

Petition (0.9, r.2)



IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: 55 OF 2019 (RPJ)

IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)

AND IN THE MATTER OF GF GTEC FUNDS SPC

AND IN THE MATTER GTEC PANDION MULTI-STRATEGY FUND SP



PETITION

To the Grand Court of the Cayman Islands

The humble petition of GF GTEC Funds SPC, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands (the "SPC") shows that:

A. SUMMARY

- 1 The SPC seeks the appointment of receivers over one of its segregated portfolios, the GTEC Pandion Multi-Strategy Fund SP (the "Fund"), pursuant to section 224 of the Companies Law (2018 Revision), (the "Law") on the grounds that:
 - 1.1 the appointment of receivers will enable the orderly closing down of the business of the Fund, the conduct of any necessary investigations into any litigation claims that may exist against third parties, and the distribution of the Fund's assets to those persons entitled to have recourse thereto;
 - 1.2 the directors of the SPC have reached the conclusion that the assets attributable to the Fund are likely to be insufficient to discharge the claims of creditors of the Fund; and
 - 1.3 the SPC operates 3 other segregated portfolios that are not in financial distress and the directors of the SPC are therefore of the view that it is undesirable that the Company, as a whole, be wound up.

B. BACKGROUND – CORPORATE STRUCTURE

- 2 The SPC is an exempted company registered as a segregated portfolio company under the laws of the Cayman Islands. It was incorporated on 13 May 2016.

This Petition was presented by Campbells of Floor 4, Willow House, Cricket Square, George Town, Grand Cayman KY1-9010, Cayman Islands, Attorneys at Law for the Petitioner, whose address for service is that of their said attorneys. (Ref: MGM/DMP/15661-28944)

- 3 As at the date of this Petition, the directors of the SPC are:
- 3.1 Nigel David STEAD, an independent, non-executive director who is the sole shareholder of DirectorsPlus (Singapore) Pte Limited and registered as a director with the Cayman Islands Monetary Authority;
- 3.2 Sammy Chung Hing LAU, the managing director of the investment advisor of the Fund, GF Asset Management (Hong Kong) Limited; and
- 3.3 Jackson Pok Man KWAN, a senior portfolio manager employed by the Investment Advisor (the “Directors”).
- 4 As at the date of this Petition, the administrator of the Fund is Northern Trust Global Fund Services Cayman Limited of 94 Solaris Avenue, Camana Bay, PO Box 1348, Grand Cayman KY1-1108, Cayman Islands (the “Administrator”).
- 5 As at the date of this Petition, the auditors of the SPC are Ernst & Young of 62 Forum Lane, Camana Bay, PO Box 510, Grand Cayman KY1-1106, Cayman Islands (the “Auditors”). Until 29 August 2018, the auditors of the SPC were Deloitte & Touche of One Capital Place, PO Box 1787, Grand Cayman KY1-1109, Cayman Islands.
- 6 As at the date of this Petition, the manager of the Fund is GF GTEC Investment Management Ltd of 4th Floor, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands (the “Manager”).
- 7 As at the date of this Petition, the investment advisor of the Fund is GF Asset Management (Hong Kong) Limited of 29-30/F Li Po Chun Chambers, 189 Des Voeux Road, Central, Hong Kong SAR (the “Investment Advisor”).
- 8 The Manager conducts and manages the business of the Fund. The Manager has delegated some responsibilities to the Investment Advisor, which is primarily responsible for providing portfolio advisory and management services to the Manager in relation to the management of the assets of the Fund.
- 9 The Fund is 1 of 4 segregated portfolios of the SPC.
- 10 The Fund’s inception date was 3 October 2016.
- 11 The Fund has issued 100 management shares which are held by the Manager.

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- 12 The Fund has issued participating shares in 2 share classes: Class A unrestricted participating shares and Class B unrestricted participating shares, each in multiple series. As at the date of this Petition, the participating shareholders in the Fund (whose names have been anonymised) and their respective shareholdings are:
- 12.1 [Shareholder A] holds 59,567.7430 Class A unrestricted participating shares;
- 12.2 [Shareholder A] holds 30,549.8504 Class B unrestricted participating shares; and
- 12.3 [Shareholder B] holds 38.274 Class B unrestricted participating shares.
- 13 [Shareholder A] currently holds 90,117.5934 out of the 90,155.8674 participating shares issued by the Fund (being 99.96% of the issued participating shares).
- 14 [Shareholder A] and the Investment Advisor are both wholly-owned subsidiaries of GF Holdings (Hong Kong) Corporation Limited, which is itself a wholly-owned subsidiary of GF Securities Co. Ltd, one of the first full service securities companies in the Peoples Republic of China. GF Securities Co. Ltd is listed on the main boards of the Shenzhen Stock Exchange and the Hong Kong Stock Exchange.
- 15 [Shareholder B] is a British Virgin Islands Business Company which is wholly owned by employees of the Investment Advisor and their related parties.

C. FUND INVESTMENTS

- 16 The investment objective of the Fund is stated in Appendix 1 to the Private Placing Memorandum (the "PPM") for the SPC (the "Appendix") as follows:
- "The [Fund] is a cross-asset multi-strategy fund, which objective is to generate long term uncorrelated returns to traditional investment strategies by allocated capital and leverage efficiently between capital appreciation and income generation strategies depending on the market cycle."*
- 17 The Fund began to trade in October 2016 and had a successful track record of almost 23 months before it experienced difficulties.
- 18 On 25 August 2017, the Fund and the Investment Advisor entered into a Customer Agreement for Foreign Exchange Prime Brokerage Services (the "PB Agreement") with Citibank NA, London Branch (the "Prime Broker").
- 19 Since 16 October 2018, and as at the date of this Petition, other than cash on hand and treasury notes, the only assets of the Fund have been derivative transactions between the Fund and the Prime Broker (the "Transactions") under a 2002 ISDA Master Agreement dated 20 July 2017 (as amended) between the Fund and the Prime Broker (the "ISDA"), which are supported by a 2016

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Credit Support Annex for Variation Margin (VM) dated 20 July 2017 (as amended) (the "CSA"), and together with the ISDA, the "Master Agreement").

- 20 From October 2016 to June 2018 the Fund's monthly performance was very consistent, with the largest monthly increase in NAV being 3.9% (for Class B participating shares in June 2018) and the largest monthly decrease being -0.7% (for Class A participating shares in February 2017).
- 21 The Fund's performance dipped in July 2018 with a monthly decrease in NAV of 6.7% for Class B participating shares, but rebounded in August 2018 with a monthly increase in NAV of 16.6% for Class B participating shares.
- 22 At its peak in August 2018, the total NAV of the Fund was US\$108,926,196.65. The total NAV of the Fund declined rapidly month-on-month after that date. Based on figures provided to the Directors by the Administrator:
 - 22.1 The total NAV of the Fund in September 2018 was US\$86,833,122.00;
 - 22.2 The total NAV of the Fund in October 2018 was US\$60,646,588.21;
 - 22.3 The total NAV of the Fund in November 2018 was negative (US\$15,524,826.15);
 - 22.4 The total NAV of the Fund in December 2018 was negative (US\$15,493,448.94); and
 - 22.5 The total NAV of the Fund in January 2019 was negative (US\$21,426,791.11).
- 23 The decline in performance can be largely explained by the fact that certain instruments underlying the Transactions became suddenly illiquid as the result of a systemic shock in corresponding currency markets. Those markets remain illiquid. In some cases, the positions underlying the Transactions will not mature until as far out as 2021.
- 24 In or around October 2018, the Fund failed to provide the Prime Broker with certain credit support which it was obligated to transfer pursuant to the CSA (the "Collateral Failure"). As the Fund held insufficient eligible credit support to meet its obligations under the CSA in full, it transferred all eligible credit support that it had, with the exception of US\$1.5 million needed to cover the Fund's operating expenses, under the terms of an Amendment Agreement to the Master Agreement and the PB Agreement dated 19 October 2018 (the "Amendment Agreement").
- 25 Clause 1 of the Amendment Agreement provides that:
 - (a) *"The Parties acknowledge and agree that, notwithstanding the Dispute [being a dispute between the Parties regarding the Prime Broker's valuation of the Transactions and related calculation of margin requirements pursuant to the terms of the Master Agreement] and notwithstanding the Collateral Transfer referred to below [and at paragraph 23 above], the Collateral Failure constitutes a*

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failure under Section 5(a)(i) (Failure to Pay or Deliver) of the Master Agreement such that, if the Collateral Failure is not remedied within the time period described in Section 5(a)(i) [and at paragraph 26 below], [the Prime Broker] shall have the right to designate an Early Termination Date.

(b) This Amendment Agreement constitutes notice of the Collateral Failure for the purposes of Section 5(a)(i). The Fund agrees and acknowledges that, for these purposes, execution of this Amendment Agreement shall constitute valid notice for the purposes of the Master Agreement"

26 Under the Amendment Agreement, the Prime Broker agreed, *inter alia*, and subject to certain conditions, to defer until 6pm Hong Kong time on 31 March 2019 its right to designate an Early Termination Date under the Master Agreement as a result of the Fund's failure to provide the required credit support.

27 At the time that the Amendment Agreement was entered into, the Directors expected that the relevant markets would normalise in the short term. That has not occurred.

D. STATUTORY GROUNDS FOR APPOINTMENT OF RECEIVERS

28 This petition is made pursuant to section 224 of the Law.

29 The creditors of the Fund only have access to the segregated assets of the Fund and not to the general assets of the SPC or to the assets of the other segregated portfolios of the SPC.

30 Article 17A.12 of the SPC's Amended and Restated Articles of Association dated 5 August 2016 states:

"The assets and liabilities of the [SPC] held within or on behalf of any Segregated Portfolio will be segregated from the assets and liabilities of the [SPC] held within or on behalf of any other Segregated Portfolio and the General Assets. Persons investing in and dealing with a Segregated Portfolio shall only have recourse to, and their interests shall be limited to, the assets from time to time attributable to that Segregated Portfolio and such persons shall have no recourse to the assets of any other Segregated Portfolio or against any General Assets of the [SPC]."

31 The SPC has no general assets.

32 The Directors have reached the conclusion that the assets attributable to the Fund are or are likely to be insufficient to discharge its liabilities to the Prime Broker after the deferral referred to in paragraph 26 above expires at 6pm Hong Kong time on 31 March 2019, or at any time following the declaration of an Event of Default by the Prime Broker under the Master Agreement.

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- 33 The Prime Broker has conveyed to the Directors that it wishes for there to be such reasonable investigations as may be necessary to identify any potential litigation claims that may be available to the Fund prior to any termination of the Fund by the Directors.
- 34 For the reasons set out above, the Directors believe that the Fund is or is likely to become insolvent. For that reason, and also for those set out below it is appropriate that this Honourable Court should make a receivership order under section 224 of the Law:
- 34.1 the inevitable high cost of conducting the investigations into potential litigation claims desired by the Fund's primary creditor, the Prime Broker;
 - 34.2 the need to determine how best to allocate the remaining cash reserves of the Fund;
 - 34.3 in light of the connection of two of the Directors to the Investment Advisor (and indirectly to the 99.96% shareholder), as well as for public policy reasons, it is preferable that an independent party conduct any analysis and investigation into potential litigation claims; and
 - 34.4 the inability of the Directors, who continue to be responsible for the solvent segregated portfolios of the SPC, amongst other roles, to dedicate the necessary time and resources to conduct the investigations into potential litigation claims on behalf of the Fund.
- 35 Accordingly, the Directors are of the view that the Fund should be put under the control of receivers who will be best placed to take decisions as to how the limited liquid assets of the Fund should be applied and take all necessary steps to realise the assets for the benefit of the Fund's creditors and other stakeholders.

YOUR PETITIONER THEREFORE HUMBL Y PRAYS AS FOLLOWS:

- 1 That a receivership order be made in relation to the Fund pursuant to section 224 of the Law;
- 2 That Mr David Griffin of FTI Consulting (Cayman) Ltd and Mr Ken Fung of FTI Consulting (Hong Kong) Limited (the "Receivers") be appointed jointly and severally as receivers over the Fund.
- 3 That the business and segregated portfolio assets of the Fund shall be managed by the Receivers for the purposes specified in section 224(3) of the Law.
- 4 That the Receivers be authorised to exercise the following powers:
 - 4.1 to exercise the powers conferred on the Receivers by section 226 of the Law;
 - 4.2 to exercise the powers conferred on official liquidators by sections 101 to 103 of the Law (powers relating to investigation into the affairs of the company), with the appropriate

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amendment of the references in the Law from a liquidator to a receiver and of the references from a company to a segregated portfolio;

- 4.3 to pay any class of creditors in full;
- 4.4 to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claims (present or future, certain or contingent, ascertained or sounding only in damages) against the segregated assets of the Fund or for which the segregated assets of the Fund may be held liable;
- 4.5 to compromise on such terms as may be agreed all debts or liabilities (present or future, certain or contingent, ascertained or sounding only in damages) as between the Fund and any party against whom the Fund (or the SPC in relation to the Fund) may have a claim;
- 4.6 to deal with all questions in any way relating to or affecting the assets or the orderly closure of the Fund;
- 4.7 to engage staff to assist them in the performance of their functions;
- 4.8 to engage attorneys and other professionally qualified persons to assist them in the performance of their functions;
- 4.9 to take possession of, collect and get in the segregated assets of the Fund and for that purpose to take all such proceedings as they consider necessary;
- 4.10 to do all acts and execute, in the name of an on behalf of the Fund, all deeds, receipts and other documents;
- 4.11 to convene meetings of creditors and contributories; and
- 4.12 to do all other things incidental to the exercise of their powers.

5 That the Receivers' fees and expenses be payable out of the segregated assets of the Fund pursuant to section 228 of the Law in priority to all other claims.

6 That no suit, action or other proceeding may be instituted against the Company in relation to the Fund except with the leave of the Court pursuant to section 226(5) of the Law.

7 That any act required or authorised to be done by the Receivers may be done by any one of them.

8 That the Receivers be at liberty to apply for further directions and generally.

9 That the SPC's costs of this Petition be paid out of the segregated assets of the Fund on an indemnity basis.

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10 That such other order may be made as the Court thinks fit.

Dated the 3rd day of April 2019.

Campbells

Campbells

This petition and the supporting affidavits of Nigel Stead, David Griffin and Ken Fung are intended to be served on:

A. CIMA

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NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, on 11 July 2019 at 10.00am.

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, Tel: +1 (345) 949 4296.

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