

**Unofficial Translation  
of German Original**

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To the creditors of  
Petroplus Marketing AG in debt restructuring  
liquidation

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## **Petroplus Marketing AG in debt restructuring liquidation Circular no. 3**

Dear Sir or Madam

This circular provides information about the status of the debt restructuring liquidation of Petroplus Marketing AG in debt restructuring liquidation ("PMAG") in 2014 and the next steps planned in the debt restructuring liquidation proceedings in the coming months.

### **I. REPORT ON ACTIVITIES AS OF 31 DECEMBER 2014**

After having been acknowledged and approved by the Creditors' Committee, the Liquidators' second report on activities for 2014 was submitted to the debt restructuring judge of the cantonal court of Zug on 2 March 2015. The report on activities will be available for inspection by creditors at the Liquidators' offices at Seestrasse 39, 8700 Küsnacht until 18 May 2015. Appointments should be made in advance with Christian Rysler (phone +41 43 222 38 00).

The following pages summarise the content of the report on activities.

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

### **A) Activities of the Liquidators**

#### **1. General**

The activities of the Liquidators were focused on negotiations with the banks of the syndicated loan of 16 October 2009 (hereinafter "RCF" or "RCF banks") regarding the release of excess realisation proceeds and collateral and the joint collection of accounts receivable, the resolution of the dispute with Petroplus Raffinage Petit-Couronne SAS and the review of avoidance claims. In addition, the assessment of the claims filed was continued in view of the publishing of the schedule of claims.

#### **2. Negotiations with RCF banks regarding the release of excess realisation proceeds and collateral**

The claims of the RCF banks were extensively secured with assets of PMAG and other group companies (as guarantors). The proceeds gained by the RCF banks and their security agent (ING Bank N.V.) from the realisation of these assets exceeded the secured claims of the RCF banks by a considerable amount. An excess of more than CHF 200 million resulted from the realisation of PMAG assets alone (not taking into consideration the contributions of the guarantors). A definitive statement from the RCF banks on the realisation proceeds and their use has yet to be delivered. The Liquidators have compared, however, the data provided so far by the RCF banks regarding the amount of the realisation proceeds and the RCF-based claims settled with the accounts of PMAG. No significant differences were found.

Negotiations with the security agent of the RCF banks and the relevant guarantors with respect to an agreement on the settlement of all RCF-based claims (including the release of excess realisation proceeds and collateral) are well advanced. The conclusion and implementation of such an agreement will still take some time, however, due to the many parties involved and the approvals required.

### **3. Agreement with the security agent of the RCF banks and the receiver regarding the collection of accounts receivable**

The security agent of the RCF banks asserts claims on the accounts receivable of PMAG on the basis of collateral agreements drawn up under Swiss and English law. The security agent has employed the services of a so-called receiver to enforce security rights in accordance with English law collateral contracts. During the course of their enforcement measures, the security agent and receiver notified the debtors (the clients) of PMAG of the security rights that were being asserted, which generated some uncertainty among the debtors with regard to whom they could pay to provide them with exempt from discharge.

Against this background, PMAG, the security agent and the receiver concluded an agreement at the end of August 2014 in which they agreed to send a joint letter to the debtors of PMAG in which they would request payment of the outstanding amounts into an escrow account in Switzerland. This letter was sent in the autumn of 2014. By the end of 2014 approximately CHF 5.3 million in various currencies had been deposited in the escrow account. Some debtors asked questions or disputed the payment obligation wholly or in part. The responses by the debtors are being subject to review. The collection of accounts receivable will continue.

### **4. Settlement with Petroplus Raffinage Petit-Couronne SAS**

Petroplus Raffinage Petit-Couronne SAS ("PRPC") was the owner and operator of the group-owned refinery in Petit-Couronne, France. PMAG had a relationship with PRPC in two respects: in addition to having commissioned PRPC to refine crude oil under a processing agreement, PMAG was the indirect owner of PRPC. In the wake of the bankruptcy of the Petroplus group, there were various disputes between PMAG and PRPC, some of which could already be resolved during the debt restructuring moratorium with a settlement agreement in April 2012. Some of the disputes were also subject to attachment and judicial proceedings in France. In particular, PRPC was able to obtain an attachment on a claim of PMAG against Petroplus Marketing France SAS ("PMF") for approximately EUR 58 million. The attachment claim of PRPC was for PMAG assets with a value of more than EUR 300 million. The majority of this amount was a claim asserted on grounds of responsibility for environmental damage (toxic waste clean-up), with the remaining amount as payment for the removal of the residual oil inventory from the site of the Petit-Couronne refinery. In addition, PRPC had registered earlier claims against PMAG in the debt restructuring proceedings in the amount of some CHF 75 million (from processing fees and EUR-call-account). PMAG's financial statements revealed a counter claim against PRPC in the amount of just under USD 39 million (from a USD-call-account). To end their disputes and reciprocal claims, PMAG and PRPC agreed in September 2014 to a settlement of all claims with the following key components:

- payment of EUR 7 million to PRPC, payable from the PMAG claim against PMF that had been attached by PRPC, with the simultaneous payment of the remaining amount of just under EUR 51 million to PMAG;
- (subsequent) acknowledgement by PMAG of PRPC's option to sell specific parts of its residual oil inventory, with retention of the proceeds to be used by PRPC to pay the disposal costs;
- inclusion of a PRPC claim in the schedule of claims of PMAG in the amount of CHF 18,486,000 (about EUR 15 million) in the third class with the right to a dividend only by the amount that the PMAG dividend for third-class claims exceeds 15% – all this subject to the initiation of auxiliary bankruptcy proceedings by PRPC in accordance with Art. 166 ff. IPRG;

In addition, the security agent of the RCF banks asserted security rights on the PMAG claim against PMF that had been attached by PRPC. So as not to delay the process for the settlement agreement with PRPC, PMAG agreed with the security agent that the remaining claim of PMAG against PMF in the amount of just under EUR 51 million was not to be paid directly to PMAG, but into an escrow account in Switzerland.

The Creditors' Committee approved the settlement. The payment of approximately EUR 51 million has been deposited in the escrow account in Switzerland.

## **5. Intercompany claims**

Discussions with the Liquidator of Petroplus Deutschland GmbH and Petroplus Raffinerie Ingolstadt GmbH continued during the reporting period. Negotiations on the settlement of reciprocal claims are at an advanced stage.

In addition, negotiations began with the co-liquidator of Petroplus Refining Cressier SA on the settlement of reciprocal claims. These negotiations are also at an advanced stage.

## **B) Activities of the Creditors' Committee**

The Creditors' Committee held three meetings during the course of 2014. At its meetings, the Committee discussed the various proposals submitted by the Liquidators and passed resolutions accordingly.

The Creditors' Committee focused its activity last year on reviewing the claims filed and their planned registration. This review takes place in conjunction with the approval of the schedule of claims.

### **C) Notification of the creditors**

The creditors received two circulars last year, in May and December, in which they were informed about the debt restructuring liquidation.

## **III. REALISATION OF ASSETS**

### **A) Agreement with Lonza AG**

PMAG and Lonza AG ("Lonza") had a delivery agreement, on the basis of which PMAG agreed to supply Lonza with a specific amount of butane every month. In light of the rapidly deteriorating financial situation of the Petroplus group in January 2012, PMAG was no longer able to perform its delivery obligations to Lonza in accordance with the agreement.

PMAG had open claims in the amount of USD 4,334,844.83 against Lonza from the delivery agreement, on which the security agent of the RCF banks asserted security rights. PMAG and the security agent requested in a joint letter to Lonza that Lonza pay them the outstanding amount (in part to an account of the security agent to offset the liabilities of PMAG under the RCF, and in part to PMAG). Lonza responded by paying USD 1,430,887.44 and stated that it would be offsetting the remaining amount of USD 2,903,957.39 to satisfy claims for damages it was asserting due to PMAG's breach of the delivery agreement. PMAG countered by saying that such offsetting was not permissible due to their agreement to an offsetting exclusion. Moreover, PMAG was of the opinion that the claims for damages asserted were not indicated in full.

As a result, PMAG and Lonza started negotiations to settle their reciprocal claims. A settlement was reached, on the basis of which Lonza agreed to pay PMAG a final amount of CHF 1.1 million for all claims (payable based on the original demand on a pro-rated basis to the security agent and PMAG). The Creditors' Committee approved the settlement. The agreement has since been executed.

### **B) Sale of stake in Petroplus Switzerland Investment GmbH**

PMAG was the sole shareholder of Petroplus Switzerland Investment GmbH headquartered in Zug ("PSIG"). In the wake of the bankruptcy of the Petroplus group, there were organisational shortcomings at PSIG. In May 2014 the commercial registry office of Zug requested that PSIG restore its legal state, otherwise it would ask the court to take the required measures.

PMAG is currently not in possession of PSIG's financial figures. According to the available data, PSIG was inactive, and its only major asset is a claim against PMAG. On the other hand, PSIG owes the same amount to Petroplus Holdings AG ("PHAG"). PSIG may also have some tax debts. In light of

potential over-indebtedness, PMAG had no interest in resolving PSIG's organisational shortcomings. In contrast, PHAG announced it was interested in acquiring the stake in PSIG from PMAG for the symbolic price of CHF 1. PMAG rejected this offer, as the purchase price did not even cover the transaction costs. Subsequently, Attestor Capital LLP ("Attestor") and BlueMountain Capital Management (USA) ("BlueMountain") announced that they were interested in acquiring PSIG. At the end of August 2014, PMAG sold its entire stake in PSIG for the price of CHF 10,000 to various companies and investment funds affiliated with Attestor and BlueMountain.

#### **IV. AVOIDANCE CLAIMS IN ACCORDANCE WITH ART. 285 ET SEQ. SCHKG**

##### **A) General**

We reported on the review of possible avoidance claims in December 2014 in Circular no. 2. Subsequently, PMAG has filed 17 avoidance claims with a total amount in controversy of about CHF 110 million. In most cases, the suits were filed via an application for conciliation. One avoidance claim has already been settled (see section IV.B) below).

##### **B) Settlement with Prokon Pflanzenöl GmbH**

PMAG contested the payment of EUR 2,565,506.22 on 5 January 2012 to Prokon Pflanzenöl GmbH, Deutschland ("Prokon", previously: Bio-Ölwerk Magdeburg GmbH). With this payment, PMAG had paid for goods (FAME) that Prokon had supplied to PMAG on credit. As a result, the Swiss legal counsel of Prokon contacted the Liquidators to sound out the possibility of a settlement. Negotiations were held and a settlement was reached, on the basis of which Prokon agreed to pay PMAG the amount of EUR 1,282,753.11 to finally settle all reciprocal claims. The Creditors' Committee approved the settlement. The settlement was then executed, and the settlement payment has been deposited with PMAG.

#### **V. ASSET STATUS OF PETROPLUS MARKETING AG AS OF 31 DECEMBER 2014**

##### **A) Preliminary remarks**

A report on the liquidation status of PMAG as of 31 December 2014 is attached to this Circular. It contains a statement of the assets of PMAG as of 31 December 2014. The valuation of the assets in foreign currencies was carried out after the Swiss National Bank abandoned the minimum exchange rate of the CHF to the EUR.

**B) Assets**

Liquid funds: PMAG's liquid funds are mainly in accounts held at Zuger Kantonalbank, the legal depository.

Assets as yet unrealized: These are primarily claims on third parties that have arisen during the debt restructuring moratorium or debt restructuring liquidation (accounts receivable by the estate), claims on the RCF banks (in particular the proceeds from the realisation of PMAG assets, on which the RCF banks asserted security rights), claims on third parties and claims on group companies. The RCF banks continue to assert security rights to these assets in some cases. Irrespective of the existence of these security rights, the RCF banks' claims are covered by previous realisations. The final statement and release of collateral are still pending, however.

**C) Debts incurred in the course of the liquidation process**

Creditors: The debts incurred in the course of the liquidation process as reported as of 31 December 2014 consist of accrued expenses and costs, social security contributions and withholding taxes.

Provisions for future liquidation costs: Provisions of CHF 20 million have been set aside for future liquidation costs as of 31 December 2014.

**D) Creditors' claims**

Major progress has been made in the assessment of claims under the schedule of claims proceedings, but the process has not yet been completed. The liquidation status as of 31 December 2014 therefore indicates the current total of claims that have been filed in the respective classes, and those claims that have been recognised or rejected by PMAG. In this respect, it should be noted that the liquidation bodies are not bound by PMAG's assessment of the claims filed in their decision as to whether to recognise or reject claims. Yet, for the purpose of estimating the dividends, PMAG's position on the claims was provisionally applied.

Claims secured by rights of lien: These are primarily claims that the RCF banks have filed, for which they are asserting security rights on various assets of PMAG.

First-class claims: To date, 171 creditors have filed first-class claims totalling CHF 11,742,010.

Second-class claims: To date, four creditors have filed second-class claims totalling CHF 590,998,976. CHF 494,283,129 of this is VAT claimed by the UK tax authority.

Third-class claims: To date, 323 creditors have filed third-class claims totalling CHF 7,008,298,406. It should in particular be mentioned that one creditor has subordinated its claim in the amount of USD 1 billion (plus interest; equivalent to approximately CHF 919 million) in accordance with Art. 725 OR (Swiss Code of Obligations). This claim has not been taken into consideration for the purpose of determining the dividend.

The inclusion of some third-class claims in the schedule of claims raises the question of their subordination. The subject stands in conjunction with a subordination agreement that was concluded under the framework of bonds issued by the Petroplus group. The Liquidators have analysed the subject under both Swiss and English law with respect to the inclusion of claims in the schedule of claims that fall under the subordination agreement. The analysis showed that there are good reasons to qualify the subordination as a subordination agreement in favour of all third-class claims without subordination, and not merely as relative subordination in favour of specific loan claims that the security trustee of the bond creditors (Deutsche Bank Trust Company Americas) is asserting against PMAG. Based on this, the potential dividend on the claims under the subordination agreement would be payable to all other claims included in the third class without subordination. The Liquidators informed the security trustee of the bond creditors about the current status of the investigations. The subject will be discussed in more detail with the Creditors' Committee. In addition, there will be an additional exchange with the security trustee.

#### **E) Estimated dividend**

Until the claims filed under the schedule of claims proceedings have been settled, the dividend for third-class claims cannot be reliably estimated. According to current estimates, the expected range is between 2.23% and 14.99%. If the claims under the subordination agreement are recognised on a subordinated basis in accordance with the above considerations, the maximum dividend for the remaining third-class claims, without subordination, is 22.74%.

This estimate of the minimum dividend takes full account of the second-class claim filed by the UK VAT authority, irrespective of the fact that according to the Swiss Federal Debt Enforcement and Bankruptcy Act (SchKG) priority is only given to claims under Swiss VAT law.

### **VI. PLANNED NEXT STEPS IN THE PROCESS**

The priority should be on bringing to a close the negotiations with the RCF banks and other involved parties to settle the RCF-based claims and the release of excess sales proceeds and collateral. The settlement that is being sought will bring some clarity for PMAG in terms of both assets and liabilities, in that the availability of assets will be substantially increased and the schedule of

claims will be reduced by the amount of the RCF-based claims (in particular in the area of RCF-based claims secured by a right of lien). With the settlement of the RCF complex, the other creditors can better assess the implications of the decision made with regard to their claims. For this reason, the publishing of the schedule of claims will not yet take place. The preparations for publishing are sufficiently well advanced that the schedule of claims will be published shortly after the agreement with the RCF banks takes effect.

Further, the collection of outstanding claims and the pursuit of avoidance claims will be advanced. Ultimately, it is planned to carry out the necessary clarifications on the issue of responsibility to such a stage to enable a decision on the next steps in the current year.

Yours faithfully

Petroplus Marketing AG in debt restructuring liquidation  
The Liquidators

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Enc: Liquidation status of Petroplus Marketing AG in debt restructuring liquidation as of 31 December 2014

Petroplus Marketing AG in Nachlassliquidation

LIQUIDATION STATUS AS AT 31 DECEMBER 2014

	31.12.2014 CHF	31.12.2013 CHF	Change CHF
<b>ASSETS</b>			
<b>Liquid Funds</b>			
Portokasse, Zug	-	-	-
Postfinance, CHF	-	-	-
UBS AG CHF (Sachwalterkonto)	83'608	49'295	34'313
UBS AG GBP (Sachwalterkonto)	2'603	501'811	-499'208
UBS AG USD (Sachwalterkonto)	18'045	62'753	-44'708
UBS AG EUR (Sachwalterkonto)	66'641	200'572	-133'931
ZKB CHF (Sachwalterkonto)	1'180'019	34'140'598	-32'960'579
ZKB USD (Sachwalterkonto)	608'590	615'022	-6'432
ZKB EUR (Sachwalterkonto)	8'586'015	10'757'966	-2'171'951
ZKB PMAG CHF	2'922	2'973	-51
ZUGER KB CHF	180'003'535	149'999'500	30'004'035
<b>Total Liquid Funds</b>	<b>190'551'979</b>	<b>196'330'490</b>	<b>-5'778'511</b>
<b>Liquidation Positions</b>			
Lease deposits	46'619	-	46'619
Accounts Receivable*	65'043'953	79'404'330	-14'360'377
Claims against RCF-Banks*	218'437'594	214'232'912	4'204'682
Escrow*	55'272'231	-	55'272'231
Claims against Third Parties*	148'000'000	166'000'000	-18'000'000
Claims against Group Companies*	82'000'000	159'500'000	-77'500'000
Investments	-	-	-
Avoidance Claims	p.m.	p.m.	
Responsibility Claims	p.m.	p.m.	
<b>Total Liquidation Positions</b>	<b>568'800'398</b>	<b>619'137'242</b>	<b>-50'336'844</b>
<b>TOTAL ASSETS</b>	<b>759'352'376</b>	<b>815'467'732</b>	<b>-56'115'356</b>
<b>LIABILITIES</b>			
<b>Debts of the Estate</b>			
Accounts Payable	536'914	399'574	137'340
Provision for Liquidation Costs	20'000'000	20'000'000	-
<b>Total Debts of the Estate</b>	<b>20'536'914</b>	<b>20'399'574</b>	<b>137'340</b>
<b>TOTAL DISPOSABLE ASSETS</b>	<b>738'815'462</b>	<b>795'068'158</b>	<b>-56'252'696</b>

\* The RCF-banks claim security rights with regard to parts of these assets. Irrespective of the validity of these security rights, the claims of the RCF-Banks are covered by recoveries made to date. Detailed accounting and the release of securities are still pending.

## Petroplus Marketing AG in Nachlassliquidation

### Overview of the Schedule of Claims Proceedings

Category	Evaluation of the Call to Creditors			Dividend in %	
	registered	Claims contested by PMAG**	Claims recognised by PMAG**	Total	
	CHF	CHF	CHF	minimum	maximum
Claims secured by pledge	834'902'274	84'843'531	750'058'743	100%	100%
First Class	11'742'010	5'781'654	5'960'356	100%	100%
Second Class*	590'998'976	534'667'306	56'331'669	100%	100%
Third Class (without claims subject to subordination agreement)***	4'549'730'060	1'574'870'635	2'974'859'425	2.23%	22.74%
Third Class (claims subject to subordination agreement)***	1'539'200'000	-	1'539'200'000	0.00%	14.99%
Third Class with subordination pursuant to Art. 725(2) CO	919'368'346	-	919'368'346	0.00%	0.00%
<b>Total</b>	<b>8'445'941'665</b>	<b>2'200'163'126</b>	<b>6'245'778'540</b>		

\* The claim filed by the UK VAT-Authorities in Second Class has been taken into account in full for the purpose of calculating the dividend estimate, irrespective of the fact that under the DEBL only claims under the Swiss VAT Act are privileged.

\*\* This statement by PMAG is not binding upon the liquidators in their decision on the admittance or rejection of the registered claims in the schedule of claims. The preparation of the schedule of claims is still on-going.

\*\*\* A part of the claims filed in the Third Class are subject to certain subordination arrangements. The qualification of these arrangements and their effects in relation to the schedule of claims are not yet assessed. If the respective claims are ranked in the schedule of claims behind the other claims of the Third Class (which are not subject to the subordination arrangements), the subordinated claims will not receive any dividend, while the dividend for the other claims of the Third Class (which are not subject to the subordination arrangements) will be increased.