

# ARM ASSET BACKED SECURITIES SA

Bondholder/creditor meeting

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# BONDHOLDER/CREDITOR MEETING

## Agenda and format

1. Introduction
2. How we got here today
3. What is a provisional liquidation?
4. The sale of the SLS to FCIL
5. The assets and liabilities of ARM
6. Steps taken so far
7. Jurisdiction issues
8. Bond documentation and issues
9. The position of regulators / public bodies
10. The position of the FSCS
11. What options are available to the Provisional Liquidators?
11. Ad hoc committee - formation, purpose and modus operandi
12. Future communication with Bondholders
13. Next steps and timeline
14. Questions



# INTRODUCTION

- We will refer to bondholders and creditors together as Bondholders today for simplicity
- This is an informal meeting of Bondholders
- The meeting is to:
  - Explain the position of ARM
  - Explain the issues we face to return value to Bondholders
  - Explain the options for the way forward
  - To take questions from Bondholders
  - To form an ad hoc committee of Bondholders to assist the PLs
- We will not be able to provide answers to all questions:
  - Some issues are not yet sufficiently advanced to be resolved
  - Some issues are complex
  - There can be commercial sensitivity, confidentiality or legal privilege reasons why it is not feasible to explain an issue fully



# INTRODUCTION

- The PLs discharge their duties in a manner which is “right” and “fair” for Bondholders, taking into account their respective positions
- This can make processes like this seem cumbersome or slow
- However, it is a reflection of due process
- The PLs have a very high standard of care imposed on them by virtue of being officers of the court
- This requires all decisions and actions to be fully informed
- The PLs take these duties very seriously
- Inevitably, this means that not everyone will or can be happy all the time
- We cannot and do not give investment advice to Bondholders in this presentation



## HOW WE GOT HERE TODAY

- ARM issued bonds to Bondholder investors to purchase Senior Life Settlements (SLS)
- SLS is currently a controversial asset class for regulators in the UK and other jurisdictions
- ARM was incorporated in Luxembourg, whose regulator, the Commission de Surveillance du Secteur Financier (CSSF) stated that ARM should be regulated as it issued bonds continuously
- The CSSF refused to regulate ARM in Luxembourg, but ARM continued to issue bonds
- This created a long-running legal dispute between ARM and the CSSF
- The Financial Conduct Authority (FCA) in the UK did not regulate ARM, but did regulate some of the IFAs who sold ARM's bonds and Catalyst who promoted ARM's bonds
- Various regulatory sanctions have been imposed on Catalyst and certain people associated with Catalyst (see FCA website)



## HOW WE GOT HERE TODAY

- Moreover, the FCA froze c£22m of monies which related to bonds issued in Tranches 9, 10 and 11 - the Pending Monies
- The £22m mathematically reflects, we understand, part of Tranche 9 and all of Tranches 10 and 11
- It is not clear how the £22m will be applied at this time
- The FCA was able to do this as it regulated the businesses that held these funds at the time
- Once these monies were frozen, ARM was unable to purchase new SLS policies, was unable to meet ongoing operating expenditure (Opex) and, most importantly, was unable to pay ongoing premia on SLS policies it owned
- This led to ARM selling the SLS portfolio in an auction which was run by Ernst & Young
- Had this not happened, it is likely that SLS policies would have lapsed and value been lost



## HOW WE GOT HERE TODAY

- Following the final refusal of the CSSF to grant authorisation in Luxembourg, the CSSF requested, as it was required to do under local securitisation law, the Luxembourg public prosecutor to ask the court in Luxembourg to liquidate ARM
- At this time, ARM took legal advice on the steps they should take in relation in ARM given its financial position
- ARM was advised that it needed to commence an insolvency process somewhere and that its Centre of Main Interests (COMI) was likely in the UK
- Therefore, it was appropriate that an application be brought for ARM to be placed into an insolvency process in the UK
- BDO was introduced to ARM at this time to act as PLs as BDO had experience of similar Luxembourg structures and financial services insolvencies
- Provisional liquidation was used rather than administration due to the potential complexities arising from the limited recourse nature of Bonds



# WHAT IS A PROVISIONAL LIQUIDATION?

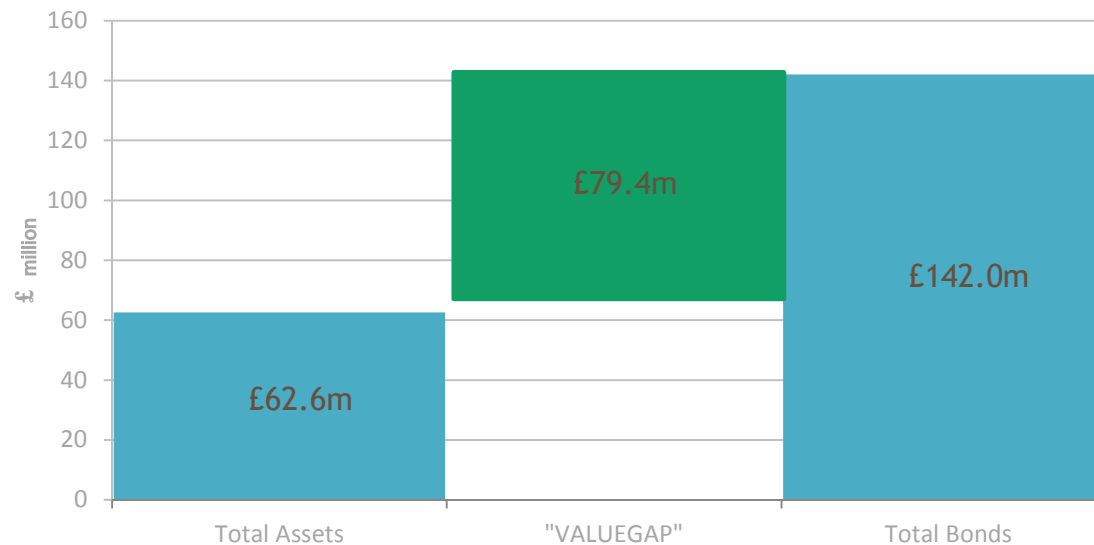
- Broadly analagous to an administration:
  - Creates a block on legal actions against ARM and its assets
  - Preserves and protects assets pending their distribution
  - Allows the “ring to be held” while the position is assessed and discussions take place with Bondholders for the best way forward
  - PLs can investigate certain matters
  - PLs can compel co-operation from directors
  - PLs are officers of the court
  - PLs cannot distribute assets to Bondholders
- Has effect throughout Europe and world under the EC Regulation on Insolvency Proceedings
- Process can be seen as a “gateway” to the appropriate means of maximising and returning value to Bondholders
- Can make applications to court in the UK to determine key issues which arise, in a streamlined manner
- Being a UK process, puts the interests of Bondholders at its heart



## THE SALE OF THE SLS TO FCIL

- There was an auction process run by Ernst & Young in London to sell the SLS, which was reviewed by the Supervisory Commissioner
- The terms of the FCIL sale agreement remain confidential at this time. We are in discussions with FCIL and would anticipate having these confidentiality restrictions lifted imminently
- We can confirm the information below which is already in the public domain:
  - FCIL is related to Apollo Global Management, but is an SPV
  - The consideration is on a deferred basis
  - Two payments of \$113,939 and \$3,613,939 were paid on 2 November 2012 and 31 December 2012, respectively
- Transfer of one policy still outstanding - we are exploring our legal rights and are in without prejudice discussions with FCIL on how best to resolve this

# THE ASSETS AND LIABILITIES OF ARM



- The chart above shows an illustration of the current financial position of ARM
- The total assets include; the FCIL receivable, pending monies and cash at bank
- We need to understand the “VALUE GAP” more fully
- When we are able we will confirm the size of the “value gap”



## THE ASSETS AND LIABILITIES OF ARM

- This “value gap” is simply the difference between the value of bonds understood to be in issue and the value of the assets we are aware of
- It is likely to relate to a mixture of:
  - Opex over time
  - Net reductions in the value of the SLS portfolio prior to its sale
  - Net reductions in value of the SLS portfolio caused by its sale
  - Other items
- We want to understand what this gap relates to and to consider any consequent claims which ARM may have as a result



## STEPS TAKEN SO FAR

- Ensured that no payments can be made out of the Luxembourg bank account without our approval
- Engaged with the CSSF and Public Prosecutor in Luxembourg on proceedings there (more on this later)
- Engaged with FCIL to ensure payments are only made to the PLs in the UK under the sale agreement and to seek a way forward on the outstanding policy, as well as other matters
- Put together a team to finalise the statutory accounts for ARM
- Requested a statement of affairs for ARM to show its financial position
- Considering potential restructuring options for ARM
- Engaged extensively with Bondholders
- Established a working relationship with the Supervisory Commissioner



## STEPS TAKEN SO FAR

- Reviewed underlying documentation for the bonds to consider ranking of the bonds between themselves and Pending Monies issues - sought legal advice on this
- Established, as much as we are able, the Bondholder list
- Liaised with the FCA in relation to the Pending Monies (including recently suggesting a solution to have them interest bearing)
- Proposed this meeting to put together an ad hoc Bondholder committee to consult with on steps from now
- Collated various information on bondholders and liaised extensively with the FSCS to assist them in their compensation process - we felt that this was an important task to focus on at an early stage in the process:
  - Allows compensation to be paid quickly to Bondholders if eligible
  - Provides more clarity as to population of stakeholders for strategy proposals



## JURISDICTION ISSUES

- The following countries are relevant to ARM:
  - ARM was incorporated in Luxembourg
  - ARM had its COMI in England, hence is in provisional liquidation in the England
  - ARM had its bonds listed on Irish Stock Exchange
- Many of the legal issues have both English law and Luxembourg law aspects to them
- The CSSF wanted to see ARM liquidated in Luxembourg
- We took the view that this was neither appropriate, lawful nor in Bondholders' interests
- We therefore had various lengthy correspondence with the CSSF and the public prosecutor in Luxembourg explaining the latter to them
- This in effect created uncertainty for the PLs for some time at the start of the case
- We are now of the view that this uncertainty has passed and that the insolvency process will exclusively take place in the UK, allowing to us to move ahead



# JURISDICTION ISSUES

- UK insolvency processes are:
  - Creditor (ie Bondholder) focussed
  - Flexible, and hence can see innovative solutions
  - Generally speedier than continental processes
  - More easily understood by Bondholders in the UK and similar jurisdictions
  - Conducted in the English language
- There are insolvency practitioners in the UK who are experienced at dealing with structures such as ARM - the PLs have such experience
- We have dealt with the CSSF and Luxembourg public prosecutor in a measured and proportionate manner so as not to incur significant costs for Bondholders unnecessarily, which would reduce returns for them



# BOND DOCUMENTATION AND ISSUES

## Introduction

- The bond documentation is voluminous, complex and contradictory
- Each category of Bonds (ie with the same maturity date and coupon) is referred to as a different “Series” of bonds (eg Series J bonds, issued pursuant to a Series J Prospectus)
- Each occasion a Series of bonds is issued is referred to as a different “Tranche” of bonds (eg there are 3 Tranches of Series G bonds)
- An “Issue” refers to the period of time in which the Tranches were issued, for instance Issue 1 refers to bonds issued up to and including 1 January 2008
- There are 11 Issues of bonds
- Proceeds of Issues 1-8 comprise the “Non Pending Monies”
- Proceeds of Issues 9-11 comprise the “Pending Monies” (although we understand that some proceeds of Issue 9 were released to ARM)



# BOND DOCUMENTATION AND ISSUES

## Introduction

- The bonds are also subject to the terms set out in the relevant Base Prospectus
- Bondholders bought bonds on the basis of the ARM Brochures, and the Information Memoranda
- Provisions of the Subscription Agreements, Global Notes and, in some cases, Bearer Bonds also seek to govern the terms of the bonds
- Bondholders had in effect a share in a Global Note, as opposed to their own definitive bond
- The various documents purporting to govern the terms of the Bonds are inconsistent with respect to a number of issues including the ranking of the bonds



## BOND DOCUMENTATION AND ISSUES

### Do the bonds rank equally with each other?

- The documentation does not provide for a clear, certain and consistent bond priority schedule
- The provisions in the relevant documents are inconsistent with respect to whether the bonds rank pari passu with each other or whether they are ranked by reference to their maturity date
- In addition, the provisional liquidators do not yet have access to all of the relevant documentation
- There is still further work to be done with respect to determining the proper priority of the bonds
- The current view is that this issue will not be determined based on legal review
- It may be necessary for the provisional liquidators to obtain court directions on this issue or resolve this through consensus via a CVA or scheme of arrangement



# BOND DOCUMENTATION AND ISSUES

## Pending Monies

- There is currently a legal debate ongoing as to whether bonds comprising Issues 9-11 were issued by ARM
- If these bonds were not issued, there is an argument that the Pending Monies do not belong to ARM and should be returned to the original Bondholders
- If these bonds were issued, then there is an argument that the Pending Monies do belong to ARM and should form part of the estate
- The PLs are currently seeking independent legal advice on this matter
- This issue is not straightforward, and will take time to resolve - in particular there are jurisdictional complexities to handle as the bonds are governed by Luxembourg law
- It may be necessary for the PLs to obtain court directions on this issue or resolve this by consensus via a CVA or scheme of arrangement



# BOND DOCUMENTATION AND ISSUES

## Other issues

- We believe we have now resolved the issue of bond transferability
- We are aware of the issue of bond listings being cancelled and are exploring a potential solution



## THE POSITION OF REGULATORS / PUBLIC BODIES

- ARM was subject to the regulatory jurisdiction of the CSSF
- The UK FCA regulated the IFAs selling ARM's bonds and Catalyst as promoter of ARM's bonds
- This means that the FSCS may compensate Bondholders to the extent they were mis-sold the bonds or similar by UK IFAs and/or Catalyst (more on this below) - the FSCS is not a regulator
- The Maltese Financial Services Authority (MFSA) regulated certain IFAs in Malta who sold ARM bonds
- The Irish Stock Exchange (ISE) listed ARM's bonds



## THE POSITION OF THE FSCS

- The FSCS is a UK compensation scheme, funded by UK regulated businesses
- We have worked closely with the FSCS to assist them in their assessment of whether to compensate Bondholders in this matter
- For a business like ARM, the FSCS can compensate up to £50k per investor
- In return, the FSCS takes an assignment of all of that investor's claims against the relevant IFAs, Catalyst and the underlying ARM bonds
- For this reason, the FSCS may become the largest single Bondholder of ARM and hence influence the PLs' strategy
- It is a general principle of the FSCS that an investor should be no worse off as a result of receiving compensation from the FSCS than they would have been had they not accepted that compensation
- To the extent that claims have been assigned to them, the FSCS will vote on any restructuring/liquidation proposals for ARM

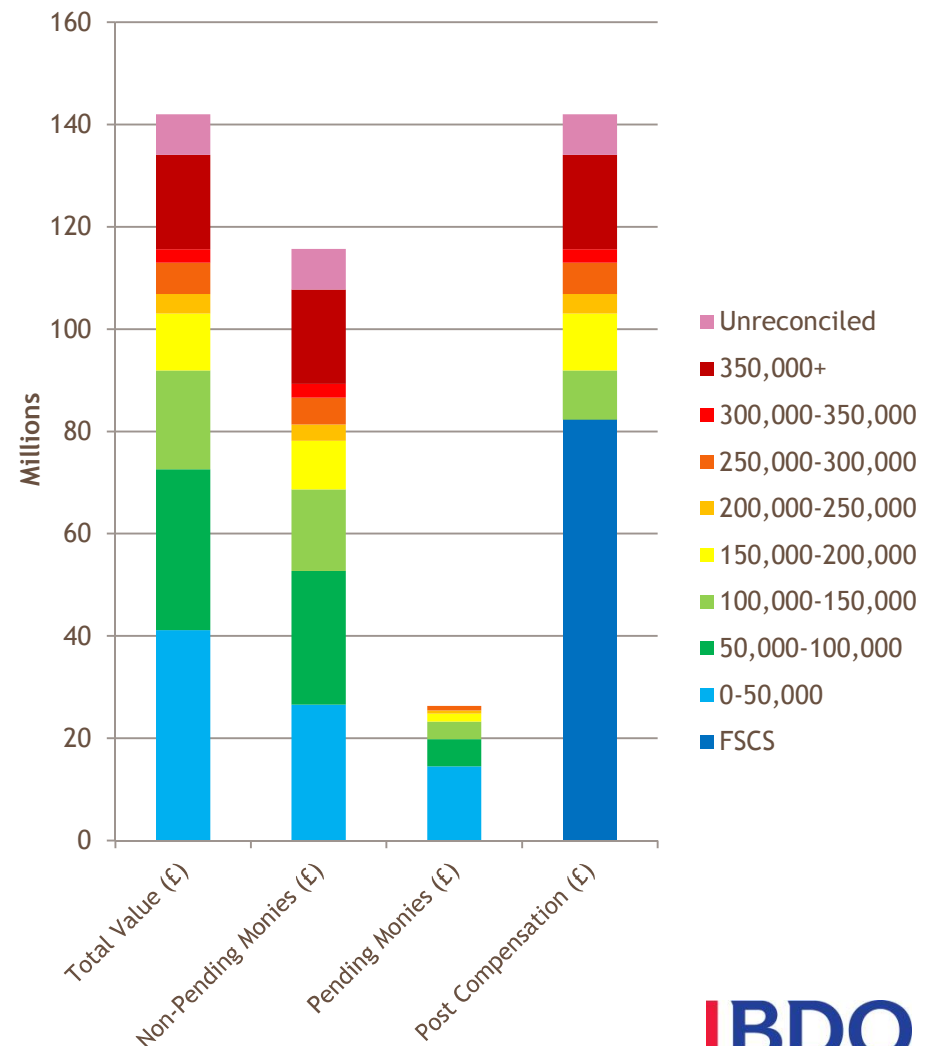


## WHAT OPTIONS ARE AVAILABLE TO THE PLS?

- The PLs can propose:
  - Restructuring plans, or
  - Liquidation plans
- These can be proposed using:
  - Company voluntary arrangements (CVAs)
  - Schemes of arrangement (Schemes)
  - Liquidations
- Whatever plan we put together over the next few months will be: discussed with any ad hoc committee; trailed with Bondholders generally; and formally put to Bondholders for proposal to the extent needed/appropriate
- For issues like the ranking of bonds between themselves or the Pending Monies, the PLs can:
  - Make applications to court to determine the issue or
  - Put compromise proposals to Bondholders
- The latter may be attractive as they can de-risk “binary” outcomes for Bondholders - but will only be proposed on the basis of legal advice and open discussion of the position with Bondholders
- Bondholder agendas will be important
- We would like to create “flexibility and optionality” for Bondholders, to recognise that some Bondholders may prefer a lower earlier payment due to their own circumstances - about generating choice

## WHAT OPTIONS ARE AVAILABLE TO THE PLS?

- This diagram represents the bonds rather than investments of individuals
- The 4<sup>th</sup> column illustrates the potential value of the FSCSs holding post compensation on the following assumptions:
  - All those with less than £100k invested take up the FSCS' compensation, if eligible
  - 50% of those with £100-150k invested take up the compensation
- This may well create a dynamic in the Bondholder voting base for any proposals the PLs put together and seek votes on





## AD HOC COMMITTEE - FORMATION, PURPOSE AND MODUS OPERANDI

- This committee will be consultative only - will have no formal standing
- All formal votes will be for Bondholders and FSCS
- Our fees will be approved by the court
- We propose to select 5 committee members and will co-opt the FSCS onto the committee - they may become a Bondholder quickly
- Voting forms today (and in the post) provide for you to rank your top 5 proposed committee members
- They will be allocated 1-5 points each and the 5 people with the most points will be elected
- The PLs will consider whether this yields any manifestly unfair outcome before confirming committee members
- Committee members will be required to enter into confidentiality agreements (NDAs)



## FUTURE COMMUNICATION WITH BONDHOLDERS

- We have engaged and communicated frequently and openly with Bondholders so far - much more than required by law, the court or best practice
- We are keen to continue that spirit of openness
- However, with a committee in place, we feel that it would be more appropriate to have a monthly (as opposed to weekly) update on our website for Bondholders
- We propose to continue with the FAQs, but with monthly responses as opposed to weekly
- Bondholders should understand that we cannot conduct the case publicly, as this would not be in their interests due to commercial sensitivity and legal privilege etc



## NEXT STEPS AND TIMELINE

### Q3 2013

- Appointed as PLs
- Bondholder engagement
- Deal with Luxembourg regulators
- Establish information / position
- FSCS engagement

### H1 2014

- Hold Bondholder meeting
- Establish ad hoc committee
- Progress strategy for bond ranking / Pending Monies
- Reach agreement with FCIL on options for payment under contract
- Finalise accounts and audits
- Investigate “value gap”
- Develop distributions/restructuring options
- Determine FSCS position, and if applicable commence claims process

### Post H1 2014

- Court applications as needed
- Deal with any claims needed arising from “value gap”
- Determine proposals to bondholders



# QUESTIONS

