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By registered mail
To the bank clients and creditors of
Bank Hottinger & Cie Ltd. in bankruptcy liquidation

Küsnacht, September 2017
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Bank Hottinger & Cie Ltd. in bankruptcy liquidation;
Circular No. 6

Dear Madam, dear Sir,

We would like to inform you on the current status of proceedings, the further settlement of the schedule of claims, the investigation of avoidance claims and the next steps planned.

I. STATUS OF PROCEEDINGS

Execution of the first interim payment has been under way since early August. Payments to bank clients have to be made in accordance with the compliance regulations in force. The execution of the payments is therefore time-consuming. Creditors who have provided us with their payment details will receive their interim payment in the next few weeks.

The six actions to contest the schedule of claims take their course. To date, none of these proceedings have been completed.

II. FURTHER SETTLEMENT OF THE SCHEDULE OF CLAIMS

Since the schedule of claims was published in March 2017, a further previously suspended tax claim of the Canton of Zurich has been settled.

1. STATE AND MUNICIPAL TAXES FOR 2014

The state and municipal taxes claimed by the Canton of Zurich for 2014 have been set at CHF 35,395.00. This claim under public law has been finally assessed and can no longer be challenged by the creditors.

2. CLAIM OF THE FEDERAL TAX ADMINISTRATION UNDER THE FEDERAL ACT ON INTERNATIONAL WITHHOLDING TAX ("IWTA")

In the bankruptcy proceedings of Bank Hottinger, the Federal Tax Administration ("FTA") has submitted a claim in the amount of CHF 2,340,190.26 being the share of the shortfall under Article 28 IWTA.

In order to regularise the past, the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Cooperation in the area of Taxation (hereinafter referred to as the "UK Agreement") was signed on 6 October 2011. According to Article 17 of this agreement, Swiss paying agents (banks) were required to make an upfront payment of CHF 500 million to the United Kingdom on the expected tax revenues from one-off payments by persons affected in order to regularise the past (Article 9(5) of the UK Agreement). Once these one-off payments would have reached the amount of CHF 1,300 million, the competent Swiss authority would have been permitted to set off further one-off payments against the upfront payment (Article 17(3) UK Agreement).

The one-off payments made did not reach the amount of CHF 1,300 million. The one-off payments could therefore not be set off against the upfront payment made. Under Article 28 IWTA the FTA issued the necessary payment orders to cover the shortfall to the Swiss paying agents, including Bank Hottinger.

The FTA's claim is founded in public law and was formally issued by the FTA by its order dated 20 January 2015. Bank Hottinger has logged an objection against this order on 19 February 2015, within the deadline. The proceedings were suspended due to another case already pending concerning another bank, the outcome of which had prejudicial significance for the objection proceedings. Given that the objection proceedings are still pending, the relevant claim of the FTA was included pro memoria in the Bank Hottinger schedule of claims.

The Federal Supreme Court has since reached a decision in the other pending case and rejected the appeal of another other bank in the same matter (Federal

Supreme Court decision 2C_654/2016 of 17 March 2017). We have examined the claim filed by the FTA in the light of the decision of the Federal Supreme Court and consider it justified. The Federal Supreme Court held that the calculation method used by the FTA for the shortfall payment was accurate and in accordance with the wording of Article 28 IWTA.

We have therefore decided to discontinue the objection proceedings commenced against the claim. The objection proceedings in question are suspended until 13 November 2017 and might be withdrawn by Bank Hottinger before then at no cost. The FTA has indicated that after 13 November 2017 it will terminate the suspension of the objection proceedings, which will incur costs, and give the objecting party the opportunity to comment. If no creditor should request the assignment of the right to take legal action to further continue these proceedings (see para. IV.1. below), we will withdraw the objection and the claim will be finally admitted in the schedule of claims as third class claims in the amount submitted.

III. LIQUIDATION OF ASSETS

1. AVOIDANCE CLAIMS

1.1. General

Based on evaluations from the IT systems (book keeping and Front Office G2), we have assessed the existence of avoidance claims at Bank Hottinger. We have reviewed both payments made by Bank Hottinger to suppliers, service providers, authorities and external asset managers as well as transactions made for bank clients which reduced their credit balances. The focus was on voidability for intent under Article 288 of the Swiss Federal Debt Enforcement and Bankruptcy Act (SchKG). We were unable to identify any cases where an action to void a gift (Article 286 SchKG) or voidability due to insolvency (Article 287 SchKG) might be applicable.

The following conditions must be met if a claim is to be successfully voided on the grounds of intent:

- The action by the debtor must have taken place within the last five years prior to the commencement of bankruptcy proceedings;
- One or more creditors must have suffered loss;

– The debtor must have intended to cause the loss;
– The beneficiary must have been able to identify the intention to cause the loss to the creditors.

We only examined actions carried out less than half a year before the opening of the bankruptcy proceedings. Before that there were no indications that insolvency proceedings might be opened against Bank Hottinger.

Creditors only suffer loss if the debtor's actions reduce the assets for creditors. As regards payments made to suppliers, service providers, authorities and external asset managers, this is the case where the performance of the beneficiary has occurred before the payment. Transactions for bank clients can reduce the bank's assets if they reduce the client's credit balance on their account. This can happen by executing payment instructions, buying securities, investing in funds or by making deposits to fiduciary accounts.

1.2 Intention of Bank Hottinger to cause loss to creditors

Bank Hottinger was in a period of restructuring between 1 July 2015 and 26 October 2015. To what extent and under what conditions a debtor's restructuring efforts rule out the voidability of the debtor's actions is a controversial issue.

According to the literature and the jurisprudence of the Federal Supreme Court, a debtor's actions are not voidable if the restructuring efforts appear promising from an objective point of view. Considered objectively, the chances of a restructuring may not be less than the risk of bankruptcy.

The Board of Directors of Bank Hottinger tried to achieve the reorganisation of the bank until 25 October 2015. Once the plan to recapitalise the Bank with an increase of capital had failed, it pursued the project of raising the funds required by means of an asset deal so as to be able to carry out an orderly liquidation.

The liquidation balance sheet as at 31 August 2015 and the audit report by PricewaterhouseCoopers ("PwC"), the statutory auditor of Bank Hottinger, both of which were available on 18 September 2015, indicated to the bank's corporate bodies that, if unfavourable assumptions were used, the bank could be overindebted even in the event of an asset deal. However, the Board of Directors assessed that the bank's prospects were better than PwC was predicting. It therefore thought there was still a good chance of being able to prevent overindebtedness at Bank Hottinger through an asset deal.

The Board of Directors was however unable to complete an asset deal that satisfied the required conditions before the deadline of 14 October 2015 set by FINMA. In a letter dated 15 October 2015, received by the bank that evening, FINMA informed Bank Hottinger that it felt it was appropriate to commence bankruptcy proceedings. Consequently, the Board of Directors must have recognised that its latest restructuring efforts to prevent bankruptcy would not be sufficient. From that point on, the chances of the restructuring were in our view smaller than the risk of commencing bankruptcy proceedings.

In our opinion and based on the case law of the Federal Supreme Court, with every action after 16 October 2015 that reduced the bank's assets the corporate bodies of Bank Hottinger were accepting the risk of causing a loss to creditors.

It is therefore not surprising that Bank Hottinger made no more payments to suppliers, service providers, authorities or external asset managers after 16 October 2015.

It is our view that the prerequisite intention to cause loss to creditors in terms of Article 288 SchKG should be considered as being met from 16 October 2015 onwards. Accordingly, actions taken by Bank Hottinger after 16 October 2015 that reduced its assets and where the beneficiary would have been able to identify the intention to cause loss to creditors can be challenged.

1.3 Actions taken by Bank Hottinger after 16 October 2015 that reduced its assets

a) Payments to suppliers, service providers, authorities and external asset managers

On 16 October 2015 Bank Hottinger made a final payment of around CHF 8,000 to an external asset manager. This payment was not pursued due to its small amount.

Thereafter, no more payments were made to suppliers, service providers, authorities or external asset managers until the opening of the bankruptcy proceedings.

b) Transactions for bank clients

In our experience, avoidance actions are complex and involve significant risks. It is therefore our opinion that an avoidance action for a sum of less than

CHF 400,000 does not offer an appropriate balance of cost to risk. According to today's estimate the minimum bankruptcy dividend is around 60%. The value at stake when challenging a transaction for a bank client is therefore 40% of the value of the transaction. Hence, we have restricted our investigations to transactions processed after 16 October 2015 with a value of at least CHF 1,000,000.

Using these selection criteria we have examined a total of four accounts where such transactions took place. The four accounts were used to carry out payment instructions, investments in money market funds and fiduciary deposits. The amount of the individual transactions was between CHF 1 million and over CHF 14 million.

Our investigations focused on finding indications whether the clients in question were or could have been aware of the precarious financial situation Bank Hottinger was in as well as the imminent bankruptcy.

Up until the bankruptcy proceedings opened, the situation at Bank Hottinger was not a matter of public discussion, certainly not in the daily newspapers. We also found no indications that specific information leaked out of the bank. Without additional knowledge, there was therefore no reason for bank clients or external asset managers to enquire about the financial situation of Bank Hottinger.

There are however signs that certain external asset managers in particular were concerned about the situation at the bank in the final days before the bankruptcy. Amongst others, it is conspicuous that clients of one external asset manager (these include three of the accounts examined) shifted relatively large amounts of cash into money market funds on 20 October 2015. However, the external asset manager had already taken the preparatory steps for these transactions before 16 October 2015. Because of this time line and due to the fact that at that time Bank Hottinger still held a banking licence, we think it would be difficult to successfully prove at trial against an individual client that they had recognized the intention to cause the loss to creditors in terms of Article 288 SchKG. As regards the fourth account examined, we found no indication that the client or its external asset manager had or could have had any knowledge of the situation at Bank Hottinger. We therefore concluded that the chances of succeeding with avoidance claims are less than 50%.

1.4 INSPECTION OF THE FILES

The review of the avoidance claims has been set down in a memorandum and documented accordingly. All interested creditors may inspect this memorandum and the supporting documents at the offices of the Liquidators, Brigitte Umbach-Spahn and Karl Wüthrich, Wenger Plattner, Seestrasse 39, Goldbach-Center, 8700 Küsnacht (please call the hotline on +41 43 222 38 50 to arrange an appointment).

Creditors who wish to inspect the files must sign a written statement that they will use the information consulted solely to protect their own direct financial interests (Article 5(4) of the FINMA Banking Insolvency Ordinance, BIO-FINMA).

2. LIQUIDATION PLAN

Based on the above assessment and in view of the litigation risks involved in raising avoidance claims, the liquidators decided not to pursue avoidance claims as outlined in Section III.1 and to commence court proceedings. Please note that the two-year limitation period according to Article 292 SchKG will expire on 25 October 2017. This limitation period may be interrupted as a result of actions which may be grounds for interruption of the limitation period.

IV. PROCEEDINGS

1. ASSIGNMENT

The liquidators are offering to assign to creditors the right to take legal action to defend the claim being raised by the FTA for the share of the default under Article 28 IWTA and to lead the objection proceedings pending in this matter (Section II.2) and concerning potential avoidance claims (see Section III.1 above) according to Article 21 BIO-FINMA in conjunction with Article 260 SchKG.

Requests for assignment must be submitted **no later than 10 October 2017** (date of postmark by a Swiss post office) to the liquidators below **in writing**. The right to request assignment is deemed to have been **forfeited** if this deadline is not respected.

2. CONTESTABLE RULING

Creditors who do not agree with the intended liquidation activities described must request a contestable ruling from FINMA (Swiss Financial Market Supervisory Authority FINMA, Laupenstrasse 27, 3003 Berne) (Article 34(4) BIO-FINMA) until **10 October 2017** (date of postmark by a Swiss post office). For a contestable ruling a fee will be charged. Creditors resident or incorporated outside Switzerland must provide a postal address in Switzerland where official communications may be served, otherwise communications will be announced by publication in the Swiss Federal Gazette.

We will continue to keep you informed about the progress of the bankruptcy proceedings as and when new developments emerge.

Kind regards

Bank Hottinger & Cie Ltd. in bankruptcy liquidation
The Liquidators:

Brigitte Umbach-Spahn Karl Wüthrich