

Deminor *Damage Recovery*

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Dear Reader,

As we are getting close to the end of the year, we would like to pursue the tradition of highlighting some of the most interesting developments of the last twelve months and also anticipating (or at least trying to) what could await us in the near future.

The decision of the US Supreme Court in *Morrison vs NAB* will undoubtedly be considered as one of the most important evolutions in the legal environment, particularly for those involved in cross border securities litigation. US Courts have already applied the new “transactional test” as designed by the Supreme Court in many cases. But several issues of both practical and legal importance for US and non-US investors still need to be addressed in order for those investors to better identify the available remedies in case of undue losses on their investments. This is far from being the end of the story.

The evolution in the United States has had many impacts in Europe where investors are getting more and more familiar with the world of collective actions. Discussions at the EU level on collective redress are still ongoing. Three European Commissioners (Justice, Competition and Consumer Policy) recently issued a joint information note in which they announced their intention to launch a public consultation. The purpose of this consultation will be to elaborate common legal principles and to identify other common principles which should guide any future proposals for collective redress in EU legislation. The start of the consultation is expected any time soon. As experts in this field, we clearly intend to participate in the discussion.

The lack of US-style class action in Europe has never been an obstacle to the launch of collective actions by Deminor in several European countries. We have already demonstrated our ability to deal efficiently with the complexities of court actions on behalf of a large group of investors, both from a legal and practical point of view. The many cases which are discussed in this Newsletter illustrate our ability to cope with the challenges presented by collective actions in the current legal context.

This does not mean that the legal *status quo* in Europe should be considered as an alternative. While we expect fierce lobbying from various stakeholders in order to oppose or delay any progress in the access to justice for large groups of plaintiffs, we believe that it is in everybody’s interest to make sure that, whenever safeguards and protections have failed to prevent losses from occurring, the victims of those losses, be it investors, consumers or even businesses, should have the possibility to seek adequate compensation. In this respect, issues such as the length, costs and risks of legal procedures certainly need to be addressed.

We also believe that it is important to facilitate constructive solutions and settlements as they often provide a suitable alternative to lengthy, costly and risky legal procedures. However, people should be realistic and understand that the launch of such procedures are usually a prerequisite for negotiations to take place. A comprehensive approach is therefore necessary.

We certainly do not need a dogmatic discussion as nobody can dispute that investor rights and protection are the cornerstones of a sustainable market economy. Investors confronted with undue losses need solutions, not additional problems or worries. And at Deminor, this will always be our priority.

We would also like to take this opportunity to already wish you a happy and prosperous New Year.

Best regards,

Charles Demoulin

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EU joint public consultation on collective redress

Mr Joaquin Almunia, EU Competition Commissioner, announced together with Ms Reding, Commissioner for Justice and Fundamental Rights and Commissioner Dalli for Health and Consumer Affairs, the launch of a joint public consultation to define together a common and coherent framework for collective redress.

In 2008, the DG Competition had already published a White Paper on Damages Actions for Breach of the EC antitrust rules that was later (in 2009) put into a draft directive providing private victims of EU antitrust infringements effective redress mechanisms in order to get fully compensated for the harm they suffered.

This draft directive was highly criticized and eventually withdrawn at the end of the mandate of the Barroso I Commission. The new Commissioners' decision to re-open the discussion on the issue of collective redress is a positive evolution, provided that such discussion will encompass all (other) aspects related to the access to justice, including the legal costs and risks and the efficiency of the remedies available for victims of mass injury across the EU.

Based on the result of this consultation, a general legal framework on EU collective redress will be prepared, drawing as much as possible on the different national traditions.

With this framework in place,

the Commission's objective is to draw up specific legislative initiatives for the different policy areas (antitrust, consumers, etc.). Commissioner Almunia has declared he would present a specific proposal on antitrust damages actions in the second half of 2011. This may take the form of an EU Directive that will provide for common standards and minimum requirements of antitrust damages actions in each Member State.

The EU Commissioners have made it also clear that a EU regime on collective redress would have to avoid the excesses of the US class-actions and should establish safeguards against abusive litigation. This new EU regime would only allow for full compensation but no punitive damages.

To view the speech in which Commissioner Almunia announces the launch of this public consultation, please follow this link: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/554&format=HTML&aged=0&language=EN&guiLanguage=en>

Post-Morrison evolution - The shifting rules on jurisdiction regarding securities litigation

In our September 2010 Newsletter we had already referred to the decision rendered by the U.S. Supreme Court before the summer in the *Morrison vs National Australia Bank* case, and which restricts the possibility for U.S. courts to apply U.S. securities laws extraterritorially.

In the Morrison decision, the highest jurisdiction in the U.S. rejected the possibility for foreign investors to sue foreign companies in the U.S. in connection with foreign securities transactions. The U.S. Supreme Court has developed a new "transactional test" for the applicability of U.S. securities regulations pursuant to which securities fraud "reaches the use of a manipulative or deceptive device or contrivance only in connection with the purchase or sale of a security listed on an American stock exchange, and the purchase or sale of any other security in the U.S."

Applying this Supreme Court decision, the U.S. District Court for the Southern District of New York recently decided in the class action litigation involving Société Générale (SocGen) in connection with the fraud scandal having involved the trader Jérôme Kerviel, that U.S. securities laws would not apply extraterritorially even where the plaintiffs are domestic purchasers. This decision confirms the trend set by the Morrison decision to foreclose the access to U.S. courts to investors seeking recovery for their losses in foreign securities, but is even more far-reaching as it deprives U.S. investors themselves of their right to sue foreign companies in the U.S.

Those decisions will of course have a direct impact on the possibility for investors to participate in U.S. securities class actions. We believe that both U.S. and non-U.S. investors will now have to seriously consider litigation in Europe or elsewhere as an alternative to U.S. class actions.

As illustrated by our own experience, collective actions

based on securities fraud can be launched in most European countries despite the absence of US-style class actions. Some countries, such as the Netherlands, have already implemented alternative forms of “collective” actions in their own judicial system.

In its recent decision of 12 November 2010 regarding a settlement in the Converium case, the Amsterdam Court of Appeals assumed “provisional” jurisdiction to declare an international collective settlement binding even in case none of the defendants and only a limited number of potential claimants were domiciled in the Netherlands. The Court raised however other issues which are to be dealt with in the coming months before it can assume jurisdiction without any reserves. The provisional decision of the Court is already an indication of a new trend set by Dutch courts and may certainly have implications for the future.

AIFM Directive

The amended text of the Directive on Alternative Investment Funds Managers (AIFMs) has been approved on 11 November 2010 by the European Parliament following a long period of negotiation. As there is a political agreement, the approval by the Council should be a mere formality. The Directive is expected to come into force following its publication early 2011 and should be implemented into national law by Member States by 2013.

Hedge funds, private equity funds and real estate funds,

among others, fall within the scope of application of the Directive (provided however certain thresholds are exceeded).

The AIFM Directive creates a comprehensive framework for the supervision and prudential oversight of AIFMs in the EU. Pursuant to this Directive, all AIFMs will be required to obtain an authorisation and will be subject to ongoing regulation and supervision. Mandatory registration will provide EU AIFMs with a passport to market funds across the EU. As from 2015, passports will also be available to non-EU AIFMs who can comply with the new rules and satisfy the same standards of transparency and conduct, as well as additional obligations such as anti-money laundering compliance.

Investor protection is one of the main objectives of the AIFM Directive. The recent experiences in the Madoff and Lehman cases have highlighted the risks to which investors in investment funds – whether alternative or not - are exposed and the urgency to clarify and improve investor protection rules, including operational and organisational requirements. The AIFM Directive also intends to increase the transparency of AIFMs and the funds they manage, in order to enable investors to make a well-informed investment choice.

As illustrated by Deminor’s intervention on behalf of investors in cases like Madoff and Lehman, the role and functions of the financial intermediaries providing services to an investment fund, and particularly the role and functions of the depositary, need

to be clearly defined in order to guarantee efficient investor protection. As stated by the EU Commission: *“When the entities charged with safeguarding the assets of the fund do not perform their duties effectively, investors stand to lose all or part of their investment.”*

We welcome the AIFM Directive’s objective to hold depositaries to a high standard of liability and to reverse the burden of proof when losses have occurred. This means that in case of a loss, the investor will no longer have to prove that the depositary failed to fulfil its obligations, but the burden of proof will now rest with the depositary. Deminor also welcomes the fact that the AIFM Directive introduces clearer rules for the delegation of depositary functions.

The EU Commission is currently examining the corresponding depositary rules in the UCITS Directive to ensure that the standard of protection afforded to investors under the UCITS Directive does not fall below that of the AIFM Directive. The EU Commission has launched a public consultation on 14 December 2010 in order to gather evidenced views to complete the cost and benefit analysis of the changes which are intended to be introduced in the UCITS Directive, including on the role and liability of the depositary.

To view this consultation, please follow this link: http://ec.europa.eu/internal_market/consultations/docs/2010/ucits/consultation_paper_en.pdf

Madoff

Since the Madoff fraud was revealed in December 2008, Deminor has been active defending the interests of 2,500 investors from all over the world (excluding the US) who suffered losses on their investments in so-called “*Madoff feeder funds*” like Luxalpha, Herald Lux, Luxinvest, Thybo, Hermes, Fairfield, Kingate, and Plaza. Assets of these funds were entrusted to and managed by Bernard L. Madoff Investment Securities LLC (hereafter “BMIS”). These investors have lost altogether around EUR 400 millions.

After successful summary proceedings, Deminor has undertaken legal actions on the merits in various jurisdictions, including the Netherlands and Luxembourg, in order to seek damages for its clients. Simultaneously, the liquidators of the feeder funds and/or of the BMIS’ estate have also undertaken actions to recover assets on behalf of the estate they each represent. UBS, for example, is currently being sued by three different parties in two jurisdictions: in the USA by the U.S. Trustee for its role in Luxalpha, Luxinvest and Groupement Financier, and in Luxembourg by (i) the liquidators of Luxinvest and Luxalpha, and (ii) the investors represented by Deminor for its role in Luxalpha, Luxinvest, Plaza and Thybo.

You will find below the interactions between those interests represented in justice. On top of that, there are also criminal investigations pending in Luxembourg, the outcome of which could have an impact on Deminor’s strategy.

1. Deminor’s recent legal actions

Deminor has filed several complaints before the courts of Luxembourg against UBS Luxembourg SA seeking damages on behalf of around 1,000 victims who directly suffered losses on their investments in Luxalpha, Luxinvest, Thybo and Plaza. UBS Luxembourg SA is the custodian of those funds.

Deminor also filed recently a writ of summons against HSBC and Herald Lux in Luxembourg and sued Citco as custodian and administrator of the Fairfield funds, in the Netherlands.

Writ of summons against HSBC and Herald Lux in Luxembourg

Deminor has federated around 750 investors in Germany having invested in Herald Lux, a regulated UCITS based in Luxembourg.

Following this massive support from German investors, both retail and institutional, Deminor filed early December 2010 a writ of summons seeking damages from the Herald Lux fund and its custodian, HSBC Securities Services SA.

As custodian, HSBC Securities Services SA was responsible for the safekeeping of the funds’ assets. Despite clear regulations, HSBC Securities Services SA delegated the entire custody function to BMIS without performing any control.

The Herald Lux fund – now in liquidation – is being sued (i) as the issuer of a prospectus containing misleading and incomplete information and (ii)

for having approved an illegal structure.

According to Deminor’s analysis, as confirmed by the Luxembourg regulatory authority (hereafter the “CSSF”) (see its press release of 18 November 2009), the prospectus failed to disclose the real structure of the fund. The prospectus systematically referred to Bank Medici AG as investment manager and to HSBC as custodian. The names “Madoff” or “BMIS” have never been mentioned in such legally binding document. We now know that (i) Madoff was acting as investment manager pursuant to a “*trading authorization directive*” and an “*option agreement*”, i.e. documents formally approved by the board of directors upon the opening of the fund’s account with BMIS and (ii) BMIS was acting as the global and unique sub-custodian of the fund’s assets, as it was later confirmed by the CSSF. Considering that the investment management and custody functions were performed by the same legal entity (i.e. BMIS), the fund was illegal since its incorporation according to EU and Luxembourg legislations and regulations and should never have been approved by the CSSF as a UCITS fund. In other words, if the illegal structure of the prospectus had been disclosed, the shares of Herald Lux would never have been offered to the public.

In its press release of 18 November 2009 and in its 2009 annual report, the CSSF indicated that “*a UCI’s prospectus has to contain all the necessary information for an investor to reach a properly informed decision on the proposed investment*”. The pivotal role of

BMIS has never been disclosed in the successive versions of the prospectus despite the fact that (i) such information was essential to assess a potential investment in Herald Lux and (ii) the board of directors was, or at least should have been, aware of BMIS' involvement at each level of the fund (investment manager, custodian and "broker-dealer"). In accordance with the laws of Luxembourg, the issuer (i.e. the Herald Lux fund) is responsible for the content of the prospectus.

Writ of summons against Citco in the Netherlands

Deminor served in November 2010 a writ of summons on behalf of around 750 investors against Citco seeking damages before the courts of Amsterdam. Citco is being sued as the custodian of Fairfield Sentry Ltd, Fairfield Sigma Ltd and Fairfield Lambda Ltd.

The legal and factual basis of the claim has been broadened in part due to evolutions in the USA. We are now waiting for Citco to file its first counterarguments. This will take at least three months.

Deminor has also investigated in-depth the role of the Fairfield auditors, PWC. The analysis of the role of PWC has been finalized and legal actions should be undertaken shortly.

2. Actions of the liquidators of Luxalpha and Luxinvest

The liquidators of those feeder funds have also undertaken legal actions against the different

service providers. The legal proceedings initiated by the liquidators of Luxinvest and Luxalpha against UBS and E&Y have been substantially delayed. As part of its judicial strategy, UBS is trying to slice the legal proceedings into different pieces. The liquidators have therefore undertaken legal actions in order to bring the case forward. It is still too early to predict the outcome of such legal proceedings.

The main concern of the Luxembourg liquidators remains the "claw-back" issues raised by the U.S. Trustee.

3. The latest actions of the US Trustee of the Madoff estate

As reported by the international press, the U.S. Trustee recently filed a number of lawsuits in Europe against various financial intermediaries, amongst which UBS and HSBC.

Against UBS and UBS related feeder funds

The U.S. Trustee filed on 23 November 2010 and 7 December 2010 the much anticipated lawsuit against, inter alia, UBS, Luxalpha and Luxinvest before the courts of New-York.

The lawsuit is twofold: on the one hand, the U.S. Trustee is formally implementing the "claw-back" actions against Luxalpha (i) and, on the other hand, the US Trustee is seeking damages from UBS for having allegedly participated to the Madoff fraud (ii).

(i) As already mentioned in

our previous newsletters, the U.S. Trustee of the BMIS estate, Irving Picard, is currently seeking to recoup money through claw-back actions and other legal actions against third parties. In accordance with New York bankruptcy law, the U.S. Trustee had to file such lawsuits at the very latest on 11 December 2010.

By launching a lawsuit against UBS and Luxalpha, the US Trustee will try to recover from Luxalpha transfers received from BMIS during the six years preceding the arrest of Madoff. Such transfers amount to approximately USD 766 million. Pursuant to the US Bankruptcy Code and various legal theories, such transfers could be declared "avoidable" and "recoverable" by the U.S. Trustee.

The U.S. Trustee underlines the fact that Luxalpha, as legal entity, had actual and/or constructive knowledge of BMIS' fraud and should therefore not be considered as "innocent". The U.S. Trustee stated that "*the transfers were made to avoid detection of the fraud, to retain existing investors, and to lure other investors, and constituted an integral and essential element of the fraud, necessary to validate the false account statements and to avoid the disclosure of the fraud*".

(ii) The U.S. Trustee is also seeking compensatory and punitive damages from UBS as it was substantially assisting the fraud perpetuated by BMIS, including by lending its name to the feeder funds in order to attract investors and by delegating its functions (investment manager and custodian) to BMIS. In other words, the U.S. Trustee considers that UBS agreed to serve as a "façade" for the feeder funds.

The charges pressed by the U.S. Trustee against UBS are extremely severe and include: aiding and abetting fraud, aiding and abetting breach of fiduciary duty, conversion (UBS' fees were taken from monies withdrawn from BMIS) and unjust enrichment (UBS has wrongfully benefited from the money originated from BMIS).

The U.S. Trustee's claim confirms Deminor's own analysis according to which UBS entities acted as "letter box companies", lending their names publicly to the feeder funds in order to attract investors and collect fees. This analysis has been elaborated in the numerous complaints filed since October 2009 before the courts of Luxembourg on behalf of around 1,000 victims federated by Deminor.

Against HSBC and HSBC-related feeder funds

Similarly to what has been done with regard to UBS, the U.S. Trustee filed a complaint implementing the claw-back actions against various HSBC-related feeder funds (e.g. Herald Lux, Hermes) and seeking damages from several subsidiaries of the HSBC Group, including HSBC Luxembourg.

The claw-back exposition of the Herald Lux fund is rather limited as the U.S. Trustee is seeking USD 134.000 as voidable transfers. The Hermes feeder fund received approximately USD 250 million in transfers from BMIS through its wholly owned subsidiary Lagoon Investments Limited and is therefore requested to repay that amount to the U.S. Trustee.

As for the UBS complaint, the U.S. Trustee's writ of summons is a source of information on the involvement of HSBC. The most relevant item is definitely the existence of various due diligences undertaken by HSBC on BMIS and on the Madoff feeder funds.

Throughout the years, HSBC undertook several due diligences on BMIS and identified numerous badges of fraud and operational risks. Despite the alarming conclusions of the audit reports issued in 2006 and 2008 by KMPG (in which the Madoff trades were described as "a sham in order to divert client cash"), HSBC continued to serve as custodian to various feeder-funds and to delegate the key-functions to BMIS. Notably, when conducting due diligences on the Madoff feeder funds, HSBC explicitly noted every year from 2003 to 2008 that BMIS' role as custodian created a serious risk of theft.

The KPMG reports confirmed that the fraud was easily detectable by the professionals involved in the setting-up and running of the Madoff feeder funds.

4. Criminal investigation

In addition to these private proceedings launched by the liquidators and Deminor, a criminal investigation is currently pending in Luxembourg with regard to the liability of UBS' employees and directors.

This criminal investigation led by the Luxembourg Public Prosecutor is examining the alleged participation of UBS in drafting

key documents (e.g., prospectus, operating memorandum) which contain false, misleading and contradictory information.

Fortis

Deminor launched a procedure against Fortis (now Ageas) before the Commercial Court of Brussels in January 2010 in order to claim damages. Following an in-depth analysis during the second half of 2009, Deminor came to the conclusion that Fortis' communication during the period of time between the official announcement of the takeover bid on ABN AMRO in May 2007 and the dismantling of the group in October 2008 had been misleading on several material aspects, including its subprime exposure.

The purpose of this procedure is to claim compensation for the losses suffered by investors due to misleading communications from Fortis. The number of investors represented by Deminor currently amounts to 5,300 including some 4,900 private and 400 institutional investors from all over the world. Deminor is now calculating the losses suffered by each of those investors.

Since the launch of the case in January 2010, Deminor's own analysis of Fortis' communication has been confirmed and reinforced on several occasions, including in the report of the court-appointed Dutch experts published in June 2010 and the two decisions of the Dutch Market Authority (Autoriteit Financiële Markten) in February and August 2010 imposing fines on Fortis for violation of the Dutch law on

financial supervision.

In another procedure, Deminor is expecting the preliminary report of the experts appointed by the President of the Commercial Court of Brussels following summary proceedings initiated in October 2008. The experts have to review the circumstances in which the transactions leading to the dismantling of the group in September-October 2008 took place.

In addition, Deminor and the VEB had also filed a lawsuit in April 2009 in the Netherlands against the Dutch State, in order to hold the Dutch State liable for abuse of circumstances (“misbruik van omstandigheden”) while nationalizing Fortis’ Dutch activities (banking and insurance). The pleadings in this procedure took place before the Court of Amsterdam on 29 November 2010. During the pleadings, Fortis’ lawyers argued that the Dutch State had indeed threatened Fortis and had exercised pressures in order to nationalize not only the banking activities but also the insurance business.

The Court is now deliberating and should render its decision within a couple of weeks.

Lehman Brothers

1. Belgium

The civil proceedings initiated in July 2009 against Deutsche Bank before the Court of Commerce of Brussels are still pending. These proceedings aim at obtaining damages for the investors to whom Deutsche Bank had sold Lehman Brothers

Notes. Deminor is also awaiting a decision of the Brussels public prosecutor whether or not to file a criminal lawsuit against Deutsche Bank and its directors.

The Brussels public prosecutor will certainly take into account the recent decision of the criminal court of Brussels on the 1st December 2010 in a similar case involving Lehman Brothers notes. The criminal court declared Citibank and some of its officers guilty of not disclosing in the prospectus the necessary information for the investors in order to make an informed decision on the proposed investment. Citibank recently announced that it would file an appeal against this decision.

2. Netherlands

Deminor has federated approximately 400 investors grouped under the Dutch Foundation “Stichting Hulp Gedupeerden” and who had bought Lehman Brothers’ notes through the investment firm Wijs & Van Oostveen and who lost most of their investments after Lehman Brothers went bankrupt in 2008.

As the first attempts to settle the matter failed, the Stichting Hulp Gedupeerden, with the assistance of Deminor and the law firm Barents Krans, has initiated legal proceedings before the Courts in Amsterdam against Wijs & Van Oostveen and its directors in April 2010. The writ of summons was first served on behalf of those investors holding 100% and 90% guaranteed notes. The writ of summons on behalf of the investors holding 0% guaranteed notes is currently

being finalized.

This collective action launched in the Netherlands aims at claiming around €16 million on behalf of the investors who bought Lehman Brothers structured products through Wijs & Van Oostveen, without having properly been informed on the underlying risks.

Deminor is now expecting the decision of the judge in the case of the 100% guaranteed notes. In the case of the 90% guaranteed notes, Deminor is waiting for the introductory hearing and the decision of the judge about the further steps in the procedure.

3. Germany

In the German part of the Lehman Brothers saga, Deminor currently concentrates its efforts and actions on Targobank (formerly Citibank Deutschland) who massively sold Lehman Brothers notes to its retail clients. These complex financial instruments, often containing derivatives, were issued by Lehman Brothers Treasury Co. B.V., a Dutch special purpose vehicle, and were unconditionally and irrevocably guaranteed by Lehman Brothers Holdings Inc., the issuer’s mother company. Following the bankruptcy of the Lehman Brothers group in September 2008, many German retail clients who had purchased these Lehman Brothers notes suffered substantial losses.

In a first stage, Deminor has analyzed the case and gathered facts and documents to support the case.

Deminor is now preparing

legal actions against Targobank on behalf of its clients with the help of Germany lawyers, should no constructive and amicable solution be possible.

Deminor considers that the financial instruments – derivatives – sold by Targobank were not suited for the bank's retail clients. Deminor's analysis has also revealed important shortcomings in the way these instruments were structured. Those complex financial instruments also represented an investment in a highly leveraged American investment bank with an increasing risk exposure to the deteriorating real estate market and asset backed securities.

Marionnaud

On 19 January 2010, the Commercial Court of Créteil pronounced its judgment and declared the company Marionnaud Parfumeries (hereafter «Marionnaud») liable for having provided misleading and false information to the market, causing thereby losses to its shareholders.

On 17 December 2004, Marionnaud had revealed accounting mistakes amounting to more than €90 million and causing a sudden fall of its share price on the stock market. Deminor was then contacted by a substantial amount of investors who initiated proceedings on 23 September 2005 before the Commercial Court of Créteil against Marionnaud. Marionnaud sued in turn its former directors, Marcel and Gérald Frydman.

The judgment of 19 January 2010 ordered Marionnaud to pay

€6.84 per share to be increased by €1 for legal interests. Marcel and Gérald Frydman have filed an appeal against this judgment. The first pleadings in this proceeding took place on 19 October 2010.

The next hearings have been scheduled by the Court of Appeals to take place on 25 January 2011. By that date, the company Marionnaud Parfumeries and the former shareholders are due to file their own court briefs.

Natixis

A legal action has been filed on 31 December 2009 before the Commercial Court of Paris on behalf of 730 shareholders of Natixis federated by Deminor, by the lawyer in charge of the case.

This file was transferred to the Commercial Court of Bobigny in the springtime of 2010.

As of today, the action has been undertaken against Natixis, BPCE, Mr Philippe Dupont (former Chairman of the Executive Board of Natixis) and Mr Charles Milhaud (former Chairman of the Supervisory Board of Natixis and former Chairman of the Caisse d'Epargne Group).

Shareholders blame them for having disclosed false and misleading information on the prospects and forecasts as well as on the financial situation of Natixis at the time it was founded, i.e. at the time of the IPO in December 2006 and during the two following years. Shareholders also blame the Caisses d'Epargne and the Banques Populaires for breaking market rules.

Registrations for this case are closed since 15 October 2010.

Carrere Group

210 shareholders of the Carrere Group company, who represent together more than 12% of the share capital, have mandated Deminor to help them undertake any action in order to recover the losses they have suffered, including any legal proceedings with the assistance of a lawyer.

After seven years of positive and optimistic financial communication, the trading in the company's shares on Eurolist was suddenly suspended in March 2008. Consequently, Mr Claude Carrere, manager and founding shareholder of Carrere Group, filed a petition with the Commercial Court of Bobigny to benefit from a restructuring procedure which was opened on 30 December 2008. The President of the Commercial Court of Bobigny recently (on 9 July 2010) ordered the winding up of Carrere Group. An appeal was filed against this decision. In the meantime, the winding up has already started and the shares should be delisted.

A complaint was also lodged with the public prosecutor of the Tribunal de Grande Instance of Bobigny on 28 January 2010 by the shareholders federated by Deminor.

They blame the company's directors for not having disclosed the financial problems which the company encountered and for misrepresenting the real situation of the company.

The file was transmitted to the public prosecutor of the Tribunal de Grande Instance of Paris who is competent and is now being investigated by the French Financial Squad. If the directors are found guilty, the lawyer in charge will be able to request a compensation for the losses suffered by the shareholders.

Deminor continues to federate shareholders who have suffered losses by investing in Carrere Group shares.

National Bank of Belgium

On 30 September 2010, the Court of Appeals of Brussels ruled in both proceedings launched by Deminor and its clients who are minority shareholders of the National Bank of Belgium (NBB):

- in the procedure regarding the expiry of the right of the NBB to issue banknotes (which would lead to the distribution of the Bank's Reserve Fund), the Court considered that the NBB's right to issue banknotes had not expired as a consequence of Belgium joining the Economic and Monetary Union. The Court of Appeals therefore confirmed the decision of the Commercial Court of Brussels. As a result, the Court did not order the NBB to distribute its reserve fund to its shareholders;

- in the procedure regarding the transfer of €235 million to the Belgian State, the Court again confirmed the previous decision of the Commercial Court of Brussels by upholding that the transfer of an amount of €235

million, corresponding to a withdrawal from the provision for future exchange losses, to the Belgian State was not unlawful as argued by Deminor and its clients.

Following the analysis of those court decisions, Deminor is currently assessing the merits of an appeal before Belgium's Supreme Court. Deminor is also seeking the support of a significant number of NBB shareholders in order to pursue the action.

Lernout & Hauspie Speech Products (LHSP)

After more than 9 years of proceedings, the Court of Appeals of Ghent finally rendered on 20 September 2010 its decision in the LHSP case regarding the criminal lawsuit. The Court of Appeals found 8 of the 21 defendants guilty and pronounced a sanction against them. However, the Court of Appeals acquitted Dexia and KPMG of any wrongdoing and declared that Dexia and KPMG were not to blame for fraudulent accounts at LHSP.

The civil claims and the issue of the compensation for the civil plaintiffs will later be dealt with in the civil proceedings which are scheduled to resume as from December 2011.

Due to the acquittal of both Dexia and KPMG, there is however a lesser chance of recovering losses for the civil plaintiffs. Nevertheless, the Court of Appeals, while acquitting KPMG, found Mr William Van Aerde, the KPMG partner and

auditor responsible for the audit of LHSP, guilty. And since the Court of Appeals concluded that the professional fault held against him was not intentional, his condemnation might still open a possibility to claim compensation from the insurer.

Deminor is convinced that there were sufficient grounds to challenge the Court of Appeals' decision. But an appeal to the Belgian Supreme Court (Cour de Cassation/Hof van Cassatie) was technically not feasible for the civil parties because a civil party who is not condemned to the costs of the criminal proceedings lacks the capacity to appeal the decision regarding the criminal proceedings.

The public prosecutor had the capacity and the possibility to go to the Supreme Court. Though the prosecutor was also of the opinion that there were sufficient grounds to question the motivation of the Court's decision, he eventually decided not to file an appeal against the decision of the Court of Appeals of Ghent. The reason was that he feared that such an appeal could lead to the proceedings not being completed within the legal statutes of limitation.

From the eight condemned parties six of them lodged an appeal with the Supreme Court.

Deminor is currently examining with its lawyers Christian Van Buggenhout and Joris De Vos which strategy to adopt and which actions to undertake.

Deutsche Postbank

Deminor has been analyzing the information disclosed by Deutsche Bank, Deutsche Postbank and Deutsche Post with respect to the agreement between Deutsche Bank and Deutsche Post relating to the acquisition of Deutsche Post's controlling stake in Deutsche Postbank by Deutsche Bank. The initial agreement between Deutsche Bank and Deutsche Post had been announced in September 2008, just before the collapse of Lehman Brothers. An amended agreement still providing for a transfer of the controlling stake was announced in the first days of January 2009.

Deminor believes that the minority shareholders of Deutsche Postbank have been unduly deprived of their protection under the mandatory bid rule as provided for under German and European law. Considering that the agreement between Deutsche Bank and Deutsche Post provides for the transfer of control of Deutsche Postbank, Deminor is of the opinion that Deutsche Bank should have launched a mandatory bid at the time the agreement was concluded (**see the Deminor European Alert by following this link**).

(Former) Postbank shareholders suffered losses as a result of this breach of the German takeover law. Deminor will need the support of a large and representative group of investors in order to be able to launch a case and is therefore calling on investors in Deutsche Postbank to register on www.myDeminor.com. This registration is confidential and free of charge. Deminor will further

communicate with the interested investors who registered.

Unicredit

Deminor is currently analyzing whether there is a sufficient number of investors interested in joining a shareholder engagement with Unicredit. Deminor strongly believes that institutional investors who are shareholders of Unicredit need to engage with the company following the departure on 20 September 2010 of its CEO, Mr. Alessandro Profumo, which reflected the influence of domestic core shareholders to orientate the management of the bank to pursue their self-interests.

During Mr. Profumo's mandate (15 years), the bank was transformed from a major Italian bank into a European top player with a clear leadership position in Eastern Europe. The internalization of the group, especially after the merger with the German HVB, led to an increase of the presence of foreign institutional investors in the shareholder structure of the group. Currently, major foreign investors hold approximately 20% of the share capital.

Italian banking foundations, i.e. non-profit regional organizations which used to control the banks merged into the Unicredit group and which hold today 13% of the share capital, have been criticizing this internationalization of the group and the increasing presence of foreign core shareholders in the capital of the bank.

Those local core shareholders and the vast majority of the Board

members eventually succeeded in their attempt to remove the CEO of the group. Mr. Profumo was granted a €40 million severance package, allegedly in accordance with his contract which entitled him to a 3-year pay in case of termination of employment. It does not seem that this information and the existence of this golden parachute had been disclosed to shareholders.

Those decisions and the removal of the CEO do not seem to be in line with corporate governance best practices. Serious concerns are also raised regarding (1) the future of the group, both in terms of long term leadership and strategy, (2) the independence of the management and (3) its ability to manage the group in the interest of all shareholders.

Unicredit's stock price has underperformed the European banking sector Index by approximately 8% over the last 2 months.

UBS

Together with Actares and Euroshareholders, Deminor had sent an open letter to UBS on 20 September 2010 in order to formally request the Board of Directors of UBS AG to reconsider its initial decision not to launch a lawsuit against the former directors and management following the decision of UBS shareholders not to grant discharge to the former management at the last annual general meeting in April 2010. Deminor considered that it is the primary fiduciary duty of the board of directors to take any possible actions against former

directors and members of the management whose misconduct and/or negligence caused severe losses to the UBS shareholders.

On 14 October 2010 UBS AG held a press conference and presented its *“Transparency report to the shareholders of UBS AG”*. In this transparency report, UBS AG briefly reviews the causes of its write-downs on “toxic” securities and examines how the US cross-border activities had been managed internally. Mr Kaspar Villiger, chairman of the Board, also mentioned that the current board of directors would not take legal action against former directors and management.

A class action against UBS is currently pending in the United States. As a result of the recent decision of the Supreme Court in *Morrison vs NAB* (see above), it is unclear whether non-US investors could join or benefit from this class action (UBS had and still has a dual listing both in Switzerland and in the United States). Recent court decisions in the United States tend to apply the *Morrison* decision rather restrictively.

To view the Transparency report, you can follow this link: www.ubs.com/transparencyreport.

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