Absolute Capital Management's Fund Restructuring Approved

Deals - 30/10/2007

In a development which should be of interest to asset managers and their advisors, Ogier client Absolute Capital Management Holdings Limited ("Absolute Capital") successfully restructured four of its equity funds to implement side pocket share classes and to defer redemptions for 12 months. The restructuring was proposed to investors following a run on redemptions caused by the sudden departure Absolute Capital's chief investment officer on 18 September 2007, and the difficulty in liquidating the funds' portfolios due to their exposure to illiquid assets. Absolute Capital worked closely with its legal counsel, Ogier (Cayman Islands) to formulate the proposals to restructure the Absolute East West Fund Limited, Absolute European Catalyst Fund Limited, Absolute Octane Fund Limited and Absolute Return Europe Fund Limited, which together represent approximately $1.3 billion in Absolute Capital's assets under management.

Following the former CIO's departure, the funds' directors immediately suspended calculation of net asset values and redemptions, and, rather than closing down and liquidating the funds, sought investor consent to the restructuring proposals submitted by Absolute Capital. The plan has four basic elements: 1) the creation of side pockets to hold the illiquid securities and to allow for their orderly disposal; 2) a 12-month lock-up on the funds' liquid and illiquid share classes, with limited liquidity from the liquid class over the lock-in period; 3) amendment of the current NAV calculation methodology to provide for the re-pricing of the illiquid assets using external valuation opinions; and 4) a reset of the funds' high water marks at the restructuring date.

The restructuring proposals were approved by shareholders at the funds' extraordinary general meetings held in Grand Cayman on Saturday 27 October.

Glenn Kennedy, General Counsel for Absolute Capital, commented on the results of the funds' extraordinary general meetings: "We are very pleased that our investors have chosen to restructure our funds to allow for the orderly management and realisation of their illiquid assets. We are confident that our plan will result in result in higher realisations not only from these particular assets, but also from the funds' liquid portfolios when compared with a liquidation conducted by a third party. This, ultimately, is in the best interests of all stakeholders. I would expect that increasingly we'll see hedge funds facing redemption shocks proposing to restructure in a similar way. In such circumstances, restructuring to allow for the orderly management of a fund's portfolio by its existing manager is inherently a more sensible approach than turning over what are often very complex pools of capital to outside liquidators."

Peter Cockhill, partner at Ogier, commented: "These funds faced a crisis which many commentators thought would result in their liquidation. It was essential that the restructuring plan was robust, detailed and fair. By meeting these criteria the plan gave the directors and investors the dynamic option of renewing Absolute Capital's mandate to actively manage the funds to maximise returns to investors."

Ogier is also handling the attempts to dispose of the winding-up petition to Cayman's Grand Court initiated by one investor in respect of two of the affected funds. The petitions call for the liquidation of the funds and the appointment of a provisional liquidator. "With a majority in excess of 75% of shareholders at the meetings voting to continue the funds under the new terms, even if the petitions against two of the funds had any prospect of success, which we do not consider to be the case, we are confident that the Court would allow the will of the majority against liquidation to prevail," said Chris Russell, senior counsel at Ogier.

This innovative restructuring appears to have given investors in Absolute Capital increased confidence, as its shares climbed 28% on the Alternative Investment Market (AIM) on Monday 29 October, after the announcement of the successful funds restructuring.

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