

Mitteilung an alle Anteilseigner der Primeo Select Fonds:

Anbei finden Sie die Information der Gesellschaft, folgende Fonds sind betroffen:

KYG7242V1077	Primeo Select - USD in liquidation DIS
KYG7243U1085	Primeo Select - EUR CAP

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Primeo Fund – in official liquidation (the Fund)

Summary of minutes of the 30 April 2021 meeting of the Fund’s creditors and investors of record (the Stakeholders)

30 April 2021, 9:00 a.m. (GMT-5)/ 4:00p.m. Central European Time (GMT+2)

Via telephone conference facilities

In attendance:

Gordon MacRae – Joint Official Liquidator, Kalo (the **Chairman**)

Peter Hayden of Mourant – Cayman counsel to the Joint Official Liquidators (the **Liquidators**) (**PH**)

Cassandra Ronaldson – Kalo, the Liquidators’ office (**CR**)

Ashley Coates – Kalo, the Liquidators’ office

Introduction

The Chairman formally opened the meeting at 9:00 am.

The Chairman confirmed that notice of the meeting was provided to the Fund’s Stakeholders on 8 April 2021 (**Notice**) and that notice of the meeting was also posted on the Liquidators’ website (www.primeofund-liquidation.com). Notice was provided in accordance with Order 8, rule 4 of the Companies Winding Up Rules.

The Chairman then tabled the report for the period from 1 September 2020 to 28 February 2021 (the **Period**) which had been circulated to the Stakeholders on 22 April 2021 (the **2021 Report**). Capitalised terms in these minutes, not otherwise defined, shall bear the meanings ascribed to them in the 2021 Report.

The Chairman advised that the meeting’s agenda would follow the Report.

The Chairman advised that at the end of the presentation, questions that were received in advance of the meeting would be addressed. These questions would be presented in the form in which they were received. Once these questions had been addressed, the telephone line would then be unmuted to allow Stakeholders to raise any queries they may have. It was noted that the questions might be paraphrased for clarity for the purposes of the minutes.

The Chairman thanked the Stakeholders for their attendance and voiced his regret that he was unable to meet with the Stakeholders in person due to the global COVID-19 pandemic.

The Chairman referred to the Notice and confirmed that the purpose of the meeting was to provide the Stakeholders with an update on the Fund's liquidation during the Period. He confirmed that they were no formal resolutions to attend to.

Distributions

The Chairman started by addressing the distributions section of the 2021 Report.

The Chairman referred the Stakeholders to the receipts and payments presented at appendix C of the 2021 Report. The Chairman noted that as at the Period's end, the Fund had distributed US\$187 million with total dividends declared to admitted claimants totaling approximately US\$238 million.

The Chairman confirmed that the Fund has paid, or provided for, all Ordinary Creditors and Redemption Creditors for their principal claims and their statutory interest entitlements. In March 2021, the Liquidators disbursed a third payment tranche in respect of statutory interest in the amount of US\$11 million. Following this payment there remains US\$1.1 million earmarked to be paid to creditors in relation to their statutory interest entitlements.

The Chairman reminded the Stakeholders that the first distribution to the Fund's investors was declared during the Period in the value of US\$40 million. At the end of the Period, approximately US\$4 million had been paid to investors with a further US\$21 million paid in March 2021. The Chairman confirmed there is approximately US\$15 million still to be paid to investors in respect of the first declared distribution. The Chairman informed the Stakeholders that the unpaid balance was due to inadequate due diligence documentation being received from the relevant investors, or else a lack of engagement with the Liquidators.

The Chairman then introduced CR to clarify the general issues that the Liquidators are experiencing with respect to the KYC/AML process.

CR explained that only an investor of record of the shares is required to provide the due diligence documents and not the beneficial owner. CR clarified that an investor of record is the investor noted on the Fund's share register as the legal owner of the relevant shares. A beneficial owner is a person who has an underlying interest in the Fund's shares, but who is not listed as the investor of record in respect of such shares.

CR also advised that the KYC checklist is available on the Fund's website and that a password was not required to access the same. CR reminded the attendees that there are different KYC document requirements for individuals, entities, and trusts.

CR continued to explain that for individuals that hold the share interests jointly, that all the individual account holders must provide the necessary KYC documentation. CR noted that it is also important that the wire instructions are duly signed by all the individual account holders.

CR noted that, with regard to entities, in circumstances where they considered that they qualify for simplified due diligence, then they should complete the relevant letter of assurance, a copy of which is available for download from the Fund's website.

CR advised that unless otherwise requested, payments would be made in United States Dollars (**USD**) with any Euro claims being converted into USD as at the date of the transfer.

All investors will need to provide their IBAN in their wire instructions as the Liquidators' banking institution now requires this information.

CR reminded investors that a Self-Certification Form, for CRS disclosure purposes, must be completed by each investor and that these should be kept up to date.

CR also advised that the Liquidators do not require original due diligence documents, only certified copies.

The Chairman reiterated that the only barrier to paying declared funds to Stakeholders was the Liquidators receiving the requisite due diligence documentation.

The Chairman explained that there are some funds that have been 'held back' for the purpose of making various provisions, including reserves for declared but unpaid distributions, unadmitted contingent creditor claims, adverse costs orders and the future costs of the liquidation. The Chairman confirmed that these funds were substantial due to the nature of the litigation that the Fund was engaged in.

The Chairman informed the Stakeholders that during the upcoming quarter, the Liquidators would review the provisions and determine whether they could declare a second interim distribution to the investors of the Fund. The Chairman was hopeful that a second distribution could be made within the next six months.

The HSBC Proceedings

The Chairman introduced the next topic being the latest developments in the HSBC Proceedings.

The Chairman reminded the Stakeholders that the Fund's claim had been barred by the Cayman Islands Court of Appeal's (**CICA**) interpretation and application of the rule against reflective loss.

The Chairman noted that a landmark decision from the Supreme Court of the United Kingdom, being *Sevilleja v Marex Financial Ltd* [2020] 3 WLR (**Marex**), has significantly narrowed the scope of this principle.

The Chairman reminded the Stakeholders that the matters on appeal to the Privy Council had been bifurcated, with the reflective loss issue being dealt with at a preliminary hearing held over 1.5 days the previous week (the **Reflective Loss Hearing**).

The Chairman invited PH to provide further detail in respect of the Reflective Loss Hearing.

PH explained that the reflective loss principle is that a shareholder cannot bring a claim for a loss suffered by the company, and where a company suffers a loss, it is the company that is the proper claimant to recover that loss.

PH advised that HSBC's argument is that as the Fund was a shareholder in Herald, Herald should bring an action against HSBC and not the Fund. PH stated that the Fund's argument is that this is not relevant in the current circumstance as the Fund is bringing contractual claims against HSBC and those claims relate to a period prior to the Fund being a shareholder in Herald.

PH stated that the Privy Council hearing was undertaken via video conference and lasted 1.5 days. PH advised that although the panel did not provide an indication of the outcome, he believed that the Fund has strong arguments against the application of the reflective loss principle, and he hoped that the Fund's arguments would succeed.

PH advised that he expected a Privy Council judgment to be handed down at some point during the summer of 2021. PH informed the Stakeholders that if the Fund's appeal failed in its entirety on reflective loss this would be the end of this litigation, however, he believed such an outcome is unlikely.

PH further explained that should the Fund be at least partially successful on the reflective loss issues, there would be a further hearing in the Privy Council during October 2021 to deal with the remaining matters on appeal.

PH explained that HSBC have also cross appealed certain of the CICA's findings and those matters would also be heard by the Privy Council in October 2021.

PH further explained that, provided HSBC were not successful in defeating the Fund's claim on their appeal, the Privy Council hearing in October would establish the parameters for the amount of damages due to the Fund, and the case would likely be referred to a judge in the Grand Court of the Cayman Islands (the **Grand Court**) who would assess the amount of damages payable by HSBC. PH stated that he expected any such Grand Court hearing would take place in 2022.

The liquidation of Herald

The Chairman then moved onto matters relating to Herald starting with the outcome of the Rectification Proceedings which he reminded the attendees were concluded in 2020.

The Chairman clarified that as a result of these proceedings, the Fund has established an approximately 30% interest in future distributions from Herald.

The Chairman reminded the Stakeholders that the final aspect of the Fund's creditor claim in Herald was for unpaid performance fee rebates (the **Performance Rebate Claim**).

The Chairman advised that although nothing has been formally agreed, he was confident that a settlement with Herald could be reached which would result in realisations to the Fund.

The Chairman further noted that upon the resolution of the Performance Rebate Claim there should be no remaining matters for the Additional Liquidator of Herald to carry out and it should therefore be possible for him to be discharged.

The Chairman concluded to state that the Liquidators would continue to monitor Herald's litigation proceedings against HSBC in Luxembourg which the Chairman noted has taken a significant amount of time. However, the Liquidators were committed to focusing on their own litigation with the relevant HSBC entities.

Alpha

The Chairman then proceeded to explain the Fund's position in respect of its claim in Alpha.

The Chairman explained that the Fund has claims in respect of unpaid redemption proceeds and has an equity claim in Alpha. The Chairman noted that Alpha is not currently in any formal insolvency process and continues to be managed and run by its directors.

The Chairman stated that although the Liquidators continue to pursue Alpha for information, they have no current update on this matter.

Matters relating to the MVF

The Chairman noted that significant payments have been made to certain claimants of the MVF and that those who had invested in BLIMS, through the Fund, have not been paid to date. The Chairman reiterated that the Fund has no claim in the MVF and therefore has no standing to pursue a claim against the MVF. Furthermore, the Fund

cannot launch a claim on behalf of Stakeholders in respect of any MVF claims they may have.

The Chairman advised that the Liquidators have shared information with the MVF regarding the Fund's general distributions in aggregate, but not in respect of any individual investor. The Chairman clarified that no individual investor information would be provided to the MVF without the express consent of the respective investor.

The Chairman stated that a letter had been sent to all investors on 24 March 2021 requesting that investors provide their consent for the Liquidators to disclose the investor(s)' distribution information to the MVF. This information disclosure may assist investors in receiving payments. The Chairman took the opportunity to request that any investor, who has not already done so, should respond to the Liquidators. In addition, the Chairman encouraged any beneficial owners to contact their relevant investor of record to ensure that they have provided their consent to the Liquidators.

The Chairman stated that the Liquidators are not able to provide advice to investors in relation to the MVF.

PH stated that the Fund has not been provided any additional information than is already available on the MVF's website. Although PH confirmed that the Fund is one of the seven held vehicles, as referenced on the MVF's website.

PH reiterated the importance of investors seeking their own US legal advice should they wish to obtain advice on their claims against the MVF.

Questions submitted in advance of the meeting

The Chairman then dealt with questions received in advance of the meeting.

Question 1 Part A: The question I would like to have answered in the meeting is whether the Liquidators will be able to finally settle their claim against Herald in time and in such a manner that the Madoff Victim Fund will be in a position to treat the investors in the Primeo Fund in the same way as the vast majority of all other approved claimants who have already received MVF payments covering 80% of their investment.

The Chairman reiterated that the Liquidators are unable to comment on the MVF's position and strategy regarding the release of the earmarked funds to the claimants of the remaining held vehicles.

Regarding Herald, the Chairman advised that the Liquidators hoped to settle the Performance Rebate Claim shortly. Resolution of this creditor claim would settle all the Fund's outstanding creditor claims against Herald.

The Chairman reminded the Stakeholders that, following the Privy Council's judgment in respect of the rectification issues in February 2020, the impact of this decision was the final determination of the Fund's equity entitlement in Herald. Whilst the Fund's

shareholding has been finally determined, distributions from Herald will be over several years, as Herald continues to litigate its claims against its former custodian and administrator and the BLMIS Trustee's recovery efforts continue.

The Chairman then took the opportunity to note that there are parties who have indicated their interest in purchasing investors' shares in the Fund. The Chairman noted that whilst details of these interested parties could be shared, the Liquidators in no way endorse the sale of the Fund's shares and investors will need to take their own advice before proceeding with the same.

Question 1 part B: In point 2 (2.15 et seq) of the report, the liquidators indicate that the nearly USD 36 mln. are being held back because of KYC/AML-issues. Is that correct? If our banks did not receive any distribution yet - what can the investors do to help?

The Chairman confirmed that funds were being held back due to deficiencies in the KYC/AML documentation received. The Chairman noted that of the US\$36 million, as mentioned earlier in the meeting, following receipt of sufficient due diligence information, US\$21million was paid in the month of March 2021 to investors.

The Chairman encouraged any investor of record that has not received a distribution to contact the Liquidators. Any beneficial owner who also has not received payment should contact their respective investor of record explaining that they are aware that distributions are being made and the only barrier to receiving funds is the provision of the relevant due diligence documentation to the Liquidators.

Question 2 part A: In point 7 (7.3 et seq) of the report, the liquidators report of Stakeholders obligations with regard to an AEOI-regime and a beneficial ownership regime in the Cayman Islands. Is this also applicable for the beneficial owners and indirect investors in Primeo? Will our clients have to fill out and file documentation with authorities in the Caymans (or Primeo itself)?

The Chairman clarified that section 7 of the 2021 Report referred to the obligations of the Fund and the investors of record, not the underlying beneficial owners of the shares.

Question 2 part B: Could this be the reason, why much of the money reserved for distribution has not been distributed yet? (If so:) When did the liquidators notify the banks and provided the necessary forms and documents - did the liquidators receive replies? What can we (of course the investors who are customers of the banks) do to help? (if this is the case:) How come the December Redeemers did not need to fill out anything? How come Herald-investors see to not have a need for this?

The Chairman confirmed that creditors (including December Redeemers) were subject to the same due diligence requirements as the investors. In respect of the point raised for the requirements of Herald's investors, this was a matter for the Liquidators of Herald, however, the Fund has been required to submit due diligence documents to Herald in order to participate in Herald's distribution.

Question 2 part C: When did this regime take effect?

The Chairman explained that the AEOI regime has been in place for several years.

Question 3: I did take a short look at the Privy Council hearing - which is indeed a bit complicated to follow for non-native-speakers and non-lawyers (especially the combination). However, I believe there was one question by Lord Reed: if indeed Primeo would win the reflective loss-question in this round - the autumn hearing will deal again with this question/issue again?

And the loss analysis-issue will be heard in October too if reflective loss is decided pro Primeo? Or will you have to ultimately go back to Grand Court?

And how does this respond with the statute of limitation? Wouldn't most of the (earlier) investments and claims been barred? Or was this rather dealt with the fact that only the time where BoB/HSBC had an "active" sub custodian agreement with BLMIS is in question?

PH confirmed that, even in circumstances where the Fund receives a favorable judgment from the Reflective Loss Hearing, there is the potential that the Privy Council will be asked to deal with reflective loss principle again at the October 2021 hearing. This is because the CICA accepted that the Fund suffered loss each time it placed cash with BLMIS, and this point is being appealed by HSBC in October. For the purposes of the recent hearing, the Privy Council accepted the CICA's analysis on loss and considered the application of the principle of reflective loss on that basis.

PH continued that the lower courts have ruled that certain of the Fund's claims are not time barred.

Questions raised during the meeting

The Chairman then invited those in attendance to raise any questions they may have.

Question: In respect of KYC/AML, where can we access the checklist and relevant forms?

CR advised that these were available on the Fund's website <https://primeofund-liquidation.com/forms/>.

Question: When do you expect the liquidation to be brought to a close, are we talking months or years?

The Chairman explained that this was unlikely to be in the next few months and would more likely be years, using the HSBC litigation as an example of this timeline. The Chairman explained that the length of the liquidation was dependent on the Fund's litigation against HSBC and future distributions from Herald, which would in turn be paid to the Fund.

Question: We believe that we may have provided our KYC/AML information some time ago, will this need to be submitted again?

CR advised that KYC information can become out of date. CR encouraged Stakeholders to get in contact should they have any queries concerning the status of their due diligence documentation.

Question: Which documents are required to be certified?

CR stated that the KYC checklist, available at the Fund's website, <https://primeofund-liquidation.com/forms/> sets out which documents are required to be certified.

Question: Can you elaborate on the potential range of recoveries in respect of the Fund's claim against HSBC?

The Chairman explained that as the Fund is currently in litigation with HBSC it would not be appropriate to discuss this during the meeting. In addition, it would be difficult to quantify with certain points currently on appeal which will impact recoveries. As previously mentioned, a further hearing will be required to determine the Fund's damages. The Chairman assured the attendees that the Liquidators were trying to maximise the recoveries of the Fund.

PH agreed that the matter of quantification turned on legal points to be determined by the Privy Council although it could be estimated to be between zero and the total lost (approximately US\$750 million) plus interest, less any credit for recoveries received from other sources.

Question: Could the Liquidators please explain which documents on the Fund's website will need to be completed in relation to the investor distribution?

CR advised that investors do not need to complete a proof of debt form but will need to complete the wire instructions, provide the relevant KYC documentation as set out in the checklist and the Common Reporting Standards (CRS) form, the latter of which needs to be kept up to date. An entity may also need to provide a letter of assurance in certain circumstances. An explanation of the information and documentation required can be found in the email circular sent to investors on 19 January 2021.

Question: If we invested through Bank Austria can we communicate with you directly?

The Liquidators only hold information on, and will therefore only communicate with, investors of record. If you are a beneficial owner, your custodian or nominee shareholding institution (i.e. the investor of record) will be responsible for circulating the Liquidators' updates and forwarding any distributions to you.

Question: We have not received confirmation that our AML/KYC information is sufficient, when will we expect payment?

CR advised that KYC information is currently being reviewed and that the Liquidators anticipate that the third payment tranche will occur by the end of May 2021.

Question: What is the declared dividend rate in respect of the Fund's sub-funds?

The Chairman responded that this is dependent on which sub-fund the investor was invested. A breakdown of these distribution percentages could be found at section 2.15 of the 2021 Report.

The Chairman confirmed that the percentages are a percentage of the last statement value of the respective sub-funds as of December 2008.

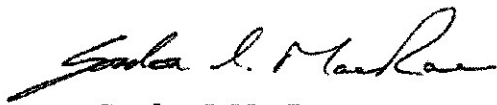
Question: Does this correspond to the estimations from 2-3 years ago where the total possible range of distributions in respect of the last statement value of the Fund as at December 2008 were to be between 30% to 60%?

The Chairman advised that there may have been some confusion regarding the figures quoted in the question as no account is taken of the fact that the creditor classes received 100% of their claims, plus statutory interest, along with the fact that percentage recoveries are often looked at in relation to net equity positions as opposed to last statement positions (which are much higher).

The Chairman then invited any further questions from the Stakeholders on the call, but none were received.

Closing remarks

The Chairman invited any other business. There being no further business, the meeting was closed at 10:06 am (GMT-5)/ 5:06 p.m. Central European Time (GMT+2).



Gordon I. MacRae
Chairman