

# The Montreux Healthcare Fund PLC (in Controllershship)

Registered Office: PO Box 227, Peveril Buildings, Peveril Square, Douglas, Isle of Man IM99 1RZ

**Date: 17 September 2024**

## **The Montreux Healthcare Fund Plc (“the Fund”) – Notice to Shareholders**

Dear Shareholder,

I refer to your investment in the Fund and to the letter sent to you by the Fund dated 9 August 2024 concerning the outcome of the general meeting on 7 August 2024 and the resignation of the Fund’s Investment Adviser, Montreux Capital Management (UK) Limited (“MCM”) effective 31 July 2024.

On the 22 August 2024, the Isle of Man Financial Services Authority (the “Authority”) appointed myself, Gordon Wilson (the “Controller”) of FRP Advisory (Isle Of Man) Limited (“FRP”) to assume control of the affairs of the Fund.

I write to you in my capacity as Controller of the Fund. In this letter, I explain how I have come to be appointed and provide an overview of my actions. I also explain what the next steps should be for the Fund in my view and why.

### **1 My background/experience**

In terms of myself and my background/experience, I am a partner in FRP and a qualified insolvency practitioner. I have dealt with a number of problem fund cases in my 20+ year career and I was formerly managing director of a fund administration company. This experience has given me a particular awareness of fund affairs. In relation to this matter, I am being assisted by specialists from FRP in the UK as well as our staff here in Isle of Man.

### **2 Controller**

- 2.1 The Fund established under the Collective Investment Schemes (Qualifying Fund) Regulations 2010 (the “Regulations”).
- 2.2 I have been appointed by the Authority who decided to act to make this appointment pursuant to their regulatory powers under Section 13(1)(b) of the Collective Investment Schemes Act 2008 (“the Act”).
- 2.3 In making this appointment the Authority took several things into account including that:
  - 2.3.1 the Fund has no investment adviser, following the resignation of MCM, and is in breach of Regulation 10 of the Regulations;

- 2.3.2 the Fund has not provided shareholders with audited financial statements within 6 months of its year end (namely 30 September 2023) in breach of Regulation 20 of the Regulations;
  - 2.3.3 the Fund has no current or future income streams following on from the loss of its interests in the Active Care Group (“ACG”), yet it has liabilities which continue to accrue; and
  - 2.3.4 a number of shareholders have made complaints to the Fund, some of which are considered material.
- 2.4 In addition to taking control of the Fund, I have been asked by the Authority to make an assessment as to whether you are and have been in possession of sufficient information to understand your commercial position as Fund shareholders and to assess the ongoing viability of the Fund as a going concern. I am in regular discussions with the Authority and they are aware that I am writing this letter to you.

### **3 Events Since My Appointment**

- 3.1 Since being appointed Controller of the Fund, I have spoken to the directors of the Fund about the current status of the Fund and events leading up to my appointment.
- 3.2 On 27 August 2024, I met with the Fund’s Manager, Suntera Fund Services (IOM) Limited (“Suntera”) to discuss the Fund’s remaining assets, which were held: (i) with a London based FX broker, Global Currency Exchange Network Limited (“GCEN”) and (ii) in the Fund’s account at Cayman National Bank (Isle of Man) Limited (“Cayman National”). At that time, I was advised by Suntera that there was approximately £8m left in the Fund’s account with GCEN and around £0.5m in the account at Cayman National. As discussed further below, it appears there is now circa £4m remaining in the GCEN account.
- 3.3 On 29 August 2024, Suntera gave written notice of termination of its services as Manager and Registered Agent of the Fund. The Fund must have a licensed Manager under the Regulations. I have agreed with Suntera that they will continue to provide Manager services to 4 October 2024 and Registered Agent services to 24 October 2024. I agreed that the Fund would pay Suntera (i) £40,000 for this work and (ii) their outstanding fees for April through August 2024, albeit for their April fee, I only agreed to pay part of it as it had been calculated based on an estimated Net Asset Value (“NAV”) that still included the value of the ACG business at that time.
- 3.4 On 30 August 2024, one of the directors of the Fund resigned, leaving the Fund with only one director. This is a breach of the Fund’s Articles of Association (“Articles”) as the Fund is required to have at least two directors under its Articles.

- 3.5 I have been reviewing other outstanding bills, some of which were particularly overdue. I considered which of these bills were in the best interest of the Fund to pay and decided to authorise payments totalling £151,531. These invoices were paid by the Fund's Custodian, Cayman National, on 3 September 2024 and a breakdown of these is shown below:

	‘£
Howden Insurance (D&O insurance policy 15 March 2024 – 14 March 2025)	20,550
Suntera Fund Services IOM Ltd (April 2024 – September 2024)	103,981
Director fees – Mr Monks (April 2024 – September 2024)	18,000
Director fees – Ms McArdle (June 2024 – August 2024)	9,000
<b>Total payments</b>	<b>151,531</b>

- 3.6 The above referenced payments were made from the Fund's Cayman National account leaving £352,426 in the account at the date of this letter. Additionally, there is approximately £3,600 of cash held in other Fund accounts at Cayman National and RBS at the date of this letter.
- 3.7 I am in the process of gathering in documents from the directors, Suntera, GCEN and Cayman National, as well as other sources. The collection and review of documentation is far from complete, but, insofar as I am able to do so at this stage, I would like to provide you with an update on how my work is progressing and to identify some key areas for investigation.

#### **4 Findings to date**

- 4.1 The Fund was at the top of a large corporate structure and a summary structure chart is attached for your information.
- 4.2 The audited accounts of the Fund as at 30 September 2022 show net assets of £426m made up of c£428m of assets less c£2m of liabilities. The main asset was the Fund's interest in its subsidiary Montreux Holdings Limited ("MHL"), and this was valued at £376.4m. The Fund also had £41m of cash at that time. The value of MHL was derived from the value of the underlying companies notably Ruby and ACG Holdco.
- 4.3 On 24 December 2021, the Fund became interested through its sub subsidiary ACG Bidco in the Huntercombe Group ("Huntercombe"). Huntercombe was acquired from a related party for a total consideration of £66.6m, including an amount for goodwill of £76.8m.
- 4.4 On 28 June 2022, ACG Holdco entered into the above-mentioned bridging loan the proceeds of which were mainly used to pay back the debts arising from the Huntercombe acquisition. This new debt was secured against a

share pledge by ACG Holdco over, effectively, the entirety of the assets of the Fund except for its cash balances with its Custodian and with GCEN.

- 4.5 On 3 October 2022, the Fund suspended subscriptions, redemptions and the calculation of the NAV, and it appears that efforts started around this date to sell the totality of the ACG business.
- 4.6 The new debt had to be repaid by the end of 2023, and no or insufficient repayments appear to have been made.
- 4.7 Due to enforcement by the creditors under the terms of this 2022 lending, ACG Holdco was put into Administration in May 2024. This in turn caused the total loss of the assets of ACG Holdco for the Fund, including Huntercombe.
- 4.8 On 29 May 2024, Richard Beard and Richard Fleming of Alvarez & Marsal Europe LLP were appointed as Joint Administrators of ACG Holdco. Shortly after their appointment, they completed a sale of the assets of ACG Holdco (being ACG Midco shares and a loan due to ACG Midco from ACG Bidco) to Gadwell Holdings Limited for a consideration of £62.0m.
- 4.9 The Joint Administrators' report explains that £61,207,951 of this consideration was distributed to Sequoia as the secured lender of ACG Holdco. The remaining consideration of £0.8m due to Ruby as the only unsecured creditor, which was also paid to Sequoia to be held pending the adjudication of unsecured claims at Ruby.
- 4.10 As a result of this, the Fund no longer has any interest in the ACG business and the Fund's main financial asset, its interest in MHL, should be considered effectively of no value.
- 4.11 The Fund took legal advice in June 2024 (privilege in which is not waived) and the directors of the Fund confirmed that the secured creditors had acted properly in line with their commercial rights, and that there was nothing the Fund could do in that respect given that the secured debt was in default.

## **5 Reconciliation of Fund cash**

- 5.1 A reconciliation of the cash movement between 1 October 2022 and 16 September 2024 based on information provided to us by Suntera is shown below:

	‘£
Foreign exchange losses on hedging contracts	(27,647,711)
Investment Adviser fees and costs	(10,786,568)
Share issues/redemptions	(4,339,728)
Fund manager fees and costs	(891,241)
Professional service fees - auditors/lawyers etc.	(686,930)
Custodian fee	(670,872)
Director fees/expenses	(387,049)
Commission	(45,754)
Other	(17,609)
Loan repayment	8,622,148
<b>Total cash outflows</b>	<b>(36,851,313)</b>

- 5.2 The Fund’s cash position at the date of this letter is approximately £4,273,847 comprising a balance of £3,917,818 held at GCEN and the remainder at Cayman National, the Fund’s Custodian.

## 6 Areas for further investigation

- 6.1 These are necessarily preliminary views, as my work in collecting and reviewing documentation and speaking to those involved is at an early stage. I have purposefully withheld some of the detail that is known to me in order to protect the Fund’s position whilst the investigations are ongoing.

### *Possible Over-Hedging at GCEN*

- 6.2 As shown in the Table at paragraph 5.1 above, the Fund has incurred substantial foreign exchange losses since October 2022. This is because the Fund routinely held forward contracts totalling c.£250m a month with GCEN to hedge FX exposure GBP/EUR and GBP/USD. It is not apparent yet what benefit this brought the Fund. I intend to look into possible over-hedging and which parties benefited from it.

### *Payment of NAV based fees*

- 6.3 The fees charged by certain of the Fund’s service providers were based on estimated NAV’s. Given the subsequent events, I intend to assess it was appropriate to calculate fees on this basis and whether these fees which are well into the millions of pounds should have been paid.

### *Funds held at GCEN*

- 6.4 A transfer of approximately £4m was made from the account at GCEN to a related party in the days prior to my appointment, purportedly in relation to fees owing to the related party. On finding out about this payment, one of the Fund’s directors, resigned, as did the Fund’s Manager and Registered

Agent, Suntera because neither of them knew about the payment being made. The circumstances of this payment require further investigation.

- 6.5 I have asked GCEN to close the account and send all available funds to the Custodian account at Cayman National. I am expecting to receive the funds in this account at the start of October 2024.

*Audited Accounts of the Fund and its subsidiaries*

- 6.6 I have noticed the following with regard to the dates of the 2022 signed audited accounts:
- 6.6.1 The Fund's 30 September 2022 accounts were signed on 28 April 2023.
- 6.6.2 Ruby's consolidated 30 September 2022 accounts were signed on 27 January 2023.<sup>1</sup>
- 6.6.3 ACG Holdco's 30 September 2022 accounts were signed on 30 June 2023.<sup>2</sup>
- 6.7 I would have expected for the accounts of the subsidiaries further down the group to have been signed first followed by the subsidiaries further up, and for the Fund's accounts to be signed last. However, as these dates show, Ruby's accounts were signed around 5 months before the accounts of its wholly owned subsidiary ACG Holdco, and the Fund's accounts were signed around 2 months before those of ACG Holdco.
- 6.8 Given that ACG Holdco was the main asset of Ruby (and ultimately of the Fund) it is unclear to us how the Ruby accounts and the Fund accounts were able to be signed before those of ACG Holdco. This requires further investigation.
- 6.9 It is also not clear at this stage why the Fund did not produce consolidated accounts which would have showed (for example) the extent of the borrowings in the various subsidiary and sub-subsidiary companies that the Fund owned. I did, however, note that the Ruby accounts for 2022 were produced on a consolidated basis and they included disclosure of bank loans of £160.6m.
- 6.10 These Ruby bank loans were made up of a bridging finance loan of £55.7m and bank loans of £104.9m. The bridging loan is noted as being repayable in June 2023 with the option to extend this by 6 months. It was this bridging loan which was put in place in June 2022 and secured by way of fixed and floating charges over the assets and business undertakings that was called, leading to the administration.

---

<sup>1</sup> <https://find-and-update.company-information.service.gov.uk/company/13159793>

<sup>2</sup> <https://find-and-update.company-information.service.gov.uk/company/11157123>

- 6.11 I noted that the Fund's 30 September 2022 audited accounts make no mention of the Huntercombe acquisition in December 2021 or the new loan arrangement including the security given by ACG Holdco in June 2022. None of the risks in the notes to the Fund's 2022 accounts highlight the risk that eventually sunk the Fund namely the calling of the security on the short term ACG Holdco loan and this requires further investigation.
- 6.12 The circumstances surrounding this Huntercombe acquisition and the related refinancing (which had very material consequences for the Fund) require further investigation.

## **7 NAV as at 31 August 2024**

- 7.1 Calculation of the Fund's NAV was suspended on 3 October 2022 and there have been no official NAV's issued since then, so far as I am aware. Suntera have explained that indicative only NAVs were published until the end of October 2023 which included a full value for the Fund's interest in the ACG business.
- 7.2 There are approximately 50 share classes in the Fund including several non-GBP share classes. I have instructed Suntera to prepare an updated indicative NAV for the Fund at 31 August 2024. That work is ongoing.
- 7.3 Historically, I have ascertained that the Fund allocated foreign exchange gains/losses to the corresponding share class that the hedging relates to. The allocation of remaining Fund assets between share classes will be complicated and will need to be dealt with in due course.

## **8 Disclosure of FRP's Role in Valuation of ACG Holdco's Assets**

- 8.1 In the interests of full disclosure, FRP provided services to ACG Bidco's secured lenders and their security agent. This work comprised an independent valuation of ACG Holdco's main assets (being the loan to ACG Midco and the ACG Midco shares) and involved assessing all of the companies under ACG MidCo (the "Underlying Group").
- 8.2 FRP's valuation indicated a value range for the Underlying Group on a debt free basis of £52.5m to £72.5m on a going concern basis, after taking into account the immediate funding needs of the Underlying Group.
- 8.3 FRP's valuation of the ACG Midco loan and the ACG Midco Shares was zero because the Underlying Group's value was less than the total amount due on the loans which by then was considerably more than the above referenced £160.6m.
- 8.4 Before I accepted the appointment as Controller of the Fund I considered if this valuation resulted in a conflict. I am satisfied that there is no conflict.

## 9 Way Forward

- 9.1 The Fund has moved from a position whereby it had reported net assets of £428m in 2022 to the current position where the remaining assets are of negligible value. In addition, if historical accounting policies for the allocation of hedging losses are maintained, the value of all non-GBP share classes maybe nil or negative.
- 9.2 This financial situation, combined with the fact that the Fund is in breach of numerous applicable regulations mean that the only real way forward for the Fund is to go into liquidation.
- 9.3 I have summarised my key findings so far in this letter in order to assist you in your deliberations.
- 9.4 It is clear, I think, from these initial findings that further investigation is required in relation to a wide range of issues involving the Fund, various related parties and individuals. In my view, this would be done best with the Fund in liquidation because a liquidator has powers that I do not have as Controller including to make any necessary enquiries of companies no longer owned by the Fund.
- 9.5 I hope that this letter demonstrates that I have gained a degree of familiarity with the Fund's affairs and I believe that I am well placed to be the Fund's liquidator. I have also asked my colleague Paul Allen if he will be joint liquidator as his assistance, particularly in the UK where proceedings may have to be considered, will be important.
- 9.6 I am satisfied that Paul and I are sufficiently qualified and experienced, and that it is also appropriate from an ethical perspective for us to act.
- 9.7 I have therefore summoned another members' meeting for you to consider and if thought fit pass a resolution to wind up the Fund.
- 9.8 Please appreciate that due to the financial uncertainties facing the Fund, I am not willing to sign a declaration of solvency and this means that any voluntary liquidation will, by applicable law, be a Creditors Voluntary Liquidation as opposed to a solvent Members Voluntary Liquidation and this means that the Fund's creditors, which may include MCM, will have a say on the choice of liquidator as well as the conduct of the liquidation.
- 9.9 If you do not resolve to wind up the Fund then I will stay in place as Controller unless the Authority removes me. However, as I have explained, the Fund will remain in breach and I can see no realistic scenario for the Fund from here other than going into liquidation.
- 9.10 An alternative for you as members of the Fund is to make an application to the Isle of Man High Court ("Court") for the Fund to be wound up and you should take legal advice about that if you so decide.



- 9.11 Please appreciate that the Fund is unable to petition the Court for it to be wound up as only members or creditors have such rights under Isle of Man law.
- 9.12 Finally, please appreciate that the Authority has a statutory power to make a winding up application in the public interest and if, after reading this letter and having received my verbal reports, they decide to do so then that is a matter for them. I cannot speculate or comment on any decision that they might yet make.

## 10 Conclusion

- 10.1 I appreciate that there is a lot for you to take in. Unfortunately, I have to summon the meeting on the minimum required 14 days' notice given that Suntera will cease Manager and Administrator services on 4 October 2024 and Registered Agent services on 24 October 2024. There are almost 1000 shareholders in the Fund and their assistance in distributing the required notices, as well as this letter, is required.
- 10.2 If your investment is wrapped up in a nominee arrangement and you want to attend the meeting, please arrange for your nominee to appoint you as a proxy.
- 10.3 Please submit any questions to me in writing by email to [iom@frpadvisory.com](mailto:iom@frpadvisory.com) and I will do what I can to have answers on the day of the meeting.

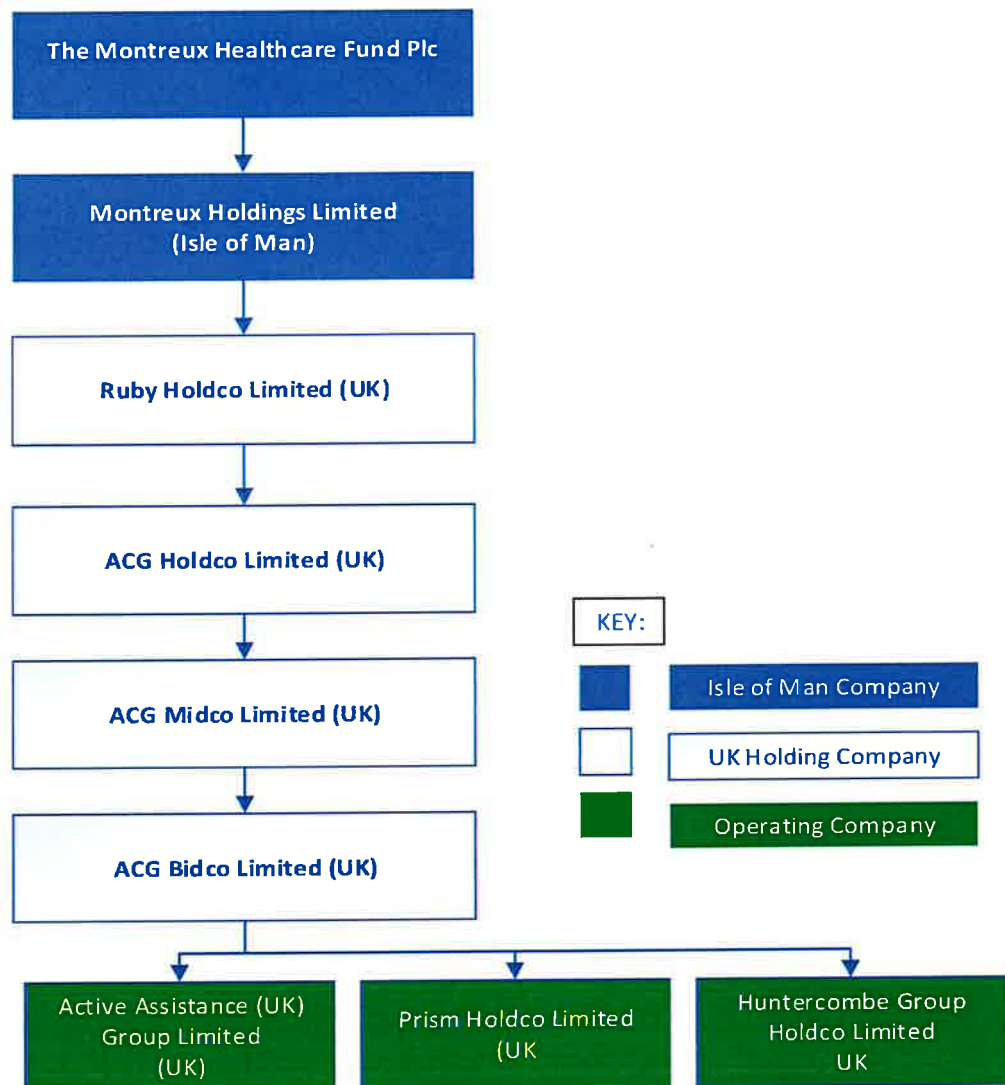
Yours faithfully,

A handwritten signature in black ink, appearing to be 'Gordon Wilson', with a large, stylized initial 'G'.

Gordon Wilson

(in his capacity as Controller of the Fund)

**Fund structure chart prior to administration of ACG Holdco**



Note that ACG Holdco no longer owns ACG Midco or any of the subsidiaries.