

To the creditors of  
Petroplus Marketing AG in debt restructuring liquidation

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## **Petroplus Marketing AG in debt restructuring liquidation Circular no. 9**

Dear Sir or Madam

This circular provides information about the progress of the debt restructuring liquidation of Petroplus Marketing AG in debt restructuring liquidation ("PMAG") since May 2018 and the next steps planned in the debt restructuring liquidation in the coming months.

### **I. REPORT ON ACTIVITIES AS AT 31 DECEMBER 2018**

Having been acknowledged and approved by the Creditors' Committee on 12 March 2019, the Liquidators' sixth report on activities for 2018 was submitted to the debt restructuring judge of the cantonal court of Zug. The report on activities will be available for inspection by creditors at the Liquidators' offices at Wenger Plattner, Seestrasse 39, Goldbach-Center, 8700 Küsnacht, until 3 June 2019. If you wish to inspect the report, please call the hotline on +41 43 222 38 50.

The following pages summarise the report on activities and cover the content that has not already been disclosed to creditors by way of previous circulars.

## **II. OVERVIEW OF THE LIQUIDATION PROCESS**

### **1. Activities of the liquidators**

The significant activities of the Liquidators included preparing and executing the third interim payment, pursuing pending avoidance claims and conducting clarifications about responsibility issues.

### **2. Activities of the Creditors' Committee**

In 2018, the Creditors' Committee held two meetings. At the meetings, the Committee discussed the proposals submitted by the Liquidators and passed resolutions on these. The Creditors' Committee made decisions on other proposals submitted by the Liquidators by circular.

## **III. LIQUIDATION OF ASSETS**

### **1. Claims on the RCF banks**

As part of the settlement agreement with the RCF banks and other parties (Global Settlement Agreement, "GSA" – see Circular no. 4, section I.1), the RCF banks provisionally retained realisation proceeds of PMAG amounting to an equivalent of approximately CHF 80 million. The GSA stipulates that the sums retained are to be disbursed to PMAG on specific target dates, provided they are not needed in the meantime to cover justified claims of the RCF banks. Pursuant to this provision, in spring 2018 sums retained were repaid to PMAG in the amount of around USD 65.8 million and CHF 6.7 million, followed in spring 2019 by the repayment of the remaining sum retained of about CHF 9.7 million.

### **2. Avoidance claims in accordance with Art. 285 ff. SchKG**

#### **2.1 Status of avoidance claims**

An avoidance action has been settled by judgement since the last circular (see below). The only avoidance action that was still unresolved at the end of 2018 was the claim against the Swiss federal government (Directorate General of Customs) with an amount in dispute of just under CHF 80 million. This action is currently still pending before the court of first instance (see Circular no. 8, section III.4.2).

## 2.2 Allen & Overy LLP

In February 2015 PMAG instigated an avoidance action against Allen & Overy LLP and contested the payment of lawyer's fees in the amount of around GBP 320,000. The Cantonal Court of Zug ruled that this constituted restructuring consultancy and rejected the action in May 2017 as the court of first instance. PMAG lodged an appeal against this decision with the High Court of the Canton of Zug. The High Court of the Canton of Zug rejected the appeal in its ruling of 29 October 2018. The Liquidators and the Creditors' Committee decided not to pursue the matter further with the Federal Supreme Court. The action has thus been rejected without the right to appeal.

## IV. SETTLEMENT OF LIABILITIES

### 1. General information

The majority of the claims submitted have been assessed and included. The recognition of claims of former executives of PMAG, among others, remains suspended until it has been clarified whether any claims should be offset on grounds of responsibility. No new claims were registered in 2018.

### 2. Settlement with the Climate Cent Foundation

The Climate Cent Foundation registered claims totalling around CHF 2.3 million for outstanding Climate Cent contributions in the debt restructuring proceedings against PMAG. In addition, in connection with the PMAG avoidance claim against the Climate Cent Foundation for repayment of previously paid Climate Cent contributions, a revived claim by the Climate Cent Foundation totalling approximately CHF 16.7 million was included ex officio in the schedule of claims against PMAG. Both claim items were rejected in PMAG's schedule of claims on the grounds that PMAG's undertaking to pay Climate Cent contributions qualified as a promise of a gift, which is not enforceable in the liquidation proceedings. In response to the rejection, the Climate Cent Foundation lodged an action to contest the schedule of claims. The avoidance action (see Circular no. 8 section III.4.4) and the action to contest the schedule of claims hinged on the question as to whether and to what extent the payment of Climate Cent contributions had the character of a gift. The parties therefore agreed to suspend the action to contest the schedule of claims until a decision had been made regarding the PMAG avoidance claim against the Climate Cent Foundation. Once the avoidance claim had been brought to a legal conclusion, the parties agreed in August 2018 on a settlement of the action to contest the schedule of claims. According to this agreement, PMAG recognised the claim for outstanding Cli-

mate Cent contributions in the amount of around CHF 2.3 million as a third-class claim. PMAG additionally recognised a revived third-class claim by the Climate Cent Foundation in the amount by which the PMAG avoidance claim was upheld and the Climate Cent Foundation had refunded PMAG contribution payments to the liquidation estate prior to the debt restructuring moratorium (approximately CHF 1.18 million). PMAG assumed the legal costs of the action to contest the schedule of claims, and both parties agreed not to seek compensation for the parties' legal costs. The Creditors' Committee approved the agreement.

## **V. ASSET STATUS OF PETROPLUS MARKETING AG AS AT 31 DECEMBER 2017**

### **1. Introductory remarks**

Both a liquidation status and a commercial law balance sheet and income statement have again been drawn up as of 31 December 2018. Brief comments on the liquidation status ([Annex 1](#)) are provided below.

### **2. Assets**

#### **2.1 Cash and cash equivalents**

PMAG's liquid funds are mainly in accounts held at Zürcher Kantonalbank. The credit balances in Swiss francs are earning negative interest. Last year relatively small amounts also remained in the former administrator's accounts at UBS AG, in particular for processing international payments, as well as as at Zuger Kantonalbank.

#### **2.2 Assets not yet realised**

Assets that had not yet been realised at the end of 2018 are primarily claims that have arisen during the debt restructuring moratorium or debt restructuring liquidation (accounts receivable by the estate), claims on the RCF banks (see section III.1 above) and claims on group companies.

### **3. Debts incurred in the course of the liquidation process**

#### **3.1 Payables**

The debts incurred in the course of the liquidation process as reported on 31 December 2018 consist of expenses and costs accrued over the year 2018.

### 3.2 Provisions

PMAG's liquidation status as at 31 December 2018 includes the following provisions for the previous interim payments.

| Reason  | 1 <sup>st</sup> interim payment | 2 <sup>nd</sup> interim payment | 3 <sup>rd</sup> interim payment |
|---|---------------------------------|---------------------------------|---------------------------------|
| A lack of payment instructions or payments not executed for other reasons (including provision with regard to directions actions in the second class) | CHF 45.26 million               | CHF 0.17 million                | CHF 0.17 million                |
| Contingent claims where conditions have not yet been met  | CHF 0.15 million                | CHF 0.05 million                | CHF 0.05 million                |
| Claims suspended, included pro memoria or not yet assessed  | CHF 50.99 million               | CHF 3.74 million                | CHF 3.74 million                |

These provisions ensure that the maximum amounts for the three previous interim payments with respect to all unsettled claims are secured.

Provisions of CHF 20 million have been set aside for future liquidation costs as at 31 December 2018.

### 4. Creditors' claims

The enclosed overview of the schedule of claims proceedings (Annex 2) states the current total of claims that have been registered in the respective classes, those claims that have been recognised, those that have been definitively rejected, those that are in dispute (schedule of claims actions) and those that are still suspended or not yet assessed. The claim amounts are still subject to change as efforts to settle the schedule of claims proceed.

### 5. Estimated dividend

The disposable assets reported in the liquidation status as at 31 December 2018 give a maximum dividend of 25.92% for third-class claims if only 70% of the third-class claims that have been suspended, included pro memoria or not yet assessed, have to be recognised. However, if all of the third-class claims that had been suspended as at the end of 2018 are to be recognised in full, included pro memoria or not yet assessed, then the minimum dividend is 25.55%. Of this, 25.3% has already been paid out in the first three interim payments.

## VI. NEXT STEPS IN THE PROCESS

This year it is planned to pursue the avoidance claim still pending, as well as to decide on the next steps concerning the issue of responsibility and to take the appropriate measures.

Depending on how the proceedings progress, creditors will continue to receive information about important developments in the form of circulars. A report on the progress of the liquidation process this year will be issued by early 2020 at the latest.

Kind regards

Petroplus Marketing AG in debt restructuring liquidation  
The Liquidators

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### Hotline

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- Annexes: 1. Liquidation status of Petroplus Marketing AG in debt restructuring liquidation as of 31 December 2018
2. Overview of the schedule of claims proceedings

## LIQUIDATION STATUS AS AT 31 DECEMBER 2018

|  | 31.12.2018<br>CHF  | 31.12.2017<br>CHF  | Change<br>CHF       |
|--|--------------------|--------------------|---------------------|
| <b>ASSETS</b>                          |                    |                    |                     |
| <b>Liquid Funds</b>                    |                    |                    |                     |
| UBS AG CHF (Sachwalterkonto)           | 53'427             | 68'269             | -14'842             |
| UBS AG GBP (Sachwalterkonto)           | 13'846             | 23'532             | -9'686              |
| UBS AG USD (Sachwalterkonto)           | 9'253              | 6'222              | 3'031               |
| UBS AG EUR (Sachwalterkonto)           | 20'069             | 26'467             | -6'398              |
| ZKB CHF (Sachwalterkonto)              | 84'064             | 8'527'369          | -8'443'304          |
| ZKB USD (Sachwalterkonto)              | 290'942            | 1'896              | 289'046             |
| ZKB EUR (Sachwalterkonto)              | 775'611            | 805'393            | -29'782             |
| ZKB GBP (Sachwalterkonto)              | 61'085             | 63'329             | -2'244              |
| ZKB PMAG CHF                           | 2'052'372          | 58'645'388         | -56'593'015         |
| ZKB PMAG EUR                           | 82'602             | 2'191'997          | -2'109'395          |
| ZKB FESTGELD CHF                       | 125'000'000        | 155'000'000        | -30'000'000         |
| ZUGER KB CHF                           | 23'367             | 1'429'341          | -1'405'975          |
| <b>Total Liquid Funds</b>              | <b>128'466'639</b> | <b>226'789'203</b> | <b>-98'322'565</b>  |
| <b>Liquidation Positions</b>           |                    |                    |                     |
| Accounts Receivable                    | 6'446              | 45'460             | -39'014             |
| Claims against RCF-Banks               | 7'700'000          | 68'000'000         | -60'300'000         |
| Claims against Third Parties           | -                  | p.m.               | -                   |
| Claims against Group Companies         | 35'300'000         | 36'300'000         | -1'000'000          |
| Investments                            | -                  | -                  | -                   |
| Prepaid court expenses                 | p.m.               | p.m.               | -                   |
| Avoidance Claims                       | p.m.               | p.m.               | -                   |
| Responsibility Claims                  | p.m.               | p.m.               | -                   |
| <b>Total Liquidation Positions</b>     | <b>43'006'446</b>  | <b>104'345'460</b> | <b>-61'339'014</b>  |
| <b>TOTAL ASSETS</b>                    | <b>171'473'084</b> | <b>331'134'664</b> | <b>-159'661'579</b> |
| <b>LIABILITIES</b>                     |                    |                    |                     |
| <b>Debts of the Estate</b>             |                    |                    |                     |
| Accounts Payable                       | 48'135             | 92'069             | -43'935             |
| Provision for 1st Interim Distribution | 96'394'763         | 126'504'225        | -30'109'462         |
| Provision for 2nd Interim Distribution | 3'955'859          | 12'330'695         | -8'374'836          |
| Provision for 3rd Interim Distribution | 4'048'495          | -                  | 4'048'495           |
| Provision for Liquidation Costs        | 20'000'000         | 20'000'000         | -                   |
| <b>Total Debts of the Estate</b>       | <b>124'447'252</b> | <b>158'926'989</b> | <b>-34'479'737</b>  |
| <b>TOTAL DISPOSABLE ASSETS</b>         | <b>47'025'833</b>  | <b>172'207'674</b> | <b>-125'181'842</b> |

Overview of the Schedule of Claims Proceedings

| Category  | In the Schedule of Claims Proceedings |                      |                        |   |   | Dividend in %        |                       |                       |                       |                       |
|---|---------------------------------------|----------------------|------------------------|---|---|----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
|   | registered                            | admitted             | conditionally admitted | schedule of claims appeal pending <sup>3)</sup> | decision suspended or pro memoria or not yet assessed | rejected             | Interim Distributions | Future Dividend       | Total                 |                       |
|   | CHF                                   | CHF                  | CHF                    | CHF   | CHF   | CHF                  | minimum <sup>1)</sup> | maximum <sup>2)</sup> | minimum <sup>1)</sup> | maximum <sup>2)</sup> |
| Claims Secured by right of lien                           | 1664'231                              | 1'547'409            | -                      | -   | -   | 116'822              | 100%                  | 0%                    | 100%                  | 100%                  |
| First Class   | 11'863'654                            | 4'578'880            | -                      | -   | 2'750'644   | 4'534'129            | 100%                  | 0%                    | 100%                  | 100%                  |
| Second Class  | 59'1242'696                           | 60'883'275           | -                      | -   | 36'076'292  | 484'283'129          | 100%                  | 0%                    | 100%                  | 100%                  |
| Third Class   | 4'709'836'590                         | 3'171'847'402        | 942'351                | -   | 77'947'760  | 1'459'099'077        | 25.30%                | 0.25%                 | 25.55%                | 25.92%                |
| Third Class with subordination pursuant to Art. 725(2) CO | 923'300'000                           | 923'300'000          | -                      | -   | -   | -                    | 0%                    | 0%                    | 0%                    | 0%                    |
| <b>Total</b>  | <b>6'237'907'170</b>                  | <b>4'162'156'965</b> | <b>942'351</b>         | <b>-</b>  | <b>116'774'696</b>                                    | <b>1'958'033'158</b> |                       |                       |                       |                       |

1) For the calculation of the minimum dividend, 100 % of the conditionally accepted claims have been taken into account.

2) For the calculation of the maximum dividend, 70 % of the claims for which the decision has been suspended or pro memoria or which have not yet been assessed have been taken into account, while the conditionally admitted claims have not been taken into account.

3) All appeal proceedings by creditors against decisions by the liquidation bodies to reject the creditors' claims have been terminated. Two appeal proceedings are still pending against the admission of claims in second class in the total amount of CHF 59'931'341, which however do not have an impact on the other creditors.