, on behalf of our clients, specific examples of the accusations set out in the Notice being so vague as to make a response to the allegations impossible. By way of example, the Commission accuses the Company (in paragraph B2) of "significant manipulation of the Net Asset Value". Although each cell produces a net asset value ("**NAV**"), the Company itself has no NAV and the reference to the Company's NAV is therefore nonsensical making it impossible for the Company to show cause against the suspension in this regard. Whilst our clients have responded to those allegations which contain sufficient detail for them to be able to respond, and whilst they have gone beyond the text of the Notice in an attempt to interpret the Commission's meaning, the preponderance of unsubstantiated and vague allegations, renders the Notice intrinsically unfair and irregular in administrative law.

Nevertheless, with a view to cooperating to the fullest extent possible, in the remainder of this letter, we respond, on our clients' behalf to the specific allegations made by the Commission.

## 4 AD PARAGRAPH (A) - BREACH OF FSA

4.1 The Commission alleges that the Company has "failed to maintain transaction records with regards to its business activity." The Commission's allegation in this paragraph is not that there was an inadequate maintenance of records; it is that there was no maintenance of records whatsoever. The allegation is also made in relation to the Company without specifying if this allegation is in relation to the Company's assets and liabilities or those of the protected cells (see paragraph 1). This allegation against the Company appears to be disproved by the Notice itself since there are various references in the Notice to records of business activity maintained by the Company, including records that have been independently audited.

4.2 That said, our clients believe that even if the Company had not maintained records adequately, it would not be "necessary" to suspend the Company's authorisation in order to deal with this issue. The Commission has more appropriate sanctions that would not

result in harm to the investors nor would it destroy our clients' businesses especially since the responsibility for maintenance of certain records was outsourced to professional, independent third parties some of whom are regulated by the Commission.

4.3 Because the Commission mentions only two alleged transgressions under this clause, the Company can only show cause in relation to these two transactions. It is submitted that it would be irregular in administrative law for the Commission to rely on other "instances" that have not been disclosed.

4.3.1 **Adonis High Yield**

4.3.1.1 The Commission's allegation in this case is that "the loan agreement to Adonis Ltd. (sic) was made and dated after part of the initial amount disbursed has (sic) been written off." We refer to paragraph 3 above and note that the Commission does not specify which loan it is referencing in this sentence. We are instructed to request further details from the Commission in relation to the documents that it relied upon to make this statement so that the Company can consult with the promoter of the cell and reply properly.

4.3.1.2 To the extent that the Commission is referring to the a loan of USD 115,641.61 to Adonis Limited, **Annexure A** contains a copy of the loan agreement in question ("**2011 Adonis Loan**"), **Annexure B** contains a copy of the general ledger and **Annexure C** contains a copy of board minutes of the Company in relation to 21st Century Fund. These documents show that –

4.3.1.2.1 28 September 2011 – the Adonis Loan is documented;

4.3.1.2.2 6 October 2011 – the general ledger records a write-off; and

4.3.1.2.3 8 March 2012 – the Company ratifies the write-off formally.

Consequently, the documentation that the Company has in its position refutes the Commission's statement that the 2011 Adonis Loan was made prior to any write-off. In the absence of additional information being supplied by the Commission, it is impossible for the Company to show cause in relation to this allegation other than to note that it appears that the Commission has made a clerical error.

4.3.2 **Customer Due Diligence**

4.3.2.1 We refer to paragraph 3 above and note that the Commission refers to "a number of investors through nominee accounts" without specifying even one of those investors' names. We respectfully request, on behalf of the Company, that the Commission provide proper details in this regard by specifying, as a minimum, which nominee companies the Commission is referring to so that the Company can respond, failing which this allegation is so vague as to make it intrinsically irregular.

4.3.2.2 If the Commission is referring to Royal Skandia, Friends Provident and CITI as "nominees", then, without prejudice to its right to have proper allegations put to it, the Company notes that the above entities do not hold their investments in the Company as nominees in the technical sense of the word. Those entities are insurance companies which are pooled portfolios. They are the legal and beneficial owners of the shares in the Company. The Company is not entitled to information about the clients of these entities, who will also not provide such

details to the Company or any other CIS in Mauritius. Moreover, the Company is not required by law to obtain details of the investors (if any) in the pooled portfolios since those entities are based in equivalent jurisdictions to Mauritius permitting the Company to rely on the information provided by them. As an example of the harm that could be done to the reputation of the Mauritian financial services sector by the suspension proceeding, we note that most Mauritian funds would be liable to suspension on this basis.

## 5 AD PARAGRAPH (B) - BREACH OF THE CIS REGULATIONS 2008

### 5.1 Regulation 57

Mr. Kenneth Maillard is a Director of the Company. He has received Directorship fees and been reimbursed for expenses incurred in his capacity as a Director of the Company. The remuneration a director is entitled to is specifically outlined in the offering document under the heading "Fees and expenses – other operating expenses". The Directors' right to remuneration is also clearly disclosed in section 36.4 of the Constitution of the Company. As such, the Commission's allegation of non-compliance with Regulation 57 is erroneous and the expenses paid out were indeed properly disclosed.

### 5.2 Regulation 59

5.2.1 Our clients refer to paragraph 3 and note that it is impossible for the Company to respond properly to the allegation regarding "the NAV" as there is no single NAV for the Company and the Commission does not specify which protected cell's NAV the Commission is referring to.

5.2.2 By way of evidencing its willingness to cooperate, the Company notes that the protected cell known as 21st Century Fund offered investors a guaranteed return underpinned by a guarantee (the "**Guarantee**") from the promoter (Hamptons Advance Solutions Company Limited ("**Hamptons**")) for any underperformance of the assets being managed by Hamptons. Guarantees of this nature are common in the investment funds industry. We are instructed that the Company considered that this Guarantee was clearly in the interests of the investors in 21st Century Fund. If Hamptons failed to make good the Guarantee, the investors would be in no worse position than they would have been in without the Guarantee and any payment to the 21st Century Fund under the Guarantee would be for the benefit of the investors. The Company therefore approved of the proposal.

5.2.3 The Guarantee was implemented by 21st Century Fund entering into a facility agreement with Hamptons ("**21st Century Facility**"). It would appear (from the Commission's comments at paragraph (D)) that the Commission has mistakenly classified the 21st Century Facility as a Term Loan rather than a Loan Facility and we refer the Commission to the comments in paragraph 7.3.1.2 in this regard. A copy of the 21st Century Facility is set out in **Annexure D**.

5.2.4 In order to ensure that the 21st Century NAV always accurately reflected the net value of the portfolio, 21st Century Fund required an asset equal to any shortfall that there might have been had the guaranteed return not been achieved. This was accomplished by putting in place the 21st Century Facility which permitted the 21st Century Fund to draw down, whenever there was an underperformance, cash from Hamptons in the amount of the Guarantee. 21st Century Fund therefore had an asset, being the claim it had under the 21st Century Facility, which was taken into account in calculating the NAV of the 21st Century Fund. The NAVs of 21st Century

Fund were calculated and audited by independent third parties and there has been no allegation, including from the auditor, of any NAV manipulation.

5.2.5 It transpires that no drawdown was ever required to be disbursed under the 21st Century Facility as the performance of the 21st Century Fund always exceeded the guaranteed performance. Should the Commission not understand the accounting nature of these transactions, the Company will happily instruct its auditors to explain them to the Commission.

5.2.6 **Regulation 63**

Our clients refer to paragraph 3 and note that it is impossible for the Company to respond properly to the allegation regarding transactions between connected persons without information as to which transactions the Commission is referring to. We respectfully request, on behalf of our clients, that the Commission provide the names of the parties, details of the transactions, the dates thereof and the amounts so that the Company can respond.

## 6 AD PARAGRAPH (C) - BREACH OF THE CODE

It is submitted that it is not "necessary" to suspend the licence in order to address issues of breaches of customer due diligence. In the context of a multi-jurisdictional business with hundreds of investors who are reticent to provide information and a set of regulations in Mauritius that are unclear, our clients submit that absolute compliance at all times is very difficult, if not impossible. The Company also notes that it had taken legal advice form Mauritian counsel in relation to the matters in question and was assured that it was in compliance with all Mauritian laws. The allegations of non-compliance stem mainly from a difference of opinion between the Company's local counsel and the Commission. Our clients submit that justifying the suspension on the grounds of client due diligence itself threatens to undermine the reputation of Mauritius as a financial services centre. It also notes that the client due diligence issues should not be cumulated for the reasons set out in paragraph 1.

### 6.1 Ad Sub-Paragraph 1

Our clients refer to paragraph 3 and note that it is impossible for the Company to respond to an allegation as vague as "in many instances". The Company has, nevertheless, requested that we supply you with the CDD on the applicants as per Annexure 1 of your letter (set out in **Annexure E**) and we trust that this addresses the issues raised in this paragraph.

### 6.2 Ad Sub-Paragraph 2

6.2.1 Our clients refer to paragraph 3 and note that it is impossible for the Company to respond to this allegation as the Commission provides no detail of –

6.2.1.1 which protected cell(s) it is referring to;

6.2.1.2 which application form it is referring to; and

6.2.1.3 which funds the Commission is referring to.

On behalf of our clients, we respectfully request that you supply the Company with details of these transactions in order to enable our client to respond.

6.2.2 Again, our clients note that the Commission appears not to appreciate that the majority of the investors into protected cells of the Company are life insurance companies investing as pooled portfolios and located in equivalent jurisdictions to Mauritius and as per the Code, the Company can rely on information provided by these companies without going beyond the information on the pooled portfolio.

## 7 AD PARAGRAPH (D) - OTHER DEFICIENCIES

### 7.1 Ad Sub-Paragraph (i) - Loan Agreement unsigned

7.1.1 The Company denies that the loan agreements listed in Annexure II to the Notice were not signed by both parties. This is evident from the information disclosed by the Commission itself which shows that the loan agreements were signed. Please see **Annexure F** which contains copies of the loan agreements.

7.1.2 In relation to the statements regarding the loan agreement between the cell known as 21st Century Fund and Hamptons, we refer the Commission to the statements made under paragraph 5.2.2. The Commission's statements in this regard appear to be based on a fundamental misunderstanding of various issues relating to NAV calculations and loan agreements and we trust that to the extent that the misunderstanding persists, the Commission will avail itself of our clients' offer to have the auditor explain the transactions.

### 7.2 Ad Sub-Paragraph (ii) - Purpose of loan not specified

7.2.1 Our clients refer to paragraph 3 and note that the Company can only respond to the loans set out in Annexure III and not to other "instances of loan agreements."

7.2.2 The Commission's typos in the second sentence of this paragraph make it difficult to understand what the Commission means and we respectfully request that the Commission correct the errors in order to give our clients a proper opportunity to respond.

7.2.3 Notwithstanding the above, we note that –

7.2.3.1 There is no requirement in law that a loan agreement state its purpose and/or commercial rationale. The commercial rationale for any decision is an internal issue for the cell that is recorded in its internal documentation rather than a loan. The commercial rationale and purpose of the loans is clear from the fact that the cell are CIS's. The loans are made for the purposes of generating an investment return for the investors and this is clearly documented in the offering documents of the cells and in the Constitution. Our clients submit that it would be obtuse to suggest that there could be any other purpose for making the loan.

7.2.3.2 The 21st Century Facility (being the only loan the Commission refers to) is a legally binding agreement enforceable by 21st Century Fund. As such, the way in which the loan was documented cannot be said to have resulted in any prejudice to investors in 21st Century Fund.

7.3 **Ad Sub-Paragraph (ii) – Interest Free and Unsubstantiated Loans**

7.3.1 **Interest-free Loans**

7.3.1.1 We refer the Commission to the explanation of the loan agreement in paragraph 7.1.2. As noted, any claim that the 21st Century Fund may have had under the 21st Century Facility would have been an asset of 21st Century Fund and the NAV was therefore an accurate representation of the net value of the portfolio. This was confirmed by the auditors.

7.3.1.2 Interest has not been paid on the 21st Century Facility since 2009 because no amount has been drawn down by 21st Century Fund and no amount of interest is therefore owing. In layman's terms, one would not expect to have paid any interest to the bank on a credit card that had never been used. A credit card represents a facility to borrow from the bank but the holder is not obliged to borrow and if he fails to use the facility, he pays no interest to the bank. It would be patently ridiculous in those circumstances to say that the bank had granted an interest-free loan and the Commission's statement in this regard must be rejected out of hand.

7.3.1.3 The Company notes the Commission's statement of the provisions of the Securities Act but submits that these are based on the misunderstanding that have hopefully been clarified above. The 21st Century Facility is entirely consistent with the purpose of a CIS and the fact that the Company ensured that it had a valid, documented claim to back up the promoter's Guarantee and a claim that could be valued for the purposes of the NAV calculation shows that the protection of investors was paramount in the mind of the Company.

7.3.1.4 In light of the above, the Company rejects the Commission's allegation that Two Seasons is not meeting its purpose as a CIS. Furthermore, the Company notes the issue raised in paragraph 1 above, namely that even if there was an issue with 21st Century Fund, the statement that "Two Seasons is not meeting the purpose of a CIS" ignores the nature of the Company as a PCC by characterising the nature of the entire PCC on the basis of a single cell of that PCC.

7.4 **Ad Sub-Paragraph (iv) – Non-Settlement of Loans at Date**

7.4.1 The Commission's statements in regard to the purpose of a CIS are not understood. The purpose of a CIS is to invest collectively in order to generate returns for the investors. This can be achieved through a loan agreement which provides a fixed return to the lender. When a loan is impaired, it may well be in the interests of investor to extend payment terms. In any event, without a proper understanding of the precise nature of the Commission's issue with specific loans, it is impossible to respond properly to the Commission's comments in this regard. Having only been provided with the parties to certain loans set out in Annexure IV, our clients can only respond by providing details of the status of the loans in question.

7.4.2 We are instructed by the Company that the true position is as follows –

7.4.2.1 **International USD Money Market Fund and Stonewood Trading** - We are instructed that in fact an amount of $200,000 has already been repaid. The date for repayment of the balance was extended to 30 Sept 2015 by mutual agreement between the parties but the borrower indicated some time ago that

it wishes to repay the outstanding balance. It has, however, been unable to effect payment given the Company's suspension.

7.4.2.2 **Adonis High Yield Fund and Capegate Ltd** – We are instructed that this loan is recorded as having been written off and it is therefore not unusual that the loan has not been repaid as at the date of the Notice. In the time available, the Company has been unable to consult properly with the manager of the cell but notes that Capegate Limited was wound up and it is assumed that this was the reason for the loan being written off. It is entirely consistent with the purpose of a CIS for Adonis High Yield Fund to hold an investment in the form of a loan. Had the Company held shares in Capegate Limited, its exposure to the underlying investment would have been identical.

7.4.2.3 **Adonis High Yield Fund and Queensgate Holdings (Pty) Ltd** – We are instructed that this loan was repaid in full by the conversion of the loan into 80,000,000 shares in Queensgate Holdings.

7.4.2.4 **Adonis High Yield Fund and Adonis Ltd** – Please see paragraph 4.3.1.2. The Commission's own Notice states that this loan has been written off and it is therefore not unusual that the loan has not been settled as at the date of the Notice.

7.5 **Ad Sub-Paragraph (v) – Piton High Yield Fund**

We are instructed by the Company that the Commission's information in relation to this transaction is incorrect and that –

7.5.1 Due diligence information for Mr. Bibby is indeed on file (set out in **Annexure G**).

7.5.2 Repayments have indeed been made.

7.5.3 The final repayment date for the loan was extended until 31 December 2015 with the agreement of the parties to the loan.

7.5.4 Piton High Yield Fund is a CIS so the commercial rationale for the loan is clear. The loan carries an interest rate of 6% which is above market rate and the Company believes that it was reasonable for the manager to make such investment considering the risks involved. The purpose of the loan was to fund a business whose prospects the manager of the cell deemed sufficient to make the loan. The Company's directors had no reason, in discharging their oversight role, to doubt the manager's advice having taken reasonable steps to verify the information.

7.6 **Ad Sub-Paragraph (vi) – UK Property Owner (GBP) ("UKPOF") & Australian Traded Property Short Fund ("ATPSF")**

7.6.1 The Company instructs that the cell supplements approved by the Commission for both UKPOF and ATPSF provide that the cells may hold 100% in cash. In the current market, if the cells hold cash at the bank, they are effectively losing investors' money since, when bank charges are taken into account, the effective interest rate is negative. The promoter and the investment manager for UKPOF and ATPSF took the decisions that, instead of investing in cash, the CIS's should invest in a cash equivalents with a guaranteed return. They decided to invest UKPOF and ATPSF in the 21st Century Fund as it offered such a guaranteed return (see paragraph 5.2.2). The role of the Company is to exercise oversight over the activities of the investment manager of the cells and the directors of the Company considered that it was in the

interests of the investors to invest in a guaranteed return product rather than losing money by holding an investment in cash at the bank.

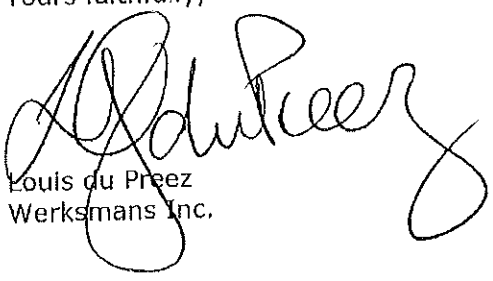
7.6.2 The Commission notes that UKPOF and ATPSF invested into 21st Century Fund which invested into Peak XV Venture Fund ("**Peak XV**") which made other investments. It is not clear to our clients why the Commission suggests that the directors of the Company have an obligation, when discharging their duties of oversight, to look through multiple layers of investments or what authority the Commission relies on in this regard. We are requested by our clients to request reference to the outsourcing rules that require the Company to look through 21st Century Fund. In our clients view, the manager of UKPOF and ATPSF was acting within the investment guidelines of both funds when it took the decision to invest in UKPOF and ATPSF and the Company's obligations were therefore met. To the extent that the Commission disagrees, our clients can only respond by reference to more detailed allegations.

## 8 CONCLUSION

Our clients remain concerned that a media-fuelled panic may have prompted the Commission to take action against our clients prematurely. Whilst our clients understand the Commission's desire to act promptly to protect the reputation of Mauritius, our clients also note the potential for reputational damage that arises from the Commission acting precipitously. Our clients believe that this has already occurred in relation to other group businesses.

With regards to the Notice, our clients are of the view that it is intrinsically flawed in law, inter alia, because it fails to make or prove the essential allegation that suspension is necessary. Furthermore, by taking action against the Company rather than dealing with each cell separately, it is our clients' view that the Commission's approach is apposite to the PCC law. Our clients concede that the Commission has legitimate queries, but they are of the view that these should be dealt with in the ordinary course of engagement and do not warrant suspension.

Yours faithfully,



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