

**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.

**ECF CASE**

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

ADDITIONAL CAPTION ON NEXT PAGE

**AFFIDAVIT OF ROBERT S. SCHACHTER  
IN SUPPORT OF PETER BRANDHOFER'S MOTION 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  
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.  
SMITH, GERALD J.P. BRADY, DANIEL  
MORRISEY, 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.

**ECF CASE**

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

STATE OF NEW YORK            )  
  ) ss  
COUNTY OF NEW YORK        )

Robert S. Schachter, being duly sworn, deposes and says:

1. I am a member of the law firm of Zwerling, Schachter & Zwerling, LLP (“Zwerling, Schachter”), counsel for Peter Brandhofer (“Movant”). I am fully familiar with all of the facts and circumstances herein.

2. This affidavit is submitted in support of the Motion of Peter Brandhofer for Consolidation and for Appointment of Lead Plaintiff and Lead Counsel, made pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995, in the above-captioned actions (the “*Repex* Action” and the “*Leonhardt* Action”).

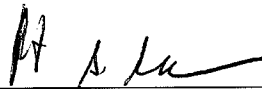
3. Attached as Exhibit “A” is the first notice, dated January 12, 2009, of the filing of a class action relating to investments “in the Herald USA Fund, Herald Luxemburg Fund, Primeo Select Funds and the Thema International Fund...between January 12, 2002 through and including January 12, 2008.”

4. Attached as Exhibit “B” is a copy of the amended complaint in the *Repex* Action, filed on January 26, 2009.

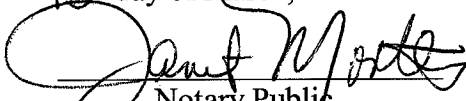
5. Attached as Exhibit “C” is a copy of the complaint in the *Leonhardt* Action, filed on March 5, 2009.

6. Attached as Exhibit “D” is a certification by Movant, with a chart annexed thereto, listing the transactions and Movants’ total estimated losses in the securities that are the subject of the *Repex* Action and the *Leonhardt* Action.

7. Attached as Exhibit "E" is a firm resume of Zwerling, Schachter, Movant's choice for Lead Counsel.

  
\_\_\_\_\_  
Robert S. Schachter

Sworn to before me this  
13 day of March, 2009

  
\_\_\_\_\_  
Notary Public

JANET MONTES  
NOTARY PUBLIC, State of New York  
No. 01MO5083883  
Qualified in Bronx County  
Commission Expires Aug. 25, 2009

## **EXHIBIT A**

## Business Services Industry

# **Class Action Lawsuit Filed Against the Herald USA Fund, Herald Luxemburg Fund, Primeo Select Funds and the Thema International Fund by Stull, Stull & Brody**

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Business Wire , Jan 12, 2009

- [Email](#)
- [Print](#)

LOS ANGELES -- Stull, Stull & Brody has commenced a Class Action lawsuit in the United States District Court for the Southern District of New York (Case No. 09 CIV 00289) on behalf of a Class, consisting of all persons and entities who invested in the Herald USA Fund, Herald Luxemburg Fund, Primeo Select Funds and the Thema International Fund ("collectively, the "Funds") between January 12, 2002 through and including January 12, 2008 (the "Class Period"). The Complaint asserts that, during the Class Period, unbeknownst to investors, defendant Medici Bank, along with defendants Sonja Kohn, Peter Scheithauer, Bank Austria Creditanstalt, Unicredit S.A., Pioneer Alternative Investments, Ernst & Young LLP, and HSBC Holdings plc, caused the Funds to concentrate almost 100% of their investment capital with entities that participated in the massive, fraudulent scheme perpetrated by defendants Bernard L. Madoff and Bernard L. Madoff Investment Securities.

If you invested in either the Herald USA Fund, Herald Luxemburg Fund, Primeo Select Funds or the Thema International Fund during the Class Period, you have until March 13, 2009 to request the Court appoint you as lead plaintiff. Your ability to share in any recovery is not, however, affected by the decision whether or not to serve as a lead plaintiff. You may retain Stull, Stull & Brody as your counsel to represent you in this action.

The attorneys at Stull, Stull & Brody have over 30 years of experience litigating securities class action cases, and have played lead roles in major cases resulting in the recovery of hundreds of millions of dollars for investors. The reputation and expertise of Stull, Stull & Brody in shareholder and other class litigation has been repeatedly recognized by courts throughout the United States, which have continually appointed the firm to major positions in complex securities multi-district and consolidated litigation. Stull, Stull & Brody maintains offices in New York and Los Angeles.

If you would like to discuss this action or if you have any questions concerning this Notice or your rights as a potential class member or lead plaintiff, you may contact:

Timothy J. Burke, Esq. at Stull, Stull & Brody by e-mail at [Tburke@ssbla.com](mailto:Tburke@ssbla.com), or by calling toll-free 1-888-388-4607, or by fax to 1-310-209-2087, or by writing to Stull, Stull & Brody, 10940 Wilshire Boulevard, Suite 2300, Los Angeles, CA 90024. You can also visit our website at [www.ssbny.com](http://www.ssbny.com).

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- [1](#)
- [2](#)

## **EXHIBIT B**

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

REPEX VENTURES S. A, on Behalf of )  
Itself and All Others Similarly Situated, )

Plaintiff, )

v. )

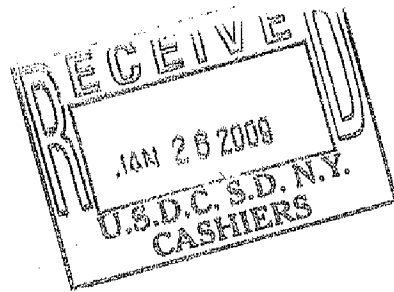
BERNARD L. MADOFF; BANK MEDICI )  
S.A.; SONJA KOHN; PETER )  
SCHEITHAUER; HERALD USA FUND; )  
HERALD LUXEMBURG FUND; BANK )  
AUSTRIA CREDITANSTALT; )  
UNICREDIT S.A.; PRIMEO SELECT )  
FUND; PRIMEO EXECUTIVE FUND; )  
PIONEER ALTERNATIVE )  
INVESTMENTS; THEMA )  
INTERNATIONAL FUND PLC; ERNST & )  
YOUNG S.A., and HSBC SECURITIES )  
SERVICES, S.A., )

Defendants. )

**Civil Action No.: 09-cv-289-RMB**

**AMENDED COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**





**SUMMARY OF THE ACTION**

Plaintiff, Repex Ventures S. A, (“Repex”) by its attorneys, submits this Amended Class Action Complaint (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 “Primeo Funds”), Pioneer Alternative Investments (“Pioneer”), Thema International Fund plc, (“Thema Fund”) Ernst & Young S.A. (“E&Y”) and HSBC Securities Services, S.A. (“HSBC”). Plaintiff alleges the following based upon the investigation of plaintiff’s counsel. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**NATURE AND 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 was granted an order staying all actions against BMIS under the Securities Investor Protection Act of 1970. BMIS is not a defendant in this action as a result of this order.

3. After Madoff was arrested, numerous investment funds disclosed that they were little more than feeder funds for Madoff and BMSI. 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. 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 BMSI

systematically stole investor funds for their personal use and for making payments to other investors in order to create the false appearance of high returns on investments.

8. E&Y were at all relevant times the auditors for both the Herald and Primeo Funds. E&Y audited the Herald and Primeo Funds and falsely represented to Plaintiff and the Class that their investments were secure and gaining value. E&Y ignored the many red flags which would have shown that these funds were not safe and growing, but were instead invested in a Ponzi scheme.

9. The Herald, Primeo, and Thema Funds, along with the Fund Managers, ignored many red flags that should have caused them, as investment professionals, to conduct further 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 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. monthly account statements sent to Madoff's investors did not support the returns they reported;

g. 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";

h. 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;

i. 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 case 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

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

10. 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.

11. 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.

12. 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.

13. 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**

14. Plaintiff Repex is a corporation incorporated under the laws of the British Virgin Islands. Repex had invested in Herald (LUX) U.S. Absolute Return Fund controlled by Medici. 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.

15. Defendant Medici is based in Vienna, Austria with offices located in New York, Milan, Gibraltar and Zurich. Medici was incorporated in Austria on 9 March 1994 and was granted a full banking licence by the Austrian Financial Authority on 3 December 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 Thelma 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.

16. 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.

17. 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 bln 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.

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

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

20. Defendant Herald Funds were at all relevant times were investment funds created and sold by Medici. Unknown to investors, 100% of the Herald Funds were transferred to Madoff. The Herald (LUX) U.S. Absolute Return Fund was started in March of 2008.

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

22. 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.

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

24. E&Y at all relevant times was the auditor for the Primeo and Herald Funds. It is located in Luxembourg.

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

26. Defendant HSBC is located in Lux was at all relevant times the custodian of, among other funds, the Herald (LUX) U.S. Absolute Return Fund.

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

28. Each defendant participated in the Ponzi-scheme complained of herein and/or was aware of, or recklessly disregarded, the misuse and mismanagement of investment fund belonging to plaintiff and the proposed Class, and/or was aware of, or recklessly disregarded, the material misstatements or omissions associated with the Ponzi-scheme alleged herein.

#### **GENERAL ALLEGATIONS**

29. 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.

30. BMIS is 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.

31. 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.

32. However, during the first week of December 2008, a senior BMIS employee apparently understood that the company's investment advisory business had between \$48 billion and \$50 billion in assets under management. On or about December 9, 2008, Madoff informed another senior employee that Madoff wanted to pay early bonuses to BMIS employees.

33. On or about December 10, 2008, the two senior 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."

34. 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.

35. 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.

36. 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.



37. 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.

38. 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.

39. 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 of the red flags are discussed in the paragraphs that follow.

40. 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 of 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 reimburse their clients. No action was taken against Madoff.

41. 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.

42. 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 fir 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.”

43. 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.’”

44. 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.)

45. 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 live 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.

46. 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.

47. 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."

48. 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 vests 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."

49. 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.

50. Had Herald, Primeo, and Thema Funds, 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**

51. 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, 1337.

52. 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.

53. 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**

54. 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



55. 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.

56. 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**

57. Plaintiff repeats the allegations set forth above.

58. 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.

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

60. 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.

61. 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**

62. Plaintiff repeats the allegations set forth above.

63. Medici was a control person within the meaning of § 20(a) of the 1934 Act as alleged herein for the Herald, Primeo, and Thema Funds. 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.

64. 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.

65. 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.

66. 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.

67. 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.

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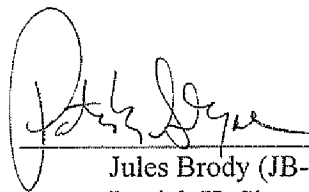
**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: January \_\_, 2009

**STULL, STULL & BRODY**

By:



Jules Brody (JB-9151)  
Patrick K. Slyne (PS-1765)

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**STULL, STULL & BRODY**

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Plaintiff's Counsel

## **EXHIBIT C**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

09 CIV 2032

\_\_\_\_\_  
HORST LEONHARDT, on Behalf of )  
Himself and All Others Similarly Situated, )  
 )  
Plaintiff, )

Civil Action No.

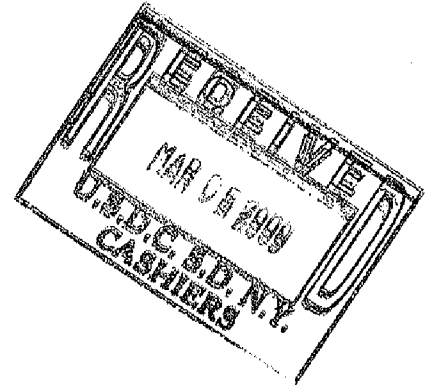
**COMPLAINT FOR VIOLATIONS OF  
THE FEDERAL SECURITIES LAWS**

v. )

**JURY TRIAL DEMANDED**

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. )  
\_\_\_\_\_ )



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 States 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, Switzerland 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**

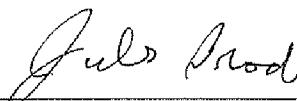
WHEREFORE, plaintiff prays for judgment as follows: declaring this action to be a proper class action; awarding damages, including interest; awarding expenses, costs and attorneys' fees; and such equitable/injunctive or other relief as the Court may deem proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: March 5, 2009

**STULL, STULL & BRODY**



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Patrick Slyne (PS-1765)

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Plaintiff's Counsel

## **EXHIBIT D**

**CERTIFICATION OF PETER BRANDHOFER**

I, Peter Brandhofer, declare that:

1. I am the Chief Executive Officer of PFB Vermögensberatungs GmbH ("PFB"), an Austrian asset management company.
2. As an investor advisor, I purchase and sell securities on behalf of my clients.
3. By way of Assignment Agreements, executed by my clients listed in "Attachment A" (the "Clients") annexed hereto, the Clients have assigned to me "all rights, legal title and interest in Client[s'] claims for damages, demands, or causes of action relating to" their purchase of shares in certain Herald funds.
4. I have reviewed the amended complaint, filed in *Repex Ventures S.A. v. Bernard L. Madoff, et al.*, 1:09-cv-00289-RMB, and I authorized the filing of a lead plaintiff motion.
5. I did not purchase any security that is the subject of this action at the direction of counsel for plaintiff in order to participate in this private action.
6. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.
7. The transactions in the securities that are the subject of this action during the class period are set forth in Attachment A, annexed hereto.
8. During the three years prior to the date of this Certification, I have not sought to serve or served as a representative party for a class filed under the federal securities laws.
9. I will not accept any payment for serving as a representative party on behalf of the class beyond my *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the Court.



I, Peter Brandhofer, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 12, 2009



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**Peter Brandhofer**  
**Chief Executive Officer**  
**PFB Vermögensberatungs GmbH**

## ATTACHMENT A

## TRANSACTIONS AND LOSS CHART

Client	Fund	Transaction	Date	Price Per Share	Total Purchase Amount***
Auer, Johann	Herald USA Fund*	Purchased 38.6181 shares	Feb. 29, 2008	€1,252.76	€48,379.21
	Herald USA Fund*	Purchased 15.2832 shares	Aug. 29, 2008	€1,308.62	€19,999.90
Baumann, Karl	Herald USA Fund*	Purchased 2.9059 shares	Sept. 30, 2008	€1,317.95	€3,829.83
Edlinger, Ferdinand	Herald USA Fund*	Purchased 38.934 shares	Dec. 31, 2007	€1,242.86	€48,389.51
Hartwig, Peter	Herald USA Fund*	Purchased 42.4902 shares	Jan. 31, 2008	€1,252.40	€53,214.73
Mayer, Josef	Herald USA Fund*	Purchased 11.4624 shares	Aug. 29, 2008	€1,308.62	€14,999.93
Punz, Daniel	Herald USA Fund*	Purchased 2.2762 shares	Sept. 30, 2008	€1,317.95	€2,999.92
Vrana, Mrs. Elfride	Herald USA Fund*	Purchased 38.5008 shares	Mar. 31, 2008	€1,256.61	€48,380.49
Weichberger, Johann	Herald LUX Fund**	Purchased 48.9994 shares	July 31, 2008	\$1,020.42	\$49,999.97

\* Full name is Herald USA Segregated Portfolio One

\*\* Full name is Herald Lux US Absolute Return

\*\*\*Exchange rate, on December 11, 2008: €1 to \$1.3294

Losses: €240,193.52  
\$49,999.97

Total Estimated Losses, as of December 11, 2008 = \$369,313.24

**EXHIBIT E**

**FIRM RESUME OF  
ZWERLING, SCHACHTER & ZWERLING, LLP**

The firm of Zwerling, Schachter & Zwerling, LLP was formed on January 1, 1985 (the “Zwerling Firm”), and is currently involved in numerous class actions in the areas of securities fraud, consumer fraud, and antitrust litigation.

**Securities Litigation**

The Zwerling Firm has acted or is presently acting as a lead counsel or as a member of an executive committee for plaintiffs in many securities related lawsuits, including: *In re Citigroup Auction Rate Securities Litigation*, S.D.N.Y. Civ. No. 1:08-CV-3139 (LTS); *In re NYMEX Holdings Shareholder Litigation*, Del. Ch. Ct., C.A. No. 3621 (VCN); *In re Vonage Initial Public Offering (IPO) Securities Litigation*, Civ. No. 07-177 (FLW) (D.N.J.); *In re BP Prudhoe Bay Royalty Trust Securities Litigation*, W.D. Wash. No. C06-1505 MJP; *Diana Allen Life Insurance Trust v. BP plc, et al.*, S.D.N.Y. Civ. No. 06-14209 (PJC); *In re First BanCorp Securities Litigation*, D.P.R. Civ. No. 3:05-cv-02148-PG; *Fox v. Levis, et al.*, S.D.N.Y. No. MD C 06-1506 (RO); *In re Silicon Image, Inc. Securities Litigation*, N.D. Cal. Master File No. C 05-00456 (MMC); *In re: Old Banc One Shareholders Securities Litigation*, N.D. Ill. Civ. No. 00C2100; *In re Network Associates Derivative Litigation*, Sup. Ct. Cal., Santa Clara Co., CV 781854; *In re Telxon Corporation Securities Litigation*, N.D. Ohio, 5:98-CV-2876; *Hayman v. PriceWaterhouseCoopers LLP*, N.D. Ohio 01-CV-1078; *In re Corrections Corporation Shareholder Litigation*, Tennessee Chancery Ct., Master File No. 98-1257-iii; *In re Adaptec Inc. Derivative Litigation*, Sup. Ct. Cal., Santa Clara Co., CV 772590; *In re Pacific Scientific Securities Litigation*, C.D. Cal., No. SACV-96-1106-LHM(EEx); *Kaplan v. Prins Recycling Corp.*, D.N.J., 96 Civ. 2444; *In re Health Management Inc. Securities Litigation*, E.D.N.Y., 96

Civ. 889; *Weikel v. Tower Semiconductor, Ltd.*, D.N.J., 96 CV 03711; *In re Bennett Funding Group Inc. Securities Litigation*, S.D.N.Y., 96 Civ. 2583; *In re Horizon/CMS Healthcare Corporation Securities Litigation*, D.N.M., Master File No. 96-044 BB/LCS; *Rosenberg v. Stauth*, W.D. Okla., Civil Action No. 96-1808-M; *In re Solomon, et al. v. Armstrong*, Del. Ch. Ct., CA No. 13515; *In re Archer Daniels Midland Company Derivative Litigation*, Del. Ch. Ct., Cons. C.A. No. 14403; *In Re American Pacific Securities Litigation*, D. Nev., CV-S-93-00576-PMP; *McNeil v. Austin*, Sup. Ct., N.Y. Co., Index No. 33189/91, *In Re Foodmaker/Jack-in-the-Box Securities Litigation*, W.D. Wash., No. C93-517WD; *In re Ames Department Stores, Inc. Stock Litigation*, D. Conn., 90-00027 (PCD); *In Re: General Development Corporation Securities Litigation*, S.D. Fla., 90-069; *In Re Republic Pictures Corporation Shareholders Litigation*, Del. Ch. Ct., C.A. No. 13122; *In Re Blockbuster Entertainment Corp. Shareholders Litigation*, Del. Ch. Ct., Civil Action No. 13319; *In re First Capital Holdings Corporation Financial Products Securities Litigation*, C.D. Cal., MDL No. 901; *In re New World Securities Litigation*, C.D. Cal., CV 88-06260; *In re Anchor Securities Litigation*, E.D.N.Y., 88 Civ. 3024; *3Com Corp. Securities Litigation*, N.D. Cal., C89-20480; *In re Par Pharmaceutical Derivative Litigation*, S.D.N.Y., 89 Civ. 5497 (RPP); *Fishbein v. Resorts International Inc.*, S.D.N.Y., 89 Civ. 6043 (MGC); *In re Bank of Boston Securities Litigation*, D. Mass., 89-2269-H; *In re Howard Savings Bank Securities Litigation*, D.N.J., 89-5131; *Merrit v. Gulf States Utilities Co.*, E.D. Tex., B-86-574-CA.

In addition, the Zwerling Firm represents or has represented public employee pension funds and union pension funds in securities litigations, including: *In Re: Doral Financial Corp. Securities Litigation*, S.D.N.Y., Case No.: 1:05-md-1706 (RO); and *Clinton Charter Township*

*Police and Fire Retirement Systems v. Donald J. Reckler, et al.*, E.D.N.Y., Case No.: 03 CV 5008 (TCP).

The following is a representative sample of the complex securities claims which the Zwerling Firm has litigated:

- *In re First BanCorp Securities Litigation*, D.P.R. Civ. No. 3:05-cv-02148-PG co-lead counsel in securities fraud class action involving sham mortgage sales transactions between Puerto Rico banks. The Zwerling Firm achieved a \$74.25 million settlement in less than eighteen months of litigation, which is pending court approval.

- *Hayman v. PriceWaterhouseCoopers, LLP*, N.D. Ohio, 01-cv-1078 brought on behalf of investors in Telxon Corp. securities against the company's auditors for issuing false opinions on the company's financial statements. The Zwerling Firm obtained a recommendation for a default judgment against PriceWaterhouseCoopers, LLP and subsequently settled the action for \$27.9 million.

- *In re Telxon Corp. Securities Litigation*, N.D. Ohio 5:98-cv-2876 a securities fraud class action where the Zwerling Firm, as sole lead counsel obtained a settlement of \$40 million on behalf of investors. Class members in the PriceWaterhouseCoopers and Telxon actions received over 70% of their losses in the two settlements.

- *In re Corrections Corporation Shareholder Litigation*, Tennessee Chancery Ct., Master File No. No. 98-1257-iii - shareholder class action challenging a management-led buyout of public shareholders in exchange for shares in a publicly held REIT.

- *In re Bennett Funding Group Inc. Securities Litigation*, S.D.N.Y., 96 CV 2583 - securities fraud class action involving the single largest alleged Ponzi scheme in the United States. The Zwerling Firm has been on the Executive Committee which has successfully prosecuted the accountants, insurers, and sellers of the alleged fraudulent securities.

- *In re Health Management Inc. Securities Litigation*, E.D.N.Y., 96 Civ. 889 - securities fraud class action alleging accounting fraud by the company and its auditors. The Zwerling Firm was co-lead trial counsel in the first case tried pursuant to the Private Securities Litigation Reform Act of 1995.

- *Rosenberg v. Stauth*, Civil Action No. 96-1808-M - shareholders' derivative action involving alleged improper business practices at Fleming Companies, Inc. in which the demand futility defense was successfully defeated.

- *In re ICN/Viratek Securities Litigation*, S.D.N.Y., 87 Civ 4296 - securities fraud class action involving FDA sought approval of an HIV drug.

· *McNeil v. Austin*, Index No. 33189/91 - shareholders' derivative action regarding the sale of defective nuclear containment systems by General Electric.

· *In re Adaptec Inc. Derivative Litigation*, Master File No. CV 772590 and *In re Network Associates Derivative Litigation*, Superior Ct. Cal., Master File No. CV 781854 – shareholders' derivative lawsuits pursuant to California's insider trading statute to recover profits from the company's officers and directors.

· *In re Ames Department Stores, Inc. Stock Litigation*, D. Conn., 90-00027 (PCD) - securities fraud class action in which the Second Circuit reaffirmed the scope of the "in connection with" requirement of the Securities Exchange Act §10(b).

Courts have commented favorably upon the expertise of the Zwerling Firm. In appointing the firm as lead counsel in *In re Old Banc One Shareholders Securities Litigation*, N.D. Ill., 1:00-CV-2100, the Court noted that the "attorneys have extensive experience, many successes on their resumes, and have obtained sizable recoveries on behalf of their clients." Minute Order dated December 21, 2000.

In appointing it as lead counsel in *In re Telxon Corporation Securities Litigation*, N.D. Ohio, 5:98-CV-2876, the Court determined that the Zwerling Firm has "the requisite ability and expertise to prosecute and manage this litigation effectively." Memorandum and Order entered August 25, 1999, p. 39.

As a member of a team of plaintiffs' trial counsel in *In re ICN/Viratek Securities Litigation*, S.D.N.Y., 87 Civ 4296, the Zwerling Firm was complimented by Judge Kimba Wood as having done a "superb job on behalf of the class.... This was a very hard fought case. You had very able, superb opponents, and they put you to your task.... The trial work was beautifully done and I believe very efficiently done...."

In *In re Par Pharmaceutical, Inc. Derivative Litigation*, S.D.N.Y., 89 Civ 5742 (RPP), Judge Patterson, in commenting on the Zwerling Firm, said "[they] acted skillfully and resourcefully.... [The Zwerling Firm] exercised wisdom and judgment and negotiated a skillful

settlement with the defending company and with the officer and director/defendants.” Slip Op. dated June 12, 1992.

Chief Judge Weinstein, in the *Jack Eckerd Corporation* litigation (E.D.N.Y. 1986), and Judge Charles P. Sifton in both *Golden v. Shulman* [1988 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶94,060 (E.D.N.Y. 1988) and *Cagan v. Anchor Savings Bank, FSB*, [1990] Fed. Sec. L. Rep. (CCH) ¶94,060 (E.D.N.Y. 1990) also commented favorably upon the Zwerling Firm.

One of the partners of the Zwerling Firm was appointed by former Chief Judge Browning as Proof-of-Claim Counsel in connection with the loss analysis in *In re Washington Public Power Supply System Securities Litigation*, MDL 551, in the United States District Court for the District of Arizona. In that matter, former United States District Judge Nicholas J. Bua, as Special Master appointed by the Court, in commenting on one of the partners in the Zwerling Firm, said: “I . . . find that the services of Mr. Schachter were efficiently and reasonably performed by him personally.... Mr. Schachter specifically was appointed by the District Court to serve as Claims Counsel.... It was not unreasonable for a senior partner like Mr. Schachter, with his vast knowledge of the case, to directly oversee the claims administration process rather than relying upon less knowledgeable junior attorneys. The class received its money’s worth for Mr. Schachter’s services....”

### **Antitrust / Consumer Litigation**

The Zwerling Firm has acted or is presently acting as a lead counsel or member of an executive committee in numerous class actions involving antitrust claims and deceptive trade practices, including: *In Re Oxycontin Litigation*, S.D.N.Y., 04 MDL No. 1603; *In re Neurontin Antitrust Litigation*, D.N.J., MDL No. 1479; *In re Tamoxifen Antitrust Litigation*, E.D.N.Y., MDL No. 1408; *Karofsky v. Abbott Laboratories, et al.*, Case No. CV-95-1009 (as well as in 10



related cases in other state courts); *In Re Lorazepam and Clorazepate Antitrust Litigation*, D.D.C., MDL-1290 (TFH) (as well as in 11 related cases in state courts); *Newman v. DuPont Merck Pharmaceutical Company*, Sup. Ct. Cal., Case No. 788358; *In Re Ciprofloxacin Hydrochloride Antitrust Legislation*, E.D.N.Y., Master File No. CV-00-4428 MDL No. 1383; *Pickett v. Holland America Line*, 2000 WL 1141052 (Wash. App. Div. 1); *Latman v. Costa Cruise Lines, N.V.*, 758 So.2d 699 (2000); *Renaissance Cruises, Inc. v. Glassman*, 738 So.2d 436 (1999) (as well as in 7 related cases in other state courts); *Garcia v. General Motors Corporation*, N.J. Sup. Ct., Docket No. L-4394-95; *In re Playmobil Antitrust Litigation*, E.D.N.Y., 95 Civ. 2896; and *Boni v. America Online Inc.*, Del. Ch., New Castle County, 95-C-07 and *Feige v. America Online Inc.*, Sup. Ct., N.Y. Co., Index No. 118333/95) (as well as other related cases in state courts).

In the antitrust area, the firm is currently on the Steering Committee for plaintiffs in *In Re: Insurance Brokerage Antitrust Litigation*, D.N.J., MDL No. 1663 04-CV-5184 and 05-CV-5533 (“*Insurance Brokers*”). In *Insurance Brokers*, settlements totaling over \$128 million have been reached with two of the many defendant groups. The Zwerling Firm also currently plays a significant role in the prosecution of *Funeral Consumers Alliance, Inc. et al. v. Service Corporation International, et al.*, S.D. Tex., CA No. H-05-cv-03394 (KMH), a major antitrust multi-district litigation.

The Zwerling Firm is one of the three class counsel in *Rodriguez v. West Publishing Corporation*, C.D. Cal., Case No. 05-3222, where a \$49 million settlement of antitrust claims has been reached, pending final court approval, on behalf of a class of law graduates enrolled in the BAR/BRI bar review courses.

The Zwerling Firm also represents union health and welfare funds in litigation to recover damages for price-fixing and other anti-competitive behavior. Such actions include: *In re Norvir Abbott Laboratories Antitrust Litigation*, N.D. Ca., Case No. 04-1511; *In re: Oxycontin Antitrust Litigation*, S.D.N.Y., 04 MDL 1603 (SHS); *In Re Tamoxifen Citrate Antitrust Litigation*, E.D.N.Y., MDL No. 1408 (ILG); *In re Ciprofloxacin Hydrochloride Antitrust Litigation*, E.D.N.Y., Master File No.: 1:00-MD-1383 (DGT).

In *In re Norvir Abbott Laboratories Antitrust Litigation*, N.D. Ca., Case No. 04-1511, the Zwerling Firm represents the SEIU International Health Fund (“SEIU”) against Abbott Laboratories in an action for monopoly leveraging under Section 2 of the Sherman Antitrust Act, as well as the California Unfair Competition law and state law unjust enrichment. On June 13, 2007, the court certified a nationwide class for injunctive relief under the Sherman Antitrust Act and for money damages under the unjust enrichment laws of 48 of the 50 States; the SEIU was appointed to serve as a class representative. A trial in this matter is scheduled for the fall of 2008.

In *In Re Oxycontin Litigation*, S.D.N.Y., 04 MDL No. 1603, the Zwerling Firm represents Local 1199 National Benefit Fund and has been appointed third-party payor co-lead counsel. This matter challenges the monopoly pricing of Oxycontin, a pain killer, the patents for which are in question. The matter is currently stayed pending the resolution of the underlying patent litigation.

The Zwerling Firm was appointed co-lead counsel for plaintiffs in numerous related indirect purchase actions brought against Mylan Laboratories, Inc. regarding injury to competition and monopolization, as well as price fixing. Those actions included an action in federal court, *In Re Lorazepam & Clorazepate Antitrust Litigation*, D.D.C., MDL-1290 (TFH)

and resulted in settlements of over \$100 million. The plaintiffs represented by the Zwerling Firm included several institutions, such as union health funds and private insurers.

The Zwerling Firm was co-lead counsel and a member of the Executive Committee in eleven actions filed against the major pharmaceutical manufacturers alleging violations of state antitrust laws for charging higher prices to consumers who purchased brand name prescription drugs from retail pharmacies. Those cases resulted in a \$65 million settlement. The courts presiding over those cases have commented on the Zwerling Firm's expertise:

- I think the lawyering in this case is most commendable. I think that both sides have accorded themselves in a manner that allows us to be proud of the profession. . .

*Kerr v. Abbott Laboratories, et al.*, Case No. 96-2837, Transcript of Hearing at 16-17. (Dist. Ct. Hennepin Co., Minn., Nov. 24, 1998).

- this Court, in particular, has been helped along every step of the way by some outstanding lawyering . . . You can hardly say that there's been anything but five star attorneys involved in this case.

*Scholfield v. Abbott Laboratories, et al.*, Case No. 96 CV 460, Transcript of Hearing at 31 & 33. (Cir. Ct. Dane Co., Wisc., Oct. 5, 1998).

- I think the quality of counsel is excellent.

*McLaughlin v. Abbott Laboratories, et al.*, Case No. CV 95-0628, Transcript of Hearing at 28. (Super. Ct. Yavapai Co., Ariz., Oct. 28, 1998).

- I'll join my learned colleagues from this and other jurisdiction[s] in commending counsel in arriving at something that represents a great deal of hard work and a great deal of ingenuity in putting together a settlement of this magnitude and complexity, and especially the cost effective way in which this settlement is proposed to be distributed.

*Karofsky v. Abbott Laboratories, et al.*, Case No. CV-95-1009, Transcript of Hearing at 17. (Super. Ct. Cumberland Co., Maine, Dec. 2, 1998).

In addition, the Zwerling Firm represented consumers who were victims of overcharging in the sale of toys in *In re Playmobil Antitrust Litigation*, E.D.N.Y., 95 Civ. 2896. Judge Seybert

complimented the work of Class Counsel, including the Zwerling Firm, stating in her opinion certifying the Class:

As set forth in greater detail in the firm resumes...: (1) Zwerling, Schachter & Zwerling, LLP [and three other firms] ... all have extensive familiarity with the prosecution of complex litigations, class actions and specifically, antitrust litigations.... This is further borne out by counsels' submissions and conduct to date before this Court.

*In re Playmobil Antitrust Litigation*, 1998 WL 966003 at \*13 (E.D.N.Y. Dec. 30, 1998).

In the area of deceptive trade practices, the Zwerling Firm was lead counsel in coordinated nationwide actions against the world's leading passenger cruise lines regarding their advertising practices concerning "port charges." (*Cicogna v. Royal Caribbean Cruises, Ltd.*, Cir. Ct. Dade Co. 96-08075; *Espinet v. Kloster Cruise Ltd.*, Cir. Ct. Dade Co. 96-08076; *Bellikoff v. Celebrity Cruises Inc.*, Cir. Ct. Dade Co. 96-08077; *Hackbarth v. Carnival Cruise Lines Inc.*, Cir. Ct. Dade Co. 96-08078; *Glassman v. Renaissance Cruises, Inc.*, Cir. Ct. Broward Co. 96-005490; *Pickett v. Holland America Line*, Sup. Ct., King Co. (Wash.) 96-2-10831 ("*Pickett*"), *Barton v. Princess Cruises Inc.*, Sup. Ct., L.A. Co. BC 148448); *Millheiser v. Dolphin Cruise Line*, Cir. Ct. Dade Co. 96-18146; *Latman v. Costa Cruise Lines N.V.*, Cir. Ct. Dade Co. 96-18139; and *Cronin v. Cunard Cruise Line*, Sup. Ct., N.Y. Co., 96-115899). These cases resulted in settlements in excess of \$100 million. In *Pickett*, the Court complimented the Zwerling Firm by declaring that "[t]his has been litigated very professionally from the beginning to the end."

In addition, the Zwerling Firm was involved in cases regarding defective automobile brakes (*McGill v. General Motors Corp.*, Sup. Ct., Bronx Co., Index No. 15525-95) (related to *Garcia v. General Motors Corp.*, N.J. Sup. Ct., Docket No. L-4394-95) and defective pacemakers (*Gould v. Telectronics Pacing Systems*, S.D. Ohio, 95-726).

The Zwerling Firm was appointed Administrator for the General Motors Diesel Litigation Fund under the direction of Judge Henry Bramwell, District Judge, United States District Court, Eastern District of New York.

**Other Complex Litigation**

In *County of Nassau v. Hotels.com, L.P.*, E.D.N.Y., Case No. 2:06-cv-05724, the Zwerling Firm represents Nassau County (NY) in a class action seeking to recover unpaid taxes from internet-based hotel reservation companies on behalf of a class consisting of all New York counties and municipalities.

In addition, the Zwerling Firm has also represented union health and welfare funds in litigation against the tobacco industry. Those claims were for the excess costs incurred by the funds in providing health care to the members of their unions as a result of the fraudulent and deceptive practices of the tobacco companies (*Eastern States Health & Welfare Fund, et al. v. Philip Morris, Inc., et al.*, Sup. Ct. N.Y. Co., Index No. 97/603869).

The Zwerling Firm has been counsel in high profile constitutional and civil rights actions. In *Haley v. Pataki*, N.D.N.Y., 95-CIV 550, the firm obtained an order forcing the Governor of the State of New York to stop withholding salaries from legislative employees in an attempt to coerce members of the State Legislature to vote on his State budget. In a related case, *Dugan v. Pataki*, Sup. Ct., Kings Co., Index No. 16341/95, the Zwerling Firm obtained the same relief for the elected members of the State Legislature.

The Zwerling Firm has represented the New York City Council in *Mayor of the City of New York v. Council of the City of New York*, Sup. Ct., N.Y. Co., Index No. 402354/95, an action in which the Mayor challenged the legislative powers of the City Council in connection with the establishment of a board to review allegations of police corruption.

The Zwerling Firm also represented the Straphangers Campaign, a mass transit advocacy group, in *New York Urban League v. Metropolitan Transportation Authority*, 95-CIV-9001 (RPP), an action to compel the State of New York and the MTA to allocate transit subsidies in a manner which does not have a discriminatory impact on minority ridership in New York City.

The Zwerling Firm was an active member of the 9/11 Union Project where it provided legal representation *pro bono* for low income victims of the World Trade Center attacks and their families.

### **Members of the Firm**

#### **Jeffrey C. Zwerling**

Jeffrey C. Zwerling was admitted to the bar of the State of New York in 1972 and to the bar of the State of Arizona in 1981; he is admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York, and the United States Court of Appeals for the Second Circuit. He received a Bachelor of Science degree with Honors from Lehigh University in 1968 and a Juris Doctor degree from Columbia University School of Law in 1971. He was Articles Editor of the Columbia Journal of Transnational Law. His professional affiliations include: New York State Bar Association, Association of the Bar of the City of New York, Nassau County Bar Association, and State Bar of Arizona.

On July 1, 1977, Mr. Zwerling founded the Law Offices of Jeffrey C. Zwerling; on January 1, 1985 that firm became Zwerling, Schachter & Zwerling, LLP. Prior to 1977, Mr. Zwerling was associated with the firms of Gasperini, Koch & Savage; Koch & Gluck; and Murray A. Gordon, P.C., with emphasis on civil litigation, real estate, general corporate and commercial matters. Mr. Zwerling has represented and advised the Uniformed Fire Officers Association in regard to its pension funds and annuity plans.

Mr. Zwerling has extensive experience in all phases of complex litigation, including jury and non-jury trials, mediation, expert discovery, and settlement negotiations. He has negotiated several innovative corporate governance and structural changes in the resolution of shareholders' complaints. He is highly knowledgeable about economic and finance issues. Mr. Zwerling co-authored "The Dell Case: The Doors To The Courts Close Further For Investors" in the Aspatore Special Report (Thomson Reuters/Aspatore 2008).

Mr. Zwerling is located in both the Zwerling Firm's New York and Long Island offices.

**Robert S. Schachter**

Robert S. Schachter was admitted to the bar of the State of New York in 1972; he is admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York and the Central District of California, the United States Court of Appeals for the Second, Fifth and Ninth Circuits, and the Supreme Court of the United States. He received a Bachelor of Arts degree from Syracuse University in 1968 and a Juris Doctor degree from Brooklyn Law School in 1971. His professional affiliations include: The American Bar Association (Lecturer, Panels in Class Actions, 1980 and 1998) and the Second Circuit Federal Bar Council. Mr. Schachter was a panelist at the Public Funds Summit (2002-2004), Investment Education Symposium sponsored by the Council of Louisiana Trustees (2002), and Fire & Police Pension Summit (2002).

Prior to the formation of the Zwerling Firm, Mr. Schachter was associated since 1973 with the firm now known as Labaton Sucharow & Rudoff LLP. Mr. Schachter became a partner of that firm on January 1, 1978, concentrating in complex multi-district litigation.

Mr. Schachter has extensive experience in all phases of complex litigation. He has been involved in many settlement negotiations, as well as the drafting of complex settlement documents, and has particular expertise in the administration of class settlements. Mr. Schachter has been instrumental in crafting novel settlements which have been applauded by courts in securities, as well as antitrust matters, including corporate governance issues.

Mr. Schachter is located in the Zwerling Firm's New York office.

**Robin F. Zwerling**

Robin F. Zwerling was admitted to the bar of the State of New York in 1976; she is admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second, Fourth and Seventh Circuits, and the Supreme Court of the United States. She received a Bachelor of Arts degree *cum laude* from Jackson College of Tufts University in 1972, and a Juris Doctor degree from Georgetown University Law Center in 1975. Her memberships include: the American Bar Association, the National Institute of Trial Advocacy, the National Association of Securities and Commercial Law Attorneys, and the Second Circuit Federal Bar Council. As a member of the Program Committee of the Second Circuit Federal Bar Council, Ms. Zwerling plans and coordinates Continuing Legal Education programs.

Ms. Zwerling has concentrated in litigation since her graduation from law school. At that time, she became associated with Martin, Clearwater & Bell, becoming a partner in 1982 and remained there until the formation of the Zwerling Firm in 1985. Ms. Zwerling has extensive experience in all phases of litigation, including trials and appellate arguments. She has tried cases in both state and federal courts. Ms. Zwerling successfully completed the National



Institute of Trial Advocacy's Advanced Trial Practice course after having tried a number of cases.

Ms. Zwerling is located in the Zwerling Firm's New York office.

**Susan Salvetti**

Susan Salvetti was admitted to the bar of the State of New York in 1980; she is admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York and the United States Court of Appeals for the Second Circuit. She received a Bachelor of Arts degree *summa cum laude* from Thomas More College of Fordham University in 1976 and a Juris Doctor degree from Fordham University School of Law in 1979. Her memberships include: the American Bar Association, the New York State Bar Association – Committee Member of the Commercial and Federal Litigation Section on Class Actions, Who's Who in American Women, and Phi Beta Kappa. Ms. Salvetti authored the published *Report on Class Certification for Particular Issues Pursuant to Federal Rules of Civil Procedure 23(C)(4)(A)*, 12 NYLitigator 63 (2007).

Ms. Salvetti has concentrated in litigation throughout her career, becoming a partner of the Zwerling Firm on January 1, 1992. Prior to her association with the firm in 1985, she was associated with Martin, Clearwater & Bell. Prior to that time, Ms. Salvetti was associated with Newman, Tannenbaum, Helpern & Hirschtritt, a general practice firm.

Ms. Salvetti has extensive experience in all phases of complex litigation, including as trial counsel and complex discovery. She has taken numerous depositions, argued motions before courts, and has negotiated complicated settlements in both securities and consumer matters.

Ms. Salvetti is located in the Zwerling Firm's New York office.

**Richard A. Speirs**

Richard A. Speirs was admitted to the bar of the State of New York in 1986; he is admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second, Ninth and Tenth Circuits. He received a Bachelor of Arts degree *cum laude* from Brooklyn College of the City University of New York in 1976. Mr. Speirs received his Juris Doctor degree from Brooklyn Law School in 1985, where he was awarded the Order of the Coif and was the recipient of American Jurisprudence Awards in Conflicts of Law and Labor Law. He is a member of the New York State Bar Association and the Second Circuit Federal Bar Council. Mr. Speirs was a panelist at the Public Funds Summit in 2007.

Mr. Speirs became a partner of the firm on January 1, 2000. Prior to his association with the Zwerling Firm in 1997, Mr. Speirs was an associate of Bernstein Litowitz Berger & Grossmann LLP where he concentrated primarily in securities and class action litigation.

Mr. Speirs has extensive experience in all phases of complex litigation, including the investigation and analysis of potential matters and the development of electronic discovery requirements. He has conducted many depositions of both fact and expert witnesses and has acted as trial counsel.

Mr. Speirs is located in the both the Zwerling Firm's New York and Long Island offices.

**Senior Counsel**

**Hillary Sobel**

Hillary Sobel was admitted to the bar of the State of New York in 1989; she is also admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York and the United States Court of Appeals for the Fourth and Ninth Circuits. She received a Bachelor of Arts Degree from Barnard College of Columbia University in 1985, and a Juris Doctor degree from the Benjamin N. Cardozo School of Law of Yeshiva University in 1988, where she was Editor of the ILSA International Law Journal. Her memberships include: the American Bar Association.

Ms. Sobel has been involved in complex discovery, including responding to and drafting discovery requests, questioning fact and expert witnesses, as well as arguments before the court. She has also participated at trial, including witness questioning, as well as trial preparation.

Ms. Sobel is located in the Zwering Firm's New York office.

**Stephen L. Brodsky**

Stephen L. Brodsky was admitted to the bar of the State of New York in 1994; he is also admitted to the United States District Court for the Southern and Eastern Districts of New York and the United States Court of Appeals for the Third and Eighth Circuits. He received a Bachelor of Arts degree *summa cum laude* from the University of Pennsylvania in 1989, and a Juris Doctor degree from Columbia Law School in 1993, where he was a Harlan Fiske Stone Scholar and member of the Columbia Journal of Law and Social Problems. His memberships include: Phi Beta Kappa.

Mr. Brodsky has published "The Time is Right For Mid-Size Public Or Union Pension Funds To Be Lead Plaintiffs in Securities Class Action," in Investment Management Weekly

(Vol. 21, Issue No. 10, March 10, 2008); “Federal Courts in New York Provide Framework For Enforcing Preliminary Agreements,” in the New York State Bar Association Journal (March/April 2001) and “Defending an Agent Against a Claim for Breach of Warranty of Authority,” NYLitigator (Spring 2001). He also co-authored “The Dell Case: The Doors To The Courts Close Further For Investors” in the Aspatore Special Report (Thomson Reuters/Aspatore 2008). Prior to joining the Zwerling Firm, Mr. Brodsky was associated with Sonnenschein Nath & Rosenthal, LLP.

Mr. Brodsky is located in the Zwerling Firm’s New York office.

**Associates of the Firm**

**Sona R. Shah**

Sona R. Shah was admitted to the bar of the State of New Jersey in 1997, and to the bar of the State of New York in 1998; she is also admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York. She received a Bachelor of Arts degree from New York University in 1994, and a Juris Doctor degree from Fordham University School of Law in 1997. Her professional affiliations include: the New York State Bar Association.

Prior to her association with the Zwerling Firm, Ms. Shah was associated with the Center for Constitutional Rights.

Ms. Shah is located in the Zwerling Firm’s New York office.

**Shaye J. Fuchs**

Shaye J. Fuchs was admitted to the bar of the State of New Jersey in 1999 and to the bar of the State of New York in 2000; he is also admitted to the following federal courts: the United

States District Court for the Southern and Eastern Districts of New York. He received a Bachelor of Arts degree *magna cum laude* from Queens College of the City University of New York in 1995, and a Juris Doctor degree from Brooklyn Law School in 1998. His memberships include: the American Bar Association, the New York County Lawyers Association, and Phi Beta Kappa.

Prior to his association with the Zwerling Firm, Mr. Fuchs interned at the New York Stock Exchange Enforcement Division and has been of counsel in securities class action lawsuits.

Mr. Fuchs is located in the Zwerling Firm's Long Island office.

**Justin M. Tarshis**

Justin M. Tarshis was admitted to the bar of the State of New York in 2003; he is also admitted to the United States District Court for the Southern and Eastern Districts of New York. He received a Bachelor of Science degree from the University of Wisconsin in 1999, and a Juris Doctor degree *cum laude* from Brooklyn Law School in 2002. While in law school, Mr. Tarshis was the recipient of the Samuel L. Sporn Academic Achievement Scholarship and the CALI Excellence for the Future Award in Civil Practice. In addition, Mr. Tarshis served as an intern to the Honorable Shira A. Scheindlin of the Southern District of New York, as well as an intern in the New York State Attorney General's Office.

Mr. Tarshis is located in the Zwerling Firm's New York office.

**Paul Kleidman**

Paul Kleidman was admitted to the bar of the State of New York in 2002; he is also admitted to the United States District Court for the Southern and Eastern Districts of New York. He received a Bachelor of Science degree from Boston University in 1998, and a Juris Doctor degree from the State University of New York at Buffalo School of Law in 2001. While in law school, Mr. Kleidman was the recipient of the Martin Feinrider Merit Scholarship. He served as Business Editor of the Buffalo Human Rights Law Review and was a Senior Member of the Jessup International Moot Court Board.

Prior to joining the Zwerling Firm, Mr. Kleidman was an Assistant Corporation Counsel in the General Litigation Division of the New York City Law Department. There, he worked on high profile class action lawsuits, including *Benjamin v. Horn* in the Southern District of New York.

Mr. Kleidman is located in the Zwerling Firm's New York office.

**Stephanie E. Kirwan**

Stephanie E. Kirwan was admitted to the bar of the State of New Jersey in 2004, and to the bar of the State of New York in 2005; she is also admitted to the following federal courts: the United States District Court for the District of New Jersey, and the United States District Court for the Southern and Eastern Districts of New York. She received a Bachelor of Arts degree from Tufts University in 2000, and a Juris Doctor degree *cum laude* from New York Law School in 2004, where she was an associate editor for the Law Review. Her professional associations include: the New York State Bar Association, the New York County Lawyers Association; and the New York State Trial Lawyers Association.

Prior to her association with the Zwerling Firm, Ms. Kirwan was associated with the

Renzulli Law Firm where her practice concentrated in litigation.

Ms. Kirwan is located in the Zwerling Firm's New York office.

**David R. Kromm**

David R. Kromm was admitted to the bar of the State of New York in 2001. He received a Bachelor of Arts degree and graduated with Departmental Honors from Wheaton College in 1997, and a Juris Doctor degree from St. John's University School of Law in 2000, where he was Editor-in-Chief of the St. John's Journal of Legal Commentary. While in law school, Mr. Kromm served as an intern with the United States Attorney's Office, Southern District of New York. His professional affiliations include the New York State Bar Association.

Prior to his association with the Zwerling Firm, Mr. Kromm worked as a criminal trial prosecutor with the Office of the District Attorney, Bronx County (New York) for six years. As a prosecutor, he was lead counsel in approximately two dozen criminal trials.

Mr. Kromm is located in the Zwerling Firm's New York office.

**Ana Cabassa**

Ana Maria Cabassa was admitted to the bar of the State of New York in 2001 and to the bar of the District of Columbia in 2002; she is admitted to the following federal courts: the United States District Court for the District of Columbia, and the Tax Court. She received a Bachelor of Science degree in Accounting and Finance, *magna cum laude*, from Georgetown University in 1995 and a Juris Doctor degree from New York University, School of Law in 2000. She received the Thomas Stoddard Award for editing contributions to the Journal of Legislation and Public Policy. Her professional affiliations include: American Bar Association and New York State Bar Association.

Ms. Cabassa is also a Certified Public Accountant.

Prior to her association with the Zwerling Firm, Ms. Cabassa was associated with Latham



& Watkins, LLP, where she represented clients in antitrust, securities and complex commercial litigation matters.

Ms. Cabassa has extensive experience in all phases of complex litigation, including the investigation and analysis of potential matters and the development of electronic discovery requirements.

Ms. Cabassa is located in the Zwerling Firm's New York office.

### **Of Counsel**

#### **Dan Drachler**

Dan Drachler was admitted to the bar of the State of New York in 1988; he is also admitted to the bar of the States of Washington, New Jersey and Minnesota; he is admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York, the United States District Court for the Western and Eastern Districts of Washington, the United States Court of Federal Claims, and the United States Court of Appeals for the Ninth and Federal Circuits. Mr. Drachler received a Bachelor of Arts degree *cum laude* from the University of South Carolina in 1980, and his Juris Doctor degree *cum laude* from New York Law School in 1987. At New York Law School, Mr. Drachler was a member of the law review and was a John Ben Snow Merit Scholar. His professional affiliations include: the American Bar Association, the Washington State Bar Association, the King County Bar Association, and the National Association of Consumer Advocates.

Prior to joining the Zwerling Firm, Mr. Drachler served as Chief Deputy Attorney General for the State of New York. In that position, all litigation and administrative proceedings

in the Securities Bureau were subject to Mr. Drachler's review. Mr. Drachler also regularly counseled state agencies and the Governor's office regarding a variety of legal and non-legal matters. From 1987 to 1993, Mr. Drachler was an associate and then partner of Koppell, Drachler & Lipofsky. At that firm, he concentrated in general civil litigation, real estate, and trusts and estates.

Mr. Drachler was an Adjunct Professor at New York Law School from 1992-97. He taught "Negotiation, Counseling and Interviewing," a course designed to develop skills in counseling clients and conducting negotiations in simple and complex matters.

Mr. Drachler is located in the Zwerling Firm's Seattle office.

### **Joseph Lipofsky**

Joseph Lipofsky was admitted to the bar of the State of New Jersey in 1972, and is also admitted to the bar of the States of New York, Missouri and Michigan; he is admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York, the District of New Jersey, the Eastern District of Missouri, the Eastern District of Michigan, and the Supreme Court of the United States. He received a Bachelor of Science degree from Rider College in 1969, and a Juris Doctor degree *cum laude* from Seton Hall University School of Law in 1972. His professional affiliations include: the American Bar Association; the New York State Bar Association, where he serves on the Executive Committee of the Antitrust Section; the National Lawyers Guild; and the National Association of Consumer Advocates. He also serves as a Board Member for Brooklyn Legal Services Corporation A; and for the Sugar Law Center for Economic and Social Justice.

Prior to joining the Zwerling Firm, Mr. Lipofsky served as Deputy Counsel to the Attorney General of New York. In that capacity, he regularly counseled state agencies and the Governor's office regarding a variety of legal and non-legal matters. From 1991 to 1993, Mr. Lipofsky was counsel to the firm of Koppell & Drachler and then partner of Koppell, Drachler & Lipofsky. Prior to 1991, he served as an attorney and Executive Director with legal service programs in New Jersey, Missouri and Michigan, as well as with various labor unions including their ERISA funds.

Mr. Lipofsky is located in the Zwerling Firm's New York office.

**Jonathan Platnick**

Jonathan Platnick was admitted to the bar of the State of New York in 1979. Mr. Platnick received a Bachelor of Arts degree *magna cum laude* from The City University of New York 1971, and his Juris Doctor degree from the New York University School of Law in 1978.

His memberships include: Phi Beta Kappa.

Mr. Platnick is located in the Zwerling Firm's New York office.

**Timothy E. Gillane**

Timothy E. Gillane was admitted to the bar of State of New York in 1988; he is also admitted to the United States District Courts for the Southern and Eastern Districts of New York. He received a Bachelor of Arts degree *cum laude* from the University of Connecticut in 1973, a Masters of Arts degree from Boston College (where he also taught under a fellowship) in 1975, and a Juris Doctor degree from New York Law School in 1987. His professional affiliations

include the Brehon Law Society.

Prior to joining the Zwerling Firm, Mr. Gillane was a staff attorney at Robin, Schepp, Yuhas, Doman & Harris, where his practice concentrated in litigation.

Mr. Gillane is located in the Zwerling Firm's Long Island Office.

**Lisa Holman**

Lisa Holman was admitted to the bar of the State of New York in 1998. She received a Bachelor of Arts degree from Cornell University in 1994, and a Juris Doctor degree from the University of Michigan Law School in 1997. Her memberships include the American Bar Association and the New York State Bar Association.

Prior to joining the Zwerling Firm, Ms. Holman practiced corporate law and securities litigation with Goodkind Labaton Rudoff & Sucharow, LLP, now known as Labaton Sucharow & Rudoff LLP.

Ms. Holman is located in the Zwerling Firm's New York office.

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