

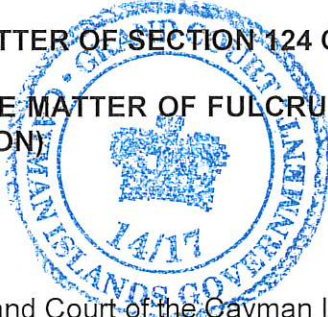
IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



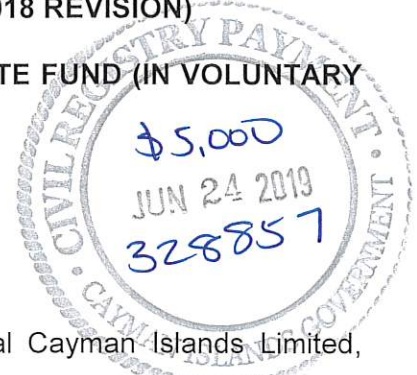
CAUSE NO. FSD 116 OF 2019

IN THE MATTER OF SECTION 124 OF THE COMPANIES LAW (2018 REVISION)

AND IN THE MATTER OF FULCRUM DIVERSIFIED INCOME NOTE FUND (IN VOLUNTARY LIQUIDATION)



PETITION



To: The Grand Court of the Cayman Islands (the "**Court**")

The humble petition of Christopher Kennedy of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 70 Harbour Drive, George Town, Grand Cayman KY1-1104, Cayman Islands and Neil Hayward of Alvarez & Marsal Middle East Limited, Unit C206, Level 2, Burj Daman, Dubai International Financial Centre, PO Box 506729, Dubai, United Arab Emirates (the "**Petitioners**"), shows that:

**Particulars of Incorporation**

1. Fulcrum Diversified Income Note Fund (In Voluntary Liquidation) (the "**Company**") is an exempted limited company incorporated on 29 May 2017 and organised pursuant to the Companies Law of the Cayman Islands (as revised). The registration number of the Company issued by the Registrar of Companies (the "**ROC**") is 323335.
2. The registered office of the Company was, prior to the commencement of the voluntary liquidation of the Company, at Walkers Corporate Limited, Cayman Corporate Centre, 27 Hospital Road, George Town, Grand Cayman KY1-9008; Cayman Islands.
3. The most recent version of the Memorandum and Articles of Association (the "**Articles**") were adopted by the Company on 29 May 2017. The objects for which the Company was established are unrestricted.
4. The Company has an authorised share capital of US\$50,000 divided into:
  - (a) 4,999,900 non-voting, participating, redeemable shares with a par value of US\$0.01 each; and

- (b) 100 voting, participating, non-redeemable shares with a par value of US\$0.01 each (together, the "**Shares**").
5. All of the Shares that are currently in issue by the Company are held by the immediate parent of the Company, Gibson Consultants Ltd (the "**Shareholder**").

### **The business of the Company**

6. The Company acts as an open-ended investment vehicle registered with the Cayman Islands Monetary Authority ("**CIMA**") with licence number 10415 under the Mutual Funds Law (as revised). The stated long-term investment objective of the Company is to preserve the capital contributed to the Company and to generate consistent current income for participating shareholders by principally investing in debt instruments issued by financial institutions which pay a periodic coupon. The business of the Company includes the realisation and distribution of the Company's assets to shareholders during a wind down of the Company's operations.

### **Commencement of the voluntary liquidation of the Company**

7. Section 116(c) of the Companies Law (2018 Revision) (the "**Law**") provides as follows:

*"A company incorporated and registered under this Law [...] may be wound up voluntarily-*

*[...]*

*(c) if the company resolves by special resolution that it be wound up voluntarily;"*

8. A "**Special Resolution**" is defined in Article 1 of the Articles as:

*"[...] a resolution passed by a majority of not less than two-thirds of such Shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company [...]"*; or

*"[...] approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders 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[...]"*

9. The Articles define "Members" or "Shareholders" as those:

*"[...] registered as the holder of Shares in the Register and includes each subscriber to the Memorandum of Association pending entry in the Register of such subscriber [...]"*

10. On 25 May 2019:

- (a) the Shareholder was the sole registered holder of all of the Shares and as such, the sole "Member" of the Company;
- (b) the Shareholder was therefore the only entity entitled to vote at a general meeting of the Company; and
- (c) in its capacity as the sole registered holder of all of the Shares, the Shareholder executed written resolutions that resolved that:
  - (i) the Company be wound up voluntarily, which was passed as a special resolution; and
  - (ii) the Petitioners be appointed joint voluntary liquidators of the Company, which was passed as a special resolution.

11. In the premises:

- (a) the Company duly resolved by special resolution that it be wound up voluntarily pursuant to section 116(c) of the Law; and
- (b) the voluntary winding up of the Company is deemed to have commenced on 25 May 2019 pursuant to section 117(1)(a) of the Law.

12. The Petitioners filed a notice of winding up and consent to act as the joint voluntary liquidators of the Company with the ROC on 27 May 2019 in accordance with sections 123(1)(a) and 123(1)(b) of the Law and Order 13, rules 2(a) and 2(b) of The Companies Winding Up Rules 2018 (as amended) (the "CWR"). The Petitioners also filed a notice of winding up with CIMA on 27 May 2019 and published notice of the winding up in the

Gazette on 11 June 2019 in accordance with sections 123(1)(d) and 123(1)(e) of the Law and Order 13, rules 2(c) and 2(d) of the CWR. Accordingly, the Petitioners' appointment took effect on 25 May 2019 pursuant to section 119(3) of the Law and Order 13, rule 3(2) of the CWR.

### **Declaration of solvency**

13. As at the date of this Petition, the Petitioners have not received an executed declaration of solvency from Mr Stephen Gibson, who is the sole director of the Company (the "**Director**"), in the form required by section 124(2) of the Law and Order 14, rule 1 of the CWR (a "**Declaration of Solvency**"), nor, to the best of the knowledge of the Petitioners, has the Director filed an executed Declaration of Solvency with the ROC in accordance with section 123(1)(c) of the Law and Order 13, rule 2(2) of the CWR.
14. The Petitioners have inquired with the Director as to whether he intends to provide an executed Declaration of Solvency. As of the date of the Petition, the Petitioners have received confirmation from the Director that he will not provide an executed Declaration of Solvency.

### **Requirement for Court supervision**

15. Under section 124(1) of the Law, the Petitioners are required to present a petition seeking that the winding up of the Company continue under the supervision of the Court if a Declaration of Solvency executed by the Director is not provided within 28 days of the commencement of the voluntary liquidation.
16. Although 28 days have not elapsed as at the date of this Petition, the Director has confirmed that he will not provide an executed Declaration of Solvency. In these circumstances, the Petitioners consider it prudent to now seek that the winding up of the Company continue under the supervision of the Court, rather than wait for 28 days to elapse.

### **Consent to Appointment as Joint Official Liquidators**

17. Christopher Kennedy is a qualified insolvency practitioner (as that term is defined in section 89 of the Law) and consents to his appointment as a joint official liquidator of the Company.

18. Neil Hayward is a qualified foreign practitioner (as that term is defined in section 89 of the Law) and 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. Christopher Kennedy of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 70 Harbour Drive, George Town, Grand Cayman KY1-1104, Cayman Islands and Neil Hayward of Alvarez & Marsal Middle East Limited, Unit C206, Level 2, Burj Daman, Dubai International Financial Centre, PO Box 506729, Dubai, United Arab Emirates be appointed as joint official liquidators of the Company (the "JOLs").
3. The JOLs shall not be required to give security for their appointment.
4. The JOLs be authorised to act jointly and severally and exercise any of the following powers within and outside the Cayman Islands specified in Part I and Part II of the Third Schedule to the Law without further sanction or intervention 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) the power 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;
  - (d) to engage staff (whether or not as employees of the Company) to assist them in the performance of their functions;
  - (e) to engage attorneys and other professionally qualified persons to assist them in the performance of their functions;
  - (f) 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;

- (g) 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;
  - (h) 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;
  - (i) 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;
  - (j) to promote a scheme of arrangement pursuant to section 86 of the Law;
  - (k) to convene meetings of creditors and contributories; and
  - (l) to do all other things incidental to the exercise of their powers.
5. The JOLs' remuneration and expenses be paid out of the assets of the Company in accordance with section 109 of the Law, the Insolvency Practitioner's Regulations 2008 (as amended) and Order 20 of the CWR.
  6. The JOLs be at liberty to meet all disbursements reasonably incurred with the performance of their functions.
  7. The JOLs shall have the authority to appoint Cayman Islands attorneys, and if necessary, legal representation in any other jurisdiction where the Company has or may have assets, as they may consider necessary to advise and assist them in the performance of their duties and to remunerate them for their reasonable fees and expenses out of the assets of the Company as an expense of the liquidation.
  8. The JOLs be at liberty to and do pay their agents, employees, attorneys, solicitors 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.

9. No suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the Company except with leave of the Court pursuant to section 97 of the Law.
10. No disposition of the Company's property by or with the authority of the JOLs in the carrying out of their duties and functions and the exercise of their powers shall be avoided by virtue of section 99 of the Law.
11. Any act required or authorised to be done by the JOLs may be done by any one of them.
12. The Petitioners' costs of and incidental to this Petition be paid from the assets of the Company, to be taxed on the indemnity basis if not agreed.
13. The JOLs be at liberty to apply generally.
14. Such further or other orders or directions as the Court thinks fit.

AND your Petitioners will ever pray etc.

DATED the 24<sup>th</sup> day of June 2019



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**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 190 Elgin Avenue, 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        2019 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.