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## **Proposal to affected UTM clients**

Dear UTM client,

### **Introduction**

For some time now, UTM has purported to take steps to repay its investors, without providing substantive evidence to back its claims or indeed without giving credible explanation of the facts.

Legal action, which in our opinion will give you a chance of recovering your money, must be taken.

In this letter, we set out our view of the overall shape of such action and how it should be best organised. We propose that you engage us (and our colleagues in other relevant jurisdictions through us) on this basis. The letter is intended for both existing clients and those who are considering appointing us. Existing clients' fee payments on account will be taken into account as specified below.

Since as we explain below, we think that it would only be possible to take appropriate action if sufficient funding is available, we ask that you send this out to anyone who you know may have been affected by UTM, inviting them to consider joining the action.

### **Summary**

- We invite investors who wish to be represented by us to each contribute GBP 1,500 to a representation fund (the "**UTM Litigation Fund**") and to agree that the legal teams be entitled to a further 15% of the proceeds on success<sup>1</sup>
- The UTM scheme implicated multiple jurisdictions and recovery will also require action in these multiple jurisdictions
- Lawyers specialising in each relevant jurisdiction as well as lawyers specialising with various legal expertise will accordingly be engaged
- A considerable part of the activities of UTM occurred in Bulgaria. Funds were sent and received through the UAE, Poland and the Czech Republic. St Vincent, the Seychelles and the UK were used for creating corporate vehicles

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<sup>1</sup> Existing clients will have any prior payments recognised.

- We propose commencing proceedings against the companies and individuals behind UTM; against any facilitators / contributors; securing funds and information from third parties and sourcing information and procuring action from the public authorities, among others
- We have been working hard on preparing the ground for these, so that actions can be taken swiftly once the UTM Litigation Fund is in place
- NBLO's lawyers will carry out legal work relating to Bulgaria and certain English-speaking jurisdictions and project-manage and oversee the work of lawyers and other professionals from all involved locales
- We request you to distribute this letter to others who you know are affected, as costsharing and a wider involvement are and continue to be of help
- We propose that the gross share each UTM investor will be entitled to from the recovered funds is equal to the share of their claim out of the total claims we represent.

### **Relevant considerations and taking legal action**

We think the following points are reasonable to make, or to remind UTM investors of:

1. Irrespective of whether or not UTM is proven to have been a fraud, recovering your funds will take time and require determination and sustained effort.
2. Based on the information we have, we believe there is a chance for you to recover or be compensated for some or all of your loss<sup>2</sup>.
3. It is therefore appropriate for one or more groups of UTM clients to take legal action.
4. There are well over 1,000 investors in UTM whose money has been taken. The money lost is a considerable loss for a large number of affected individuals (and for some we are told a dramatic loss). There are challenges which this large number involves, but also strength that can be derived from it.
5. Successful recovery will require considerable legal and associated work<sup>3</sup>.

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<sup>2</sup> This assessment is based on our analysis of the information known so far, and experience. As we say below, we feel it is important to re-assess the chances of success continuously in order to deliver a good ratio of cost vs expected benefit to those affected. Specifically, we will carry out this before starting litigation and before each of its key phases. We expect to be able to give a finer assessment of the chances of success as the cases develop.

<sup>3</sup> Legal work may consist of the following: liaising with clients, client representatives and client groups as well as each of the above in respect of potential clients, receiving and confirmation of instructions, coordination (external and internal), liaison with government and regulatory officials, appointment of and liaison with investigators and inquiry agents, research into legal precedent and practice, preparation of legal and court documents (including applications, witness statements/affidavits and similar) and all functions supporting the above, collecting and distributing information and updates, preparing pleadings and oral argument in court and in front of other bodies, liaising with lawyers from other jurisdictions, making, receiving and considering offers of settlement, negotiating

6. Successful recovery also requires mobilising multiple inputs and being resourceful. One needs to combine the efforts of lawyers, private investigators, government bodies (courts, law enforcement agencies, regulators), third parties who hold valuable information, valuable witnesses (e.g. former UTM employees), etc.
7. Because of the points made immediately above (volume of cases and multiplicity of work streams), there is also a coordination problem: effort needs to be managed and focused.
8. Further, while important progress has already been made by volunteers who have generated important information and further such may be made in future, and help has been and may further be had from government, over the life of the effort, an other than voluntary organisation will likely be required.
9. A large portion of what remains to be done relies on private initiative rather than that of governments, and it will be also be fair to assume that the time volunteer UTM investors have available in future may be less than they have been able to allot so far and that specialised professional skills will need to be tapped.

#### **What recovered proceeds will investors be entitled to?**

10. We believe that a fair method of distribution is that the gross share (i.e., before any costs or fees are subtracted) that each UTM investor is entitled to from any recovered funds should equal to the share that their claim has in the total claim basket we represent. To illustrate, if you have lost \$30,000 and we represent 200 claims, each on average of \$20,000, your share of the total claimed amount will be 3/400 parts or 0.75%. If we recovered \$1,500,000, you would be entitled to \$11,250<sup>4</sup>.

#### **Risks incidental to litigation**

11. Irrespective of how precisely the effort of various professionals involved is compensated (we return to this below), your representatives will need to have their costs covered. These costs will generally be recoverable from the defendants, but at least a part of your costs may reduce the net recovery.
12. In addition, disbursements<sup>5</sup> need to be budgeted for.

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with the opponent and third parties, identifying and securing witnesses and evidence, analysing written and other information, etc.

<sup>4</sup> The figures used in this example are intended to illustrate the method we propose to use only. We may recover more or less in total, and your proportion of the total will of course depend on the total amount of claims and their sizes, as well as your total claim.

<sup>5</sup> E.g., court fees

13. In all cases where one starts legal proceedings, one needs to convince the courts that one's claim has merit. Under the principle of 'costs follow the event'<sup>6</sup>, in the event that a claim fails, the claimant may be asked to cover the costs of the defendant (and absorb their own). We do not expect this to be an issue for the majority of the cases we intend to bring and specifically for those against the UTM defendants.
14. Further, where there is a need to freeze funds or take action against third parties, you may be asked to guarantee to third parties that they are not going to suffer a loss (e.g., by being sued by a person whose account is frozen). Such funds are then repaid on success in the main claim or if the third party or other respondent cannot prove loss.
15. All of the above risks are normal to litigation. It is unlikely that you will be asked to cover the UTM defendants' costs. We will advise you in detail when any risks become relevant in future, but wanted to tell you about them in general in advance.

## **Coordination and collaboration**

### *Sharing costs and accountability*

16. Cost-sharing is sensible. This tends to reduce the cost per client and allows a larger budget which in turn allows doing more.
17. While each UTM investor wishes to recover what has been lost, there are also differences between investors:
  - a. The amount of money lost varies
  - b. How much the amount matters for each investor varies
  - c. Each investor has a different willingness and availability to spend time and be involved with the process of recovery
  - d. Our past experience shows that recovery can take a long time, and your personal circumstances might change even further over the period.
18. To benefit from cost-sharing, there must be a system that respects these differences; if not everyone is involved directly or equally, it also becomes doubly important to use accountability to ensure that the interests of some are not unfairly prioritised over others'.

### *What are the jurisdictions involved?*

19. The UTM scheme was multi-national in many ways – in the investors affected, laws and regulations that were triggered or will now be triggered, in the scheme's real

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<sup>6</sup> Which will apply in most if not all relevant jurisdictions

and supposed locations, etc. These multiple jurisdictions will be involved in recovery to various degrees, but all will be important to the ultimate success.

20. The specific states are multiple and range from Bulgaria to Poland, from the Czech Republic to Israel, and from St Vincent and the Grenadines and the Seychelles to the UK.
21. Of relevance are potentially all jurisdictions in which UTM set up companies which dealt with UTM investors, in which money was held, deposited or paid out of, and all the jurisdictions of UTM's accessories (those who consciously or not helped UTM). There are also those jurisdictions in which regulators are willing (or required) to take an interest (because the country's financial system was used by the scheme, or because some of the victims are its residents or nationals).

#### *What is the place of Bulgaria?*

22. The UTM scheme claimed that its main office address was in Bulgaria all along. Several addresses in Bulgaria were shown on its website in 2014-2016. More recently, it has said that it had been in fact present in Bulgaria through a third party. A key UTM company, CFD Global, was registered in Bulgaria. Practically all UTM agents used Bulgarian mobiles and land lines. Further, the Bulgarian Financial Services Commission has investigated UTM and referred it to the country's serious crime agency and police with which we are liaising. Key witnesses are associated with Bulgaria: there is information that while employees of UTM used assumed nonBulgarian names (e.g. Oscar Green), they were native-level Bulgarian speakers. Bulgaria will be a key jurisdiction in the forthcoming investigations and legal proceedings. It will not be the only one, as we state above, but will likely be one of the most important.
23. NBLO is a law firm with a multi-jurisdictional presence and experience. Although our main office is in Bulgaria, we regularly advise on multi-country disputes and instruct and supervise lawyers from a large number of other jurisdictions.
24. NBLO has a representative office in London and one of NBLO's key lawyers involved is also a member of the English Bar, with significant experience in the common law jurisdictions involved.

#### *Coordination of legal teams*

25. The legal team which will be key to successful recovery will need to be diverse and include lawyers:
  - a. With different specialties (e.g., asset recovery, criminal law, general civil litigation, banking law, regulatory law)
  - b. From different jurisdictions
  - c. With varying degrees of seniority to optimise costs

26. Certain elements will need to be true of all the lawyers involved:
- a. The lawyers appointed will need to be very high quality
  - b. Each group in the team will need to be rewarded fairly
  - c. Legal teams working on the same or different aspects must at the very least coordinate efforts and the lawyers involved should be used to working with team members from other jurisdictions.
27. It is also important for legal costs to be monitored and managed carefully both in advance (where possible) and retrospectively. NBLO has strong experience in project management of this type on behalf of clients.

*How we propose to collaborate with other firms?*

28. We see advantages if one group of lawyers coordinates with clients and is in charge of liaising with them. This does not mean that they necessarily have to be from the same law firm - but this will avoid unhelpful friction. At the same time, as long as multiple law firms which have client relationships can agree on the principles involved, they can collaborate very usefully.
29. We are in advanced discussions with law firms in the UK, UAE, Poland, Israel and St Vincent to secure their involvement. These firms include leaders in the relevant specialities in their jurisdiction and all of them are well-used to working with lawyers from other jurisdictions on multi-national matters as required.
30. We will shortly be in a position to announce these partnerships.

**Costs structure**

*Legal fees to be part-success-based to align interests and defer costs*

31. To align the interests of lawyers and clients even more closely and defer as much of the costs as possible, the great number of individuals affected by UTM needs to be turned into an advantage.
32. Some fees would be payable as the work is done or a short time in advance of it from the UTM Litigation Fund we propose, and the rest – on success<sup>7</sup>.

*Specific financial proposal*

33. Specifically, we propose that:

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<sup>7</sup> This approach would work with most lawyers, but to get the best lawyers in some of the jurisdictions may require paying them in full as work is done: e.g., because the jurisdiction's involvement is small but important, or because a firm is so sought-after that they are unable to offer their time otherwise.

- a. each client appointing us pays GBP 1,500 upfront into a UTM Litigation Fund (existing clients of ours will have their prior payments taken into account<sup>8</sup>) and
- b. all clients agree to pay us and the lawyers working with us 15% of the proceeds in the event of success.

34. Our estimate is that the part of fees which must be paid upfront together with the disbursements budgeted for make up US\$ 240,000. Of this \$150,000 is earmarked for fees and \$90,000 for disbursements. At an implied average of ~\$300 an hour, this would mean ~500 fully-paid equivalent hours of legal work can be paid for<sup>9</sup>.

*What part of this will be received by NBLO?*

35. We propose to be paid a blended rate of \$100 per hour for our work including our work managing the process, together with a share of the 15% of recovered sums to compensate for the discount from our normal rates, and for the uncertainty and risk that we will share with clients. We aim to negotiate similar arrangements (a discount to usual rates combined with a success uplift or kicker) with other law firms.

36. The above terms relating to our compensation will be set out in an Engagement Letter which we will circulate to those who confirm appointing.

*Does our proposal work for those who can ill-afford the costs?*

37. We are aware that many UTM investors may find considerable legal fees unaffordable or may feel that it does not make sense to contribute more than a certain sum if they have invested, say, \$10,000 (the minimum which was permitted by the UTM scheme). This is one reason why we are proposing the low initial fixed payment with a success-based balance.

*Do we expect that \$240,000 for fees and disbursements will be fully sufficient?*

38. No. We expect that some of the legal fees will be paid as actions start and some will be paid on success (as above). The \$150,000 figure is an estimate of the financial value of the amount of payable work that cannot be deferred or made conditional. This is intended as an estimate based on our professional experience and is the lowest amount which we believe can realistically be required for conducting the work needed.

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<sup>8</sup> We will write separately to existing clients to clarify the amount they should deposit.

<sup>9</sup> Legal fees vary from one market to another and from one firm to another and depend on the level of fee earners involved. For partners or barristers in the jurisdictions involved they range from \$200 (Bulgaria, lowest) to \$1,000 (UK/St Vincent, highest). For associates, rates may be from \$150 to \$600 and for paralegals – from \$100 to \$400. The figure of \$300 is what we expect to be the weighted average rate.

39. Within reasonable limits, the more successful the fundraising is – the more funds that are collected and saved up for the purpose of these legal actions – the better equipped the legal team will be to pursue the claims to success.
40. As long as the funds are safeguarded and spent wisely, and constant assessments are made of the chances of success as these change over time, the interests of the investors will be protected.

*How did we arrive at the estimate of \$90,000 for disbursements?*

41. This is an estimate and is based on our experience. We have budgeted \$50,000 for court fees and charges; \$35,000 for private investigators; \$5,000 for other expenses (including translations, certifications, legal research fees etc). As above, these are minima and we would wish to raise more.

*How do we propose to organise and keep the funds?*

42. We suggest that funds are transferred to a lawyers' client account and disbursed out of this as each cost arises and under the governance of NBLO. We intend to regularly update clients as a whole on the expenditure. If funds are in excess at any final point (a situation that is unlikely, we will devise a method to efficiently return these in proportion to what has been paid in by each investor).

*What if we do not reach the minimum? At what time would we begin pursuing our strategy?*

43. Some of the elements of the strategy we have in mind can be worked on without the full amount being raised. Obviously, we are already working on existing and prospective clients' behalves to lay the ground. We intend to start implementing these initial elements as soon as we have a minimum of, say, \$30,000. However, it should be clear that to have a real chance of success, it will be necessary to have at least the amount of \$240,000 and investors should not feel tempted to wait and see.

*What if we exceed the minimum we have estimated?*

44. As we state above, the \$240,000 is the minimum for an effective strategy to be implemented (in addition to work to be conducted on a success basis). However, it is quite possible, indeed likely, that further opportunities may arise, which will benefit from additional fundraising. As an example, it may be possible to apply for a freezing injunction over a bank account. Generally, such injunctions require "fortification" (a sum of money deposited with a court) before they can be issued. If it is in clients' interests, we would recommend these further contributions and would then need to raise the funds to pay into court. Such funds would not be (save in exceptional situations) at risk but will be locked in for some time. If the funds for these are available upfront, it will be easier than if they have to be raised often at short notice.

### *Predictability of total budget*

45. In the nature of litigation, it is impossible to be quite certain in advance what the cost and investment of time and effort will be. There are too many branching possibilities. If anyone is suggesting otherwise (with some exceptions), they are not being quite honest. The key point is that the investors should have a fair assessment of what the chances of success are insofar as possible, and how their funds are spent. They would not contribute further if they were not convinced of progress and the future success.

### *Representation for investors contributing to budget*

46. We will unfortunately not be able to undertake to represent any investors who are unable to cover the upfront fees set out above or unwilling to accept the success component. Anyone unrepresented will be unable to participate in the division of any funds we are able to recover. To the best of the team's knowledge, in the target jurisdictions, there is no representative action structure (such as a U.S.-style class action) which means that only those who join any claims as parties will be able to recover.

47. We expect that the time and effort involved in organising investors (and the opportunity lost while not commencing action), will increase if there are investors who should in principle be able and willing to commit to joining this action, but prefer to wait and see (e.g., to have more information on how the action progresses). This would be understandable but we feel that it imposes a cost on the group, and wish to pass on that cost to those adopting the approach.

### *Pro bono representation in exceptional circumstances*

48. We are not generally able to take on clients on this matter pro bono, but subject to our reaching the target number of clients above, will be happy to review any representations where personal circumstances might merit acting pro bono (as to the upfront fee and potentially any top-up payments required). This will be reserved to truly exceptional circumstances. If you think you may be in such circumstances, please email [utm.probono@newbalkanslawoffice.com](mailto:utm.probono@newbalkanslawoffice.com) outlining why you should be assisted pro bono and what your exceptional circumstances are.

## **How we intend to communicate**

### *Methods of communication*

50. We intend to communicate with you in a variety of ways, including:

- E-mail
- This will be used to convey information or receive instructions individually
- Website

- We have set up a dedicated website on which we will post regular general updates. Please visit [www.utmarketsconcerns.com](http://www.utmarketsconcerns.com)
- Conference calls
- We will set up regular conference calls to answer questions and update
- Meeting in Dubai
- Once we start, the legal teams will offer to meet in Dubai with those who wish to meet in person, we expect in late November.

Social media: we may set up a social media presence in addition to the above.

### *Language*

51. We understand that most of those affected are highly mobile international individuals, who use English in their professional and personal daily lives. We therefore intend to communicate with all clients in English. If you are aware of someone who will find this difficult, please do refer such persons to us nevertheless. We have in-house capability in a number of languages in addition to English, and will be able to cover more where there is a genuine need and based on an assessment of practicality with the help of our colleagues in other jurisdictions.

### **Litigation Strategy**

52. We cannot be too detailed at this stage for two reasons: (i) some of the actions we intend to take may not be obvious to UTM and other defendants/respondents, and it will be in your interests as a group for the information about these to be safeguarded.

53. The situation will develop dynamically and we will be able to update you (insofar as possible) as we proceed. We will take specific decisions jointly with the most experienced and qualified members of the legal team. However, there are a number of clear lines which need to be pursued.

54. Some of the methods which will be used are:

- Civil law claims against individuals and/or companies identified as connected to UTM
- Regulatory investigations
- Criminal complaints, and where appropriate in future, prosecutions, together with associated compensatory actions targeted against identified criminal property
- Third party claims against companies whose liability can be engaged as having facilitated or been responsible for UT Markets having caused you loss.

55. At this stage, all of the possible legal actions in these categories need to be continually re-evaluated, which we are already doing.

56. Each type of legal action depends on a number of factors and requires a number of pieces of evidence to be successful. For instance, some of the civil actions we describe above may require reliably identifying the individuals or companies behind

UT Markets. We are working on identifying and preparing evidence that will be required.

57. As the matter progresses, we will focus our efforts and resources on those actions that are most promising in the light of the then most up-to-date analysis and evidence.

58. As it will be appreciated, there are multiple legal details involved in deciding whether to bring a specific proceeding and how to pursue it, which we are considering and on which we will be advising our clients. We cannot deal with these here, but instead we now set out a number of themes which we think will give an indication of what recovering the funds will involve.

### **Forwarding to others who may be affected**

59. For the reasons above, we will need to reach the funding thresholds. It will however be helpful to collect more than this to give us more freedom of manoeuvre. We therefore ask that you forward this to as many others whom you know are affected as possible. Since it is very unlikely that recovery will come from voluntary sidearrangements with UTM (even if these were possible/lawful), this will give you the best chance individually as well as ensuring the cost of legal action is the lowest possible for you.

### **How to appoint us as your lawyers**

60. If you want to instruct us as your lawyers, we would like to kindly ask you to:

- **answer the questionnaire**, which you can find in [this link](#) to help us have a better picture of your case
- **sign the Letter of Engagement** which we will send you after you complete the questionnaire
- **sign the Power of Attorney (POA)** which we will send you after completing the questionnaire
- **send us a scanned copy of your passport and proof of address** for KYC (Know Your Clients) purposes. As EU-based lawyers we are required for regulatory reasons to identify our clients by name and address
- **pay funds** into the account which we will specify when we circulate a Letter of Engagement

At all times, please feel free to contact us via email at [utm@newbalkanslawoffice.com](mailto:utm@newbalkanslawoffice.com) or by phone at +359 2 950 6239 with any questions.

Yours faithfully,  
New Balkans Law Office