## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

REPEX VENTURES S.A., on Behalf of Itself 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, ERNST & YOUNG S.A., and HSBC SECURITIES SERVICES, S.A.,

Defendants.

ADDITIONAL CAPTION ON NEXT PAGE

**ECF CASE** 

Civil Action No.: 1:09-cv-00289-RMB

NOTICE OF MOTION OF PETER BRANDHOFER FOR CONSOLIDATION AND FOR APPOINTMENT OF LEAD PLAINTIFF AND LEAD COUNSEL

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 **PRIMEO SELECT** FUND. **PRIMEO** S.A., EXECUTIVE FUND, PIONEER ALTERNATIVE INVESTMENTS, **INTERNATIONAL** THEMA FUND PLC, HELMUTH E. FREY, FRIEDRICH PFEFFER, FRANCO MUGNAI, **ALBERTO** BENBASSAT, **STEPHANE** BENBASSAT, GENEVALOR, BENBASSAT & CIE, DAVID T. **GERALD** J.P. BRADY, MORRISEY, ERNST & YOUNG S.A., ERNST & YOUNG GLOBAL LIMITED, HSBC HOLDINGS PLC, HSBC INSTITUTIONAL TRUST SERVICES (IRELAND) LIMITED, **HSBC SECURITIES SERVICES** (IRELAND) LIMITED, **HSBC SECURITES** SERVICES, S.A., PRICEWATERHOUSECOOPERS, **CHARTERED** ACCOUNTANTS, **PRICEWATERHOUSECOOPERS** INTERNATIONAL LIMITED and FRIEHLING & HOROWITZ,

Defendants.

#### **ECF CASE**

Civil Action No.: 1:09-cv-02032-UA

**PLEASE TAKE NOTICE** that, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), Peter Brandhofer ("Brandhofer") will move this Court, at a time and place to be determined, for an Order:

- (1) consolidating the above-captioned actions (the "Actions") filed on behalf of "all persons and entities who invested in the Herald USA Fund, Herald Luxemburg Fund, Primeo Select Funds and the Thema International Fund...between January 12, 2002 through and including January 12, 2008" (the "Class");
- (2) appointing Brandhofer as Lead Plaintiff of the Actions, on behalf of the Class, pursuant to Section 21(D)(a)(3)(B) of the PSLRA; and
- (3) approving Brandhofer's selection of Zwerling, Schachter & Zwerling, LLP as Lead Counsel.

This motion is supported by the accompanying Memorandum of Law in Support of Peter Brandhofer's Motion for Consolidation and for Appointment of Lead Plaintiff and Lead Counsel; the Affidavit of Robert S. Schachter in Support of Peter Brandhofer's Motion for Consolidation and for Appointment of Lead Plaintiff and Lead Counsel, and the exhibits attached thereto; the [Proposed] Order for Consolidation and for Appointment of Lead Plaintiff and Lead Counsel; all of the prior pleadings and proceedings had herein; and such other written and/or oral argument as may be presented to the Court.

Dated: New York, New York March 13, 2009

Respectfully submitted,

# ZWERLING, SCHACHTER & ZWERLING, LLP

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### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

REPEX VENTURES S.A., on Behalf of Itself 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, ERNST & YOUNG S.A., and HSBC SECURITIES SERVICES, S.A.,

Defendants.

ADDITIONAL CAPTION ON NEXT PAGE

**ECF CASE** 

Civil Action No.: 1:09-cv-00289-RMB

[PROPOSED] ORDER CONSOLIDATING THE ACTIONS,
APPOINTING LEAD PLAINTIFF AND
APPROVING LEAD PLAINTIFF'S CHOICE OF LEAD COUNSEL

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, **STEPHANE** BENBASSAT, GENEVALOR, BENBASSAT & CIE, DAVID T. **GERALD** J.P. BRADY, SMITH, MORRISEY, ERNST & YOUNG S.A., ERNST & YOUNG GLOBAL LIMITED, HSBC HOLDINGS PLC, HSBC INSTITUTIONAL TRUST SERVICES LIMITED, **HSBC** (IRELAND) **SECURITIES SERVICES** (IRELAND) LIMITED, **HSBC SECURITES** SERVICES, S.A., PRICEWATERHOUSECOOPERS, CHARTERED ACCOUNTANTS, **PRICEWATERHOUSECOOPERS** INTERNATIONAL LIMITED and FRIEHLING & HOROWITZ,

Defendants.

#### **ECF CASE**

Civil Action No.: 1:09-cv-02032-UA

The Court, having considered the papers filed in support of the motion by Movant Peter Brandhofer ("Brandhofer") to consolidate these actions, appoint Brandhofer as Lead Plaintiff pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), and appoint Zwerling, Schachter & Zwerling, LLP ("Zwerling, Schachter") as Lead Counsel, and, for good cause shown, hereby enters the following Order:

1. The following actions (the "Actions"), which allege similar factual and legal issues, are consolidated, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, for all purposes, including discovery, pretrial proceedings, trial and appeal:

Case NameCase No.Repex Ventures S.A. v. Madoff, et al.No. 1:09-CV-00289-RMBLeonhardt v. Madoff, et al.No. 1:09-CV-02032-UA

- 2. A Master Docket and a Master File are hereby established for the Actions.
- 3. The Actions shall be identified as *In re Bank Medici S.A. Litigation*, Civil Action No. 1:09-CV-00289-RMB, and the files of the Actions shall be maintained in one file under Master File No. 1:09-CV-00289-RMB. Any other actions now pending or later filed in or transferred into this district that arise out of the same facts and claims alleged in the Actions shall be consolidated for all purposes, if and when they are brought to the Court's attention.
- 4. Every pleading filed in these Actions, or in any separate action included herein, shall bear the following caption:

IN RE BANK MEDICI S.A. LITIGATION : 1:09-CV-00289-RMB

AND RELATED CASES

THIS DOCUMENT RELATES TO:

5. When a pleading is intended to be applicable to all actions governed by this Order, the words "All Actions" shall appear immediately after the words "This Document Relates to:" in the caption set out above. All pleadings that are applicable to "All Actions" shall be filed in the Master File and noted on the Master Docket. No further papers need be filed or docket entries made.

- 6. When a pleading is intended to be applicable only to some, but not all, of the Actions, the Court's docket number for each individual action to which the pleading is intended to be applicable and the last name of the first-named plaintiff in the individual action shall appear immediately after the words "This Document Relates to:" in the caption described above.
- 7. When a pleading is filed and the caption shows that it is to be applicable to less than all of the Actions, the clerk shall file the pleading in the Master File, and shall note the filing in both the Master Docket and the docket of each applicable action.
- 8. When a case related to the subject matter of the Actions is filed in this Court or transferred to this Court from another court:
  - (a) The Clerk of this Court shall place a copy of this Order in the separate file for such action, after notification to Lead Counsel;
  - (b) Lead Counsel shall mail to the attorneys for the plaintiffs in the newly-filed or transferred case a copy of this Order and direct that this Order be served upon or mailed to any new defendants in the newly filed or transferred case; and

- (c) The Clerk of this Court shall make an appropriate entry on the Master Docket. This Court requests the assistance of counsel in calling the attention of the Clerk of this Court to the filing or transfer of any case which may properly be consolidated as part of *In re Bank Medici, S.A. Litigation*.
- 9. Brandhofer has also moved this Court to appoint him as Lead Plaintiff in the Actions and approve his choice of the law firm of Zwerling, Schachter to be Lead Counsel.
- This Court, having considered the provisions of the PSLRA, hereby determines that Brandhofer is the "most adequate plaintiff" and that he satisfies the requirements of the PSLRA. The Court hereby appoints Brandhofer to be Lead Plaintiff to represent the interests of the class.
- 11. The Lead Plaintiff, pursuant to the PSLRA, has selected and retained the law firm of Zwerling, Schachter to be Lead Counsel. This Court approves that selection, and hereby appoints Zwerling, Schachter as Lead Counsel.
- 12. Lead Counsel shall have the following responsibilities and duties, to be carried out either personally or through counsel whom Lead Counsel shall designate:
  - (a) To coordinate and direct the briefing and argument of any and all motions;
  - (b) To coordinate and direct the conduct of any and all discovery proceedings;
  - (c) To coordinate and direct the examination of any and all witnesses in depositions;
  - (d) To coordinate and direct the selection of counsel to act as a spokesperson at all pre-trial conferences;
  - (e) To call meetings of the plaintiffs' counsel as they deem necessary and appropriate from time to time;
  - (f) To coordinate and direct all settlement negotiations with counsel for the defendants;
  - (g) To coordinate and direct the preparation for trial and the trial of this matter and to delegate work responsibilities to selected counsel as may be required;

(h) To coordinate and direct the preparation and filing of all pleadings; and

(i) To coordinate and direct any other matters concerning the prosecution or resolution of this action.

13. No motion, request for discovery, or other pretrial proceedings shall be initiated

or filed by any plaintiff without the approval of Lead Counsel, so as to prevent duplicative

pleadings or discovery by plaintiffs. No settlement negotiations shall be conducted without the

approval of Lead Counsel.

14. Lead Counsel shall be the contact between the plaintiffs' counsel and defendants'

counsel, as well as the spokesperson for plaintiffs' counsel.

15. Defendants shall effect service of papers on plaintiffs by serving a copy of same

on Lead Counsel through the Court's electronic filing system. Lead Plaintiff shall effect service

of papers on defendants by serving a copy of same on defendants' counsel through the Court's

electronic filing system.

DATED:, 2009	
	IT IS SO ORDERED
	United States District Judge

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

REPEX VENTURES S.A., on Behalf of Itself 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, ERNST & YOUNG S.A., and HSBC SECURITIES SERVICES, S.A.,

Defendants.

ADDITIONAL CAPTION ON NEXT PAGE

**ECF CASE** 

Civil Action No.: 1:09-cv-00289-RMB

**CERTIFICATE OF SERVICE** 

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 **PRIMEO SELECT** FUND. **PRIMEO** S.A., EXECUTIVE FUND, PIONEER ALTERNATIVE INVESTMENTS, **INTERNATIONAL** THEMA FUND PLC, HELMUTH E. FREY, FRIEDRICH PFEFFER, FRANCO MUGNAI, **ALBERTO** BENBASSAT, **STEPHANE** BENBASSAT, GENEVALOR, BENBASSAT & CIE, DAVID T. BRADY, **GERALD** J.P. MORRISEY, ERNST & YOUNG S.A., ERNST & YOUNG GLOBAL LIMITED, HSBC HOLDINGS PLC, HSBC INSTITUTIONAL TRUST SERVICES (IRELAND) LIMITED, **HSBC SECURITIES SERVICES** (IRELAND) LIMITED, **HSBC SECURITES** SERVICES, S.A., PRICEWATERHOUSECOOPERS, **CHARTERED** ACCOUNTANTS, **PRICEWATERHOUSECOOPERS** INTERNATIONAL LIMITED and FRIEHLING & HOROWITZ,

Defendants.

#### **ECF CASE**

Civil Action No.: 1:09-cv-02032-UA

I hereby certify that on March 13, 2009, I electronically filed the foregoing:

- NOTICE OF MOTION OF PETER BRANDHOFER FOR CONSOLIDATION AND FOR APPOINTMENT OF LEAD PLAINTIFF AND LEAD COUNSEL
- MEMORANDUM OF LAW IN SUPPORT OF PETER BRANDHOFER'S MOTION FOR CONSOLIDATION AND FOR APPOINTMENT OF LEAD PLAINTIFF AND LEAD COUNSEL
- AFFIDAVIT OF ROBERT S. SCHACHTER IN SUPPORT OF PETER BRANDHOFER'S MOTION FOR CONSOLIDATION AND FOR APPOINTMENT OF LEAD PLAINTIFF AND LEAD COUNSEL
- [PROPOSED] ORDER CONSOLIDATING THE ACTIONS, APPOINTING LEAD PLAINTIFF AND APPROVING LEAD PLAINTIFF'S CHOICE OF LEAD COUNSEL

with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jules Brody Stull, Stull & Brody 6 East 45<sup>th</sup> Street New York, NY 10017 Timothy J. Burke Stull, Stull & Brody 10940 Wilshire Boulevard Suite 2300 Los Angeles, CA 90024

and I hereby certify that I have mailed by United States Postal Service the documents to the following non-CM/ECF participant:

Patrick Slyne Stull, Stull & Brody 6 East 45<sup>th</sup> Street New York, NY 10017 Dated: New York, New York March 13, 2009

Respectfully submitted,

# ZWERLING, SCHACHTER & ZWERLING, LLP

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