Neutral Citation Number: [2016] EWHC 2854 (Ch)

Case No: Nos 1003 and 1004 of 2015

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 November 2016

Before :

Mr Robin Dicker QC

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IN THE MATTER OF CALEDONIAN LTD
AND IN THE MATTER OF CALEDONIAN COMMODITIES LTD

AND IN THE MATTER OF THE INSOLVENCY ACT 1986
AND IN THE MATTER OF THE COMPANIES ACT 2006

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Christopher Buckley (instructed by **Gowling WLG (UK) LLP**) for the **Secretary of State**
The **Respondents** appearing in person

Hearing dates: 31st October and 1st – 4th November 2016

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Robin Dicker QC :

Introduction

1. This is the trial of two petitions presented by the Secretary of State for Business, Innovation and Skills, which seek the winding up of Caledonian Ltd ("Caledonian") and Caledonian Commodities Ltd ("Commodities") (together "the Companies") on grounds of public interest.

2. Under section 124A of the Insolvency Act 1986 the Secretary of State has locus to present a petition if he considers on the information provided to him that it is expedient in the public interest that the companies should be wound up. The court has jurisdiction to make a winding up order on these grounds if it forms the opinion on the totality of the evidence presented at the hearing of the petition that it is just and equitable to do so.

3. Caledonian has traded by marketing and selling carbon credits, rare earth metals, coloured diamonds, precious metals and storage pods to members of the public. The petition alleges that it has, amongst other things, sold objectionable products as investments, used marketing material that is misleading and charged inflated commissions, such that it would be just and equitable for it to be wound up. The petition is opposed by Caledonian. It accepts that in hindsight it did sell some objectionable products but denies that it did so with a lack of commercial probity, saying that all such trading had ceased before the investigators were appointed and that Caledonian cooperated with the investigators in a transparent and forthright manner. It contends that its trading in respect of precious metals and storage pods was conducted in a way that is commercially legitimate and proper.

4. At the start of the hearing I made an order under CPR Part 39.6 giving Mr Roy Seeballuck ("Mr Seeballuck") permission to represent Caledonian at the trial as a litigant in person. Mr Seeballuck was the Sales Manager at Caledonian and was closely involved in its affairs and in responding to the investigation by the investigators appointed by the Secretary of State pursuant to sections 447(3) and 453A of the Companies Act 1985. He performed his role during the trial with considerable energy and a ready understanding of the issues.

5. The petition in respect of Commodities states that it also traded in such products. Mr Seeballuck says, however, that it never traded and, where its name appears, this is because Caledonian used "Caledonian Commodities" as a trading name. The petition states that the Secretary of State is concerned that, although it is not clear if Commodities is still trading, if it is not wound up by the court there is a risk that it may continue the alleged objectionable trading practices and that he considers that it would be in the public interest to wind up the company to allow the Official Receiver to investigate its affairs.

6. Commodities was struck off and dissolved from the register of companies on 26 April 2016. At the start of the trial, Mr Buckley, on behalf of the Secretary of State, made an application to amend the petition in respect of Commodities to seek an order restoring it to the register prior to any order for it to be wound up. The application was supported by a witness statement by David Hill, exhibited to which was a copy of a letter from the Treasury Solicitors confirming that they had no objection to the application. I granted that application. I also gave Mr Seeballuck permission to represent Commodities on the hearing of the petition.

Background

7. Caledonian was incorporated on 29 March 2005. The sole director, since 19 June 2012, has been Mr Ozden Hassan ("Mr Hassan"). It appears to have started trading in late 2012.

8. Caledonian was a small business. An organogram showing the position in late 2013 shows Mr Seeballuck heading up a sales team of some five people and a back-office function run by Meryem Ertekin with the help of five persons.

9. Caledonian's unaudited accounts for the year ended 31 March 2014, which are apparently the latest accounts which have been prepared, show, amongst other things, net current liabilities of £60,616 and total net assets of £6,617.

10. Commodities was incorporated on 20 November 2012. The sole director is Mr Hassan. No accounts have been filed in respect of Commodities to date.

11. On 14 and 15 August 2013 Joe Peacock ("Mr Peacock") and Christopher Gray ("Mr Gray") (together "the Investigators") were authorised, pursuant to sections 447(3) and 453A of the Companies Act 1985, to investigate the affairs of the Companies.

12. The petitions were presented on 6 February 2015, served on 17 February 2015 and advertised on 22 April 2015.

The role of the Court on a public interest petition

13. Section 124A of the Insolvency Act 1986 provides that where it appears to the Secretary of State from any report or information obtained under Part XIV of the Companies Act 1985 that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up. If the Court thinks it just and equitable for it to do so, the Court may order the winding up of the company.

14. The role of the Court on a public interest petition was explained by Nicholls LJ *in Re Walter L Jacob Co* [1989] BCLC 345 at p.353b-c as follows:

> "A petition having been duly presented by the Secretary of State, the next stage is when the petition comes before the court. At this second stage the court is concerned with the whole of the evidence before it, and the submissions made thereon by the parties. The court is not concerned with what was the material before the Secretary of State at the earlier stage when he formed his opinion. Nor, it seems to me, is the opinion as such of the Secretary of State, or an official in his department, reached at the earlier stage on whatever factual matter was before him in a report made by inspectors, or resulting from a books and papers investigation, normally of materiality to the Companies' Court when it decides the petition. The court's task, in the case of so-called "public interest" petitions, as in the case of all other petitions invoking the court's winding-up jurisdiction under s.122 (1)(g), is to carry out the balancing exercise described above, having regard to all the circumstances as disclosed by the totality of the evidence before the court. In respect of all such petitions, whoever may be the petitioner, the court has to weigh the factors which point to the conclusion that it would be just and equitable to wind up the company against those which point to the opposite conclusion. It is to the court that Parliament has entrusted this task, in all cases. Thus, where the reasons put forward by the petitioner are founded on considerations of public interest, the court, if it is to discharge its obligation to carry out the balancing exercise, must itself evaluate those reasons to the extent necessary for it to form a view on whether they do afford sufficient reason for making a winding-up order in the particular case.
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> In the case of "public interest" petitions, the court will, of course, carry out that evaluation with the assistance of evidence and submissions from the Secretary of State and from other parties. When doing so the court will take note that the source

> of the submissions that the company should be wound up is a government department charged by Parliament with wide-ranging responsibilities in relation to the affairs of companies. The department has considerable expertise in these matters and can be expected to act with a proper sense of responsibility when seeking a winding-up order. But the cogency of the submissions made on behalf of the Secretary of State will fall to be considered and tested in the same way as any other submissions. His submissions are not ipso facto endowed with such weight that those resisting a winding-up petition presented by him will find the scales loaded against them. At the end of the day the court must be able to identify for itself the aspect or aspects of public interest which, in the view of the court, would be promoted by making a winding-up order in the particular case. In many, perhaps most, cases that will be a simple exercise, in which the answer will be self-evident. In other cases the answer may not be so obvious."

15. In *Re Senator Hanseatische Verwaltungsgellschaft m.b.H.* [1997] 1 WLR 515 Millett LJ said at p.526D-E:

> "The safeguard for the individual is that the decision to wind up the company is not left to the Secretary of State but to the court, which must consider whether it is just and equitable to do so. In reaching its decision the court will take into account the interests of all parties, present members and creditors of the company and present participants in the scheme, as well as the interests of the public who may hereafter have dealings with the company."

The evidence

16. A number of witness statements have been served by the Secretary of State in support of the petitions. They include:

    (1) Two substantial witness statements by Mr Peacock, together with their exhibits, setting out the results of the investigations.

    (2) A short witness statement from Mr Gray which confirmed the contents of Mr Peacock's first statement so far as it concerned a meeting with Mr Seeballuck on 19 September 2013.

    (3) Seventeen witness statements from individual investors.

17. Mr Peacock and Mr Gray were cross-examined on their evidence by Mr Seeballuck. By orders made by consent dated 18 October 2016 it was agreed that the investors would not attend for cross-examination and that their statements would be admitted unchallenged.

18. The Companies served two witness statements by Mr Seeballuck and by Kashif Seeballuck in opposition to the petitions on 10 March 2015 and 10 November 2015 respectively.

19. During the course of the hearing the Companies sought to adduce further evidence:

    (1) A short unsigned witness statement by Mr Hassan was served on the morning of Monday 31 October 2016, exhibiting two files of documents relating to an informal offer by Caledonian for debt relief. The Secretary of State did not object to the late introduction of such documents.

    (2) During the morning of Tuesday 1 November 2016 the Companies sought to introduce further documents into evidence. I gave permission to rely on certain of that material which I was told simply aggregated into a spreadsheet trade data that was already in the trial bundles or which was of limited scope and Mr Seeballuck indicated that he did not persist with his application in respect of the remaining documents. The relevant documents were subsequently exhibited to a short further witness statement by Kashif Seeballuck dated 2 November 2016.

20. Mr Seeballuck and Kashif Seeballuck were cross-examined on their evidence.

Caledonian's business

21. Caledonian traded by marketing and selling a succession of different investment products, namely carbon credits, coloured diamonds, rare earth metals, precious metals and storage pods, to members of the public.

22. For present purposes the trading can be divided up into three categories:

    (1) The first category involves the marketing and sale of carbon credits, coloured diamonds and rare earth metals. The Secretary of State contends that each of these aspects of Caledonian's business was objectionable in that they involved, amongst other things, the marketing and sale of products which were unsuitable for members of the public. Caledonian accepts that these were objectionable investments. It says however that it carried out due diligence on each of the products to a satisfactory standard but was misled and that, as soon as it realised

that the investments were objectionable, it immediately stopped marketing and selling them and does not intend to market and sell them in the future.

(2) The second category involves the marketing and sale of precious metals. The Secretary of State contends that this aspect of Caledonian's business was conducted in a way which was also objectionable. He says that it led investors to believe that, when they entered into a contract to buy gold, Caledonian would purchase the relevant quantity of gold which would be owned by the investor. In fact, he says, Caledonian did not purchase enough precious metals to cover its obligations to investors and, in addition, subsequently sold part of its holdings to provide it with cashflow for its business. Caledonian says that its marketing and sales practices in relation to precious metals were not misleading or otherwise objectionable.

(3) The third category involves the marketing and sale of storage pods. The Secretary of State makes no specific criticisms in these proceedings in relation to this aspect of Caledonian's business.

The role of Commodities

23. The Secretary of State contends that Commodities was also involved in marketing and selling at least some of such investments. Mr Seeballuck says that this is incorrect and that Caledonian merely used "Caledonian Commodities" as a trading name and that Commodities, which never had a bank account, never traded.

24. It is abundantly clear that the relevant business was, at least in part, conducted through Commodities and that "Caledonian Commodities" was not merely used as a trading name for Caledonian. Thus:

(1) Commodities had its own separate website. Mr Seeballuck accepted that the website operated for at least the first three or four months of the Companies' trading and that clients were able to log on to their account through that website, although he said that at some stage it re-directed investors to Caledonian's website.

(2) There is correspondence with investors up to at least mid-2013 which bears the logo "Caledonian Commodities" and which refers to Commodities' website address and provides an e-mail address at the same domain name, although such investors also received correspondence in the name of Caledonian.

(3) The terms and conditions which were used in relation to the marketing and sale of gold identified Commodities as the company which was providing a physical precious metals commodities brokerage service and expressly stated in Clause 1 that the agreement was entered into between the investor and Commodities. Mr Seeballuck said that these terms and conditions were used for at least the majority of investors in gold until around late 2014.

(4) Although Mr Seeballuck's evidence was that Commodities had no bank account and that clients were instructed to transfer any monies to Caledonian, this simply emphasises the extent to which the affairs of the two companies appear to be intermingled.

25. Given the extent to which the affairs, business and property of Caledonian and Commodities appear to be intermingled, in the rest of this Judgment I will, for convenience, refer to the relevant business as having been conducted by the Companies without seeking to distinguish between them and, save where otherwise stated, treat Mr Seeballuck's submissions as applicable to both.

26. It is helpful to deal separately with the various investment products which were marketed and sold by the Companies.

Carbon credits

27. The first type of investment which the Companies marketed and sold to members of the public was an investment in a type of carbon credits known as VERs.

28. Carbon credits come in two main forms. Compliance credits, which are also known as certified credits, can be used by governments and industry to meet emission reduction targets and to comply with caps on emissions. They are widely traded and there is an identifiable secondary market for them. In contrast, voluntary carbon credits, often referred to as VERs, cannot be used to meet legal obligations, and are intended for

individuals or organisations that want to offset their carbon emissions for ethical or corporate responsibility reasons. The evidence indicates that VERs are wasting assets the value of which tends to decline as the age of the credit increases and that there is no evidence of a secondary market in them which is available to retail investors.

29. The available records indicate that between 25 September 2012 and 26 November 2012 the Companies made 19 sales of VERs totalling £59,372.50 to 12 individuals. The sum invested by each individual ranged from £1,750 to £13,000.

30. The Companies sold VERs via an online platform hosted by a company called Carbon Neutral Investments Ltd ("CNI"). It purchased each credit from CNI for £2.50 and sold them to investors for between £6.75 and £7.00 per credit, a mark-up of approximately 170% to 180%. The evidence suggests that CNI may, in turn, originally have purchased such carbon credits for between 45-65p each.

31. The Secretary of State considers that VERs are unsuitable investments and that the Companies should not have marketed and sold them to members of the public for two main reasons:

    (1) VERs are, by their nature, not suitable for unsophisticated investors. Their value declines over time. It is also very difficult, if not impossible, for any individual member of the public to sell any VERs that he or she has purchased.

    (2) The effect of the size of the mark-up applied by the Companies is that the price of VERs would need to increase significantly before investors might be able to recover their investment, even assuming that it was possible for them to find a buyer. This is exacerbated by the mark-up which it appears is likely to have been applied by CNI when it sold VERs to the Companies.

32. Mr Buckley informed me that the Secretary of State has presented a winding up petition on public interest grounds against CNI and that a number of other companies which dealt with CNI have already been wound up on such grounds or have gone into liquidation.

33. The Companies accept that VERs are unsuitable investments. On 23 October 2013, Kashif Seeballuck told Mr Peacock:

> "As a company we are interested in being able to provide our customers with access to an array of investment opportunities that may range in risk but at the very least offer the potential for capital growth or preservation and some methodology that provides a potential exist strategy. Neither Rare Earth Metals or Carbon Credits fit within this ethos hence why we no longer recommend either or these products to our clients and to many degrees we regret having been involved in them at all …"

Kashif Seeballuck confirmed this position in paragraph 16 of his witness statement saying that:

> "Caledonian wishes to provide access to alternative investments that offer the potential for capital growth or capital preservation and has some method of exit strategy. Neither Carbon Credits, Rare Earth Metals or Coloured Diamonds fits within those categories and as soon as this was realised by management at Caledonian, these desks were shut down, which we believe shows an abundance of commercial probity".

Statements to similar effect are made by Mr Seeballuck in paragraphs 16, 27 and 28 of his witness statement.

34. The Companies make five main points in respect of its trading in carbon credits. They say in short that:

(1) They conducted due diligence in relation to carbon credits to a satisfactory standard and that there was no readily available information suggesting that VERs were anything other than long term, alternative, speculative investments with a future exit strategy.

(2) The Companies were mislead in this respect by CNI.

(3) It was only when the Companies transacted with CNI "that it became apparent that an exit strategy did not actually exist and that these were objectionable and illiquid investments with excessive mark-ups".

(4) When the Companies realised this they immediately ceased further business in carbon credits, and did so before any warnings were issued and many months before the investigators were appointed, and have no intention of marketing and selling investments in carbon credits again.

(5) They cooperated fully with the investigators in their investigations.

(6) Whilst they accept that marketing and selling investments in VERs was objectionable, in the circumstances this does not indicate a lack of commercial probity on their part.

35. There is no documentary evidence in relation to any due diligence carried out by the Companies before they began marketing and selling VERs to members of the public.

36. Mr Seeballuck says that the due diligence was done by Kashif Seeballuck not by him and that he checked that CNI was FSA registered and looked at its accounts and details of its directors and that the marketing material produced by CNI indicated that the product was potentially one with opportunities for capital growth in the long term and provided an exit strategy.

37. Mr Seeballuck says that:

(1) The Companies were misled into believing that it was certified carbon credits that were being supplied, rather than VERs.

(2) The sale price charged by the Companies, and thus the mark-up that they would receive, was set by the online platform provided by CNI rather than by the Companies themselves.

(3) The product had been introduced to them by an employee, Mr Porter, who brought with him his own client list and who was the person responsible for marketing and selling them.

38. Before marketing and selling investments to members of the public it is, in my view, the responsibility of a company to take proper steps to ensure that it has a sufficient understanding of the investment that it is marketing and selling. The more unusual and speculative the investment, the heavier is the burden resting on the seller to ensure that the contents and set-up of his sales literature are not misleading; see *Re Walter J Jacob & Co Ltd* [1989] BCLC 345 at p.359c-d.

39. Such due diligence as was carried out was, in my view, wholly inadequate. It appears to have consisted in reliance on the fact that CNI was FSA registered, obtaining copies of CNI's accounts and details of its directors, reading some marketing materials and carrying out a Google search. Such steps were insufficient to enable the Companies to

understand the product that they were selling and to satisfy themselves that carbon credits could properly be regarded as an investment, even if a speculative one, which would provide investors with the potential for capital growth and the ability to realise their investment.

40. In particular:

(1) Mr Seeballuck appears to have regarded the fact that CNI was, at that stage, FSA registered and an apparently substantial and profitable company as sufficient due diligence. Whilst that may provide comfort in relation to the company, the sale of carbon credits was not a regulated activity and, in any event, this did not justify the Companies failing to take proper steps to ensure that they sufficiently understood carbon credits before marketing and selling them as an investment.

(2) The Companies' claim that they were misled by CNI into believing that they were purchasing certified carbon credits rather than VERs and that all sales to customers were made on this basis. I do not accept this. A brochure produced by Caledonian on carbon credits states that CNI only supplies VERs. Although I was told that the brochure was barely ever sent to investors, it correctly records what was being sold. I was also shown a letter from Caledonian to Mr Potter, one of the investors, confirming that VERs had been reserved for him, together with a subsequent contract note dated 15 October 2012 which referred to VERs. In his oral evidence Mr Seeballuck said that, at the time, he did not understand the difference between certified carbon credits and VERs. Even assuming this to have been the case, the Companies did not take proper steps to ensure that they understood what they were selling.

(3) The mark-up applied to the sale of carbon credits was considerable. Kashif Seeballuck says that the mark-up earned by the Companies when they sold carbon credits to investors was set by CNI's platform. But, even assuming that this was the case, they decided to sell VERs to members of the public at such a price and the Companies should have appreciated that the prospect of the VERs increasing in value above the price paid by the investor, given in particular the mark up applied by the Companies, was in practice almost non-existent.

(4) Mr Seeballuck did not know what the exit strategy was for any investor who purchased carbon credits. Kashif Seeballuck said that CNI offered to re-purchase the carbon credits at £5.50, and thus only at a loss to investors, but said that he "could not remember" how investors might have realised their investment at a profit. The brochure dealing with carbon credits, although apparently hardly ever sent to investors, stated that investors should be aware that there is little or no liquidity and that it may not be possible to sell VERs without suffering a loss of some or all of the capital invested. The Companies should have been aware that it was, at best, highly unlikely that investors would be able to access a market to sell their carbon credits at a profit.

41. Nor, in the circumstances, was it acceptable for Mr Seeballuck to say, as he did, that the Companies' intention was only to "test" the product, in the sense of seeing if there was demand from customers for the product and checking the supplier's conduct. This is particularly so given that Kashif Seeballuck said that, at the time, he had thought that the whole thing was "a bit off". Mr Seeballuck says that the market appeared to "be a gold rush" and he appears to have been eager to be part of it.

42. The Companies made statements to investors about the likely benefits of investing in VERs and the level of returns that they might reasonably anticipate to receive:

(1) The various witness statements from the investors record them being told that they could make returns, including on occasions specific rates of return ranging from between 8% and 30% within a period of a year or sometimes less. The Companies do not challenge that evidence. Indeed, Mr Seeballuck said that he had no doubt that Mr Porter said such things and that he "probably said much worse than that". Kashif Seeballuck described such statements to investors as "well out of line". There was no reasonable basis on which those predictions could have been made.

(2) The Companies say that such statements were made by Mr Porter. However, the evidence from Mr Potter, one of the investors, suggests that he was repeatedly cold called, not by Mr Porter, but by Mel Ertekin. Although Mr Seeballuck suggested that Mr Potter must be mistaken, his evidence was not challenged.

(3) Mr Seeballuck also said that such statements were made without his knowledge. Although the office was small such that everyone would know what others were doing, Mr Seeballuck said that Mr Porter would leave the office when speaking to his clients and use his mobile phone to do so, and that it took him some time to realise what was happening. However, during his cross-examination, he also said that the traders were told that "they could go up to £12 to £15" in terms of likely sale price. This he said, was on the basis of various articles he had read which, he did not realise, had been referring to certified credits.

43. Mr Seeballuck and Kashif Seeballuck both accepted during the course of their evidence that VERs were mis-sold to investors. Mr Seeballuck said that he accepted that it was a product that should not be sold at all and that the only thing that investors could properly have been told was that they would lose 100% of their investment. It follows that investors who purchased carbon credits are likely to have claims against the Companies.

44. Mr Seeballuck says that, whilst he regrets the sale of carbon credits, the Companies' subsequent actions indicate that they acted with commercial probity and that, in the light of this, their involvement does not indicate that it would be just and equitable for the Companies to be wound up. In particular:

(1) He ascribes the experience to naivety on his part, on the basis that he was new to alternative and speculative investment products of this sort.

(2) He says that the Companies only sold carbon credits for a matter of weeks to relatively few investors and that they stopped selling them immediately they realised that they provided no opportunity for capital growth and would not be possible to sell and almost a year before the investigators were appointed.

(3) He says that the problem was the fault of Mr Porter and that he terminated his employment immediately he realised the position.

(4) He says that the Companies attempted to contact their clients who purchased carbon credits and make recompense, and that the two clients who contacted the company accepted compensation in the form of an amount of unallocated gold credited to their account of £1,000.

(5) He says that the Companies cooperated with the investigators in relation to their investigations in respect of carbon credits.

(6) He says that, if the Companies had been interested simply in making profits at the expense of the investors, they would not have stopped marketing and selling carbon credits as quickly as they did, particularly given how profitable they appeared to be to the Companies. He sought to contrast the Companies' behaviour with that of other companies which dealt with CNI for considerably longer.

45. I will consider the Companies' conduct in ceasing to sell carbon credits after I have addressed the Companies' other investment products.

Rare Earth Metals

46. After the Companies stopped selling carbon credits they started marketing and selling rare earth metals to members of the public as investments. This aspect of their business has a number of similarities with their sale of carbon credits.

47. Rare earth metals are chemical elements used in the manufacture of products like computers, mobile phones, batteries, satellites and wind turbines. Despite being "rare" they are among the most abundant resources, the description coming instead from the difficulty in extracting them from the earth.

48. The available records indicate that between 19 February 2013 and 5 June 2013, the Companies made eight sales totalling £61,000 to six investors. The sum invested by each individual ranged from £4,000 to £31,000.

49. The investigators were provided with purchase invoices relating to the purchase of rare earth metals by the Companies totalling £21,188. Assuming that these relate to the sales referred to above, the Companies made a profit of £39,812 on the sale, equating to a mark-up of up to 187%. This estimate was not challenged by the Companies in their evidence. The investigators believe that the price paid by the Companies' supplier is likely to have been much lower.

50. On 14 May 2013 the FSA, as it then was, published a warning regarding investments in rare earth metals which set out the reasons why they are not suitable investments for retail investors. Those reasons included the following:

    (1) The FSA had yet to see any convincing evidence that there was a viable market for retail investors to make money from investments in rare earth metals. Manufacturing companies that use the metals almost always buy them in very large quantities, making it highly unlikely that they would deal with small independent retail consumers.

    (2) It is difficult to find and track prices of rare earth metals as they are sold on private markets rather than traded on an exchange like precious metals such as gold and silver. This makes it very hard for investors to check if they are paying the right price, to eventually sell it at all or at least to do so at a competitive rate.

    (3) Rare earth metals are generally not sold in their pure form, but will be distributed in varying mixtures of purity. This means that quality and quantity varies and investors cannot be certain about what they are paying for.

51. The Secretary of State considers that rare earth metals are unsuitable investments and that the Companies should not have marketed and sold them to members of the public, for the reasons set out by the FSA and because, given the scale of the mark-up applied by the Companies, the price of rare earth metals would need to increase significantly before investors could get any of their investment back, even assuming that they were able to find a buyer.

52. The Companies accept that rare earth metals are unsuitable investments, but make essentially the same six points in response as they make in relation to VERs that I set out earlier.

53. There is no documentary evidence in relation to any due diligence carried out by the Companies before they began marketing and selling rare earth metals to members of the public.

54. Mr Seeballuck says, however, that they checked the accounts of the supplier, a company called Anglo Metal Holdings Ltd and that the supplier's marketing materials were convincing. However:

    (1) Mr Peacock's investigations indicate that Anglo Metal Holdings Ltd is registered in Gibraltar, with a share capital of £100, and that its sole shareholder is a company called Keylink, an American registered company.

    (2) Mr Seeballuck said that, although the supplier provided an online platform on which investors were to be able to trade, he is not sure it ever worked and the Companies were not given a log-in. The supplier was also difficult to get hold of and difficult when you did manage to contact them.

    (3) Although the supplier was supposed to act as a two-way market maker, when Mr Seeballuck started to look at it he realised that it was not real and that *"*the set up was a scam".

55. Despite the Companies' recent experience of carbon credits, it does not appear to have occurred to Mr Seeballuck to have acted more cautiously before starting to market and sell rare earth metals. Instead, the Companies proceeded to "test" the product on investors.

56. The Companies made statements to investors about the likely benefits of investing in rare earth metals and the level of returns that they might reasonably anticipate to receive. The various statements by investors record, for example, one investor being told that returns in the region of 30% over a five year period could be made and that the Companies could sell their investment when they wanted to realise it. Mr Seeballuck's response to such representations varied. At one stage he said that the traders were not supposed to say such things but that there are some people who cannot help themselves. At another stage he said that such statements were reasonable. In my view, the Companies did not have reasonable grounds for making such statements to investors given, amongst other things, the lack of evidence of a market that would have been available to them on which they could realise their investment.

57. Mr Seeballuck ultimately accepted that the indicated returns were misleading and that rare earth metals were mis-sold to investors. It follows that investors who purchased such products are also likely to have claims against the Companies.

58. Mr Seeballuck says that, whilst he regrets the sale of rare earth metals, as soon as he realised that the product was objectionable the Companies stopped selling them. He says that he was still learning about alternative investments. As with carbon credits, he emphasised the short period for which they were sold and said that he co-operated fully with the investigators. He also said that, if the Companies had been interested simply in making profits at the expense of the investors, they would not have stopped when they did. Again, I will consider the Companies' conduct in this respect after I have addressed the Companies' remaining investment products.

Coloured diamonds

59. The third type of investment which the Companies marketed and sold to members of the public were coloured diamonds.

60. At a meeting with the investigators on 4 September 2013 Kashif Seeballuck stated that Caledonian had only sold one coloured diamond and on 19 September 2013 Mr Seeballuck told the investigators that it had no intention of completing any further sales of diamonds.

61. The Companies' records indicated that the sale was of a 0.34 carat fancy pink diamond to Yiqi Pan ("Mr Pan") for £6,111. The diamond had been purchased for £1,770.84 from a company called Sterling International, and was to be held offshore.

62. The diamond was sold to Mr Pan at a mark-up of some 345%. Mr Seeballuck accepted that the mark-up involved was "very excessive" and that the sale should have been stopped as it was an "awful trade" to which he "put his hands up", saying that if he was lucky Mr Pan might break even in 10 years. Kashif Seeballuck accepted that, although unlike VERs and rare earth metals it is possible to sell coloured diamonds, given the size of the mark-up, the diamond could not fairly be described as an investment and that Mr Pan would not be able to sell out at a profit.

63. Despite this, when Mr Pan subsequently wanted to sell his diamond, Mr Seeballuck told him that it had increased in value by some 10% and persuaded not him to sell it on the basis that it would be better to keep it for the long term in order to maximise his investment.

64. The investigators subsequently identified further sales of coloured diamonds by the Companies. Two such sales were made before the investigators had been appointed and prior to the meeting on 4 September 2013:

    (1) Maurice Foster sold his existing investment in gold and purchased a yellow diamond from the Companies for £3,500 on 8 August 2013.

    (2) Ian Potter purchased a 0.75 carat yellow fancy diamond in April 2013 for £4,000 which he paid for by instalments between April and September 2013.

65. Mr Seeballuck said that these diamonds were purchased from a different supplier. He said that, although he could not remember the precise mark-up, it was significantly lower. Kashif Seeballuck suggests that the mark-up may have been about 65% which he said was still "a bit naughty".

66. The Companies did not disclose the existence of such additional sales to the investigators. Mr Seeballuck said that this was because they had been purchased from a different supplier and had been delivered, with the result that they were recorded in a different part of the Companies' records, and that he overlooked them. He said that, given their problems in relation to carbon credits and rare earth metals, there would have been no point in concealing the existence of these two further sales. Even if this explanation is the full story, as to which I have my doubts, the Companies failed to ensure that the investigators were given the full facts.

67. Despite Mr Seeballuck informing the investigators that the Companies had no intention of completing any further such sales, in February 2014 they sold Tony Norman a 1.09 carat brown-yellow fancy diamond for £5,000.

68. The Secretary of State considers that, in the circumstances, there is a distinct possibility that there have been further sales of coloured diamonds of which he is unaware.

69. In March 2015, and thus after service of the petition, Mr Potter sent his diamond to the Companies to be sold on his behalf, having been told that he could expect to receive £6,000. However, he heard nothing further, and was not told whether his diamond had been sold. Mr Seeballuck, when asked about this, said that he considered that the Companies failing to explain to Mr Potter what had happened to his diamond was acceptable behaviour.

70. The Companies accept that coloured diamonds are also objectionable investments given in particular the size of the mark-up, although they say that, unlike VERs and rare earth metals it was possible for investors to sell them. They also say that they stopped dealing with Sterling International immediately that they realised the position and sourced their diamonds from another supplier and that their failure to mention the additional sales to the investigators was not deliberate.

71. I should add that Mr Seeballuck told me that Mr Potter's, Mr Foster's and Mr Norman's coloured diamonds are in his possession and offered to show them to me.

Precious metals

72. The third type of investment which the Companies marketed and sold involved precious metals, which it appears to have sold from about January 2013 onwards.

73. The Companies' position was that, unlike the position in relation to carbon credits, rare earth metals and coloured diamonds, their marketing and sale of precious metals was entirely unobjectionable. Unfortunately, that is very far from the case.

74. In an e-mail dated 4 September 2013 Mr Hassan informed the investigators that the Companies had made:

    (1) 51 sales of gold totalling 7,844.8086 grams for a price of £269,500 to 34 clients; and

    (2) 8 sales of silver totalling 33,916.517 grams for a price of £22,250 to 7 clients.

    Mr Hassan further said that the Companies had charged a commission of 5% on such sales.

75. The Companies' marketing materials, terms and conditions and correspondence were, in my view, calculated to give members of the public the impression that the money they paid to the Companies would be used by the Companies to purchase physical gold and furthermore that investors would be acquiring an interest in that physical gold.

76. The Companies produced a brochure in Caledonian's name headed "GoldPlus – A Guide to Gold". It explained, at some length, why and how an investor could invest in gold. Amongst other things:

    (1) It said that "We aim to provide our clients with the opportunity to build their own physical holdings in precious metals …" and that gold was "one of the few financial assets that do not rely on an issuer's promise to pay".

    (2) It explained the types of GoldPlus accounts an investor could hold. A GoldPlus Pooled Account was described as the easiest way to begin investing in precious metals and build up their holdings. It explained that the advantage of holding gold in a Pooled Account was that "There are no storage or insurance charges and you can save what you like, when you like, and when you are ready you can sell some or all of it back to us in an instant". In contrast, an investor with a GoldPlus Allocated Account could "reserve specific bars which are then stored and individually segregated within LBMA Accredited Vaults". On the same page, under the heading "Direct Delivery" it stated that "clients can arrange for delivery of bars at the time of purchase or of specific bars which are already stored in LBMA Accredited Vaults".

    (3) A page set out GoldPlus Key Features which included "Buy and Sell Investment Grade Gold" and "Secure Storage in LBMA Accredited Vaults".

77. The Terms & Conditions for a GoldPlus Account were not exhibited to Mr Peacock's statement but, following Mr Seeballuck's complaint at their omission, I was provided with a copy by Mr Buckley. They are to similar effect. For example:

    (1) Clause 2 of the agreement stated that it provided for the establishment of an account for the investor for the purchase and sale of physical commodities.

(2) Clause 4 provided that Commodities would deliver such commodities to the investor or for the benefit of the investor to banks or depositories used for the purpose of safekeeping and that ownership of commodities purchased by the investor would, subject to any security interest, pass to the investor upon delivery to the investor or depository to be held for the investor.

(3) Clause 10 provided that the investor granted Commodities a security interest in the Collateral as defined, which was expressed to consist of each and every commodity purchased by the investor from Commodities.

78. Letters from the Companies to investors variously stated, for example, that "we would like to acknowledge full receipt of funds … towards the purchase of physical gold", "once cleared we shall purchase the gold for you" and "we have now purchased £[x] of Gold in your name".

79. The Purchase Order Form that was provided to investors contained a series of pre-printed confirmations. By signing that form an investor confirmed that "I am instructing Caledonian Commodities to purchase Unallocated Gold up to the retail value of the investment amount" and that he or she understood that "as Unallocated Gold is a hard asset denominated by weight it may not be possible to purchase Unallocated Gold to the exact value of the investment amount, in which case the monetary difference between the investment amount and the actual amount purchased would remain on account". It also stated that "Subject to receipt of full cleared funds and signed Terms, we shall authorise registration of the Unallocated Gold in your name".

80. The Companies' position was however that they had no obligation to use the monies paid by investors to buy physical gold or to hold gold of equivalent value to the amount purchased by investors and that investors had no interest in any gold owned by the Companies. Instead, according to Mr Seeballuck, investors merely had an unsecured claim against the Companies in respect of the notional value of the gold that they had purchased. It was, he said, entirely up to the Companies how much gold, if any, they wanted to hold to hedge their position.

81. The Companies in their Skeleton Argument nevertheless submitted that, despite this, "their marketing in relation to precious metals was very clear, all the data on the marketing was accurate and in no circumstances was it misleading".

82. This stance displayed a profound inability or refusal to recognise the seriously misleading nature of the Companies' communications with investors if, as they maintained, they believed that they were never obliged to use the money paid to purchase or hold gold and that investors were only ever unsecured creditors.

83. Mr Seeballuck, during the course of his cross-examination, said that the Companies could be viewed as providing investors with a platform for spread betting on the price of gold. Such a description would, I am sure, have been met with complete bewilderment on the part of investors if it had been communicated to them.

84. Mr Seeballuck referred to the Client Information Form, which was part of the Terms & Conditions, which contained a declaration by the investor, in small type, that they "agree to accept non-obligatory advisory services in relation to the purchase of Spot Commodities i.e. Physical Allocated/Unallocated Gold, Silver and other Precious Metals, Rare Earth Metals or any other Spot Commodities" and in particular the use of the word "Unallocated". He also referred to the use of the word "Unallocated" in the Purchase Order Form and in some, but far from all, of the correspondence with investors. These unexplained references were a wholly inadequate means of correcting the understanding conveyed by the rest of the Companies' communications with investors.

85. The various witness statements provided by investors indicated that they understood that they had purchased physical gold.

86. Whether because the Companies misunderstood the nature of their relationship with investors or, as I suspect is more likely, because they needed to generate cashflow to operate their business, for much of the period there was a substantial and growing shortfall between the amount of gold owed to customers and the amount of gold held by the Companies.

87. During the course of the trial, the Companies produced a schedule which showed that, by February 2013, they were already had a short position in respect of gold to a value of some £27,531.84. This was less than one month after they had started trading gold.

88. In an e-mail dated 23 October 2013 Kashif Seeballuck confirmed to the investigators that there was a shortfall in the gold owned by the Companies and explained the reason for this as follows:

> " Due to delays that have occurred in the setting up of client accounts … we have been unable to complete settlement on commercial property storage pods referrals, thus resulting in our having been operating with no business income and therefore our being required to liquidate some of our gold reserve in order to remain liquid as a company and open to business.
>
> Since we have been trading in unallocated metals as Principal, we are able to view credit balances in unallocated gold as a liability to be recorded on our balance sheet. Metals & Metals Credits held by us against these liabilities are held in our name and will appear as assets (valuables) on our balance sheet. Fortunately, this is legal and rather common practice within the metals industry as there is no legal requirement for such holdings to match outstanding liabilities to account holders.
>
> Whilst this is an acceptable practice for keeping liquid, we feel it is important to clarify that we do not consider this to be a satisfactory solution for our business to be in and as soon as our sales pipeline re-opens we aim to replenish our metals levels in order to balance our accounts, since as it stands this currently leaves us in a situation of risk of being the issuer of such unallocated gold, whereby if there were a financial banking type "run" on the metals in the immediate future … whereby all of our clients attempted to reach their metal deposits with us at the same time, then not all our clients would be able to convert their holdings back to cash or bars & we ourselves would be left essentially insolvent …
>
> Our current liability to this effect is approximately £55,000."

89. Despite the Companies' professed case as to the nature of their relationship with investors and the existence of the shortfall, a number of investors were expressly assured that, in the event that the Companies went into liquidation, their gold would be safe. Janet Wicks, for example, received an e-mail from Mel Ertekin dated 22 May 2013 which said "I have been advised by our compliance officer that in the event that our company went into liquidation, you would be able to access your gold by contacting the liquidator at that time or our accountant who would have a list of all investors … He has ensured [sic] me that your invoice is proof of purchase and proof of ownership of the gold". Kashif Seeballuck said that the reference to the compliance officer was a

reference to him. Mr Seeballuck accepted that the statement, which was made after the Companies already had a substantial shortfall in gold, was wholly misleading.

90. Mr Seeballuck stated, in his witness statement, that "we do not promote future potential returns" for gold. This was also not correct. It is clear, from the witness statements provided by investors, that they were encouraged to believe that gold was likely to be a good investment and were provided with indications of potential returns.

91. Mr Buckley also criticised the forecasts that were provided on the basis that they amounted to assertions of fact or that the Companies had no reasonable basis for making such forecasts. I am not satisfied, from the limited material before me, that the Companies' approach to forecasts was also open to criticism on such grounds. Some of the material appears to have concerned past performance and many of the statements in relation to the future appear to have been expressed in terms of possibility or likelihood or otherwise qualified. Mr Buckley also said that the forecasts lacked balance. That may well have been the case. However, this is very much a matter of degree and, in circumstances where reputable news sources appear to have been predicting returns that were in some cases higher than those suggested by the Companies and where the price of gold did increase substantially, I am not satisfied on the basis of the limited material before me that such forecasts amounted to a lack of commercial probity on this basis. Whilst the marketing and sale of gold may also be objectionable on the grounds that it involved high pressure sales techniques, this is not established by the evidence before me.

92. The Companies' forecasts are, however, open to another objection. Given in particular the existence of the shortfall, investors were exposed not merely to the risk of fluctuation in the value of gold, but also to the risk that the Companies would be unable to meet their obligations to investors, and that this risk would be exacerbated if the price of gold rose. To provide forecasts to investors which focussed solely on the potential increase in the price of gold and which failed to disclose the risk of the Companies being unable to honour their obligations, particularly in the event that the price did increase, was wholly unsatisfactory given the Companies' professed understanding of their relationship with investors and the existence of the shortfall.

93. By the end of giving their evidence both Mr Seeballuck and Kashif Seeballuck accepted that the Companies' communications with investors in respect of gold were misleading.

94. Mr Seeballuck referred to a new set of terms and conditions which he said the Companies introduced in late 2014. Unfortunately, these did not adequately remedy matters. Whilst they did state that Caledonian was the principal debtor with the obligation to repay investors who were unsecured creditors, they did not sufficiently clearly indicate that the Companies were not obliged to use the money provided to purchase and hold gold. To the contrary, they stated that:

> "It must be understood that monies paid to Caledonian are for the purchase of bullion. They are neither a deposit nor margin. Caledonian will not hold such funds in any form on segregated account.
>
> Unless specifically purchased on an allocated basis, bullion purchased by you will be held to your unallocated account with Caledonian.
>
> The balance on an unallocated account represents a general entitlement to metal which is supported by the general metals stocks which Caledonian hold in bar, coin or grain form, or that is held to their account by professional trading counterparties or refineries …"

95. It appears likely that similar issues exist in relation to the marketing and sale of silver. In particular, although Kashif Seeballuck's e-mail of 23 October 2013 referred solely to a shortfall in respect of gold, a similar shortfall also appears to exist in relation to silver. Although Mr Hassan had informed the investigators on 4 September 2013 that the Companies had sold 33,96.517 grams of silver, a statement from Baird & Co, the Companies' supplier, dated 20 November 2013 showed holdings of only 16,009.5566 grams. Whilst, given the different dates, a direct comparison is not possible, there is no evidence that the drop in holdings is explicable by investors disposing of their holdings in the intervening month.

96. A statement by Baird & Co indicates that the Companies' holdings of gold and silver as at 16 September 2016 amounted to 1,670.7056 grams of gold and 18,620.3182 grams of silver, with a total value of £62,204.21. It appears that the current shortfall as against investors' positions may amount to as much as £425,000 by value.

Storage pods

97. From about August 2013 the Companies also sold storage pods to members of the public as an investment. On 4 September 2013 Mr Hassan told the investigators that the Companies had sold six storage units for a total of £46,500 to two investors and that they had received 25% commission, amounting to some £11,625, on those sales. No specific complaints are however made by the Secretary of State on the present petitions in respect of such sales, although I was told that a number of concerns as to the suitability of storage pods as investments have been identified.

Accounting records

98. The Secretary of State is also concerned that the available books and records of the Companies are inadequate to disclose the full extent and nature of the various transactions undertaken by them. Three specific matters were identified.

99. The most significant matter concerned the fact that the investigators had been told that Mr Hassan had put £30,000 into Caledonian. In support of this the Companies referred to three credits of cash to Caledonian's bank accounts of £5,000 on 11 January 2013, £5,000 on 16 January 2013 and £20,000 on 24 January 2013. The investigators were, however, unable to identify any accounting records explaining the nature of such credits. Caledonian's accounts for the year to 31 March 2014 also showed a balance outstanding by Mr Hassan on his director's loan account as at 1 April 2013 of £21,187. Although Mr Peacock accepted that all client's monies appear to have been accounted for, it remains the case that the Companies' books and records do not adequately explain the nature of such credits.

Offers to creditors

100. In October 2016, Caledonian has made an informal request for debt relief from investors in precious metals, by means of a letter which it appears to have sent to all such investors.

101. The letter refers to the petition and accepts that Caledonian sold objectionable products in the past. It says that Caledonian took on three investment products following due diligence which seemed to show potential but that, following a short period of trading,

ceased such activities having decided on its own volition that such products were objectionable. It says that it then promoted precious metals and storage pods and that it did not consider such products to be objectionable. It says that it was however forced to rely on its gold assets to meet its cashflow needs but that "this is a position the Company is legally allowed to take and was declared appropriately on company accounts".

102. The letter said that Caledonian had £62,204.21 of assets with Baird & Co. One version of the letter recorded its liabilities to investors in respect of precious metals amounting to some £377,895.61. Another version gave an increased figure of £435,198.68.

103. The letter said that Caledonian was now faced with two obvious options, in that it could either not contest the petition or contest it and lose due to insolvency, with the result that, in either case, investors would get nothing back. It said that it would like to try a different option which would require investors' consent. This would involve offering investors approximately 15% of the value of their claims (or approximately 13% where the higher figure for liabilities was used) in full and final settlement, conditional on the court dismissing the petition. If the offer was accepted, Caledonian would then seek to persuade the court that it had acted with integrity and would do so in the foreseeable future, and have the petition dismissed. The letter said that if 75% of creditors who responded by the deadline agreed the offer, Caledonian would contest the petition.

104. Mr Seeballuck told me that the offer had been formally accepted by 34 creditors equating to 48.57% of investors by number and 39.08% by value and the documents before the court contain various signed letters by investors. He also said that a further 9 investors had orally agreed to the offer, equating to a further 12.86% by number and 25.69% by value. This amounts to 61.43% by number and 64.77% by value. He said that so far no investor had said that they wanted to reject the offer.

105. None of the investors has sought to give notice of an intention to appear on the hearing of the petitions.

106. Although Mr Seeballuck told me that the offer was prepared with the assistance of professional insolvency advice, it is, in my view, deeply unsatisfactory for a number of reasons. The offer says that Caledonian's marketing and sales in respect of precious metals was unobjectionable when it was not. It envisages distributing the remaining

assets of Caledonian amongst investors in respect of precious metals, despite the fact that Mr Seeballuck accepts that investors in respect of carbon credits, rare earth metals and coloured diamonds are also likely to have claims against Caledonian. It tells creditors that, if they do not accept the offer, they will get nothing, without disclosing the possibility of claims against the director and others involved in the business of the Companies or whether those claims might have any value. It fails to explain that, if Caledonian is allowed to continue trading, its affairs will not be investigated by the official receiver or a liquidator. The letter says nothing about the position of Commodities or its role in such trading.

107. In my view the offer, rather like the offer in *Re Walter J Jacob & Co Ltd* [1989] BCLC 345, rather than making matters better, would make them worse; see at p.358f-g and 361c-f.

Other matters

108. Mr Seeballuck made a number of submissions which he asked the court to take into account when deciding whether it would be just and equitable to wind up the Companies. In particular:

(1) Mr Seeballuck and Kashif Seeballuck have both been FCA registered for, he said, some 20 years, and have a clean record, although they are presently shown as inactive. He says that he is currently working for an IFA firm.

(2) When the Companies were set up he was new to alternative speculative investments and was misled into selling objectionable products, in particular by CNI and Mr Porter.

(3) Unlike many companies involved in selling carbon credits, rare earth metals and coloured diamonds, the Companies marketed and sold such products for a relatively short time and in relatively small amounts and stopped doing so of their own volition when they realised that such products were objectionable.

(4) He provided partial compensation to two investors who had purchased carbon credits, by crediting their accounts with Caledonian with £1,000 each.

(5) The Companies co-operated with the investigators.

(6) He had caused the Companies to give up their offices in Canary Wharf and to move to considerably smaller and cheaper offices in Eltham to try and reduce overheads, and had more recently introduced a call monitoring system.

(7) Caledonian has duly paid corporation tax.

(8) He had taken steps to oppose the winding up of the Companies in what he believed to be the best interests of creditors and "was only here for the sake of investors".

(9) Given that Commodities was struck off and dissolved on its own application, there was no risk of Caledonian's business being transferred to it.

(10) If winding up orders are made there is little or no prospect of creditors receiving any payments, given the likely costs of liquidation.

(11) Neither he nor Kashif Seeballuck have any assets of any value.

(12) During the course of his closing submissions, he offered to compensate investors in carbon credits, rare earth metals and coloured diamonds from his future salary.

(13) He had taken a considerable personal risk in opposing the petitions, given that he had been told that he might be ordered to pay the costs of the hearing.

(14) He would be prepared to accept any undertakings that the court might consider it appropriate to require as a condition for dismissing the petitions. He referred, in this context, to *Secretary of State for Business, Enterprise and Regulatory Reform v Amway (UK) Limited* [2009] EWCA Civ 32.

109. I have taken such matters into account as part of the totality of the matters before the court.

Just and equitable

110. Whilst recognising that the power of the court to wind up companies on public interest grounds needs to be exercised sparingly and with care, I am firmly of the view that it

would be just and equitable to make winding up orders in relation to both Caledonian and Commodities.

111. In reaching this conclusion I have had regard to all the circumstances as disclosed by the totality of the evidence before the court and have weighed the factors which point to the conclusion that it would be just and equitable to wind up the Companies against those which point to the opposite conclusion. I have considered the evidence and submissions from the Secretary of State, bearing in mind that the source of the submissions that the Companies should be wound up is a government department which has considerable expertise in these matters and can be expected to act with a proper sense of responsibility when seeking a winding-up order. I have also considered the submissions made by Mr Seeballuck. I have taken into account the interests of all parties, including members and creditors of the company, as well as the interests of the public who may hereafter have dealings with these Companies.

112. In my view, the business of the Companies has been conducted in a way which does not meet accepted minimum standards of commercial behaviour. This is the case not merely in relation to the marketing and sale of carbon credits, rare earth metals and coloured diamonds, where the Companies accept that investors were seriously misled, but, despite their assertions to the contrary, also in relation to the sale of precious metals. Such trading involved mis-selling which, in a number of respects, can only have been deliberate.

113. Whilst it is right to record that, unlike various other companies involved in selling such products, the Companies did not trade carbon credits and rare earth metals for long and stopped of their own volition, the Companies' failings were serious and the sums involved were significant for many of the individual investors involved.

114. The Companies are insolvent. Although I am conscious that there must be a real prospect that a winding up order may not enable existing creditors to recover their losses, the result of Caledonian's informal offer to investors, given its terms, does not justify treating it as solvent or dismissing the petitions.

115. I also consider that there is a strong prospect that, if allowed to continue trading, members of the public will suffer further loss. I do not consider that the steps taken by the Companies to change their business practices are to be regarded as in any way

comparable to those which were taken in *Secretary of State for Business, Enterprise and Regulatory Reforms v Amway (UK) Ltd*. I am, I am afraid, far from satisfied that, even now, Mr Seeballuck appreciates the full extent to which the Companies' behaviour failed to meet minimum standards of acceptable commercial behaviour. It is clearly important that members of the public should be protected from such practices and from the unacceptable risks that flow from them.

116. Whilst I note Mr Seeballuck's various offers to compensate investors in respect of carbon credits, rare earth metals and coloured diamonds out of his future salary, which I am prepared to accept were put forward sincerely, they are to be regarded as of no value to the court, not least because the Secretary of State cannot be expected to supervise them.

117. I also consider that, in all the circumstances, it would also be appropriate to wind up the Companies as a matter of punishment for past behaviour and to mark the court's disapproval of that misbehaviour.

118. I do not consider that the fact that Commodities has been struck off and dissolved means that it would not be just and equitable to make a winding up order in respect of it. It is clear that Commodities was a party to at least some of the contracts with investors and the affairs of Caledonian and Commodities are plainly intertwined. In my view, the affairs of Commodities also require to be investigated.

119. Accordingly, I will make an order for the winding up of Caledonian and an order restoring Commodities to the register of companies and for its winding up. I will hear the parties in relation to any consequential matters.

Postscript

120. At the hearing to hand down my judgment, and before making the orders Kashif Seeballuck asked me to include a paragraph clarifying his role in the Companies. He said that he was concerned that my judgment would prevent him regaining FSA registration. I should make it plain that it was not necessary for me to determine the precise extent of his involvement in or responsibility for the affairs of the Companies and that the only findings I make in respect of him are those set out in this judgment. The consequences are for others to determine.