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Joint Official Liquidators' report to the Fund's stakeholders

Primeo Fund – in official liquidation

28 March 2018

PO Box 776
38 Market Street
Suite 4208, Canella Court
Camana Bay
Grand Cayman, KY1-9006
Cayman Islands
133573400081

Basis of Presentation

This progress report has been prepared for the purpose of informing the investors and creditors of Primeco Fund – in official liquidation (the **Fund**) (the **Stakeholders**) about the progress made in the liquidation. Receipt of this report is not an admission that the Joint Official Liquidators (**JOLs**) have adjudicated or admitted any claim that the recipient may have made against the Fund.

This report has been prepared using the information available to the JOLs at the time of preparation. Should any new information be received, that may result in material changes to the report.

This report does not waive privilege in relation to any matters that are or were the subject of legal proceedings in any jurisdiction.

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In preparing this report the JOLs have relied upon information in the possession of the Fund at the time of their appointment, and the statutory documentation and other information provided to them. The JOLs have not performed an audit examination on this information. Except where specifically stated, the JOLs have been unable to establish the reliability of the sources of information presented to them by reference to independent evidence.

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1. Introduction

- 1.1 This is the seventeenth report of the JOLs to the Stakeholders on the progress of the liquidation (the **Report**). The Report covers the period from 1 September 2017 to 28 February 2018 (the **Period**).
- 1.2 When reviewing the Report, the Stakeholders should refer to previous reports (the **Previous Reports**) and updates to the Stakeholders which have been issued since the appointment of the JOLs as voluntary liquidators on 23 January 2009 and their subsequent appointment as JOLs by the Grand Court of the Cayman Islands (**Grand Court**) on 8 April 2009.
- 1.3 Section two of the Report provides an update in relation to the various proceedings with the additional liquidator (**Additional Liquidator**) of Herald Fund SPC - in official liquidation (**Herald**).
- 1.4 Section three of the Report provides an update on the appeal of the judgment in *Primeo Fund (in official liquidation) v Bank of Bermuda (Cayman Limited) (BoB) and HSBC Securities Services (Luxembourg) SA (HSSL)* (together **HSBC**) (FSD of 2013 (AJJ) (the **HSBC Ruling**).
- 1.5 Section four of the Report provides an overview of the Fund's interest as a shareholder in Alpha Prime Fund Limited (**Alpha**).
- 1.6 Section five of the Report provides an explanation of the Cayman Islands compliance framework which affects the Fund and its various stakeholders.
- 1.7 Section six of the Report provides an analysis of the Fund's liquidation receipts and payments as at 28 February 2018 and the JOLs' fees incurred for the Period.
- 1.8 Section seven of the Report provides an update in relation to the process and timing in relation to a distribution to the Fund's creditors.

2. Herald

Herald representative proceedings

- 2.1 The Herald representative proceedings are between the Additional Liquidator and the Fund, each acting as a representative of a class of shareholders in Herald in respect of the December Redeemer Issues (defined below) and Rectification Issues (defined below) (together the **Herald Representative Proceedings**). The parties' respective roles were sanctioned by the Grand Court in an order for directions dated 24 November 2014 (**Representation Order**).
- 2.2 The Fund and the Additional Liquidator will shortly be applying to the Grand Court to seek a further representation order in relation to the interest issue arising from the December Redeemer proceedings. This is discussed in greater detail below.

December Redeemer Issue

Background

- 2.3 From previous updates, the Stakeholders will recall that the issue on appeal to the Privy Council was whether section 37(7)(a) of the Companies Law (2016 Revision) (as amended) (the **Companies Law**) (**section 37(7)**) applies in relation to:
- shares which were redeemed by certain Herald investors (including the Fund) pursuant to Herald's articles (**Articles**) on 1 December 2008, but in respect of which redemption monies were not paid (**December Redeemers**); and
 - shares which were redeemed by certain Herald investors pursuant to the Articles on or prior to 1 December 2008, but in respect of which redemption monies were not paid due to outstanding "Know your Client" and/or other documentation (the **KYC Redeemers**).

(jointly the **Redemption Creditors**)

(the **December Redeemer Issue**)

- 2.4 The Privy Council handed down its final determination on the December Redeemer Issue on 19 July 2017, ruling that the December Shares fell outside the scope of section 37(7) such that the December Redeemers and the KYC Redeemers are entitled to be treated as creditors of Herald, with provable claims in the amount of their unpaid redemption proceeds.

Trustee loan

- 2.5 In November 2017, Herald paid to the Fund the principal of its December Redeemer claim, net of the Trustee loan to which Herald was entitled.
- 2.6 The Stakeholders will recall the tripartite settlement agreement dated November 2014, between Irving H. Picard, in his capacity as the trustee of BLMIS, (the **Trustee**), Russell Smith and Niall Goodsir-Cullen, the Principal Liquidators of Herald (the **Principal Liquidators**), and the Fund (the **Settlement Agreement**). Under the terms of the Settlement Agreement, the Fund agreed to pay to the Trustee

US\$29,142,345, representing full and final settlement and satisfaction of all avoidance claims and any other claims which the Trustee or BLMIS estate may have against the Fund (**Primeo Settlement Payment**). As the Fund did not have sufficient funds to pay this at the time of the Settlement Agreement, and as the Fund was not entitled to any direct distributions from the BLMIS estate due to its standing as a shareholder in Herald, Herald advanced the Primeo Settlement Payment to the Trustee on the Fund's behalf (**Trustee Loan**). It was further agreed that as a result, Herald would have a valid claim against the Fund for the Primeo Settlement Payment, plus interest at a rate equal to the rate that Herald receives on its escrow deposits, with such sums would be deducted from the first distribution received by the Fund.

- 2.7 Whilst the Fund did not dispute Herald's entitlement to interest (the **Loan Interest**), the Fund had concerns regarding the quantum claimed by Herald. Despite these concerns, it was agreed that this issue could be resolved at a later date so that it would not delay Herald transferring the redemption proceeds, less the Primeo Settlement Payment, to the Fund. The transfer of the redemption proceeds took place on 16 November 2017. Subsequently the Fund agreed the position on the Loan Interest with Herald and that amount is due to be paid shortly.
- 2.8 Separate to the Loan Interest issue, the Additional Liquidator disputed the Redemption Creditors' entitlement to statutory interest. This is set out in more detail below.

Dispute in relation to interest payable to Redemption Creditors

- 2.9 As determined by the Privy Council, the Fund, as well as the other Redemption Creditors, are entitled to prove in the Herald liquidation as creditors in respect of their claims for unpaid redemption proceeds.
- 2.10 Pursuant to section 149(1) of the Companies Law, interest is payable on any debt proved within the winding up. The Privy Council has held that the redemptions are debts of the company and are provable as prescribed by section 139(1) of the Companies Law. Accordingly, it is the JOLs' position that the Redemption Creditors' entitlement to statutory interest is consistent with the Privy Council's determination, particularly as the Fund has proved for its claim to unpaid redemption proceeds by way of proof dated 13 September 2013.
- 2.11 The Additional Liquidator's position is that there is no legal basis for the payment of statutory interest to the Redemption Creditors as he considers the Redemption Creditors' claims to unpaid redemption proceeds to be properly classified as non-provable liabilities which do not attract interest.
- 2.12 In order to resolve this issue as soon as possible, it was agreed that the Additional Liquidator would make an application to the Grand Court for directions. It is anticipated that this application will be filed in the near term.
- 2.13 In the same way as the original Representative Order, the following terms will be sought:
- the Fund will be appointed as representative of the Redemption Creditors;
 - the Additional Liquidator shall be appointed as representative of all contributories who are not Redemption Creditors; and

- The Fund's legal costs (including that of leading counsel) will be met by Herald.

Rectification and the in-specie issue

- 2.14 The Cayman Islands Court of Appeal (the **CICA**) has allowed the Fund's appeal in its entirety and dismissed that of the Additional Liquidator in its entirety.

Background

- 2.15 The Stakeholders will recall that the in-specie issue relates to whether the Additional Liquidator should be authorised to adjust the number of USD class shares Herald issued to the Fund on 2 May 2007 in respect of its US\$463 million in-specie subscription (the **In-Specie Subscription**) in Herald (the **In-Specie Issue**).
- 2.16 The first proceeding, which the Additional Liquidator brought, was heard in February 2016, when he sought to argue that there was a common mistake as to the existence of the underlying investments held by BLMIS, and as a result, the In-Specie Subscription was void. The Grand Court dismissed the Additional Liquidator's claim and ruled that the doctrine of common mistake did not apply and, in any event, that Herald had assumed the risk in relation to the transaction.

Rectification Issues

- 2.17 As the Stakeholders will recall, the rectification issues are concerned with whether (a) Herald's net asset values (**NAVs**) determined pursuant to Herald's articles during the period from 24 March 2004 to 10 December 2008, in respect of 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, 2018 (the **CWR**); and (b) whether section 112 of the Companies Law and/or Order 12, rule 2(1) of the CWR applies so as to require the Additional Liquidator to rectify Herald's register of shareholders (the **Rectification Issues**).
- 2.18 Initially, the Rectification Issues and In-Specie Issues were separate proceedings, given the In-Specie Issue was relevant only to the Fund; however, in the course of the Rectification Issues proceedings at first instance, the Additional Liquidator sought to assert, by way of a further argument, that he was entitled to adjust the Fund's In-Specie Subscription on the basis of what he claimed were powers to rectify under section 112 of the Companies Law. Thus, the legal findings were interrelated and were dealt with as part of the Grand Court hearings on 18 and 19 July 2016.
- 2.19 In the first instance proceedings, the Judge ruled that:
- the NAVs were binding on Herald and the Additional Liquidator was therefore not required to rectify Herald's register of shareholders;
 - despite this fact, the Additional Liquidator did have a self-standing power under section 112 of the Companies Law to rectify Herald's register of shareholders which ought to be done in the present circumstances;
 - however, the Additional Liquidator's power to rectify does not extend to adjusting the Fund's In-Specie Subscription; and
 - the rectification methodology that should be adopted is one which ascribes to each share, at all valuation dates, a notional value of US\$1,000 or €1,000.

(the **Rectification Order**)

CICA Order

- 2.20 As set out in Previous Reports to the Stakeholders, both parties appealed various aspects of the Rectification Order:
- both the Fund and Herald appealed the Judge’s substituted rectification methodology;
 - the Fund separately appealed the finding concerning the scope of section 112 of the Companies Law, arguing that the power is not self-standing but can only be exercised where there is a legal basis for doing so at the commencement of a company’s winding up; and
 - the Additional Liquidator appealed the finding that his rectification powers did not operate in respect of the Fund’s In-Specie Subscription.
- 2.21 Ultimately, the Fund was successful in its appeal and the Additional Liquidator’s appeal was dismissed (the **CICA Order**).
- 2.22 Importantly, as a result of the CICA Order, the Fund’s In-Specie Subscription of US\$463 million into Herald is protected and additionally any distribution made by Herald to its shareholders will be on a ‘Last Statement’ basis.
- 2.23 The CICA did not consider the Grand Court’s suggested rectification methodology given that the CICA found that Herald’s NAVs were contractually binding and Herald’s register of shareholders could not be rectified.
- 2.24 Pursuant to a directions order dated 24 November 2014, the Fund is bound by any determinations made in the Herald liquidation concerning the Rectification Issues. Accordingly, assuming that the position remains, the Fund will make any distributions to its shareholders in accordance with the Last Statement distribution methodology.

Next steps

- 2.25 On 15 March 2018, the Additional Liquidator filed a petition for leave to appeal the CICA Order to the Privy Council. The hearing of that petition has been listed for 27 April 2018.

Herald liquidation

- 2.26 The Fund is Herald’s largest stakeholder. The Fund continues to act as a member of Herald’s liquidation committee, attending committee meetings and liaising with the Herald liquidators, and other committee members on a regular basis.

Sanction application: Redemption Creditor distributions

- 2.27 During the final quarter of 2017, the Additional Liquidator, together with the Principal Liquidators (the **Herald Liquidators**), sought sanction from the Grand Court to, inter alia, pay the claims of Herald’s creditors including that of its Redemption Creditors (the **Creditor Distribution Application**).

- 2.28 The Fund, in its capacity as a member of Herald's liquidation committee, was provided the relevant application documents, prior to its filing.
- 2.29 The Creditor Distribution Application was heard on the papers and the Grand Court handed down its ruling on 7 November 2017.
- 2.30 In summary the effects of the relevant orders are as follows:
- The Primeo Settlement Payment shall be deducted from the principal amounts due to the Fund, with Loan Interest to be settled at a later date by the Fund and the Herald Liquidators;
 - Insofar as is necessary, the Herald Liquidators be authorised to lift the suspension of Herald's redemptions and payment of redemption proceeds; and
 - The claims of the Redemption Creditors which are denominated in Euros shall be paid in Euros.
- 2.31 The Fund received the balance of its Redemption proceeds in November 2017.
- Sanction application: safe maximum distribution*
- 2.32 On 8 December 2017, the Herald Liquidators issued an application to the Grand Court regarding sanction of a safe maximum distribution (the **SMD Distribution**) to its participating shareholders.
- 2.33 Again, as a member of the Herald liquidation committee the Fund was issued a copy of the SMD Distribution application for the Fund's approval, prior to it being filed with the Grand Court.
- 2.34 The SMD Distribution order was handed down on 12 December 2017 and US\$34,919,674.13 and EURO 1,853,109.90 was subsequently received by the Fund in respect of the SMD Distribution.

3. HSBC Proceedings

HSBC Ruling

- 3.1 You will recall from Previous Reports that the Grand Court handed down the HSBC Ruling on 23 August 2017.
- 3.2 You will recall that the outcome was based upon a number of novel legal findings and inferences which the Judge drew from the underlying facts. Although the Grand Court did not award any damages against HSBC, there were some helpful findings in the Fund's favour. The key findings of the Judge were outlined for the Stakeholders in the Previous Report. In summary:

Duty and breach

- 3.3 The Judge largely accepted the Fund's case against HSBC, finding that HSBC owed duties to the Fund and that it had breached those duties in a number of ways, including that:
- HSSL was in breach of its 'on-going suitability' and 'most effective safeguards' duties by not recommending certain safeguards to protect the Fund's assets;
 - HSSL was in breach at various dates when it failed to make any recommendations to the Fund about effective safeguards which were available at that time; and
 - BoB did not exercise reasonable care and skill when calculating the April 2005 NAV, or thereafter, making it grossly negligent to continue to issue NAVs based upon single-source information received from BLMIS.

Strict liability and relevant loss

- 3.4 Despite his findings in respect of serious breaches of duty, the Judge focussed on the impact of the Fund's 2007 switch from a direct to an indirect investment in BLMIS, via Herald.
- 3.5 Although he accepted that HSSL was strictly liable for the wilful defaults of BLMIS as its sub-custodian, the Judge decided that the Fund suffered no loss as a result of those defaults, concluding that the Fund had realised the full value of its assets at the time of the switch into Herald.
- 3.6 The Judge held that, as a result of the switch in to Herald, the Fund's claim is barred by the rule against reflective loss, and the correct claimant for the Fund's losses is Herald.
- 3.7 You will recall that the Fund's legal advisors, and leading counsel, consider that the Judge is wrong in relation to his findings on reflective loss.
- 3.8 Importantly, should these points be overturned on appeal, and provided that the Judge's other findings are upheld, the Fund will recover damages from HSBC.

Limitation

- 3.9 You will recall that there are a number of arguments which can be made to extend the time for initiating a breach of duty claim beyond the prescribed statutory period of 6 years.
- 3.10 In this case, the Judge held that only causes of action which accrued after 20 February 2007 (i.e. 6 years prior to the writ being issued by the Fund) are allowed and that any claims prior to that date are time-barred under the Limitation Law. He also dismissed certain of the Fund's arguments in relation to extending the limitation period, including in respect of fraud and deliberate concealment. Certain of the Judge's limitation findings are being appealed.

Contributory negligence

- 3.11 You will recall that the Judge ruled that, had damages been awarded against HSBC, HSSL would not have been entitled to a reduction in respect of the strict liability claim or its breaches as custodian, but that a reduction of 75% would have applied to any award of damages against BoB. That percentage figure is exceptionally high and, assuming the Fund is successful in recovering damages against BoB on appeal, it will also challenge the reduction.

Causation

- 3.12 As you will recall, the Judge held that HSBC's breaches were not an effective, or dominant cause of the Fund's lost investments and the Fund's withdrawal hypothesis had not been proved. These findings (a mix of factual and legal analysis) form part of the Fund's appeal. As previously noted, due to the strict liability claim, for recovery purposes, it is not essential that the Fund is successful on causation.

Appeal of the HSBC Ruling

- 3.13 As noted in Previous Reports, the JOLs considered all of the points raised in the judgment with their legal advisors, concluding that there are grounds to appeal and that such an appeal has real prospects of success. Accordingly, a notice of appeal was filed with the Grand Court and served on HSBC on 6 September 2017.
- 3.14 HSBC has indicated that the appeal should run for a period of 12 days (not including time set aside for the members of the CICA panel to undertake their pre-reading). Standard appeals to the CICA are usually listed for a much shorter period. Due to the length of the estimated time period, it has been necessary to agree dates for a special sitting of the CICA to facilitate the timetable. Subject to final approval from the CICA, the hearing of the appeal will commence on 26 November 2018 and run until 12 December 2018.
- 3.15 A timetable for exchange of legal submissions has been agreed (subject to Court approval) as follows:
- The Fund shall serve its written submissions on or before 29 June 2018;
 - HSBC shall serve their written submissions on or before 31 August 2018; and
 - The Fund shall serve its submissions in reply on or before 26th October 2018.

Costs per the HSBC Ruling

- 3.16 You will recall from the Previous Report that the issue of liability for costs of the HSBC Proceedings, to the end of the trial, was dealt with at a hearing on 9 November 2017.
- 3.17 Following evidence and submissions from both parties, the Judge ruled that: (1) the Fund must pay 80% of HSBC's costs, to be taxed on a standard basis, if not agreed; (2) the Fund make a payment on account of US\$20 million within 14 days of the order; (3) interest should be paid at a rate of 2.375% per annum from 23 August 2017 (i.e. the date of the HSBC Ruling); (4) HSBC have liberty to apply for an order for interest on costs for the period prior to 23 August 2017. In the event that the Fund is successful on appeal, the Fund has liberty to apply for the same order in relation to interest; and (5) that the deadline for commencement of taxation be extended by no more than six months from the determination of any appeal, or as otherwise ordered by the Grand Court.

EY summons

- 3.18 You will recall from the Previous Report that the summons issued by the JOLs (at the behest of HSBC) against EY Cayman, compelling EY Cayman to use its best endeavours to obtain documents from Ernst & Young Luxembourg (the **EY Summons**), failed, and the issue of costs was reserved.
- 3.19 All interested parties made submissions to the Court, and the issue of costs was considered on the papers by Mr Justice McMillan, who ruled that:
- HSBC shall pay the JOLs' costs of the Leave to Appear Summons and the EY Summons, to be taxed on the standard basis if not agreed; and
 - HSBC shall pay EY Cayman's costs of the Leave to Appear Summons, to be taxed on the standard basis, if not agreed, and the EY Summons to be taxed on an indemnity basis, if not agreed.
- 3.20 Since the Previous Report, EY Cayman has confirmed to the JOLs that they will not be making any claim in the liquidation under the indemnity in relation to any residual costs.

4 Alpha

The Fund's position

- 4.1 The Fund has the following interests as a shareholder in Alpha:

Share class	Number of shares as at 12 December 2008*
Alpha Prime Equity Hedged Euro Class A (Alpha Euro)	107,973.49
Alpha Prime Equity Hedged Fund USS Class A (Alpha USD)	11,915.42

*This figure includes shares the subject of redemption requests for a trade date 1 December 2008.

- 4.2 As at the date of the liquidation of the Fund, there were two tranches of redemption requests outstanding in relation to the Fund's shareholdings, being:

Dealing date of the redemption	Share class	Value of shares
1 December 2008	Alpha Euro	2,203,000.00
	Alpha USD	202,000.00
1 January 2009 (redeemed 12 December 2008)	Alpha Euro	Balance of the holding*
	Alpha USD	Balance of the holding*

*Unknown given Alpha's NAV was suspended on 12 December 2008.

- 4.3 Currently, the Fund's holding is registered in the name of its former custodian, HSSL.
- 4.4 The JOLs are liaising with Alpha's directors and Alpha's administrator, Deutsche Bank AG (**DB**), to update Alpha's register of investors for the shares to be transferred into the name of the Fund. Alpha's board of directors have now provided their consent to the transfer and the JOLs are now working with DB to satisfy DB's due diligence requirements.

Alpha's claim

Trustee

- 4.5 It has been announced that the Trustee filed a motion in the United States Bankruptcy Court, seeking approval of a settlement agreement with Alpha in relation to the Trustee's clawback claim against Alpha and Alpha's reciprocal claim in the BLMIS bankruptcy (the **Alpha Settlement Agreement**). An approval hearing for the agreement has been set for 28 March 2018.
- 4.6 The timing and quantum of any distribution from Alpha is currently unclear. The JOLs are liaising closely with Alpha and its advisors in respect of these matters and it is hoped that further details will become available once the Alpha Settlement Agreement is approved by the Bankruptcy Court and its terms are made public.

Alpha's HSSL claim

- 4.7 On 20 October 2009, Alpha bought proceedings against HSSL in the Luxembourg District Court for breach of contract and negligence in the appointment of BLMIS as sub-custodian of Alpha's assets.

- 4.8 Additionally, Alpha filed a writ of execution on 30 November 2015 against HSSL in Bermuda in order to preserve the Bermudian statute of limitations.

5 Compliance

Automatic Exchange of Information regimes

- 5.1 The Cayman Islands is a signatory to the Automatic Exchange of Information (**AEOI**) regimes, which is implemented in the Cayman Islands via domestic laws and regulations (**AEOI Laws**). This results in certain duties and obligations that are mandated on the Fund.
- 5.2 It has been determined that the Fund is a Cayman Islands "Financial Institution" and as such, has registration, due diligence and reporting obligations to the Tax Information Authority (the **TIA**) in relation to the Common Reporting Standards (**CRS**).
- 5.3 The AEOI Laws impose penalties on non-compliant Cayman Financial Institutions and it was determined necessary for the JOLs to retain a compliance consultant, Emerold Grace, to provide advice on the Fund's reporting obligations, and to assist with the Fund's notification and reporting obligations to the TIA.
- 5.4 Stakeholders and/or their representatives were contacted last year in relation to the completion of self-certification forms, in their capacity as account holders pursuant to their classification under the AEOI Laws. This allowed the JOLs to undertake due diligence in determining the Fund's reportable accounts in relation to CRS.
- 5.5 The Fund's reporting obligations for CRS continue until the dissolution of the Fund. Although the self-certification forms will not need to be completed annually by account holders, the Fund does need to be informed if there are any changes to an account holder's tax information. The Fund has written to account holders on this basis.
- 5.6 The upcoming deadline to file the Fund's yearly report is 31 May 2018.
- 5.7 Stakeholders are also on notice that the JOLs have adopted a policy whereby no distributions shall be paid to a stakeholder unless they have provided a completed self-certification form confirming their tax jurisdiction and a tax identifier number or equivalent (if applicable).

Beneficial ownership regime

- 5.8 The Cayman Islands government has introduced legislation which requires the Fund to maintain a register of information about its beneficial owners (**Beneficial Ownership Regime**).
- 5.9 On the face of the legislation, as currently drafted, the Fund falls within the scope of the Regime (i.e. the Fund is an "in-scope entity") and must maintain a beneficial ownership register. However, the JOLs have no reasonable cause to believe that the Fund has any registerable persons, as defined by the relevant laws. Accordingly, the Fund shall note in its beneficial ownership register the words "no Registerable Person identified."

6 Receipts and payments

- 6.1 The Fund's receipts and payments account for the period 1 September 2017 to 28 February 2018 is detailed at Appendix A.

JOLs fees and expenses

- 6.2 Following unanimous approval by the Committee, on 7 November 2017 the Grand Court approved the JOLs fees and expenses for the period 1 March 2017 to 31 August 2017 totalling US\$1,127,294.77
- 6.3 The JOLs' discounted fees and expenses for the Period total US\$1,028,424.45 and US\$26,063.99 respectively. As agreed with the Committee, to the extent that any category of the JOLs or their staff have spent more than 500 hours working on the liquidation of the Fund during a six-month period, the charges for work in excess of 500 hours are discounted by 10%.
- 6.4 The discounts applied to each category for the Period are as follows:

	Discount US\$
Assistant Manager	6,799.05
Total discount	6,799.05

- 6.5 A detailed breakdown of the fees is attached at Appendix B.
- 6.6 The next remuneration hearing for the Fund is scheduled for 10 May 2018.

7 Claim adjudication

- 7.1 As detailed in the Previous Reports, it remains the JOLs' intention to declare an interim distribution based on the receipt of funds from Herald. As noted at section 2 above, on 16 November 2017 Herald paid to the Fund the principal amount of its December Redeemer claim, net of the Trustee Loan, being some US\$143.4 million. Herald also made an interim distribution in relation to the Fund's equity claim totalling US\$37.2 million. Receipt of these funds put the JOLs in a position to be able to make a distribution to all of the ordinary creditors (the **Ordinary Creditors**) of the Fund and, upon satisfaction of this claimant class, make a distribution to the Redemption Creditors.

The Fund's distribution sanction application

- 7.2 By early November 2017, the JOLs wrote to all stakeholders and advised them of their intention to make a request to the Grand Court for sanction to make a distribution to certain creditor classes in the liquidation and to verify their position.
- 7.3 By a summons date 29 December 2017, the JOLs made a request to the Grand Court for the following:
- That the JOLs be authorised to lift the suspension of the payment of redemption proceeds which was put in place by the directors of the Fund on 12 December 2008 pursuant to Article 50 of the Fund's Articles of Association;
 - That the JOLs be authorised to pay in full, or alternatively provide for, all Ordinary Creditor claims, in the currency of the obligation;
 - That the JOLs be authorised to pay in full, or alternatively provide for, all Redemption Creditor claims, in the currency of the obligation;
 - That the share register be rectified to remove creditors who validly redeemed their shares with a trade date of 1 December 2008;
 - To approve the JOLs' proposed treatment of the December subscribers, being certain prospective investors who submitted subscription requests to the Fund for a trade date of 1 December 2008, (**December Subscribers**), as shareholders, not as creditors and consequently that the Fund's shareholder register should be rectified to reflect those subscriptions; and
 - To approve the JOLs' proposed treatment of the January subscribers, being certain prospective investors who submitted subscription requests to the Fund for a trade date of 1 January 2009, (**January Subscribers**) as Ordinary Creditors in the liquidation and to pay them in full.
- 7.4 That application was heard on the papers by the Honourable Mr Justice Raj Parker, who handed down his ruling on 12 January 2018, granting all of the JOLs' requests.
- 7.5 Notice of the JOLs' intention to declare the distribution was published in the Cayman Islands Gazette on 31 January 2018, in the Die Presse on 1 February 2018 and on the Fund's website.

- 7.6 The JOLs are continuing the process of adjudicating claims from investors who have provided the requisite supporting documentation and anticipate making a distribution within the next two months.

AML / KYC review

- 7.7 Before any distribution can be made to an individual they must be compliant with the Cayman Islands Proceeds of Crime Law (2017 Revision), the Anti-Money Laundering Regulations 2017 and the AEOI Laws (discussed in the Report at section 5.1 to 5.7).
- 7.8 Creditors who have not already done so, are encouraged to submit their KYC/AML information to ensure that their distribution is not delayed. In this regard, a KYC/AML documents checklist is available to be downloaded from the Fund's website. Please note that the evidentiary requirements for individuals, companies and trusts are different.
- 7.9 Additionally, creditors will need to provide their wire transfer details, to allow the distribution to be made to them. A wire transfer form is also available to be downloaded from the Fund's website. Where the registered claimant does not match the nominated bank account, and/or the claimant is a corporate or other type of entity, please provide all necessary authorisation documentation.

The Fund's distribution sanction application

- 7.10 Pursuant to Order 18, rule 2 of the CWR, Appendix C is a dividend calculation statement which sets out how the dividend is to be calculated and provides particulars concerning the assets and affairs of the Fund. This will enable claimants to understand the dividend calculation and their respective dividends to be received, if any.
- 7.11 In summary, in this interim distribution, being the first distribution of the Fund, Ordinary Creditors will be entitled to receive 100 cents in the dollar whilst Redemption Creditors will be entitled to 79 cents in the dollar on their principal Redemption Creditor claim.
- 7.12 Given that there are currently insufficient monies to meet the claims of all of the Fund's creditor classes, there will not be a distribution to shareholders at this time, in accordance with statutory provisions regarding priority of payments.

8 Next steps

- 8.1 The steps that the JOLs intend to take in order to progress the liquidation over the next six months include the following:

Next Stakeholder meeting

- 8.2 The next meeting of the Stakeholders will be held on Friday, 6 April 2018 at 2:00 p.m. (Vienna time) at the Palais Hansen Kempinski Vienna, Schottenring 24, 1010 Vienna, Austria.

HSBC Proceedings

- Preparing for the HSBC Appeal and assisting the Fund's legal advisors.

Herald liquidation

- Continuing to liaise with the Herald Liquidators regarding the progress of the Herald liquidation, including attendance at Herald liquidation committee meetings.
- Dealing with the matter of interest payable to Redemption Creditors.
- Dealing with matters arising out of the CICA Order and the appeal thereof.
- Continuing to liaise with the Herald Liquidators in relation to the recovery of the Fund's legal costs pursuant to the CICA Order and representative order(s).

Claim adjudication

- Finalising the adjudication of creditor claims.

Payment of first distribution

- Paying a distribution to the Fund's Ordinary Creditors and an interim distribution to the Redemption Creditors.

- 8.3 The JOLs will continue to keep the Stakeholders updated on material developments in relation to the liquidation and are available to answer any specific queries the Stakeholders may have.

Yours faithfully
For and on behalf of
Primeo Fund - in official liquidation



Gordon MacRae
Joint Official Liquidator

Appendix A. Receipts and payments from 23 January 2009 to 28 February 2018

Receipts	To 31 Aug 2017 US\$	Movement US\$	To 28 Feb 2018 US\$
Aggregate other recoveries	125,716,512.64	-	125,716,512.64
Herald Dec Redemption proceeds	-	143,386,067.94	143,386,067.94
Herald equity distribution	-	37,180,468.21	37,180,468.21
Repayment of Herald Rep Proceedings costs	2,709,659.23	732,105.45	3,441,764.68
Interest on fixed deposit accounts	1,429,996.59	689,524.90	2,119,521.49
Repayment of In-Specie costs	-	1,205,214.09	1,205,214.09
Repayment of Herald petition costs	1,039,285.39	-	1,039,285.39
Funding agreement	500,000.00	-	500,000.00
Transfer from trust account	-	478,525.55	478,525.55
KPMG application costs award	147,749.21	-	147,749.21
Reimbursement of Herald committee expenses	12,161.59	6,540.55	18,702.14
Total receipts	131,565,369.65	183,678,446.69	315,243,816.34

Payments			
Liquidators' fees and expenses	17,950,711.72	1,086,892.06	19,037,603.78
Legal fees			
Mourant Ozannes	27,222,817.98	1,315,879.06	28,538,697.04
South Square	9,922,712.12	326,402.94	10,249,115.06
Morrison Foerster	3,896,366.58	9,013.59	3,905,380.17
Wildgen	262,264.72	-	262,264.72
Nabarro	254,985.03	-	254,985.03
HLMK	212,013.18	-	212,013.18
Arthur Cox	155,491.45	-	155,491.45
Enyo Law	134,700.82	45,465.93	180,166.75
Sedgwick Chudleigh	128,736.03	-	128,736.03
MNKS	106,650.35	5,976.55	112,626.90
Harneys	17,452.81	-	17,452.81
Tabery & Wauthier	14,220.35	-	14,220.35
Patrick Leonard	12,937.06	-	12,937.06
William Wood QC	7,470.89	-	7,470.89
Swan Legal Services	1,691.71	-	1,691.71
Felten & Associates	1,492.38	-	1,492.38
Total	42,352,003.46	1,702,738.07	44,054,741.53

Other			
HSBC litigation expert and factual witness costs	7,113,977.16	70,678.98	7,184,656.14
HSBC litigation security for costs	-	20,000,000.00	20,000,000.00
Herald loan repayment (Madoff Trustee)	-	29,142,345.00	29,142,345.00
Repayment of funding agreement	557,722.22	-	557,722.22
Data management services	394,441.57	14,664.34	409,105.91
Document disclosure costs	259,398.00	-	259,398.00
Alpha settlement payment	90,000.00	-	90,000.00
Pioneer litigation witness costs	68,023.60	-	68,023.60
Translation services and notary public	61,136.79	7,255.24	68,392.03
Mediator fees	51,672.00	-	51,672.00
Bank charges	46,289.79	2,032.77	48,322.56
Stakeholder meeting costs	36,929.23	779.04	37,708.27
Cayman Islands Government fees	32,387.81	-	32,387.81
Court reporting services	16,138.88	-	16,138.88
Liquidation committee expenses	13,355.69	1,262.59	14,618.28
Herald-related travel expenses	5,044.40	-	5,044.40
Website charges	1,520.00	-	1,520.00
Total	8,748,037.14	49,239,017.96	57,987,055.10
Total payments	51,050,753.32	52,028,648.09	103,079,401.41
Net balance	80,514,616.33	131,649,798.61	194,154,410.94

Represented by	US\$	US\$
Cash at bank (US dollars)	5,389,831.03	2,653,786.87
Cash at bank (Euros) *	-	5,426,979.33
Term deposit placements	57,114,781.30	186,073,644.74
Net balance	62,504,612.33	194,154,410.94

* Translated into USD at EUR1.00:USD1.22 based on 28 February 2018 mid market rates

[illegible]

Appendix C. Dividend distribution calculation statement

	US\$	%
Total assets realised to date	315,233,811.34	
Expenses of the liquidation to date		
Liquidators' fees and expenses	(19,037,603.78)	
Legal fees	(44,054,741.53)	
Repayment of funding	(29,700,067.22)	
HSBC proceedings including expert and factual witness costs and security for costs	(27,184,656.14)	
Other general liquidation costs	(1,102,331.74)	
Total expenses of the liquidation to date	(121,079,400.41)	
Provisions ¹	(53,993,257.70)	
Amount of dividend distribution	140,156,953.24	
Value of Ordinary Creditor claims ²	8,885,237.65	
Reserve on the interest on Ordinary Creditor claims (including contingent claims) ²	6,693,541.40	
Total to be provided for or paid to Ordinary Creditors²	15,578,799.05	100%
Balance	124,582,354.19	
Value of Redemption Creditor claims ²	156,803,813.29	
Total to be provided for and / or paid to Redemption Creditors²	124,582,354.19	0.79 79 cents in the dollar

¹. This figure includes provisions for the expenses of the liquidation including:

- Liquidators' costs to finalisation of the liquidation
- legal costs, including costs relating to ongoing litigation
- HSBC costs in HSBC Proceedings
- provision for contingent Ordinary Creditor claims including:
- indemnity claims by former directors and service providers
- HSBC indemnity claims
- HSBC claims for unpaid fees

• provision for interest payments (i) to purchasers of redeemed shares and (ii) on funding of the Trustee Settlement Agreement.

A value is the admitted, or provisioned amount relating to the claims. In accordance with the CWR, given the liquidation is solvent, creditors are entitled to be paid in the currency of the obligation. Where there are EURO claims, in the absence of the actual rate of exchange, the mid market exchange rate has been used provisionally.

NB: The figures in the above dividend distribution calculation vary from the figures per the Fund's sanction application on the bases that (1) exchange rates of 28 February 2018 have been adopted, (2) actual receipts and payments to 28 February 2018 are reflected in the above and (3) certain provisions have changed since the sanction application was made.