

Mitteilung an alle Anteilseigner Kingate Global Anteile:

Anbei finden Sie die Information der Gesellschaft, folgende Wertpapiere ist betroffen:

VGG5255Z1146 Kingate Global USD - in liquidation DIS

Details können Sie der beigefügten Anlage entnehmen.



To All Known Registered Shareholders and Creditors

22 December 2020

Dear Sirs

Kingate Global Fund, Ltd. – In Liquidation (the Fund)

We write to provide you with a general update on progress of the liquidation of the Fund.

As with all correspondence, and as set out in detail at paragraphs 1.5 to 1.8 of the Liquidators' previous report dated 15 February 2019, this update must not be copied or disclosed to any third party (other than to your professional advisors) or otherwise be quoted or referred to, in whole or in part, without the Liquidators' prior written consent.

In the event that this document is obtained by a third party (whether an assignee or successor of another third party or otherwise) or used for any purpose other than in accordance with its stated purpose of providing an update to registered Shareholders and Creditors, any party relying on this document does so entirely at their own risk and shall have no right of recourse against the Liquidators, Kalo (BVI) Limited, Kalo (Cayman) Limited, Finance & Risk Services Ltd, their partners, directors, consultant(s), employees, professional advisers or agents, none of whom assumes any duty of care to any third party.

This update will be followed by a full report, including a receipts and payments account in early 2021.

1. Replacement of liquidator

Charlotte Caulfield was appointed as Joint liquidator in place of Tammy Fu by the BVI Court on 18 November 2019.

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Subsequently, applications were made to the Bermuda Court and the US Bankruptcy Court for the ratification of the change in Liquidator, which were subsequently granted on 13 December 2019 and 3 February 2020 retrospectively.

2. Deutsche Bank Complaint

In or around 2011 the Fund, together with Kingate Euro Fund, Ltd - in liquidation (together, the **Funds**) sought third party funding in order to facilitate a potential settlement of the litigation, then on foot, between the Trustee of the liquidation estate of Bernard L. Madoff Securities LLC (the **Trustee** and **BLMIS**) and the Funds.

The Funds' desire for third party funding stemmed from the fact that the Trustee was only willing to consider a settlement which involved, as a first step, a several hundred million dollar payment by the Funds to settle all of the Trustee's claims against the Funds.

To that end, the Funds entered into negotiations with Deutsche Bank Securities Inc. (**DB**), seeking to secure a deal under which, amongst other things, DB would pay that several hundred million dollars directly to the Trustee to settle the Trustee's claims against the Funds; that settlement would permit recovery on the Funds' claims against the Madoff Estate and lead to those claims becoming "*Allowed*"; and the Funds would then be able to transfer the *Allowed Claims* to DB.

Those negotiations led to the Funds and DB signing a Confirmation Letter in August 2011. That Confirmation Letter provided, amongst other things, that the Funds would cease any and all discussions and negotiations with other potential purchasers of the Funds' Allowed Claims and that, subject to the execution of a Purchase and Sale Agreement between the Funds and DB, in a form that they would negotiate in good faith to agree, the Funds would sell their Allowed Claims to DB.

During the same period, the Funds and DB exchanged several draft Purchase and Sale Agreements, but they were ultimately unable to agree upon final terms. As such, no deal was concluded between the Funds and DB, DB didn't ever pay a single cent to the Trustee or to the Funds, and the Funds were forced to spend many more years litigating with the Trustee.

Mindful of the risk and costs of further litigation with the Trustee, the Funds even sued DB in 2011, to try to compel it to complete the deal and pay monies to the Trustee to enable the BLMIS litigation to be settled. That litigation was ultimately dismissed by consent in late 2013.

For the next few years, as you are well aware, the Liquidators spent significant time and resources defending the litigation by the Trustee in the US and pursuing our right to receive an Allowed Claim in the BLMIS estate. The BLMIS Settlement (the **Settlement**)



was achieved in June 2019 as a result of those efforts and DB played no part in the Settlement.

A key difference between the 2019 Settlement and the deal which the Funds had sought to pursue in 2011 was that, in 2019, the Trustee no longer required the Funds, as a first step, to pay monies directly to it to settle the Trustee's claims against the Funds. Instead, the Trustee agreed to set-off the sums owed by the Funds and BLMIS to each other as arising from the settlement, and to pay the outstanding balance to the Funds. Accordingly, unlike in 2011, it was unnecessary to seek third party funding to complete this settlement.

Notwithstanding the fact that DB played no part in the Settlement, they now allege that the Funds are obliged by the Confirmation Letter to sell the Allowed Claims to DB at the previously agreed price. DB issued the proceedings against the Funds in the US Court in November 2019 claiming:

1. breach of contract and damages against the Funds for not transferring the Allowed Claims to DB;
2. breach of contract and damages for the Funds failing to negotiate a definitive Purchase & Sale Agreement with DB;
3. breach of implied covenant of good faith and fair dealing; and
4. a declaratory judgement that the Confirmation Letter is an enforceable binding contract.

Essentially, DB are attempting to close on an agreement to negotiate a further agreement, that it entered into nine years ago, which it refused to consummate at the time and in respect of which it has never paid a cent to benefit the Funds or their stakeholders.

DB filed its complaint in the US District Court for the Southern District of New York in November 2019. The Funds filed a motion to dismiss all of DB's claims in April of this year. DB filed its opposition to that motion in June, and the Funds filed a reply in July. The parties are now awaiting the Court's indication as to whether it wishes to hear oral argument on the Funds' motion.

3. BLMIS settlement

As you are aware, the mediation with the Trustee took place in mid-May 2019, following which the Settlement was reached between the Funds and the Trustee in late June 2019.

The headline terms of the settlement with the Trustee are:

- No advance payment of monies would be required from the Funds to BLMIS or the Trustee;
- The Funds would receive a total allowed claim in the BLMIS estate of US\$1.66 billion;



- Once a set-off of respective liabilities had been effected, the Funds would receive an immediate cash recovery from BLMIS of US\$263m;
- Since then, further distributions of approximately US\$40m have been received from BLMIS and we expect more to follow; and
- The Trustee to discontinue his claims against the Funds.

We also entered into confidential side agreements with certain key third parties (for example, the defendants to the Bermuda Action). The outcome is that a "global" deal was reached that resulted in the finalisation and receipt of all asset realisation efforts then on foot, and brought all other matters (other than the continuing Allowed Claim in the BLMIS estate) to a conclusion.

We also entered into a confidential settlement agreement with certain key third parties to reach "global" peace among the Trustee, the Funds and agents of the Funds. The outcome is that the global deal resulted in the finalisation and receipt of all asset realisation efforts then on foot and brought all other matters (other than received distributions on the Allowed Claim in the BLMIS estate) to a conclusion.

We continue to liaise with our US lawyers regarding various matters connected to BLMIS, monitoring developments and reports issued by the Trustee regarding the liquidation of BLMIS. This work is carried out for the purposes of assessing the outcome in other similar cases, the impact on the Funds' respective positions in relation to recoveries, and therefore potential distributions to the Funds' Stakeholders, and to assess the tradeable value of the Funds' allowed claims.

The BLMIS settlement contained some provisions affecting future distributions (to the extent permissible under BVI law). The liquidators intend to report on the effects of these in future updates.

4. The Madoff Victim Fund

As you will be aware, the MVF appears to have stopped making payments to victims related to the Funds.

Please note that the Funds do not have any MVF claims of their own. **Accordingly, it remains the sole responsibility of each MVF claimant to engage with the MVF in respect of their own claim.**

5. Stakeholder Management

We have dealt with a variety of enquiries from registered Shareholders, Creditors and those asserting a beneficial interest in the Funds. Stakeholders have shown an increased interest in claim adjudication and potential distributions, particularly since the BLMIS settlement was agreed.



Some have put specific queries to us regarding our liquidation strategy and/or made information requests, which on occasion require careful consideration and legal advice before they can be responded to.

General queries we receive on a daily basis include queries on current shareholdings, share transfers and due diligence requirements that could affect future distributions. We receive in the region of 20 to 30 queries each week. Each time a query is received we go through identification procedures to ensure that we are speaking to either a shareholder of record or a properly authorised representative. Depending on the nature of the query, these can take some time to resolve.

We have put in place a dedicated Stakeholder correspondence team to manage and deal with all enquiries from the Stakeholder group.

6. Share Transfers

Due to a number of issues, share transfer requests were put on hold. This was predominantly in order for us to obtain legal advice in light of comments made by our supervising BVI Judge on a similar case. On the back of that advice, and communications with our supervising Judge about the way forward, we have now recommenced share transfers.

We took this opportunity to fully review the shares transfer process, obtain legal advice on anti-money laundering regulations and other regulatory matters and produced new requirements that must be completed in respect of each share transfer request, which we have published on the Funds' websites.

7. Distribution Analysis & Claims Adjudication

You may recall that prior to the BLMIS settlement, it was intimated by the BVI Court that we should not incur a considerable amount of time and cost looking at distribution matters while there were no funds in the liquidation estates.

Since the BLMIS settlement, we have made significant progress with our review and consideration of the issues that the Funds face in regard to distributions matters, such that we consider that by early 2021 we will be in a position to call for claims.

As mentioned above, we intend to circulate a full report to Registered Shareholders and Creditors following the approval of the BVI Court in relation to the allocation of the third-party recoveries made to date.



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Should you have any queries in relation to this update, please email us at kingateglobal@kaloadvisors.com or by telephone on +1 284 541 9600.

Yours faithfully

Paul Pretlove
Joint Liquidator

Charlotte Caulfield
Joint Liquidator