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Primeo Fund – in official liquidation (the Fund)

**Summary of minutes of the 6 April 2018 meeting of the Fund's
creditors and investors of record (the Stakeholders)**

6 April 2018, 2.00 p.m.

Palais Hansen Kempinski Hotel, Vienna, Austria.

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**)

Introduction

The Chairman opened the meeting at 2.05 p.m. and introduced PH and CR to those in attendance.

Overview

The Chairman tabled the report for the period from 1 September 2017 to 28 February 2018 (the **Period**) which had been circulated to the Stakeholders on 29 March 2018 (the **Report**). Capitalised terms in these minutes, not otherwise defined, shall bear the meanings ascribed to them in the Report.

The Chairman began by stating that the meeting did not have any formal resolutions to attend to and the primary purpose of the meeting was to provide the Stakeholders an update of the Fund's liquidation during the Period.

The Chairman advised Stakeholders that the agenda would follow the same sequence as in the Report.



In particular, the Chairman noted that he would address the following:

- The HSBC costs hearing held on 9 November 2017 and the appeal of the HSBC Ruling;
- Matters concerning the Herald liquidation including the Fund's proceedings with the Additional Liquidator;
- Information regarding the timing and quantum of an interim distribution to the Fund's creditor classes.

The Chairman confirmed that he would invite questions from the Stakeholders once he had provided the relevant update for each of the agenda items.

Notice of the meeting

The Chairman advised that notice of the meeting was circulated on 14 March 2018 to all Stakeholders and that the notice of the meeting was posted on the Liquidators' website (www.primeofund-liquidation.com).

HSBC Ruling and appeal thereof

The Chairman moved to the first agenda item which included the HSBC Ruling, the costs hearing and the Fund's appeal.

The Chairman briefly outlined the Liquidators' case against HSBC and the HSBC Ruling as detailed in sections 3.0 to 3.12 of the Report.

The Chairman explained that, at the 9 November 2017 costs hearing, HSBC claimed approximately US\$38 million of costs, however, the Fund successfully had this figure reduced to approximately US\$30.4 million (being 80% of the amount claimed). The Judge also ruled that the Fund make a payment of US\$20 million on account to HSBC within 14 days of the costs order.

The Chairman confirmed that the Fund had filed its notice of appeal of the HSBC Ruling and served the same on HSBC on 6 September 2017. The appeal timetable for exchange of legal submissions has been agreed by the parties, with the hearing of the appeal to commence on 26 November 2018, running until 12 December 2018, subject to the approval of the Court.

PH then explained to the Stakeholders the legal points that the Fund needs to successfully overturn in order to recover damages from HSBC (provided that the Judge's other findings are upheld).

The Chairman invited questions from the Stakeholders in relation to the HSBC Proceedings.

Question: What are the prospects of the Fund's appeal of the HSBC Ruling?



PH confirmed that upon the Fund's liquidation committee's (the **Committee**) request, independent opinions had been sought in relation to the merits of the Fund's appeal and the presentation of the same. Given the Committee is bound by confidentiality agreements, the opinions have been shared with the Committee. The independent opinions were favorable, however, the Stakeholders should bear in mind that there will always be litigation risk.

The Chairman reminded the Stakeholders that the Committee represented the entire body of Stakeholders and were actively engaged in the oversight of the liquidation.

Question: Could pursuing the appeal of the HSBC Ruling result in there being no return to the Fund's unredeemed investors?

The Chairman advised that a recovery from HSBC would be an important factor in achieving a return to unredeemed investors and this was one of the considerations underpinning the Liquidators' strategy to pursue the appeal.

PH reminded the Stakeholders of the progress of the liquidation to date and noted that, at the commencement of the winding up of the Fund, there were limited funds to advance the liquidation and there was no prospect of any return to the Fund's investors or creditors. PH noted that the Fund is now in a position to pay an interim distribution to the Fund's Ordinary Creditors of 100 cents in the dollar and to the Redemption Creditors of 79 cents in the dollar on their principal Redemption Creditor claims.

Question: Are the investors receiving anything in the upcoming distribution?

PH confirmed that equity investors will not receive anything in this round of distributions. He noted that the distribution will be in accordance with the Cayman Islands statutory provisions, in which creditors' claims (including Redemption Creditors) rank ahead of the Fund's investors. PH reminded Stakeholders that Redemption Creditors were former investors.

Question: What is the provision line item in appendix C of the Report, being the dividend distribution calculation statement, in relation to HSBC?

The Chairman confirmed that the provision included all of the anticipated expenses of the liquidation up to the Fund's dissolution and all known contingent ordinary creditor claims. The Chairman advised that HSBC's potential claims taken into account in calculating the provision included:

- A provision for HSBC's claim for costs, not already discharged, in the HSBC Proceedings (incurred to date and estimated future costs associated with the



- appeals process), which rank as an expense of the liquidation, rather than as an ordinary creditor claim;
- A provision for HSBC's potential claims against the Fund for unpaid administration and custody fees; and
- A provision for HSBC's potential claims for costs under the indemnities pursuant to the Administration and Custodian Agreements.

Question: Why is there an issue in relation to the Fund's claim against HSBC being time-barred under the Limitation Law?

PH explained that the Fund's statement of claim (the **SOC**) had been filed once the Liquidators had sufficient knowledge and funds to pursue the claim. Additionally, prior to filing the SOC, the Liquidators had approached HSBC with a view to settle the matter and avoid litigation. When it became clear that pre-action settlement would not occur, the SOC was issued.

Herald liquidation matters

The Chairman moved to the next agenda item being the Herald liquidation and related proceedings with the Additional Liquidator.

The Chairman briefly summarised the following matters which are outlined in the Report:

- The December Redeemer Issue detailed at sections 2.3 to 2.4 and the dispute concerning interest payable to Redemption Creditors at sections 2.9 to 2.13;
- The Rectification Issues and In specie Issue detailed at sections 2.14 to 2.25; and
- The general matters relating to the Herald liquidation, particularly the distributions received by the Fund in the Period, detailed at section 2.26 to 2.34.

The Chairman confirmed that, during the Period, the CICA handed down its ruling in relation to the Rectification Issues. In that ruling, the CICA allowed the Fund's appeal in its entirety and dismissed that of the Additional Liquidator in its entirety.

The Chairman explained that, 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.

The Chairman confirmed that 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. PH noted that the leave



application is a formality, given the Additional Liquidator is entitled to appeal as of right.

The Chairman invited questions from the Stakeholders in relation to the Herald liquidation.

Question. What is the value to the Fund's liquidation estate should it successfully defend the Additional Liquidator's appeal of the CICA Order?

PH advised that there are two inter-related limbs to the appeal of the CICA Order being:

- Rectification of the Fund's equity claim on a 'Net Equity' basis; and
- Rectification of the Fund's In specie Subscription.

PH confirmed that if the Fund is successful in defending the In Specie part of the ruling, then there will be a comparatively small variance in the amount to be received from Herald on the balance of the Fund's shares should the distribution be made on a 'Last Statement' basis as compared to a 'Net Equity' basis.

However, the effect of the Additional Liquidator rectifying the Fund's In Specie Subscription on the basis of net equity could alter the Fund's shareholding in Herald by approximately US\$300 million.

PH added that the ongoing litigation with the Additional Liquidator concerning the Rectification Issues will delay any payment to the Fund's shareholders. This is because the manner in which shareholders' positions are to be rectified and the method of distribution is yet to be determined. The ultimate decision will apply to the shareholders in both Herald and the Fund.

Question. Is there any conflict in running both the Fund's claim in the Herald liquidation regarding the Fund's In specie Subscription and the Fund's claim against HSBC for damages in relation to the same investment?

PH confirmed that whilst the loss is the same, the claims are not. Any amounts received from Herald would be credited to HSBC in the HSBC Proceedings. In accordance with the principle of "double recovery", the Fund is unable to recover more than the loss it suffered. PH explained that, at this point in time, there is uncertainty in relation to the amount to be recovered from the Herald liquidation and, by pursuing HSBC, the Liquidators will ensure that the return to the Fund's investors is maximised.

Question. How can the Fund claim it suffered a loss in relation to HSBC's actions where: (i) the Fund was able to successfully swap its investment from direct investment in BLMIS to indirect via Herald and (ii) prior to 1 December 2008, the Fund was able to pay out redemptions?



PH noted, per his previous explanation, that the Fund has always accepted that it will have to give credit for any recoveries it may receive from Herald but that does not mean that the Fund did not suffer any loss. The question of whether the Fund suffered any loss is of course one of the key issues on the appeal. In relation to the swap from direct investment in BLMIS to indirect investment through Herald, the simple point is that the Fund did not receive any additional value as a result of that transaction. The transaction itself was designed to be economically neutral. The Fund swapped the value shown on its broker statement, which was in reality much less due to the fraud, for Herald shares, the value of which depended entirely on underlying assets supposedly held by BLMIS. Had the Fund received cash and then chosen to re-invest the cash the position may have been different but that is not what happened. In addition, had HSBC properly performed its duties, the Fund would have withdrawn its investments at a much earlier stage and would never have swapped to an indirect investment through Herald. The fact that BLMIS paid out cash to facilitate redemption payments prior to 1 December 2008, from money stolen from other investors, does not change the analysis. Had HSBC complied with its obligations, the Fund would have withdrawn all its investments at a much earlier stage. It was because HSBC failed to comply with its obligations that the Fund remained exposed to the BLMIS fraud.

Distribution

The Chairman reiterated that, in the upcoming interim distribution, 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 claims.

The Chairman invited questions from the Stakeholders in relation to the upcoming distribution.

Question. What is the distribution priority of the Fund's December Subscribers?

The Chairman confirmed that December Subscribers are prospective investors who submitted subscription requests to the Fund for a trade date of 1 December 2008 as shareholders (not as creditors) and, consequently, the Fund's shareholder register should be rectified to reflect those subscriptions. This treatment is in accordance with the Privy Council's determination in the December Redeemer Proceedings and has been ratified by the Grand Court in the Fund's distribution sanction application.



Question: How are redemptions with a trade date after 1 December 2008 to be treated?

The Chairman confirmed that these are not valid redemptions and will form part of the relevant investors' equity claim.

General matters

The Chairman invited general queries.

Question: What is the Liquidators' strategy in the event that the Herald liquidation is protracted longer than the Fund's liquidation?

The Chairman advised that, if that occurs, the Liquidators may consider selling the Fund's interest in Herald.

Question: As per the Report, Alpha has announced a settlement with the Trustee. What is the expected quantum and timing of a distribution from Alpha?

PH confirmed that in the first instance the settlement required approval from the United States Bankruptcy Court. The Liquidators would be seeking an update from Alpha in due course regarding any distributions.

Question: Could the Liquidators consider a less expensive venue for future Stakeholder meetings?

The Chairman agreed that the Liquidators would consider this.

Closing remarks

The Chairman invited any other business. There being no further business, the meeting was closed at 3.40 p.m. (Vienna time).

Gordon I. MacRae
Chairman