

**Petroplus Marketing AG in
debt restructuring liquidation**

Circular No. 13

www.liquidator-petroplus.ch

info.petroplus@wenger-plattner.ch

Hotline

Deutsch: +41 43 222 38 30

Français: +41 43 222 38 40

English: +41 43 222 38 50

**Unofficial Translation
of German Original**

Wenger Plattner
Seestrasse 39 | P.O.
CH-8700 Küsnacht Zurich

T +41 43 222 38 00
F +41 43 222 38 01
www.wenger-plattner.ch

To the creditors of
Petroplus Marketing AG in debt restructuring liqui-
dation

Brigitte Umbach-Spahn, lic. iur., LL.M.
Attorney at Law
Member of the Bar Association

Karl Wüthrich, lic. iur.
Attorney at Law
Member of the Bar Association

info.petroplus@wenger-plattner.ch

Küsnacht, May 2021

Petroplus Marketing AG in debt restructuring liquidation

Circular No. 13

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 2020, the issuance of supplement no. 2 to the schedule of claims and the next steps planned in the debt restructuring liquidation in the coming months.

I. REPORT ON ACTIVITIES AS AT 31 DECEMBER 2020;

After being acknowledged and approved by the Creditors' Committee on 12 March 2021, the Liquidators' eighth report on activities for 2020 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 8 June 2021. 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 PROGRESS OF THE LIQUIDATION PROCESS

1. Activity of the Liquidators

The main activities of the Liquidators in the reporting period related to the preparation and performance of the fourth interim payment, proceedings for enforcing the ruling regarding the avoidance claim against Harvest Energy Limited in England and efforts concerning claims still suspended in the schedule of claims, namely the claim of the Swiss Federal Tax Administration relating to the VAT input tax correction (see Sections IV. and VI. below).

2. Activities of the Creditors' Committee

The Creditors' Committee did not hold any meetings during the reporting period. The Creditors' Committee decided on several proposals from the Liquidators by circular letter.

III. REALISATION OF ASSETS

1. Avoidance claims in accordance with Art. 285 ff. of the Swiss Federal Debt Enforcement and Bankruptcy Act

1.1 Status of avoidance claims

By the end of 2019, all avoidance actions had already been settled. The only pending matter was the proceedings to enforce the avoidance ruling against Harvest Energy Limited ("Harvest") in England.

1.2 Settlement with Harvest Energy Limited

In its ruling on 8 August 2016, the Cantonal Court of Zug upheld PMAG's avoidance action against Harvest and ordered the latter to pay PMAG USD 1,020,633 (plus interest and costs). Harvest had not appeared in the proceedings despite being served with the action by way of letter rogatory and took the view that the Swiss avoidance ruling was not enforceable in England. Accordingly, Harvest did not comply with PMAG's request for payment. Efforts to reach an out-of-court settlement were initially unsuccessful.

To enforce the Swiss avoidance ruling, PMAG commenced proceedings against Harvest in the English High Court in January 2020. After two rounds of written pleadings, Harvest indicated that it was willing to engage in settlement discussions. The discussions eventually led to the conclusion of a settlement agreement in August 2020, whereby Harvest agreed to pay the amount of USD

400,000, net of all claims, to PMAG. The settlement adequately takes into account the litigation risks, in particular the high cost risk in English court proceedings. The Creditors' Committee approved the settlement. The settlement payment from Harvest has been received.

2. Claims from Petroplus Deutschland GmbH

Upon conclusion of the agreement with Petroplus Deutschland GmbH ("PDG"), a claim by PMAG for around EUR 290 million was admitted to the insolvency proceedings against PDG. On this claim, the PDG insolvency administrator made interim payments of 16.14% and 1.1%, in the spring and fall of 2020, respectively. With these interim payments, PMAG received around EUR 42.7 million (net, after deduction of German value added tax).

3. Account Receivables by the Estate

The Liquidators had filed an appeal against the assessment of the German value added tax for the 1st quarter of 2016 with the Konstanz tax office (Germany). The appeal concerned the VAT consequences resulting from the settlement agreement between PMAG and PDG. The appeal was essentially based on the fact that the value added tax resulting from the offsetting of the mutual claims was not to be qualified as liability but as an insolvency claim. Furthermore, in the context of the appeal, the value added tax was recalculated on the basis of a methodology that was more favourable to PMAG.

In a ruling dated 27 November 2020, the tax office accepted the adjusted calculation methodology, but rejected the other points raised as unfounded. The Liquidators had the appeal ruling examined in detail by German tax experts from the law firm Schultze & Braun. Due to the very low prospects of success combined with a very high cost risk, the Liquidators have refrained from appealing the ruling before the Baden-Württemberg Finance Court.

The new calculation of value added tax for 2016 and 2017 resulted in a credit balance of PMAG with the Konstanz tax office in the amount of approximately EUR 1.4 million, which was refunded to PMAG plus interest at the beginning of 2021.

IV. SETTLEMENT OF LIABILITIES

Most of the claims submitted have been assessed and included in the schedule of claims. As at the end of 2020, the recognition of a claim by the Swiss Federal Tax Administration relating to input tax correction (value added tax) in the amount of approximately CHF 36 million as a second-class claim was still sus-

pending. At the beginning of 2021, the Federal Tax Administration adjusted its registered claim and reduced the claim from input tax correction to an amount of CHF 685,000. In this context, a supplement no. 2 to the schedule of claims will be issued (see Section VI. below).

No new claims were registered in 2020.

V. ASSET STATUS OF PETROPLUS MARKETING AG AS OF 31 DECEMBER 2020

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 2020. 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 held in accounts 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 at Zuger Kantonalbank.

2.2 Assets not yet realised

Assets that had not yet been realised at the end of 2020 are primarily claims that have arisen during the debt restructuring moratorium or debt restructuring liquidation (accounts receivable by the estate) 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 2020 consist of expenses and costs accrued over the year 2020.

3.2 Provisions

PMAG's liquidation status as at 31 December 2019 includes the following provisions for the former interim payments:

Reason	1st interim payment	2nd interim payment	3rd interim payment	4th interim payment
A lack of payment instructions or payments not executed for other reasons (including provision with regard to allocation suits in the second class).	CHF 0.5 million	CHF 0.16 million	CHF 0.17 million	CHF 0.19 million
Claims suspended, included pro memoria or not yet assessed	CHF 36.1 million	-	-	-

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

Provisions of CHF 7.5 million have been set aside for future liquidation costs (including negative interest) as at 31 December 2020.

4. Creditor's 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 liquidating dividend

The disposable assets reported in the liquidation status as at 31 December 2020 give a maximum dividend of 30.42% for third-class claims, provided only 5% of the claims that have been suspended, included pro memoria or not yet assessed, have to be recognised. However, if all of the claims that had been suspended, included pro memoria or not yet assessed as at the end of 2020 are to be recognised in full, then the minimum dividend is 29.34%.

VI. ISSUANCE OF SUPPLEMENT NO. 2 TO THE SCHEDULE OF CLAIMS

Since the schedule of claims was published, the last claims that have been suspended to date were assessed. Supplement no. 2 to the schedule of claims is therefore published. As soon as this supplement no. 2 becomes legally binding, the schedule of claims will be definitively settled.

Supplement No. 2 to the schedule of claims is available for inspection by the creditors from 26 May to 15 June 2021 at the offices of the liquidators Brigitte Umbach-Spahn and Karl Wüthrich at Wenger Plattner, attorneys at law, Sees-

trasse 39, Goldbach-Center, 8700 Küsnacht (please book an appointment by telephone calling the hotline on +41 43 222 38 00).

The claims included in supplement no. 2 are, on the one hand, two claims of the unemployment fund of the Canton of Zug recognised in the first class in the total amount of CHF 17,618.30 for subrogated wage claims of the former employees Peter Senkbeil and James McCoy. Their wage claims were suspended due to ongoing investigations into claims for responsibility asserted by the estate of PMAG, which is why the schedule of claims decision regarding the claims transferred to the unemployment insurance fund of Canton Zug was also temporarily suspended (Art. 59 para. 3 of the Ordinance on the management of bankruptcy offices, "KOV"). After the estate reached settlements with the two former employees at the end of 2019 to settle all mutual claims, the claims of the unemployment insurance fund of the Canton of Zug have now been included.

The Swiss Federal Tax Administration had filed various claims in the debt restructuring proceedings of PMAG, including a second-class claim from input tax correction in the amount of approximately CHF 36 million. Since the amount of the input tax correction depended on the amount of the estate dividend paid on other filed tax claims, the existence and the scope of the claimed claim could not yet be assessed at the time of the issuance of the schedule of claims in May 2016. Accordingly, the decision was temporarily suspended (Art. 59 para. 3 KOV).

In the meantime, the open questions could be clarified. The Swiss Federal Tax Administration has reduced the previously suspended claim and is still claiming around CHF 685,000 as a second-class claim. An assessment by the Swiss Federal Tax Administration has not yet taken place. For details, please refer to the notes in the general order on supplement no. 2 to the schedule of claims.

VII. NEXT STEPS IN THE PROCESS

In 2021, it is planned to pursue the realisation of assets not yet liquidated (collection of receivables from Group companies).

Depending on how the proceedings progress, creditors will continue to receive information about important developments in the form of circulars. In spring 2022 at the latest, we will inform you with a further circular about the Report on Activities for this year.

Kind regards,

Petroplus Marketing AG in debt restructuring liquidation
The Liquidators

Brigitte Umbach-Spahn

Karl Wüthrich

www.liquidator-petroplus.ch
info.petroplus@wenger-plattner.ch

Hotline

Deutsch: +41 43 222 38 30

Français: +41 43 222 38 40

English: +41 43 222 38 50

- Annexes:
1. Liquidation status of Petroplus Marketing AG in debt restructuring liquidation as of 31 December 2020 (in german only)
 2. Overview of the schedule of claims proceedings (in german only)

LIQUIDATIONSSTATUS PER DATUM 31. DEZEMBER 2020

	31.12.2020 CHF	31.12.2019 CHF	Veränderung CHF
AKTIVEN			
Liquide Mittel			
UBS AG CHF (Sachwalterkonto)	57'358	62'321	-4'964
UBS AG GBP (Sachwalterkonto)	4'932	35'139	-30'206
UBS AG USD (Sachwalterkonto)	8'138	9'006	-867
UBS AG EUR (Sachwalterkonto)	22'610	26'768	-4'158
ZKB CHF (Sachwalterkonto)	8'934'810	9'332'642	-397'832
ZKB USD (Sachwalterkonto)	614'338	285'760	328'578
ZKB EUR (Sachwalterkonto)	744'336	748'101	-3'765
ZKB GBP (Sachwalterkonto)	7'784	23'876	-16'093
ZKB PMAG CHF	37'156'749	25'940'517	11'216'232
ZKB PMAG EUR	3'598'002	47'019	3'550'983
ZKB FESTGELD CHF	-	125'000'000	-125'000'000
ZUGER KB CHF	22'892	23'129	-236
Total liquide Mittel	51'171'949	161'534'277	-110'362'328
Liquidations-Positionen			
Nachlassdebitoren	1'265	5'105	-3'840
Forderungen gegenüber Konzerngesellschaften	7'800'000	47'600'000	-39'800'000
Beteiligungen, Wertschriften	-	-	-
Gerichtsvorschüsse	-	1'800'000	-1'800'000
Anfechtungsansprüche	-	p.m.	-
Verantwortlichkeitsansprüche	-	2'000'000	-2'000'000
Total Liquidationspositionen	7'801'265	51'405'105	-43'603'840
TOTAL AKTIVEN	58'973'214	212'939'382	-153'966'168
PASSIVEN			
Massenschulden			
Nachlasskreditoren	1'187	5'592	-4'405
Rückstellung 1. Abschlagszahlung	36'586'386	81'501'886	-44'915'501
Rückstellung 2. Abschlagszahlung	160'274	204'342	-44'068
Rückstellung 3. Abschlagszahlung	167'005	210'372	-43'367
Rückstellung 4. Abschlagszahlung	192'882	-	192'882
Rückstellung Umsatzsteuern Deutschland	509'870	-	509'870
Rückstellung Liquidationskosten	7'500'000	10'000'000	-2'500'000
Total Massenschulden	45'117'604	91'922'192	-46'804'588
TOTAL AKTIVEN VERFÜGBAR	13'855'609	121'017'190	-107'161'580

Petroplus Marketing AG in Nachlassliquidation

Beilage 2

Übersicht über den Stand des Kollokationsverfahrens

Kategorie	angemeldet		im Kollokationsverfahren				Nachlassdividende in %					
	CHF		zugelassen	bedingt zugelassen	Kollokationsklage hängig	ausgesetzt, pro memoria kolloziert oder noch nicht beurteilt	abgewiesen	Abschlags- zahlungen	Zukünftige Dividende		Total	
			CHF	CHF	CHF	CHF	CHF		minimal	maximal ¹⁾	minimal	maximal ¹⁾
Pfandgesicherte	1'664'231		1'547'409	-	-	-	116'822	100%	0%	0%	100%	100%
1. Klasse	9'130'628		4'578'880	-	-	17'618	4'534'129	100%	0%	0%	100%	100%
2. Klasse	591'244'014		60'884'593	-	-	36'076'292	494'283'129	100%	0%	0%	100%	100%
3. Klasse	4'630'946'479		3'171'847'402	-	-	-	1'459'099'077	28.90%	0.44%	1.52%	29.34%	30.42%
3. Klasse subordiniert	-		-	-	-	-	-	0%	0%	0%	0%	0%
3. Klasse mit Rangrücktritt i.S. Art. 725 Abs. 2 OR	923'300'000		923'300'000	-	-	-	-	0%	0%	0%	0%	0%
Total Nachlassforderungen	6'156'286'352		4'162'158'283	-	-	-	36'093'911					

1) Bei der Berechnung der Maximaldividende sind die ausgesetzten, pro memoria kollozierten oder noch nicht beurteilten Forderungen mit 5 % berücksichtigt worden.

www.liquidator-petroplus.ch

info.petroplus@wenger-plattner.ch

Hotline

Deutsch: +41 43 222 38 30

Français: +41 43 222 38 40

English: +41 43 222 38 50