

«HERALD (LUX) »

(in Court Ordered Liquidation)

société d'investissement à capital variable (SICAV)

Luxembourg

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

**Shareholders' Extraordinary General
Meeting ASSEMBLEE GENERALE
EXTRAORDINAIRE**
du 26 octobre 2009

No

Before us, the undersigned Maître **Jean-Joseph WAGNER**, notary residing in SANEM, Grand-Duchy of Luxembourg,

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 40 avenue Monterey, L-2163 Luxembourg, entered in the company register at Luxembourg, section B, under number 136680, incorporated by a deed of notary act on 18th February 2008 and published in the Mémorial, Recueil des Sociétés et Associations, number 623 of 13th March 2008

By a judgment given on 2nd 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 Mr. Carlo REDING as Chairman.

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

The meeting elects as Scrutineer the a-fore-mentioned Mr. Ferdinand BURG.

The Board of the meeting having thus been constituted, the Chairman outlines and requests the undersigned notary to record that:

- I. The **agenda** of the meeting is the following:
 1. Attendance list.
 2. Board of the Meeting.
 3. Summary of events until the liquidation judgment.
 4. Summary of events since the liquidation judgment.
 5. Legal procedure.
 6. Shareholders' information.
 7. Accounts presentation.
 8. Discussion of the opportunity to create a creditor/investor committee.
 9. Miscellaneous.

II.- Registered shareholders have been notified of the present Extraordinary General Meeting by registered mails dated 9th October 2009.

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, one hundred and thirty thousand eighty three spot eight thousand eight hundred and ninety one (130.083,8891) out of two hundred and four thousand six hundred and thirteen spot six thousand two hundred and fifty two shares (204,613.6252) 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

Maître BURG reminds the General Meeting of the initial background of the Corporation set-up: Bank Medici wished to create a Fund of a similar nature to Herald Fund SPC (Cayman) but under the laws of the European UCITS Directive.

Phases of the set up of the fund have been as follows:

In 2007, Bank Medici entrusted Maître Jacques Elvinger of the law firm Elvinger, Hoss et Prussen as legal adviser for introducing to the CSSF a request to register, a fund to be created, i.e; Herald (Lux) to be listed on the list of

undertakings for collective investment under the Law of 20 December 2002. The application was introduced on the 3rd July 2007;

After the CSSF approval based on information and documents provided, the société anonyme Herald (Lux) has been established on 18th February 2008 before notary Henri Hellinckx residing in Luxembourg. The fund Herald (Lux) has been registered on the official list of undertakings for collective investment on 29th February 2008;

Relevant stakeholders on the fund's structure are listed hereafter:

→ Bank Medici as fund promoter;

→ A Board of Directors composed of:

- Helmut Frey, Director, who resigned on 30th September 2008 and was replaced by Peter Scheithauer;

- Andreas Pirkner, Director, who resigned on 31st July 2008 and was replaced by Andreas Schindler.

These two administrators were Bank Medici representatives on the Board of Directors, and both were on the payroll of Bank Medici in Vienna.

- Friedrich Pfeffer, consultant from Wunstdorf, Germany

- Franco Mugnai, financial consultant from Milan, Italy

- Richard Goddard, Director, from The Director's Office in Luxembourg.

→ The société anonyme HSBC Securities Services (Luxembourg) S.A. (hereafter « HSSL »), having its registered office at 40 avenue Monterey, L-2163 Luxembourg at the date of the set up of the Corporation, now at 16 bd d'Avranches, L-2014 Luxembourg;

1) as *custodian*, as per the *custody agreement* dated 1st March 2008 between Herald (Lux) and HSSL;

2) as *Service Agent* as per the *Service Agreement* dated 1st March 2008 between Herald (Lux) and HSSL.

→ The société anonyme Ernst & Young as *independent auditor* as per the engagement letter dated 25th January 2008;

→ BANK MEDICI AG, a corporation incorporated under the laws of Austria, should have been appointed as *Investment Manager*. The agreement that should have been concluded between Herald (Lux) and Bank Medici does not seem to have been finalized and signed. It appears that the signed contract does not exist or has not been provided to the liquidators.

→ The CSSF as supervisory authority.

Maître Burg lists the documents that are in liquidators' possession.

He stresses that only three of the all the distribution agreements that were made between Herald (Lux) and Bank Medici and various counterparties are in the hands of the liquidators. The three agreements have been concluded with Deloitte Investments, Farad Investments and AIG Zurich. Bank Medici indicated to the liquidators that other distribution agreements exist, but as of today, Bank Medici failed to communicate them.

Maître Burg then explains in detail the different *BMIS* contracts attached to this basic structure which give the impression that all stakeholders knew from the beginning that Herald (Lux) would be 100% a « *Madoff Fund* ».

The liquidators nevertheless stress that the CSSF declared that they were not aware of any *BMIS* involvement in Herald (Lux) before late December 2008.

The liquidators address the fund's activities from 11th February to 12th December 2008 and describe the fund's operations, *BMIS*'s role and the investment policy the later was supposed to apply.

Mr. Reding stresses that Bank Medici explained to the liquidators that investment decisions were made based on an Excel like application. This application had been developed for Herald funds and defined which securities positions could be traded by *BMIS*. On the contrary, it was for *BMIS* to set the timing to place trades, as *BMIS* expertise in this field was supposed to explain their extraordinary and stable performances.

As of today, Bank Medici has not provided the liquidators with this algorithm although they committed to do so for months now.

Mr. Reding summarizes information liquidators have received concerning the control mechanisms in place (controls on financial data) and shows NAV evolution over the period and the importance of collected amounts through subscriptions that were transferred to *BMIS* in their totality.

Point 4) of the agenda

Following this, the liquidators explain the events which occurred during the period from 12th December 2008 (revelation of the Madoff case in the USA) to 2nd April 2009 (Herald (Lux) liquidation judgment) before they summarize events that occurred from the liquidation judgment to the day of the General Meeting. They highlight that stakeholders are quite reluctant to provide complete documentation. They inform the audience in particular of their meetings with Herald (Lux) stakeholders, contacts with the Court, shareholders and investors.

Point 7) of the agenda

In order to present the point concerning legal procedures in full knowledge of the facts, the liquidators suggest to discuss point 7) before point 5). Following agreement from the General Meeting, Mr. Reding presents non audited financial statements as of 31st December 2008 and 2nd April 2009 as compiled by the liquidators. He explains different items in more detail.

Point 5) of the agenda

Maitre BURG explains that the liquidators will start proceedings soon in view of the almost entire loss of the investments made in Herald (Lux). The liquidators have not yet made a final decision whether proceedings will be made only against a number of stakeholders or against all of the stakeholders.

In answer to several questions from the audience, Maître BURG provides details on the timing for starting proceedings, any prescription periods involved, the opportunity to ask for a legal opinion before introducing proceedings, as well as the contacts that have been established relating to legal proceedings with other Madoff funds' liquidators in Luxembourg and abroad.

Point 6) of the agenda

Parties participating in the General Meeting discuss the communication between the liquidators and the shareholders, in particular via the website established by the liquidators.

Point 8) of the agenda

Maître Burg explains that as per the judgment dated 2nd April 2009, the shareholders' assembly may deliberate on the opportunity to create a creditor/investor committee and that the liquidators are willing to hear shareholders' opinion, either favorable or unfavorable.

Two participants underline the fact that it would be interesting to have regular contacts with the two main stakeholders (key players of the fund industry in Luxembourg; portfolio managers, especially from Germany, that could provide the liquidators with specific and practical information and act as intermediaries with their respective investors.

There being no further item on the agenda and none of the present or represented shareholders asking to be allowed to speak, the meeting was adjourned by the Chairman at 12:40am.

Thus registered in

Whereas the present notarial deed was drawn up and signed in Luxembourg, on the day named at the beginning of this document.

The document having been read to the appearing persons, all of whom are known to the notary by their surnames, Christian names, civil status and residences, the said persons signed together with the notary the present original deed.

Signed: C . REDING, M. CAMPAN, F BURG, JJ WAGNER

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