



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: FSD¹⁷¹ OF 2024 (DDJ)

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF SIGMA FINANCE CORPORATION**

WINDING UP PETITION

TO THE GRAND COURT

This humble petition of **SIGMA FINANCE CORPORATION** (the "**Company**") acting through its joint administrative receivers, Stephen John Harris and Simon Edel of Ernst & Young LLP, 1 More London Place, London, SE1 2AF, (the "**JARs**")¹ shows that:

INTRODUCTION

1. The Company was incorporated under the laws of the Cayman Islands on 5 April 1994 as an exempted company limited by shares with registration number 53258.

¹ Originally, the appointed JARs were Mr Stephen John Harris, Ms Margaret Mills and Mr Alan Bloom, all licensed insolvency practitioners from Ernst & Young LLP. In October 2020, due to their respective retirements, Ms Mills and Mr Bloom were replaced by Mr Edel. Mr Edel is also a licensed insolvency practitioner from Ernst & Young LLP.

2. The registered office of the Company is care of Maples Corporate Services Limited, situated at PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands.
3. The Memorandum and Articles of Association were adopted by Special Resolution dated 28 January 2004. The authorised share capital of the Company consists of multiple currencies, which are further divided into A shares and B shares.

THE COMPANY'S BUSINESS

4. Prior to its receivership, the Company issued capital notes (the "**Capital Notes**") denominated in a variety of currencies, and issued with maturities of up to thirty years. As explained in paragraph 22 below, the rights to payment of the holders of such instruments are subordinated to the rights to payment of all other creditors on a winding-up of the Company.
5. The Company is a structured investment vehicle ("**SIV**"), which was incorporated as a special purpose vehicle whose principal function was to invest in certain types of asset-backed securities and other financial products. Save for this investment activity, the Company did not (and was never intended to) engage in any other trading business.
6. The Company's business model involved seeking to profit from the spread between its cost of funding and the returns made on its investment portfolio. In essence, this model operated on the assumption that the investment returns obtained by the Company on its investment portfolio would be higher than the interest rates that it paid under the securities which it issued to fund its investment activities.
7. Until the appointment of the JARs on 6 October 2008, the Company's investment strategy was managed by an investment management firm, Gordian Knot Limited,

under an Investment Management Contract dated 27 March 2003. In circumstances where the Company's investment activities were managed by Gordian Knot Limited, the Company did not have its own employees or its own office premises.

8. As a SIV whose only business was to invest in certain asset-backed securities and other financial products, the Company was intended to have a limited pool of creditors, essentially comprising:
 - (a) the holders of debt securities issued or guaranteed by it to fund its investment activities (i.e. holders of Commercial Paper, Euro Medium Term Notes and US Medium Term Notes, such securities collectively referred to herein as "**Medium Term Notes**");
 - (b) liquidity providers under liquidity facilities intended to hedge against market liquidity risks;
 - (c) derivative counterparties under financial instruments (typically swaps) intended to hedge against currency and interest rate risk;
 - (d) "repo" counterparties, which in this context refer to counterparties under both repurchase agreements and securities lending agreements; and
 - (e) the holders of debt securities issued in order to provide capital support to the Company's secured obligations (i.e. the holders of the Capital Notes).

9. The Company's assets were charged to Deutsche Trustee Company Limited (the "**Security Trustee**") as trustee for the Company's secured creditors under an amended and restated security trust deed dated 27 March 2003 between the Security Trustee and the Company (the "**Security Trust Deed**").

10. The security was granted by the Company in favour of the Security Trustee to secure the payment and discharge of the Secured Obligations (as defined in the Security Trust Deed). In summary, the Secured Obligations are obligations undertaken by the Company to various categories of counterparty. The majority of the Secured Obligations by value are sums which have or will in the future fall due to the holders of notes issued by or guaranteed by the Company.
11. Most but not all of the Company's creditors benefit from the security granted by the Company under the Security Trust Deed. The secured creditors, defined in the Security Trust Deed as the "Beneficiaries", include each of the types of creditors described in paragraph 8 above with the exception of the holders of Capital Notes and the counterparties to certain repurchase ("**repo**") arrangements entered into with the Company.
12. During the course of 2007 and then more particularly in 2008, the financial markets became concerned at the high level of defaults by borrowers in the United States sub-prime mortgage market. This in turn affected the value of asset-backed securities supported by such mortgage assets, and negative sentiment spread so as to cause substantial falls in the value of other types of securities which were supported by assets other than pools of mortgages.
13. This adverse market sentiment had two principal effects on the Company's affairs:
 - (a) The market for securities of the type held by the Company in its investment portfolio fell and became less liquid in the sense of there being fewer investors willing to purchase such securities; and
 - (b) The appetite among investors to acquire debt securities issued by the Company similarly fell away, reducing the Company's ability to fund its activities.

14. The Company's board of directors resolved on 30 September 2008 that the Company's position as a going concern was no longer applicable, that it may be or may become insolvent based on market conditions, and that *"the required steps under the relevant transaction documents entered into by [the Company] should therefore be taken to provide for an orderly winding down of [the Company's] affairs"*. By that resolution the board of directors also resolved that certain liabilities of the Company falling due that day should not be paid.

APPOINTMENT OF THE RECEIVERS

15. On 1 October 2008, the Company wrote to the Security Trustee stating that it had been resolved that there was *"no reasonable likelihood of [the Company] avoiding an insolvent liquidation"*.
16. On 2 October 2008, one of the Company's liquidity providers served a notice of an event of default under its liquidity facility agreement with the Company upon the Security Trustee. That notice directed the Security Trustee to enforce the security described above, with the consequence that an Enforcement Event (as defined in the Security Trust Deed) took place on 2 October 2008 (the **"Enforcement Date"**).
17. By virtue of clause 7.1 of the Security Trust Deed, the Security Trustee is entitled to enforce the security described above on and from the Enforcement Date. By virtue of clause 14.1 of the Security Trust Deed, the Security Trustee is empowered to appoint a receiver at any time on or after the Enforcement Date.
18. As a result of the Company's default and the resulting occurrence of an Enforcement Event, the JARs were appointed by the Security Trustee on 6 October 2008 over the assets of the Company. The work undertaken by the JARs during the receivership of the Company is set out in detail at paragraphs 30 to 66 of the first affidavit of Stephen Harris filed in support of this Petition.

19. Pursuant to their position as agents of the Company and their powers incorporated in the Security Trust Deed, the JARs have caused the Company to present this Petition seeking its winding up on the grounds set out below.

GROUNDINGS FOR WINDING UP

20. As at the date of the JARs' appointment on 6 October 2008, the Company's financial records indicated various assets. Those assets principally comprised an asset portfolio of unencumbered asset-backed securities with a face value of around US\$1.9 billion. It also included limited other assets, including an estimated asset due from derivative counterparties of approximately US\$105 million and cash of around US\$28.5 million.
21. In contrast, there were secured liabilities of approximately US\$6.3 billion, principally relating to approximately US\$5.9 billion of Medium Term Notes which had not yet fallen due for repayment and an estimated liability of approximately US\$0.4 billion due in respect of derivative counterparties.
22. There were also unsecured liabilities – in the sense of liabilities not secured by the Security Trust Deed – of approximately US\$4.8 billion, comprised of an estimated amount of US\$0.8 billion owed to repo counterparties on close-out and a liability of approximately US\$4 billion in respect of outstanding Capital Notes which had been issued. The terms of the Capital Notes provide for the Capital Note holders to be treated as if they had become holders of class A shares in the Company on the day immediately preceding the date of the commencement of the winding up (or where there are no class A shares in issue and outstanding, an amount equal to the value of all the assets of the Company attributable to that class less liabilities attributable to the Notes).
23. In consultation with their advisors and following various English Court decisions concerning the receivership, the JARs arranged an auction of the Company's

investments. That auction took place on 2 December 2008 and realised approximately US\$310 million. Following that auction and the realisation of other assets, the JARs reached a position where the secured assets comprised cash at bank of approximately US\$440 million.

24. The JARs and their advisers then focused on the most appropriate approach to the distribution of the available assets among the secured creditors in accordance with the Security Trust Deed.
25. In all, to date, three distributions have been made to secured creditors by the JARs. The distributions made to date total approximately US\$406 million, by way of distributions of approximately US\$330 million in July 2011, US\$60 million in July 2015, and US\$16 million in October 2017. This represents approximately 6 cents in the dollar distribution to secured creditors based on the face value of their secured claims as at the commencement of the receivership process, and leaving aside any question of interest entitlements which may have continued to accrue since.
26. As detailed above, the Company is deeply insolvent both as against its secured creditors, and as regards its total liabilities including to unsecured creditors. At its height, the receivership had realised assets in the region of US\$440m, with secured liabilities alone originally exceeding US\$6 billion.
27. Having made various distributions to secured creditors as summarised at paragraph 25 above, and defraying costs and expenses as the receivership has progressed, the Company's only remaining asset is now cash at bank in approximately US\$4.7 million² which is held predominately in USD, and which is secured in favour of the secured creditors (i.e. the Beneficiaries). The JARs are not aware of any other assets of the Company to be realised. It is anticipated that

² As at 31 December 2023.

subject to certain remaining costs and expenses, the remaining cash balances will be distributed to secured creditors as part of a final distribution to be made in due course, as part of drawing the Company's affairs to a complete close.

28. As at the date of this petition, the Company's unpaid secured liabilities remain in the billions of dollars.
29. In the premises:
 - (a) the Company, acting by the JARs, has standing to present this petition pursuant to section 94(1)(a) of the Companies Act (2023 Revision) (the "**Companies Act**"); and
 - (b) the Company is unable to pay its debts pursuant to sections 92(d) and 93(c) of the Companies Act and is therefore hopelessly insolvent and should be wound up; or, alternatively,
 - (c) the Company has lost its substratum and it is just and equitable that the Company should be wound up pursuant to section 92(e) of the Companies Act.

NOMINATION OF JOINT OFFICIAL LIQUIDATORS

30. The Petitioner nominates Iain Gow and David Griffin of FTI Consulting (Cayman) Ltd, Suite 3206, 53 Market Street, Camana Bay, Grand Cayman KY1-1203, Cayman Islands for appointment as joint official liquidators of the Company.

Your Petitioner therefore humbly prays:

1. That the Company be wound up in accordance with section 92(d) and/or 92(e) of the Companies Act.

2. That Iain Gow and David Griffin be appointed as the joint official liquidators of the Company (the "**Liquidators**").
3. The Liquidators shall not be required to give security for their appointment.
4. The Liquidators shall have the power to act jointly and severally in their capacity as liquidators of the Company.
5. The Liquidators shall be authorised to do any acts or things considered by them to be necessary or desirable in connection with the liquidation and dissolution of the Company and the winding up of its affairs in the Cayman Islands and/or elsewhere.
6. The Liquidators be authorised to exercise all the powers set out in paragraphs 2 to 7, 10 and 11 of Part 1 of the Third Schedule of the Companies Act and section 110(2) thereof, without the further sanction of this Honourable Court.
7. No disposition of the Company's property by or with the authority of the Liquidators in carrying out their duties and functions and the exercise of their powers under any Order granted pursuant to this Petition shall be voided by virtue of section 99 of the Companies Act.
8. The Liquidators be at liberty to appoint attorneys, counsel and 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 in accordance with Order 25 of the Companies Winding Up Rules (2023 Consolidation).
9. Subject to section 109(2) of the Companies Act and the Insolvency Practitioner's Regulations (2023 Consolidation), the Liquidators be authorised to render and pay all invoices out of the assets of the Company for their own remuneration.

10. The Liquidators be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties 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 an expense of the liquidation.
11. The Petitioner's costs of and incidental to the Petition shall be paid out of the assets of the Company as an expense of the liquidation, such costs to be taxed on an indemnity basis if not agreed with the Liquidators.
12. The Liquidators shall be at liberty to apply.
13. Such further and/or other relief as this Honourable Court deems appropriate.

AND your Petitioner will ever pray etc.

DATED the 4th day of June 2024

FILED the day of 2024

Walkers (Cayman) LLP

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

NOTE: This Petition is intended to be served on the following party by way of service upon its registered office, or otherwise in accordance with any directions of the Honourable Court:

The Company

This **PETITION** is presented by Walkers (Cayman) LLP, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, for the Petitioner whose address for service is care of their said Attorneys at Law.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on 17 July 2024 at 10:00 ~~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 345 949 4296.

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