



'Ensuring Investor Protection'

THE SECURITIES AND EXCHANGE COMMISSION

PRESS RELEASE

Background

The Securities and Exchange Commission (SEC) issued a press release on the 28th August, 2020 to give an update to the public on the aftermath of the revocation of licences of fifty-three (53) fund management companies. The revocation, which occurred on 8th November, 2019 was due to their inability to return clients' funds totaling GHC 8 billion, and significant breaches of applicable rules that created risks to financial stability. Among other things, the press release provided some information on the process for affected investors to benefit from the bailout promised by the Government. It has come to the attention of the SEC, that there is a misinterpretation of certain aspects of the press release in some sections of the public and we hereby shed some more light on the issues.

Clarity on Government Bailout

Our engagements with the Government through the Ministry of Finance after the revocation of the licences resulted in an agreement for Government to provide bailout for affected investors. In our communication immediately after the revocation, we indicated that Government would provide a capped amount to investors but this position has changed to Government offering a bailout to cover the validated claims of clients as stated in our press release. We indicated that the agreement reached with Government was for the bailout to be effected only after validation of claims and liquidation orders are secured. Specifically, we said that *"The first phase will cover clients of the twenty-two (22) companies currently under official liquidation per Court orders, based on their validated claims. The Official Liquidator will communicate details of the payment process to affected clients starting in September. The second phase would cover clients of the remaining companies after the liquidation orders are secured"*. The point being made therefore is that receiving Government's bailout is predicated on completion of validation and securing of liquidation orders. It is therefore a question of timing and nothing else.

Receiver pathway and Liquidation pathway

It is important to understand the differences in pathways used by the SEC and the Bank of Ghana (BOG) in restoring health and soundness to the financial sector. The BOG used the Receiver pathway as the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) provides

BOG the mandate to appoint a Receiver when a licensed bank or specialized deposit-taking institution (SDI) becomes insolvent, with very clear powers assigned to the Receiver so appointed.

The Securities Industry Act, 2016 (Act 929) does not provide the SEC with the power to place failed fund management companies under Receivership. The legal option therefore available to the SEC, where the licence of a fund manager is revoked, is to provide information for the process of liquidation which will legally transfer the assets and liabilities of the company. In this pathway, the SEC notifies the Registrar of Companies/ Registrar General about the revocation in order for the Registrar General to petition the court to be appointed as Official Liquidator. It is only after the appointment by the Court that the Registrar General is empowered to take possession and control of the assets and liabilities of the failed market operator. It is at this point of taking possession and control of the assets and liabilities that affected clients' claims can be processed by the Official Liquidator.

It is noteworthy that the liquidation process, by its nature, can be long and protracted. It is not surprising, that liquidation of some corporate entities here in Ghana which started over two decades ago is still ongoing. This is what motivated the decision of Government to step in with a bailout package to protect the affected clients of the 47 (3 out of the 50 FMCs have no investor claims) fund management companies (FMCs) that would be going through the liquidation process.

Act 929, specifically section 26, empowers the SEC to authorise a person to enter premises, search/make copies of records and close down/secure premises pursuant to carrying out its mandate under Act 929. Section 26 (2) of Act 929 makes provision for SEC to seek assistance of law enforcement agencies to carry out these activities. This is exactly what the SEC did after revoking the licences of these 50 FMCs in November 2019.

Role of the Official Liquidator

After the granting of the liquidation order under Section 4 of the Bodies Corporate (Official Liquidation) Act 1963, (Act 180) and Section 170 of the Corporate Insolvency and Restructuring Act, 2020 (Act 1015), the Official Liquidator is now mandated to take over the assets and liabilities (including claims from clients) of the affected companies. Among other things, the Official Liquidator will invite all creditors of the affected firms to file claims. In the case of FMCs, since the SEC has arranged for clients to file claims which have subsequently been validated, the Official Liquidator would take over these validated claims to use in the liquidation process. The Official Liquidator has already put out notices inviting claims from creditors. Secondly, the Official Liquidator would hold creditor meetings for each company followed by class meetings for specific groups like investors, only to explain the specific steps related to that class in the process. The Official Liquidator has published a schedule for the creditor meetings in the newspapers (Page 22, Daily Graphic 1st September, 2020). It is noteworthy that the liquidation orders were given to the Official Liquidator and not the SEC, therefore it is the Official Liquidator that would be driving the process going forward.

Response to inaccuracies by Blackshield Capital Management Limited (formerly Gold Coast Fund Management Limited.)

It has come to the attention of the SEC that Blackshield Capital Management Ltd (Blackshield) has issued a statement that contains errors and can be misleading as evidenced by how it is informing some pronouncements by a section of affected clients of these companies. We will therefore use the next few paragraphs to correct these inaccuracies.

Blackshield alleges that the SEC issued a public notice in 2017 directing that their Structured Finance (SF) product should be discontinued within six (6) months from the date of the directive. They further alleged that 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. This is inaccurate. The SEC did not issue a public notice in 2017 directing that the SF product be discontinued. In June 2018, the SEC held a meeting with the Executive Management and Board members of our market operators and reminded them that the practice of offering guaranteed returns to their clients was illegal, and that SEC was going to enforce an earlier directive issued in 2014. The SEC asked the fund managers to unwind any positions as the contracts matured between July and December 2018. We gave the concession to fund managers who were unable to unwind their positions due to counterparty defaults to inform the SEC at the end of December 2018 and submit a plan for the SEC's consideration. We wrote letters to the fund managers after this engagement. It is noteworthy that complaints received at the Commission about the failure of Blackshield to pay clients started in 2018. A total of 153 complaints valued at GHS147 million was received in 2018, representing 25% of total complaints received at SEC. In 2019, a total of 1,161 complaints from Blackshield's clients (representing 52% of total complaints) were received valued at GHS782 million. Complaints Hearings were held by the SEC to obtain payment plans for some of the investors, unfortunately most payment plans were not adhered to by Blackshield. This failure to pay investors was widely reported by media outlets in 2019 before the revocation, after some customers petitioned different government agencies.

Secondly, Blackshield alleges that the SEC refused to grant approval to an alternate product. This is another untruth. Between December 2018 and March 2019, SEC gave audience to Blackshield in discussions and also gave an opportunity for a presentation on a concept Blackshield had come up with, after which they were required to make a formal submission to the SEC for approval. Blackshield failed to submit the relevant documents for approval until the SEC wrote to Blackshield on April 11, 2019 giving them with a deadline of 30 days for a formal submission. Blackshield eventually made a submission of their Cardinal Asset Master Trust Offer and listing of bonds on June 26, 2019. After a thorough review of the application, with Investor Protection as a key consideration of a Bond issue, the SEC wrote to Blackshield on July 9, 2019 with issues to redress, but they failed to respond to the Commission. Some of the issues identified with the application for which Blackshield was asked to address was the omission of basic documents including but not limited to the following: audited Statement of Affairs, Legal Due Diligence report, Board and Shareholder Resolutions and Valuation Reports of their assets. Indeed, what may be termed as regulatory forbearance on the part of SEC was aimed at allowing Blackshield enough time to address their issues.

The liquidation petition for Blackshield is pending due to the steps taken by Blackshield after the revocation of their licence. Blackshield first appealed to SEC on 11th November, 2019, three (3) days after the revocation, before formally appealing to the Administrative Hearings Committee (AHC) on 14th November, 2019. Accordingly, the liquidation petition had to be put on hold until the determination by the AHC. It is a documented fact that the AHC accommodated various requests from Blackshield including varying aspects of the rules of procedure which slowed down the pace for hearing of their appeal at the AHC. After their appeal was dismissed by the AHC and communicated to Blackshield on 8th June, 2020, Blackshield proceeded to file an application in Court alleging that they were not given a fair hearing at the AHC. Although they filed the

application on 15th June, 2020, the date for hearing was scheduled for 28th July, 2020. Hearing commenced on the 28th July, 2020 and would resume after the legal vacation.

The validation of the claims filed against Blackshield is also partially done because of limited access to their records. It is untrue that the SEC has had full access on 3 occasions to all client information of Blackshield and therefore the SEC cannot claim that it did not have records for validation. The data provided by Blackshield to our agent for the forensic audit and the SF product were in excel format but our agent did not sight any evidence to support the values in the excel sheets. The server was also not in the offices at the date of revocation and securing of the offices. The mandate of the agent was to take the records at the time of revocation for the purposes of validating the claims. Blackshield submitted data in excel and the incompleteness of the excel sheet became evident after claims were submitted by investors. The excel sheet data enabled our agent to examine 2,275 claims (about 3% of the 82,204 claims filed) valued at GHS26 million. After persistent requests for access to all the records of Blackshield was unsuccessful, the SEC had to engage the assistance of a law enforcement agency who was able to retrieve the server on 19th August, 2020. Our agent is therefore now able to proceed with the validation of the remaining claims filed against Blackshield.

Validation is critical to establish that rightful claimants are making the right claims. It is noteworthy that any Government bailout is based on validated claims. In terms of the liquidation order, the pace would be accelerated if Blackshield gives credence to its statement of readiness to work with the SEC, for the inclusion of its clients in the Government bailout package as soon as possible, by considering the adverse effect its (Blackshield) actions are having on investors all over the country. Blackshield in its statement of 28th August, 2020 has admitted that it does not have the resources to pay investors, so genuine and sincere steps must be taken by Blackshield to back its commitment to see its customers paid through the Government bailout.

To recap, we wish to assure all affected clients that the Government bailout package is all inclusive, provided claims have been validated and liquidation orders secured. The SEC reiterates the fact that there is no plan to exclude any group of customers and as indicated in our last press release, the roll out of the Government bailout will be done in phases.

For any further information/clarification, affected clients may send emails to revocations@sec.gov.gh or call our toll free line, **0800100065**.

By Order of the
SECURITIES AND EXCHANGE COMMISSION

2nd September, 2020