

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: 373 OF 2009

**IN THE MATTER OF SECTIONS 92 AND 105 OF THE COMPANIES LAW (2007 REVISION)
AS AMENDED BY THE COMPANIES (AMENDMENT) LAW, 2007**

AND IN THE MATTER OF HERALD FUND SPC



WINDING UP PETITION

TO: THE GRAND COURT

THE HUMBLE PETITION of Natixis S.A. ("Natixis"), a company organized under the laws of France, as successor to IXIS Corporate & Investment Bank further to a merger effective on 1 January 2008, shows that:-

1. Herald Fund SPC (the "Fund") is an exempted segregated portfolio company incorporated in the Cayman Islands and registered with the Registry of Companies on 24 March 2004 under Registration Number 134222 and carries on business as a private investment fund registered as a regulated mutual fund under the Mutual Funds Law (2003 Revision) of the Cayman Islands.
2. The current registered office of the Fund is located at M & C Corporate Services Limited, P.O. Box 309, Uglund House, South Church Street, George Town, Grand Cayman KY1-1104.
3. The authorized share capital of the Fund is comprised of three classes:
 - 3.1. US\$100 divided into 100 voting Management Shares of US\$1.00;
 - 3.2. US\$10,000 divided into 10,000,000 Participating Non-Voting Shares of US\$0.001 par value each; and
 - 3.3. Euro 10,000 divided into 10,000,000 Participating Non-Voting Shares of Euro 0.001 par value each.
4. The Fund's Memorandum of Association filed 24 March 2004 provides that, subject to the provisions of the Companies Law and the Fund's Articles of Association filed 24 March

2004 (the "Articles"), the Fund has the power to redeem or purchase any of its shares and to increase or decrease the capital of the Fund.

5. The administrator and custodian of the Fund is HSBC Securities Services (Luxembourg) S.A. ("HSBC"), 40, Avenue Monterey, L-2163 Luxembourg.
6. As of 3 April 2008 the directors of the Fund were Franco Mugnai, Friedrich Pfeffer and Hannes Saleta. Hannes Saleta was reported on 13 January 2009 as having resigned.
7. The investment manager of the Fund is Herald Asset Management Limited (the "Investment Manager"), an exempted company incorporated in the Cayman Islands and registered with the Registry of Companies under Registration Number 134223 on 24 March 2004, with a registered office located at Caledonian Trust (Cayman) Limited, P.O. Box 1043, Caledonian House, 69 Dr Roys Drive, George Town, Grand Cayman.

The Petitioner

8. Natixis (under a previous name) was incorporated in Paris on 30 July 1954. On or around 31 August 2007 IXIS Corporate & Investment Bank ("IXIS") subscribed for US\$14,700,000 of shares within the Fund's segregated portfolio described as Herald USA Segregated Portfolio One ("Herald USA"). All the rights and obligations of IXIS (at the time a 100% subsidiary of Natixis) were transferred to Natixis on 1 January 2008 as the result of a merger of IXIS Corporate & Investment Bank into Natixis.
9. Following further subscriptions, as at 4 December 2008 Natixis held 12,031.7891 shares in the Herald USA segregated portfolio of the Fund (the "Shares"), which, according to a statement from the administrator dated 4 December 2008, had a total NAV of US\$16,678,466.05.
10. Accordingly, Natixis is a contributory within the meaning of Part V of the Companies Law (2007 Revision) as amended.
11. Moreover, Natixis has a tangible interest in the liquidation of the Fund. To the extent that a liquidator makes any recoveries in respect of Herald USA or limits or reduces the potential liability of Herald USA, these recoveries and limitation of liability will benefit Natixis and the other shareholders. For the reasons set out below, the Fund's prospects of making recoveries would be significantly increased and its exposure to liability likely reduced if liquidators were appointed.

The Fund's business and the Fund's present status

12. The objective and investment strategy of the Fund is stated in the Fund's Offering Memorandum pertaining to Herald USA dated 3 April 2008 (the "Offering Memorandum") to be to provide investors with long-term capital growth while minimizing risks through a very active trading style and diversification of investments.
13. While the Articles (Article 14) empower the Directors of the Fund to establish one or more segregated portfolios, to the Petitioner's knowledge the Fund is presently comprised of only one segregated portfolio; Herald USA.

14. According to the 31 December 2007 audited accounts of the Fund, the total net asset value of Herald USA was at that time US\$1,833,977,065.
15. Of the three classes of shares issued by the Fund, under the Articles only the holders of the Management Shares have the right to vote at a general meeting of the Fund.
16. The Offering Memorandum provided *inter alia* as follows:

"The Directors of Herald Fund SPC (the "Company") whose names appear on page 5 accept responsibility for the information contained in this document. To the best of the knowledge and belief of the Directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with the facts and does not omit any material statements likely to affect the import of such information.

Distribution of this document is not authorised after the publication of the first annual report and accounts of the Fund unless it is accompanied by a copy of such report and accounts and, if published thereafter, the latest annual report and accounts. Such reports shall form part of this Offering Memorandum and all together shall constitute the Offering Memorandum for the issue of Shares in the Fund. It is not currently intended to translate this Offering Memorandum into any other language.

Structure - *The Fund's principal investments will comprise one portfolio investing in funds, equities, bonds, and other investments in which the Shares participate.*

Investment Objective and Strategy - *The Fund's objective is to provide investors with long-term capital growth while minimizing risks through the use of a very active trading style. The Fund will utilize a multi-strategy approach with respect to investment and management of the Fund's assets. The Fund, based upon the recommendation of the Investment Manager [Herald Asset Management Limited] in consultation with the Investment Adviser(s), will appoint, on a continuous basis, investment managers ("Managers") managing collective investment schemes and/or discretionary portfolio management accounts ("accounts") with different backgrounds in terms of investment strategies, markets and financial instruments. The Investment Manager in consultation with the Investment Adviser(s) will consider a number of factors in supervising the selection of Managers, including, but not limited to, their experience and market performance, trading strategy and techniques, areas of expertise and judgment.*

The Investment Manager may place all or the majority of the Fund's assets with one Manager.

The Investment Manager in consultation with the Investment Adviser(s) will continually monitor, directly or indirectly, the performance of Managers, collective investment schemes and accounts in which the Fund's assets are invested and make recommendations to the Directors as to appropriate changes in, or reallocation of assets among, existing or new Managers, collective investment schemes or accounts. Such monitoring will be direct, by the Investment Manager or the Investment Adviser(s), or indirect, through the assistance of third parties, and include, as

appropriate, personal visits and periodic review of performance in comparison to other investment managers.

***Nature of Investments** - The Fund does not have any pre-determined philosophy with respect to the types of financial instruments that should be invested in and instead expects that through selection of various Managers and the allocation of assets to different accounts and/or collective investment schemes, there will be ultimate diversity of investment of the Fund's assets in financial instruments in different markets capitalizing on investment opportunities present throughout the world, thus reducing risks through diversification. The Fund expects that Managers may invest accounts and collective investment schemes in a wide range of financial instruments, including, but not limited to, equities and equity-related instruments, fixed income and other securities and debt-related instruments, securities that lack active public markets and other financial instruments, such as futures and other derivatives.*

***Limitations on Investments** - The Investment Manager will monitor the underlying portfolio of collective investment schemes and accounts to ensure that, in the aggregate, collective investment schemes and accounts do not invest more than 20% of the Fund's assets in equity securities of a single issuer.*

***Performance** - The Investment Manager believes that its investment activities attempt to moderate risk through diversification and the careful selection of Managers.*

***Temporary Suspension of Dealings** - The Fund may temporarily suspend the determination of the Net Asset Value [and] the issue and redemption of Shares and delay the payment of redemption proceeds for Shares already redeemed during the whole or any part of any period: ...*

(b) when, as a result of political, economic, military or monetary events or any other circumstances outside the control, responsibility and power of the Directors, any disposal or valuation of investments is not, in the opinion of the Directors, reasonably practicable without this being seriously detrimental to the interests of owners of Shares in general or if, in the opinion of the Directors, the redemption price cannot fairly be calculated or such disposal would be materially prejudicial to the owners of Shares in general; ...

(d) when the Fund is unable to repatriate funds required for the purpose of making redemption payments or when such payments cannot, in the opinion of the Directors, be effected at normal prices or normal rates of exchange or during which any transfer of funds involved in the realisation or acquisition of investments or when payments due or redemption cannot, in the opinion of the Directors, be effected at normal prices or normal rates of exchange."

The July 2005 Offering Memorandum of the Fund in respect of Herald USA contained materially the same terms.

17. Notwithstanding the foregoing representations made in the Offering Memorandum, substantially all of the Fund's assets were in fact held and managed by the investment advisory business of Bernard L. Madoff Investment Securities LLC ("BMIS"), the firm of Bernard Madoff ("Madoff").

18. The 2007 audited financial statements of the Fund state:
- "The Investment Manager invests most of the assets of [Herald USA] through a separate managed account. This separate managed account is managed by a broker/dealer investment firm. The custodian bank has appointed this broker/dealer investment firm as its sub-custodian to hold and maintain the assets of the Herald USA Segregated Portfolio One."*
19. On 15 December 2008 by order of the United States Federal Court for the Southern District of New York BMIS was placed into bankruptcy. Madoff subsequently admitted using BMIS as the vehicle for a massive Ponzi scheme since at least 1990.
20. On 16 December 2008 the directors of the Fund advised shareholders in writing:
- "The Fund [Herald USA] invests its assets almost entirely into Madoff managed accounts. Therefore, the Fund has an exposure to Madoff"*
- and further that on 12 December 2008 the Board of Directors had by resolution suspended the calculation of the Net Asset Value of shares in the Fund and the issue and redemption of shares.
21. On 24 December 2008 the board of directors of the Fund passed a further resolution clarifying that the suspension of the issue and redemption of shares imposed on 12 December 2008 included a suspension of payment of all redemption proceeds.
22. On 23 February 2009 the directors of the Fund advised shareholders that the suspension of the NAV would remain in place indefinitely, it being impossible to estimate the value of the NAV or to ascertain Herald USA's assets pending the investigations into BMIS and Madoff. The Fund had at that time instructed counsel in multiple jurisdictions including the Cayman Islands (Walkers), the United States, Luxembourg and Gibraltar and was said to be cooperating fully with its regulator, the Cayman Islands Monetary Authority.
23. The Petitioners reasonably believe that in the circumstances substantially all of the assets of the Fund and Herald USA have been lost.

Grounds for the appointment of a liquidator

24. The Petitioner seeks the appointment of a liquidator of the Fund on a number of grounds, as set out below.
- Loss of substratum – assets depleted*
25. The Fund's operations are effectively paralysed. According to the Fund's board of directors, substantially all of Herald USA's assets were invested in BMIS. Accordingly, notwithstanding the statements by the Fund that the NAV of Herald USA was \$1,386.20 per share as at 30 November 2008, it is uncertain what, if any, assets Herald USA, or the Fund, currently have.
26. The shareholders have been provided with very limited information as to the assets and liabilities of Herald USA or those of the Fund, or the activities of the directors. The board has provided a limited number of "investor updates", but these contained very little information, and have principally focussed on the Fund's decision to file a claim in the BMIS

bankruptcy. The only explanation given by the board for this failure to provide information, in its investor updates, is that, rather than possibly advantage one investor over another by providing specific information to a particular individual or entity, the board of directors considers it appropriate to provide information by way of general shareholder updates only.

27. The directors have said more recently that they would endeavour to respond where reasonable to individual investor queries. However, they have not previously done so. The Petitioner's solicitors have written to the Fund on a number of occasions to request information about Herald USA's current assets and liabilities, details of other shareholders and information about claims being investigated and pursued by the directors. The Petitioner (and the other shareholders) require this information so that they can have a better understanding of their exposure and likely recoveries, and so that they can discuss the matter with other shareholders as appropriate. However, the information requested has not been provided.

Loss of substratum – NAV calculation suspensions

28. On 15 December 2008 Natixis submitted a redemption request to the Fund in respect of the Shares. On 12 December 2008 the directors of the Fund determined to suspend the calculation of the NAV and the issue and redemption of shares pursuant to Article 19 of the Articles. However they have not identified the precise circumstances under the Offering Memorandum on which they rely as the basis for this suspension.
29. On 23 February 2009 the directors indicated that this suspension would remain in place indefinitely and were unable to provide any realistic estimate as to when, or if, the suspension might be lifted.

Loss of substratum – no investment activities

30. Herald USA was established as an investment fund with the objective of achieving long-term capital appreciation through active trading and investing in a diverse range of assets. However, given the fact that substantially all of its assets were invested with BMIS, Herald USA has lost substantially all of its assets. All marketing and investment activities have ceased. No debts are being paid, no redemption requests are being honoured, Herald USA and the Fund have no cash flow and Herald USA and the Fund's principal activities appear to be only the consideration, review and management of their legal options.
31. By virtue of the foregoing, Herald USA and the Fund are incapable of executing any investment strategy and its prescribed investment objective cannot be implemented and the Fund's substratum has therefore wholly failed.

Loss of substratum – no reasonable prospect of achieving its objectives

32. In the all circumstances outlined above there is no reasonable or practicable prospect of the Herald USA resuming investment and trading at a profit in accordance with its objectives, without a massive infusion of capital which it is unlikely that any of the members, including this Petitioner, will contribute.

Claims by and against the Fund – Herald USA

33. The assets of Herald USA and the Fund have almost certainly been completely depleted and lost as a result of the Madoff fraud. The only likely significant assets of Herald USA and the Fund are the legal claims they may have for their losses – against various parties including its advisers, auditors and directors.
34. The Fund has brought a claim in the Courts of Luxembourg against HSBC. However, notwithstanding requests by the Petitioner, no information about this claim has been provided to the shareholders. Moreover, to the best of the Petitioner's knowledge, the Fund has not brought any other claims, against other parties, to recover its losses.
35. On 14 July 2009 the trustee in bankruptcy of BMIS appointed by the United States Bankruptcy Court (the "BMIS Trustee") filed with the United States Bankruptcy Court for the Southern District of New York a claim against the Fund and HSBC, seeking to avoid and recover ("clawback") under various provisions of the US Bankruptcy Code and other statutes, the total sum of US\$578,033,847 alleged to have been paid out to the Fund during the previous six years when it is alleged the Fund knew or ought to have known that Madoff was operating BMIS as an elaborate Ponzi scheme.
36. The deadline for filing claims by the Fund in the BMIS bankruptcy and under the Securities Investor Protection Corporation ("SIPC") coverage with the BMIS Trustee, was stated by the Fund in correspondence to investors to be 4 March 2009. The Fund later advised that it did not appear that this deadline was applicable and that 2 July 2009 was the deadline for filing. In its update to investors of 19 June 2009 the directors of the Fund advised that having regard to all the consequences, including the exposure to a clawback claim by the BMIS Trustee, the directors had instructed the Fund to file a claim with the BMIS Trustee in the sum of US\$1,894,066,134.18 before the 2 July 2009 filing deadline.
37. In the same update of 19 June 2009 the directors advised, that while HSBC was the proper party to file the claim with the BMIS Trustee, HSBC had refused to file the claim and the Fund would make the filing itself.
38. The review and consideration of these substantial issues and the conduct, strategy and response to be adopted by the Fund calls for the objectivity and independence of a qualified insolvency practitioner as official liquidator, with statutory powers of investigation, who will be in a position to consider objectively and to conduct and manage the claims and litigation in the interests of the Fund/Herald USA and its creditors, rather than the remaining directors of the Fund, who for the reasons set out below find themselves in an intractable conflict of interest.
39. An official liquidator appointed by the Grand Court will be able to represent the Fund and be recognized in foreign jurisdictions and pursue the Fund's interests independent of the former directors and management of the Fund and any questions or concerns as to their role, interests and integrity and will be able to take advantage of the International Protocols provisions available under CWR Order 21 as appropriate.
40. Indeed, it is of note that many of the other "feeder funds" into BMIS have already gone into liquidation – for example, Fairfield Sentry Limited, Kingate Global Fund Limited, Kingate Euro Fund Limited, Harley International (Cayman) Limited and Primeo Fund. The liquidation of the Fund is inevitable.

Conflict of interest

41. The directors of the Fund have a serious conflict of interest. The Fund has a number of potential claims that should be investigated by an official liquidator and pursued if appropriate. These include potential claims against the directors themselves, and other companies including the Investment Manager, with which they are associated, for negligence and gross mismanagement.
42. The directors took responsibility for the information contained in the Offering Memoranda, which contained a number of material misstatements:
 - 42.1. The statement that Herald USA would utilise a multi-strategy approach with respect to the investment and management of Herald USA's assets was incorrect. In point of fact the directors of the Fund handed Herald USA's assets over to BMIS.
 - 42.2. The statements that Herald USA would "*moderate risk through diversification and the careful selection of Managers*", and that the Investment Manager would "*continually monitor, directly or indirectly, the performance of Managers, collective investment schemes and accounts in which the Fund's assets are invested*", were also incorrect and/or misleading.
 - 42.3. The annual reports and accounts of Herald USA formed part of the Offering Memorandum. Those reports and accounts were materially inaccurate; the 31 December 2007 accounts of Herald USA stated that the total net asset value of Herald USA was US\$1,833,977,065, when in fact, given the Madoff fraud the assets of Herald USA were nothing approaching that.
43. Accordingly, *prima facie* investors in the Fund, including the Petitioner, who subscribed for shares on the basis of the representations in the Offering Memorandum, have claims against the directors.
44. Indeed, claims have already been commenced against the directors of the Fund by certain investors:
 - 44.1. On 5 March 2009 Horst Leonhardt commenced a claim in the United States District Court, Southern District of New York, against Friedrich Pfeffer and Franco Mugnai (amongst others), in their role as directors of "Herald Funds", for breaches of the 1934 US Securities and Exchange Act.
 - 44.2. On 19 March 2009 Fabian Perrone and Chia-Hung Kao made similar allegations in another complaint in the New York Courts against the directors of the Fund.
45. In updates to investors dated 23 February and 27 April 2009, the directors indicated that they did not consider it necessary to liquidate the Fund, or that it was in the best interests of the Fund, but that they would continue to assess such options.
46. The Fund's current directors and management are, however, incapable of properly and objectively managing the Fund/Herald USA, including pursuing its various claims and defending the claims made against it, when their focus is likely to be upon or distracted by their present and future personal exposure and interests and their objectivity and commercial judgment accordingly affected.

Lack of probity of directors and loss of confidence

47. Where the assets of Herald USA were not invested, managed or monitored in accordance with the strategy and approach expressly represented to the Petitioner and other investors in the Offering Memorandum i.e. they were handed over to BMIS, and where Herald USA's annual reports and statements grossly overstated its net asset value, the probity, integrity and good faith of the directors is in the circumstances directly in issue.
48. Having regard to the lack of probity of the directors and the role and potential liability of the directors and management and advisers of Herald USA for the almost complete loss of Herald USA's assets in the BMIS bankruptcy and Madoff Ponzi scheme, the Petitioner justifiably has lost all confidence and faith in the present directors and management of the Fund or in the objectivity and integrity of any investigation conducted by them and in their commercial judgment going forward in the conduct of the Fund's/Herald USA's affairs and in representing the Fund/Herald USA and its interests.

Inability of shareholders to vote for the removal of directors or appointment of a liquidator

49. The Petitioner, as holder of Participating Non-Voting Shares, has no right to vote at a general meeting of the Fund, to call for a meeting, or to remove or appoint directors. The directors further informed the shareholders in an update dated 27 April 2009 that they were not prepared to convene an EGM for the purposes of obtaining the views of the Participating Non-Voting Shareholders even on an advisory basis as to whether *inter alia* the Fund should be put into liquidation.
50. Accordingly, the Petitioner (and the other Participating Non-Voting Shareholders) is not in a position to vote in favour of a special resolution that the Fund be wound up and a liquidator appointed, or to remove and replace the current directors of the Fund.

Solvency

51. Although the Fund has commenced proceedings against HSBC in Luxembourg, and has potential claims against other parties, as far as the Petitioner is aware the Fund has little in the way of liquid assets.
52. The Fund is facing a number of substantial claims including:
 - 52.1. a clawback claim by the BMIS Trustee filed in United States Bankruptcy Court on 14 July 2009 for US\$578,033,847 as detailed above;
 - 52.2. at least three claims against it by investors – the two claims referred to at paragraph 44 above and a claim issued by Repex Ventures S.A. in the United States District Court, Southern District of New York.
53. The directors have instructed the Fund to file a claim with the BMIS Trustee in the sum of US\$1,894,066,134.18 before the 2 July 2009 filing deadline. Any substantial recovery in the BMIS bankruptcy beyond the maximum available US\$500,000.00 SIPC coverage appears unlikely.
54. Despite requests by counsel for the Petitioner addressed to the Fund seeking information as to the state of the Fund's accounts including its assets and liabilities, the Fund has refused to provide such information to the Petitioner and the Petitioner is unable to ascertain the true

position of the Fund in terms of its solvency. In the circumstances, it appears the Fund is unlikely to be able to pay its debts on a balance sheet basis and is at least of doubtful solvency.

Order sought

55. In all the circumstances is it just and equitable that the Fund be wound up by the Court pursuant to s.92(e) of the Companies Law (2007 Revision) as amended.

YOUR PETITIONERS therefore humbly pray that:-

1. The Fund be wound up by the Court under the provisions of Part V of the Companies Law (2007 Revision) as amended;
2. Geoff Varga and Nicolas Matthews, qualified insolvency practitioners within the meaning of the Insolvency Practitioners' Regulations 2008, with Kinetic Partners (Cayman) Limited, The Harbour Centre, 42 North Church Street, Grand Cayman, or such other fit and properly qualified insolvency practitioners as the Court deems appropriate, be appointed Joint Official Liquidators (the "Official Liquidators"), with power to act jointly or severally.
3. The Official Liquidators be authorized to exercise any of the powers conferred upon them by the Court pursuant to s.110(2) and Parts I and II to the Third Schedule of the Companies Law (2007 Revision) as amended, without the further sanction or intervention of the Court;
4. The Official Liquidators be authorized to do any act or things considered by them to be necessary or desirable in connection with the liquidation of the Fund and the winding up of its affairs.
5. The Official Liquidators be at liberty to appoint counsel, attorneys and professional advisors, whether within the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit, and to remunerate them out of the assets of the Fund, subject in the case of "liquidator's counsel" to the provisions of CWR Order 25.
6. The Official Liquidators shall file with the Clerk of the Court their report and accounts in writing, reporting on their conduct of the liquidation and the state of the Fund's affairs in accordance with the provisions of CWR Order 10 and at such further and other times as this Court may direct.
7. The Official Liquidators, their firm and staff shall be remunerated for their professional time and services in accordance with Part III to the Insolvency Practitioner's Regulations 2008 and such remuneration agreement as may be agreed between the Official Liquidators and the liquidation committee as contemplated by Part IV to the Insolvency Practitioner's Regulations 2008.
8. The Official Liquidators shall have liberty to apply for such further directions with respect to the winding up of the Fund and its affairs and the conduct of the liquidation, as they shall consider necessary from time to time.

9. The Petitioner have its costs of this Petition paid out of the assets of the Fund on an indemnity basis to be taxed if not agreed with the Official Liquidators in accordance with the provisions of CWR Order 24/8.
10. Such further and other relief as to this Honourable Court may seem just.

AND YOUR PETITIONER will ever pray etc.

DATED this 4th day of August 2009

NELSON & CO.

Nelson & Co., Attorneys-at-Law
Attorneys for the Petitioner, Natixis S.A.

NOTE: This petition is intended to be served on (i) the Fund, and (ii) the Cayman Islands Monetary Authority pursuant to s.32(1)(a) of the Mutual Funds Law (2009 Revision).

THIS PETITION is presented by Nelson & Co., Attorneys-at-Law, attorneys for the Petitioner, Natixis S.A., whose address for service is that of its said attorneys at The Strand, Seven Mile Beach, P.O. Box 2075, Grand Cayman, KY1-1105.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on:

DATE: 2009.

TIME: 10:00 a.m.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at P.O. Box 495, Grand Cayman KY1-1106. Telephone: (345) 949-4296.