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BERMUDA MONETARY AUTHORITY
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BY EMAIL

13 December 2022

Hamilton Bay Capital Limited &
HBC Management Limited
c/o Kane LPI Solutions (Bermuda) Limited
4th Floor, Cumberland House
1 Victoria Street
Hamilton HF 11
Bermuda

Attn: The Board of Directors

WARNING NOTICE

TAKE NOTICE that the Bermuda Monetary Authority, of 43 Victoria Street, Hamilton (**Authority**), issues this warning notice (**Warning Notice**) in accordance with Section 28 of the Investment Funds Act 2006 (**IF Act**) and proposes to **revoke the authorisation** of Hamilton Bay Capital Limited (**Hamilton** or the **Company)** and publish the revocation of Hamilton's authorisation as a standard fund by way of a Press Release on the Authority's website under the provisions of Section 67M of the IF Act.

1. The Company was incorporated in Bermuda as a limited liability company on 6 March 2019 and became authorized by the Authority as a Standard Fund under Section 11 of the IF Act on 26 June 2019. Hamilton is a subsidiary of HBC Management Limited (**HBC**) which qualified for an exemption pursuant to Section 3 of the Investment Business (Exemptions) Order 2004 (**IBEO**) and exemption was granted in accordance with Section 4 of the IBEO. HBC was then registered by the Authority as a non-licensed person (**NLP**) pursuant to Section 10 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (**SEA**) on 20 November 2019. Hamilton was structured as an umbrella fund, having underlying sub-funds with all assets pooled together.
2. The stated beneficial owners of the Company are Messrs. Mort Friedman and Eric Schreiber, who also serve as Directors of the Company.

3. The last known registered office of the Company is Cumberland House 4th Floor, 1 Victoria Street, Hamilton HM 11.

4. Section 27 of the IF Act authorizes the Authority to revoke the authorisation of a company in the following circumstances:
   a. Section 27 (a) – the Authority is satisfied that the authorised fund has failed to comply with a requirement by or under the IF Act;
   b. Section 27 (b)(i) – the Authority is satisfied that the authorised fund has contravened a requirement imposed on it by or under the IF Act; and
   c. Section 27(c) – the Authority is satisfied that the authorised Fund has not carried on investment activity in relation to the fund for the previous twelve months.

Proposed Action

5. For the reasons set out in **Schedule 1** to this **Warning Notice**, the Authority is satisfied that it is appropriate to revoke the authorisation of the Company, under the provisions of Sections 27(a), (b)(i) and (c) of the IF Act.

6. The factors that the Authority has considered in reaching its view to revoke the authorisation of the Company are specified in **Schedule 2** to this **Warning Notice**.

Publication of Decision

7. In the event the Authority decides to revoke the authorisation of Hamilton, Section 67M of the IF Act provides that the Authority may publish such information about the revocation as it considers appropriate. In such circumstances, Section 67M (2) requires that the Authority notify Hamilton of its intention to publish information of its decision and this Warning Notice serves that purpose.

8. It is currently intended that such publication will be by way of Press Release, providing details of the breaches identified, the penalties imposed and the identity of the institution concerned. Further, details included in the Press Release will be set out in the Authority's website and may be referred to in notifications to other regulators or in the Authority's Annual Report.

9. The factors that the Authority has considered in reaching its view to publish the revocation of the Company's authorization are specified in **Schedule 3** to this **Warning Notice**.

Representations

10. The Company has the right, pursuant to Section 67J of the IF Act, to make representations in writing to the Authority. Those representations must be received no later than 28 days from the date hereof.
11. Those representations may include representations on whether the Authority should revoke the authorisation of the Company.

12. Such representations should be sent to Susan Davis-Crockwell, Deputy Director, Bermuda Monetary Authority, 43 Victoria Street, Hamilton HM12, Bermuda or by email to sdcrockwell@bma.bm.

Service of Warning Notice on operators and service providers

13. Section 28(1) of the IF Act requires that, in circumstances where the Authority proposes to revoke the authorization under the provisions of Section 27 of the IF Act, it must give separate warning notices to the operators and service providers of the authorized fund.

14. In compliance with this requirement, this Warning Notice will also be issued to the following:

- Trocan Management Limited (**Trocan**) – Corporate Service Provider (**CSP**)
- Kane LPI Solutions Limited (**Kane**) – Secretary, Registered Office and Administrator
- HBC– Investment Manager

The Tribunal

15. If, having considered representations from the Company, or in the absence of any such representations, the Authority decides to revoke the authorisation, the Company has a right of appeal to the Tribunal under Section 55 of the IF Act against the decision of the Authority to revoke the authorisation of the Company. The service providers identified in paragraph 14 above also have the right, pursuant to Section 28(2) of the IF Act, to refer the matter to the Tribunal.

…………………………………….
Susan Davis-Crockwell
Deputy Director, Legal Services and Enforcement
For and on behalf of the Bermuda Monetary Authority

13 December 2022
……………………………………………
Date

SCHEDULE 1

Grounds for conclusion that the Company has failed to comply with the IF Act

1. In accordance with Section 27 of the IF Act, the Authority may, by notice, revoke the authorisation of an authorised fund on grounds defined therein, the following of which apply to the Company:

    i. Section 27 (a) – the Authority is satisfied that the authorised fund has failed to comply with a requirement by or under the IF Act;

    ii. Section 27 (b)(i) – the Authority is satisfied that the authorised fund has contravened a requirement imposed on it by or under the IF Act; and

    iii. Section 27(c) – the Authority is satisfied that the authorised fund has not carried on investment activity in relation to the fund for the previous two years.

2. With respect to **Ground 1** above, the Authority has considered the following information:

    i. Trott & Duncan Ltd. (**TDL**) was listed as Legal Counsel for Hamilton and has remained as such, however, TDL informed the Authority of its difficulties with Hamilton and HBC. Hamilton and HBC had been non-responsive to all attempts to establish contact by TDL and the Authority and payments for service are overdue.

    ii. Ernst and Young Ltd. (**EY**) was listed as the auditors for Hamilton; however, it was determined that the letter of intent was never signed, hence audit work never commenced.

    iii. Kane acted as Administrator for Hamilton upon the request of HBC. Hamilton was structured to provide investors the opportunity to invest in a strategic risk adjusted, systematic, algorithmic trading opportunity that was specifically designed to provide broad exposure to the US Standard and Poor's 500 equity futures market, with underlying systematic strategies that have historically shown to mitigate portfolio return volatility and overall portfolio drawdown. The authorised capital of Hamilton consists of 1,000 Management Shares with par value of US$1.00 each, 20,000,000 A-Class Shares with a par value of US$0.0001 each and 70,000,000 Unclassified Shares with a par value of US$0.0001 each.

    iv. The proposal for this engagement indicated that there would be three partners responsible for Hamilton:
        a) Sebastien Zurlo (Investor/capital fund raiser);
        b) Eric Ian Schreiber (Chairman and Chief Executive Office); and
        c) Mort Nathan Freidman (Chief Operating Officer).

v. Hamilton launched in July 2020 and it was anticipated that there would be $100 Million USD (all funds described within this Warning Notice should be taken as USD unless stated otherwise) in subscriptions. Mr. Zurlo was able to secure one investor who invested $500,000 prior to the three partners being embroiled in a disagreement, that would result in Mr. Zurlo being removed as a partner of HBC.

vi. The sole investor became aware of the feud between the partners and with the knowledge that Mr. Zurlo was no longer affiliated with Hamilton, the investor redeemed the shareholding of $500,000. The remaining partners expected an influx of subscriptions in January 2021 and when this did not materialise, it was determined that Hamilton was no longer a viable venture. The sole investor received 10% return on their investment for the period July 2020 to October 2020, as Hamilton returned $550,000.

vii. On 8 December 2020, Hamilton verbally informed Kane that it was ceasing operations, and then Hamilton subsequently followed up via letter confirming it had ceased operating.

viii. Kane has advised the Authority that:
   a) Neither Hamilton nor HBC are currently active;
   b) Kane was verbally advised by HBC on 8 December 2020, that its services with respect to Hamilton were no longer required however, HBC did not confirm this position in writing despite requests to do so;
   c) The letter of intent between Hamilton and EY was never signed, hence the audit work never commenced;
   d) Kane believed the only contract still in place for Hamilton was with TDL, noting that payment was overdue for its services;
   e) There were no subscriptions or redemptions outstanding;
   f) The remaining partners (Mr. Friedman and Mr Schreiber) returned their focus back to their US based entity, Claughton Capital LLC. (**Claughton**), that had more assets under management than the Hamilton.

ix. Hamilton, while initially appearing to be a stable venture, has not secured any investments due to a feud between the intended partners. The Authority has not been able to establish contact with Hamilton since November 2020.

x. An email was sent to Samuel Wilson, the primary contact person for Hamilton with the Authority, on 5 February 2021, advising that the 2021 annual billing process had commenced and sought confirmation that the invoice for the requisite annual business fee should be directed to Mr. Wilson's attention; this was the first billing cycle for Hamilton. Another email was sent on 18 March 2021, seeking an update on the status of Hamilton's net asset value (**NAV**) from November 2020 to 31 January 2021. Mr. Wilson failed to respond to either message.

xi. On 7 November 2022, the Authority established contact with Mr. Wilson who advised that Hamilton was closed abruptly when investor shareholding was redeemed suddenly. He confirmed that the NAV was decreased to nil. Mr. Wilson advised the Authority that he would secure operable contact details for Hamilton and provide them to the Authority.

xii. Hamilton launched July 2020 and to Authority's knowledge, ceased operations by November 2020, as indicated to the Authority by Kane. The Authority never received formal notification from the Fund that its service providers had resigned.

xiii. On 17 August 2022, TDL informed the Authority that neither TDL or Trocan, the CSP)of the Company, had provided any legal or CSP services for HBC or Hamilton, as both companies ceased to carry on business and ceased paying both TDL's and Trocan's fees for over 18 months.

xiv. The last NAV report provided to the Authority was for the period ended 31 October 2020 in the amount of $969,505. The sole investor had redeemed their investment, with the funds paid out in full in November 2020. There is no evidence to suggest that any investment activity has been carried on in relation to Hamilton for the past twelve months which is a basis for revocation pursuant to Section 27(c) of the IF Act. Due to the inability to establish contact, the Authority is unclear as to whether there are any assets remaining in Hamilton.

xv. Hamilton failed to comply with the requirement to prepare audited financial statements within 6 months of its year-end for the fiscal years ended 31 December 2020 and 2021 thereby breaching Section 14(1)(a) of the IF Act and Section 14(1) of the Investment Fund Rules 2019 (IFR).

xvi. Hamilton failed to submit its Statement of Compliance, as required by Section 26(1)(b) of the IF Act since the year end 31 December 2019.

xvii. The Directors of Hamilton are the same as those for HBC. Friedman and Schreiber appear to have, abandoned the operations of HBC and Hamilton since at least November 2020 and failed to comply with regulatory obligations for the entities, resulting in a number of breaches of the SEA with respect to HBC and in this instant case the IF Act and the IFR with respect to Hamilton.

xviii. Further, the Directors appear to have abandoned Hamilton and HBC in pursuit of other activity in Claughton which the Authority has learned is a US domiciled fund and investment manager which, as at 23 August 2022, remained an ongoing entity. Claughton appears to be operating from Manhattan, New York City, New York. Both Directors appear to be associated with this entity.

xix. On 2 November 2022, the Authority placed a telephone call to a New York telephone number associated with Claughton. This call was not answered; however, the voicemail recording was that of "Mort Friedman" who was not available to take the call. The Authority left a voicemail message for Friedman to return the call, with an associated direct dial telephone number; to date the call has not been returned.

xx. Pursuant to paragraph 1(2) of the Schedule of the IF Act, the Directors did not operate with soundness of judgment for fulfilling the responsibilities of their positions, particularly given that they abandoned Hamilton, and provided no direction to its remaining service providers and failed to surrender its authorisation to the Authority in accordance with the provisions for doing so in the IF Act. The conduct resulted in breaches of the IF Act as outlined above; and also with respect to HBC and its breaches of the SEA.

xxi. HBC's registration under SEA as an NLP was canceled on 13 November 2022, due to breaches of the SEA in three key areas, in that HBC:

a) Failed to comply with an obligation imposed under the provisions of section 16 of the SEA for the years 2020 and 2021;
b) Failed to comply with an obligation imposed under the provisions of Section 14 of the SEA for the years 2021 and 2022; and
c) Ceased to carry on business.

xxii. The Directors, when permitted, failed to provide any representations to the warning notice issued on 6 September 2022 to HBC which provided details of the Authority's intended decision to cancel the NLP registration of HBC. As a result, the cancellation of HBC's NLP registration was published on 22 November 2022.

xxiii. The Authority, based on the details set out above, is satisfied that the Company has ceased to carry on business, without notification.

xxiv. All of the aforementioned conduct are indicators that the Directors of Hamilton, who were also Directors of HBC, are not fit and proper persons for the purposes of executing the regulatory requirements in accordance with Section 14(1)(e) of the IF Act and the Minimum Criteria for Licensing of the IF Act. The Authority has attempted to communicate these failings with the Directors of Hamilton without success given that the said Directors appear to have abandoned the operations of Hamilton without properly winding it down.

SCHEDULE 2

Statement of Principles

Factors relevant to the decision to issue the Notice

1. The nature of the suspected breach, including:

a. The circumstances of the breach

The Authority has determined that the following provisions of Section 27 of the IF Act apply to the actions and activities of the Company in support of the grounds to revoke the authorisation of the Company, which are detailed in Schedule 1 above:

i. Section 27(a) – the Authority is satisfied that one or more of the requirements for authorization under Section 14 of the IF Act are no longer being satisfied by Hamilton;

ii. Section 27(b)(i) – the Authority is satisfied that Hamilton contravened a requirement imposed on it by or under the IF Act; and

iii. Section 27(c) – the Authority is satisfied that Hamilton has not carried on investment activity in relation to the fund for the previous twelve months.

b. The seriousness of the breach

With respect to circumstance **1(a)(i)** above, the Authority has considered that, the Company has not complied with the requirements for authorization namely that:

i. It has not prepared audited financial statements within 6 months of its year-end for the fiscal years ended 31 December 2020 and 2021 thereby breached Section 14(1)(a) of the IF Act and Section 14(1) of the Investment Fund Rules 2019 (**IFR**);
ii. It has failed to retain at all times an investment manager and fund administrator and failed to appoint an auditor as required by Section 14(1)(b) of the IF Act;
iii. As the operator of the fund, neither the Company nor its investment manager of record, HBC, are regarded by the Authority as being fit and proper persons to act as such as required by Section 14(1)(e) of the IF Act; and
iv. It has failed to comply with the requirement to prepare audited financial statements within 6 months of its year-end for the fiscal years ended 31 December 2020 and 2021 thereby breaching Section 14(1)(a) of the IF Act and Section 14(1) of the IFR, as required by Section 14(1)(g) of the IF Act.

With respect to **1(a)(iii)** above, as referenced in detail in paragraphs 2(vii) of Schedule 1, the Company's Administrator represented to the Authority that the Company has not conducted any business, at a minimum, for at least two years preceding the date of this Warning Notice.

c. *The duration and frequency of the breach*

The Company has not been compliant with the above noted provisions of Sections 14(1) of the IF Act and Section 14(1) of the IFR since 31 December 2020 as mentioned above at 1(b)(i). Additionally, the Company has not been compliant with Section 26(1)(b) of the IF Act since 31 December 2019 as mentioned above at 1(b)(ii).

2. The importance of the regulatory provision breached

The Company's Directors have failed to maintain contact with its service providers and the Authority for an extended period of time. Further, the Directors have failed to maintain the known means of contact (telephone and email) as provided by the Company to the Authority.

The requirement that Directors submit audited financial statements and Statements of Compliance, are mandatory requirements and failings in this regard are considered particularly egregious by the Authority and will not be tolerated.

3. The nature and gravity of the conduct

a. *Intention*

The Authority has determined that the Company failed to act in accordance with the IF Act and the IFR. Moreover, the Directors were either unaware or disregarded the requirements of the IF Act and the IFR despite numerous attempts by the Authority to contact the Directors to address the same.

b. *Negligence or recklessness*

Due to the duration of the Company's conduct and business practices, there appears to be an inherent disregard for complying with the requirements of the IF Act and the IFR.

c. *Dishonesty and criminality*

The Authority does not have any evidence to suggest that the Company has acted dishonestly or has been engaged in criminal activities.

4. The interests of stakeholders

The Authority considers that the interests of stakeholders are best served by revoking the authorisation of the Company as fund to ensure that any stakeholders are made aware that the Company is no longer registered under the IF Act and accordingly prohibited from operating as a fund.

5. **The benefits derived**
   The Authority is not aware whether any benefit has been derived.

6. **The reputation of Bermuda as a reputable financial center**
   The effective regulation of licensed financial entities, inclusive of those registered as fund under the IF Act, is an integral part of any reputable regulatory structure. It follows that the enforcement of that regulation where the provisions of the IF Act have been breached, by way of revocation of the authorisation of the Company, is a critical part of demonstrating that Bermuda is a reputable financial center.

7. **Systemic issues**
   The Authority believes that the Company is not acting, nor has it effectively attempted, to bring the Company into compliance.

8. **Cumulative matters**
   The repetition, delay and duration of the breaches further frustrate the breach.

9. **Previous actions by the Authority**
   The Authority has not taken any previous enforcement actions against the Company, however it has taken action against HBC, as recited in paragraph 2xxi above, which was operated by the same Directors as the Company.

10. **Compliance history**
    As described throughout this Warning Notice, the Company has not been compliant with Sections 13, 14 and 26 of the IF Act and it has not written any business, at a minimum, within the two years preceding the date of this Warning Notice.

11. **Complexity and concealment of the breach**
    The Authority does not believe that the breaches are complex but does believe that the Directors disregarded, whether intentionally or otherwise, the requirements of the IF Act and the IFR.

12. **Impact on other regulators or law enforcement**
    The Authority is not aware of any action being taken by other regulatory authorities in respect of the conduct complained of.

13. **Resources of the licensee**
    There is no financial penalty being imposed and therefore the Authority does not consider this to be a consideration.

14. **Prevention or cure of risk or harm**
    The Authority believes that by revoking the authorisation of the Company it will prevent the risks to future clients, not only by the Company but also by other registrants or licensees. The Authority considers the enforcement action is in accordance with the regulatory objectives of the IF Act.

SCHEDULE 3

Factors considered in reaching a conclusion that the decision should be published

1. **Deterrence**

   In the view of the Authority, the publication of the revocation of the authorisation of Hamilton will have a significant deterrent effect with the regulated community and will also serve to inform the community generally about the importance the Authority attaches to compliance with the obligations it imposes on any fund that is subject to the IF Act.

2. **The protection of stakeholders**

   It is considered that stakeholders are best served when the Authority's enforcement actions are publicized, in the absence of some intervening factor. The Authority has not been able to identify any such intervening factors. Further, the general public should be informed that Hamilton, operating through its Directors, are no longer authorised and permitted to operate a fund in or from Bermuda and that it is a criminal offence for any person to operate a fund in contravention of Section 5(2) of the IF Act.

3. **The extent to which publication will assist and inform stakeholders and the public generally about the relative gravity of the conduct and the action taken**

   Stakeholders and the public generally are best protected by a public demonstration of the importance the Authority ascribes to compliance with its regulatory regime and the gravity with which breaches of that regime are viewed by the Authority. This is particularly so when the breaches result in an authorised fund that has not complied with its regulatory obligations in accordance with its authorisation, granted by the Authority, for an extensive amount of time. It is important that stakeholders and the general public understand the significance that the Authority attaches to compliance with the IF Act, in particular with respect to the protection of investors and potential investors. It is considered appropriate to publicize the decision in relation to these breaches.

4. **The adverse effects of publication where the size and significance of the action is relatively minor**

   The Authority does not consider the breaches to be minor in nature for the reasons set out in Schedule 2 above.

5. **In addition, the Authority will in all cases consider whether it is in the public interest not to publish the decision**

   The Authority has not been able to identify any facts which would suggest that the public interest is not served by publication of the Authority's decision.