

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 30 OF 2010 (AJJ)

BEFORE THE HONOURABLE MR JUSTICE ANDREW J. JONES QC

IN CHAMBERS, 19 NOVEMBER 2014

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

AND IN THE MATTER OF THE PRIMEO FUND (IN OFFICIAL LIQUIDATION)

ORDER

UPON hearing counsel for Gordon MacRae and Eleanor Fisher the joint official liquidators (the "Liquidators") of Primeo Fund (in Official Liquidation) (the "Company") on their Summons dated 12 November 2014

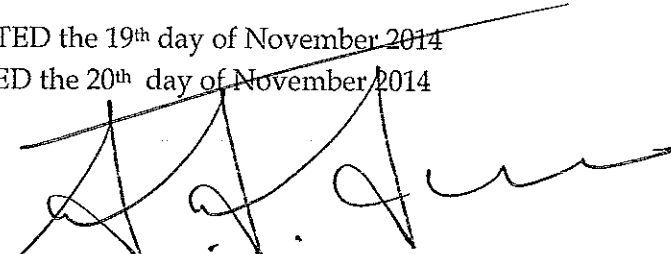
AND UPON READING the Third Affidavit of Eleanor Fisher sworn on 13 November 2014 together with Exhibit "EF3"

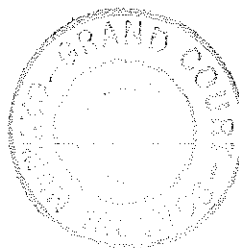
IT IS HEREBY ORDERED THAT:

1. the entry by the Company into the settlement agreement dated 12 November 2014 (a copy of which is annexed hereto) is approved and the Liquidators are authorised to take all steps required to bring it into effect; and
2. the costs of and incidental to this application be paid out of the assets of the Company as an expense of the liquidation.

DATED the 19<sup>th</sup> day of November 2014

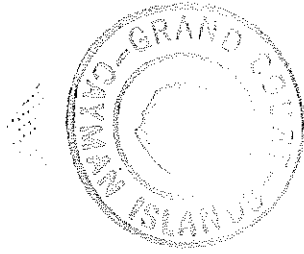
FILED the 20<sup>th</sup> day of November 2014

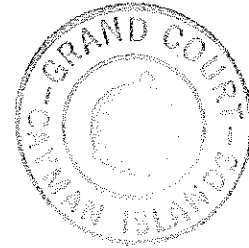
  
The Hon. Mr Justice Andrew J. Jones QC  
JUDGE OF THE GRAND COURT



This Order is filed by Mourant Ozannes, Attorneys-at-Law for Primeo whose address for service is PO Box 1348, 4th Floor, 94 Solaris Avenue, Camana Bay, Grand Cayman KY1-1108 (Ref:8005124/61588121/2)

**ANNEXURE  
SETTLEMENT AGREEMENT**





## AGREEMENT

This Agreement, dated as of November 12, 2014 ("Agreement"), is made by and between Irving H. Picard, in his capacity as the trustee ("Trustee") for the liquidation proceedings under the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. § 78aaa *et seq.* ("SIPA"), of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the substantively consolidated Chapter 7 case pending before the United States Bankruptcy Court for the Southern District Court of New York (the "Bankruptcy Court") of Bernard L. Madoff ("Madoff"), on the one hand, and Primeo Fund (In Official Liquidation) acting by its joint official liquidators, Gordon MacRae and Eleanor Fisher ("Primeo") and Herald Fund SPC (In Official Liquidation) acting by its principal joint official liquidators, Russell Smith and Niall Goodsir-Cullen ("Herald," together with Primeo, the "Funds"), on the other hand. The Trustee and the Funds collectively shall be referred to herein as the "Parties."

## BACKGROUND

A. BLMIS and its predecessors were registered broker-dealers and members of the Securities Investor Protection Corporation ("SIPC").

B. On December 11, 2008 (the "Filing Date"), the Securities and Exchange Commission (the "SEC") filed a complaint in the United States District Court for the Southern District of New York (the "District Court") against BLMIS and Madoff.

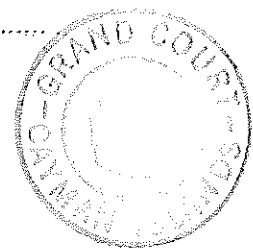
C. On December 15, 2008, the District Court entered an order under SIPA, which, in pertinent part, appointed the Trustee for the liquidation of the business of BLMIS under section 5(b)(3) of SIPA and removed the case to the Bankruptcy Court under section 5(b)(4) of SIPA, where it is pending as Case No. 08-01789 (SMB) (the "SIPA Proceeding"). The Trustee is duly qualified to serve and act on behalf of the BLMIS estate (the "BLMIS Estate"). By Order dated June 9, 2009, the estate of Madoff was substantively consolidated with the BLMIS Estate.

D. Primeo maintained two accounts with BLMIS. The first account was opened in or around December 1993 and was designated account no. 1FR060. Account no. 1FR060 was closed in or around April 2000. The second account was opened in or around January 1996 and was designated account no. 1FR092. Account no. 1FR092 was closed in 2007, when Primeo became an indirect investor with BLMIS through other funds, including Herald.

E. In the two years prior to the Filing Date, Primeo withdrew from its BLMIS accounts approximately Fifteen Million Four Hundred Thousand United States Dollars (\$15,400,000.00).

F. In the period from two to six years prior to the Filing Date, Primeo withdrew from its BLMIS accounts approximately One Hundred Twenty-Three Million Nine Hundred Fifty Thousand United States Dollars (\$123,950,000.00); in total during the six years prior to the Filing Date, Primeo withdrew One Hundred Thirty-Nine Million Three Hundred Fifty Thousand Dollars (\$139,350,000.00) ("Primeo Six-Year Transfers"). In the six years prior to the Filing Date, Primeo also received indirect transfers on account of its investments in Herald and Alpha Prime Fund Limited ("Alpha Prime").

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G. Herald maintained an account with BLMIS through its Luxembourg-based custodian HSBC Securities Services (Luxembourg), S.A. ("HSSL"), designated account no. IFR109, that was opened in or around April 2004. In the six years prior to the Filing Date, Herald, through HSSL, withdrew from that BLMIS account approximately Five Hundred Sixty-Seven Million Eight Hundred Thousand United States Dollars (\$567,800,000.00) ("Herald Six-Year Transfers," and together with the Primeo Six-Year Transfers, the "Transfers").

H. On or about June 23, 2009, Herald filed a customer claim with the Trustee, which the Trustee has designated as Claim No. 10817 (the "Herald Customer Claim"). The Herald Customer Claim is included as Attachment A to this Agreement. The Herald Customer Claim asserts that Herald is entitled to the securities reflected on its BLMIS Account statement for the period ending November 30, 2008, or in the alternative its net equity. The Parties agree that Herald's net equity equals \$1,172,195,000 ("Net Equity").

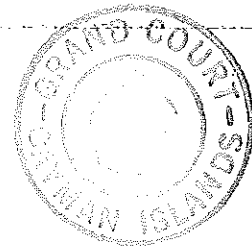
I. Primeo did not file a customer claim.

J. On January 23, 2009, Primeo was placed into voluntary liquidation by special resolution ("Primeo Liquidation") and on April 8, 2009, the liquidation of Primeo was continued under the supervision of the Grand Court of the Cayman Islands ("Cayman Court"). Gordon MacRae and Eleanor Fisher are the current joint official liquidators of Primeo ("Primeo Liquidators").

K. On July 16, 2013, Herald was placed into official liquidation by Order of the Cayman Court following the winding up petition presented by Primeo on February 14, 2013 ("Herald Liquidation," and together with the Primeo Liquidation, the "Cayman Liquidation Proceedings"). On July 24, 2013, Russell Smith and Niall Goodsir-Cullen were appointed as the principal joint official liquidators of Herald ("Herald Liquidators," and together with the Primeo Liquidators, the "Liquidators"), and Michael Pearson was appointed as the additional liquidator of Herald by the Cayman Court.

L. On December 5, 2010, the Trustee filed an Amended Complaint in an adversary proceeding captioned *Picard v. HSBC Bank plc, et al.*, Adv. Pro. No. 09-1364 (SMB) (the "Adversary Proceeding"). In the Amended Complaint, the Trustee asserted claims to avoid and recover the Transfers under 11 U.S.C. §§ 544, 547, 548, 550, or 551, SIPA § 78fff-(2)(c)(3), and the New York Debtor and Creditor Law §§ 270-281 ("Avoiding Power Claims"). The Trustee also asserted claims to disallow the Herald Customer Claim, pursuant to 11 U.S.C. § 502(d), and to equitably subordinate the Herald Customer Claim, pursuant to 11 U.S.C. §§ 510(c) and 105(a) ("Disallowance and Subordination Claims").

M. On December 9, 2010, the Trustee and BLMIS also filed a proceeding against Primeo in the Cayman Court, Cause No. FSD 0275 of 2010-AJJ ("Cayman Proceeding"), advancing avoidance and constructive trust claims under U.S. and Cayman law ("Trustee's Cayman Claims"). Primeo filed a Defence and Counterclaim in the Cayman Proceeding, denying the Trustee's Cayman Claims and asserting counterclaims against BLMIS for breach of contract and fraudulent misrepresentation ("Primeo's Cayman Claims"). In January 2011, various preliminary issues were tried in the Cayman Court. In January 2013, the Cayman Court ruled on those preliminary issues. The Trustee and Primeo respectively appealed certain of those



issues to the Cayman Islands Court of Appeal (the "Court of Appeal Proceeding"). On April 16, 2014, the Cayman Islands Court of Appeal ruled on certain issues and adjourned one issue for further argument.

N. In December 2010, the Trustee commenced an adversary proceeding against JPMorgan Chase ("JPM") alleging that JPM received approximately \$425 million in direct and indirect transfers from BLMIS, including \$154 million that JPM redeemed from Herald. In December 2013, the Trustee and JPM reached a settlement whereby JPM paid the Trustee \$325 million. Herald has asserted that it is entitled to a \$154 million credit based on the settlement amounts paid by JPM, which the Trustee disputes. However, in connection with the Trustee's settlement with Herald and Primeo, the Parties agree that Herald will receive credit for \$100,098,057 of the amount paid by JPM, reducing the Trustee's claim against Herald to \$467,701,943 ("Herald Adjusted Six-Year Transfers").

### AGREEMENT

1. Payment to Trustee. At the Closing (as defined in paragraph 9) (i) Primeo shall pay or cause to be paid to the Trustee, pursuant to the conveyances, assignments, endorsements, and transfers set forth in paragraph 9, the sum of Twenty-Nine Million One Hundred Forty-Two Thousand Three Hundred Forty-Five United States Dollars (\$29,142,345) (the "Primeo Settlement Payment") in full and final settlement and satisfaction of all Avoiding Power Claims, the Trustee's Cayman Claims and any other claims of the Trustee or the BLMIS Estate of every kind and nature whatsoever, whether known or unknown (as described in paragraph 6), that the Trustee or the BLMIS Estate may have against Primeo (including all claims against Primeo as a subsequent transferee); and (ii) Herald shall pay or cause to be paid to the Trustee, pursuant to the conveyances, assignments, endorsements, and transfers set forth in paragraph 9, the sum of Four Hundred Sixty-Seven Million Seven Hundred One Thousand Nine Hundred Forty-Three United States Dollars (\$467,701,943) (the "Herald Settlement Payment") in full and final settlement and satisfaction of all Avoiding Power Claims and other claims of the Trustee or the BLMIS Estate of every kind and nature whatsoever, whether known or unknown (as described in paragraph 6), that the Trustee or the BLMIS Estate may have against Herald.

2. No Further Claim for Primeo. Notwithstanding the Primeo Settlement Payment, Primeo shall not be entitled to any distributions directly from the BLMIS Estate and shall not seek allowance of a customer claim or any other claim under section 502(h) of the Bankruptcy Code.

3. Allowance of Herald Customer Claim. Upon the Closing (as defined in paragraph 9), Herald's Customer Claim shall be deemed conclusively allowed pursuant to section 502(h) of the Bankruptcy Code and 15 U.S.C. § 7811(11), equal in priority to other allowed customer claims against the BLMIS Estate, in the amount of One Billion Six Hundred Thirty-Nine Million Eight Hundred Ninety-Six Thousand Nine Hundred Forty-Three Dollars (\$1,639,896,943) (the "Allowed Claim"). As of the date of this Agreement, the initial amount to be paid by the Trustee to Herald allocable to the Allowed Claim in respect of a catch-up distribution is \$755,320,133 (46.059% of the Allowed Claim).

4. Release by the Trustee. In consideration for the terms herein, except with respect



to the obligations, rights, and considerations arising under this Agreement, upon the Closing (as defined in paragraph 9), the Trustee on behalf of himself, BLMIS, and its consolidated estates, shall release, acquit, and forever discharge the Funds and the Liquidators, including their successors and/or assigns, from any and all past, present, or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity, or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts), of whatever kind, nature, or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability, or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty, or otherwise (including attorneys' fees, costs, or disbursements), known or unknown, existing as of the date of the Closing that are, have been, could have been, or might in the future be asserted by the Trustee based on, arising out of, or in any way related to the Funds' respective direct or indirect relationship with BLMIS, including, without limitation, the claims against the Funds in the Adversary Proceeding and the Cayman Proceeding (including all claims against Primeo as a subsequent transferee, where such claims are related to Primeo's investments in or redemptions from Herald or Alpha Prime), except for any and all claims to enforce the obligations of the Funds under this Agreement. The release granted by the Trustee hereunder shall extend to the Funds' shareholders to the extent that any such shareholders received transfers of money from Herald and/or Primeo but shall not include a release of claims that the Trustee may bring that are unrelated to the Funds' investments in or withdrawals from BLMIS. For the avoidance of doubt, the Parties agree that the Trustee's release granted herein shall not in any way extend to Alpha Prime, nor shall Alpha Prime be deemed a beneficiary, intended or unintended, of this release.

5. Release by the Funds and the Liquidators. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, except with respect to the obligations, rights, and considerations arising under this Agreement, upon the Closing (as defined in paragraph 9), the Funds and the Liquidators hereby release, acquit, and forever discharge the Trustee and all his agents, representatives, attorneys, employees, and professionals, and BLMIS and its consolidated estate, from any and all past, present, or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity, or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts), of whatever kind, nature or description, direct or indirect, in law, equity, or arbitration, absolute or contingent, in tort, contract, statutory liability, or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty, or otherwise (including attorneys' fees, costs or, disbursements), known or unknown, existing as of the date of the Closing, based on, arising out of, or in any way related to BLMIS, including without limitation, Primeo's Cayman Claims, except for the rights of the Funds and the Liquidators to enforce the obligations of the Trustee under this Agreement.

6. Unknown Claims. Unknown Claims shall mean any released claims pursuant to paragraphs 4 and 5 of the Agreement, as defined herein, that the Parties do not know or suspect to exist in their favor at the time of giving the release in this Agreement that if known by them, might have affected their settlement and release in this Agreement. With respect to any and all released claims in paragraphs 4 and 5 of this Agreement, the Parties shall expressly waive or be

deemed to have waived, the provisions, rights and benefits of California Civil Code section 1542 (to the extent it applies herein), which provides:

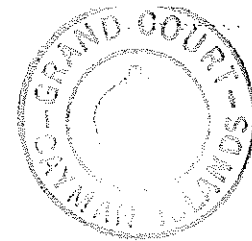
A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.



The Parties expressly waive, and shall be deemed to have waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable, or equivalent in effect to California Civil Code section 1542. The Trustee and/or the Liquidators may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but the Parties shall expressly have and be deemed to have fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Parties acknowledge and shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

7. Dismissal of Adversary Proceedings. Within five days of the Closing (as defined in paragraph 9), the Parties shall submit: (i) to the Bankruptcy Court, a stipulation requesting the dismissal of the Adversary Proceeding, with prejudice, as against the Funds, with each party bearing its own costs, attorneys' fees, and expenses; and (ii) documents seeking the dismissal of the Cayman Proceeding and the Cayman Court of Appeal Proceeding, including the Trustee's Cayman Claims and Primeo's Cayman Claims, with each party bearing their own costs, attorneys' fees, and expenses.

8. Court Approval; Effective Date; Termination. This Agreement is subject to, and shall become effective and binding on the Parties upon the later of: (i) the Bankruptcy Court's approval of this Agreement in the SIPA Proceeding by an order that is no longer subject to appeal, review, or rehearing; or (ii) the Cayman Court sanctioning the entry into this Agreement by the Herald Liquidators by an order that is no longer subject to appeal, review, or rehearing; or (iii) the Cayman Court sanctioning the entry into this Agreement by the Primeo Liquidators by an order that is no longer subject to appeal, review, or rehearing (the date when this Agreement becomes effective and binding on the Parties, the "Effective Date"). The Trustee shall use his reasonable efforts to obtain approval of the Agreement in the SIPA Proceeding as promptly as practicable after the date of this Agreement. The Liquidators shall use their reasonable efforts to obtain sanction of the Agreement in their respective Cayman Liquidation Proceedings as promptly as practicable after the date of this Agreement. If this Agreement has not become effective as provided in this paragraph within 360 days after the date of this Agreement (or within such additional time as mutually agreed upon by the Parties), then (a) this Agreement



(other than this paragraph) shall terminate and be void; (b) all of the statements, concessions, consents, and agreements contained in the Agreement (other than this paragraph) shall be void; and (c) neither the Trustee nor the Funds may use or rely on any such statement, concession, consent, or agreement in any public statement or litigation involving the SIPA Proceeding, in the respective Cayman Liquidation Proceedings, or any case or proceeding relating to the Funds, BLMIS, or Madoff.

9. Closing. There shall be a closing ("Closing") within five business days after the Effective Date of this Agreement. At the Closing simultaneously:

(a) Herald shall satisfy the Herald Settlement Payment and the Primeo Settlement Payment by:

(i) conveying, assigning, endorsing, and transferring to the Trustee the funds to be advanced by SIPC in the amount of Five Hundred Thousand Dollars (\$500,000.00); and

(ii) conveying, assigning, endorsing, and transferring to the Trustee from the catch-up distribution the sum of Four Hundred Ninety-Six Million Three Hundred Forty-Four Thousand Two Hundred Eight-Eight Dollars (\$496,344,288) owed to Herald under the Allowed Claim.

These actions shall constitute full payment of the Primeo Settlement Payment and the Herald Settlement Payment owed by the Funds to the Trustee;

(b) The Trustee shall pay Herald Two Hundred Fifty-Eight Million Nine Hundred Seventy-Five Thousand Eight Hundred Forty-Five Dollars (\$258,975,845), consisting of the balance of the catch-up distribution owed to Herald under the Allowed Claim pursuant to payment instructions to be provided by the Herald Liquidators to the Trustee; and

(c) The releases contained in paragraphs 4 and 5 shall become effective without any further action by any of the Parties.

10. Herald Claim Against Primeo. Upon satisfaction of the Primeo Settlement Payment by Herald at the Closing, Herald shall obtain a valid and uncontested claim against Primeo equal to the Primeo Settlement Payment plus an interest rate equal to the rate Herald receives on its escrow deposits ("Primeo Claim"). Herald shall be entitled to satisfy the Primeo Claim from the first distributions otherwise payable to Primeo in the Herald liquidation proceedings pending in the Cayman Court.

11. No Prejudice in Cayman Proceedings. Herald and Primeo agree that, except for and subject to the terms of paragraph 10 above:

(a) No payment under this Agreement shall create any claim by Herald against Primeo, or by Primeo against Herald, under either United States or Cayman Islands law that does not otherwise currently exist in the Cayman Islands; and

(b) Any positions taken by Herald or Primeo in this Agreement shall be without prejudice to Herald or Primeo's ability to make any argument before the Cayman Court (including without limitation regarding the issue of Primeo's in-kind subscription in Herald).

12. Liquidators' and Trustee's Authority. The Funds and the Liquidators represent and warrant to the Trustee that, as of the date hereof, and subject to the approval of the Cayman Court as set forth in paragraph 8 above, each of them has the full power, authority, and legal right to execute and deliver, and to perform their respective obligations under this Agreement and have taken all necessary action to authorize the execution, delivery, and performance of their respective obligations under this Agreement. The Trustee represents and warrants to the Funds that, as of the date hereof, and subject to the approval of the Bankruptcy Court as set forth in paragraph 8 above, he has the full power, authority, and legal right to execute and deliver, and to perform his obligations under this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of his respective obligations under this Agreement. The Herald Liquidators represent and warrant that Herald owns and controls the Herald Customer Claim as of the date of this Agreement. The Primeo Liquidators represent and warrant that they have joint and several power, authority, and legal right to execute and deliver this Agreement on behalf of Primeo.

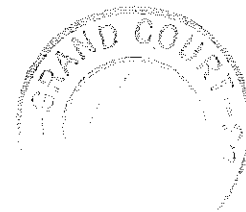
13. Further Assurances. The Parties shall execute and deliver any document or instrument reasonably requested by any of them after the date of this Agreement to effectuate the intent of this Agreement.

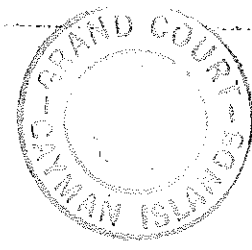
14. Entire Agreement. This Agreement constitutes the entire agreement and understanding between and among the Parties and supersedes all prior agreements, representations, and understandings concerning the subject matter hereof.

15. No Admission. This Agreement and all negotiations, statements, and proceedings in connection therewith are not, will not be argued to be, and will not be deemed to be a presumption, concession, or admission by any Party of any fault, liability, or wrongdoing whatsoever. This Agreement and any matter relating thereto may not be offered or received in evidence or otherwise referred to in any civil, criminal, or administrative action or proceeding as evidence of any fault, liability, or wrongdoing whatsoever.

16. Amendments, Waiver. This Agreement may not be terminated, amended, or modified in any way except in a writing signed by all of the Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

17. Assignability. No party hereto may assign its rights under this Agreement without the prior written consent of each of the other Parties hereto, except that nothing in this Agreement shall prevent the Herald Liquidators' ability to assign all or part of the Herald Allowed Claim, without the prior written consent of the Trustee, pursuant to the Bankruptcy Court's November 10, 2010 Order Establishing Procedures for the Assignment of Allowed Claims.





18. No Personal Liability of the Liquidators. The Parties acknowledge and agree that the Liquidators are acting as joint official liquidators and agents of the relevant Funds and that neither of the Liquidators nor their firms and their employees, their partners now or in the future, their personal representatives, estates, effects or any successor shall incur any personal liability under this Agreement which has been entered into by them in performance of their functions as Liquidators.
19. Successors Bound. This Agreement shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns.
20. No Third Party Beneficiary. Except as expressly provided in paragraphs 4 and 5, the Parties do not intend to confer any benefit by or under this Agreement upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.
21. Applicable Law. Except for the provisions of paragraphs 10 and 11 above, which shall be governed in accordance with the laws of the Cayman Islands, this Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard to its conflict of laws provisions.
22. Exclusive Jurisdiction. The Parties agree that the Bankruptcy Court shall have exclusive jurisdiction over any and all disputes between or among the Parties, whether in law or equity, arising out of or relating to this Agreement, or any provision thereof, and the Parties hereby consent to and submit to the jurisdiction of the Bankruptcy Court for any such action. In the event the BLMIS proceeding is closed by a final decree and not reopened, the Parties agree that any dispute arising out of this Agreement, or any provision thereof, may be brought in the United States District Court for the Southern District of New York or the Supreme Court of New York in New York County. Notwithstanding the foregoing, the Cayman Court shall have exclusive jurisdiction over any and all disputes between Herald and Primeo relating to paragraphs 10 or 11 above and Herald and Primeo further agree that any such dispute shall be brought exclusively in the Cayman Court.
23. Captions and Rules of Construction. The captions in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Any reference in this Agreement to a paragraph is to a paragraph of this Agreement. "Includes" and "including" are not limiting.
24. Counterparts, Electronic Copy of Signatures. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same document. The Parties may evidence their execution of this Agreement by delivery to the other Parties of scanned or faxed copies of their signatures with the same effect as the delivery of an original signature.
25. Negotiated Agreement. This Agreement has been fully negotiated by the Parties. Each Party acknowledges and agrees that this Agreement has been drafted jointly, and the rule that ambiguities in an agreement or contract may be construed against the drafter shall not apply

in the construction or interpretation of this Agreement.

26. Severability. In the event that any term or provision of this Agreement or any application thereof is deemed to be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

27. Notices. Any notices under this Agreement shall be in writing, shall be effective when received and may be delivered only by hand, by overnight delivery service, by fax, or by electronic transmission to:

If to the Trustee:

Irving H. Picard  
Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Email: [ipicard@bakerlaw.com](mailto:ipicard@bakerlaw.com)

If to Primeo, c/o:

Gary S. Lee  
Email: [glee@mofo.com](mailto:glee@mofo.com)  
John A. Pintarelli  
Email: [jpintarelli@mofo.com](mailto:jpintarelli@mofo.com)  
Morrison & Foerster LLP  
250 West 55<sup>th</sup> Street  
New York, NY 10019  
T: (212) 468-8000  
F: (212) 468-7900

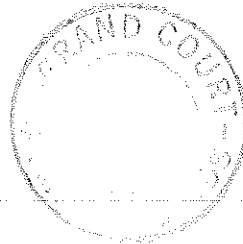
with copies to:

Oren J. Warshavsky  
Email: [owarshavsky@bakerlaw.com](mailto:owarshavsky@bakerlaw.com)  
Geoffrey A. North  
Email: [gnorth@bakerlaw.com](mailto:gnorth@bakerlaw.com)  
Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
F: (212) 589-4201

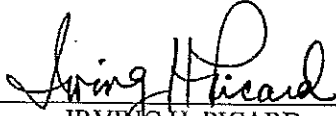
If to Herald, c/o :

Joseph Serino, Jr., P.C.  
Email: [joseph.serino@kirkland.com](mailto:joseph.serino@kirkland.com)  
David S. Flugman  
Email: [david.flugman@kirkland.com](mailto:david.flugman@kirkland.com)  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
T: (212) 446-4800  
F: (212) 446-4900

*[Signature pages follow]*



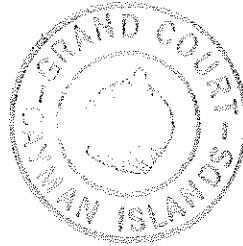
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

  
\_\_\_\_\_  
IRVING H. PICARD  
Trustee for Bernard L. Madoff  
Investment Securities LLC

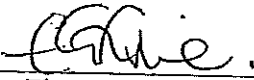
Sworn to and subscribed before me  
this 12<sup>th</sup> day of November, 2014

  
\_\_\_\_\_  
Notary Public

SONYA M. GRAHAM  
Notary Public, State of New York  
No. 01GR6133214  
Qualified in Westchester County  
Commission Expires: 9/12/2017

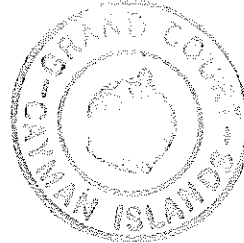


**PRIMEO FUND (IN OFFICIAL  
LIQUIDATION)**

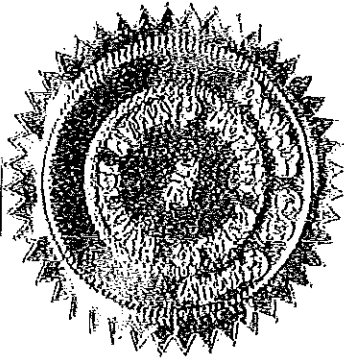
By:   
Name: Eleanor Fisher  
Title: Joint Official Liquidator

Subscribed before me  
this 12 day of November

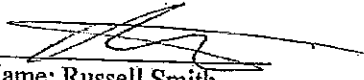
  
Notary Public



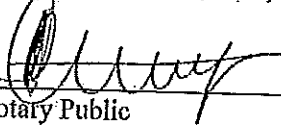
**RHONDA L. ANDERSON**  
Notary Public In and for The Cayman Islands  
My Commission Expires on 1 Jan., 20 15



**HERALD FUND SPC (IN  
OFFICIAL LIQUIDATION)**

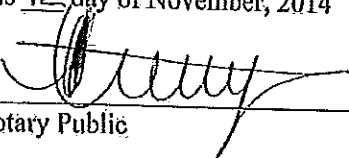
By:   
Name: Russell Smith  
Title: Official Liquidator

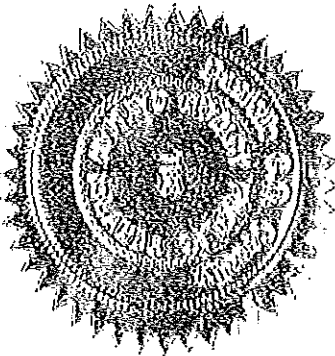
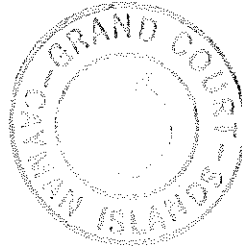
Subscribed before me  
this 12 day of November, 2014

  
Notary Public

By: Niall Goodsir-Cullen  
Name: Niall Goodsir-Cullen  
Title: Official Liquidator

Subscribed before me  
this 12 day of November, 2014

  
Notary Public



**ATTACHMENT A**

**HERALD CUSTOMER CLAIM**

**[NOT INCLUDED]**

