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To the customers and creditors of Bank Hottinger & Cie AG in bankruptcy liquidation

Küsnacht, May 2017

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Bank Hottinger & Cie AG in bankruptcy liquidation;
Circular No. 4

Dear Sir or Madam

This Circular provides information on the result of the publication of the schedule of claims of Bank Hottinger & Cie AG in bankruptcy liquidation ("Bank Hottinger"), on three settlements in respect of claims previously suspended in the schedule of claims and on the further steps planned in the proceedings.

I. SETTLEMENT OF LIABILITIES

1. SCHEDULE OF CLAIMS PROCEEDINGS

During the period for filing actions contesting the schedule of claims, six actions have been lodged against our decisions. Contested were the rejections of a first class claim amounting to CHF 124,000, of a second class claim in the amount of CHF 100,000 and of four secured claims of a total maximum of approximately CHF 26 million.

2. AGREEMENTS WITH INDIVIDUAL CREDITORS WITH REGARD TO REGISTERED CLAIMS

2.1 GENERAL

We were able to agree settlements with three creditors with major claims previously suspended in the schedule of claims, subject to the approval by the creditors (see sections I.2.2. to I.2.4 below).

2.2 AGREEMENT WITH THE LANDLORD FOR THE PREMISES IN GENEVA

Bank Hottinger operated its private client business from a branch office in Geneva. Upon commencement of bankruptcy, it occupied rented premises at Rue Kléberg 8-12 and Place des Bergues 3. The premises were let under various tenancy agreements, including a master lease for a fixed term ending in December 2019. Bank Hottinger vacated the premises in Geneva at the end of June 2016 and has been looking for a new tenant with the assistance of a professional estate agent since July 2016. No tenant has been found to date.

The landlord (BVK Personalvorsorge des Kantons Zürich, "BVK") registered claims totalling approximately CHF 1.8 million in the Bank Hottinger bankruptcy proceedings (with respect to unpaid rent, ancillary costs and the dismantling of tenant's alterations). By operation of law, any rent accruing prior to the date on which premises are vacated are deemed to be so-called debts of the estate, i.e. such debts must be paid in full. Bank Hottinger paid rent in respect of the Geneva premises up to 31 January 2016. Approximately CHF 170,000 is still outstanding for the period between 1 February and 30 June 2016 when the premises were vacated. Due to various types of nuisance caused by the complete refurbishment of the premises between January 2015 and June 2016, Bank Hottinger claimed a rent reduction of around CHF 85,000 for the period in question. Rent of around CHF 1.26 million and ancillary costs of around CHF 45,000 are still owed for the residual term under the tenancy agreements from the date on which the premises were vacated. It has proved extremely difficult to find a new tenant due to the market environment and the fit-out standard of the premises. In addition, BVK is attempting to let the premises at a significantly higher price per square metre than that agreed in the tenancy agreements with Bank Hottinger.

An agreement for the settlement of the outstanding debts has now been reached with BVK, which covers the following key points:

– Bank Hottinger pays BVK a total of CHF 84,050.10 in respect of rent accrued up to the end of June 2016 (i.e. prior to the date on which the premises were vacated) and a lump sum of CHF 500,000 in respect of rent and ancillary costs accrued since July 2016. BVK will withdraw any other claims from the bankruptcy proceedings.

This agreement represents a good solution for the bankruptcy estate: the payment of just over CHF 84,000 in respect of debts of the estate incurred prior to 30 June 2016 properly reflects the nuisance and emissions caused by the complete refurbishment of the premises. The lump-sum payment of CHF 500,000 for the period after July 2016 properly reflects the current dividend forecast (see section III.4.) and the risks to which BVK and Bank Hottinger are exposed in finding a new tenant. Accordingly, we propose a motion that this agreement be approved.

2.3 AGREEMENT WITH THE LANDLORD FOR THE PREMISES IN ZURICH

Bank Hottinger also rented the premises at its headquarters in Zurich. The Bank entered into the relevant tenancy agreement for the premises at Schützengasse 30, Zurich with Swiss Life AG ("Swiss Life") prior to commencement of bankruptcy for a fixed term ending at the end of September 2017. The Bank continued to use the premises following the declaration of bankruptcy. Plans are in place to vacate the property concerned by the end of April 2017.

In the context of the Bank Hottinger bankruptcy proceedings, Swiss Life registered total claims of approximately CHF 2.1 million (with respect to unpaid rent, ancillary costs and putative clearance, cleaning and dismantling costs). Following commencement of bankruptcy, Bank Hottinger paid the rent as debts of the estate. Overall, approximately CHF 125,000 is owed in accrued rent prior to the scheduled vacation at the end of April 2017. The rent due for the residual term from May 2017 to September 2017 is approximately CHF 310,000. In addition, Bank Hottinger is required under the tenancy agreement to dismantle any alterations made to the premises. The cost of reinstating the premises, as between the parties, have been estimated at around CHF 60,000. Swiss Life holds a security deposit of CHF 300,000.

An agreement for the settlement of the outstanding debts has now been agreed with Swiss Life, which covers the following key points:

– Bank Hottinger pays Swiss Life a total of CHF 124,141.50 in respect of rent accrued up to the end of April 2017 (i.e. prior to the scheduled vacation) and a lump sum of CHF 185,000 in respect of rent and ancillary costs due after May 2017. In addition, Bank Hottinger pays Swiss Life CHF 28,651.60 in respect of dismantling the alterations.

– Swiss Life releases the security deposit paid by Bank Hottinger in full and withdraws its claim from the Bank Hottinger bankruptcy proceedings.

This agreement represents a good solution for the bankruptcy estate: the rent payments due prior to the Bank vacating the property at the end of April 2017 are recognised claims against the bankruptcy estate. The lump-sum payment of CHF 185,000 in respect of rent due after May 2017 properly reflects the current dividend forecast. It is also beneficial to Bank Hottinger that it is only required to assume a proportion of the dismantling costs and that Swiss Life releases the security deposit in full. Accordingly, we propose a motion that this agreement be approved.

2.4 AGREEMENT WITH BANQUE LOMBARD ODIER & CIE SA ("LOMBARD ODIER")

Prior to commencement of bankruptcy, Bank Hottinger entered into a comprehensive framework agreement with Lombard Odier for the supply of services. The related agreements concern the provision of an IT platform for client banking transactions, various software applications, IT hardware, a custody account agreement and assistance with regulatory issues (e.g. tax reporting) and accountancy (the "Old Outsourcing Agreement"). The majority of agreements under the Old Outsourcing Agreement are fixed-term agreements until June 2018.

Bank Hottinger still required the majority of the services under this Agreement following the declaration of bankruptcy. Bank Hottinger therefore entered into a new agreement ensuring the continued supply of services ("New Outsourcing Agreement") following the declaration of bankruptcy. Bank Hottinger is required to pay the cost of the services supplied under the New Outsourcing Agreement in full (as debts of the estate).

In the context of the Bank Hottinger bankruptcy proceedings, Lombard Odier registered various claims relating to the Old Outsourcing Agreement for a total amount of CHF 8.5 million (primarily in respect of compensation due until the

end of the contractual term). In addition, Lombard Odier has asserted a number of contractual liens over the assets of Bank Hottinger in relation to the claims registered.

There is disagreement between us and Lombard Odier as to the value of the registered claims and the calculation of various heads of compensation: in our view, the actual development of the payment-related parameters (e.g. assets under management, number of accounts etc.) relating to services for which no minimum purchasing quantities were defined in the Old Outsourcing Agreement are relevant to calculating the compensation owed up to the end of the contractual term. We therefore contend that the reduction of assets under management following the declaration of bankruptcy, for example, should reduce the amount of compensation owed by Bank Hottinger under the Old Outsourcing Agreement. Lombard Odier argues that the level of assets under management etc. should be "frozen" with effect from the date of declaration of bankruptcy and that the claims registered should be calculated on this basis up to the end of the contractual term. There is no settled case law on this issue. The heads of compensation at issue account for approximately CHF 1.9 million of the CHF 8.5 million in total claims registered by Lombard Odier.

However, the views of the parties essentially converge on the following issue: insofar as Bank Hottinger has used services under the New Outsourcing Agreement in respect of which Lombard Odier has registered claims in the bankruptcy proceedings in reliance on the Old Outsourcing Agreement, Lombard Odier must offset the payments made by Bank Hottinger following declaration of bankruptcy against the claims registered and deduct such payments accordingly. This significantly reduces the value of the claim registered by Lombard Odier. In addition, we consider that the liens asserted by Lombard Odier are lawful.

An agreement for the settlement of the claims registered has now been agreed with Lombard Odier, which takes into account the payments made by Bank Hottinger under the New Outsourcing Agreement from commencement of bankruptcy up to the end of September 2016. In this context, a total amount of CHF 450,000 has been approved in respect of the disputed heads of compensation amounting to approximately CHF 1.9 million which relate to services for which no minimum purchasing quantities were defined under the Old Outsourcing Agreement (see above). The agreement covers the following key points:

– Under the schedule of claims procedure, Bank Hottinger acknowledges an amount of CHF 3,558,229.05 (including value added tax) owed to Lombard Odier as a secured and conditional claim.

– Lombard Odier is obliged to deduct certain payments which it has received or will receive from Bank Hottinger under the New Outsourcing Agreement subsequent to October 2016. Lombard Odier is therefore required to account for the realisation of pledged assets and hand over any surplus to Bank Hottinger.

This agreement represents a good solution overall for the bankruptcy estate, as it properly reflects the risks to which Lombard Odier and Bank Hottinger are exposed in calculating the compensation to which Lombard Odier is entitled under the Old Outsourcing Agreement. It also takes account of Lombard Odier's need to agree a clear, mutually acceptable settlement with regard to the registered claims as a basis for continued cooperation between Bank Hottinger and Lombard Odier. Accordingly, we propose a motion that this agreement be approved.

2.5 PROCEEDINGS RELATING TO SETTLEMENTS OF REGISTERED CLAIMS

By its ruling dated 8 May 2017 (see enclosure) FINMA granted to us the right to conduct creditors' meetings. The creditors' meeting has the authority to agree settlements in respect of registered claims. The body of creditors may also pass resolutions by circular motion. The settlements with the three creditors (see sections I.2.2. to I.2.4 above) have been agreed subject to the approval by the creditors.

The claims settled by these agreements have been suspended in the schedule of claims. Once the majority of creditors approve an agreement, the claim concerned will be treated in the schedule of claims as reflected in the settlement. Such claim can no longer be contested by any other creditor. Accordingly, there will be no additional publication of a new schedule of claims. In contrast, if the creditors disapprove an agreement, the liquidators will decide on the recognition or rejection of the claims, render a decision to this effect to the creditor concerned and publish a new schedule of claims with regard to such claims.

Voting on motions put forward by the liquidators regarding the settlements reached (see sections I.2.2. to I.2.4 above) will be carried out by circular

resolution. The motions proposed in sections I.2.2., I.2.3. and I.2.4. above shall be deemed to have been adopted as resolutions, unless the majority of creditors reject the motions by notifying the undersigned liquidators in writing by **31 May 2017**. **Accordingly, silence shall be deemed to constitute consent to the motions put forward by the liquidators.**

II. PLANNED FURTHER STEPS IN THE PROCEEDINGS

Owing to the current status of the schedule of claims proceedings, a first interim payment to creditors can be issued. The recognised first and second class claims will be paid in full. The amount of the interim payment to the creditors with recognised third class claims is yet to be determined in consultation with FINMA. In our view, an interim payment in the range of 30% should be possible. Preparations for this interim payment will be made and further information provided to the creditors by the end of June 2017.

Yours faithfully

Bank Hottinger & Cie AG in bankruptcy liquidation
The Liquidators:

Brigitte Umbach-Spahn Karl Wüthrich

Encl.: Ruling of FINMA dated 8 May 2017

www.liquidation-bankhottinger.ch

Hotline Bank Hottinger & Cie AG in bankruptcy liquidation

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Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

VERFÜGUNG

der Eidgenössischen Finanzmarktaufsicht FINMA

vom 8. Mai 2017

in Sachen

Bank Hottinger & Cie AG in Liquidation,
Schützengasse 30, 8021 Zürich

vertreten durch

die Konkursliquidatoren Brigitte Umbach-Spahn und Karl Wüthrich,
Wenger Plattner Rechtsanwälte, Goldbach-Center, Seestrasse 39, 8700 Küsnacht

betreffend

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Die Eidgenössische Finanzmarktaufsicht FINMA stellt fest und zieht in Erwägung, dass

(1) die FINMA mit Verfügung vom 23. Oktober 2015 den Konkurs über die Bank Hottinger & Cie AG, Zürich, per 26. Oktober 2015 eröffnete und Brigitte Umbach-Spahn sowie Karl Wüthrich, Wenger Plattner Rechtsanwälte, Küsnacht, als Konkursliquidatoren einsetzte;

(2) die mit dem Schuldenruf gesetzte Frist zur Eingabe von Konkursforderungen am 30. November 2015 abgelaufen ist und der Kollokationsplan seit dem 16. März 2017 für zwanzig Tage aufgelegen hat;

(3) die Konkursliquidatoren darin den Entscheid über angemeldete Forderungen verschiedener Gläubiger aussetzen[1] und mit diesen - unter Vorbehalt der Rechte der anderen Gläubiger - mehrere Vergleiche über den Bestand, die Höhe und die Erfüllung von Verbindlichkeiten sowie deren Behandlung im weiteren Kollokationsverfahren verhandelt haben (im Folgenden: Vergleichs-Gläubiger);

(4) die Konkursliquidatoren mit Gesuch vom 04. März 2017 den Antrag auf Durchführung einer Gläubigerversammlung stellten, um allen Gläubigern die geschlossenen Vergleiche auf dem Zirkularweg zur abschliessenden Genehmigung zu unterbreiten;

(5) die Konkursliquidatoren im Falle der Genehmigung der Vergleiche durch die Gläubigerversammlung eine Neuauflage und Publikation des durch die Vergleiche abgeänderten Kollokationsplanes nicht beabsichtigen[2];

(6) es im Ermessen der Konkursliquidatoren liegt, eine Gläubigerversammlung zu beantragen und Beschlüsse derselben auf dem Zirkularweg herbeizuführen[3];

(7) die Eidgenössische Finanzmarktaufsicht FINMA nicht an den Antrag der Konkursliquidatoren gebunden ist, sondern nach freiem Ermessen entscheiden kann und gleichzeitig die Kompetenzen der Gläubigerversammlung sowie die für die Beschlussfassung notwendigen Präsenz- und Stimmenquoren festlegt[4];

(8) die Einberufung einer Gläubigerversammlung angebracht ist, wenn dies aufgrund der Anzahl der Gläubiger, der Grösse des zu liquidierenden Instituts, der Komplexität der Liquidation oder anderer Umstände angezeigt erscheint[5] oder das Einverständnis der Gläubiger wesentlich zu einem reibungslosen Ablauf des Verfahrens beitragen kann[6];

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[1] Art. 59 Abs. 3 Verordnung des Bundesgerichts über die Geschäftsführung der Konkursämter (KOV, SR 281.32)

[2] analog Art. 66 Abs. 3 KOV

[3] Art. 35 Abs. 1 Bankengesetz (BankG, SR 952.0), Art. 14 Abs. 1 und Abs. 4 Bankeninsolvenzverordnung-FINMA (BIV-FINMA, SR 952.05)

[4] Art. 35 BankG, Art. 14 Abs. 1 BIV-FINMA

[5] Eidgenössische Bankenkommission, Bankenkonkurs und Einlagensicherung, Bulletin 48/2006, S. 139

[6] Botschaft zur Änderung des Bankengesetzes vom 20.11.2002 8060, 8093

(9) die Anzahl der eingegebenen und aus den Büchern ersichtlichen Forderungen signifikant ist: Im Kollokationsplan ca. 1550 Gläubiger zu berücksichtigen sind, die Forderungen von ca. CHF 383 Mio. eingegeben haben;

(10) die Liquidation komplex ist: Auf die Vergleichs-Gläubiger Forderungen von ca. CHF 12.4 Millionen entfallen, für die Sicherungsrechte am Vermögen der Gemeinschuldnerin bestehen könnten und die zum wesentlichen Teil auf langlaufenden Verträgen beruhen, aus denen sich für die Gemeinschuldnerin Risiken auf Schadenersatz für die restliche, ungenutzte Vertragslaufzeit ergeben. Die am Verfahren beteiligten Gläubiger ihren (Wohn-)Sitz bzw. Aufenthalt in verschiedensten Ländern haben;

(11) die Bankeninsolvenzverordnung-FINMA auf den Maximen der Beschleunigung und der Rechtssicherheit basiert[7]. Mit einer aktiven Begleitung durch die Gläubiger über Verfahrenshandlungen der Konkursliquidatoren – vorliegend die von den Liquidatoren ausgehandelten Passiv-Vergleiche – innert kurzer Zeit Rechtssicherheit hergestellt und der diesbezügliche Verfahrensfortgang nicht von Partikularinteressen einzelner Gläubiger blockiert werden kann;

(12) es aufgrund der geschilderten Verfahrensspezifika angebracht ist, Gläubigerversammlungen abzuhalten;

(13) daher die Konkursliquidatoren ermächtigt werden, nach eigenem Ermessen Gläubigerversammlungen einzuberufen, um den Gläubigern eine aktive Möglichkeit zur Begleitung des Konkurses zu geben und so das Verfahren zu beschleunigen und die Rechtssicherheit zu erhöhen;

(14) im Bankenkonkursverfahren besondere Verfahrensvorschriften für Vergleiche über Verbindlichkeiten der Gemeinschuldnerin (Passiv-Vergleiche) nicht existieren;

(15) die Genehmigung von Vergleichen im allgemeinrechtlichen Konkurs zum Aufgabenbereich einer Gläubigerversammlung gehört[8] und für das Bankenkonkursverfahren der Aufgabenbereich einer Gläubigerversammlung nicht gesondert geregelt ist;

(16) sich die Präsenz- und Stimmenquoren einer Gläubigerversammlung grundsätzlich aus Art. 235 Abs. 3 und 4 SchKG ergeben[9] und die Konkursliquidatoren keine besonderen Umstände geltend machen, die eine Abweichung von der gesetzlichen Regelung notwendig erscheinen lässt;

(17) die FINMA diese Verfügung im Schweizerischen Handelsamtsblatt (SHAB) und auf der Internetseite der FINMA (www.finma.ch) öffentlich bekannt macht;

(18) diese Verfügung den Konkursliquidatoren und den Gläubigern der Bank Hottinger & Cie AG in Liquidation individuell zugestellt wird, wobei die Mitteilung an die Gläubiger von den Konkursliquidatoren auf dem Zirkularweg vorgenommen wird;

(19) in Bankenkonkursverfahren nach dem 12. Abschnitts des Bankengesetzes nur gegen bestimmte Verfahrenshandlungen ein Rechtsmittel ergriffen werden kann und die Beschwerde nach

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[7] Eidgenössische Bankenkommission, Bankenkonkurs und Einlagensicherung, Bulletin 48/2006, S. 138

[8] Art. 34 Abs. 2 BankG i.V.m. Art. 237 Abs. 3 Ziff. 3 und Art. 253 Abs. 2 Bundesgesetz über Schuldbetreibung und Konkurs (SchKG, SR 281.1)

[9] Art. 34 Abs. 2 BankG i.V.m. Art. 252 Abs. 3 Satz 2 SchKG

Art. 17 SchKG ausgeschlossen ist[10]. Der Entscheid über die Einsetzung einer Gläubigerversammlung nach Art. 35 BankG nicht zu den beschwerdefähigen Entscheiden im Bankenkonkurs zählt;

(20) einer dennoch gegen die vorliegende Verfügung erhobenen Beschwerde keine aufschiebende Wirkung zukäme[11], diese Verfügung folglich sofort vollstreckbar ist.

(21) gebührenpflichtig ist, wer eine Verfügung veranlasst[12]. Für diese Verfügung Verfahrenskosten von CHF 500.00 angefallen sind, die der Gemeinschuldnerin auferlegt werden.

[10] Art. 24 Abs. 2 BankG

[11] Art. 24 Abs. 3 BankG

[12] Art. 15 Abs. 1 Finanzmarktaufsichtsgesetz (FINMAG, SR 956.1) i.V.m. Art. 5 Abs. 1 Bst. a und Art. 8 Abs. 3, 4 FINMA-Gebühren- und Abgabenverordnung (FINMA-GebV; SR 956.122)

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Swiss Financial Market Supervisory Authority FINMA

Die Eidgenössische Finanzmarktaufsicht FINMA verfügt:

1. Im Konkursverfahren über die Bank Hottinger & Cie AG in Liquidation werden die Konkursliquidatoren ermächtigt, Gläubigerversammlungen einzuberufen.

2. Der Aufgabenbereich der Gläubigerversammlungen wird festgelegt auf die abschliessende Genehmigung von Vergleichen, die von den Konkursliquidatoren ausgehandelt wurden.

3. Für die Präsenz- und Stimmenquoren der Gläubigerversammlungen gelten Art. 235 Abs. 3 und 4 SchKG; bei Durchführung auf dem Zirkularweg gilt Art. 14 Abs. 4 BIV-FINMA.

4. Die Eidgenössische Finanzmarktaufsicht FINMA veranlasst die Publikation der Ermächtigung zur Einberufung von Gläubigerversammlungen im Schweizerischen Handelsamtsblatt (SHAB) und auf der Internetseite der Eidgenössischen Finanzmarktaufsicht FINMA (www.finma.ch);

5. Gegen die vorliegende Verfügung besteht kein Rechtsmittel. Die Ziffern 1 bis 5 des Dispositivs werden sofort vollstreckt. Beschwerden haben keine aufschiebende Wirkung.

6. Die Verfahrenskosten von CHF 500.00 werden der Bank Hottinger & Cie AG in Liquidation auferlegt. Sie werden der Konkursmasse der Bank Hottinger & Cie AG in Liquidation mit separater Post in Rechnung gestellt.

Eidgenössische Finanzmarktaufsicht FINMA
Geschäftsbereich Recovery und Resolution

David Wyss

Marcel Walthert

Rechtsmittelbelehrung:

Gegen diese Verfügung kann kein Rechtsmittel ergriffen werden (vgl. Erwägung 19 in der Verfügung)

Zu eröffnen an:

- Brigitte Umbach-Spahn und Karl Wüthrich, Wenger Plattner Rechtsanwälte, Goldbach-Center, Seestrasse 39, 8700 Küsnacht (Einschreiben Rückschein)
- Gläubiger der Bank Hottinger & Cie AG in Liquidation gemäss Kollokationsplan vom 16. März 2017 (durch Gläubigerzirkular)

Versanddatum: 8 MAI 2017