



## GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO. OF 2022 ( )

IN THE MATTER OF SECTIONS 224 AND 225 OF THE COMPANIES ACT (2022 REVISION)

AND IN THE MATTER OF OAKWISE VALUE FUND SPC

AND IN THE MATTER OF ENHANCED FIXED INCOME SP

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**PETITION**

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**TO THE GRAND COURT:**

The humble petition of CMB International Securities Limited of 45-46/F, Champion Tower, 3 Garden Road, Central, Hong Kong (the "**Petitioner**") shows that:

**A. INTRODUCTION**

1. The Petitioner presents this petition seeking the appointment of receivers over the segregated portfolio of Oakwise Value Fund SPC ("**Oakwise**" or the "**SPC**") known as Oakwise Value Fund SPC – Enhanced Fixed Income SP (the "**SP**" or the "**Fund**"), pursuant to sections 224 and 225 of the Companies Act (2022 Revision) (the "**Companies Act**").
2. The Petitioner is a creditor of Oakwise in respect of the Fund, and seeks the appointment of joint receivers over the Fund on the grounds that:
  - (a) the Fund is insolvent, the assets attributable to the Fund are, or are likely to be, insufficient to discharge the claims of creditors in respect of that segregated portfolio; and

- (b) the appointment of receivers to manage the assets and business of the Fund would enable the orderly close down of the business attributable to the Fund and the distribution of its assets to those persons entitled to have recourse thereto.

## B. BACKGROUND

### The SPC and the Fund

3. Oakwise was incorporated on 10 October 2018 in the Cayman Islands as an exempted segregated portfolio company with registration number 343585. Oakwise's registered office is at Harneys Fiduciary (Cayman) Limited of 4<sup>th</sup> Floor, Harbour Place, 103 South Church Street, P.O. Box 10240, Grand Cayman KY1-1002, Cayman Islands. As at 22 December 2022, it remains active and in good standing.
4. Oakwise has also been registered as a mutual fund with the Cayman Islands Monetary Authority since 20 March 2019 with registration number 1541164. The Fund was also established as a segregated portfolio on 20 March 2019.
5. As of 13 April 2022, the directors of Oakwise were Mr Wang Fengyu and Mr Xing Chao (the "**Directors**"). The Petitioner is not aware of any changes in the Board of Oakwise as at the date of the Petition. Investment management services are provided to Oakwise by Oakwise Asset Management Limited ("**OAML**") and Oakwise Capital Management Limited ("**OCML**").
6. The amended and restated memorandum and articles of association of Oakwise adopted by special resolution dated 17 November 2020 (the "**M&A**") show that the objects for which Oakwise was established are unrestricted, and that the authorised share capital of Oakwise is USD1,000,000 divided into:
  - (a) 100 management shares of USD0.01 par value each (the "**Management Shares**"). As at 13 April 2022, the Management Shares are held by OAML

(a registered person under the Securities Investment Business Act (2022 Revision) with registration number 1812473); and

- (b) 99,999,900 participating shares of USD0.01 par value each (the "**Participating Shares**").

#### **The Petitioner**

7. The Petitioner is a company incorporated in the Hong Kong Special Administrative Region ("**HK SAR**") with registration number 1373968. The Petitioner's registered office is at 45-46/F, Champion Tower, 3 Garden Road, Central, Hong Kong.
8. Between 25 June 2021 and 17 October 2022 the Petitioner made various subscriptions in the Fund. In addition, during this period, the Petitioner variously made reinvestments in the Fund and issued redemption requests. Details of the subscriptions, reinvestments and redemption requests made by the Petitioner are listed in **Annexure A** of this Petition.
9. As at the date of this Petition, the Petitioner has redeemed all of its subscriptions in the Fund. However, as set out in **Annexure A** and as particularised further below, the Fund has failed to discharge its obligations to the Petitioner such that the Fund is indebted to the Petitioner in the sum of USD91,385,352.69 and RMB10,558,045.07.

#### **C. THE PETITIONER'S INVESTMENTS INTO OAKWISE AND THE FUND**

10. The affairs of the Fund are governed by the M&A together with the applicable PPM(s), Supplement(s), Reinvestment Notices and Subscription Agreements as may have been in force at any relevant time and in respect of any particular transaction (as such terms are defined below) (collectively, the "**Documents**"). The Petitioner will rely upon the terms of the applicable Documents for their full meaning and effect and capitalised terms used but not defined in this Petition have the meaning given to them in the Documents.

**The M&A**

11. According to the M&A:
- (a) Article 6.1(a) states that "*The holder of a Participating Share shall not (in respect of such Share) have the right to receive notice of, or attend and vote as a Member at, any general meeting of the Company...*";
  - (b) Article 6.1(c) states that "*The holder of a Participating Share shall have the right to redeem the Participating Share upon such terms as the Director determine on the creation and designation of the relevant Class*";
  - (c) Article 7.1 states that "*...the Directors may issue...Participating Shares...at such times, to such persons on such terms and in such manner as the Directors may determine*";
  - (d) Article 9.1 states that "*Subject to the provisions of these Articles, the Companies [Act] and to the rights attaching to any Class, Participating Shares shall be redeemable at the option of a Member on any Redemption Day*" where Redemption Day is defined in Article 1.1 as "*in respect of any Class, such day or days as the Directors may determine on the creation and designation of the Class and such other day or days as the Directors may determine from time to time*";
  - (e) Article 9.3 states that "*A Redemption Notice [a request for redemption of Participating Shares in such form as the Directors may determine from time to time] must be received by the Company at such place and by such time prior to the Redemption Day for which the redemption is requested as the Directors may determine from time to time*";
  - (f) Article 9.8 states that "*From the Redemption Day, the redeeming Member shall cease to be entitled to any rights in respect of that Participating Share except the right to receive the redemption proceeds and any Distribution which has been declared prior to the relevant Redemption Day (in respect*

*of which the redeeming Member shall be treated as a creditor of the Company)";*

- (g) Article 12.3 states that: *"A Member may, by written notice, request that all or any of his Participating Shares of one Class be converted into Participating Shares of any other Class. The Directors may accept such request in whole or in part on such terms as they may determine or may refuse such request without giving any reason for doing so";* and
- (h) Article 15.1(a) states that *"The Directors may...declare a suspension of the redemption by a Member of Participating Shares of any class...";* and
- (i) Article 22.1 states that *"all or any of the rights for the time being attached to a Class may...only be materially adversely altered or abrogated...with the consent in writing of the holders of not less than two-thirds of the issued Shares of the Class."*

#### **The PPM(s) and the Supplement(s)**

12. As detailed in **Annexure A**, the Petitioner was the holder of Participating Shares between 25 June 2021 (being the date of the Petitioner's first Subscription) and 1 November 2022 (being the Redemption Day in respect of the last tranche of the Petitioner's Participating Shares). During this period, the following versions of the PPM(s) and the Supplement(s) were variously in effect as applicable:

- (a) Private Placement Memorandums (collectively, the "**PPM(s)**"):
  - (i) the Fourth Amended and Restated Private Placement Memorandum dated December 2020 (the "**December 2020 PPM**"), applicable to all Subscription Agreements, Reinvestments and Redemption Requests (as defined below) dated between 29 June 2021 to 30 November 2021;

- (ii) the Fifth Amended and Restated PPM dated December 2021 (the "**December 2021 PPM**"), applicable all Subscription Agreements, Reinvestments and Redemption Requests dated between 14 December 2021 to 25 February 2022; and
  - (iii) the Sixth Amended and Restated PPM dated March 2022 (the "**March 2022 PPM**") applicable to all Subscription Agreements, Reinvestments and Redemption Requests dated between 7 March 2022 to 17 October 2022; and
- (b) Supplements to the PPM (the "**Supplement(s)**):
- (i) the Third Amended and Restated Supplement to the PPM dated May 2021 (the "**May 2021 Supplement**"), applicable to all Subscription Agreements, Reinvestments and Redemption Requests (as defined below) dated between 29 June 2021 to 30 November 2021;
  - (ii) the Fourth Amended and Restated Supplement to the PPM dated December 2021 (the "**December 2021 Supplement**"), applicable to all Subscription Agreements, Reinvestments and Redemption Requests dated between 14 December 2021 to 30 June 2022; and
  - (iii) the Fifth Amended and Restated Supplement to the PPM dated July 2022 (the "**July 2022 Supplement**"), applicable to all Subscription Agreements, Reinvestments and Redemption Requests dated between 18 July 2022 to 17 October 2022.
13. In respect of the July 2022 Supplement, on 22 July 2022, the Fund Administrator sent an email to the Petitioner stating that two-thirds of the holders of the issued shares approved the July 2022 Supplement (presumably with reference to Article 22.1 regarding the variation of class rights). The Petitioner does not know the identity of the other holders of Class A Participating Shares.

14. All versions of the PPM(s) and the Supplement(s) described the Fund as an investment vehicle whose objective and strategy is to invest primarily in fixed income securities, including bonds, in the Greater China, the HKSAR and the Asia Pacific region. According to the Fund's audited financial statements (dated 31 April 2022) for financial year to 31 December 2021 of the Fund (the "**2021 Financial Statements**"), 79.74% of the Fund's total financial assets were invested in real estate bonds. 68.11% and 23.26% of the Fund's geographical exposure were in China and the HKSAR respectively (see pages 34 and 35 of the 2021 Financial Statements).
15. Pursuant to the PPM(s) and the Supplement(s):
- (a) the Fund offers its Class A Participating Shares to investors who wish to invest in the Fund (page ii of the Supplement(s));
  - (b) subscriptions can be made on the first Business Day of each calendar month (or any other day subject to the discretion of the directors of Oakwise), being the "**Subscription Day**" (see the Glossary of the Supplement(s));
  - (c) subscriptions are available at the applicable subscription price, being USD100, RMB1,000 and HKD1,000 for the Class A Participating Shares with class currency in USD, RMB and HKD respectively, being the "**Subscription Price**" (see section 1.8 of the Supplement(s) – HKD denominated Participating Shares were introduced in the December 2021 Supplement, with consequential amendments made to the December 2021 Supplement);
  - (d) as to the Subscription Amount Ratio (see section 1.12 of the Supplement(s));

- (i) at any given time, the aggregate NAV of the Class A Participating Shares shall remain not more than 100% **200%**<sup>1</sup> of the aggregate Net Asset Value of Class B Participating Shares;
- (ii) in the event that the aggregate NAV of Class A Participating Shares is more than 100% **200%** of the aggregate NAV of Class B Participating Shares, the Directors may decide at their discretion:
  - (A) to issue additional Class B Participating Shares for which Class B Participating Shareholders shall be required to subscribe until the aggregate NAV of Class A Participating Shares is not more than 100% **200%** of aggregate NAV of Class B Participating Shares;  
or
  - (B) to liquidate the Fund's investments and terminate the Fund;
- (e) the Class A Participating Shares are redeemable on the first Business Day of each calendar month (or any other day subject to the discretion of the directors of Oakwise), being the "**Redemption Day**" – see section 1.15 and the Glossary of the Supplement(s);
- (f) Participating Shareholders wishing to redeem their Class A Participating Shares are required to send a completed redemption request form to the Administrator of the Fund at least 10 Business Days before the relevant Redemption Day (or any other deadline as per the directors' sole discretion), being the "**Redemption Deadline**" (see paragraph 1.15 of the Supplement(s)). In addition, no redemption proceeds will be paid until the Administrator has received the signed original redemption request form and any other information required by the Administrator (see page 24 of the PPM(s));
- (g) the redemption price of a Class A Participating Share is equal to the net asset value of such Participating Shares (less payment of any fees and

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<sup>1</sup> The percentages in bold and underline were amendments made in the July 2022 Supplement.

charges) as at the Valuation Point immediately preceding the relevant Redemption Day, being the "**Redemption Price**" (page 25 of the PPM(s));

- (h) redemption proceeds should be paid to the Participating Shareholder's bank account within 30 calendar days of the Redemption Day or when the Managers and Administrator receive the original redemption request form, whichever is later (page 25 of the PPM(s));
- (i) Subject to sub-paragraph (j) below, Participating Shareholders are entitled to receive a fixed return rate of up to 5% calculated on their total subscription amount (the "**Fixed Return Payments**"), which is in the form of a dividend (section 1.25 of the Supplement(s)). This Fixed Return Payment is to be paid within two business days after the end of the relevant "*Lock-Up Period*" or at such day as their directors may determine in their sole discretion. The Lock-Up Periods are set out at section 1.17 of the Supplement(s);
- (j) Section 1.25 of the Supplement(s) was amended in the December 2021 Supplement to state that:
  - (i) the Class A Participating Shareholders must complete a redemption request form pursuant to paragraph 1.15 of the Supplement in order for the Fixed Return to be paid; and
  - (ii) a completed redemption request form must be received by the relevant Redemption Deadline, otherwise the shares will be automatically redeemed upon the expiry of the relevant Lock-Up Period with the proceeds reinvested into a new series of the same class of participating shares;
- (k) upon the expiry of any applicable Lock-Up Period, Participating Shareholders have the right to reinvest all or part of the proceeds from any redemption into Participating Shares of a new series of the same class in the same Fund by submitting a "*Reinvestment Notice*" by no later than the

Redemption Deadline of the Initial Class, which must be in writing sent by post, facsimile or email (page 28 of the PPM(s));

- (l) there is a stop-loss mechanism – if the Net Asset Value of the Fund is less than 80% **60%**<sup>2</sup> of the “*Benchmark NAV*” on any Valuation Day, the Directors (i) may reject any redemption request, and/or (ii) shall within 7 Business Days after such Valuation Day, issue additional Class B Participating Shares in such amounts as to ensure the Net Asset Value of the Segregated Portfolio is not less than 80% **60%** of the Benchmark NAV. If this falls to less than 75% **50%** of the Benchmark NAV, the Fund “*shall be liquidated and terminated and redeem all Class A Participating Shares at their latest Net Asset Value, despite of the Redemption Gate*” (see paragraph 1.26 of the May 2021 Supplement and December 2021 Supplement) (the “**Stop-Loss Mechanism**”); and
- (m) the obligations of the Class B Participating Shareholders include making “*compulsory additional subscription into the Segregated Portfolio under certain circumstances, such as in a market downturn, or when the subscription amount ratio is higher than certain ratio as provided in this Supplement*” (paragraph 1.30 of the Supplement(s)).

16. The Petitioner is unaware of the identity of all current or previous Class B Participating Shareholders. However, according to the 2021 Financial Statements (at page 29), Mr Wang Fengyu (a director of Oakwise) and Oak Brilliant Limited (which is wholly owned by Mr Wang and which is registered as a British Virgin Islands incorporated company) held Class B Participating Shares as at 31 December 2021. Upon the Stop-Loss Mechanism being triggered, and regardless of whether the Directors had rejected any redemption requests, the Directors are obligated (under paragraph 1.26 of the Supplement(s)) to ensure that the Class B Participating Shareholders subscribe for the requisite number of Class B

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<sup>2</sup> The percentages in bold and underline were amendments made in the July 2022 Supplement.

Participating Shares in order for the Benchmark NAV to be increased above the requisite threshold.

17. Other than as stated above, the amendments between the different versions of the PPM(s) and the Supplement(s) were relatively minor and related to:

(a) the change of auditor from PricewaterhouseCoopers to Ernst & Young Ltd; and

(b) changes of director of Oakwise and of Oakwise Asset Management Limited.

#### D. THE FACTUAL GROUNDS SUPPORTING THE APPOINTMENT OF RECEIVERS

##### The Subscriptions, Reinvestments and Redemptions

18. As detailed in Annexure A, during the period from 25 June 2021 to 29 October 2021, the Petitioner made various investments into the Fund by way of 19 subscriptions of the Class A Participating Shares (the "**Subscriptions**") pursuant to certain standard form Subscription Agreements (the "**Subscription Agreements**"). The Petitioner made investments into the following classes of shares by signing the Subscription Agreements:

<b>Class of Participating Shares</b>	<b>Lock-Up Period (from date of Subscription, unless otherwise agreed by the Directors)</b>
USD Class A-1M	1 month
USD Class A-2M	2 months
USD Class A-3M	3 months
USD Class A-6M	6 months
USD Class A-9M	9 months
USD Class A-12M	12 months

RMB Class A-12M	12 months
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19. In accordance with the Documents and as detailed in Annexure A:
- (a) during the period from 15 September 2021 to 8 June 2022, the Petitioner made 12 applications to reinvest all or part of the proceeds from redemptions into new series of Class A Participating Shares (the "**Reinvestments**");
  - (b) during the period from 29 October 2021 to 17 October 2022, the Petitioner sent **29** original redemption requests ("**Redemption Requests**") to the Administrator by the relevant Redemption Deadlines with respect to the Class A Participating Shares issued through (i) the Subscriptions and (ii) the Reinvestments, and sought payment of the redemption proceeds and Fixed Return Payments (together, the "**Redemption Payments**"). The one exception was on 31 October 2021, when the Administrator confirmed that redemption had taken place (via email) rather than the Petitioner submitting redemption requests. The Petitioner redeemed all of its Class A Participating Shares on the relevant Redemption Days. The last original Redemption Request was delivered on 17 October 2022, with a Redemption Day of 1 November 2022. The deadline for payment of the Redemption Payments in respect of that Redemption Request was accordingly 1 December 2022.

#### **Failure of Oakwise/the Fund to make the Redemption Payments**

20. Up until 28 December 2021, the Fund made the Redemption Payments upon redemption by the Petitioner in full. However, from 28 December 2021 onwards, the Fund often made only partial payments or no payments at all in respect of many Redemption Requests (as set out at **Annexure A**) despite the valid and effective nature of those requests. As outlined at paragraph 15(h) above, the Redemption Payments should have been paid within 30 calendar days of the

Redemption Day or upon receipt of the original Redemption Requests (whichever was the later) and the Fund failed to comply with this requirement.

*The Debt*

21. As set out in **Annexure A**, The Fund owes the Petitioner the total amount of USD184,830,823.05 and RMB10,700,000.00 in redemption proceeds and Fixed Return Payments, but the Fund has failed to settle the Redemption Payments in full (as detailed above).
22. Despite the Petitioner effecting valid service of the Redemption Requests on the Fund after the relevant Lock-Up Periods had expired, the Fund has failed to make all of the Redemption Payments owed. The Petitioner has received only USD93,445,470.36 and RMB106,643.74. Thus the amount owed by the Fund to the Petitioner is **USD91,385,352.69** and **RMB10,558,045.07** (the "**Redemption Debt**").

*Correspondence with Oakwise*

23. On 21 March 2022, the Petitioner's Hong Kong counsel, Debevoise & Plimpton LLP ("**Debevoise**"), sent a letter to OCML and OAML with regards to the failure of the Fund to pay certain Redemption Payments up to that date. Debevoise also identified in that letter that the Fund had failed to provide requested information about the financial status of the Fund despite repeated requests by the Petitioner on 21 January 2022 and 4, 8, 10, 11 and 16 February 2022 for information regarding (a) the Fund's performance in the previous six months; (b) the underlying assets of the portfolio; (c) information on why the Fund had not paid the outstanding Redemption Payments; and (d) the status of paying the outstanding Redemption Payments.
24. On 28 March 2022, CFN Lawyers (on behalf of OCML, OAML and Oakwise) sent a holding response and requested additional time (until 30 April 2022) to respond

to the letter and the information requests therein. On 8 April 2022, Debevoise sent a letter to CFN Lawyers agreeing to a short extension of time (14 days) for a reply.

25. On 22 April 2022, CFN Lawyers wrote to Debevoise to request further time to respond and noting that the parties were in negotiations. However, the matter was not satisfactorily resolved to the Petitioner's satisfaction (for the reasons set out above and below).
26. The Petitioner also attempted to obtain information from Oakwise/OAML/OCML directly. The responses received (on behalf of the Fund) were unsatisfactory:
  - (a) on 29 June 2022, Oakwise wrote to the Petitioner and identified the Stop-Loss Mechanism as a reason why payment by the Fund of the redemption proceeds and Fixed Return Payments to the Petitioner was either delayed, partial or not forthcoming;
  - (b) in July and August 2022, the Petitioner asked Oakwise various questions about the calculation of the NAV, the current financial position of the Fund and whether the Fund had a repayment plan for paying the Redemption Payments owed to the Petitioner. Oakwise failed to provide an adequate response to these questions;
  - (c) on 13 July 2022, Oakwise stated in an email that *"If the net asset value of the Fund declines by more than 40% in the future, all categories cannot be redeemed"*. The Petitioner replied via email as follows: *"Are customers due in July affected by this provision? According to your current arrangement, the principal distribution is delayed for 6 months. If the net asset value of the fund falls by more than 40% within these 6 months, it is unclear whether the priority that has previously expired is limited and cannot be redeemed. Please quote specific terms for discussion"*. Oakwise failed to provide an adequate response to these questions;
  - (d) on 1 September 2022, Oakwise sent an email to the Petitioner and stated that the Fixed Return of 4% in respect of the redemption of the particular

shares would only be paid to the Petitioner if the Petitioner agreed to reinvest the Redemption Payments in respect of the redeemed shares into new classes of shares (which is not a condition of any of the Documents).

27. The Petitioner does not accept that the Stop-Loss Mechanism was engaged by the directors or that any Redemption Request was rejected (validly or at all) in accordance with the Stop-Loss Mechanism. On the contrary, during the period relevant to the Redemption Requests and Redemption Payments, Oakwise arranged for partial payment of certain Redemption Payments (see No. 60 of **Annexure A**, for example, where a USD 200,000 Redemption Payment was made, although more than USD 4 million was owed) and at no point in time until 22 November 2022 (as detailed below) did the directors of Oakwise formally reject any request by an investor to redeem or suspend redemptions.

*Attempts to change the July 2022 Supplement*

28. On 28 October 2022, the Petitioner received a letter from Oakwise requesting changes to the provisions of the July 2022 Supplement with regards to the Class B Participating Shareholders. Of particular note were the following changes (emphasis added):

*"The Directors ...(ii) **shall have the discretion to**, at any time after such Valuation Day, **request Class B Participating Shareholders to subscribe** for additional Class B Participating Shares in such amounts as to ensure the Net Asset Value of the Segregated Portfolio is not less than 60% of the Benchmark NAV.*

*Class B Participating Shareholders shall have the obligations to, unless otherwise determined by the Directors, upon receiving a written notice (the Notice) from the Fund, subscribe for such additional Class B Participating Shares on a pro rata basis in proportion to number of Class B Participating Shares held by them.*

*If any Class B Participating Shareholder **fails to subscribe** for such additional Class B Participating Shares within 3 Business Days of the date of the Notice, **the Directors shall, at their absolute discretion have the power** to (i) compulsorily redeem all Participating Shares in the Segregated Portfolio held by that Class B Participating Shareholder... or (ii) liquidate the Segregated Portfolio's investments and terminate the Segregated Portfolio (in which case all Participating Shares in issue will be compulsorily redeemed)."*

29. If these changes were to take effect, it would have had the result of removing the mandatory obligation on the Class B Participating Shareholders to subscribe for more shares if the Stop-Loss Mechanism was triggered.
30. Oakwise requested the Petitioner's consent to these amendments by 4 November 2022. As the Redemption Day for the last Redemption Request (which was sent on 17 October 2022) was 1 November 2022 (see No. 61 of **Annexure A**), the Petitioner was no longer a shareholder of the Fund (only a creditor, in accordance with Article 9.8 of the M&A, as referenced at paragraph 11(f) above).

*Letter of Demand*

31. On 11 November 2022, Walkers (Hong Kong) ("**Walkers**") (on the instructions of the Petitioner) sent a letter to Oakwise on behalf of the Fund (the "**Demand Letter**" enclosing **Annexure A**):
- (a) demanding that the Redemption Debt be paid in full by no later than 4pm Hong Kong time on Tuesday 15 November 2022; and
  - (b) requesting that (if the Fund was unable to make payment by the above date) the following information be provided by no later than 4pm Hong Kong time on Thursday 17 November 2022:
    - (i) an explanation of precisely why the Fund was unable to pay the Redemption Debt;

- (ii) full particulars of the Fund's assets and liabilities as at 31 October 2022;
- (iii) the latest calculation of the Benchmark NAV;
- (iv) confirmation of what steps have been taken to implement the Stop-Loss Mechanism and, if no steps have been taken, the reason for the failure of the directors of Oakwise to take such steps; and
- (v) confirmation of who are the holders of the Class B Participating Shares, including any director of Oakwise.

32. On 22 November 2022, Oakwise sent a letter to the Petitioner (via Walkers) (the "**Oakwise 22 November Letter**"). The letter did not satisfactorily respond to the above points and Oakwise did not provide full particulars of the Fund's assets and liabilities, Benchmark NAV and the holders of Class B Participating Shares as requested. However, Oakwise:

- (a) admitted that the Fund was "*experiencing challenges in liquidating its assets*" to pay the Redemption Payments, and acknowledged that "*as the housing market slid rapidly into deep depression during this year due to the tighter borrowing requirements for housing and other restrictive policies imposed by the government of PRC, causing more and more property developers to default on their debts, the market prices for the Real Estate Notes held by the [Fund] are extremely low at this stage. Accordingly, the Directors will have no choice but to sell the portfolio investments of the Fund at a significantly low price if the redemption request from you is to be further processed, which will inevitably result in great loss to all Participating Shareholders*". In other words, the Fund's assets would not be sufficient to meet the claims of its creditors;

- (b) acknowledged that "*as the housing market slid rapidly into deep depression during this year due to the tighter borrowing requirements for housing and other restrictive policies imposed by the government of PRC, causing more and more property developers to default on their debts, the market prices for the Real Estate Notes held by the [Fund] are extremely low at this stage.*"
  - (c) notified the Petitioner that it had decided "*to suspend redemptions from all Participating Shareholders*". As the Petitioner has redeemed all of its shares by 1 November 2022, this suspension has no impact on the Petitioner; and
  - (d) stated that "*the Directors have used their best endeavors to urge and request the Class B Participating Shareholders to subscribe for additional Class B Participating Shares*". In circumstances in which the proposed amendments to the July 2022 Supplement had not been approved at this time, the Class B Participating Shareholders were under an obligation at this time to subscribe for additional shares if the Stop-Loss Mechanism was triggered.
33. On 24 November 2022, the Fund sent an email to its investors in (broadly) similar terms to the above letter and noting that redemptions were suspended from 2 November 2022. The letter requested the investors to enter into a waiver of the liquidation and termination of the Fund under paragraphs 1.12 and 1.26 of the Supplement(s). The Petitioner does not know whether the Fund's investors provided the waiver requested.
34. Since the date of the Demand Letter:
- (a) the USD 499,636.98 and CNY 35,429.29 partial repayment made by the Fund on 28 October 2022 has been credited towards specific classes of Class A Participating Shares (see number 60 of Annexure A); and

(b) the Fund made a small partial repayment of USD 303,921.52 and CNY 35,311.19 on 2 December 2022 (see number 61 of Annexure A).

35. As at the date of this Petition, no other response has been received from the Fund and the Fund has neither paid the remaining Redemption Debt nor any part thereof (other than as set out at paragraph 34 above).

#### **E. APPOINTMENT OF RECEIVERS**

36. The Petitioner avers that both jurisdictional requirements for the appointment of receivers under s 224(1) of the Companies Act are met.

#### **No right of recourse to the General Assets**

37. Under Article 5.10 of the M&A, the Petitioner (as a creditor of the Fund) has no right of recourse to the general assets of the Company.

#### **The Fund's assets are or are likely to be insufficient to discharge the claims of creditors in respect of the Fund**

38. According to the 2021 Financial Statements, the total assets of the Fund as at 31 December 2021 amounted to USD 1,387,958,834. However, only USD 3.4 million of the total assets is in cash and cash equivalents. The Fund's main financial assets of USD 509,093,853 consist of bonds. The total liabilities of the Fund as at 31 December 2021 amounted to USD 628,377,462, meaning that the net assets amounted to USD 759,581,372 (page 6 of the 2021 Financial Statements).

39. Although the Fund appeared to be balance sheet solvent at the date of the 2021 Financial Statements, the Petitioner has reason to believe that the figures in the 2021 Financial Statements are out of date and that the assets of the Fund are (or are likely to be) insufficient to discharge its liabilities.

40. Oakwise has failed to provide full particulars of the Fund's latest asset and liability position despite repeated requests. As pleaded at paragraphs 23, 24 and 31

above, the Petitioner and its attorneys have written to Oakwise on numerous occasions to request the provision of the relevant financial information, but those requests have been ignored.

41. However, as acknowledged in the Oakwise 22 November Letter (and as evidenced by recent news articles from reputable sources), there has been a significant decline in the value of the real estate market in China and by extension, the value of the bonds held by the Fund.
42. In light of the performance of the real estate market, the Oakwise 22 November 2022 letter, the 24 November 2022 letter to the investors and the suspension of redemptions from 2 November 2022, it is apparent that the assets of the Fund are (or are likely to be) insufficient to discharge its liabilities, including the Redemption Debt. This is also to be viewed in conjunction with the repeated failure of the Fund to pay all the Redemption Repayments in full since January 2022 and attempts by the directors of Oakwise to amend the Stop-Loss Mechanism to favour the Class B Participating Shareholders.

#### **Purpose of the receivership order**

43. The Petitioner desires that joint receivers be appointed as soon as possible so that the receivers have control of the process of closing down the business of the Fund, such that available assets attributable to the Fund can be ultimately distributed to the Petitioner. The Petitioner has lost all confidence in the Fund's management in light of the matters particularised above.
44. In the circumstances, the Petitioner avers that the Fund should be placed into receivership pursuant to sections 224 and 225 of the Companies Act on the grounds that:
  - (a) the Fund is insolvent, meaning that the assets attributable to the Fund are, or are likely to be, insufficient to discharge the claims of creditors in respect of that segregated portfolio; and

- (b) the appointment of receivers to manage the assets and business of the Fund would enable the orderly close down of the business attributable to the Fund and the distribution of its assets to those persons entitled to have recourse thereto.

**Identity of the proposed receivers**

45. The Petitioner proposes that Kam Chung Hang (Forrest) and Lai Kar Yan (Derek) of Deloitte Touche Tomatsu and Michael Green of Deloitte & Touche LLP be appointed as joint receivers of the Fund.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

1. Pursuant to sections 224 and 225 of the Companies Act, Forrest Kam and Derek Lai of Deloitte Touche Tomatsu and Michael Green of Deloitte & Touche LLP be appointed jointly and severally as receivers of the Fund (the "**Joint Receivers**").
2. The Joint Receivers shall not be required to give security for their appointment.
3. The business and segregated portfolio assets of the Fund shall be managed by the Joint Receivers for the purposes specified in section 224(3) of the Act.
4. The Joint Receivers be authorised to take any such action as may be necessary or desirable to obtain recognition of the receivership and/or their appointment in any other relevant jurisdiction that the Joint Receivers consider necessary together with such other relief as they may consider necessary for the proper exercise of their functions within that jurisdiction.
5. In addition to the powers prescribed in section 226(1) of the Companies Act, the Joint Receivers be authorised and empowered to exercise the following powers and functions without the further direction or intervention of this Honourable Court:
  - (a) the power to carry on the business of the Fund and so far as may be necessary;

- (b) the power to sell or otherwise realise any of the Fund's assets (including any of its investments);
- (c) to initiate, continue, conduct or otherwise manage any litigation or adversarial proceedings, including with respect to the obligations to subscribe for and issue the Class B Participating Shares in the Fund to the Class B Participating Shareholders;
- (d) to engage staff (whether or not as employees of the Fund) to assist them in the performance of their functions; and
- (e) to engage such counsel, attorneys and/or other professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties,

and in so doing, the Receivers shall have all the functions and powers of directors in respect of the business and segregated portfolio assets of or attributable to the Fund.

6. The Joint Receivers be authorised to do any acts or things considered by them to be necessary or desirable in connection with the receivership of the Fund and in the Cayman Islands and/or elsewhere.
7. Pursuant to section 228 of the Companies Act, the Joint Receivers be authorised to render and pay invoices for their own remuneration and meet all disbursements reasonably incurred in connection with the performance of their duties out of the assets of the Fund.
8. The Joint Receivers be required to submit a report to the Court and the Petitioner on the conduct of the receivership, including the level of their own remuneration and costs incurred every 6 months from the date of their appointment or such other intervals as the Court may from time to time direct.
9. Any act required or authorised to be done by the Receivers may be done by any one of them.

10. The Joint Receivers be at liberty to apply generally.
11. The Petitioner's costs of the Petition be paid out of the segregated assets of the Funds, and shall be paid in priority to all other claims.
12. Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray etc.

DATED the 23rd day of December 2022

FILED the        day of December 2022

*Walkers (Cayman) LLP*

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**WALKERS (CAYMAN) LLP**  
Attorneys at Law for the Petitioner

**NOTE:** This Petition is intended to be served on Oakwise Value Fund SPC for itself and for and on behalf of the Enhanced Fixed Income SP, and on CIMA

This Petition was presented by Walkers (Cayman) LLP, Attorneys-at-Law for the Petitioner, whose address for service is 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 on \_\_\_\_\_ at \_\_\_\_\_ am/pm.

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 +1 345 949 4296.