

UNOFFICIAL TRANSLATION

CANADA

PROVINCE OF QUEBEC
DISTRICT OF LAVAL
No.: 540-11-012245-249

SUPREME COURT OF CANADA
(Commercial Division)

FINANCIAL MARKETS AUTHORITIES

Plaintiff

v

WHITEHAVEN SECURITIES INC.

WHITEHAVEN ASSET MANAGEMENT INC.

WHITEHAVEN INVESTMENTS INC.

WHITEHAVEN VENTURE CAPITAL INC.

WHITEHAVEN CAPITAL INC.

SOLSTAR PHARMA INC.

SOLSTAR CAPITAL INC.

SOLSTAR CAPITAL FUND

MVMT CAPITAL FUND

MVMT CAPITAL LIMITED PARTNERSHIP MVMT

CAPITAL OPERATING TRUST MVMT CAPITAL

LIMITED PARTNERSHIP

MVMT CAPITAL LIMITED PARTNERSHIP 1

Defendants

FTI CONSULTING CANADA INC.

Provisional Administrator

**MOTION BY THE PROVISIONAL ADMINISTRATOR TO (I) MODIFY HIS POWERS
GRANTED UNDER AN ORDER DATED
SEPTEMBER 12, 2024, (II) FOR APPROVAL OF A CLAIMS PROCESS AND (III) FOR
AUTHORIZATION TO PROCEED WITH AN INTERIM DISTRIBUTION
(Sections 19.2 and 19.11 of the *Act respecting the financial sector*, CQLR, c. E-6.1, and
paragraph 22 of the Order issued on September 12, 2024)**

**TO THE HONORABLE PATRICK OUELLET, JUDGE OF THE SUPERIOR COURT ACTING
AS MANAGING JUDGE, SITTING IN THE COMMERCIAL CHAMBER IN AND FOR THE
DISTRICT OF LAVAL, FTI CONSULTING CANADA INC., IN ITS CAPACITY AS
PROVISIONAL ADMINISTRATOR OF THE DEFENDANTS STATES THE FOLLOWING:**

I INTRODUCTION

1. On September 10 and 11, 2024, the Autorité des marchés financiers (hereinafter the "**AMF**") filed with this honorable Court an *ex parte* and *in camera* Application to order the appointment of a provisional administrator for the Defendants (hereinafter the "**Application**"), as appears in the Court record;
2. By order dated September 12, 2024 (hereinafter the "**Order**"), the Honorable Christian Immer, J.C.S., granted the AMF's Application, issued various orders, and appointed FTI Consulting Canada Inc. as provisional administrator of the Defendants (hereinafter the "**Provisional Administrator**"), as appears in the Court record;
3. The Order provides, among other things, for powers related to taking possession of the Defendants' assets, powers related to investigations of the Defendants, and powers related to the Defendants' operations;
4. The Order also provides for the suspension of any redemption of securities issued by the MVMT Capital Fund and the power of the Interim Administrator to lift such suspension at such time as he deems appropriate;
5. By this Motion, the Interim Administrator requests the intervention of this honorable Court to obtain the following additional orders and powers in relation to MVMT Capital Fund, MVMT Capital Limited Partnership, MVMT Capital Operating Trust, MVMT General Partner Inc., and MVMT Capital Limited Partnership 1 (the "**MVMT Entities**"):
 - i. To obtain all necessary powers to implement a claim process for any investor holding one or more units of the MVMT Capital Fund (the "**Investor**" or "**Investors**") acquired on the exempt market (a "**Unit**" or "**Units**");
 - ii. Authorize the claims process proposed by the Interim Administrator in connection with the MVMT Entities in accordance with the draft order (R-1);
 - iii. Obtain all necessary powers to make one or more interim distributions to Investors of the MVMT Entities holding an accepted proof of claim, each distribution having the effect of redeeming Units;
 - iv. Authorize the Interim Administrator to make such interim distributions to Investors;
 - v. Obtain all necessary powers to prepare and file with the Court a distribution and/or liquidation plan in accordance with the provisions of the LESF with respect to the MVMT Entities;
6. The Claims Process will enable the Interim Administrator to commence one or more interim distributions to Investors in the form of redemption of Units and the preparation and possible filing with the Court of a distribution and/or liquidation plan in accordance with the provisions of the LESF with respect to the MVMT Entities;

7. The Interim Administrator hereby files as **Exhibit R-1** the draft order sought in connection with this Motion;

II THE FINANCIAL SECTOR SUPERVISION ACT

8. Under paragraphs 9 and 10 of section 19.2 of the FSMA, the Provisional Administrator may be granted the additional powers sought:

"9° proceed with the liquidation of the person, partnership or other entity in accordance with, as the case may be, the Companies Liquidation Act ([chapter L-4](#)), the Business Corporations Act ([chapter S-31.1](#)), any specific provision of a law referred to in section 7 that applies to it, or on such terms and conditions as the Superior Court may determine;

10° exercise any other power or function that the Court deems appropriate in order to enable the provisional administrator to perform his or her duties.

9. Under section 19.11 of the LESF and paragraph 22 of the Order, the Interim Administrator may, at any time, apply to this honorable Court to modify the powers initially conferred by the Order;
10. For the following reasons, the Interim Administrator respectfully submits that the Order should be amended in accordance with the draft order (R-1) in order to grant him the additional orders and powers sought;
11. The addition of these additional powers and the sought-after orders are in keeping with the spirit of the Order and are intended to enable the Interim Administrator to fully exercise his mandate and to proceed with one or more interim distributions of the cash he holds for the benefit of the Investors.
12. Furthermore, this Motion is made with the consent of the Authority and the MVMT Entities;

III REASONS JUSTIFYING THE MODIFICATION OF THE PROVISIONAL ADMINISTRATOR'S POWERS AND THE ISSUANCE OF THE ORDERS SOUGHT

13. As a reminder, the MVMT Capital Fund is a trust that acted as an issuer to raise funds on the exempt market through offering memoranda;
14. The capital raised on the exempt market by the MVMT Capital Fund was used, in part, to enable MVMT Limited Partnership to make residential and commercial loans to borrowers.
15. Prior to the Order, the MVMT Capital Fund made distributions of 10% to Investors. Part of the distributions was made as a return of capital (redemption of Units) and the other part was a return on investment (the "**Distributions**");
16. Considering the concerns raised by the Authority and the reasons for the Order, the Interim Administrator has suspended Distributions since his appointment;

17. However, since the Order, the Interim Administrator has implemented protective measures concerning the assets of the MVMT Entities, which are described in more detail in his reports;
18. The purpose of these protective measures was to recover, protect, and optimize the value of the assets of the MVMT Entities for the benefit of the Investors, in order to be able to distribute the remaining assets to them;
19. One of these protective measures consists of monitoring and collecting the principal and interest owed by the borrowers of the MVMT Entities.
20. The amounts thus collected, net of expenses incurred during the provisional administration of the MVMT Entities, are described in greater detail in the Provisional Administrator's report dated December 10, 2025 (the "**Report**"), filed in support hereof as **Exhibit R-2**.
21. Considering the cash flow thus generated, the Interim Administrator deemed it appropriate to invest a portion of MVMT Limited Partnership's cash in a GIC, with the objective of generating a certain return for the benefit of the Investors.
22. The capital invested is insured and cannot adversely affect the capital invested;
23. As of today, the GIC consists of a total amount of \$5.3 million, which will be used to make the interim distribution(s) proposed by the Interim Administrator pursuant to this Motion;
24. The Report (R-2) also includes a financial update on the MVMT Entities;
25. However, in order to proceed with the proposed interim distribution, the Interim Administrator must be able to conduct a claims process to ensure that interim distributions are made to Investors holding claims validated by the Interim Administrator;

IV THE PROPOSED CLAIMS PROCESS

26. Considering the investigation conducted by the Interim Administrator and the taking possession of the assets and records of the MVMT Entities and the Whitehaven entities, the Interim Administrator is able to assess with a high degree of accuracy the existing claims of Investors who invested in the MVMT Capital Fund on the exempt market through Whitehaven (the "**Claims**");
27. Therefore, the Interim Administrator proposes to implement a simplified claims process (the "**Claims Process**") to enable:
 - i. Establish an effective and fair claims process;
 - ii. Determine definitively the amount of investor claims;
 - iii. Reduce the costs associated with such a claims process;
 - iv. Enable one or more interim distributions;
 - v. Enable the preparation of a final distribution/liquidation plan.

28. To this end, the draft order (R-1) provides, in particular, for the following:

- a. The publication on the website of the Provisional Administrator and the AMF of a copy of the order to be made on this Application;
- b. The transmission by the Interim Administrator of a copy of the order to be issued to all Investors known to him, as well as a notice setting out the amount of each Investor's Claim according to the records in his possession (the "**Notice**");
- c. The date for determining a Claim will be **September 12, 2024**, the date on which the Order of Appointment was issued.
- d. The Claim will relate exclusively to the capital invested by each Investor, less any amount received by the Investor as capital in connection with that same investment;
- e. Each investor will have a strict deadline of 30 business days from the Notice to send the Interim Administrator a notice of objection (the "**Notice of Objection**"), the content of which is specified in the draft order (R-1);
- f. Failure to submit a Notice of Objection within the 30-day strict deadline will result in the amount of the Claim contained in the Notice being deemed accepted by the Investor concerned.
- g. Any Notice of Dispute will be processed in accordance with the dispute process set out in the draft order (R-1).

IV DISTRIBUTION METHOD AND INTERIM DISTRIBUTION

29. As indicated in the Report, the cash holdings of the MVMT Entities amounted to \$7.7 million as at November 25, 2025.

30. Furthermore, the various offering memoranda issued by the MVMT Capital Fund allowed for distributions to be made and, as previously indicated, these were suspended following the Appointment Order;

31. Considering the foregoing, the Interim Administrator is of the opinion that an interim distribution would be desirable for Investors and that an amount of \$6.3 million could be distributed to Investors holding a Claim validated by the Administrator under the Claims Process;

32. The Interim Administrator is of the opinion that this amount may be distributed on an interim basis without affecting the operations of the MVMT Entities or the mandate of the Interim Administrator;

33. The proposed interim distribution would be made as soon as the Claims Process is completed, and each Investor would receive an amount as an interim distribution, prorated to the Claims accepted by the Interim Administrator;

34. Therefore, with respect to the method of distribution of the assets of the MVMT Entities, the Interim Administrator is of the opinion that, for the purposes of the interim distribution and the final plan,

distribution to be made, the "Fund-by-Fund Distribution Method" and not the "Global Distribution Method," in proportion to the amount invested by each Investor;

35. The "Global Distribution Method" consists of distributing all of the assets of the Defendant companies to all investors, regardless of the fund in which the investor invested;
36. The Global Distribution Method is based on the fact that "fraud corrupts everything (*fraus omnia corruptit*)" to the extent that, if it were applicable in this case, all the assets of all investors in all the Defendants would have to be combined into a single pool of assets for the benefit of all investors;
37. As appears from the Report and previous reports of the Interim Administrator, this method should not be recommended in this case.
38. Indeed, there is no reason to treat investors who have invested sums with one or more of the Defendant issuing companies on a consolidated basis;
39. Furthermore, the assets of the MVMT Entities have not been "polluted" or "contaminated" by inappropriate transactions between the Defendant Issuing Companies, in particular, ensuring that the ownership of said assets cannot be called into question;
40. The Fund-by-Fund Method provides that an investor who invests in a particular fund may recover part or all of his or her investment only from the assets of the fund in which he or she invested;
41. In this case, and as appears from the Report and previous reports of the Interim Administrator, the "Fund-by-Fund Method" should be applied in this case for Investors who subscribed to units of the MVMT Capital Fund on the exempt market;
42. Furthermore, the Interim Administrator requests that this Honorable Court authorize a distribution mechanism on a pro rata basis for each Investor's investment, considering that this mechanism is the most fair, practical, and equitable in the circumstances for Investors who subscribed to units in the MVMT Capital Fund.
43. Furthermore, the Interim Administrator is unable to apply the LIBR (*Lowest Intermediate Balance Rule*) distribution mechanism, and the *first in first out rule* should not be considered in the present circumstances;
44. With respect to the proposed interim distribution, the Interim Administrator wishes to be authorized to distribute to Investors holding proof of claim accepted by the Interim Administrator an amount of \$6.3 million, on a pro rata basis of each Investor's investment, prior to the approval of a distribution plan;
45. Claims eligible for interim distribution are all claims by Investors arising from an investment that enabled the subscription of a Share or Shares of the MVMT Capital Fund on the exempt market, but excluding any excluded claims.

46. Furthermore, the interim distribution is subject to the following preconditions:

- a) The Order to be issued (R-1) must be enforceable and must, among other things:
 - i) Declare that the Interim Administrator is authorized to take all measures and perform all acts necessary to implement one or more interim distributions;
 - ii) Declare and order that the Interim Administrator may apply to the Court for directions with respect to any matter arising from the order to be made;
 - iii) State that the order to be made is the only approval required to enable the Interim Administrator to make one or more interim distributions.

V CONCLUSION

47. The order sought is desirable, and a simplified claims process is fair, necessary, and in the interests of investors and justice;

48. Furthermore, the proposed Claims Process does not prejudice investors, who will be able to prove a claim different from that proposed by the Interim Administrator in the Notice, all subject to the terms of the proposed order (R-1);

49. The Interim Administrator requests the intervention of this honorable Court to authorize it to use the "Fund by Fund" distribution method as the method of distribution of the assets of the MVMT Entities for the purposes of the interim distribution and a distribution plan to be implemented, in proportion to the amount that each Investor has invested in the MVMT Capital Fund;

50. The Interim Administrator recommends and requests authorization to proceed with one or more interim distributions, as this is fair and equitable in the circumstances and meets the objectives of the *Financial Sector Supervision Act*;

51. These additional powers and orders are consistent with the Administrator's mission, provisional and prove to be beneficial to Investors;

52. This Motion is well founded in fact and in law.

FOR THESE REASONS, THE COURT IS REQUESTED TO:

GRANT the Interim Administrator's Motion to (i) amend his powers granted under an order dated September 12, 2024, (ii) approve a claims process, and (iii) authorize an interim distribution;

ISSUE an Order in accordance with the draft submitted as Exhibit R-1;

ALL without costs.

MONTREAL, December 16, 2025

Gowling WLG (Canada)

GOWLING WLG (CANADA) LLP

Counsel for FTI Consulting Canada Inc., in its
capacity as interim administrator for the
Defendants

SWORN STATEMENT

I, the undersigned, Patrick Fillion, CPA, Managing Director, practicing my profession at FTI Consulting Canada Inc., located at 915-1000 Sherbrooke Street West, Montreal, Quebec, H3A 3G4, solemnly affirm the following:

1. I am one of the representatives of FTI Consulting Canada Inc., in its capacity as provisional administrator of the Defendants;
2. All facts alleged in this Motion of the Provisional Administrator to (i) to amend its powers granted under an order dated September 12, 2024, (ii) for approval of a claims process, and (iii) for authorization to proceed with an interim distribution are true.

AND I HAVE SIGNED:



PATRICK FILLION

Sworn before me in Montreal,
December 16, 2025



Commissioner for Oaths for Quebec

NOTICE OF PRESENTATION

To:

Jean-François Paré, Esq.

Sébastien Simard, Esq.

Financial Markets Authority

Attorneys for the Petitioner

Sabia Chicoine, Esq.

FCA Legal

Attorney for MVMT Capital Fund, Mvmt Capital Limited Partnership, MVMT Capital Operating Trust, MVMT General Partner Inc., MVMT Capital 1 Limited Partnership, and Whitehaven Capital Inc.

Étienne Bisson-Michaud, Esq.

Delegatus

Attorney for Whitehaven Securities Inc., Whitehaven Asset Management Inc., Whitehaven Investments Inc., and Whitehaven Venture Capital Inc.

Pharma Solstar Inc., Capital Solstar Inc., and Solstar Capital Fund

A/S: FTI Consulting Canada Inc.

PRESENTATION OF THE PROCEEDINGS

NOTICE is hereby given that the Interim Administrator's Motion to (i) amend his powers granted under an order dated September 12, 2024, (ii) approve a claims process, and (iii) authorize an interim distribution will be heard by the Honorable Patrick Ouellet, J.C.S., presiding judge, on the basis of the file or will be presented on the date, time, and in the room to be determined by the latter, or as soon as counsel can be heard.

Any person wishing to oppose or object to this Motion must send the Interim Administrator (whitehaven@fticonsulting.com) within ten (10) business days of notification of this Motion a notice indicating their opposition or objection to the Motion and the reasons for such opposition or objection, accompanied by the relevant documents.

PLEASE ACT ACCORDINGLY.

MONTREAL, December 16, 2025

Gowling WLG (Canada)

GOWLING WLG (CANADA) LLP

Attorneys for FTI Consulting Canada Inc., in its capacity as provisional administrator for the Defendants

No.: 540-11-012245-249

SUPERIOR COURT
(COMMERCIAL CHAMBER)
DISTRICT OF LAVAL

AUTORITÉ DES MARCHÉS FINANCIERS

Plaintiff

v

WHITEHAVEN SECURITIES INC. & ALS.

Defendants

-and-

FTI CONSULTING CANADA INC.

Intervenor

BL0052

MOTION BY THE PROVISIONAL ADMINISTRATOR TO
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on September 12, 2024)

ORIGINAL

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