



RESPONSE OF THE FINANCIAL SERVICES COMMISSION TO REPORT OF THE TRUSTEE OF STOCKS AND SECURITIES LIMITED (IN COURT-SUPERVISED WINDING-UP AND BANKRUPTCY)

October 23, 2024

Statement of Purpose

1. The Financial Services Commission (“FSC”) presents this summary response to the Report of the Trustee of Stocks and Securities Limited (“SSL”) (In Court Supervised Winding Up and Bankruptcy) dated 15 October 2024 (“the Report”).
2. This response is not intended to be comprehensive and is deliberately presented as a summary response to the main issues raised in the Report and in respect of which the Trustee indicates that there should be a further inquiry.
3. FSC’s response is given with a view to ensuring that Creditors of SSL and the public at large can have an accurate representation of the matters referred to herein and the position of the FSC.

Background

4. The FSC assumed Temporary Management of SSL’s workflow and operations on January 17, 2023, pursuant to the Financial Services Commission Act and thereafter appointed Kenneth Tomlinson of Business Recovery Services Limited (“BRSL”) as the Temporary Manager. The Temporary Management continued until May 31, 2024.

Main Activities during the Temporary Management

5. During the period of the Temporary Management, the Temporary Manager took charge of SSL’s general management. In addition to the overseeing the management and operations of the company the Temporary Manager performed the following operational, administrative, and strategic tasks:
 - a. Executed a special audit of SSL and produced reports.
 - b. Conducted interviews and meetings with former Board members, executive staff and general staff members.
 - c. Met with SSL clients and responded to their queries.
 - d. Met and provided information to Investigators (Financial Investigations Division) and provided information to assist in their investigations.
 - e. Reviewed and continued the audit of On and Off-Balance Sheet assets and liabilities including “Managed Funds/Securities” held by Morgan Stanley, Inter Active Brokers and CI Fund.
 - f. Reviewed related company/party transactions, going back several years.

- g. Negotiated with security dealers for the transfer/acquisition of SSL's securities portfolio.
- h. Reviewed and approved of cash transfers from clients' accounts, and the Inter Member Movement requests from clients to other security dealers re Jamaican Securities.
- i. Liquidated SSL's Off-Balance Sheet International Securities after negotiations for acquisition/sale were unsuccessful.
- j. Negotiated with the JSE/JCSD in relation to the transfer of the remaining Jamaican Securities portfolio and review of the "Trust Deed" to facilitate the transfer.
- k. Collated data and meetings with SSL's Insurers to facilitate the claim on behalf of SSL.
- l. Reviewed documentation and held various meetings in relation to "Promissory Notes" issued by SSL and related companies.
- m. Investigated Solvency issues, in particular funds removed from clients' accounts for operational purposes since 2019.
- n. Prepared and circulated "Notices" to clients in relation to the various SSL portfolios.
- o. Oversaw redundancy exercise (to include making redundancy payments) for staff members.

Costs incurred during the Temporary Management

6. The Trustee states in the Report that "the costs of administering the SSL estate during the period of temporary management was approximately JMD\$500 million inclusive of the Temporary Manager's fees of JMD \$160 million." [1] The Cash Flow Movement Report at Appendix 5 of the Report [2] shows the cash inflows and outflows during the temporary management (i.e. January 17- 2023 to May 31, 2024).

7. As the Cash Flow Movement Report shows the total operating expenses for SSL during the period was approximately JMD\$376.5 million and which included SSL's operating expenses such as staff salaries and redundancy payments, rent, utilities, security, janitorial, IT and other systems costs (Prospero Licence), legal expenses and the temporary manager's fees and other professional fees. The fee paid to BRSL for temporary management services was approximately JMS\$48 million and not \$160 million as suggested by the Trustee.

Management Fees

8. No management or brokerage fees were charged to clients during the period of Temporary Management. During Temporary Management, SSL was not trading and the services contemplated by the client contracts were suspended. The FSC and the Temporary Manager did not consider it reasonable or lawful to charge management fees in the circumstances. The Off-Balance Sheet holders of local shares/securities whose assets were transferred from SSL to other local dealers/brokers during the Temporary Management were also not charged management fees to move their assets. Brokerage and other fees were charged at source by Morgan Stanley and Interactive Brokers on the liquidation of the International Securities and recovery were allocated across the relevant clients' accounts.

[1] Paragraph 8 , page 8 of the Report

[2] Page 66 of the Report

9. With prudent investigations, the Temporary Manager was able to recover J\$14.7 million from clients' accounts on behalf of SSL for funds lawfully due to the company. With further investigation by the Trustee, more funds may be recovered to greatly reduce the funding deficit.

The Quasi- Management and Administrative Fee proposed by the Trustee

10. The client contract between SSL and the Off-Balance Sheet clients expressly provides that in the event of insolvency, the assets "shall belong to or shall be appropriated to the claim of the Client and shall not form part of the SSL assets available to meet the costs of SSL insolvency or claims of SSL's general creditors."

11. The charging of the fees is a matter of contract. It is a matter within the discretion of the Off-Balance Sheet clients to determine if they will consent to pay the quasi-management fee being proposed by the Trustee.

Use of Insurance Policy Settlement Proceeds

12. SSL was insured under a Comprehensive, Crime, Cybercrime and Professional Indemnity Insurance Policy. The policy provided indemnity to SSL for several risks to include employee dishonesty in the aggregate limit of US\$1 million dollars. Following fraud at the company, a claim was made on the policy and the sum of US\$1 million was paid to SSL.

13. As the policy settlement proceeds were the property of SSL, the proceeds were available for use to satisfy SSL liabilities and/or expenses. A reasonable commercial decision was taken by the Temporary Manager to apply the policy settlement proceeds to operating expenses of SSL to include staff salaries.

Need To Use Inflows for Operating Expenses

14. It was essential for SSL to continue to pay staff retained during Temporary Management to assist with the ongoing investigations, the maintenance of client accounts and overall management of the client relationship. Without the staff all administrative, financial, brokerage, operational, IT functions could not continue and would have hindered the relevant investigations and put client assets at risk.

Termination of JSE Dealer Agreement

15. In January 2023 when the Temporary Management commenced, SSL's Insurance policy had already lapsed, and the Jamaica Stock Exchange RMOD indicated that the Member Dealer Agreement would be terminated on account of the absence of the insurance. The Temporary Manager concluded early following his appointment that SSL was insolvent. Additionally, with the reports of fraud at SSL, underwriters were unwilling to extend insurance cover to SSL. Further, SSL had no appropriate proprietary assets to secure a bond in favour of JSE/RMOD as an alternative to insurance. Termination of the Member Dealer Agreement in the circumstances was unavoidable and was not the result of any action or omission of the Temporary Manager.

Transaction with Spectrum Capital Partners

16. Spectrum Capital Partners Limited (“Spectrum”) entered into an agreement with SSL to purchase some of its assets, as well as Share Purchase Agreement and Share Subscription Agreements with SSL’s parent company SSL Growth Equity Limited. In addition to correspondence between the Temporary Manager and attorneys/representatives of Spectrum, meetings were held with a view to agreeing a way forward. The transaction did not successfully conclude due to factors beyond the control of the Temporary Manager including SSL’s apparent insolvency at the material time, as well as the ensuing litigation between the Trustee and the FSC.

The foregoing information is provided in light of the Report and in the interest of all creditors and the public to get a fuller understanding of these issues.

Dated the 23rd Day of October 2024
FINANCIAL SERVICES COMMISSION .