'09 CIV 2032

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HORST LEONHARDT, on Behalf of Himself and All Others Similarly Situated, Plaintiff, v. BERNARD L. MADOFF, BANK MEDICI S.A., SONJA KOHN, PETER SCHEITHAUER, HERALD USA FUND, HERALD LUXEMBURG FUND, BANK AUSTRIA CREDITANSTALT, UNICREDIT S.A., PRIMEO SELECT FUND, PRIMEO EXECUTIVE FUND, PIONEER ALTERNATIVE INVESTMENTS, THEMA INTERNATIONAL FUND PLC, HELMUTH E. FREY, FRIEDRICH PFEFFER, FRANCO MUGNAI, ALBERTO BENBASSAT, STÉPHANE BENBASSAT, GENEVALOR, BENBASSAT & CIE, DAVID T. SMITH, GERALD J. P. BRADY, DANIEL MORRISSEY, ERNST & YOUNG S.A., ERNST & YOUNG GLOBAL LIMITED, HSBC HOLDINGS PLC, HSBC INSTITUTIONAL TRUST SERVICES (IRELAND) LIMITED, HSBC SECURITIES SERVICES (IRELAND) LIMITED, HSBC SECURITIES SERVICES, S.A., PRICEWATERHOUSECOOPERS, CHARTERED ACCOUNTANTS, PRICEWATERHOUSECOOPERS INTERNATIONAL LIMITED and FRIEHLING & HOROWITZ, Defendants.	Civil Action No. **COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** **JURY TRIAL DEMANDED**

Plaintiff Horst Leonhardt, by his attorneys, submits this Class Action Complaint for violation of federal securities laws (the "Complaint") against defendants Bernard L. Madoff ("Madoff"), Bank Medici, ("Medici"), Sonja Kohn ("Kohn"), Peter Scheithauer ("Scheithauer"), Herald USA Fund and Herald Luxemburg Fund (collectively, "Herald Funds"), Bank Austria Creditanstalt ("Bank Austria"), Unicredit S.A. ("Unicredit"), Primeo Select Fund and Primeo Executive Fund (collectively, the "Primeo Funds"), Pioneer Alternative Investments ("Pioneer"), Thema International Fund plc, ("Thema Fund"), Genevalor, Benbassat & Cie, Helmuth E. Frey, Friedrich Pfeffer, Franco Mugnai, Stéphane Benbassat, David T. Smith, Gerald J. P. Brady, Daniel Morrissey, Ernst & Young S.A. and Ernst & Young Global Limited (collectively, the "E&Y Entities"), HSBC Holdings plc, HSBC Institutional Trust Services (Ireland) Limited, HSBC Securities Services (Ireland) Limited, and HSBC Securities Services, S.A. (collectively, the "HSBC Entities"), PricewaterhouseCoopers, Chartered Accountants and PricewaterhouseCoopers International Limited (collectively, the "PwC Entities"), and Friehling & Horowitz. Plaintiff alleges the following based upon the investigation of plaintiff's counsel. Plaintiff believes that substantial additional evidentiary support exists for the allegations set forth herein and will be obtained after a reasonable opportunity for formal discovery.

SUMMARY OF THE ACTION

1. This matter involves a massive and unprecedented Ponzi scheme. Over the past several years, Madoff and Bernard L. Madoff Investment Securities LLC ("BMIS") amassed billions of dollars in private investments. On December 11, 2008, Madoff was arrested by federal authorities after confessing to his children that he was operating a $50 billion Ponzi scheme, in which Madoff used the investments of new clients to pay for fictitious "returns" to

other clients. Madoff and BMIS were charged with securities fraud by the SEC. They both were also criminally charged with securities fraud by the U.S. Attorney's Office in the Southern District of New York.

2. On December 15, 2008, the Securities Investor Protection Corporation announced that it was liquidating BMIS under the Securities Investor Protection Act. That same day, the United Stated District Court for the Southern District of New York issued an Order that appointed Irving H. Picard as trustee for the liquidation and stayed all actions against BMIS. BMIS is not a defendant in this action as a result of the December 15, 2008 Order.

3. After Madoff was arrested, numerous investment funds disclosed that they were little more than feeder funds for Madoff and BMIS. Such funds included the Herald, Primeo, and Thema Funds. They each sought funds directly from investors, and delivered, or fed the investments they received to Madoff. Medici controlled the Herald, Primeo, and Thema Funds, and caused these funds to be fed to Madoff.

4. Medici, along with Kohn, Scheithauer, Bank Austria, Unicredit, and Pioneer (collectively, the "Fund Managers") each represented to investors that they would use their respective investors funds for investing in the securities market, and that the investors would share the profits from such investments. The Fund Managers promised steady returns, sometimes in excess of 10% of the investment profits.

5. The Fund Managers did not inform their investors that they were acting as feeder funds for Madoff. Instead, Madoff forbade the Fund Managers from naming him as the actual manager in their performance summaries or marketing literature.

6. The Fund Managers also represented and reported that existing investors were making profits on their investments, thereby encouraging further investments from new and existing investors.

7. In truth, plaintiff and other members of the proposed Class were not sharing in true returns on their investments in the securities market. Instead, Madoff and BMIS systematically stole investor funds for their personal use and for making payments to other investors in order to create the false appearance of safe, steady, high returns on investments.

8. Ernst & Young S.A. was at all relevant times the auditor for both the Herald and Primeo Funds. Defendants' representations that Ernst & Young S.A. audited the Herald and Primeo Funds pursuant to applicable professional standards created a materially false and misleading impression that the stated values of Herald and Primo Funds were legitimate and their results were generated from lawful investment activities. E&Y, however, ignored many red flags which, if properly investigated, would have revealed that the stated values of those funds were not legitimate, nor were those funds' operating results generated from lawful activities.

9. PricewaterhouseCoopers, Chartered Accountants, was at all relevant times the auditor of Thema Fund. Defendants' representations that PricewaterhouseCoopers, Chartered Accountants audited Thema Fund pursuant to applicable professional standards created a materially false and misleading impression that the stated values of the Thema Fund were legitimate and its operating results were generated from lawful investment activities. PricewaterhouseCoopers, Chartered Accountants, however, ignored the many red flags which, if properly investigated, would have revealed that the stated values of the Thema Fund were not legitimate, nor were Thema Fund's operating results generated from lawful activities.

10. The Herald, Primeo, and Thema Funds, along with the Fund Managers, ignored many red flags that obligated them, as investment professionals, to conduct further and proper due diligence and/or alter their investment decisions. These red flags included, among others:

a. the lack of transparency into BMIS, including Madoff's refusal to disclose his investment strategy;

b. BMIS' returns were abnormally smooth with very little volatility, including only five months of negative returns in the past 12 years;

c. the inability of other funds using a "split-strike conversion" strategy (which Madoff purportedly used) to generated returns even remotely comparable to those generated by Madoff;

d. Madoff acted as his own prime broker, while most hedge funds use large well established banks such as Goldman Sachs and Morgan Stanley as their prime brokers;

e. unlike most hedge funds, which charge investment management fees based on the performance of the fund, BMIS only generated revenue through transaction-based commission fees;

f. in 1999, one of Madoff's competitors, Harry Markopolous, sent a letter to the SEC claiming that "Madoff Securities is the world's largest Ponzi Scheme";

g. BMIS' auditor, Freihling & Horowitz, consisted of one office in Rockland County, New York, with three employees, one of whom was 78 years old and lived in Florida, and one of whom was a secretary;

h. regulatory filings of the feeder funds showed very small positions in equities, which the feeder funds explained was due to Madoff's strategy of converting all the assets to cash equivalents at the end of every quarter, but there was no record of the estimated $13 billion in assets being moved all at one; and

i. BMIS' comptroller was based in Bermuda, while most mainstream hedge funds have in-house comptrollers.

11. Defendants' representations regarding their oversight, thorough manager research, careful due diligence, risk allocation, and portfolio management were false and misleading, because defendants either conducted no due diligence, or their due diligence was so reckless that they missed these and other obvious warning signs.

12. Had defendants conducted proper due diligence investigations, Madoff and BMIS' improper conduct would have been revealed, and plaintiff and the other members of the Class would not have invested in the Herald, Primeo, and Thema Funds.

13. As a result of defendants' wrongful conduct, including the failure to conduct due diligence into the legitimacy of BMIS, the Herald, Primeo, and Thema Fund's investments in BMIS have been wiped out, thereby damaging plaintiff and the other members of the Class.

14. Plaintiff seeks to recover damages caused to the Class by defendants' violations of Section 10(b) and 20(a) of the Securities Exchange Act of 1934.

PARTIES

15. Plaintiff Horst Leonhardt is resident of Austria. Plaintiff invested in the Primeo Select Fund. Plaintiff's investment appears to have been taken by defendants and used as part of the Ponzi scheme described herein. Plaintiff thereby has been damaged.

16. Defendant Medici is based in Vienna, Austria with offices located in New York, Milan, Gibraltar and Zurich. Medici was incorporated in Austria on March 9, 1994 and was

granted a full banking licence by the Austrian Financial Authority on December 3, 2003. Defendant Kohn at all relevant times controlled 75 percent of Medici. Bank Austria, which is owned by Defendant UniCredit, at all relevant times held the rest. Medici, at all relevant times, owned and marketed the Herald funds, which were feeder funds for Madoff. It was also, at all relevant times, the manager of the Thema Fund, which under Medici also became a feeder fund for Madoff. Through Unicredit's subsidiary Pioneer, at all relevant times Medici controlled the Primeo Funds and caused them to become feeder funds for Madoff.

17. Defendant Madoff is a resident of New York, New York. He is a former chairman of the Board of Directors of the Nasdaq stock market. He controlled investment adviser services and finances at BMIS, and is the sole owner of BMIS, a company which he appears to have founded in the 1960s.

18. Unicredit at all relevant times was a European bank holding company which owned 25% of Medici through its subsidiary Austria Bank. It also provided Medici with access to its subsidiary Pioneer's Primeo Funds. Unicredit acquired Pioneer in 2000 and grew assets to $72 billion as of the end of 2007. Pioneer's Dublin-based Alternative Investments division paid Medici commissions of €835k euros in 2007 for referring investors. Almost all of Pioneer's Primeo Select Fund was invested with Madoff. The fund's assets were reported as $280 million.

19. Defendant Kohn is the founder of Medici, its chairperson, and a 75% owner. At all relevant times she was a control person of Medici.

20. Defendant Scheithauer was at all relevant times the CEO of Medici. He was also a control person of Medici.

21. Defendant Helmuth E. Frey was, at all relevant times, chairman and director of the Herald Funds. He was also employed by Medici.

22. Defendant Friedrich Pfeffer was, at all relevant times, a director of the Herald Funds.

23. Defendant Franco Mugnai was, at all relevant times, a director of the Herald Funds.

24. Defendant Herald Funds were at all relevant times investment funds created and sold by Medici. Unknown to investors, 100% of the Herald Funds were transferred to Madoff.

25. Defendant Bank Austria at all relevant times owned 25% of Medici. It is a control person of Medici and also a subsidiary of Unicredit.

26. Defendant Primeo Funds were at all relevant times owned by Pioneer. Primeo Funds at all relevant times were controlled by Medici and Unicredit and invested with Madoff.

27. Defendant Pioneer was owned at all relevant times by Unicredit.

28. Defendant Ernst & Young S.A. was at all relevant times auditor for both the Herald and Primeo Funds and the agent of Defendant Ernst & Young Global Limited. Ernst & Young S.A. is located in Munsbach, Luxembourg.

29. Defendant Ernst & Young Global Limited is the principle of Ernst & Young S.A. (collectively, the "E&Y Entities") and located in London, England. The E&Y Entities each had agency and/or *alter ego* relationships with each other. Thus, each is liable for its own acts, as well as the acts of the other E&Y entity.

30. Defendant HSBC Securities Services, S.A. was at all relevant times the custodian for the Herald Funds.

31. Defendant Thema Fund at all relevant times was controlled by Medici and invested with Madoff.

32. Defendant Genevalor, Benbassat & Cie was at all relevant times the promoter of Thema Fund. It is an international organization, headquartered in Geneva, Sitzerland specializing in investment in the United States, European and Japanese equity markets and fixed income securities, foreign exchange management and corporate administration. Genevalor, Benbassat & Cie is a Swiss incorporated limited partnership in which defendants Alberto Benbassat and Stéphane Benbassat are general partners.

33. Defendant Stéphane Benbassat was at all relevant times a director of Thema Fund. He joined Genevalor Benbassat & Cie in 1998 and has been a general partner since October 1999. From 1996 to 1998, Mr Benbassat was an attorney in the Legal and Banking Department of the law firm Lalive & Partners in Geneva. Prior to that Mr Benbassat worked as a foreign lawyer in the Business and Finance Department of the law firm Morgan, Lewis & Bockius LLP in New York.

34. Defendant Alberto Benbassat was at all times a director of Thema Fund. He is a general partner of Genevalor Benbassat & Cie since 1989. He holds a degree in industrial and economic sciences from the University of Geneva, together with an MBA with honors from New York University.

35. Defendant David T. Smith was at all relevant times a director of Thema Fund. He was appointed a Partner of Equus Asset Management Partners, Hamilton, Bermuda in March, 2003. Equus specializes in wealth management services for high net worth individuals and eligible investors.

36. Defendant Gerald J. P. Brady was at all relevant times a director of Thema Fund. He was Country Head of Bank of Bermuda in Ireland, from commencement of operations in 1995 until his departure in May, 2004, following the acquisition of the Bank by HSBC. Mr. Brady joined Bank of Bermuda in Bermuda in 1986 as Global Head of Internal Audit and subsequently served as Country Head of the Bank's Cayman operations from 1990 until his return to Dublin in 1995. Before joining Bank of Bermuda, Mr Brady served in several capacities for KPMG Dublin. He is a Fellow of the Institute of Chartered Accountants in Ireland (FCA), a Chartered Financial Analyst (CFA), a member of the Institute of Directors and holds a first class honors degree in Economics from Queens University in Belfast.

37. Defendant Daniel Morrissey was at all relevant times a director of Thema Fund. He is a partner in the law firm, William Fry, Dublin.

38. Defendant HSBC Securities Services (Ireland) Limited, was at all relevant times the administrator of Thema Fund. It was, subject to the overall supervision of the Directors, responsible for the day to day administration of Thema Fund, including the issue and redemption of Shares, the payment of dividends and the valuation of the Company's assets. As stated in Thema Fund's Prospectus, it was incorporated in Ireland as a limited liability company on November 29, 1991 and it is an indirect wholly owned subsidiary of defendant HSBC Holdings plc, a public limited company incorporated in England.

39. Defendant HSBC Institutional Trust Services (Ireland) Limited was at all relevant times custodian for Thema Fund pursuant to a custodian agreement. It is also a subsidiary of defendant HSBC Holdings plc.

40. Defendant HSBC Holdings plc was at all relevant times a public limited company incorporated in England. As mentioned in Thema Fund's Prospectus, as of June 30, 2006, HSBC Holdings plc had consolidated gross assets of approximately US $1,738 billion.

41. Defendants HSBC Holdings plc, HSBC Institutional Trust Services (Ireland) Limited, HSBC Securities Services (Ireland) Limited, and HSBC Securities Services, S.A. (collectively, the "HSBC Entities") each had agency and/or *alter ego* relationships with each other. Thus, each is liable for its own acts, as well as the acts of the other HSBC Entities.

42. PricewaterhouseCoopers, Chartered Accountants, was at all relevant times the auditor of Thema Fund.

43. Defendant PricewaterhouseCoopers International Limited is the principle for PricewaterhouseCoopers, Chartered Accountants. Defendants PricewaterhouseCoopers, Chartered Accountants and PricewaterhouseCoopers International Limited (collectively the "PwC Entities") had agency and/or *alter ego* relationships with each other. Thus, each is liable for its own acts, as well as the acts of the other PwC Entity.

44. Defendant Friehling & Horowitz was auditor of BMIS and during the relevant time maintained an offices in the State of New York.

45. Each defendant had a duty to the putative Class members to use and manage their investment funds with due care, and/or to disseminate accurate and truthful information with respect to the value of such funds.

46. Each defendant participated in the fraud complained of herein and/or was aware of, or recklessly disregarded numerous red flags showing that their statements concerning the value and/or nature of Plaintiff's and the Class' investment were false or misleading.

FACTUAL ALLEGATIONS

47. Defendants have plundered the investments of plaintiff and the putative Class by using its invested capital in a giant Ponzi-scheme ultimately conducted by or through defendant BMIS.

48. BMIS, at all relevant times, was a broker-dealer and investment adviser registered with the SEC. BMIS formally engages in three operations, which include investment adviser services, market making services, and proprietary trading. According to the BMIS website, BMIS recently ranked among the top 1% of U.S. Securities firms.

49. In January 2008, BMIS filed a Form ADV with the SEC, stating that BMIS had over $17 billion in assets under management. BMIS represented that its trading strategy for adviser accounts involved trading in baskets of equity securities and options thereon.

50. However, during the first week of December 2008, a senior BMIS employee apparently began to question the discrepancy between the purported $17 billion funds under management reported to the SEC and $48 billion to $50 billion in assets purportedly under management at BMIS.

51. On or about December 9, 2008, Madoff informed another senior employee that Madoff wanted to pay early bonuses to BMIS employees.

52. On or about December 10, 2008, the two senior BMIS employees met with Madoff at his apartment in Manhattan. At that time, Madoff informed them that, in substance, his investment advisory business was a fraud. Madoff reported to have stated that he was "finished," that he had "absolutely nothing," that "it's all just one big lie" and that the business was "basically, a giant Ponzi-scheme."

53. In substance, Madoff admitted that he had for years been paying returns to certain investors out of the principal received from other investors. Madoff also stated that BMIS was insolvent, and that it had been for years. Madoff also estimated the losses from this fraud to be approximately $50 billion dollars.

54. Madoff further informed the two senior employees that he planned to surrender to authorities, but first, he still had about $200 million to $300 million dollars left, and he intended to distribute it to certain selected employees, family, and friends.

55. Kohn received kickbacks from Madoff for feeding funds to him. On February 11, 2009, the Massachusetts Securities Division suspended Cohmad Securities Corp. ("Cohmad's") state broker-dealer license. Cohmad was one of the "feeder funds" to Madoff's investment business. It was co-founded by Madoff and Maurice Jay (Sonny) Cohn in February 1985. According to Massachusetts regulators, Cohmad and Bernard L. Madoff Investment Securities exhibited a "deeply intertwined relationship." A complaint filed by Massachusetts regulators indicates that Cohmad paid $87,792 a year for six years, for a total a total of $526,000, to defendant Kohn, all the while Kohn was not associated with Cohmad or employed by the firm.

56. In addition, defendants materially misled putative Class members by providing them with false and misleading statements about their investment returns and/or concealing the Ponzi-scheme from them. At all relevant times, the alleged misrepresentations and/or concealment of material facts induced the putative Class members to invest their capital with, and to maintain their investment with, defendants. As a result, the investment capital acquired from plaintiff and the other putative Class members is reported to be lost.

57. All defendants knew that their representations about their investment activities were false and misleading, and knew that their concealment of the true nature and status of the investments would materially mislead putative Class members. Defendants also knowingly and substantially participated or acquiesced in the unlawful and fraudulent manipulation of investment capital placed with them for investment in the securities market.

58. During the Class Period, Madoff operated a massive Ponzi scheme, in which he used the principal investments of his investors, including the Herald, Primeo, and Thema Funds, to pay the fictitious "returns" of other investors. According to a December 19, 2008 *Bloomberg* article, U.S. government regulators investigating Madoff found evidence that the scheme began at least as early as the 1970s.

59. It was recently discovered that Madoff had not purchased a single security in 13 years. Irving Picard, court appointed trustee for BMIS said Friday, February 20, 2009 during a meeting with investors at a lower Manhattan museum that "There is no evidence to indicate securities were purchased for customer accounts." In so doing, Picard confirmed the massive ponzi scheme Madoff confessed to the feds at the time of his December 11, 2008 arrest.

60. For years since the inceptions of Madoff's scheme, there have been myriad warnings meaningful to investment professionals that Madoff and/or BMIS were perpetrating a fraud on investors. Some the of the red flags are discussed in the paragraphs that follow.

61. In 1992, the SEC filed a lawsuit against accountants Frank Avellino and Michael Bienes, who sold $441 million in unregistered securities to 3,200 people beginning in 1962, promising them returns fo 13.5 to 20 percent, and invested the money entirely with Madoff. As a

result of the SEC investigation, Avellino and Bienes agreed to shut down their business and reimbursed their clients. No action was taken against Madoff.

62. In May 1999, Harry Markopolos, a derivatives expert with experience managing the "split-strike conversion" strategy used by Madoff, sent a letter to the SEC describing how Madoff could not have generated the returns he reported using the split-strike conversion strategy.

63. In May 2001, the article "Madoff Tops Charts; Skeptics Ask How" appeared in *MAR/Hedge*, a semi-monthly newsletter reporting on the hedge fund industry. In the article, author Michael Ocrant wrote:

a. "Madoff has reported positive returns for the last 11-plus years in assets managed on behalf of the feed fund known as Fairfield Sentry . . . .[The] other [feeder] funds have demonstrated equally positive track records using the same strategy for much of that period."

b. "Those who question the consistency of the returns . . . include current and former traders, other money managers, consultants, quantitative analysts and fund-of-funds executive, many of whom are familiar with the so-called split-strike conversion strategy used to manage the assets."

c. These individuals "noted that others who use or have used the strategy . . . are known to have had nowhere near the same degree of success."

d. "The best known entity using a similar strategy, a publicly traded mutual fund dating from 1978 called Gateway, has experienced far greater volatility and lower returns during the same period."

e. "The strategy and trading, [Madoff] says, are done by signals from a proprietary 'black box' system that allows for human intervention to take into account the 'gut feel of the firm's professionals."

f. "As for specifics of how the firm manages risk and limits the market impact of moving so much capital in and out of positions, Madoff responds by saying, 'I'm not interested in educating the world on our strategy, and I won't get into the nuances of how we manage risk.'"

g. "[Madoff] won't reveal how much capital is required to be deployed at any given time to maintain the strategy's return characteristics, but does say that 'the goal is to be 100% vested.'"

h. "Madoff, who believes that he deserves 'some credibility as a trader for 40 years,' says: 'The strategy is the strategy and the returns are the returns.' He suggests that those who believe there is something more to it and are seeking an answer beyond that are wasting their time."

64. On May 27, 2001, *Barron's* published an article entitled "Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum." In that article, author Erin E. Arvedlund wrote:

a. The private accounts managed by Madoff "have produced compound average annual returns of 15% for more than a decade. Remarkably, some of the larger, billion-dollar Madoff-run funds have never had a down year. When *Barron's* asked Madoff how he accomplishes this, he says, 'It's a proprietary strategy. I can't go into it in great deal.' Nor were the firms that market Madoff's fund forthcoming."

b. "Still, some on Wall Street remain skeptical about how Madoff achieves such stunning double-digit returns using options alone. Three options strategists for major investment banks told *Barron's* they couldn't understand how Madoff churns out such numbers using this strategy."

c. "Adding further mystery to Madoff's motives is the fact that he charges no fees for his money management services."

d. "The lessons of Long-Term Capital Management's collapse are that investors need, or should want, transparency in their money manager's investment strategy. But Madoff's investors rave about his performance - even though they don't understand how he does it. 'Even knowledgeable people can't really tell you what he's doing,' one very satisfied investor told *Barron's*. 'People who have all the trade confirms and statements still can't define it very well.' . . . This investor declined to be quoted by name. Why? Because Madoff politely requests that his investors not reveal that he runs their money."

e. "What Madoff told us was, 'If you invest with me, you must never tell anyone that you're invested with me. It's no one's business what goes on here,' says an investment manager who took over a pool of assets that included an investment in a Madoff fund. 'When he couldn't explain to my satisfaction how they were up or down in a particular month,' he added, 'I pulled the money out.'"

65. On November 7, 2005, Markopolous submitted another letter to the SEC, titled "The World's Largest Hedge Fund is a Fraud," in which he set forth in detail, over 17 single-spaced pages and a two-page attachment, how Madoff's returns could not be real. Markopolous

identified 29 red flags that were signs of highly suspicious activity in BMIS, including, among others:

a. "*why would B*[ernie] *M*[adoff] *settle for charging only undisclosed commissions when he could earn standard hedge fund fees of 1% management fee = 20% of the profits?*" (Emphasis in original.)

b. "The third party hedge funds and fund of funds that market this hedge fund strategy that invests in BM don't name and aren't allowed to name Bernie Madoff as the actual manager in their performance summaries or marketing literature . . . . ***Why the need for such secrecy?*** *If I was the world's largest hedge fund and had great returns, I'd want all the publicity I could garner and would want to appear as the world's largest hedge fund in all the industry rankings.*" (Emphasis in original.)

c. "*It is mathematically impossible for a strategy using index call options and index put options to have such a low correlation to the market where its returns are supposedly being generated from. This makes no sense! . . . However, BM's performance numbers show only 7 extremely small* [monthly] *losses during 14½ years and these numbers are too good to be true. The largest one month loss was only -55 basis points (-0.55%) or just over one-half of one percent! And BM never had more than a one month losing streak!*" (Emphasis in original.)

d. "*Madoff does not allow outside performance audits.*" (Emphasis in original.)

e. "*Madoff's returns are not consistent with the one publicly traded option income fund with a history as long as Madoff's.*" (Emphasis in original.)

f. *"Why is Bernie Madoff borrowing money at an average rate of 16.00% per annum and allowing these third party hedge fund, fund of fund to pocket their 1% and 20% fees bases* [sic] *upon Bernie Madoff's hard work and brains? Does this make any sense at all? Typically FOF's* [fund of funds] *charge only 1% and 10%, yet BM allows them the extra 10%. Why? Any why do these third parties fail to mention Bernie Madoff in their marketing literature? After all he's the manager, don't investors have a right to know who's managing their money?"* (Emphasis in original.)

g. *"BM goes to 100% cash for every December 31st year-end according to one FOF invested with BM. This allows for 'cleaner financial statements' according to this source. Any unusual transfers or activity near a quarter-end or year-end is a red flag for fraud."* (Emphasis in original.)

66. In 2007, hedge fund investment adviser Aksia LLC urged its clients not to invest in Madoff feeder funds after performing due diligence on Madoff and discovered several red flags, including:

a. Madoff's comptroller was based in Bermuda, whereas most mainstream hedge funds have their own in-house comptrollers;

b. Madoff's auditor, Friehling & Horowitz, operated out of a 13 x 18 foot location in New City, New York, and included one partner in his late 70s who lives in Florida, a secretary, and one active accountant, whereas most hedge funds are audited by a Big 3 accounting firm. Friehling & Horowitz is now under investigation by the district attorney of Rockland County; and

c. Aksia discovered the 2005 letter from Markopolous to the SEC described above.

67. Aksia prepared its client advisory after, among other things, reviewing the stock holdings of BMIS that were reported in quarterly statements filed with the SEC. Aksia concluded that the holdings appeared to be too small to support the size of the assets Madoff claimed to be managing. The reason for this was revealed on December 15, 2008, when investigators working at Madoff's New York offices concluded that Madoff had been operating a secret, unregistered investment vehicle from his office.

68. In addition to the foregoing, investment advisors, who thoroughly looked into Madoff's trading, were unable to reconcile investors' account statements with the reported returns. In a December 13, 2008 article in *The New York Times*, Robert Rosenkranz, principal of hedge fund adviser Acorn Partners, was quoted as saying , "Our due diligence, which got into both account statements of [Madoff's] customers and the audited statements themselves were just pieces of paper that were generated in connection with some sort of fraudulent activity."

69. Madoff, instead of using an outside prime broker as nearly all hedge funds do, was his own prime broker and custodian of all the assets he managed. A December 13, 2008 article in *The Wall Street Journal* quoted Chris Addy, founder of Castle Hall Alternatives, which vets hedge funds for clients, as follows: "There was no independent custodian involved who could prove the existence of assets . . . There's clear and blatant conflict of interest with a manager using a related-party broker-dealer. Madoff is enormously unusual in that this is not a structure I've seen."

70. Throughout the Class Period, the Herald, Primeo, and Thema Fund each would disseminate fund performance updates. As late as December 2008, the performance report showed consistent positive net returns for the first 11 months of 2008, even during the months of September, October, and November, when the stock market has been in a tailspin. In fact, the performance report showed positive year-to-date net returns for the years 1998 through the first eleven months of 2008. These returns were not real, as they were the result of Madoff's Ponzi scheme and, therefore, were materially false and misleading.

71. Had Herald, Primeo, and Thema Fund, or the Fund Managers conducted due diligence into Madoff and BMIS, they would have discovered at least some the dozens of red flags identified herein. At the very least, like Aksia, defendants should have been able to discover the existence of Markopolous' letter, which would put them on notice of the red flags identified therein.

JURISDICTION AND VENUE

72. Jurisdiction is conferred by Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act")[15 U.S.C. § 78aa] and 28 U.S.C. §1331.

73. Venue is proper in this District pursuant to Section 27 of the Exchange Act, 15 U.S.C. §78aa and 28 U.S.C. §1391(b) and (c). Venue is proper in this District because many of the acts and practices complained of herein occurred in substantial part in this District.

74. In connection with the acts, transactions and conduct alleged herein, defendants used the means and instrumentalities of interstate commerce, including the United States mails, interstate telephone communications and the facilities of the national securities exchanges and markets.

CLASS ACTION ALLEGATIONS

75. This is a class action on behalf of those who purchased investments in funds that were controlled or managed by Medici and in turn provided to Madoff between January 12, 2004 and January 12, 2009, inclusive, (the "Class Period"). Excluded are defendants, directors and officers of the various defendants, and their families and affiliates (the "Class"). Class members are so numerous that joinder of them is impracticable

76. Common questions of law and fact predominate and include whether defendants (i) violated the 1934 Act; (ii) omitted and/or misrepresented material facts; (iii) and knew or recklessly disregarded that their statements were false.

77. Plaintiff's claims are typical of those of the Class. Prosecution of individual actions would create a risk of inconsistent adjudications. Plaintiff will adequately protect the interests of the Class. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I

Violation of § 10(b) of the 1934 Act Against all Defendants

78. Plaintiff repeats the allegations set forth above.

79. Defendants violated § 10(b) and Rule 10b-5 by:

a. Employing devices, schemes, and artifices to defraud;

b. Making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

c. Engaging in acts, practices, and a course of business that operated as a fraud or deceit upon the Class in connection with their purchase or acquisition of Medici controlled investment funds.

80. Class members were damaged. In reliance on the integrity of the market, they paid artificially inflated prices for the Herald, Primeo, and Thema Fund that were provided to Madoff during the Class Period.

81. The undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, regulations of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed.

82. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Medici controlled funds that were provided to Madoff. Plaintiff and the Class would not have purchased these investments at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

COUNT II

Violations of Section 20(a) of the 1934 Act Against Certain Defendants

83. Plaintiff repeats the allegations set forth above.

84. Medici was a control person within the meaning of § 20(a) of the 1934 Act as alleged herein for the Herald, Primeo, and Thema Fund. By virtue of its position in these funds, participation in and/or awareness of their operations and/or intimate knowledge of their internal

financial condition and business practices, Medici had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Herald, Primeo, and Thema Funds, including the content and dissemination of the various statements which plaintiff contends are false and misleading.

85. Bank Austria was a control person of Medici. By virtue of its ownership interest in Medici, participation in and/or awareness of its operations and/or intimate knowledge of its internal financial condition and business practices, Bank Austria had the power to influence and control and did influence and control, directly or indirectly, the decision-making of Medici.

86. Kohn and Scheithauer were also control persons of Medici. Due to their high corporate positions, participation in and/or awareness of Medici's operations and/or intimate knowledge of its internal financial condition and business practices, Kohn and Scheithauer had the power to influence and control and did influence and control, directly or indirectly, the decision-making of Medici.

87. As set forth above, the defendants violated §10(b) of the 1934 Act and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, these defendants are liable pursuant to §20(a) of the 1934 Act.

88. As a direct and proximate result of the wrongful conduct of defendants, plaintiff and other members of the Class suffered damages in connection with their purchase of the Herald, Primeo, and Thema Funds.

PRAYER

WHEREFORE, plaintiff prays for judgment as follows: declaring this action to be a proper class action; awarding damages, including interest; awarding expenses, costs and attorneys' fees; and such equitable/injunctive or other relief as the Court may deem proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: March 5, 2009

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