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Primeo Fund – in official liquidation (the Fund)

Summary of minutes of the 6 May 2020 meeting of the Fund's creditors and investors of record (the Stakeholders)

6 May 2020, 9:00 a.m. (GMT-5)/ 4:00p.m. Central European Time (GMT+2)

Via telephone conference facilities

In attendance:

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

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

Cassandra Ronaldson – Kalo, the Liquidators' office (CR)

Introduction

The Chairman formally opened the meeting at 9:00 a.m. and introduced PH and CR to those Stakeholders in attendance.

The Chairman confirmed that notice of the meeting was provided to the Fund's Stakeholders on 15 April 2020 (**Notice**) and that notice of the meeting was posted on the Liquidators' website (www.primeofund-liquidation.com). Notice was provided in accordance with Order 8, rule 4 of the Companies Winding Up Rules.

The Chairman then tabled the report for the period from 1 September 2019 to 29 February 2020 (the **Period**) which had been circulated to the Stakeholders on 29 April 2020 (the **2020 Report**). Capitalised terms in these minutes, not otherwise defined, shall bear the meanings ascribed to them in the 2020 Report.

The Chairman thanked the Stakeholders for their attendance and voiced his regret that he was unable to meet with the Stakeholders in person due to the Global Pandemic COVID-19. The Chairman canvassed an option for the next Stakeholder meeting whereby private

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consultations would be offered between the Liquidators and the Stakeholders. This would allow Stakeholders to raise any personal queries they may have in a private environment.

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

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

The Chairman advised that at the end of each section, questions that were received in advance of the meeting would be addressed (where they had not already been addressed in the main presentation). It was noted that the questions might be paraphrased for clarity for the purposes of the minutes. Once these question had been addressed, the telephone line would then be unmuted to allow Stakeholders to raise any queries they may have.

The Chairman noted that on 20 November 2019, by order of the Grand Court, Eleanor Fisher was replaced by Paula Richmond as the other Liquidator of the Fund.

The Chairman reiterated that the costs of dealing with the replacement had not been borne by the liquidation estate. The Chairman noted that Ms Richmond had been involved in the liquidation of the Fund as a consultant for a number of years and the replacement had been seamless.

The HSBC Proceedings

The Chairman moved on to provide an update on the HSBC Proceedings. The Chairman noted that numerous updates had been provided to the Stakeholders since the CICA delivered its judgment on 13 June 2019.

The Chairman invited PH to provide a brief overview of the HSBC Proceedings, the outcome of the Fund's appeal to the CICA and the Fund's pending appeal to the Privy Council.

PH advised the Stakeholders that the CICA's findings were generally positive. PH reminded the Stakeholders that the Fund had faced a number of hurdles on appeal due to the trial judge's findings. PH advised that the Fund had successfully overturned a number of the trial judge's findings and the CICA had ruled, amongst other things, that (1) the Fund had suffered loss when paying cash over to BLMIS and (2) that HSBC caused the Fund's losses by breaching its duties as both administrator and custodian.

PH noted that HSBC had sought to set aside a number of the trial judge's findings, including that they owed the relevant duties and had breached those duties, but their cross-appeal failed entirely on these points.

PH summarised that the Fund had established all the elements of its strict liability claim and breaches of contract claim, save for the matter of reflective loss.

PH also briefly discussed some of the CICA's subsidiary findings that could ultimately impact the quantum of the Fund's damages, in circumstances where the Fund is successful in its appeal to the Privy Council, primarily (1) limitation and (2) contributory negligence.

PH then referred the Stakeholders to the 2020 Report and the update provided in respect of the Fund's appeal to the Privy Council.

PH informed Stakeholders that the Fund had filed its grounds of appeal on 30 August 2019.

PH set out the Fund's points to be appealed highlighting that the primary point of the Fund's appeal was in relation to the principle of reflective loss. PH noted that the Fund's arguments on reflective loss had been stress tested by the engagement of independent parties (including from a retired Law Lord) who provided their opinions in respect of the Fund's case.

PH advised that the Privy Council is the final court of appeal for the Cayman Islands and it will resolve whether HSBC has any liability. In circumstances where the Fund is successful in establishing liability, the matter of quantum will need to be remitted to the lower courts.

PH explained that HSBC has also submitted their additional grounds for upholding the dismissal of the Fund's appeal. PH noted that many of HSBC's arguments were run during the appeal and were rejected by the CICA.

PH confirmed that the parties were in the process of obtaining a hearing date. PH opined that a listing in the second quarter of next year was expected. Stakeholders will be notified of the date and details of the hearing which they can attend physically (in open Court) or virtually by streaming the proceedings.

The Chairman then dealt with a question, in respect of the HSBC Proceedings, which had been received ahead of the meeting.

Question: Do the Liquidators anticipate that HSBC has any appetite to settle the claim?

HSBC has shown no realistic interest in settling the matter. If they do show a genuine interest the Liquidators will explore the possibility of settlement.

Question: What is the amount (range in Euros) the Fund might get out of a positive judgment?

PH advised that there were a range of possibilities and a lot of the points on appeal could impact quantum.

PH confirmed that the Liquidators had modeled out the figures when formulating which matters to appeal to ensure the Fund's appeal was focused from a recoveries perspective.

The Chairman also noted, as was alluded to by PH, that the matter of quantum would be dealt with in separate proceedings.

PH supplemented that Stakeholders should bear in mind that since the commencement of the liquidation, the Fund had made a number of successful recoveries including, (1) the claims brought against the Fund in New York and Cayman by the BLMS Trustee (which resulted in the Fund becoming eligible for distributions from the BLMS estate through Herald Fund), (2) the action against Pioneer / Bank Austria (which resulted in a recovery of US\$100 million), (3) having to respond to the litigation brought by Herald (which resulted in the Fund's December Redemption proceeds being paid in priority and the Fund's entire shareholding being recognised on Herald's share register) and (4) the litigation with HSBC (which is obviously continuing).

The Chairman invited further questions from Stakeholders present on the call. None were received.

The liquidation of Herald

The Chairman then moved onto matters relating to Herald starting with the outcome of the Rectification Proceedings.

The Chairman reminded Stakeholders that the premise of the Rectification Proceedings was that the Additional Liquidator considered he had the obligation and the power under Cayman Islands law to rectify the register of members, in order to achieve what he perceived to be a more just and equitable outcome.

The Chairman noted that that hearing took place in October 2019 and the judgment was received at the end of January this year.

The Chairman confirmed that the Privy Council unanimously upheld the CICA's decision, dismissing the Additional Liquidator's appeal. He advised that as a consequence Herald is required to make distributions to its shareholders (including the Fund) based upon their recorded shareholdings as at the date upon which Herald went into liquidation. The Chairman reminded Stakeholders that the Cayman Court had issued a parallel order that the basis upon which the distribution methodology was determined in Herald would be similarly applied by the Fund.

The Chairman highlighted the commercial importance of the Privy Council's ruling, particularly that the Fund had preserved the full face value of the May 2007 in-specie

subscription into Herald. This increased the face value of the Fund's interest as a shareholder of Herald by approximately US\$316 million.

The Chairman explained that following the judgment there was some delay in receiving a distribution from Herald. The Chairman clarified that this was due to the Additional Liquidator taking some time to analyze the decision, in particular some obiter comments in the judgment from one of the Judges.

The Chairman advised that on 31 March 2020, the Additional Liquidator confirmed he would not continue to litigate the Rectification Issues further and that Herald would shortly distribute funds to the relevant Herald shareholders who were entitled to a catch up dividend out of the reserves held back as part of the SMD. The Chairman confirmed this would result in approximately US\$82 million for the Fund's liquidation estate.

The Chairman confirmed that the anticipated distributions from Herald would allow the Fund to pay or provide for all of the creditors' principal and interest entitlements. The Chairman reminded Stakeholders that two distributions had been declared to date, resulting in creditors receiving 100 cents on the dollar of their principal claims. In accordance with Cayman Islands law, the Liquidators would shortly be declaring a distribution to creditors in respect of their statutory interest which amounts to approximately US\$42 million.

The Chairman informed Stakeholders that the Liquidators will shortly writing to creditors in respect of their statutory interest entitlements. This letter will set out the quantum of the entitlement and provide details in respect of the computation. He noted that these amounts were not subject to adjudication and are based on a calculation in respect of the relevant statutory interest rates and the principal claim. This letter will also request updated AML/KYC documentation.

The Chairman confirmed that, after making the appropriate reserves for future costs and contingent claims, there will be approximately US\$40 million available to meet unredeemed investors' claims.

The Chairman estimated that the distribution will take place in mid-August due to the various statutory tasks which stipulate various timeframes and deadlines.

The Chairman noted that some Stakeholders may have seen a notice published in Austria and the Cayman Islands being the notice of a final dividend to creditors.

The Chairman explained that the purpose of the notice, which declares a final dividend to creditors, is that it has the effect of notionally barring the submission of any further claims of creditors to be taken account in the next distribution after the final date for proving (the notice does not impact on shareholders). Creditors have until 17 June 2020 to submit any outstanding claims.

Once any creditor claims are received and adjudicated the Liquidators will be in a position to calculate a dividend to shareholders. The Chairman estimated that the distribution could be up to 6.5 cents on the dollar, based on the last statement value of shareholders' holdings.

The Chairman noted that unlike the adjudication process in respect of agreeing the creditors' claims, the process in respect of shareholders involves settling the share register in accordance with section 112 of the Companies Law (2020 Revision).

As part of the process of settling the list of the Fund's shareholders, the Liquidators are required to determine each shareholder's correct shareholding in accordance with their legal rights. The Liquidators will be shortly writing to shareholders with respect to their shareholding, including regarding any adjustments which may need to be made to the register of shareholders to accurately reflect any valid transactions (ie subscriptions and redemptions) which may not have been recorded on the Fund's share register at the relevant date.

The Chairman noted that as a result of the Rectification Proceedings the Fund's interest in Herald has been determined, going forward. The Fund is entitled to future distributions from Herald. In this regard the Fund represents approximately 31% of the value of the shareholding in Herald. Any further recoveries made by Herald will subsequently flow to the Fund and its shareholders.

The Chairman noted that the final matter to be resolved in relation to the Fund's claims in Herald is the Rebate Claim. The Chairman opined that from a commercial perspective that it may be capable of being settled and that the Fund would pursue this course in order to minimise costs to deal with this claim.

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

Question: Are all proceedings against Herald now settled?

The Chairman confirmed that, save for the Fund's claim in respect of the Rebate Claim, all other matters with Herald have now been resolved.

Question: Is it necessary to separate under "Next Steps", paragraph 9.1 of the 2020 Report, between continuing to liaise with the Additional Liquidator and Principal Liquidators regarding the progress of the Herald liquidation and continuing to act [as] a member of the Herald LC? Can such liaising can be done at the same time?

The Chairman stated that the role that the Fund performs in respect of Herald's LC is distinct and separate from the Fund's interest in Herald. He confirmed that Herald's LC is not the appropriate forum to prosecute claims specific to the Fund such as the Rebate Claim.

Question: Did the Liquidators and their attorneys receive their fees and costs for the proceedings against Herald from Herald? If "yes" what amount?

The Chairman referred to the receipts and payments account provided at Appendix C of the 2020 Report. He confirmed that in accordance with the Representative Orders which were endorsed by the CICA and subsequently by the PC, Herald was required to pay the Fund's legal costs, on an indemnity basis, which equated to US\$5.7 million (including the in-specie matters).

The Chairman invited questions from Stakeholders present on the call. No further questions were received.

Distributions

The Chairman moved on to specifically address questions relating to distributions which were raised in advance of the meeting.

Question: In my personal estimates I get somewhere near USD 5.5-6 per share of Primeo Select. Will you distinguish between EUR- and USD-shares? At what rates?

For Primeo Select, per the earlier discussion, that estimate is currently correct. The Chairman confirmed that following the decision in the Herald Representative Proceedings, the Fund's investors will receive distributions based upon the last statement value of their holdings. Put simply this is the number of shares held as at 1 December 2008 multiplied by the NAV of the relevant share class as struck prior to the Fund's suspension.

EUR holdings will be translated into their USD equivalent at the prevailing exchange rate of 1.28 as at the commencement of the liquidation on 23 January 2009.

The Chairman noted that in the event that any of the shareholders recorded as holding Euro class shares wish to receive distributions from the Fund's liquidation estate in Euros, the Liquidators shall use the USD amount of the proposed distribution to purchase Euro at the market rate prevailing on the transfer date.

Question: Will Luxembourg Redeemers receive their statutory interest entitlements?

The Chairman confirmed that where the Luxembourg Redeemers had settled with HSSL they would be entitled to received statutory interest on their principal claim as a December Redeemer.

The Chairman then invited questions from Stakeholders present on the call.

Question: Based on the receipts and payments there is currently US\$67 million available in cash and based on the Chairman's estimates today, US\$82 million is due to

be received from Herald. Given this is the case, why aren't more funds available for distribution?

The Chairman advised that certain provisions have been made in respect of unpaid creditor claims, contingent creditor claims, and liquidation expenses. The Chairman advised that these provisions had been reviewed and agreed by the Cayman Islands Court. It is expected that over time the provisions will be used or released.

The Chairman invited questions from Stakeholders present on the call. No further questions were received.

MVF

The Chairman referred the Stakeholders to the update as set out in the 2020 Report.

The Chairman clarified that the Liquidators' objective in respect of the MVF has been to educate the MVF in relation to the Cayman Islands distribution waterfall and the anticipated returns to the Fund's shareholders.

The Chairman noted that there were some hurdles in this understanding due to the different jurisdictions under which the MVF and the Fund operate.

CR advised that following the release of the judgment of the Rectification Proceedings, the MVF began to re-engage with the Liquidators and it is hoped that matters can be advanced with the MVF to provide a better understanding of the likely recoveries to be made by the Fund's underlying investors.

PH further added that whilst the Fund was providing information to the MVF to allow it to assess the MVF claimant's claims, he stressed that responsibility for any claims against the MVF rest entirely with the individual claimant. PH clarified that the Fund does not have a claim in the MVF and the Liquidators do not have any powers to prosecute individuals' claims. The Liquidators are merely facilitating the exchange of information to the MVF.

PH considered that MVF claimants should look to get advice individually or collectively in respect of their MVF distributions.

The Chairman thanked PH for his clarification.

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

Question: Do you have any news regarding the new round of distribution by the Department of Justice? The website of the MVF is not giving any details; only that the numbers of recipients is more or less the same as to prior rounds.

The Chairman confirmed that the MVF has not provided any further detail that is not already set out on their website in respect of the distribution.

Question: Will the Liquidators communicate the numbers to the MVF relating to investors' distributions? Would you need any consent for this?

The Chairman confirmed that due to Cayman Islands confidentiality laws and data protection regimes, the Liquidators are required to have authority to provide investors' personal information to any third parties such as the MVF.

Question: Are claimants, who are also shareholders of the Fund, still eligible for a catch-up-distribution (in principle) from the MVF?

The Chairman informed Stakeholders that the Liquidators cannot confirm this point and it is a matter for each claimant to confirm with the MVF.

The Chairman invited further questions from Stakeholders present on the call. No further questions were received.

Alpha

Question: Will investors with shareholdings in Executive receive a distribution too?

Yes. However there have been no direct recoveries from Alpha to date. Control of Alpha remains with its directors. Alpha is not presently in liquidation, or any form of independent administration. Alpha has ongoing litigation with the BLMIS Trustee and it appears that, until this litigation is resolved, Alpha Prime is not intending to make any distributions to its investors (including Primeo Executive).

The Liquidators continue to monitor Alpha and the various proceedings it is involved in.

Receipts and payments

The Chairman then moved onto the receipts and payments account and the Liquidators fees and summarised the information contained in the 2020 Report.

The Chairman then dealt with queries that had been received from parties ahead of the meeting.

Question: Have the Liquidators paid all costs and fees so far as ordered or as became due (in reference to paragraph 2.10 of the 2020 Report)?

The Chairman confirmed that not all costs have been paid in respect of the HSBC Proceedings. If HSBC are ultimately successful in defending the claims, the amount of their legal costs will have to be agreed or assessed by the court. The Fund has been ordered to make some interim payments to HSBC on account of their costs. Those

interim payments have been made. A reserve has also been made for any additional costs that may be payable.

PH confirmed that the Privy Council would be expected to order payment of costs.

Question: Please specify the Liquidators' costs/fees anticipated in pursuing (1) the HSBC Proceedings, (2) Alpha and (3) MVF.

The Chairman advised that the Liquidators do not collate costs data in this form, but could do so if it was thought to be useful. The Committee has oversight in respect of such matters and has not asked for the data in this form, presumably because they are content with the level of information being provided to them. There is obviously a cost in collating data. The Liquidators will raise this issue with the Committee and seek their views on whether the additional cost of collating the data in this form would be helpful or worthwhile.

Question: We understand that explaining costs and fees cannot be charged for under the applicable ethical rules, is this understanding correct?

The Chairman advised that the Liquidators have statutory obligations to report and the reporting includes information on costs and fees. Fees are incurred in accordance with the Insolvency Practitioners Regulations which govern the basis of liquidators' remuneration. Fees are also incurred in accordance with the remuneration agreement as approved by the liquidation committee. The fees also have to be approved by the Cayman Islands Court.

Question: Could you please explain the reasons as to why the following cost items were incurred (per Appendix C of 2020 Report);

- (a) Alpha settlement payment
- (b) Mediator fees
- (c) Advertising

The Chairman provided details in respect of the line items in the 2020 Report:

- (a) Relates to the unsuccessful petition to wind up Alpha in Bermuda in 2012 and Alpha's costs paid in respect of the same.
- (b) Relates to the Fund's share of the mediation costs incurred in the Picard, Herald and the Fund's mediation.
- (c) Relates to statutory advertising costs: ie for legally required notices in Austria and the Cayman Islands.

Question: Could the Liquidators please confirm why 16 law firms were required in this Liquidation.

The Chairman noted that the liquidation has been on-going since 2009. The Liquidators have also had to deal with a number of pieces of very large scale litigation, including the claims brought against the Fund in New York and Cayman by the BLMIS Trustee (which resulted in the Fund becoming eligible for distributions from the BLIMS estate through Herald), the action against Pioneer / Bank Austria (which resulted in a recovery of US\$100m), having to respond to the litigation brought by Herald and the litigation with HSBC (which is obviously continuing). Many of the legal costs were incurred to defend claims. Further, the legal costs have very significantly increased the returns to the Fund.

Details in relation to the law firms regarding the scope of their engagement is provided at Appendix A.

Question: Could you please confirm the details relating to costs incurred by MNKS.

The Chairman confirmed that MNKS are a legal firm which provided certain advice to the Liquidators concerning the laws of Luxembourg and acted as experts in the HSBC Proceedings.

Question: Could you please confirm the estimated timeframe to complete the liquidation of the estate.

The Chairman estimated that the Privy Council hearing is likely to take place in the first half of 2021. It is possible that there will have to be a further hearing after that to quantify the damages payable by HSBC. The only other current claim is the rebate claim against Herald.

General

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

Question: In the latest statement of the Trustee, it seems as if Picard now is able to try and go for more avoidance actions than in the past; and maybe recover more money via avoidance actions. Is there a chance that the Trustee is filing new complaints against the Fund or its (probably former) investors?

The Chairman advised that the Fund settled all claims with the Trustee in 2014. The on-going litigation in the US relates to claims that have already been pleaded against particular defendants. Some of those defendants are challenging the jurisdiction of the US courts to deal with the Trustee's claims. The Liquidators are not aware of the Trustee having plans to issue any new claims, and he would almost certainly face huge difficulties in relation to limitation.

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

Closing remarks

The Chairman invited any other business. There being no further business, the meeting was closed at 10.50 (GMT-5)/ 5:50p.m. Central European Time (GMT+2)).



Gordon I. MacRae
Chairman