



BLACKSHIELD

FUND MANAGEMENT

**REJOINDER:
PRESS RELEASE BY THE SECURITIES AND EXCHANGE COMMISSION DATED
28TH AUGUST, 2020**

The attention of BlackShield Capital Management Limited has been drawn to a circular issued by the Securities and Exchange Commission (SEC) in respect of the validation exercises it is conducting for the payment of affected customers of the various fund management companies whose licenses were revoked by SEC.

In the said circular, SEC has made a number false and inaccurate statements as forming the basis for the exclusion of customers of Blackshield from an intended government bailout package. These claims are false, inaccurate, and are intended to cast the management of Blackshield especially its significant shareholder, Dr. Papa Kwesi Nduom in a bad light in the eyes of its customers and the general public hence this rejoinder.

Background

BlackShield as one of the pioneers of fund management in Ghana has been in existence for over 25 years. One of its flagship investments, the structured finance (SF) has over the years returned significant rates to its customers without rancour. However, sometime in 2017, the SEC by a public notice to all fund management companies, directed that the SF product should be discontinued within six months from the date of the directive. This singular directive by SEC set into motion unprecedented demands for redemption by customers of BlackShield and other fund managers leading to a backlog in payment.

BlackShield in an attempt to resolve the issues brought about by the directive of SEC and return customer redemptions, engaged SEC, Ministry of Finance and various customer groups with various proposals to be able to deal with the situation. SEC on its part, refused to grant approval for an alternate product and its deputy Director General, Paul Ababio, repeatedly also indicated SEC was not in a position to help BlackShield retrieve locked up



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funds with government agencies because it was not a debt collector. BlackShield however, continued to engage government and its agencies. Whatever funds (over 200 million Ghana Cedis), were retrieved and paid to customers as well as various properties swapped and barter arrangements made to be able meet customer obligations as a committed fund manager.

SEC, rather than help BlackShield deal with these issues, appointed an agent, Pricewaterhouse Coopers (PwC) Ghana to conduct a forensic audit on the operations of the company in 2019. Blackshield believing that if SEC understood its business operations and challenges, would assist especially, with the alternate product it had proposed, opened its books, records and operational tools including the full extent of its assets and liabilities, client information, bank balances, investments among others to assist the agent of SEC to come up with a credible assessment of the operations of BlackShield. After several weeks of engagement, PwC, left the premises of BlackShield without even the courtesy of an exit meeting as required in accounting whenever such an exercise is conducted.

Surprisingly, on the 8th of November, 2019, the SEC by a public notice and a letter to BlackShield revoked BlackShield's fund management license for reasons therein stated. Immediately following the revocation, on 9th November, 2019, persons claiming to be officers of PwC Ghana appeared in the escort of policemen at all the offices of BlackShield across Ghana to close it down claiming to have been appointed by SEC to undertake the exercise. It was upon resistance that SEC served a formal letter confirming the claims of the officers of PwC Ghana.

Thus, effective 9th November, 2019, all offices of Blackshield across Ghana containing its operational documents and all information on its clients have been under the effective control of the SEC without a single information being moved from any office. Also, all employees and officers of Blackshield were rendered redundant by the closure of the offices save a



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shareholder's representative who was appointed by shareholders to correspond with the SEC when necessary.

Dissatisfied with these actions of the SEC, BlackShield filed a complaint on the 14th of November, 2019 with the SEC, against the revocation of its fund management license in accordance with provisions of the Securities Industry Act, 2016 (Act 929). After a series of hearings and a subsequent break owing to the outbreak of Covid-19, the Administrative Hearings Committee of SEC on 22nd May, 2020 changed a prior agreed procedure of allowing parties to cross-examine witnesses who had filed witness statements. The Committee decided it was no longer going to permit cross-examination but would determine the complaint based on the documents filed. BlackShield protested on the basis that, denying it the opportunity to question officers of the SEC on the decision they had taken to revoke the license of Blackshield was unjust and consequently filed an Application at the High Court, Accra on 15 June, 2020 challenging the decision not to allow cross-examination.

The SEC failed to respond to Blackshield's application in Court until the latter part of July when the Courts were almost on vacation and subsequently served their response on 12th of August, 2020 when the Courts were actually on vacation.

It is in the light of the above background, that BlackShield responds to the press release of the SEC as follows;

1. Inability to validate owing to partial access to records of Blackshield and provision of 3% of records.

BlackShield is surprised by this allegation of SEC regarding access to information on customers of BlackShield for validation purposes. We are interested to know how the SEC determined what percentage of the portfolio was given to them. Using the total value of claims



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filed, which the SEC reported to be GHS 4.65 Billion (a number significantly higher than the actual portfolio), 3% amounts to GHS 139 Million. **Is the SEC claiming that BlackShield submitted a document or documents showing a total SF portfolio of less than 140 Million?** As noted in the background, the SEC has had full access to the client's information at least on three different occasions between 2019 till date. The first, was during the forensic audit it commissioned in 2019 where BlackhShield gave PwC Ghana access of all of its books and client's information. The second, was prior to the revocation of Blackshield's license when BlackShield made proposals for alternate products for its customers which were refused by the SEC and the third, was when the SEC took control of all offices of Blackshield, which control they still have till date since the revocation of BlackShield's license; a fact they acknowledge in their press release.

The claim that BlackShield submitted data capable of verifying only 3% of claims filed by customers is an absolute falsehood intended to blame the inability of the SEC to validate claims of clients on BlackShield. The SEC has at all times material possessed and had access to all client information of Blackshield.

The real challenge, as BlackShield has consistently drawn the SEC's attention, is the SEC's attempt since revoking its license to manage customers' information without recourse to BlackShield; this attempt is not helpful and has yielded no results as evidenced by the failure to successfully validate clients' investments despite having control of all records of BlackShield.

2. Allegation of Blackshield's petition to Court as the basis of exclusion of customers.

This allegation against Blackshield is yet another attempt to mislead the public into blaming BlackShield for its failures. It is noteworthy, that the SEC, refused BlackShield's application to cease executing the order of revocation pending the hearing of its complaint. The SEC disregarded this application by BlackShield and proceeded to deal with the assets of BlackShield despite the hearing. It is therefore surprising that the SEC would use the



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pendency of the same matter as an excuse to perform a duty which BlackShield has always supported and encouraged the SEC to do.

Additionally, SEC, for reasons best known to it, did not respond to BlackShield's action filed on the 15 of June, 2020 until almost two months later after the action was filed. The only reason why the action is still pending thus, is because the SEC failed to respond within the time limits allowed by the rules of Court and cannot blame that failure on BlackShield.

More importantly though, going by SEC's own referencing to happenings in respect of SDIs and MFIs, the commencement of actions by Unibank, Unicredit and GN Bank challenging the revocation of their license by BOG in Court, which matters are yet to be decided by the Court, was no bar to the inclusion of their customers in the government bailout package. The action by BlackShield challenging the procedure of the AHC in deciding its complaint therefore, ought not to affect the inclusion of customers of BlackShield as SEC has sought to do especially when the intention of the bail out, is to grant relief to all customers.

Significantly also, the customers of BlackShield constitute about 80% of total claims made in respect of affected fund managers. If the SEC can conveniently exclude customers of BlackShield, then it saves them the arduous task of dealing with majority of the claims while laying the blame on BlackShield.

BlackShield states without equivocation thus, that as it has indicated in the past, it is in support of the SEC paying its customers notwithstanding its legal issues with the SEC. In fact, BlackShield has encouraged the SEC to use part of the funds which the Government of Ghana owes it, to pay its customers hence the proposed bailout package from government is very much welcome. BlackShield is ever ready to join hands with its customers for part of funds owed BlackShield by government to be used to pay them.



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3. Securing of Liquidation orders.

Blackshield is unaware of any proceedings by any person to secure liquidation orders as no shareholder has been notified of the pendency of such an application. It is surprising however, that the singular entity whose customers constitute the vast majority of affected persons in the 53 fund managers whose licenses were revoked have to wait such that payment of all others still leave the intention of relief being granted by the government unattained.

Conclusion

Given above, it is patently clear that, the SEC and its agents in its dealings with BlackShield have not been fair and candid with the customers of BlackShield who have had to bear the brunt of these actions.

BlackShield reiterates its readiness to work with the SEC for the inclusion of its customers in the government bailout package notwithstanding its marked disagreements with the SEC in respect of their exercise of some of its powers under their laws.

Consequently, customers should take note, that the SEC has always being in a position to perform their work in relation to customers of BlackShield and their failure to do so is not as a result of any act or omission by BlackShield but perhaps a sheer attempt to evade the assumption of the responsibilities for BlackShield clients who constitute over 80% of affected clients in the Fund Management industry.

Issued by BlackShield Capital Management Limited.

Accra

30 August 2020