

**STICHTING VOLKSWAGEN INVESTOR SETTLEMENT (*IN LIQUIDATION*)**

**ANNUAL REPORT**

**FOR THE YEAR 2019**

**Stichting Volkswagen Investor Settlement *in liquidation***

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## Stichting Volkswagen Investor Settlement *in liquidation*

ANNUAL REPORT FOR THE YEAR 2019

### 1. DIRECTORS REPORT

#### **Dissolution of the Foundation**

On 27 May 2020, the Board passed a resolution to dissolve the Foundation. As a consequence, all activities have ceased as of that date.

The Foundation was incorporated in early 2016 and we believe that the strategy we developed then was sound. We understood that it depended on Volkswagen's interest and possible willingness to engage in a global settlement. The Dutch Collective Settlement Act (*Wet Collectieve Afwikkeling Massaschade*) has no mechanism to force Volkswagen to settle with investors. Moreover, the Foundation has no authority from its participants to pursue claims against Volkswagen in the Netherlands or Germany. Thus, our strategy always depended on the creation of an outside incentive for Volkswagen to seek global peace through the Foundation. However, the U.S. class action, the litigation in Germany, and public opinion have not brought Volkswagen to the negotiating table. As a result, today we no longer see a realistic path towards a settlement.

After careful consideration and taking into account the feedback from our participants we have therefore decided to dissolve the Foundation. This has been discussed with the Supervisory Board in a Combined Meeting in January 2020 and in May 2020 the Board decided to dissolve the Foundation and to propose to the Supervisory board to approve this decision. On 23 May 2020 the Supervisory Board gave its prior written approval. The Board has instructed Stibbe N.V. to assist in the dissolution and liquidation process. The participants have been informed of this decision.

The Board has appointed the board members of the Foundation as liquidators. The Board expects that the liquidation accounts will be drawn up in the course of the next few weeks. As any remaining pre-financing balance will be settled with BLB&G, no surplus or deficit is expected on liquidation. The liquidation is estimated to be completed before the 2020 year-end. Consequently, this 2019 Annual Report will be the final one of the Foundation.

#### **Formation of the Foundation**

Stichting Volkswagen Investors Settlement, "the Foundation", is a Dutch foundation, incorporated under Dutch law by notarial deed dated 26 January 2016 and is domiciled in Amsterdam, The Netherlands

The objective of the Foundation was to represent the interests of investors who suffer loss or have suffered loss as a result of acts or omissions of one or more legal entities or personnel belonging to Volkswagen during the period from 23 April 2008 through 4 January 2016. The Foundation aimed to open a dialogue with Volkswagen in a spirit of mutual respect to find a reasonable and fair solution. Participation in the Foundation was open to all investors other than investors who purchased American Depository Receipts that are traded over-the-counter in the United States (the "Volkswagen ADRs").

The Foundation functioned as an "opt-out" foundation based upon the Dutch Collective Settlement Act (*Wet Collectieve Afwikkeling Massaschade 2005* or "WCAM"). Being a participant did not make any participant a party to any litigation and was merely intended to provide the Foundation the required representative capacity under Dutch law to act as a representative body and also enter into and execute any class-wide settlement agreements on behalf of the Investor class.

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Participants carried no financial risk or obligation. Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") has been pre-financing all costs of the Stichting, including legal costs. Any material financing and funding decisions required approval from the Supervisory Board.

The independence of the Foundation was built upon a strong internal governance (see the section on governance), the independence of the members of the Board and the Supervisory Board, the articles of association of the Foundation, transparency to the investors whose interests are represented by the Foundation and last but not least the procedures under the WCAM and the role of the Amsterdam Court of Appeal in the declaration of the binding effect of a future settlement

### **Board Meetings and Actions**

Apart from a number of telephone conferences and many exchanges of views by e-mail, the Board had three face to face meetings during 2019, including the combined meeting with the Supervisory Board.

The Board started 2019 in the hope that settlement discussions with Volkswagen would begin in 2019. The main issues discussed and/or resolved by the Board at this stage were:

- monitoring the progress of the settlement process and the United States Class Action concerning Volkswagen ADRs;
- information for investors and participants on the (lack of) progress in the settlement discussion;
- the 2019 budget for the foundation and financing agreements with BLB&G;
- drafting of the 2018 Report and Financial Statements, which were approved by the Supervisory Board; and
- deliberations on the future of the Foundation.

The budget for the financial year 2019 was approved by the Supervisory Board; actual expenses for 2019 were well below budget. The Foundation has no employees.

The lack of progress in the settlement discussions with Volkswagen has led the board to reassess its position. In June the Board informed the participants about the results of this assessment. The main points covered in this communication are summarized below.

### **June 2019 Update to participants about lack of progress in the settlement discussion**

*The Foundation is a "settlement foundation" that aims to secure compensation for investors through a potential future settlement with Volkswagen through the Dutch Collective Settlement Act in the Amsterdam Court of Appeals. As discussed, the Foundation was not created to pursue litigation against Volkswagen.*

*The Dutch Collective Settlement Act provides an efficient mechanism to settle mass claims, including securities claims. A defendant (here Volkswagen) can use this act to settle mass claims and pay fair compensation to investors who were harmed while obtaining a broadly enforceable release. However, the Dutch Act does not have a mechanism to compel a defendant to use this system – it depends on a defendant's voluntary decision to reach a global settlement of claims against it. The Foundation's strategy has therefore been to attempt to engage with Volkswagen while incentivizing the company to compensate Volkswagen investors for losses suffered as a result of diesel gate.*

*Since the establishment of the Foundation in 2016, BLB&G has reached out on a number of occasions to Volkswagen's counsel to inquire whether Volkswagen would be interested in pursuing*

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*potential settlement discussions. Volkswagen's counsel responded that Volkswagen was not interested.*

*We were informed that the statute of limitations for claims under German law expired December 31, 2018. This would have been a natural time for Volkswagen to engage in settlement discussions if it was interested because it could determine its total exposure. The Foundation's counsel therefore again reached out to Volkswagen's counsel to gauge the company's potential interest in pursuing a settlement. Consistent with the earlier message, Volkswagen's counsel made clear that Volkswagen feels no pressure from the German KapMug procedure or from public opinion to engage in settlement discussions. To the contrary, Volkswagen sees very limited downside in dragging out the KapMug proceedings for the foreseeable future. Volkswagen's three largest shareholders Porsche Automobil Holding SE, State of Lower Saxony and Qatar Holding LLC – do not appear to pressure Volkswagen either.*

None of the responses from participants contained any significant concerns or expressed new views or insights.

In April 2020 the deliberation process was rounded off by the board with the conclusion that dissolution of the Foundation was the only realistic option going forward.

## **2. REPORT SUPERVISORY BOARD**

The duties and powers of the Supervisory Board are defined in the articles of association of the Foundation. The Supervisory Board was appointed by deed of incorporation on 26 January 2016. The Supervisory Board appoints the members of the Board.

The Supervisory Board held one in person meeting in 2019; in this combined meeting with the Board the Supervisory Board was informed by the Board over the Board's policies and the daily management of the Foundation. The Supervisory Board approved:

- the budget for 2019 including the action plan;
- the remuneration of the Board and the members of the Supervisory Board; and
- the annual report including the financial statements for 2018.

During the year there were frequent contacts between the chairmen of both Boards to discuss upcoming issues. Also the Board treasurer had frequent contact with one of the Supervisory Board members over the budget, the financial statements and the organization of the auditing process.

The Board kept the Supervisory Board informed about the ongoing communication activities of the Foundation and the contacts with the participants of the Foundation.

An important point of discussion was the lack of progress in the settlement discussions with Volkswagen. The Supervisory Board was informed by the Board about the planned update on this issue to the participants and on the feedback from the participants. The Supervisory Board has been informed by the Board on the plan to wind down the Foundation and has given its approval to the Board's decision to dissolve the Foundation.

The Supervisory Board can instruct the Board to arrange for an independent audit of the annual accounts. Given the run-down of the activities against the background of a pending decision on the continuation of the Foundation, the Supervisory Board concluded that the Foundation could dispense with that need for 2019.

### 3. GOVERNANCE REPORT

The Foundation is a Dutch legal entity formed to effectuate a settlement on behalf of the Investors. The Foundation is governed by the articles of association, the "**Constitution**". The Constitution is published on the website of the Foundation.

#### **The Board and the Supervisory Board**

The Foundation operates a two-tier model, which means that management and supervision are segregated. The Board has been charged with the daily management of the Foundation. The Board consults the Supervisory Board on a regular basis. Important decisions are – in line with the articles of association – submitted to the Supervisory Board. The Board has four members, including a Chairman, a Secretary and a Treasurer. The initial members are the founders of the Foundation, who are appointed for a period of four years, with the option of reappointment. In February 2020 the Board members Willems, Okhuijsen and Frijns were reappointed by the Supervisory Board.

The Board will be guided in the performance of its duties by the interests of the investors. The Board is remunerated on the basis of agreed hourly rates for time spent. Members of the Board are appointed and dismissed by the Supervisory Board. Members shall be independent of BLB&G and independent of Volkswagen or advisors to Volkswagen.

The Supervisory Board consists of three independent members. Its role is defined in the articles of association. Members of the Supervisory Board are appointed for a period of four years with the option of reappointment. Supervisory Board members are appointed or dismissed by the Supervisory Board. In February 2020 the Supervisory Board reappointed the members Knüppe, Stadler and De Munnik.

Members of both the Board and the Supervisory Board shall be independent of BLB&G and independent of Volkswagen or advisors to Volkswagen. Reference is made to the site of the Foundation for the curricula of the members of the Board and of the Supervisory Board. The remuneration of the members of both Board is based on the hours spent. The tariff per hour is Euro 400 for the members and Euro 500 for the respective chairmen of both Boards.

The Foundation adheres to the Dutch Claim Code. This self-enforced code gives best practices on governance and internal operations for claim and settlement foundations in the Netherlands. In a separate document, published on the website of the Foundation, it is explained in which manner the Foundation applies the principles of the Code.

#### **Independent External Auditor**

The board report and the financial statements of the Foundation require the approval of the Supervisory Board. The Supervisory Board can instruct the Board to arrange for the annual accounts to be audited by an independent external auditor.

FINANCIAL STATEMENTS FOR THE YEAR 2019

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**4. STATEMENT OF CHANGES IN OPERATIONAL FUND FOR THE YEAR 2019**

	2019	2018
	<u>EUR</u>	<u>EUR</u>
Contribution Bernstein, Litowitz, Berger & Grossmann LLP	80.000	65.000
<b>EXPENSES</b>		
Remuneration Board of Directors	17.900	11.350
Remuneration Supervisory Board	5.986	8.640
Secretarial services	15.556	13.596
Administrative services	5.550	9.862
Liability insurance	18.150	18.150
Other expenses	241	153
	<u>63.383</u>	<u>61.751</u>
Balance at December 31	<u><u>16.617</u></u>	<u><u>3.249</u></u>

See the accompanying notes to the financial statements.

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**5. BALANCE SHEET AT DECEMBER 31, 2019.**

	2019	2018
	EUR	EUR
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Value added tax	684	127
Prepaid liability insurance	6.050	6.050
Cash, current account	23.359	16.939
<b>TOTAL</b>	<b>30.093</b>	<b>23.116</b>
 <b>FUNDS AND LIABILITIES</b>		
<b>OPERATIONAL FUND</b>		
	29.832	13.216
<b>OTHER LIABILITIES</b>		
Creditors	261	–
Payables and accruals	–	9.900
	261	9.900
<b>TOTAL</b>	<b>30.093</b>	<b>23.116</b>

See the accompanying notes to the financial statements.

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**6. CASH FLOW STATEMENT FOR THE YEAR 2019**

	2019		2018
	EUR		EUR
BALANCE AT JANUARY 1		16.939	16.428
Cash flow Operational Fund:			
Received (incl. VAT)	90.079		84.038
Paid	83.659		83.527
	6.420		511
BALANCE AT DECEMBER 31	23.359		16.939

See the accompanying notes to the financial statements.

**7. NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2019.**

**General Information**

Stichting Volkswagen Investor Settlement (the "**Foundation**") was founded on January 26, 2016.

As already communicated in the Annual Report for 2018 and in the notes included in the 2018 Financial Statements, the management board of the Foundation (the "**Board**") in conjunction with the supervisory board of the Foundation (the "**Supervisory Board**") started a deliberation process on the future status of the Foundation. In 2019, the participants were informed in writing about this deliberation process and the fact that the potential outcome of that process might be a dissolution of the Foundation. None of the responses from the participants contained significant concerns or expressed new views or insights. In April 2020, this process was completed. As a consequence the Board resolved in May 2020, and the Supervisory Board gave its prior written approval regarding this resolution, to dissolve the Foundation since the Board and the Supervisory Board do not see a realistic path to a potential settlement through the Foundation. Continuation of the activities of the Foundation therefore serves no further purpose.

The objective of the Foundation was to represent the interest of investors who suffer of have suffered loss as a result of acts or omissions of one on more legal entities or personnel belonging to Volkswagen entities during the period 23 April 2008 through 4 January 2016.

**Financial Year**

The financial year coincides with the calendar year.

**Accounting Policies**

The financial statements have been prepared in accordance with generally accepted accounting principles in the Netherlands. Functional currency of the Foundation is the Euro.

Assets and liabilities have been included at cost or face value. Income and expenses are accounted for in the year they relate to. The cash flow statement has been prepared on the basis of the direct method.

The Foundation applies fund accounting as the Foundation is not at risk itself for its costs as these are fully reimbursed by Bernstein, Litowitz, Berger & Grossmann LLP ("**BLB&G**"). The financial statements comprise therefore statement of changes in the operational fund, the balance sheet, the cash flow statement and the related notes to these statements.

Given the fact that BLB&G has reconfirmed that pre-financing of the Foundation will continue and will cover all costs associated with the dissolution and liquidation of the Foundation, estimated to be Euro 20,000, this decision does not impact the valuation of assets and liabilities as included at present in the 2019 financial statements. Liquidation of the Foundation is expected to be completed before the 2020 year-end.

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### Remuneration Board of Directors

	2019	2018
	EUR	EUR
Chairman	5.500	4.250
Secretary	3.200	—
Treasurer	6.200	4.500
Other members	3.000	2.600
	<u>17.900</u>	<u>11.350</u>

### Remuneration Supervisory Board

	2019	2018
	EUR	EUR
Chairman	2.750	3.250
Other members	3.236	4.800
Travel expenses	—	590
	<u>5.986</u>	<u>8.640</u>

### Operational Fund, owed to BLB&G.

As the Foundation only charges its costs to BLB&G, the Foundation owes the amount it has invoiced over the year 2019 insofar as this amount exceeds the level of costs for 2019.

### Tax position

The Foundation is subject to value added tax in the Netherlands.

The Foundation is only subject to corporate taxes in the Netherlands to the extent it realizes a profit exceeding certain thresholds, which is highly unlikely.

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**Board of Stichting Volkswagen Investor Settlement.**

J.H.M. Willems, chair  
J.M.G. Frijns, secretary  
R.W. Okhuijsen, member  
P.R. Baart, treasurer

**Supervisory Board**

B.F.M. Knüppe, chair  
H. de Munnik, member  
A. Stadler, member

Amsterdam, 27 May 2020