

Mitteilung an alle Anteilseigner der Primeo Select Fonds

Anbei finden Sie eine Information vom Abwickler.

Folgende Fonds sind betroffen:

KYG7243U1085	Primeo Select – EUR Cap
KYG7242V1077	Primeo Select – USD Cap

8016755/62341990/1

A notice to stakeholders of Primeo Fund (in official liquidation) (Primeo) from Primeo's joint official liquidations (the Primeo Liquidators) in relation to the December Redeemer Issue and the Rectification Issues

Background to the December Redeemer and Rectifications Issues

As explained in our 10 March 2014 report to Primeo's stakeholders for the period 1 September 2013 to 28 February 2014, Herald's Additional Liquidator (the **Additional Liquidator**) was appointed to Herald for the purpose of settling the list of Herald's contributories¹ pursuant to section 112 (1) of the Companies Law (2013 Revision) (the **Companies Law**) and determining related issues. As explained in our last report dated 25 September 2014, for the period 1 March 2014 to 31 August 2014, two of the issues arising for consideration by the Additional Liquidator are:

- a. whether section 37(7)(a) of the Companies Law applies in relation to shares which form the subject of redemption requests submitted to Herald by its shareholders including Primeo (the **December Redeemers**) for the redemption day 1 December 2008 and which shares were redeemed on 1 December 2008 but in respect of which redemption moneys were not paid to the relevant December Redeemer (the **December Redeemer Issue**); and
- b. whether (i) the net asset values (**Herald's NAVs**) determined pursuant to Herald's Articles of Association during the period from 24 March 2004 to 10 December 2008 are binding upon Herald within the meaning of s.112 of the Companies Law and Order 12, rule 2(1) of the Companies Winding Up Rules and (ii) whether section 112 of the Companies Law and/or Order 12, rule 2(1) of the Company Winding Up Rules apply so as to require the Additional Liquidator to rectify Herald's register of members (the **Rectification Issues**).

It is the Primeo Liquidators' view, based on legal advice obtained from their legal advisors, that (i) s.37(7)(a) does not apply to Primeo or the other December Redeemers and that they do have enforceable creditor claims in Herald's liquidation and (ii) Herald's NAVs are binding upon Herald and there is no power for the Additional Liquidator to rectify Herald's register of members.

It is the Additional Liquidator's position that (i) Primeo and the other December Redeemers do not have enforceable creditor claims in Herald's liquidation and (ii) Herald's NAVs are not binding upon Herald and its members due to the existence of the BLMIS fraud and the Additional Liquidator is therefore required, as matter of law, to rectify Herald's register of shareholders.

Given the divergence of opinion and the importance of the December Redeemer Issue and the Rectification Issues, Primeo sought to speed up the determination of the issues by serving Herald with summonses on 15 and 30 October 2014 respectively, seeking leave to commence *inter partes* proceedings in the Grand Court of the Cayman Islands (the **Court**) against Herald. Copies of the summonses will be provided upon request.

On 7 November 2014, the Additional Liquidator filed his own summons, seeking directions from the Court in relation to a range of issues, including the December Redeemer Issue and the Rectification Issues. A copy of the summons will be provided upon request.

All three summonses were listed for hearing on 24 November 2014. However, prior to the hearing, Primeo and the Additional Liquidator met and agreed a sensible and cost-effective procedure to resolve these contentious issues.

The hearing on 24 November 2014 and the Herald Order

At the hearing on 24 November 2014, the Additional Liquidator and Primeo presented the Court with an agreed form of order which provided a mechanism for the determination of the December Redeemer Issue and the Rectification Issues as an *inter partes* proceeding within Herald's liquidation. The effect of this proposed order was that those issues would be the subject of

¹ For the purpose of this notice the term "contributory" can be used interchangeably with "shareholder".

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separate hearings, with Primeo appointed as a class representative for: (i) all December Redeemers in relation to the December Redeemer Issue; and (ii) any of Herald's shareholders who agree with Primeo's position in relation to the Rectification Issues. Conversely, it was proposed that the Additional Liquidator would be the class representative for all shareholders who fall outside the Primeo representative class in respect of each issue.

At the hearing, the Court generally accepted the approach proposed by Primeo and the Additional Liquidator, save that the Honorable Judge ordered that the enforceability of the KYC Redeemers² redemption creditor claims be determined together with those of the December Redeemers (with Primeo appointed as the class representative of the KYC Redeemers) and that all of the issues be heard and determined together.

The Orders made by the Court can be summarised as follows:

- Primeo has been appointed as class representative for the December Redeemers and KYC Redeemers for the purposes of arguing that those redemption creditor claims are enforceable in the Herald liquidation;
- Primeo has been appointed as class representative for the purposes of arguing (on behalf any shareholders of Herald who agree with Primeo's position) that Herald's last stated NAV is binding as between Herald and its shareholders such that the Additional Liquidator is not required or empowered to rectify Herald's register of shareholders;
- the Additional Liquidator has been appointed as a class representative for all remaining shareholders of Herald to argue the opposing position on each of those issues;
- the issues are set down to be heard and determined by the Court for the week commencing 1 June 2015;
- each of Primeo and the Additional Liquidator are obliged to provide updates to any member of the classes they represent on each issue, provided that member has notified their class representative that they wish to receive such updates and upon the provision of a written undertaking that any such information provided by the Additional Liquidator or Primeo (as the case may be) shall be kept strictly confidential and used only for the purpose of the proceedings to resolve the relevant issue; and
- each of Primeo's and the Additional Liquidator's legal costs in respect of these issues at first instance shall be paid out of the assets of the Herald estate on an indemnity basis.

The Primeo Order

During the course of the hearing on 24 November 2014, the Court noted that, given the December Redeemer Issue and the Rectification Issues also arise in the Primeo liquidation, an order should be made in the Primeo liquidation to ensure that any determination by the Court of those issues in the Herald liquidation should be binding on the Primeo Liquidators and Primeo's creditors and shareholders. The Court's concern was to avoid the need for the same issues to be subsequently re-litigated in the Primeo liquidation.

Accordingly, the Court made an Order in the Primeo liquidation that any determination by the Court in respect of the December Redeemer Issue and the Rectification Issues in the Herald liquidation shall be binding on Primeo's joint official liquidators, creditors and shareholders (referred to in the order as "contributories") (the **Primeo Order**) as if the determinations were made in the Primeo liquidation. A copy of the Primeo Order, which annexes a copy of the Herald Order, is attached at Appendix 1.

The Primeo Order provides that any creditor or shareholder of Primeo who wishes to object to being bound as contemplated by the Primeo Order must file an objection with the Court and serve the objection on Primeo's liquidators within 35 days of the date of the filing of the Primeo Order.

² KYC Redeemers are those Herald shareholders who submitted redemption requests to Herald for a redemption day prior to 1 December 2008 and which shares were redeemed but in respect of which redemption moneys were not paid due to outstanding "Know Your Client" and/or other documentation.

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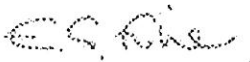
Given that the Primeo Order was filed on 3 February 2015, any objections must be filed and served by **10 March 2015**. The address for service for the Primeo Liquidators, set out in the Primeo Order is:

Primeo Fund (in official liquidation)
c/o Mourant Ozannes
PO Box 1348
4th Floor
94 Solaris Avenue
Camana Bay
Grand Cayman
KY1-1108

Please note that it is only the registered (or legal) owners of shares in Primeo that are entitled to object. If you are a beneficial owner, and wish to object, you must make arrangements with the person or entity which acts as the registered owner of your shares.

A copy of this notice is available on the secure Primeo liquidation website (www.primeofund-liquidation.com). If you have any questions in respect of any issue arising in respect of this notice, please contact the Primeo Liquidators' representatives, Joel Edwards or Emma Storry at joel.edwards@zolfocooper.ky or emma.storry@zolfocooper.ky, or alternatively at:

Zolfo Cooper
38 Market street
2nd Floor, Canella Court
Camana Bay
Grand Cayman
Cayman Islands, KY1-9006



Eleanor Fisher
Joint Official Liquidator
10 February 2015

FEB/12/2015/THU 07:50 PM Zolfo Cooper

FAX No. 1-345-946-0082

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Appendix 1 – The Primeo Order

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 30 OF 2010 - AJJ

BEFORE THE HON MR JUSTICE ANDREW J. JONES QC
IN CHAMBERS, 24 NOVEMBER 2014

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)
AND IN THE MATTER OF PRIMEO FUND (IN OFFICIAL LIQUIDATION)



ORDER FOR DIRECTIONS

UPON THE APPLICATION OF Primeo Fund (in official liquidation) (Primeo) by summonses dated and filed on 13 and 30 October 2014 respectively (together, the Primeo Summonses)

UPON THE APPLICATION OF Michael Pearson in his capacity as Additional Liquidator (the Additional Liquidator) of Herald Fund SPC (in official liquidation) (Herald) by summons dated and filed on 7 November 2014 (the Summons)

AND UPON HEARING Leading Counsel for the Additional Liquidator and Leading Counsel for Primeo and Counsel for Reichmuth & Co., a member of Herald's liquidation committee

AND UPON READING the Sixth Affidavit of Michael Pearson dated 19 November 2014 including Exhibit MP-6

AND UPON THE COURT making an order dated 24 November 2014 as varied by a consent order dated 22 December 2014 (as varied, the Herald Order) directing, *inter alia*, hearings in the Herald liquidation proceedings on the December Redeemer Issue and the Rectification Issues (as those terms are defined in the Herald Order, a copy of which is annexed hereto)

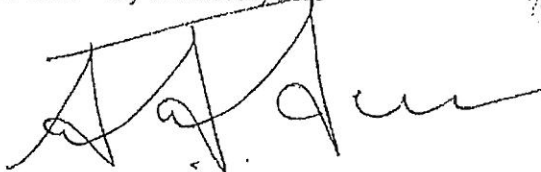
IT IS HEREBY ORDERED THAT:

1. Subject to the notification of this order pursuant to paragraph 2 and the filing and service of objections in accordance with paragraph 3, creditors and contributories of Primeo and Primeo's joint official liquidators (Primeo's Liquidators) shall be bound by any

determinations made by the Court in respect of the December Redeemer Issue and the Rectification Issues as if those determinations were made in these proceedings.

2. Primeo's Liquidators shall, within seven days of the date of the filing of this Order:
 - a. send a copy of the Order to each of Primeo's creditors and contributories (by email, facsimile, or post) for whom the Primeo Liquidators have contact details; and
 - b. make a copy of the Order available on Primeo's liquidation website.
3. Any creditor or contributory of Primeo who wishes to object to being bound as contemplated by paragraph 1 of this Order must file an objection with the Court and serve the objection on Primeo's Liquidators at the address below within 35 days of the date of the filing of this Order.

DATED the 24th day of November 2014
FILED the 3rd day of February 2015



The Hon. Mr Justice Andrew J. Jones QC
JUDGE OF THE GRAND COURT

**Annexure to Order for Directions dated 24 November 2014 and
filed on 3 February 2015**

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 27 OF 2013 - AJJ

BEFORE THE HON MR JUSTICE ANDREW J. JONES QC
IN CHAMBERS, 24 NOVEMBER 2014



IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)
AND IN THE MATTER OF HERALD FUND SPC (IN OFFICIAL LIQUIDATION)

ORDER FOR DIRECTIONS

UPON THE APPLICATION OF Primeo Fund (in official liquidation) (Primeo) by summonses dated and filed on 13 and 30 October 2014 respectively (together, the Primeo Summonses)

UPON THE APPLICATION OF Michael Pearson in his capacity as Additional Liquidator (the Additional Liquidator) of Herald Fund SPC (in official liquidation) (Herald) by summons dated and filed on 7 November 2014 (the Summons)

AND UPON HEARING Leading Counsel for the Additional Liquidator and Leading Counsel for Primeo and Counsel for Reichmuth & Co., a member of Herald's liquidation committee

AND UPON READING the Sixth Affidavit of Michael Pearson dated 19 November 2014 including Exhibit MP-6

IT IS HEREBY ORDERED BY CONSENT THAT:-

I The December Redeemer Issue

1. The Court direct a hearing on the issue of whether section 37(7)(a) of the Companies Law (2013 Revision) (the Companies Law) applies in relation to the participating non-voting shares (the December Shares) which form the subject of redemption requests submitted to Herald by shareholders including Primeo (the December Redeemers) for the redemption day 1 December 2008 and which shares were redeemed on 1 December 2008 but in respect of which redemption moneys were not paid to the relevant December Redeemer (the December Redeemer Issue).

Representation

2. The December Redeemer Issue shall be adjudicated as an *inter partes* proceeding pursuant to Order 11, rule 3 of the Companies Winding Up Rules.
3. The following parties shall be appointed as representatives of the classes of investors in Herald in respect of the December Redeemer Issue, the Court being satisfied that the respective classes of investors have a sufficient communality of interest:
 - a. Primeo shall be appointed as representative of the December Redeemers and those shareholders who submitted redemption requests to Herald for a redemption day prior to 1 December 2008 and which shares were redeemed (the KYC Shares) but in respect of which redemption moneys were not paid due to outstanding "Know Your Client" and/or other documentation (KYC Redeemers); and
 - b. the Additional Liquidator shall be appointed as representative of all contributories who are not December Redeemers or KYC Redeemers,(collectively, the December Redeemer Representative Parties).



4. The costs of the December Redeemer Representative Parties in respect of the determination of the December Redeemer Issue at first instance, including the costs of Leading Counsel, shall be paid out of the assets of Herald as an expense of the liquidation, such costs to be agreed with the Additional Liquidator, or in default of such agreement, taxed on the indemnity basis.
5. Each December Redeemer Representative Party shall provide updates to any member of the class of parties whom it represents and who has notified it that they wish to receive updates as to the progress of the proceedings in which they are being represented. For the avoidance of doubt, the December Redeemer Representative Parties are not required to include any privileged information in such updates. Anyone to whom information is being provided by virtue of this paragraph shall give a written undertaking to the Court to keep the same strictly confidential to itself and its own legal advisors and to use it only for the purpose of proceedings to resolve the December Redeemer Issue.

Directions for the determination of the December Redeemer Issue

6. Primeo shall argue that s.37(7)(a) does not apply to the December Shares or the KYC Shares.

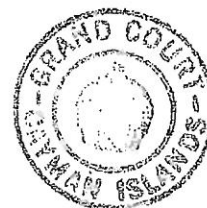
7. The Additional Liquidator shall argue that s.37(7)(a) applies to the December Shares or the KYC Shares,
8. Primeo shall file and serve its Points of Claim in respect of the December Redeemer Issue by 1 December 2014,
9. The Additional Liquidator shall file and serve its Points of Defence, if any, by 19 December 2014,
10. The December Redeemer Representative Parties shall file an agreed statement of facts exhibiting all documents which they consider relevant to the December Redeemer Issue by 12 January 2015.
11. Primeo shall serve written submissions by 6 February 2015,
12. The Additional Liquidator shall serve written submissions in response by 6 March 2015.

II The Rectification Issues

13. The Court direct a hearing on the issues of:
 - a. whether the Net Asset Values (the NAVs) determined pursuant to Herald's Articles of Association during the period from 24 March 2004 to 10 December 2008 in respect of each Separate Class of Participating Non-Voting Shares issued by Herald are not binding upon Herald by reason of "fraud or default" within the meaning of Section 112 of the Companies Law and Order 12, rule 2(1) of the Companies Winding Up Rules; and
 - b. whether Section 112 of the Companies Law and/or Order 12, rule 2(1) of the Companies Winding Up Rules apply so as to require or empower the Additional Liquidator of Herald to rectify Herald's register of members(together, the Rectification Issues).

Representation

14. The Rectification Issues shall be adjudicated as an *inter partes* proceeding pursuant to Order 11, rule 3 of the Companies Winding Up Rules.



15. The following parties shall be appointed as representatives of the classes of investors in Herald in respect of the Rectification Issues, the Court being satisfied that the respective classes of investors have a sufficient communality of interest:
- a. Primeo shall be appointed as representative of the class of investors arguing that the Rectification Issues should be answered in the negative;
 - b. the Additional Liquidator shall be appointed as representative of the class of investors arguing that the Rectification Issues should be answered in the affirmative (collectively, the Rectification Issues Representative Parties).
16. The costs of the Rectification Issues Representative Parties in respect of the determination of the Rectification Issues at first instance, including the costs of Leading Counsel, shall be paid out of the assets of Herald as an expense of the liquidation, such costs to be agreed with the Additional Liquidator, or in default of such agreement, taxed on the indemnity basis.
17. Each Rectification Issues Representative Party shall provide updates to any member of the class of parties whom it represents and who has notified it that they wish to receive updates as to the progress of the proceedings in which they are being represented. For the avoidance of doubt, the Rectification Issues Representative Parties are not required to include any privileged information in such updates. Anyone to whom information is being provided by virtue of this paragraph shall give a written undertaking to the Court to keep the same strictly confidential to itself and its own legal advisors and to use it only for the purpose of proceedings to resolve the Rectification Issues.

Directions for the determination of the Rectification Issues

18. Primeo shall argue that:

- a. the Net Asset Values (the NAVs) determined pursuant to Herald's Articles of Association during the period from 24 March 2004 to 10 December 2008 in respect of each Separate Class of Participating Non-Voting Shares issued by Herald are binding upon Herald within the meaning of Section 112 of the Companies Law and Order 12, rule 2(1) of the Companies Winding Up Rules; and
- b. Section 112 of the Companies Law and/or Order 12, rule 2(1) of the Companies Winding Up Rules do not apply and the Additional Liquidator is not required or





empowered to rectify Herald's register of members.

19. The Additional Liquidator shall argue that:

- a. the Net Asset Values (the NAVs) determined pursuant to Herald's Articles of Association during the period from 24 March 2004 to 10 December 2008 in respect of each Separate Class of Participating Non-Voting Shares issued by Herald are not binding upon Herald by reason of "fraud or default" within the meaning of Section 112 of the Companies Law and Order 12, rule 2(1) of the Companies Winding Up Rules; and
- b. Section 112 of the Companies Law and/or Order 12, rule 2(1) of the Companies Winding Up Rules do apply and the Additional Liquidator is required or empowered to rectify Herald's register of members.

20. Primeo shall file any evidence upon which they intend to rely by 19 December 2014.

21. The Additional Liquidator shall file any evidence in response by 23 January 2015.

22. Primeo shall file any evidence in reply by 6 February 2015.

23. The Rectification Issues Representative Parties shall file a statement of agreed facts and a statement in respect of facts which are not agreed (if any) by 6 March 2015.

24. The Rectification Issues Representatives Parties shall have liberty to file further evidence in response to the statement of facts which are not agreed, such evidence to be filed by 6 March 2015.

25. Primeo shall serve written submissions by 20 March 2015.

26. The Additional Liquidator shall serve written submissions in response by 10 April 2015.

III Lodging written submissions and hearing date

27. All written submissions in respect of the December Redeemer Issue and the Rectification Issues shall be lodged with the Court by 15 May 2015.

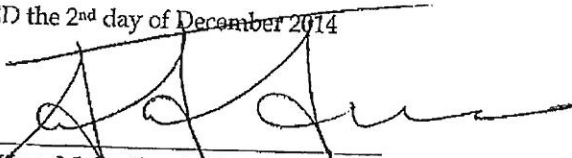
28. The hearing of the December Redeemer Issue and the Rectification Issues is set down for 1 to 5 June 2015.

IV Further Directions

29. Liberty to apply.
30. No order as to Primeo's Summonses save as to paragraph 31 below.
31. Primeo and Herald's costs of and occasioned by both the Additional Liquidator's Summons and the Primeo Summonses be paid out of the assets of Herald as an expense of the liquidation, Primeo's costs to be agreed with the Principal Liquidators, or in default of such agreement, taxed on the indemnity basis.
32. That the making of any order on paragraphs 1(c) and 2 of the Additional Liquidator's Summons be adjourned until after the determination of the Rectification Issues.

DATED the 24th day of November 2014

FILED the 2nd day of December 2014


The Hon. Mr Justice Andrew J. Jones QC
JUDGE OF THE GRAND COURT



THIS Order was filed by Walkers, Attorneys at Law for the Additional Liquidator whose address for service is that of their said attorneys, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001.