

WITHOUT PREJUDICE

NOTIFICATION TO INVESTORS OF CAPITAL ONE LTD's ("COL") FUNDS

To Whom It May Concern

1. This notification serves as a response to various queries that Labuan FSA received from parties claiming to be investors of various funds that may or may not have been promoted by COL, inquiring on the status of their investments.
2. In reply, Labuan FSA wishes to reiterate the following-
 - a. The Labuan High Court ("the Court") in a case of Labuan Offshore Financial Services Authority vs. Capital One Ltd & Paul Dominic McGuire (Originating Summons No.: L24-13-2006) ("Court Action") had, on 5 December 2011 delivered the following decisions:
 - i. the monies in COL's bank accounts are to be paid out proportionately to the ultimate beneficiaries of the Sub-Funds according to their level of investments;
 - ii. the above mentioned bank accounts are to be unfrozen and surrendered to the management of COL within four days from the date of the Court Order;
 - iii. COL are to disburse the payments to the COL Euro and USD sub-fund ultimate beneficiaries only as at 1 October 2004, as listed in COL share register and the 5 individuals named in the Court Order;
 - iv. COL are to do all things necessary to ensure that the monies are paid out within two months from the date of the Court Order and COL to report to the Court within three months of the date of the Court Order on the status of the payments to the ultimate beneficiaries; and
 - v. the Appointee, KPMG Transaction & Restructuring Sdn Bhd is discharged with immediate effect and the control of the Capital One Fund to be returned to COL accordingly.
 - b. Further, Labuan FSA wishes to clarify by reiterating the following pertinent facts in relation to the above Court Action-
 - i. Labuan FSA's application in the above Court Action was mainly to obtain the Court's order on how and to whom the monies in the accounts of COL at HSBC Bank Malaysia Berhad, Labuan Branch ("HSBC"), which had been frozen by Labuan FSA, ought

to be paid out. This action was taken by Labuan FSA pursuant to the then section 27 of the Labuan Offshore Securities Industry Act 1998 to protect the interest of the investors or/and creditors of the funds arising from the internal disputes within COL. In its application to the Court, Labuan FSA had applied for the appointment of independent Appointees, Mr Ong Hock An and Mr Ooi Woon Chee, c/o KPMG Corporate Services Sdn. Bhd., to facilitate the return of the remaining monies in the accounts to the rightful investors.

- ii. The Appointees had examined all relevant documents and accounts in detail, and had sought legal advice on the group of investors who should be entitled to the remaining monies in the bank accounts of COL as at the date on which the said bank accounts were frozen, namely on 1 April 2005. Based on the legal advice, the Appointees' fact finding suggested that the monies belong to the investors who had invested their monies as at 1 October 2004, specifically to those who had invested in the Sub Fund known as the Euro and USD Denominated Sub Fund and not to those who had invested in the main Growth Fund.
- iii. An exercise had been undertaken, as ordered by the Court on 5 December 2011, to pay out the remaining monies to the former group of investors proportionately and COL was required to submit a report to the Court on the status of the distribution exercise and proof of the distribution of funds to the identified investors. The distribution and returning of the investors' money is a court monitored process and COL was obligated to report to the Court on the status of the distributions. To the best of our knowledge, during a case management held on 5 March 2012, the Court was updated that all monies had been distributed accordingly to the identified investors.
- iv. Before the above Court's decisions, EC Corporate Management Inc. ("ECCM"), a Labuan company related to EC Trust (Labuan) Bhd. ("ECT") had filed two (2) intervener's applications relating to the above Court Action, purportedly as the sole director and shareholder of COL and also in its own capacity as trustee for certain investors. At the hearing of both intervener's applications, ECCM had failed to satisfy the Court that they were indeed parties with an interest in the proceedings. Specifically, ECCM were not able to produce in the Court any document to prove that they had been appointed as a trustee acting for and on behalf of certain classes of investors who had invested in the Growth Fund of COL. This had resulted in the dismissal of ECCM's applications to intervene.
- v. On 1 February 2012, the Court had also dismissed the application by ECCM to set aside the Court's decision of 5 December 2011. The decisions of the Court remain as delivered on 5 December 2011.

- vi. To effect the Court's decision made on 5 December 2011, Labuan FSA was also required by the Court to unfreeze COL's accounts in HSBC and to hand over the same to COL's management within four (4) days of the said Court Order, and in respect of which Labuan FSA had duly complied.
 - c. It is also important to note that prior to the hearings and decisions of the Court Action, on 10 May 2011, the High Court of Sabah and Sarawak at Labuan had made a decision on the rightful director and shareholders of COL in a separate suit, namely EC Corporate Management Inc. & Anor vs. Philip Gary Crane & 7 Ors (Suit No. L22-19-2005). In this regard, the Court held that ECCM was no longer a director or a shareholder in COL.
3. As all the above issues have been duly ventilated and decided in the relevant Court proceedings, all parties should therefore abide by the orders and decisions made by the Court.
4. We wish to emphasise that as a regulator of Labuan International Business Financial Centre, Labuan FSA has taken all necessary and appropriate actions within the powers conferred on us under the relevant laws in respect of this matter. For your information, other than the court proceedings and/or supervisory interventions as stated in the preceding paragraphs, Labuan FSA had also undertaken enforcement actions against, amongst others, EC Trust (Labuan) Bhd ("**ECT**") and its former director and trust officer, Peter Searle. This includes the revocation of ECT's trust company licence and the revocation of approval and removal of Peter Searle as trust officer and director of ECT. Further, Labuan FSA has also taken and are considering taking several other actions permitted under the relevant laws against the relevant parties based on the available evidence.
5. In respect of the investments placed prior to 1 October 2004 or the investments other than the ones which had been returned to its beneficial owners pursuant to the Court's decisions on 5 December 2011, Labuan FSA is of the view that COL or any of the trustees or intermediaries with or through whom monies were placed by the investors, are required to fulfil and carry out their fiduciary duties to honour the investments made or take appropriate measures as they think fit.
6. In this regard, should any investor feel that COL or any of the trustees or intermediaries with or through whom monies were placed have failed to carry out their fiduciary duties, Labuan FSA recommends that the investor obtains independent legal advice on the same and takes the appropriate action to safeguard or enforce his/her rights and interest, as the case may be.

Labuan Financial Services Authority

Note: The same notification had been sent to "Diane Gardner" on 9 January 2014 via e-mail to didon.gardner@gmail.com