

IN THE GRAND COURT OF THE
FINANCIAL SERVICES DIVISION



CAUSE NO. FSD²⁴ OF 2011

IN THE MATTER OF SECTION 81 OF THE COMPANIES LAW (2011 REVISION)

AND IN THE MATTER OF AVENDIS ENHANCED FIXED INCOME TRADING LTD (IN
VOLUNTARY LIQUIDATION)

PETITION

To the Grand Court of the Cayman Islands

The humble petition of Malcolm Cohen of BDO LLP, 55 Baker Street, London W1U 7EU, England, United Kingdom and Glen Trenouth of BDO Cayman Ltd., 2nd Floor, Building 3, Governors Square, 23 Lime Tree Bay Avenue, Grand Cayman KY1-1205, Cayman Islands ("the Petitioners"), shows that:

Particulars of Incorporation

1. Avendis Enhanced Fixed Income Trading Ltd (in Voluntary Liquidation) ("the Company") is an exempted company with limited liability incorporated on 28 November 2001 and organised pursuant to the Companies Law (2011 Revision) ("the Companies Law"). The registration number of the Company issued by the Registrar of Companies is 114272.
2. The registered office of the Company is situated at BDO CRI (Cayman) Ltd., P.O. Box 31229, 2nd Floor, Building 3, Governors Square, 23 Lime Tree Bay Avenue, Grand Cayman KY1-1205, Cayman Islands. The registered office of the Company was formerly situated at SH Corporate Services Ltd, P.O. Box 61 GT, 4th Floor, Harbour Centre, George Town, Grand Cayman KY1-1102, Cayman Islands.
3. The objects for which the Company was established are unrestricted.
4. The Company has an authorised share capital of US\$50,000.00 divided into 50,000 shares of a nominal or par value of US\$1.00 each ("Shares").

The Business of the Company

5. Avendis Global Fund Ltd (in Official Liquidation) ("**AGF**") is an exempted company with limited liability incorporated on 28 November 2001, organised pursuant to the Companies Law (2011 Revision) and registered as a regulated mutual fund with the Cayman Islands Monetary Authority.
6. AGF was an open-ended mutual fund which pursued three different investment strategies through, what were described as, 'sub-funds' as follows:
 - (a) The Avendis Enhanced Fixed Income Fund ("**AEFIT**") (launched in September 2002);
 - (b) The Avendis Global Strategies Fund (launched in May 2002); and
 - (c) The Avendis Alternative Fund (launched in January 2002).
7. Upon its subscription for shares in AGF, an investor was able to decide upon which investment strategy it wanted their investment to follow and its subscription proceeds would be allocated to the chosen 'sub-fund/s'. AGF would then issue shares to investors in a specific class or classes depending upon which investment strategy the investor wanted to pursue. AGF issued shares to investors in classes C, E and F in respect of subscription proceeds allocated to AEFIT.
8. Each 'sub-fund' did not constitute a separate segregated portfolio but rather the subscription proceeds received by an investor in AGF were transferred to the benefit of a wholly-owned subsidiary of AGF which corresponded with the 'sub-fund'. In the case of AEFIT, the subscription proceeds were transferred to the Company. At all times since 28 November 2001, AGF held all of the issued Shares in the Company and has been the sole shareholder of the Company (although it is uncertain as to whether AGF holds 100, 1000 or 10,000 Shares in the Company). The Shares in issue carried voting rights.
9. Upon receipt of the subscription proceeds from AGF, it was intended that AEFIT would deploy the monies to pursue its investment strategy. The strategy which AEFIT was promoted as pursuing was to profit from arbitrage opportunities on credit markets, in particular through collateralised debt obligations and credit default swaps.

10. On incorporation on 28 November 2001, the directors of the Company were Mr Yannis Bilquez and Casco Holdings Ltd (a company registered in the British Virgin Islands) ("**Casco**") and the secretary of the Company was Custom House Administration & Corporate Services Limited (now Custom House Fund Services (Ireland) Limited) (a company registered in Ireland) ("**Custom House**"). The only change of these office holders during the life of the Company was that Casco resigned on 9 October 2006 and was replaced with AGF. Pursuant to an investment management agreement, Avendis Investment Management (Guernsey) Limited ("**the Investment Manager**") was appointed as the investment manager of AGF and each of the 'sub-funds'.
11. Upon a petition presented to the Court by an investor, Banca del Gottardo S.A. Luxembourg Branch, seeking the winding up of AGF, the Petitioners were appointed by the Court as joint provisional liquidators of AGF ("**the AGF JPLs**") on 6 September 2007 and later as joint official liquidators of AGF on 1 February 2008.
12. The AGF JPLs were, by the Order of the Court appointing them dated 6 September 2007, authorised to exercise the following powers:
 - (a) to locate, protect, secure, and take into their possession and control all assets and property to which AGF is or appears to be entitled;
 - (b) to do any acts or things considered by them to be necessary or desirable for the protection of the assets and property of AGF including but not limited to causing AGF to vote as a shareholder in other companies, as the AGF JPLs deem appropriate; and
 - (c) to do all acts and to execute all documents in the name and on behalf of AGF.

Commencement of Voluntary Winding-Up

13. Section 132(b) of the Companies Law (2007 Revision) ("**the 2007 Companies Law**") provided as follows:

"Subject to section 200(3) [which relates to an exempted limited duration company], a company may be wound up voluntarily-

...

(b) *if the company has passed a special resolution requiring the company to be wound up voluntarily."*

14. Section 60(1) of the 2007 Companies Law states that a resolution is a special resolution when:

"(b) if so authorised by its articles of association, it has been approved in writing by all of the members entitled to vote at a general meeting of the company in one or more instruments each signed by one or more of the members aforesaid, and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed."

15. Article 43(b) of the Company's Articles of Association (dated 28 November 2001) (the "**Articles**") states as follows:

"An Ordinary Resolution or a Special Resolution (subject to the provisions of the Law) in writing signed by all the Members for the time being entitled to receive notice of and to attend and vote at general meetings, (or being corporations by their duly authorised representatives) including a resolution signed in counterpart by or on behalf of such Members or by way of signed telefax transmission, shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held."

16. On 4 October 2007:

(a) AGF was the sole registered holder of all of the Company's Shares in issue;

(b) AGF was therefore the only person entitled to vote at a general meeting of the Company;

(c) in its capacity as the sole registered holder of all of the Company's Shares in issue, AGF (by the AGF JPLs) executed a written resolution that:

(i) the Company be wound up voluntarily pursuant to section 132(b) of the 2007 Companies Law; and

(ii) the Petitioners be appointed as the joint voluntary liquidators of the Company.

17. In the premises:
- (a) the Company duly resolved by special resolution that it be wound up voluntarily, pursuant to section 132(b) of the 2007 Companies Law; and
 - (b) the voluntary winding-up of the Company was deemed to have commenced on 4 October 2007 pursuant to section 133(1)(a) of the 2007 Companies Law.

Investigations

18. Since their appointment, the Petitioners have investigated the affairs of the Company and have determined that:
- (a) the Company's largest investments by value were in the Charles Jourdan Group of companies ("**the CJ Group**"), a French shoe manufacturer, and capital notes issued by Golden Key, a structured investment vehicle that invested in mortgage-backed securities;
 - (b) Mr Bilquez acquired the CJ Group from bankruptcy proceedings in France in October 2005 through Finaluxe, a company registered in Luxembourg that Mr Bilquez controlled. According to the Company's records, the Company made commercial loans to the CJ Group totalling US\$12.9 million and €6.3 million from October 2005 onwards. Several companies within the CJ Group were again placed into insolvency proceedings at the time of the Petitioners' appointment on 4 October 2007 and the Group subsequently ceased trading. It is alleged that Mr Bilquez also used the CJ Group as a vehicle through which he could misappropriate the Company's assets;
 - (c) Golden Key was managed by an entity affiliated with the Investment Manager and was structured and promoted by Barclays Bank plc ("**Barclays**"). The Company initially invested in Golden Key capital notes in October 2005 with further investments in the upsizing of Golden Key in July 2007. The purchase of the Golden Key capital notes was largely funded through repurchase agreements with Barclays. Following the completion of the upsizing in July 2007, the Company had invested US\$10 million of its own funds in respect of its US\$40 million position in Golden Key capital notes with the remainder being funded by the repurchase agreements with Barclays, and

- (d) Golden Key's portfolio had significant exposure to United States of America sub-prime residential mortgages and apparently suffered a collapse in its value as a result of market events of the summer of 2007. Shortly after the Company's final investment in Golden Key, Barclays rapidly re-valued the Golden Key capital notes it held as collateral for the repurchase agreements down from their face value on 19 July 2007 to zero on 22 August 2007. At the beginning of September 2007 Barclays issued a margin call of US\$39.9 million against the Company which, due to its financial position, it was unable to meet. As a result, Barclays took steps to terminate the repurchase agreements with the Company and to close out all open positions that Barclays held under its prime brokerage agreement. As noted above, AGF (by the AGF JPLs) took steps to place the Company into voluntary liquidation to protect the assets of the Company.
19. Since their appointment the Petitioners have realised approximately US\$1.57 million and €2.83 million from the Company's assets. A significant realisation made by the Petitioners was approximately €2.085 million from an assignment of the Company's interest in the CJ Group loans to an unconnected third party, which also acquired a number of assets from the insolvency of certain companies in the CJ Group. The Petitioners do not expect any further realisations from the CJ Group directly.
20. Based on the information received to date, the Petitioners estimate that total creditors' claims will be approximately US\$31 million. Of this amount, Barclays is the largest creditor having filed a proof of debt in the liquidation of the Company in the amount of approximately US\$29.5 million. Certain investors in AGF have informed the Petitioners that they were not told of the Company's investment in Golden Key at the time it was made and consider that it breaches the investment strategy that was pursued by the Company. Certain investors in AGF have also questioned Mr Bilquez's conduct, his relationship and dealings with Barclays and have expressed concerns regarding the validity of the proof of debt submitted by Barclays, suggesting that the Company has possible counterclaims. The Petitioners, together with their legal advisors, are continuing to investigate the circumstances of the Company's investments in Golden Key and any potential claims.
21. The Company has incurred a significant loss in respect of its investment in the Charles Jourdan Group which has contributed significantly to the Company's now financial position. If the proof of debt submitted by Barclays is admitted and the Company has no

counterclaims against Barclays, then, subject to any realisations which may be made from legal proceedings commenced against the Company's former service providers (which includes Mr Bilquez's former wife) and counterparties, the Company will have sustained a significant loss as a result of its investments in Golden Key and is or is likely to become insolvent.

22. The Petitioners' investigations have also led them to identify potential actions that may be brought against counterparties and service providers of the Company. The Company (by the Petitioners) has already commenced:

- (a) civil and criminal proceedings against Mr Bilquez in the Courts in Geneva, Switzerland;
- (b) proceedings against Mr Bilquez's former wife in the Courts in Geneva, Switzerland in order to recover funds allegedly misappropriated by Mr Bilquez of which Mr Bilquez's former wife was the recipient; and
- (c) legal proceedings against Custom House, which was also the former administrator to the Company.

23. The legal proceedings identified in paragraph 22 above and other legal proceedings which are currently being contemplated by the Petitioners will likely involve the participation of other entities over which the Petitioners are appointed as liquidators related to the Company as plaintiffs or claimants. The Petitioners expect that they will need to seek directions from the Court in respect of prosecuting such legal proceedings (including potentially in relation to funding of the litigation and distribution of any recoveries).

24. The supervision of the liquidation of the Company by the Court will therefore facilitate a more effective, economic and expeditious winding up of the Company in the interests of stakeholders.

Consent of AGF

25. AGF, as the sole shareholder of the Company, consents to the winding up of the Company continuing under the supervision of the Court. The Petitioners, in their capacity as joint official liquidators of AGF, have consulted with the liquidation committee

of AGF who have consented to the winding up of the Company continuing under the supervision of the Court.

Consent to Appointment as Joint Official Liquidators

26. Glen Trenouth is a "qualified insolvency practitioner" (as that term is defined in section 89 of the Companies Law) and consents to his appointment as a joint official liquidator of the Company.

27. Malcolm Cohen consents to his appointment as a joint official liquidator of the Company.

Your petitioners therefore humbly pray that:

1. The winding up of the Company continue under the supervision of the Court.
2. Malcolm Cohen of BDO LLP, 55 Baker Street, London W1U 7EU, England, United Kingdom and Glen Trenouth of BDO Cayman Ltd., 2nd Floor, Building 3, Governors Square, 23 Lime Tree Bay Avenue, Grand Cayman KY1-1205, Cayman Islands be appointed as joint official liquidators of the Company ("**the JOLs**").
3. The JOLs be authorised to jointly and severally exercise any of the powers within and outside the Cayman Islands specified in Part I and II of the Third Schedule to the Companies Law without further sanction of the Court, namely the powers:
 - (a) to bring or defend any action or other legal proceeding in the name and on behalf of the Company;
 - (b) to carry on the business of the Company so far as may be necessary for its beneficial winding up;
 - (c) to dispose of any property of the Company to a person who is or was related to the Company;
 - (d) to pay any class of creditors in full;
 - (e) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the Company or for which the Company may be rendered liable;

- (f) to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist between the Company and a contributory or alleged contributory or other debtor or person apprehending liability to the Company;
- (g) to deal with all questions in any way relating to or affecting the assets or the winding up of the Company, to take any security for the discharge of any such call, debt, liability or claim and to give a complete discharge in respect of it;
- (h) to sell any of the Company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels;
- (i) to raise or borrow money and grant securities therefor over the property of the Company;
- (j) to engage staff (whether or not as employees of the Company) to assist them in the performance of their functions;
- (k) to engage attorneys and other professionally qualified persons to assist them in the performance of their functions;
- (l) to take possession of, collect and get in the property of the Company and for that purpose to take all such proceedings as they consider necessary;
- (m) to do all acts and execute, in the name and on behalf of the Company, all deeds, receipts and other documents and for that purpose to use, when necessary, the Company seal;
- (n) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors;
- (o) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the Company, with the same effect with the respect of

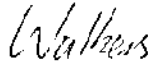
the Company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the Company in the course of its business;

- (p) to promote a scheme of arrangement pursuant to section 86 of the Companies Law;
 - (q) to convene meetings of creditors and contributories; and
 - (r) to do all other things incidental to the exercise of their powers.
4. The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the appointment of the JOLs in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
 5. Subject to section 109(2) of the Companies Law and the Insolvency Practitioner's Regulations 2008 (as amended), the JOLs be authorised to render and pay invoices out of the assets of the Company for their own remuneration.
 6. The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties.
 7. The JOLs be at liberty to and do pay their agents, employees, attorneys, solicitors, legal counsel and whomsoever else they may employ or instruct, remuneration and costs, and for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as expenses of the winding up.
 8. No suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the Company except with the leave of the Court pursuant to section 97 of the Companies Law.
 9. The JOLs be at liberty to apply for additional joint official liquidators to be appointed to the Company.
 10. Any act required or authorised to be done by the JOLs may be done by any one of them.
 11. The JOLs be at liberty to apply for further directions relating to the winding up of the Company.

12. The Petitioners' costs of and incidental to this Petition be paid forthwith out of the assets of the Company on the indemnity basis.
13. Such further or other orders or directions as the Court thinks fit.

AND your Petitioner will ever pray etc.

DATED the 17th day of February 2012



WALKERS
Attorneys at Law for the Petitioners

NOTE: This Petition will be served in accordance with any Order of the Court requiring the Petitioners to do so.

This Petition was presented by Walkers, Attorneys-at-Law for the Petitioners whose address for service is care of their said Attorneys, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands on the day of 2012 at .

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.