

**Petroplus Marketing AG in  
debt restructuring liquidation**

**Circular No. 8**

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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. 8**

Dear Sir or Madam,

This circular provides information about the status of the debt restructuring liquidation of Petroplus Marketing AG (“PMAG”) since May 2017, the assignment of legal claims of the insolvency estate, the issuance of a third interim payment and the next steps planned in the debt restructuring liquidation for the coming months.

### **I. REPORT ON ACTIVITIES AS AT 31 DECEMBER 2017**

Having been acknowledged and approved by the Creditors’ Committee on 28 February 2018, the Liquidators’ fifth report on activities for 2017 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 18 June 2018. 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. They also incorporate developments since the beginning of this year.

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

### **1. Activities of the Liquidators**

In 2017, further progress was made in selling assets and settling liabilities. Since publication of the schedule of claims in May 2016, the claims subsequently lodged by the Swiss ancillary insolvency estates of two UK group companies have been assessed (see section IV.2 below). Other significant activities of the Liquidators in the reporting period included pursuing pending avoidance claims and clarifications about responsibility issues.

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

The Creditors' Committee held three meetings, two of which took the form of conference calls, in the course of 2017. 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 against group companies**

#### **1.1 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 (see Circular no. 5, section III.1). The insolvency administrator of PDG made the first interim payment of 60% in respect of this claim in autumn 2016. A second interim payment of 20% was made in summer 2017. Through this second interim payment PMAG received around EUR 49 million (net, after deduction of German value added tax).

#### **1.2 Petroplus Refining Teesside Ltd**

In the insolvency proceedings against UK group company Petroplus Refining Teesside Ltd ("PRTL"), PMAG registered claims of around GBP 214 million. PMAG and PRTL have agreed a settlement with respect to these claims and the counter-claims of PRTL (see section IV.2 below).

## **2. Accounts receivable**

### **2.1 Settlement with BP Europa SE**

An annual contract existed between PMAG and BP Europa SE, Zug office (“BP Europa”) for the supply of oil products for 2012. As a result of the closure of the Cressier refinery in January 2012, PMAG was no longer able fully to meet its contractual obligations, which prompted BP Europa to make substitute purchases. From the annual contract there were outstanding claims on the part of PMAG against BP Europa SE amounting to around CHF 1.4 million. BP Europa initially asserted claims for damages in a corresponding amount but later reduced its claims to around CHF 854,000. The parties sought an amicable solution to clear the claims asserted against each other and agreed on a settlement under which BP Europa would pay PMAG CHF 735,000. Following approval by the Creditors’ Committee, the settlement was executed.

### **2.2 Settlement with Litasco SA**

PMAG’s books gave rise to 11 claims against Litasco SA (“Litasco”) in the amount of around EUR 42,000 and USD 370,000, mainly from demurrage charges and a residual purchase price. Some of the claims were poorly documented. Litasco asserted counter-claims based on demurrage in the amount of around USD 344,000. The parties sought an amicable solution to clear the claims asserted against each other and agreed on a settlement under which Litasco would pay PMAG around EUR 27,000 and USD 28,000. Following approval by the Creditors’ Committee, the settlement was executed.

### **2.3 Glencore Energy (UK) Ltd / waiver of pursuit of disputed claims**

According to PMAG’s accounts there were outstanding invoices against Glencore Energy (UK) Ltd (“Glencore”) totalling USD 1,915,859.36 and EUR 12,140.00. Glencore did not comply with a corresponding demand for payment in 2014. The largest single item (around USD 1.8 million) relates to a residual claim on the part of PMAG from a sale of oil products in 2011. Glencore retained this amount and asserted set-off against a claim for reimbursement against PMAG. The counter-claim asserted relates to a sale of oil products by PMAG to Glencore from the Antwerp refinery in 2009 and a subsequent dispute with Belgian tax authorities. Glencore had also registered claims totalling around USD 130,000 in the debt restructuring proceedings against PMAG. These were offset in the schedule of claims against outstanding claims by PMAG.

Efforts to resolve the matter by way of settlement have remained in vain. PMAG would thus have to take legal action in England to enforce its claims, which would involve considerable expense and risk. The Liquidator and Creditors' Committee have therefore decided not to pursue the claims against Glencore any further.

### **3. Assignment of the right to take legal action in respect of contested claims**

Each creditor is entitled to request the assignment of the right to take legal action in respect of those legal claims which the Liquidators and the Creditors' Committee decide not to pursue further (Art. 325 in conjunction with Art. 260 of the Swiss Debt Enforcement and Bankruptcy Law (Bundesgesetz über Schuldbetreibung und Konkurs – SchKG). A creditor who requests assignment is then entitled to assert the legal claim at his own risk and expense. In the event that he wins the legal action, he may use any award to cover both the costs incurred and his claims against PMAG. Any surplus would have to be surrendered to the liquidation assets. If the creditor loses the litigation, he shall be liable for any court costs as well as his personal legal fees.

The right to sue regarding the claims of PMAG against Glencore Energy (UK) Ltd, which will not be pursued by the liquidation bodies (see section III.2.3 above), is herewith offered to creditors.

Requests for assignment within the meaning of Art. 260 SchKG may be submitted **in writing** to the undersigned Liquidators by **no later than** 18 June 2018 (postmark date in a Swiss post office). The right to request assignment is deemed to have been **forfeited** if this deadline is not respected.

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

### **4.1 Status of avoidance claims**

We reported in Circular no. 7 (section III.4) on the status of the pursuit of avoidance claims as at the end of May 2017. As at the end of 2017 three actions were still pending with an amount in dispute of around CHF 96 million before various courts (see sections III.4.2 to III.4.4 below).

### **4.2 Swiss federal government**

In February 2015 PMAG instigated an avoidance action against the Swiss Confederation (Directorate General of Customs, hereinafter “federal government”) and contested the payment of petroleum tax of just under CHF 80 million in January 2012 (for background information, see Circular no. 2, section I.8). The

action was made pending in the High Court of the Canton of Berne as the sole cantonal competent court for actions against the federal government (Art. 5(1)(f) Swiss Code of Civil Procedure (Zivilprozessordnung – ZPO)). The procedure was initially restricted to the question of competence, which the High Court affirmed in an interim decision in February 2016. The federal government brought an appeal against this interim decision before the Federal Supreme Court, which was upheld by the latter in June 2017. The Federal Supreme Court decided that Paulian avoidance actions against the federal government do not constitute “actions against the federal government” within the meaning of Art. 5(1)(f) ZPO but must instead go through two cantonal competent courts. As a result PMAG instigated its action anew with the regional court of Berne-Mittelland. The action is therefore currently pending before the court of first instance.

#### **4.3 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 (for background information, see Circular no. 2, section I.6). The cantonal court of Zug 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 appeal proceedings are currently pending.

#### **4.4 Climate Cent Foundation**

In February 2015 PMAG instigated an avoidance action against the Climate Cent Foundation and contested contribution payments to the Foundation in 2011 and 2012 in the amount of around CHF 16.7 million (for background information, see second report on activities, margin nos. 62 ff.). PMAG asserted action to void a gift and, for a partial amount of around CHF 1 million, action to void for intent. With respect to this partial amount, the district court of Zurich approved the action in June 2017 and obliged the Climate Cent Foundation to pay around CHF 1 million to PMAG. On the other hand, the court found that the conditions for action to void a gift were not met and rejected the action in the remaining amount. PMAG lodged an appeal against this with the High Court of the Canton of Zurich. With regard to the partial approval of the action, the ruling in the court of first instance remained uncontested and the Climate Cent Foundation paid the amount owed in December 2017. In February 2018 the High Court ruled on the appeal. It obliged the Climate Cent Foundation to make a further payment of around CHF 87,000 to PMAG and rejected the appeal in the remaining amount. Following a thorough examination of the ruling the Liquidators and the Creditors’ Committee decided not to pursue the matter further with

the Federal Supreme Court. The defendant also left the ruling uncontested. The action has thus been resolved with legally binding effect.

#### IV. SETTLEMENT OF LIABILITIES

##### 1. General information

We have previously reported in Circulars nos. 5 and 6 on publication of the schedule of claims and the results thereof. In supplement no. 1 to the schedule of claims (published in May 2017, see Circular no. 7) the claims of the Swiss ancillary insolvency estates of the UK group companies Petroplus Refining & Marketing Ltd ("PRML") and PRTL were included in the schedule. Both brought a schedule of claims action, which in the meantime have been resolved by way of settlement (see next section).

##### 2. Settlements with Petroplus Refining & Marketing Ltd, Petroplus Refining Teesside Ltd and Deutsche Bank Trust Company Americas

At the end of May 2016 the Swiss ancillary insolvency estates of PRML and PRTL registered claims of around CHF 371.3 million and CHF 51.9 million respectively in the debt restructuring proceedings against PMAG. PRTL netted the claims registered against it by PMAG against its own claims, and registered only the remaining net claim.

The claims were included in supplement no. 1 to the schedule of claims in May 2017, as follows:

- The claims of the ancillary insolvency estate of PRML were recognised in the amount of around CHF 230.2 million in the third class, while the remaining amount of around CHF 141.1 million was rejected.
- The claims of the ancillary insolvency estate of PRTL were recognised in the amount of around CHF 23.8 million as subordinated claims after all other third-class creditors (without subordination). The remaining amount of around CHF 28.2 million was rejected.

Both creditors brought a schedule of claims action. The ancillary insolvency estate of PRML sought to have included in the schedule of claims a further amount of around CHF 131 million. The ancillary insolvency estate of PRTL requested that the recognised amount of CHF 23.8 million not be subordinated but recognised as a normal third-class claim. In parallel with the schedule of claims action PRTL also instigated court proceedings in England (directions proceedings) for directions on the claims registered there by PMAG in the

amount of around GBP 214 million (see section III.1.2 above). These proceedings in England were also concerned with claims that Deutsche Bank Trust Company Americas (“DBTCA”) had registered as the security trustee of Petroplus bond creditors in the English liquidation proceedings against PRTL and that are connected with the mutual claims of PMAG and PRTL.

Against the background of the ongoing court proceedings in Switzerland and England, the parties entered negotiations for amicable resolution of the claims against each other. DBTCA was also involved in the discussions. The discussions led to the conclusion of two connected settlements with the following essential elements:

PRML settlement:

- PMAG will include in the schedule of claims an additional amount of around CHF 22.9 million in the third class in favour of the ancillary insolvency estate of PRML.
- PRML and its ancillary insolvency estate waive claims beyond this and the ancillary insolvency estate withdraws its schedule of claims action.
- With execution of this settlement the parties declare all claims against each other to have been settled on balance.

PRTL settlement:

- PRTL and its ancillary insolvency estate waive all claims against PMAG and the registration of claims is deemed to have been withdrawn.
- The ancillary insolvency estate of PRTL withdraws its schedule of claims action.
- PMAG withdraws its registration of claims in the English liquidation proceedings against PRTL.
- DBTCA waives its claim registered in the English liquidation proceedings against PRTL and withdraws its registration of claims.
- PRTL agrees to the ending of the directions proceedings it instigated in England.
- With execution of this settlement the parties declare all claims against each other to have been settled on balance.

The validity of the settlements was dependent on various conditions being met, including approval by the Creditors’ Committee of PMAG. All conditions have since been met and the settlements entered into force in February 2018.

Both settlements give adequate consideration to the risks borne by the parties involved and go a very long way to sorting out the schedule of claims of PMAG. The substantial withdrawal of claims means that provisions can be reversed that were set aside in connection with the previous interim payments. The resources freed up are available for a further interim payment to creditors in the third class.

## **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 2017. In light of the issuance of a further interim payment, the liquidation status was updated as of 31 March 2018 (see [Annex 1](#)). Brief comments on this are provided below.

### **2. Assets**

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

PMAG's liquid funds are mainly invested in accounts held at Zuger Kantonalbank, which is the legal depository, and 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.

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

Assets that have not yet been realised 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 (for payment of retentions made under the Global Settlement Agreement) 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 as of 31 March 2018 consist of accrued expenses and costs over the first quarter of 2018.

### 3.2 Provisions

PMAG's liquidation status as at 31 March 2018 includes the following provisions for the first and second interim payments:

Reason	1st interim payment	2nd 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 48.2m	CHF 0.2m
Contingent claims where conditions have not yet been met	CHF 0.2m	CHF 0.1m
Claims in the pending schedule of claims proceedings (excluding directions actions in the second class)	CHF 3m	CHF 0.9m
Claims suspended, included pro memoria or not yet assessed	CHF 51.0m	CHF 3.7m

These provisions ensure that the maximum amounts for the first and second interim payments with respect to all unsettled claims are guaranteed.

Provisions of CHF 20 million have been set aside for future liquidation costs as at 31 March 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. Changes that have occurred since the schedule of claims was published (including execution of the settlements with PRML and PRTL; see section IV.2 above) have been included. 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 March 2018 give a maximum dividend of 25.95% for third-class claims, provided that the action still pending to contest the schedule of claims can be successfully averted and only 70% of the third-class claims that have been suspended or included pro memoria have to be recognised. However, if the action lodged to contest the schedule of claims is successful and the third-class claims that have been suspended or included pro memoria are recognised in full, then the minimum dividend is 25.51%.

## **VI. THIRD INTERIM PAYMENT**

In light of both the level of settlement of the schedule of claims and the financial situation of PMAG, a third interim payment of 4.9% can be paid to creditors with legally recognised third-class claims. Interim payments on claims that are suspended or included pro memoria, or on claims for which an action to contest the schedule of claims is pending, will be assured.

Enclosed with this circular is the corresponding special notice, which gives more procedural details. The large number of creditors means that executing these payments will take some time. Payments will be made at the earliest from July 2018.

## **VII. NEXT STEPS IN THE PROCESS**

Avoidance actions and actions to contest the schedule of claims that are still pending will continue to be pursued. Furthermore, clarification of responsibility issues will be further pursued this year, and the next steps will be decided in agreement with the Creditors' Committee.

Kind regards

Petroplus Marketing AG in debt restructuring liquidation  
The Liquidators

Brigitte Umbach-Spahn

Karl Wüthrich

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

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## LIQUIDATION STATUS AS AT 31 MARCH 2018

	31.03.2018 CHF	31.12.2016 CHF	Change CHF
<b>ASSETS</b>			
<b>Liquid Funds</b>			
UBS AG CHF (Sachwalterkonto)	17'771	82'597	-64'826
UBS AG GBP (Sachwalterkonto)	16'649	31'149	-14'500
UBS AG USD (Sachwalterkonto)	9'128	9'174	-46
UBS AG EUR (Sachwalterkonto)	23'822	41'621	-17'799
ZKB CHF (Sachwalterkonto)	13'581'511	137'138'778	-123'557'267
ZKB USD (Sachwalterkonto)	285'193	595'547	-310'354
ZKB EUR (Sachwalterkonto)	819'167	3'216'024	-2'396'857
ZKB GBP (Sachwalterkonto)	65'710	146'208	-80'498
ZKB PMAG CHF	115'075'641	230'046'669	-114'971'029
ZKB PMAG EUR	2'229'508	25'728'000	-23'498'492
ZKB FESTGELD CHF	155'000'000	-	155'000'000
ZUGER KB CHF	1'426'645	1'440'176	-13'530
<b>Total Liquid Funds</b>	<b>288'550'746</b>	<b>398'475'943</b>	<b>-109'925'197</b>
<b>Liquidation Positions</b>	-	-	-
Accounts Receivable	19'101	5'106	13'996
Claims against RCF-Banks	7'800'000	70'000'000	-62'200'000
Claims against Third Parties	p.m.	p.m.	-
Claims against Group Companies	36'800'000	33'800'000	3'000'000
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>44'619'101</b>	<b>103'805'105</b>	<b>-59'186'004</b>
<b>TOTAL ASSETS</b>	<b>333'169'847</b>	<b>502'281'048</b>	<b>-169'111'201</b>
<b>LIABILITIES</b>	-	-	-
<b>Debts of the Estate</b>	-	-	-
Accounts Payable	3'025	167'916	-164'891
Provision for 1st Interim Distribution	102'378'970	181'322'001	-78'943'032
Provision for 2nd Interim Distribution	4'887'620	-	4'887'620
Provision for German VAT	-	27'932'398	-27'932'398
Provision for Liquidation Costs	20'000'000	20'000'000	-
<b>Total Debts of the Estate</b>	<b>127'269'615</b>	<b>229'422'316</b>	<b>-102'152'701</b>
<b>TOTAL DISPOSABLE ASSETS</b>	<b>205'900'232</b>	<b>272'858'732</b>	<b>-66'958'500</b>

Overview of the Schedule of Claims Proceedings

Category	registered	in the Schedule of Claims Proceedings					Dividend in %				
		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		minimum <sup>1)</sup>	maximum <sup>2)</sup>	minimum <sup>1)</sup>	maximum <sup>2)</sup>
Claims Secured by right of lien	1'664'231	1'547'409	-	-	-	116'822	100%	0%	0%	100%	100%
First Class	11'863'654	4'578'880	-	-	2'750'644	4'534'129	100%	0%	0%	100%	100%
Second Class	591'240'964	60'881'543	-	-	36'076'292	494'283'129	100%	0%	0%	100%	100%
Third Class	4'721'184'315	3'168'346'776	1'404'098	19'020'808	77'947'760	1'454'464'873	20.40%	5.11%	5.55%	25.51%	25.95%
Third Class with subordination pursuant to Art. 725(2) CO	923'300'000	923'300'000	-	-	-	-	0%	0%	0%	0%	0%
<b>Total</b>	<b>6'249'253'164</b>	<b>4'158'654'608</b>	<b>1'404'098</b>	<b>19'020'808</b>	<b>116'774'696</b>	<b>1'953'398'954</b>					

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

<sup>2)</sup> 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.

<sup>3)</sup> The amounts shown relate to appeal proceedings by creditors against decisions by the liquidation bodies to reject the creditors' claims. In addition, two further appeal proceedings are 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.

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