

# «**HERALD (LUX)**»

**(in Court Ordered Liquidation)**

société d'investissement à capital variable (SICAV)

**Luxembourg**

R.C.S. Luxembourg, section B numéro 136.680

<b>Shareholders' Extraordinary General Meeting</b> 16 December 2010	<b>No</b>
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Year two thousand ten, the sixteenth of December, at ten o'clock AM.

is held the Shareholders' Extraordinary General Meeting of « **HERALD (LUX)** » in Court Ordered Liquidation (The Corporation), a corporation in the form of a «société anonyme» qualifying as a «société d'investissement à capital variable» incorporated and with its registered office at 6 place de Nancy, L-2212 Luxembourg, entered in the company register at Luxembourg, section B, under number 136680, incorporated by a deed of notary act on 18<sup>th</sup> February 2008 and published in the Mémorial C, Recueil des Sociétés et Associations, number 623 of 13<sup>th</sup> March 2008.

By a judgment given on 2<sup>nd</sup> April 2009, the Tribunal d'Arrondissement (District Court), Luxembourg, declared the dissolution and ordered the liquidation of the Corporation and has appointed as supervising judge Mr. Jean-Paul MEYERS, First Judge at the Tribunal d'Arrondissement, (District Court) Luxembourg, and as liquidators Maître Ferdinand BURG, lawyer at the bar of the Court, residing in Luxembourg, and Mr. Carlo REDING, company auditor, (réviseur d'entreprises) residing in Luxembourg.

The meeting elects as Chairman Mr. Carlo REDING and as co-chairman Maître Ferdinand BURG.

The Chairman thus elected appoints as Secretary Mr. Matthieu CAMPAN, private employee, residing in Luxembourg.

The Board of the meeting having thus been constituted, the Chairman outlines that:

**I.-** The agenda of the meeting is as follows:

1. Attendance list.
2. Board of the Meeting.
3. Summary of events since the last General Meeting.
4. Legal proceedings.
5. Customer claim and actions taken to recover the funds.
6. Accounts presentation.
7. Communication with the shareholders.
8. Miscellaneous.

**II.-** Registered shareholders have been notified of the present Extraordinary General Meeting by registered mails dated 22<sup>th</sup> November 2010.

**III.-** The shareholders represented, the proxies of the represented parties and the number of their shares are shown on an attendance list signed by the Chairman, the Secretary, the Scrutineer and the notary. Attendance list and proxies will remain attached to this document.

**IV.-** As per the attendance list, two hundred four thousand six hundred thirteen spot six two five two shares (204.613,6252) out of one hundred twenty seven thousand one hundred fifty two spot nine eight nine three shares (127.152,9893) are represented.

It appears from the above that the present meeting is regularly constituted and may validly deliberate on the agenda.

Point 3) of the agenda

Carlo REDING presents an overview of the events that have taken place between the last general shareholders' meeting and the 17<sup>th</sup> of March 2010.

The lawsuit has been filed by the liquidators on March 17, 2010. It was expected to be filed before end of 2009 but new elements delayed it:

- At the end of the year 2009, (1) interviews took place with HSBC Securities Services (Luxembourg) s.a. (HSSL) and the Commission de Surveillance du Secteur Financier (CSSF) and (2) additional documents were provided by one of the stakeholder. These new documents had to be analysed and consequently, the filing of the lawsuit was put off.1

- Since not all files were received from all of the parties involved, the liquidators decided to file a law suit against all the parties involved in front of the Tribunal d'Arrondissement, Tribunal d'Arrondissement de et à Luxembourg

(District Court). After 17th March 2010, no more informal communications with the defendant parties occurred.

- After the subpoena additional files were transmitted to the liquidators by one of the parties involved. The documents concern the period after the creation of Herald Lux.

A US legal representative has been appointed in June 2010 to deal with US based actions.

A subpoena was received from the US trustee of BMIS Irving Picard requesting all documents linked to Herald (including shareholders' names). Herald's shareholders have been informed and decided not to disclose details. The liquidators took the option to provide the US Trustee with only a few documents.

In September 2010, a class action was launched in the USA against the Herald (Lux) fund. Proceedings have not yet started.

In December 2010, the US Trustee sued HSSL for USD 9 billion in a lawsuit in which Herald (Lux) is a defendant. This claim being very recent, liquidators are still working on it. As the claim is not served yet, the starting point of proceedings is not expected before February or March 2011.

Furthermore, the liquidators have received a clawback for USD 134,000 paid by BMIS on behalf Herald (Lux) to US tax authorities. Liquidators are investigating whether this figure appears in the accounting statements. Because of this clawback, the customer claim filed by the liquidators was rejected.

Luxembourg proceedings are also subordinated to US decisions: indeed, if defendants are sentenced to pay in the US, they will not pay twice. As of the date of the GM, the liquidators are not aware of any settlements between any parties.

In December 2010, a Class Action (on behalf of 608 investors) was launched against Herald (Lux) and HSSL which was served on December 07, 2010. It is still being investigated by the liquidators if individuals have the right to take such legal action. If the latter is valid, the liquidators might extend the claim to any other party involved.

Finally, the president informs the participants that the US Trustee also sued Sonia KOHN and Medici Bank for USD 19.6 billion. Herald (Lux) is not a party to this lawsuit. However, Bank Medici AG and some Board Members of Herald (Lux) are defendants.

#### Point 4) of the agenda

Maître Ferdinand BURG exposes to the Assembly the status of the current legal actions.

The Luxembourg court decided to first deal with communication of the missing documents. Next hearing is scheduled on January 26, 2011. Until the liquidation date, the court has not yet pronounced a judgment on the class action launched the 7 of December 2010.

Concerning the legal proceedings in the USA, a first contact has been established on 13 of December, 2010 with representatives of the US trustee. Little information was collected but another exchange with the US trustee is scheduled for the end of January 2011.

#### Point 5) of the agenda

The President informs the GM that the liquidators have been approached by a number of Default Asset Traders willing to buy Herald's customer claim entered by the fund. The discussions are only at a preliminary stage, no negotiations have started.

Term sheets received so far show a price range between 30% and 42%. Purchase of the claim would be done under the net investment method (money paid-in on an escrow account until the claim is allowed and then wired to the fund). Such a transaction would be done under specific conditions.

The liquidators proposed to process as follows:

- Establishing the reasons for which the customer claim was rejected by the US trustee,
- Gathering shareholders' reactions and shareholders agreement on the principle,
- Supervising Judge agrees on the principle,
- Negotiation would be conducted with only one party,
- Presentation of the offer to the Shareholders will be done in a GM and submitted to a vote.

#### Point 6) of the agenda

The President presents the financial statements and reminds the participants that opening Balances are as handed over by HSSL on April 02, 2009 (Liquidations'

date). The Financial Statements as per 31 December 2009 have been prepared by the Liquidators. They have not been audited.

Since the customer claim has not yet been authorized by the US trustee, the liquidators have not included the latter in the financial statement.

Finally, the liquidators explain the most important expenses (e.g liquidation cost, professional insurance...).

Point 7) of the agenda

The liquidators remind that discussions are only allowed with shareholders whose name appears in the fund register. Consequently, final investors have to contact directly the shareholders.

Finally, the President asks to the participants how to improve the liquidators' communication with the shareholders (e.g web site information, increase the number of shareholders meeting...). No suggestions from the participants were formulated.

Point 8) of the agenda

No other questions from the shareholders.

Since no other point has been added to the agenda and since none of the present or represented shareholders has any additional comment to provide the president closed the General Meeting at 11.45 am.