

Mitteilung an alle Anteilseigner der Primeo Select Fonds:

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

KYG7242V1077	Primeo Select - USD in liquidation Dis
KYG7243U1085	Primeo Select - EUR Cap

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Joint Official Liquidators' report to the Fund's stakeholders

Primeo Fund – in official liquidation

18 October 2019

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Basis of Presentation

This progress report has been prepared for the purpose of informing the investors and creditors of Primeo 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 (**Liquidators**) 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 Liquidators at the time of preparation. Should any new information be received, that may result in material changes to the report.

By circulating this report, the Liquidators do 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 Liquidators 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 Liquidators have not performed an audit examination on this information. Except where specifically stated, the Liquidators 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 twentieth report of the Liquidators to the Stakeholders on the progress of the liquidation (the **Report**). The Report covers the period from 1 March 2019 to 31 August 2019 (the **Period**). The Report also includes material events which have occurred subsequent to the Period's end.
- 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 Liquidators as Voluntary Liquidators on 23 January 2009 and their subsequent appointment as Liquidators by the Grand Court of the Cayman Islands (**Grand Court**) on 8 April 2009. The Stakeholders are also referred to the information provided on the Fund's website available at <https://primeofund-liquidation.com/>. The password to access protected parts of the website is available on request.
- 1.3 Section two of the Report provides an update on the Fund's appeal of the decision of the Court of Appeal of the Cayman Islands (**CICA**) in *Primeo Fund (in official liquidation) v Bank of Bermuda (Cayman Limited) (BoB) and HSBC Securities Services (Luxembourg) SA (HSSL) (together HSBC) (CICA Civil) Appeal No 21 of 2017 (Formerly Cause No FSD 30 of 2013 (AJJ)) (the HSBC Proceedings)*.
- 1.4 Section three of the Report provides an update in relation to the matters arising from the Herald liquidation and various proceedings with Michael Pearson, the additional liquidator (**Additional Liquidator**) of Herald Fund SPC - in official liquidation (**Herald**).
- 1.5 Section four of the Report provides an overview of the Fund's interest 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 certain of its Stakeholders.
- 1.7 Section six of the Report provides an update in relation to the Liquidators' dealings with the Madoff Victim Fund (**MVF**).
- 1.8 Section seven of the Report provides an update in relation to the distributions by the Fund made to date and future distributions anticipated by the Liquidators.
- 1.9 Section eight of the Report provides an analysis of the Fund's liquidation receipts and payments from 23 January 2009 to 31 August 2019 and the Liquidators' fees and expenses incurred for the Period.

2. HSBC Proceedings

Grand Court decision

- 2.1 The Stakeholders will recall from the Previous Reports that the Grand Court handed down its judgment in the HSBC Proceedings on 23 August 2017.
- 2.2 The Grand Court's decision was based upon a number of novel legal findings. Although no damages were awarded to the Fund, there were a number of helpful findings in the Fund's favour, which were most recently summarised in the Liquidators' seventeenth report for the period 1 September 2017 to 28 February 2018.

CICA's decision

- 2.3 The CICA handed down its judgment on 13 June 2019. Stakeholders were notified and provided with a copy of the ruling on 21 June 2019.
- 2.4 The following section outlines the key findings from the CICA's ruling.
- The Fund's strict liability claim
- 2.5 The CICA agreed with the Fund's analysis that upon misappropriation of the money, the Fund suffered an immediate actual loss measured by the value of the money misappropriated.
- 2.6 The CICA concluded that:
- The 1996 Custodian Agreement imposes both strict liability and supervisory/ effective safeguards duties;
 - Bernard L. Madoff Investment Securities LLC (**BLMIS**) owed a duty of safekeeping in respect of the cash;
 - BLMIS wilfully breached its duties as sub-custodian by misappropriating and/or misusing the Fund's money;
 - The Fund suffered actual loss each time it sent money (via HSSL) to BLMIS for investment;
 - The redemptions which were met by BLMIS from time to time did not cure the previous breaches; and
 - The Herald transfer did not confer a benefit on the Fund that nullified the losses the Fund had already suffered as a result of the safekeeping breaches.
- 2.7 Therefore, if not the for reflective loss issues discussed in more detail below at sections 2.14 to 2.17, the Fund would have succeeded on its strict liability claim.

HSBC's cross appeal of the custody claim

- 2.8 The CICA rejected HSBC's cross appeal and upheld all of the Trial Judge's core findings in respect of BLMIS becoming HSSL's sub-custodian in August 2002 but rejected the Fund's submission that BLMIS was HSSL's sub-custodian prior to August 2002.

HSBC's cross appeal on the administration claim

- 2.9 The CICA rejected HSBC's cross-appeal and formed the view that the Trial Judge's finding that BoB was grossly negligent after April 2005 was correct.

Causation

- 2.10 Stakeholders will recall that to succeed on its breach of duty claims, but not the strict liability claim, it is necessary for the Fund to show that HSBC's breaches of duty caused the losses suffered by the Fund. At first instance, the Trial Judge held that the Fund had not proved its case on causation.
- 2.11 For the purposes of the causation analysis there are three relevant time periods which the Courts have been invited to consider:
- August 2002: Relating to the execution of the 2002 Sub-Custody Agreement;
 - April/May 2005: Relating to the issuance of the first custody confirmation by HSSL; and
 - February - April 2007: Relating to the issuance of the custody confirmation in February 2007, within the start of the limitation period.
- 2.12 The CICA upheld the Trial Judge's decision in relation the first date (i.e. August 2002) confirming that the Trial Judge's decision was one which was reasonably open to him and not one with which an appellate court should interfere.
- 2.13 However, the CICA formed a different view in relation to the position as at April/May 2005. The CICA stated that the Trial Judge erred in law in applying a balance of probability standard to the hypothetical actions of BLMIS and EY. The CICA concluded that there was undoubtedly a real or substantial (rather than speculative) chance that EY would not have produced a clean audit opinion in the circumstances. The CICA then overruled the Trial Judge on the basis that even allowing for "[the Fund's] enthusiasm for Mr Madoff" it is less than probable that, having withdrawn the assets from BLMIS following the lack of a clean audit opinion from EY, the Fund's directors would have nevertheless immediately reinvested the funds with BLMIS despite their custodian, their administrator and their auditors all confirming that they had been unable to verify that the assets really existed. The CICA reached the same conclusion in respect of the February - April 2007 period.

Reflective Loss

- 2.14 Stakeholders will recall that HSBC has been running a defence of reflective loss to the Fund's claims. The argument is that the claims must be brought by Herald and Alpha,

in which the Fund was invested when the Madoff fraud was discovered, rather than by the Fund. The Trial Judge found for HSBC on the reflective loss argument.

2.15 The Fund appealed the reflective loss finding but the CICA rejected the Fund's arguments and held that:

- Timing point: It did not matter that the Fund's claims were fully accrued before the Herald transfer, because the time to consider whether the claims were reflective was when the claims were issued rather than when they accrued.
- Merits test: The CICA also held that, notwithstanding that save for reflective loss the Fund had a good claim against HSBC, it should be prevented from pursuing that claim because Herald had a claim that was arguable and could survive an immediate strike out application. It further held that it did not matter that the Fund and Herald's causes of action were different, under different contracts governed by different laws and against different defendants, because there was a possibility that liability might nonetheless end up with HSSL and the claims were therefore reflective.

2.16 The CICA also rejected the Fund's argument that the Fund's claims against BoB, for breach of administration duties, could not be reflective, given that Herald has no claim against BoB. The CICA held that HSSL provided administration services to Herald and that a claim by the Fund against BoB would, in substance, be passed through as a claim against HSSL in negligence and/or wilful breach of duty.

2.17 Similarly, the CICA accepted HSBC's submissions that Alpha's claim against its Bermudian administrator would pass through to HSSL due to delegation and indemnity provisions.

Limitation

2.18 The Fund appealed several of the Trial Judge's findings on limitation because they may have an impact on the amount of damages that can be recovered by the Fund. The CICA was asked to determine whether there were grounds to extend the limitation period, including whether: (i) the breaches of the on-going suitability and most effective safeguards duties are "continuing" breaches; (ii) BLMIS was HSSL's "agent" for deliberate concealment purposes; (iii) the Fund's claim was based on fraud; and (iv) a reckless breach constitutes the "deliberate commission of a breach of duty" so as to extend the limitation period and, if so, whether the breaches in this case were reckless.

2.19 The CICA concluded that:

- Continuing breach: A periodic review of the position was required by HSBC and fresh breaches occurred after 20 February 2007 (including issuing a custody confirmation on 23 February 2007 and striking the monthly NAV) which are not time-barred.
- Agency: BLMIS was HSSL's agent and BLMIS' deliberate concealment can be treated as HSSL's deliberate concealment. Accordingly, time is extended in respect of the Fund's strict liability claim.

- **Fraud:** The CICA did not accept that the Fund's action is based on fraud. The CICA concluded that fraud is not an essential element of the causes of action brought against HSBC. Therefore, the fraud exception to limitation does not apply.
- **Recklessness:** The CICA held that it is difficult to construe the words "*deliberate commission of a breach of duty*" as including recklessness. They concluded that HSBC's recklessness does not suffice so as to extend limitation.

Contributory Negligence

- 2.20 Stakeholders will recall that the Trial Judge concluded that (i) the Fund's damages against BoB, as administrator, should be reduced by 75%, and (ii) the Fund's claim against HSSL, as custodian, was not subject to a defence of contributory negligence.
- 2.21 In respect of BoB, the CICA formed the view that attributing 75% of the fault to the Fund is well outside the broad range of outcomes, in light of BoB's status as a professional administrator and pursuant to the contractual agreement with the Fund. The CICA concluded that a reduction of 50% is appropriate.
- 2.22 In respect of HSSL, the CICA overruled the Trial Judge and found that HSSL can rely on the defence of contributory negligence, on the basis that HSSL's liability arises from a contractual obligation which in substance is to exercise reasonable skill and care in connection with the most effective safeguards.

Appeal to the Privy Council

- 2.23 Following an extensive review of the CICA's decision and in consultation with the Liquidation Committee, the Liquidators formed the view that the CICA's decision should be appealed to the Privy Council.
- 2.24 The CICA granted the Fund leave to appeal to the Privy Council on 8 July 2019. The Fund filed its grounds of appeal and other appeal papers on 30 August 2019.
- 2.25 In summary, the Fund has appealed the CICA's findings in relation to the following issues:
- Reflective loss;
 - Contributory negligence;
 - Limitation; and
 - Assessment of damages.
- 2.26 HSBC filed their Respondents' Form on 19 September 2019.

CICA costs submissions

- 2.27 The CICA directed the parties, in the event that costs could not be agreed, to provide written submissions on the costs of the CICA appeal by 26 July (HSBC), 9 August (the Fund) and 23 August 2019 (HSBC's reply). The Fund's Cayman legal advisors argued

in their submissions that the appropriate costs order in the circumstances (the Fund having succeeded on the majority of the issues) should be no order as to costs in relation to both the Grand Court proceedings and the CICA proceedings.

- 2.28 The parties are currently waiting for the CICA's decision on costs.

Defender proceedings

- 2.29 As previously advised, the Liquidators have been monitoring the ongoing proceedings between Defender Limited (**Defender**) and HSBC Institutional Trust Services (Ireland) Limited (**HTIE**), in order to determine whether any points raised in those proceedings may be relevant to the HSBC Appeal.
- 2.30 Shortly after the commencement of trial in the Irish High Court on 30 October 2018, the court determined the preliminary issue that section 17(2) of the Irish Civil Liability Act 1961 applied and, accordingly, Defender's claim should be reduced by 100% based upon Defender's prior settlement with the BLMIS Trustee. Having decided that preliminary issue, it was determined that the trial should not proceed.
- 2.31 Legal counsel for Defender has lodged an appeal but they do not anticipate that this will be heard for 1 to 2 years. Timing of the appeal will be dependent, in part, upon whether the Irish Supreme Court will accept a leap-frog over the Irish Court of Appeal in circumstances where it is arguably a matter of particular public importance.

3. Herald

- 3.1 As set out in greater detail in the Previous Reports, the Fund has received a number of distributions from Herald in its capacity as a creditor and as a shareholder of unredeemed shares.
- 3.2 The below provides an update on the status of Herald's liquidation generally and the Fund's outstanding claims in Herald.

The liquidation of Herald

- 3.3 Based on the position as currently determined by the Courts, 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 Herald's liquidators, namely Russell Smith and Niall Goodsir-Cullen (the **Principal Liquidators**) and the Additional Liquidator (together, the **Herald Liquidators**), on a regular basis.
- 3.4 In summary, outside of its litigation with the Fund, the remaining matters in Herald's liquidation are (i) its proceedings against its former custodian HSSL, and (ii) the receipt of further distributions from Irving H. Picard, SIPA Trustee for the Liquidation of BLMIS (**BLMIS Trustee**) in respect of Herald's admitted claim in the BLMIS bankruptcy.
- 3.5 The next formal annual meeting of the Herald contributories is to be held on 31 October 2019 in London. A meeting of the Herald's liquidation committee has also been convened for the same date.

The Fund's outstanding creditor claim

- 3.6 On 13 September 2013, the Fund filed a proof of debt in Herald's liquidation in respect of its various creditor claims. As previously reported, the Fund has received payments in respect of the majority of its creditor claims (including in respect of its successful redemption creditor claim). The remaining aspect of the Fund's creditor claim is its as yet unadmitted claim for certain performance rebates for the period October and November 2008, amounting to US\$1,099,969.96 and €1,178.65 respectively.
- 3.7 The rebates accrued pursuant to an agreement that Herald would pay to the Fund a rebate of part of the performance fee payable by Herald to its investment manager, Herald Asset Management Limited.
- 3.8 During the Period, the Liquidators have provided the Additional Liquidator with various documents to support the Fund's claim.
- 3.9 Until this matter is resolved Herald has confirmed it will provide for this element of the Fund's claim in full.

Recent distributions to the Fund in its capacity as a shareholder

- 3.10 Pursuant to orders of the Grand Court, the Principal Liquidators have paid "safe maximum distributions" to certain of Herald's stakeholders, including the Fund. Herald has put aside reserves pending the determination of certain litigation

(including the determination of the Rectification Issues discussed in greater detail in sections 3.13 to 3.23 below), which could impact the amount of Herald's distributions to its unredeemed shareholders.

- 3.11 During the Period, the Fund received US\$5,019,023.46 and €279,819.90, on 2 April 2019 and 4 April 2019 respectively, in relation to Herald's third "safe maximum distribution". In total, the Fund has received interim distributions of US\$40,378,236.04 and €7,691,540.80 in respect of its shareholding in Herald.
- 3.12 The Principal Liquidators' have confirmed that Herald is currently holding back reserves of US\$91,536,516 as a result of their "safe maximum distribution" computations, until such time as the Rectification Issues are finally determined.

The Fund's shareholding in Herald

- 3.13 As Stakeholders will be aware from Previous Reports, the Fund is in ongoing litigation with Herald regarding whether, in the circumstances of Herald's liquidation, Herald's share register should be rectified and, if so, what rectification methodology should be applied (the **Rectification Issues**).

Determination of the Rectification Issues

- 3.14 On appeal, overturning the Grand Court's first instance decision, the CICA ruled that:
- the Additional Liquidator does not have a self-standing power under section 112 of the Companies Law to rectify Herald's register of shareholders but instead could only do so if Herald's net asset values (**NAVs**) were mis-stated and not binding upon Herald and its members by reason of fraud or default; and
 - as Herald's NAVs were in fact binding, the Additional Liquidator could not rectify the register of shareholders.

(the **Rectification Order**).

Appeal of the Rectification Order to the Judicial Committee of the Privy Council (**Privy Council**)

- 3.15 As the Stakeholders will recall, on 15 March 2018, the Additional Liquidator applied to the CICA for leave to appeal the Rectification Order to the Privy Council. Leave was granted to the Additional Liquidator, as of right, on 27 April 2018. The CICA also directed that the representation order made in 2014 (**Representation Order**) be continued for the purposes of the appeal before the Privy Council. The Representation Order provides for Herald to pay the Fund's costs of determining the issues, regardless of the outcome.
- 3.16 The Additional Liquidator filed a notice of appeal to the Privy Council on 22 June 2018, with the Fund's notice of objection /acknowledgement subsequently filed on 13 July 2018. The statement of facts and issues was filed by the Additional Liquidator on 27 September 2018.
- 3.17 Following agreement between the parties, the hearing before the Privy Council was listed for 29 October 2019 in London.

- 3.18 After the end of the Period, on 4 September 2019, Cayman legal advisors for the Additional Liquidator requested that the hearing date of 29 October 2019 be vacated and ultimately for the hearing to be relisted on 4 February 2020.
- 3.19 The Liquidators considered that a delay of this length would unduly prejudice the Fund and its stakeholders given the sums of money being held back by Herald in reserve. On this basis, the Liquidators did not agree to a relisting of the hearing and requested that the hearing proceed on 29 October 2019 as planned.
- 3.20 Following several rounds of correspondence between the Fund's Cayman legal advisors, the Additional Liquidator's Cayman legal advisors and the Privy Council, on 3 October 2019, Lord Reed, one of the judges of the Judicial Committee of the Privy Council, directed that the appeal should remain listed for 29 October 2019.
- 3.21 The Additional Liquidator served his written case on 7 October 2019.
- 3.22 The Fund's Cayman legal advisors have confirmed to the Privy Council that it will provide its written case by 21 October 2019 pursuant to the timetable prescribed by the relevant Privy Council Rules. Preparation of the Fund's written case is well advanced, and the Fund anticipates being able to file its written case within the prescribed period.

4. Alpha

The Fund's position

- 4.1 As Stakeholders are aware, the Fund has the following interests as a shareholder in Alpha:

Table 1.1: The Fund's shareholding 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 US\$ Class A (Alpha USD)	11,915.42

*This figure includes shares which are 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:

Table 1.2: The Fund's redemption requests

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*

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

- 4.3 As Stakeholders will be aware, the Fund's shareholding in Alpha was previously registered in the name of its former custodian, HSSL. On 8 November 2018, after lengthy delays, Alpha's directors consented to the transfer of the holdings into the name of the Fund which was subsequently effected.

Alpha's claim with the BLMIS Trustee

- 4.4 The BLMIS Trustee filed a complaint against Alpha in New York seeking to claw back redemptions made by Alpha investors within 90 days, 2 years, and 6 years prior to Madoff's arrest.
- 4.5 With a view to avoiding further expenditure and time delays, Alpha's directors resolved that they would pay back the full amount of the redemptions made within 2 years of Madoff's arrest. The U.S. Bankruptcy Code then allows Alpha to obtain a claim against the BLMIS bankruptcy estate in the amount paid into the estate on top of any other claim it may have asserted in the bankruptcy (the **Springing Claim**). In exchange for the payment, the Liquidators are informed that the BLMIS Trustee agreed to approve 95% of Alpha's net equity claim.
- 4.6 The settlement agreement did not resolve the following issues: (i) whether Alpha is entitled to a Springing Claim and if so, at what priority; (ii) the BLMIS Trustee's treatment of the last 5% of Alpha's claims; and (iii) the BLMIS Trustee's ability to recover other redemptions made within 6 years of Madoff's arrest. The Liquidators understand that these are the only outstanding issues.
- 4.7 The litigation between the BLMIS Trustee and Alpha is on-going.

Alpha's claims against certain HSBC entities

- 4.8 Alpha has commenced proceedings against various HSBC entities (including HSSL) in Luxembourg, Bermuda and the USA.
- 4.9 As explained in the notes in the HSBC Proceedings, Alpha filed a claim against the HSBC entities in Luxembourg on 20 October 2009. This claim was suspended on 28 January 2015 and has remained suspended. On 7 December 2018 Alpha commenced further proceedings in Luxembourg against six defendants, including HSSL, and notices of appearance were filed with the Luxembourg District Court on 21 December 2018.
- 4.10 The proceedings in Bermuda were commenced in November 2014, although the Liquidators understand that the HSBC defendants have not been served. On 27 May 2011, Alpha made crossclaims against HSBC entities in proceedings brought by the BLMIS Trustee in the United States on various grounds. The US Bankruptcy Court dismissed these claims on jurisdictional grounds in December 2016.

Complaint filed against Alpha

- 4.11 On 31 July 2019 a third party, Access Advantage Master Ltd (**Access**), filed a complaint against Alpha in the Supreme Court of the State of New York. In summary, Access is seeking payment of outstanding redemption proceeds of US\$3.3 million (plus interest) and costs.
- 4.12 The Stakeholders will recall that Alpha has suspended the payment of redemptions, however control of Alpha remains with its directors and it is not presently in liquidation (or any form of independent administration).
- 4.13 The Liquidators are continuing to monitor the position.

Distributions from Alpha to its stakeholders

- 4.14 The Liquidators understand that Alpha is currently taking advice from Bermudian lawyers regarding distributions to Alpha's stakeholders. However, Alpha's directors have indicated that distributions may not be made until all of Alpha's litigation has concluded.

5. Compliance

- 5.1 As set out in the Previous Reports, changes to the Cayman Islands regulatory compliance framework imposes certain reporting obligations on the Fund, pursuant to the beneficial ownership and the Automatic Exchange of Information (**AEOI**) regimes.
- 5.2 Non-compliant companies may face penalties and, accordingly, the Liquidators, in consultation with a compliance consultant, have attended to the requisite filings to guard against the liquidation estate incurring such financial penalties.

AEOI regimes

- 5.3 On the basis that the Fund is a Cayman Islands "Financial Institution", the Fund has certain ongoing reporting obligations to the Tax Information Authority (the **TIA**) in relation to the Common Reporting Standards (**CRS**)¹.
- 5.4 During the Period, the Fund submitted its CRS filing relating to 220 reportable accounts. The next reporting deadline is 31 May 2020 (in respect of the calendar year 2019).
- 5.5 Stakeholders who have not completed and submitted a self-certification form(s) are again reminded to do so. Additionally, where Stakeholder's tax information has changed, as per previous communications, they are requested to provide updated information to the Liquidators at their earliest convenience. The self-certification forms are available from the Fund's website at <https://primeofund-liquidation.com/>
- 5.6 It is the Liquidators' policy that any distribution(s) will be withheld from non-compliant stakeholders until such documentation is submitted to the Liquidators.

Beneficial ownership regime

- 5.7 Stakeholders are reminded that the Fund is required to maintain a register of information in relation to the Fund's beneficial owners (the **Beneficial Ownership Regime**).
- 5.8 In order to avoid liability for offences under that regime, the Liquidators have proceeded to submit the Fund's filing to the Cayman Islands Ministry of Financial Services (the **Ministry**) every 90 days.
- 5.9 The information filed with the Ministry is held on a secure, non-public search platform. Recent legislative changes made by the UK Government require its British Overseas Territories, including the Cayman Islands, to establish a publicly accessible register by the end of 2020. In consultation with the Fund's compliance consultant, the Liquidators will continue to monitor and report on any developments in this area to Stakeholders. However, currently, all information lodged with the Ministry under the Beneficial Ownership Regime will continue to be secure and only accessible by the Ministry and/or another competent authority requesting access to the register.

¹ The Fund has no such FATCA registration or ongoing reporting obligations.

6. Dealings with the MVF

- 6.1 As Stakeholders may recall, the MVF is the vehicle established by the United States Department of Justice to administer and distribute funds recovered through criminal and civil forfeiture actions.
- 6.2 The MVF is designed to compensate the underlying victims of the Madoff fraud and not intermediaries (feeder funds), such as the Fund. Accordingly, the Fund does not have a direct claim in the MVF. However, the Liquidators are aware that many of the Fund's shareholders may be eligible claimants in the MVF.
- 6.3 As set out in the Previous Report the Liquidators have been in contact with the MVF to assist in the MVF's adjudication of claims filed by investors in the Fund.
- 6.4 The Liquidators are using their best efforts to progress this matter given the importance to certain of the Fund's stakeholders.

7. Distributions

First interim distribution

- 7.1 As detailed in the Liquidators' seventeenth report to the Fund's stakeholders, based on the Fund's cash position and after making the appropriate reserves, the Fund was in a position to distribute 100% of Ordinary Creditors'² principal claims and 79% of Redemption Creditors'³ principal claims, in accordance with the statutory distribution scheme.
- 7.2 The first interim distribution pool was determined as US\$140,161,153.24. During the Period the Liquidators continued to adjudicate, admit and pay previously uncompliant Redemption Creditors in the liquidation.

Second interim distribution

- 7.3 As detailed in correspondence sent to the Fund's stakeholders on 15 April 2019, based on the Fund's cash position and after making the appropriate reserves, the Fund was in a position to distribute the remaining 21% of Redemption Creditors' principal claims, in accordance with the statutory distribution scheme.
- 7.4 The second interim distribution pool was determined as US\$31,386,678.35. During the Period the following amounts were paid:

Table 1.3: Amounts paid during the Period

Sub-fund	Amount
Select USD	US\$9,522,929.65
Executive USD	US\$77,479.24
Select EUR	€17,732,169.82 ⁴
Executive EUR	€844,257.34

Luxembourg Redemption Creditors

- 7.5 As the Stakeholders are aware, some Redemption Creditors filed separate claims against HSSL in Luxembourg (**Luxembourg Redemption Creditors**) in relation to their unpaid redemption proceeds. The Liquidators understand that HSSL has been negotiating directly with these claimants with a view to settling their claims.
- 7.6 To date, three such Luxembourg Redemption Creditors have reached an agreement with HSSL, which represents full and final settlement in respect of its claim against the Fund for the principal amount of their Redemption Creditor claims. The

² Provable debts owed to the Fund's creditors. January subscribers are certain prospective shareholders who submitted subscription requests to the Fund for a trade date of 1 December 2008 (**January Subscribers**). January Subscribers are classified as Ordinary Creditors.

³ Redemption Creditors the Fund's former and or current shareholders with:

- shares which were redeemed pursuant to the Fund's articles (**Articles**) on 1 December 2008, but in respect of which redemption monies were not paid; and
- shares which were redeemed 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.

⁴ There was one subsequent bounce back of funds totalling €168,285.88.

Luxembourg Redemption Creditors have reserved their rights to their entitlement to statutory interest payable from the liquidation estate. The amounts paid by HSSL to date total €797,757.36 and US\$957,420.00.

- 7.7 The remaining Luxembourg Redemption Creditor's claim totals €345,915.46. The Liquidators will continue to hold funds in reserve for this claim in until such time as it is settled with HSSL.

Outstanding distributions

- 7.8 Save for the remaining Luxembourg Redemption Creditor, and certain contingent creditors, where creditors have not received a distribution, this is due to the fact that they have not provided adequate support required by one of more of the following:

- Cayman Islands Proceeds of Crime Law;
- the Anti-Money Laundering Regulations;
- Self-certification documents as per the AOEI Regime (see section 5 for more details); and / or
- Information pertaining to the Beneficial Ownership Regime (see section 5 for more details).

- 7.9 Whilst the Liquidators are making best efforts to work with these parties with a view to making distributions to them, where parties have not provided the requisite documentation, the Liquidators have put them on notice that monies owing to them have been placed into a specific trust account which will earn bank interest (as opposed to statutory interest).

- 7.10 At the date of this Report, (i) two potential January Subscribers (US\$220,000) (ii) one trade creditor (US\$660.74), and (iii) six Redemption Creditors (US\$699,781.94), remain AML/KYC non-compliant and, accordingly, their distributions have not been processed.

- 7.11 There are also four contingent creditors which the Liquidators have provided for (approximately US\$31.3M). The amount of this held-back reserve is approximately US\$32.2M.

- 7.12 There is also one Redemption Creditor who has requested that its claim is relinquished totalling US\$66,587.92.

Further distributions

- 7.13 Based on the cash available and after making the appropriate reserves, the Liquidators consider that there are insufficient monies available to declare a further distribution to the Fund's creditors in respect of statutory interest, in accordance with the statutory distribution scheme.

- 7.14 It is anticipated that, in circumstances where the Fund successfully defends Herald's appeal of the Rectification Order, it will result in the recovery of sufficient monies to allow the Liquidators to pay all statutory interest owed and make a first distribution to shareholders.

7.15 The Liquidators will continue to monitor the cash position of the Fund.

8. Receipts and payments

- 8.1 The Fund's receipts and payments account for the Period is detailed at Appendix A.

Liquidators' fees and expenses

Previous Period

- 8.2 Following majority approval by the Liquidation Committee, on 21 June 2019 the Grand Court approved the Liquidators' fees and expenses for the period 1 September 2018 to 28 February 2019, totalling US\$786,071.00 and US\$16,864.96 respectively.

The Period

- 8.3 The Liquidators' fees and expenses for the Period total US\$612,654.50 and US\$21,203.53 respectively.
- 8.4 As agreed with the Liquidation Committee, to the extent that any category of the Liquidators, 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%.
- 8.5 No category of staff exceeded 500 hours and therefore there is no discount applicable for the Period.
- 8.6 A detailed breakdown of the fees is attached at Appendix B.

9. Next steps

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

Next Committee / Stakeholder meetings

- 9.2 The next Liquidation Committee meeting will be held on 25 October 2019.
- 9.3 The next meeting of Stakeholders will take place next year at a date to be announced.

HSBC Proceedings

- Assisting the Fund's legal advisors with attending to procedural matters in respect of the Fund's appeal to the Privy Council.
- Considering any filings made by HSBC to the Privy Council.

Herald liquidation

- Continuing to liaise with the Additional Liquidator and Principal Liquidators regarding the progress of the Herald liquidation.
- Preparing for and attending the Privy Council appeal scheduled for 29 October 2019.
- Continuing to liaise with the liquidators of Herald in relation to the reimbursement of the Fund's costs in accordance with the Representation Order.
- Continuing to liaise with the liquidators of Herald in relation to the claims for performance fee rebates.

Alpha's claim

- Continuing to monitor the various streams of ongoing litigation and to press the Fund's claim.

Payment of distribution

- Continuing to adjudicate, admit or reject claims received.
- Arranging a third interim distribution to the appropriate claimant class in accordance with the relevant Cayman Islands statutory provisions concerning distributions, in circumstances where there are sufficient recoveries to do so.
- Liaising with shareholders to confirm their shareholdings ahead of any distributions to unredeemed shareholders.

MVF dealings

- Continuing to work with the MVF to explain the position relating to the Fund.

Primeo Fund – in official liquidation

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

A handwritten signature in black ink, appearing to read 'Gordon L. MacRae', written in a cursive style.

Gordon MacRae
Joint Official Liquidator

Appendix A. Receipts and payments to 31 August 2019

Primeo Fund (in official liquidation)

Receipts and payments account for the period from 23 January 2009 to 31 Aug 2019

Receipts	To 28 Feb 2019 US\$	Movement US\$	To 31 Aug 2019 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	44,067,995.74	5,326,825.35	49,394,821.09
Repayment of Herald Rep Proceedings costs	4,179,114.56	72,468.54	4,251,583.10
Herald Statutory Interest on Redemption	15,813,145.16	-	15,813,145.16
Interest on fixed deposit accounts	4,070,360.03	913,767.31	4,984,127.34
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	24,003.66	-	24,003.66
Share transfer fees	750.00	750.00	1,500.00
FX currency conversion ^	(467,178.98)	(410,524.16)	(877,703.14)
Total receipts	340,161,544.09	5,903,287.04	346,064,831.13

Payments			
Liquidators' fees and expenses	20,901,403.76	654,614.07	21,556,017.83
Distributions			
Unsecured creditors	447,465.89	-	447,465.89
Redemption creditors	111,397,901.77	35,623,800.48	147,021,702.25
FX currency conversion ^	(1,394,709.03)	(2,791,596.55)	(4,186,305.58)
Total	110,450,658.63	32,832,203.93	143,282,862.56

Legal fees			
Mourant Ozannes	30,707,498.02	478,726.77	31,186,224.79
South Square	11,590,282.91	10,250.16	11,600,533.07
Morrison Foerster	3,905,380.17	-	3,905,380.17
Wildgen	263,408.93	-	263,408.93
Nabarro	254,985.03	-	254,985.03
HLMK	212,013.18	-	212,013.18
Arthur Cox	155,491.45	-	155,491.45
Enyo Law	189,705.86	-	189,705.86
Sedgwick Chudleigh	128,736.03	-	128,736.03
MNKS	112,626.90	-	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	47,575,393.68	488,976.93	48,064,370.61

Other			
HSBC litigation expert and factual witness costs	7,274,458.79	-	7,274,458.79
Costs awarded in the HSBC Proceedings	20,000,000.00	-	20,000,000.00
Herald loan repayment (Madoff Trustee)	29,999,334.53	-	29,999,334.53
Repayment of funding agreement	557,722.22	-	557,722.22
Data management services	464,925.36	21,302.26	486,227.62
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	74,191.03	-	74,191.03
Mediator fees	51,672.00	-	51,672.00
Bank charges	72,910.68	7,120.65	80,031.33
Stakeholder meeting costs	44,729.83	2,728.00	47,457.83
Cayman Islands Government fees	32,387.81	-	32,387.81
Court fees	30,792.68	-	30,792.68
Court reporting services	16,138.88	-	16,138.88
Liquidation committee expenses	15,455.51	-	15,455.51
Herald-related travel expenses	5,044.40	-	5,044.40
Website charges	1,520.00	-	1,520.00
Advertising	2,883.80	-	2,883.80
Compliance fees & sanction searches	3,354.28	-	3,354.28
FX currency conversion ^	(235.52)	(471.11)	(706.63)
Effects of FX changes on balances held ^	1,509,452.25	2,807,614.44	4,317,066.69
Total	60,574,160.13	2,838,294.24	63,412,454.37
Total payments	239,501,616.20	36,814,089.17	276,315,705.37
Net balance	100,659,928.79	(30,910,802.13)	69,749,126.66

Represented by	US\$	US\$
Cash at bank (US dollars)	7,266,929.95	6,716,357.36
Cash at bank (Euros) *	472,040.63	239,841.45
Term deposit placements (US dollars)	92,920,958.21	62,792,927.85
Net balance	100,659,928.79	(30,910,802.13)

* The Fund's EUR cash balances as of 28 February 2019 and 31 August 2019 have been translated based on mid-market rates of EUR1.00:USD1.14 and EUR1.00:USD1.10 on respective dates. EUR cash movements during the 6 months period are translated based on the 31 August 2019 mid-market rate.

^ Reflects downward shift in EUR:USD FX rate from 1.14 to 1.10 during the 6 months period ended 31 August 2019.

Appendix B.

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