



**IN THE MATTER of the Administration of the Securities Industry Act, 1999
and the Securities Industry Regulations, 2000**

AND

**IN THE MATTER of Proceedings under Section 33 of
the Securities Industry Act, 1999 and Part XVII of the Securities Industry
Regulations, 2000**

BETWEEN

**THE EXECUTIVE DIRECTOR OF
THE SECURITIES COMMISSION OF THE BAHAMAS**

Plaintiff

AND

CRISTALLINA INVESTMENT FUND LIMITED (SAC)

Defendant

AND

ORHUS FUND LIMITED (SAC)

Defendant

Matter Nos. SCB/HP/4/2011 and SCB/HP/5/2011

HEARING PANEL FINAL DECISION

Hearing Panel: Sterling Quant, Chairman;
John Archer; and
Deborah Bastian.

Hearing: Tuesday 26 July, 2011.

2 The Hearing Panel (“the Panel”) held a hearing at the offices of the Securities Commission of
the Bahamas (“the Commission”) concerning allegations against both defendant funds,
Cristallina Investment Fund Limited (SAC)* (“Cristallina”) and Orhus Fund Limited (SAC)*
4 (“Orhus”). This decision concerns the Panel’s findings relative to the defendants and the
pertinent facts and submissions presented before the Panel are as follows:

6
FACTS - CRISTALLINA

8 Cristallina is an International Business Company (“IBC”) incorporated on January 10, 2007
under the IBC Act, 2000. The fund was licensed as a Professional Fund on January 16, 2007
10 by Finter Bank & Trust (Bahamas) Limited (“Finter”) pursuant to the Investment Funds Act,
2003 (“the Act”).

12 Pursuant to section 31(2) of the Act, Cristallina Investment Fund is obligated to file its
14 Audited Financial Statements (“AFS”) with the Commission within four (4) months
following its financial year end. Cristallina failed to submit its AFS within the required
16 statutory time period for the periods ending March 31, 2008 and March 31, 2009. This is
reflected in the Executive Director’s Formal Complaint dated 30th May, 2011 further outlined
18 below.

20 **BREACHES AND SUBMISSIONS**

In the Formal Complaint against Cristallina, breaches 1 and 3 were similarly worded as were
22 breaches 2 and 4, all concerning the Act and the Investment Funds Regulations, 2003 (“the
Regulations”). They are repeated here as follows for ease of reference:

24 **BREACHES 1 and 3**

26 Cristallina is in breach of section 31(2) of the Act which states: “except where
exempted by the Commission, a licensed investment fund shall send its audited
28 financial statements in respect of a financial year of the investment fund to the
licensor within four months of that financial year or within such extension of the
30 period as the Commission may allow.”

32 **BREACHES 2 and 4**

34 Cristallina is in breach of Rule 6 of the Investment Funds (Financial
Statements Extension of Time) Rules, 2004 (the Rules) which states: “Where an
investment fund or an investment fund administrator has been granted one extension
36 of the prescribed period and is unable to meet the extended date, any application for a
further extension shall be made to the Commission in writing fourteen days before the
38 expiration of the period for which the extension was granted and shall include –

40 (a) the reasons for the additional extensions;

* SAC - Segregated Accounts Company

- 2 (b) the proposed date by which the audited financial statements of the fund or of
the administrator shall be sent to the Commission; and
4 (c) any other information reasonably required by the Commission.”

6 As regards Breaches 1 and 3, the Executive Director alleged that Cristallina failed to send and
submit its AFS for the years 2008 and 2009, respectively. Concerning breaches 2 and 4 the
8 Executive Director alleged that Cristallina failed to apply for a further extension of the time
within which to submit its AFS for the years 2008 and 2009.

10 In support of his allegations the Executive Director exhibited from the Commission’s files
12 various pieces of correspondence between the Commission and Cristallina concerning the
timely submission of the AFS for 2008 and 2009.

14 The defendant accepted breaches 1, 3 and 4 of the said Formal Complaint and acknowledged
16 the evidence presented therein. Furthermore the defendant expressed great remorse for
breaching section 31(2) of the Investment Funds Act, 2003 and rule 6 of the Rules. The
18 defendant also pointed out that as of the date of the hearing it had filed the outstanding AFS
with the Commission, so the breach was no longer continuing. However, the defendant
20 denied breach 2 of the Formal Complaint concerning failure to apply for an extension
pursuant to the Rules. The defendant indicated that they applied for a further extension via
22 letter dated April 14, 2009 to submit same by October 31, 2009. Thereafter, the defendants
applied for a further extension via letter from their auditors dated October 30, 2009 which
24 was the day before the deadline expired. The defendant noted however, that this request did
not comply with the requirement in the Rules that a further request shall be made in writing
26 fourteen days before the expiration of the period for which the extension was granted.

28 In support of mitigating a fine, the defendant apologized for the breaches and requested
leniency of the Hearing Panel in implementing any sanctions. The defendant said that it did
30 not at any time intentionally set out to breach the provisions of the Act, the Regulations, or
the Rules of the Commission. Further, the defendant stated that having already submitted its
32 AFS for the years 2008 and 2009 made them current with their filings as of the date of the
hearing. The defendant further submitted that there is no potential risk to investors due to the
34 fact that the 2008 and 2009 AFS have been submitted.

36 **FACTS - ORHUS**

38 Orhus is an IBC incorporated on March 24, 2006 under the IBC Act, 2000. Orhus was
licensed by Finter on April 17, 2006 as a Smart Fund 002 pursuant to the Act.

40 Orhus is also obligated pursuant to section 31(2) of the Act to file its AFS with the
Commission within four (4) months following its financial year end. Orhus failed to submit
42 its AFS to the Commission within the required statutory time period for the periods ending
June 30, 2007 through June 30, 2010. The Commission notes that Orhus submitted in draft
44 its AFS for the period ending June 30, 2008 via email on October 26, 2009 after receiving a

2 second extension to file same by October 31, 2009. The final version of the AFS followed
afterward in hardcopy. The status of Orhus' AFS is reflected in the Executive Director's
Formal Complaint also dated 30th May 2011 which is further outlined below.

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BREACHES AND SUBMISSIONS

6 In the Formal Complaint against Orhus, breaches 1, 3, 5 and 7 were also similarly worded as
were breaches 2, 4, 6 and 8, all concerning the Act and Regulations. They are repeated here
8 as follows for ease of reference:

10 BREACHES 1, 3, 5 and 7

12 Orhus is in breach of section 31(2) of the Act which states: "except where
exempted by the Commission, a licensed investment fund shall send its audited
14 financial statements in respect of a financial year of the investment fund to the
licensor within four months of that financial year or within such extension of the
period as the Commission may allow."

16 BREACHES 2, 4, 6 and 8

18 Orhus is in breach of Rule 6 of the Investment Funds (Financial Statements
Extension of Time) Rules, 2004 (the Rules) which states: "Where an investment fund
20 or an investment fund administrator has been granted one extension of the prescribed
period and is unable to meet the extended date, any application for a further extension
22 shall be made to the Commission in writing fourteen days before the expiration of the
period for which the extension was granted and shall include –

- 24
- 26 a) the reasons for the additional extensions;
 - 28 b) the proposed date by which the audited financial statements of the fund or of
the administrator shall be sent to the Commission; and
 - 30 c) any other information reasonably required by the Commission."

32 In support of his allegations the Executive Director exhibited from the Commission's files
various pieces of correspondence between the Commission and Orhus concerning the timely
34 submission of the AFS for 2007 through 2010.

36 The defendant accepted breaches 1, 2, 3, 4, 5, 7 and 8 of the Formal Complaint and
acknowledged the evidence presented therein. Furthermore the defendant expressed great
remorse for breaching section 31(2) of the Act and rule 6 of the Rules. The defendant also
38 stated that it recently filed the outstanding AFS, namely for the periods ending June 30, 2007
through and inclusive of June 30, 2010 so the breach was no longer continuing.

40 However, the defendant denied breach 6 of the Formal Complaint. The defendant submitted
42 that they sent another request to further extend its time for submitting its AFS via letter dated
April 8, 2010. The Commission acknowledged the extension request by letter dated April 14,
44 2010 and communicated to the defendant that the request was being reviewed and that the

Commission will reply to the defendant. However, the Commission did not reply to the defendant, and the defendant did not request a further extension beyond their May 31, 2010 request. The 2009 annual financial statements were not submitted until November 19, 2010.

In support of mitigating a fine, the defendant apologized for the breaches and requested leniency of the Hearing Panel in implementing any sanctions. The defendant said that it did not at any time intentionally set out to breach the provisions of the Act, the Regulations or the Rules. Further, the defendant had already submitted the AFS for the years in question, and was therefore current with their filings as at the date of the hearing. Lastly, the defendant submitted that there was no potential risk to investors because the outstanding AFS have been submitted.

RULING - CRISTALLINA

The Panel, having deliberated on the above matter following the hearing of the same, rules as follows:

The Panel has found Cristallina guilty of the breaches in the said Formal Complaint based on the evidence presented by the Executive Director and the admission of guilt by the defendant. From the evidence presented and admission of guilt, Cristallina failed to submit its AFS for 2008 and 2009 within the statutory periods. The Panel also finds that Cristallina failed to apply for a further extension of time in accord with the Rules, noting that any further requests are required to be made fourteen days before the expiration of the period for which the extension was granted.

SANCTIONS

In making its decision, the Panel considered the prevailing circumstances such as these being first-time violations and whether the actions complained of are continuing. Emphasis has also been placed on, inter alia, whether the defendant engaged in the misconduct despite prior warnings from the regulator, the seriousness of the misconduct, evidence of whether the defendant addressed the failing(s) complained about and whether the defendant took full responsibility for the misconduct.

The Panel considered that any sanction that may be imposed ought to reflect the seriousness of the breaches. The Panel also considered the gravity of this matter given the nature of each of the breaches for which there was a finding of guilt.

The Panel, having heard and considered the submissions of both the Executive Director and the defendant, finds that the breaches warrant the imposition of fines. Therefore, having considered the case of *The Executive Director of The Securities Commission of The Bahamas v Accuvest Fund Services Limited et al. 2011/COM/com/00025*, we recommend that fines be imposed as follows:

1. Section 31(2) – failure to file audited annual financial statements for 2008 and 2009 (2 years) **\$12,000** for each of the unfiled audited statements, totalling **\$24,000**;
2. Rule 6 – failure to apply for a further extension to the Commission in writing fourteen days before the expiration of the period for which the extension was granted – 2008 and 2009 (2 years) **\$500** for each failure to apply, totalling **\$1,000**.

The total penalty for Cristallina’s breaches is - \$25,000

RULING - ORHUS

The Panel, having deliberated on the above matter following the hearing of the same, rules as follows:

The Panel has found Orhus guilty of the breaches in the Formal Complaint based on the evidence presented by the Executive Director and the admission of guilt by the defendant Orhus concerning breaches 1, 2, 3, 4, 5, 7 and 8. From the evidence and admission of guilt, Orhus failed to submit its AFS for 2007, 2008, 2009, and 2010 within the statutory periods. Further, Orhus failed to comply with the Rules and apply for a further extension of time in accord therewith.

The Panel further found Orhus guilty of breach 6 because Orhus did not apply for an extension beyond its last requested deadline of May 31st, 2010. Furthermore, the AFS were submitted six months later in November, 2010.

SANCTIONS

In making its decision, the Panel considered the prevailing circumstances such as these being first-time violations and whether the actions complained of are continuing. Emphasis has also been placed on, inter alia, whether the defendant engaged in the misconduct despite prior warnings from the regulator, the seriousness of the misconduct, evidence of whether the defendant addressed the failing(s) complained about and whether the defendant took full responsibility for the misconduct.

The Panel considered that any sanction that may be imposed ought to reflect the seriousness of the breaches. The Panel also considered the gravity of this matter given the nature of each of the breaches for which there was a finding of guilt.

The Panel, having heard and considered the submissions of both the Executive Director and the defendant, finds that the breaches warrant the imposition of fines. Therefore, having considered the case of *The Executive Director of The Securities Commission of The Bahamas v Accuvest Fund Services Limited et al. 2011/COM/com/00025*, we recommend that fines be imposed as follows:

1. Section 31(2) – failure to file audited annual financial statements for 2007, 2008,
2 2009 and 2010 (4 years) **\$12,000** for each of the unfiled audited statements, totalling
\$48,000;

4 2. Rule 6 – failure to apply for a further extension to the Commission in writing fourteen
6 days before the expiration of the period for which the extension was granted - 2007,
2008, 2009 and 2010 (4 years) **\$500** for each failure to apply, totalling **\$2,000**

8 **The total penalty for Orhus' breaches is - \$50,000**

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The sanctions for both defendants take effect from the date of this decision and the above
12 penalties are to be paid within thirty (30) days after they have received this decision.

14 This is the unanimous decision of the Panel.

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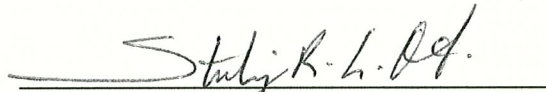
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Dated this 24th day of APRIL, 2012

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Hearing Panel Chairman