



## Investor Compensation Fund

Vs 2.0 Oct 2015

Kawase is a trade name of TopFX Ltd, which is registered as a Cyprus Investment Firm (CIF) and licensed by the Cyprus Securities and Exchange Commission (CySEC) under licence number 138/11 in accordance with the Markets in Financial Instruments Directive (MiFID).

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**INFORMATION TO CLIENTS OF KAWASE IN RELATION TO THE INVESTOR COMPENSATION FUND FOR CUSTOMERS OF CYPRIOT INVESTMENT FIRMS (CIFs)**

## 1. INVESTOR COMPENSATION FUND

Kawase - trade name of TopFX LTD (hereinafter called the "Company") , whose headquarters are at 19 Stratigou Timagia, 3rd Floor, 3107 Limassol, Cyprus, authorized and regulated by the Cyprus Securities and Exchange Commission (CySec) under license number 138/11.

The Company is a member of the Investor Compensation Fund (the "Fund") for Customers of Cypriot Investment Firms (CIFs) and other Investment Firms (IFs) which are not credit institutions.

The Fund was established under the Investment Firms (IF) Law 2002 as amended (the "Law") and the Establishment and Operation of an Investor Compensation Fund for Customers of CIFs Regulations of 2004 (the "Regulations") which were issued under the Law.

The Fund constitutes a private law legal entity and its administration is exercised by an Administrative Committee of five members, who are designated for a three-year term. The Fund has been operating since 30 May 2004.

## 2. COVERED SERVICES

The Fund covers the following investment and ancillary services of the Company:

1. Reception and transmission of orders in relation to one or more financial instruments.
2. Execution of orders on behalf of clients.
3. Portfolio Management
4. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management.
5. Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.
6. Foreign exchange services where these are connected to the provision of investment services.

in the following financial instruments:

- a) Transferable securities.
- b) Money-market instruments.
- c) Units in collective investment undertakings.
- d) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash.

- e) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event).
- f) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market or/and an MTF.
- g) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in paragraph 6 of part III of the Law and not being for commercial purpose, which have the characteristics of other derivative financial instrument, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls.
- h) Derivative instruments for the transfer of credit risk.
- i) Financial contracts for differences.
- j) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contract relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Part, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

### 3. COVERED CLIENTS

The Fund covers the clients of the Company except those who are included in the following categories of investors:

1. The following categories of Institutional and professional investors:
  - a) Investment Firms (IFs),
  - b) Legal entities associated with the Company and, in general, belonging to the same group of companies,
  - c) Banks,
  - d) Cooperative credit institutions,
  - e) Insurance companies,
  - f) Collective investment organizations in transferable securities and their management companies,
  - g) Social insurance institutions and funds,
  - h) Investors characterized by the Company as professionals, upon their request
2. States and supranational organizations.
3. Central, federal, confederate, regional and local administrative authorities.
4. Enterprises associated with the Company. Associated enterprises means companies belonging to the same group as well as

natural persons who directly or indirectly control that legal person or its parent company, holding a minimum percentage of 20% of the share capital or voting rights and their associates.

5. Managerial and administrative staff of the Company.
6. Shareholders of the Company, whose participation directly or indirectly in the capital of the Company amounts to at least 5% of its share capital, or its partners who are personally liable for the obligations of the Company, as well as persons responsible for the carrying out of the financial audit of the Company as provided by the Law, such as its qualified auditors.
7. Investors having investments in enterprises connected with the Company and, in general, of the group of companies, to which the Company belongs, or positions and duties corresponding to the ones listed in paragraphs (5) and (6) above.
8. Second-degree relatives and spouses of the persons listed in paragraphs (5), (6) and (7), as well as third parties acting on behalf of these persons.
9. Investors involved in money laundering activities or investors responsible for the financial difficulties of the Company or have contributed to the worsening of the Company financial situation or which have profited from these facts/activities.
10. Companies (investors) which due to their size are not allowed to draw a summary balance sheet in accordance with the Companies Law or corresponding law of a Member State.

In the cases of paragraphs (5), (6), (7) and (8), the Fund suspends the payment of compensation informing the interested parties accordingly, until it reaches a final decision as to whether such cases apply.

## 4. OBJECT OF THE FUND

The object of the Fund is to secure the claims of the covered customers against the members of the Fund (i.e. Kawase) by the payment of compensation for their claims arising from the covered services provided by its members, so long as failure by the Company to fulfill its obligations has been ascertained.

The term failure denotes the inability of the Company:

- a) either to return to its covered customers funds owed to them or funds which belong to them but are held by the Company, directly or indirectly, in the context of the provision by the Company to the said customers of covered services, and which the latter requested the Company to return, in exercising their relevant right, or
- b) to hand over to the covered customers financial instruments which belong to them and which the Company holds, manages or keeps on their account, including circumstances where the Company is responsible for the administrative management of the said financial instruments.

The payment of compensation by the Fund to the customers of its members is subject to the existence of a well-founded claim by the customer against the member of the Fund.

## 5. Preconditions for the initiation of the compensation payment procedure by the Fund

The Fund initiates the compensation payment procedure when at least one of the following prerequisites is fulfilled:

- a) The Cyprus Securities and Exchange Commission has determined by resolution that the Company is for the time being unable to meet its obligations arising from its investors-customers' claims, in connection with the covered services it has provided, as long as such inability is directly related to the Company financial position which has no realistic prospect of improvement in the near future,  
  
or
- b) A judicial authority, has on reasonable grounds, directly related to the financial position of the Company, issued a ruling which has the effect of suspending the investors-customers' ability to lodge claims against the Company.

The fulfillment of the above precondition is presumed:

- a) If the Company submits to the Fund or to the Cyprus Securities and Exchange Commission a written statement declaring its failure to fulfill its obligations toward its clients;
- b) If the Company files an application for liquidation in accordance with the provisions of Part V of the Companies Law;
- c) If the Cyprus Securities and Exchange Commission has revoked or suspended the Company's authorization to provide investment services and ascertains that the Company is not expected to be in a position to fulfill its obligations toward its clients in the near future, for reasons which do not concern a temporary lack of liquidity which can be dealt with immediately.

The Cyprus Securities and Exchange Commission decides on whether the above cases applies, either ex officio or upon request submitted to it by a covered client of the Company, the Fund or other competent supervisory authority and any other person with legitimate interest.

The Cyprus Securities and Exchange Commission issues its decision on the commencement of the compensation payment procedure by the Fund within a reasonable timeframe upon ascertaining the fulfillment of the preconditions for the issue of such decision, and publishes the said decision in the Official Gazette of the Republic as well as on its website on the Internet.

In order to reach a decision the Cyprus Securities and Exchange Commission may request by the Company to set out its views within a short deadline so fixed, which cannot be less than three working days from the date of the invitation to set out such views.

The Cyprus Securities and Exchange Commission may extend, by up to three months, the issue of its decision on the commencement of the compensation payment procedure by the Fund. The extension is decided upon in case of lack of certainty on whether the failure by the Company to fulfill its obligations is reversible or not and, in particular, when such failure is mostly due to a liquidity problem faced by the Company, and which is reasonably expected to be settled.

The Company is entitled to request the Cyprus Securities and Exchange Commission to issue a decision on the extension of the deadline explaining the reasons for the submission of such request.

The Cyprus Securities and Exchange Commission takes its decision considering the guarantee of the smooth operation of the capital market and upon weighting the interests of the clients and the Company.

The Cyprus Securities and Exchange Commission may prohibit the Company from disposing of specific assets, with the objective of securing the interests of the clients and in general its lenders, or take, at its discretion, other appropriate measures for the attainment of this objective.

## 6. Procedure relating to the invitation of covered clients to submit applications

Upon issuance of a decision by the Cyprus Securities and Exchange Commission or by the Court on the commencement of the compensation payment procedure, the Fund publishes in at least three national newspapers an invitation to the covered customers to make their claims against the Company arising from covered services, designating the procedure for the submission of the relevant applications, the deadline for their submission and their content. The publication should contain at least:

- a) The name and address of the headquarters of the Company;
- b) The deadline for the submission of compensation applications, which cannot be less than five months and greater than nine months from the last publication;
- c) The mode and address of submission of applications;
- d) The address at which investors may be informed about the exact content of the applications to be submitted, and get the relevant form provided by the Fund

The Cyprus Securities and Exchange Commission, the Cyprus Stock Exchange (CSE) and any interested members will enter the publication on their website during the entire deadline for the submission of applications. Non-compliance on behalf of the above persons with this obligation shall not result in the nullity of the process but it shall only result in the imposition of sanctions.

In exceptional cases, the Fund, with a notice subject to the publicity conditions defined above, may extend the deadline for the submission of compensation applications up to three months.

In case a covered client, not being its fault, was neither informed about the invitation to submit compensation applications nor in a position to submit within the deadline this application, the deadline is interrupted.

Indications that the covered client has an impediment for which he is not responsible and which forms a reason for the interruption of the deadline for the submission of a compensation application include especially:

- a) Proved absence of the covered client abroad for a period which includes at least half of the deadline for the submission of a timely

application;

- b) Illness confirmed by a doctor that it forms a serious impediment for the submission of an application for a period which includes at least half of the deadline for the submission of a timely application;
- c) Client's stay in a correctional institution for a period which includes at least half of the deadline for the submission of a timely application

In case of interruption of the deadline, the deadline starts again from the day the reason of its interruption ceases to exist.

A covered client, for whom there exists a reason to interrupt the deadline, may not submit a compensation application after eight months from the expiration of the deadline.

A covered client who submits an application late to the Fund for the payment of compensation is obliged to submit, in addition to the information forming the necessary minimum content of the application, a solemn declaration stating the reason for which he was not in a position to claim compensation in time attaching the necessary supporting evidence to prove his allegations.

## 7. Content of compensation applications submitted to the Fund

The compensation applications of covered clients with which they make their claims against the Company are submitted to the Fund in writing and must include:

- a) The name of the claimant;
- b) The address, telephone and fax numbers as well as any email address of the claimant;
- c) The client code that the claimant had for the Company;
- d) The particulars of the covered services agreement between the Fund and the claimant;
- e) The type and amount of the alleged claims of the claimant;
- f) The exposition of the particulars from which the alleged claims of the claimant and their amount are derived.

The Fund may ask for more information to be included in the compensation application, which it communicates with its publication in at least three newspapers of national coverage as well as in the Official Gazette of the Republic, and puts a catalogue with this information at the disposal of investors, at its offices and/or at the offices of the member of the Fund.

## 8. Procedure relating to the recording and evaluation of the alleged compensation claims

The Fund will designate at least one qualified auditor and at least one lawyer with knowledge on capital market issues, who after having checked initially the above prerequisites they will evaluate the claims submitted to the Fund and recommend to the Administrative Committee their acceptance in total or in part or their rejection.

The above persons in order to evaluate the applications:

- a) Ask from the Company to express its opinion about the grounds of the claims alleged by the claimants and, in case of doubt, to present the relevant supporting documents;
- b) Evaluate, based on the information they have, the applications, determining the amount of the compensation for each claimant.

The above persons will have full access to the books kept by the Company, in order to accomplish their work, and they are obliged to exhibit confidentiality against any third party as to the information coming to their knowledge in the exercise of their duties (provided that this obligation is disregarded in order to render possible the exercise of their duties and also as far as the Securities and Exchange Commission is concerned).

The Administrative Committee will take control where:

- a) The claimant falls within the category of covered clients;
- b) The application was timely submitted;
- c) The claim(s) arise out of transactions involving conviction of the claimant of a criminal offence pursuant to the Prevention and Suppression of Money Laundering Activities Law of 2007;
- d) The conditions of the Law and of the Regulations for the valid submission of compensation applications are fulfilled.

The Administrative Committee rejects the application in case the claimant does not fulfill the above conditions or, if at the Administrative Committee's discretion, there exists at least one of the following reasons:

- a) The claimant used fraudulent means in order to secure the payment of compensation by the Fund, especially if it knowingly submitted false evidence;
- b) The damage suffered by the claimant substantially derived from concurrent negligence or offence on its behalf in relation to the damage it suffered and to its underlying cause

The Administrative Committee during the examination of the applications takes into consideration the recommendations of the above persons (qualified auditor and lawyer) and decides on the applications submitted to the Fund determining the amount of the compensations for each covered client-claimant.



The Fund may demand at any time from a covered client to return the compensation paid to it, if it finds out subsequently that there was a reason to reject its application.

## 9. Fixing of the amount of payable compensation

To ascertain the claims of a claimant against the Company, as well as any counterclaims of the Company against the claimant, the books kept and the particulars issued by the Company as well as the supporting evidence produced by the claimant are taken into consideration.

The amount of compensation payable to each covered customer is calculated in accordance with the legal and contractual terms governing the relation of the covered customer with the Company, subject to the rules of set-off applied for the calculation of the claims between the covered customer and the Company. The calculation of the payable compensation derives from the sum of total established claims of the covered customer against the Company, arising from all covered services provided by the Company and regardless of the number of accounts of which the customer is a beneficiary, the currency and place of provision of these services.

The valuation of the financial instruments pertaining to the compensation payable to the covered client is carried out based on their value at the day:

- a) Of publication of a court ruling which has the effect of the suspending the investors ability to lodge claims against the Company based on reasonable grounds directly related to the financial circumstances of an Investment Firm (i.e. Kawase) which has subscribed to the Fund;
- b) Of publication of the decision of the Cyprus Securities and Exchange Commission that an Investment Firm (i.e. Kawase), which has subscribed to the Fund, is unable to meet such of its duties as arise from its customers' claims in connection with the covered services it has provided, as long as such inability is directly related to its financial circumstances in respect of which no realistic prospect of improvement in the near future seems foreseeable.

If the amount of the claim determined, exceeds the amount of Euro 20.000, the claimant receives as compensation only the amount of Euro 20.000.

The investment firm (i.e. Kawase) providing services to its clients through a branch situated in a third country, the amount of the maximum compensation payable to its clients comes up to the lump sum paid by any investor compensation scheme in operation in the third country, without however this amount exceeding the amount of €20.000 per client.

If in the third country mentioned above, an investor compensation scheme is not in operation, the maximum amount of payable compensation comes up to Euro 3.417 per client.

Upon completion of the valuation, the Fund:

- a) Issues minutes listing the customers of the Company who are entitled to compensation, along with the amount of money each one of them is entitled to receive and communicates it to the Cyprus Securities and Exchange Commission and the Company within five working days from its issue and

- b) Communicates to each affected customer its finding no later than fifteen days from the issue of the minutes, determining the total compensation amount this customer is entitled to receive.

The Cyprus Securities and Exchange Commission, in order to ensure that the provisions of the legislation in force in the Republic are fulfilled during the examination of the applications and the calculation of the amount of the corresponding compensation per covered client, may:

- a) Request from the Fund, the Company and the claimant to produce information and particulars,
- b) Run the investigations required, implementing the relevant provision of the Cyprus Securities and Exchange Commission (Cyprus Securities and Exchange Commission Law of 2009) Laws.

The claimant, to whom the Fund communicates the total compensation amount to which he is entitled, in case he disagrees with the Fund's decision, has the right within ten days from the communication of the decision to appeal to the Cyprus Securities and Exchange Commission, justifying sufficiently his alleged claim.

The Fund is obliged to pay to each covered customer – claimant the compensation within three months from sending to the Cyprus Securities and Exchange Commission the minutes with the compensation beneficiaries. The payment of the compensation by the Fund is deposited to a bank account of the covered customer-claimant designated by the latter in writing to the Fund.

For any further information regarding the Fund, please contact our Office at: **Tel.: + 357 25028079, Fax: + 357 25352266** or e-mail: [backoffice@kawase.com](mailto:backoffice@kawase.com)

or

the offices of the Administrative Committee of the Fund, at the following address:

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