

SECOND AMENDED AND RESTATED STIPULATION AND AGREEMENT
OF PARTIAL SETTLEMENT

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

IN RE HERALD, PRIMEO, AND THEMA
FUNDS SECURITIES LITIGATION

ECF Case

Case No. 09 Civ. 0289 (RMB)

This Document Relates to:

Case No. 09 Civ. 2558 (RMB)

NEVILLE SEYMOUR DAVIS,

Plaintiff,

**SECOND AMENDED AND
RESTATED STIPULATION AND
AGREEMENT OF PARTIAL
SETTLEMENT**

vs.

ALBERTO BENBASSAT, STÉPHANE
BENBASSAT, GENEVALOR, BENBASSAT &
CIE, GERALD J.P. BRADY, JOHN
HOLLIWELL, SONJA KOHN, DANIEL
MORRISSEY, PETER SCHEITHAUER, DAVID
T. SMITH, WERNER TRIPOLT, BANK MEDICI
AG, UNICREDIT SPA, HSBC INSTITUTIONAL
TRUST SERVICES (IRELAND) LTD., HSBC
SECURITIES SERVICES (IRELAND) LTD.,
HSBC BANK USA, N.A., HSBC HOLDINGS
PLC, PRICEWATERHOUSECOOPERS
INTERNATIONAL LTD.,
PRICEWATERHOUSECOOPERS (DUBLIN),
PRICEWATERHOUSECOOPERS LLP,
PRICEWATERHOUSECOOPERS BERMUDA,
THEMA ASSET MANAGEMENT LIMITED,
THEMA INTERNATIONAL FUND PLC, BA
WORLDWIDE FUND MANAGEMENT
LIMITED, PETER MADOFF, ANDREW
MADOFF, THE ESTATE OF MARK MADOFF,
WILLIAM FRY, JP MORGAN CHASE & CO.,
and THE BANK OF NEW YORK MELLON,

Defendants.

**SECOND AMENDED AND RESTATED STIPULATION AND AGREEMENT
OF PARTIAL SETTLEMENT**

This Second Amended and Restated Stipulation and Agreement of Partial Settlement (the “Second Amended Stipulation”) dated November 27, 2011, is made pursuant to Rule 23 of the Federal Rules of Civil Procedure, and entered into by and among lead plaintiff Neville Seymour Davis (the “Lead Plaintiff”), on behalf of himself and the Settlement Class (as defined below), and Defendants HSBC Securities Services (Ireland) Limited (“HSSI”), HSBC Institutional Trust Services (Ireland) Limited (“HTIE”), HSBC Holdings plc and proposed defendant HSBC Bank USA, N.A. (collectively, the “HSBC Defendants” or the “Settling Defendants,” and together with the Lead Plaintiff, the “Settling Parties”).

This Second Amended Stipulation is intended by the Settling Parties to fully and finally resolve, discharge, and settle the Released Claims (as defined below), subject to the terms and conditions set forth below (the “Settlement”). It restates, amends and supersedes the First Amended and Restated Stipulation and Agreement of Partial Settlement dated August 11, 2011 (the “First Amended Stipulation”).

WHEREAS:

THE LITIGATION

A. On March 19, 2009, Fabian Perrone and Chia-Hung Kao filed a class action complaint in the United States District Court for the Southern District of New York, captioned *Perrone et al. v. Benbassat et al.*, Case No. 09 Civ. 2558 (the “Action”). Plaintiffs Perrone and Kao, on behalf of themselves and other persons and entities who purchased shares of Thema International Fund plc, Primeo Select Fund, Herald USA Fund, and/or Herald (LUX) Fund, brought claims for violations of the federal securities laws and various common law claims against those funds, as well as their directors and service providers, arising out of those funds’

investments with Bernard L. Madoff Investment Securities (“BLMIS”) and subsequent losses stemming from the Ponzi scheme perpetuated by Bernard L. Madoff.

B. On October 5, 2009, the Court issued an order (the “Consolidation Order”) consolidating the Action for pretrial purposes with other proceedings regarding the Herald, Primeo, and Thema International funds pending in *Repex Ventures v. Madoff et al.*, Case No. 09 Civ. 289 (the “Repex Action”) and *Leonhardt v. Madoff et al.*, Case No. 09 Civ. 2032 (the “Leonhardt Action,” and, collectively with the Repex Action and the Action, the “Consolidated Actions”). The Consolidation Order named Repex Ventures, S.A. of the *Repex* Action as lead plaintiff for investors in the Herald Funds, Dr. Shmuel Cabilly of the *Leonhardt* Action as lead plaintiff for investors in the Primeo Funds, and Neville Seymour Davis of the Action as lead plaintiff for investors in the Thema International Fund.

C. On February 10, 2010, Lead Plaintiff Davis and the other lead plaintiffs filed amended complaints in the Consolidated Actions. The amended complaint filed by Lead Plaintiff Davis (the “Amended Complaint”) was filed on behalf of all persons and entities who either owned shares of Thema International Fund plc or its sub-fund Thema Fund (collectively, the “Fund”), on December 10, 2008 or purchased shares of the Fund between January 12, 2004 and December 14, 2008. The Amended Complaint alleged violations of §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and various state law claims, including breach of contract, gross negligence, breach of fiduciary duty, aiding and abetting breach of fiduciary duty and unjust enrichment. Among others, HSBC Holdings plc, HTIE, and HSSI were named as defendants in the Amended Complaint.

D. Prior to the commencement of the Action, the Fund had commenced proceedings against its custodian, HTIE, in the Irish High Court - Commercial Division, alleging breach of

the Custodian Agreement, unjustifiable failure to perform obligations under laws and regulations relating to Undertakings for Collective Investment in Transferable Securities (UCITS), and various tort claims, in *Thema Int'l Fund plc v. HSBC Institutional Trust Services (Ireland) Ltd.*, Record Nos. 2008/10983P, 2009/565TP and 2009/566TP (H. Ct.) (the "HTIE Litigation"). Sixty-one individual Thema investors also commenced separate proceedings in Dublin between April 3, 2009 and December 10, 2010. The HTIE Litigation and the investor actions were assigned to Judge Frank Clarke of the Commercial List. Two of the investor actions, *Kalix Fund Ltd. v. HSBC Institutional Trust Services (Ireland) Ltd.*, Record No. 3152P/2009 (H. Ct.) and *UBI Banca v. HSBC Institutional Trust Services (Ireland) Ltd.*, Record No. 7189P/2009 (H. Ct.), were selected as cases to progress alongside the HTIE Litigation on a coordinated basis. The other investor actions are effectively held in abeyance pending the outcome of the coordinated cases.

E. In August 2010, counsel for the Lead Plaintiff and counsel for the Settling Defendants communicated regarding the possibility of participating in a mediation. Following initial settlement discussions in New York in November 2010 and in San Diego in December 2010, the parties engaged the Honorable (Ret.) Daniel Weinstein, an experienced mediator and a retired California state court judge, to provide mediation services regarding settlement.

F. On December 5, 2010, subsequent to the commencement of the parties' settlement communications, the SIPC Trustee for the BLMIS Liquidation proceeding pending in the Bankruptcy Court for the Southern District of New York filed an amended complaint against, among others, the Fund and various HSBC entities, including the Settling Defendants. *See Picard v. HSBC Bank plc et al.*, Adv. Pro. No. 09-1364 (S.D.N.Y. Bankr.). In that litigation, the SIPC Trustee seeks to disallow the Fund's customer claim in the BLMIS Liquidation, brings

avoidance claims against the Fund, and asserts avoidance and common law claims against HSBC entities and other defendants, including aiding and abetting and contribution claims in respect of BLMIS's fraud upon and breach of fiduciary duty to its customers. The HSBC Defendants moved to have the SIPC Trustee's case transferred from the Bankruptcy Court to the District Court on February 3, 2011. Following a hearing held on the motion on April 12, 2011, the Honorable Jed Rakoff, United States District Judge, withdrew the reference to resolve preliminary issues of whether the Trustee has standing under the Securities Investor Protection Act to assert the common law claims and whether those claims are preempted under the Securities Litigation Uniform Standards Act of 1998. On July 28, 2011, Judge Rakoff issued a decision dismissing the Trustee's common law claims for lack of standing. On August 26, 2011, the Trustee filed a Notice of Appeal in the Second Circuit Court of Appeals relating to Judge Rakoff's decision. The Notice of Appeal was withdrawn on November 7, 2011, subject to reinstatement.

G. On February 24 and 25, 2011, a formal mediation presided over by Judge Weinstein took place in New York. Following the formal sessions, the mediator oversaw communications in March and April between the Settling Parties and played a significant role in facilitating the negotiations between the Settling Parties that have resulted in the Settlement.

H. On April 1, 2011, Lead Plaintiff filed a proposed Second Amended Complaint (the "Proposed Amended Complaint," collectively with the Amended Complaint, the "Amended Complaints"). The Proposed Amended Complaint omits the federal securities claims in light of the Supreme Court's 2010 decision in Morrison v. National Australia Bank, added additional factual allegations, and asserts new common law derivative claims for gross negligence, negligence, professional negligence, aiding and abetting negligence, breach of fiduciary duty,

and third party beneficiary breach of contract. The Proposed Amended Complaint also added HSBC Bank USA, N.A. as a defendant.

I. On April 5, 2011, the Settling Parties reached an agreement in principle to settle this Action.

J. On April 7, 2011, counsel for the SIPC Trustee filed a complaint against the lead plaintiffs of the Consolidated Actions, seeking to enjoin the Consolidated Actions from proceeding, citing those actions' competition with the SIPC Trustee's suit against HSBC. *See Picard v. Repex Ventures, S.A., et al.*, Case No. 11 AP 01727. The SIPC Trustee voluntarily dismissed the action without prejudice on November 14, 2011.

K. The parties have conducted confirmatory discovery that included, inter alia, production of documents by the Settling Defendants and a deposition of a senior HSBC official with knowledge of the Settling Defendants' dealings with and due diligence of BLMIS.

L. On June 7, 2011, the Settling Parties executed the Stipulation and Agreement of Partial Settlement that has been restated, amended and superceded by this Second Amended Stipulation. On June 17, 2011, Lead Plaintiff filed a motion for preliminary approval of the settlement provided for in the First Amended Stipulation.

M. On June 29, 2011, Defendants in the Consolidated Actions filed a joint motion to dismiss on various grounds. The motion became fully briefed on October 28, 2011, and oral argument is scheduled to take place on November 28, 2011.

N. On June 30, 2011, Thema filed an application before the Irish High Court seeking, inter alia, directions as to whether the settlement provided for in the First Amended Stipulation would be recognized or enforced in Ireland in the event it was finally approved by the Court. On August 4, 2011, the Irish High Court issued a judgment directing that HTIE issue an application

before the Irish High Court (the “Irish High Court Application”) as to the recognition and enforcement of the settlement in Ireland and to determine the effect the settlement provided for in the First Amended Stipulation should have had on the Irish proceedings in the event that the settlement provided for in the First Amended Stipulation were to be finally approved after the fairness hearing. HTIE filed the Irish High Court Application on September 2, 2011 and served the application on the parties to the Irish litigation on the same date. A copy of the Irish High Court Application is attached hereto as Exhibit D. The application stands adjourned until December 5, 2011. HTIE will seek directions on the hearing of the application on December 5, 2011.

O. On September 7, 2011, the Court issued a Decision and Order denying the motion for preliminary approval without prejudice for certain reasons stated therein. The Court also stated however that it “would be pleased to entertain future applications for preliminary approval if and when such applications arise.” Sept. 15, 2011 Decision and Order at 9 n.9, In re Herald, Primeo, and Thema Funds Secs. Litig., 09-CIV-289 (RMB). The Settling Parties then engaged in discussions to address the Court’s concerns, resulting in this Second Amended Stipulation, which the parties executed on November 27, 2011.

P. The Settling Defendants deny any and all allegations of wrongdoing, fault, liability or damage to Lead Plaintiff and the Settlement Class arising out of the conduct, statement, acts or omissions alleged in the Amended Complaints, deny that they engaged in any wrongdoing whatsoever, and believe that they diligently and adequately discharged their duties as service providers to the Fund in accordance with applicable law. The Settling Defendants and their counsel deny the allegations contained in the Amended Complaints and maintain that they have meritorious defenses to the allegations. However, the Settling Defendants recognize that

continued defense of the Action would entail significant burden and expense, and expose the Settling Defendants to substantial liability if their defenses were not successful. Accordingly, the Settling Defendants have concluded it is desirable fully and finally to resolve the Action upon the terms and conditions set forth in this Second Amended Stipulation, which shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Settling Defendant with respect to any claim of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Settling Defendants have asserted or would assert.

Q. The Lead Plaintiff and his counsel believe that the Action has merit. However, Plaintiff's Counsel recognize and acknowledge the expense, length, difficulties and risks inherent to litigating claims as complex as those contained in the Action. Plaintiff's Counsel have conducted investigations relating to the claims and the underlying events and transactions alleged in the Action. Plaintiff's Counsel have reviewed and analyzed documentary and deposition evidence and have researched the applicable law with respect to the claims of the Lead Plaintiff and the Settlement Class against the Settling Defendants and the potential defenses thereto. Plaintiff's Counsel are mindful of the risk to the class of dismissal of the Action on grounds of, inter alia, forum non conveniens and lack of shareholder standing to assert the claims, some of which are already being asserted in Ireland against HTIE by the Fund, as well as the risk that the Settling Defendants might prevail through a dispositive motion or at trial. Accordingly, the Lead Plaintiff and Plaintiff's Counsel have concluded that it is desirable fully and finally to resolve the Action upon the terms and conditions set forth in this Second Amended Stipulation, which shall not be construed or deemed to be a concession by Lead Plaintiff or any

Settlement Class Member of any infirmity in the claims asserted in the Action or any other action.

R. The parties to this Second Amended Stipulation recognize that the Action has been filed by the Lead Plaintiff and defended by the Settling Defendants in good faith with adequate basis in fact under Federal Rule of Civil Procedure 11, but nevertheless consider that resolution of the Action is advisable from the point of view of all the Settling Parties.

S. Based upon their investigation and confirmatory discovery as set forth above, Lead Plaintiff and Plaintiff's Counsel have concluded that the terms and conditions of this Second Amended Stipulation are fair, reasonable and adequate to Lead Plaintiff and the Settlement Class, and are in their best interests, and Lead Plaintiff has agreed to settle the claims raised in the Action against the Settling Defendants pursuant to the terms and provisions of this Second Amended Stipulation, after considering (a) the substantial benefits that the members of the Settlement Class will receive from settlement of the Action, (b) the delays and attendant costs of protracted litigation, and (c) the risks and uncertainties inherent in litigation and particularly those in this complex litigation due to several factors.

TERMS OF SECOND AMENDED STIPULATION AND AGREEMENT OF PARTIAL SETTLEMENT

NOW THEREFORE, without any admission or concession on the part of Lead Plaintiff of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Settling Defendants, it is hereby STIPULATED AND AGREED, by and between the Settling Parties, through their respective counsel, subject to approval of the District Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and other applicable rules, in consideration of the benefits

flowing to the parties hereto from the Settlement herein set forth, that all Released Claims (defined below) as against the Settling Defendants shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

1. DEFINITIONS

As used in this Second Amended Stipulation, the following terms shall have the following meanings:

1.1 “Action” means the action captioned *Davis v. Benbassat et al.*, Case No. 09 Civ. 2558 (S.D.N.Y.) and consolidated for pre-trial purposes under the caption *In re Herald, Primo and Thema Fund Litigations*, Case No. 09 Civ. 289 (S.D.N.Y).

1.2 “Administrative Expenses” means the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing notice to the Class, locating Class Members, determining the eligibility of any person to be a Settlement Class Member or Authorized Claimant, obtaining information regarding the investment account of each Settlement Class Member with the Fund, and administering, calculating and distributing the Net Settlement Fund to Authorized Claimants. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Second Amended Stipulation.

1.3 “Authorized Claimant” means any Settlement Class Member entitled to recovery pursuant to the terms of the Second Amended Stipulation and the Plan of Allocation.

1.4 “Claimant” means any Settlement Class Member who seeks a disbursement from the Net Settlement Fund and who submits a completed Proof of Claim and Release.

1.5 “Court” means the United States District Court for the Southern District of New York.

1.6 “Defendants” means each and all of the defendants named in the Amended Complaints.

1.7 “Effective Date” means the date upon which all of the conditions specified in ¶8.1 of the Second Amended Stipulation have been satisfied.

1.8 “Escrow Account” means the account maintained by the Escrow Agent at Citi Private Bank, 787 West 5th Street, Los Angeles, CA 90071.

1.9 “Escrow Agent” means Chapin Fitzgerald Sullivan & Bottini LLP. The Escrow Agent shall perform the duties set forth in this Second Amended Stipulation.

1.10 “Escrowed Funds” has the meaning defined in ¶2.3 hereof.

1.11 “Fairness Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy and reasonableness of the Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure and whether to issue the Judgment.

1.12 “Final” or “Finality,” with respect to the Judgment means: (1) if no appeal is filed, the expiration date of the time provided for under the corresponding rules of the applicable court or legislation for filing or noticing of any appeal from the Judgment; or (2) if there is an appeal from the Judgment, the date of (a) final dismissal of any appeal from the Judgment, or (b) the date of final affirmance on an appeal of the Judgment, the expiration of the time to file a petition for a writ of certiorari or other form of review or the denial of a writ of certiorari or other form of review of the Judgment, and, if certiorari or other form of review is granted, the date of final affirmance of the Judgment following review pursuant to that grant.

Any proceeding or order, or any appeal or petition for a writ of certiorari or other form of review pertaining solely to (i) any application for attorneys' fees, costs or expenses, (ii) any application for a service award to Lead Plaintiff, and/or (iii) the Plan of Allocation, shall not in any way delay or preclude the Orders from becoming Final.

1.13 "Fund" means Thema International Fund plc together with its sub-fund Thema Fund.

1.14 "Gross Settlement Fund" has the meaning defined in ¶2.4 hereof.

1.15 "Individual Claim Amount" means the portion of the Net Settlement Fund that the Settlement Administrator determines, pursuant to the terms of this Second Amended Stipulation and the Plan of Allocation, shall be allocated to each Authorized Claimant.

1.16 "Judgment" means the Settlement Approval Order and Judgment, substantially in the form attached hereto as Exhibit "C," to be entered by the Court approving the terms of this Second Amended Stipulation pursuant to Federal Rule of Civil Procedure 23 and dismissing the Action with prejudice as against the Settling Defendants.

1.17 "Lead Plaintiff" means Neville Seymour Davis, court-appointed lead plaintiff in the Action.

1.18 "Net Loss" means the loss suffered by a Claimant to the extent his, her or its aggregate investment in the Fund exceeded the amount of proceeds received from the redemption or sale of shares in the Fund.

1.19 "Net Settlement Fund" has the meaning defined in ¶6.5(h) hereof.

1.20 "Non-Settling Defendants" means the Defendants other than the Settling Defendants named in the Amended Complaints and any other person or entity who is subsequently added as a defendant in a subsequent complaint filed by the Lead Plaintiff.

1.21 “Notice” means the Notice of Proposed Settlement which is to be sent to Settlement Class Members substantially in the form attached hereto as Exhibit “A-1”.

1.22 “Plaintiff’s Lead Counsel” means the law firm of Chapin Fitzgerald Sullivan & Bottini LLP, court-appointed Plaintiff’s Lead Counsel in the Action.

1.23 “Plan of Allocation” means the plan or formula of allocation of the Net Settlement Fund, which is to be sent to Settlement Class Members substantially in the form attached hereto as Exhibit “A-2,” whereby the Net Settlement Fund shall be distributed to Authorized Claimants by the Notice and Claims Administrator. The Settling Defendants shall have no responsibility for and no liability with respect to the Plan of Allocation or any distributions made pursuant thereto or for any estimates of recovery in the Notice or otherwise.

1.24 “Plaintiff’s Counsel” means the Plaintiff’s Lead Counsel and the law firms of Robbins Geller Rudman & Dowd LLP and Murray Frank LLP.

1.25 “Preliminary Settlement Approval Order” means an order by the Court, substantially in the form attached as Exhibit “B,” preliminarily approving this Second Amended Stipulation, including the forms and procedure for providing notice to the Settlement Class, conditionally certifying the Lead Plaintiff as the representative of the Settlement Class and Plaintiff’s Lead Counsel as counsel to the Class, establishing a procedure for members of the Settlement Class to follow in order to object to the Settlement set forth in this Second Amended Stipulation, and setting a date for a Fairness Hearing.

1.26 “Proof of Claim and Release” means the form to be sent to the Settlement Class Members, substantially in the form attached as Exhibit “A-4”, by which Claimants may make claims against the Net Settlement Fund, and by which Claimants shall make all releases specified in ¶4.1.

1.27 “Publication Notice” means the summary notice of proposed Settlement and hearing for publication substantially in the form attached as Exhibit “A-3”.

1.28 “Released Claims” shall mean all claims, counterclaims, rights, causes of action, or liabilities of every nature and description, whether known or Unknown (as defined herein), whether arising under federal, state, common or foreign law, that were or could have been asserted in the Action or any other action in the United States or elsewhere in any jurisdiction throughout the world in which the Released Parties are domiciled or otherwise subject to jurisdiction, by any Settlement Class Member, that arise out of, are based upon, or related to the allegations, transactions, facts, matters, or occurrences set forth or referred to in the Amended Complaint or the Proposed Amended Complaint concerning or relating to investments in the Fund, or that would be barred by res judicata or collateral estoppel if the claims asserted in the Action had been fully litigated on the merits to a final judgment in favor of the party against whom such claims were brought.

“Released Claims” does not include claims, rights or causes of action or liabilities whatsoever related to the enforcement of the Settlement, including, without limitation, any of the terms of this Second Amended Stipulation or orders or judgments issued by the courts in connection with the Settlement or any claims asserted or that could be asserted against the Non-Settling Defendants.

1.29 “Releasing Parties” means the Lead Plaintiff, the Settlement Class Members and their respective counsel.

1.30 “Released Parties” means the Settling Defendants. Released Parties also shall include the Settling Defendants’ current and former subsidiaries, parents, principals, direct or indirect affiliates, including without limitation HSBC Bank plc, general or limited partners or

partnerships, successors and predecessors, heirs, assigns, officers, directors, agents, employees, fiduciaries, and attorneys. Released Parties shall not include the Non-Settling Defendants, except for acts or omissions within the course of any former employment with a Settling Defendant.

1.31 “Settlement” means the settlement of the Action contemplated by this Second Amended Stipulation.

1.32 “Settlement Administrator” means Gilardi & Co. LLC, engaged by Plaintiff’s Lead Counsel and appointed by the Court to perform duties including but not limited to provision of notice to the Settlement Class, calculation of Individual Claim Amounts, and implementation of the Plan of Allocation.

1.33 “Settlement Amount” has the meaning defined in ¶2.2 hereof.

1.34 “Settlement Class” means, for the purposes of this Settlement only, all persons and entities (other than persons or entities who timely and validly request exclusion from the Settlement Class) who were registered or beneficial owners of shares of Thema International Fund plc or its sub-fund Thema Fund on December 10, 2008, and suffered damages thereby due to the conduct alleged in the Amended Complaints, including the legal representatives, heirs, successors in interest, assigns and transferees, intermediate and remote, of all such foregoing holders and/or owners, immediate and remote. Excluded from the Settlement Class are Defendants and each of their officers and directors, as well as their families and affiliates, provided however that any affiliate of the Settling Defendants acting as agent or nominee for a beneficial owner of shares of the Fund who is not an excluded person or entity described above shall be deemed to be a Settlement Class Member.

1.35 “Settlement Class Member” means a member of the Settlement Class defined in ¶1.34.

1.36 “Settling Defendants” means HSBC Holdings plc, HSBC Institutional Trust Services (Ireland) Limited, HSBC Securities Services (Ireland) Limited and, in the event Plaintiff Counsel’s motion to amend the Amended Complaint is granted, HSBC Bank USA, N.A.

1.37 “Settling Defendants’ Counsel” means Cleary Gottlieb Steen & Hamilton LLP.

1.38 “Settling Parties” means, collectively, the Settling Defendants and Lead Plaintiff.

1.39 “Second Amended Stipulation” means this Second Amended and Restated Stipulation and Agreement of Partial Settlement.

1.40 “Taxes” means (i) any and all applicable taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, (A) with respect to the income or gains earned by or in respect of the Gross Settlement Fund, including, without limitation, any taxes that may be imposed upon Settling Defendants or their counsel with respect to any income or gains earned by or in respect of the Gross Settlement Fund for any period while it is held by the Escrow Agent during which the Gross Settlement Fund does not qualify as a Qualified Settlement Fund for federal or state income tax purposes; or (B) by way of withholding as required by applicable law on any distribution by the Escrow Agent or the Settlement Administrator of any portion of the Gross Settlement Fund to Authorized Claimants and other persons entitled hereto pursuant to this Second Amended Stipulation; and (ii) any and all expenses, liabilities and costs incurred in

connection with the taxation of the Gross Settlement Fund (including without limitation, expenses of tax attorneys and accountants).

1.41 “Unknown Claims” means any and all Released Claims that any of the Lead Plaintiff, Settlement Class Members or Settling Defendants does not know or suspect to exist in his, her or its favor as of the Effective Date and which, if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, including any Unknown Claims, the parties stipulate and agree that upon the Effective Date, the Lead Plaintiff and the Settling Defendants shall expressly waive, and each Settlement Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state of the United States, any principle of common law or any law of any foreign jurisdiction, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiff and Settling Defendants acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement.

2. THE SETTLEMENT

a. Scope and Effect of Settlement

2.1 The obligations incurred pursuant to this Second Amended Stipulation shall be in full and final disposition of the Action as regards the Settling Defendants.

b. Settlement Monetary Consideration

2.2 In consideration for the release and discharge provided herein, and the agreement by Lead Plaintiff on behalf of himself and the Settlement Class to the other settlement terms and conditions hereof, the Settling Defendants will pay a Settlement Amount for the benefit of the Settling Class. The Settlement Amount will depend on the aggregate Net Loss of Settlement Class Members who elect to exclude themselves from the Settlement Class, and shall be:

(a) \$52.5 million in the event the aggregate Net Loss of Settlement Class Members who request exclusion exceeds \$250 million; or

(b) \$55.5 million in the event the aggregate Net Loss of Settlement Class Members who request exclusion exceeds \$150 million but is equal to or less than \$250 million; or

(c) \$62.5 million in the event the aggregate Net Loss of Settlement Class Members who request exclusion is equal to or less than \$150 million.

2.3 To fund the Settlement Amount, the Settling Defendants caused an amount of \$62.5 million (the “Escrowed Funds”) to be paid to the Escrow Agent on June 27, 2011.

2.4 Within fourteen (14) days after the deadline to withdraw requests for exclusion has passed and the aggregate Net Loss of Settlement Class Members who have elected to exclude themselves from the Settlement is determined with reasonable accuracy, Lead Plaintiff shall refund to Settling Defendants \$10 million if the aggregate Net Loss of Settlement Class Members who request exclusion exceeds \$250 million or \$7 million if the aggregate Net Loss of Settlement Class Members who request exclusion exceeds \$150 million but is equal to or less than \$250 million. The amount remaining in escrow after this refund shall be the “Gross

Settlement Fund.”

2.5 No amount may be disbursed from the Gross Settlement Fund prior to the Effective Date, except that: (a) Taxes and other Administrative Expenses described in ¶¶1.2, 1.40, 3.5, and 6.5(b)-(d) and (f) may be paid from the Gross Settlement Fund as they become due; (b) any award for attorney’s fees and expenses that is allowed by the Court pursuant to ¶7.1 and ¶7.2 below, may be paid from the Gross Settlement Fund in accordance with those provisions; (c) the Settling Defendants may be reimbursed for costs and expenses incurred in cooperating with any discovery request pursuant to ¶2.14 below; (d) Plaintiff’s Lead Counsel may be reimbursed \$24,234.71 for expenses incurred in establishing the Settlement account as a Qualified Settlement Fund entity and expenses incurred in attending proceedings before the Irish High Court; and (e) the Gross Settlement Fund may be repaid to the Settling Defendants to the extent authorized under ¶2.6 and ¶9.2 below.

2.6 In the event the Court does not issue a Judgment, or Judgment is overturned on appeal or by writ, or does not become Final for some other reason, including the non-occurrence of the Irish High Court Order Condition, all of the funds in the Escrow Account not previously spent or committed pursuant to ¶2.5(a) and ¶3.5 shall be returned to the Settling Defendants, including interest earned thereon, within five (5) days of receipt of written demand by the Settling Defendants or any one of them as representative for all of them.

c. Settlement Fund

2.7 The Escrow Agent shall invest the Escrowed Funds in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, and shall collect and reinvest all earnings accrued thereon. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court until such

time as the funds shall be distributed pursuant to the Plan of Allocation or otherwise disbursed pursuant to this Second Amended Stipulation and/or further order of the Court.

2.8 The Escrow Agent shall not make disbursements except as provided by this Second Amended Stipulation or by an Order of the Court.

2.9 The Settling Parties hereto agree that the Escrowed Funds are intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1, and that the Escrow Agent as administrator of the Escrowed Funds within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible, with the assistance of the Settlement Administrator, for filing tax returns and any other tax reporting for or in respect of the Escrowed Funds and paying from the Escrowed Funds any Taxes owed with respect to the Escrowed Funds. The Settling Parties hereto agree that the Escrowed Funds shall be treated as a Qualified Settlement Fund from the earliest date possible, and agree to any relation-back election required to treat the Escrowed Funds as a Qualified Settlement Fund from the earliest date possible.

2.10 All Taxes shall be paid out of the Escrowed Funds, shall be considered to be an Administrative Expense of the Settlement and shall be timely paid by the Escrow Agent without prior Order of the Court. The Escrowed Funds or the Escrow Agent shall, to the extent required by law, be obligated to withhold from any distributions to Authorized Claimants and other persons entitled thereto pursuant to this Second Amended Stipulation any funds necessary to pay Taxes including the establishment of adequate reserves for Taxes as well as any amount that may be required to be withheld under Treasury Reg. 1.468B-(1)(2) or otherwise under applicable law in respect of such distributions. Further, the Escrowed Funds shall indemnify and hold harmless the Settling Defendants and their counsel for Taxes (including, without limitation, taxes payable by reason of any such indemnification payments).

2.11 Settling Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by the Lead Plaintiff, Settlement Class Member or Authorized Claimant of any payment or transfer made pursuant to this Second Amended Stipulation or derived from or made pursuant to the Settlement Fund.

2.12 Each Authorized Claimant shall be solely responsible for the federal, state, local, and/or non-United States tax consequences to him, her or it of the crediting of an Individual Claim Amount to him, her or it pursuant to this Second Amended Stipulation.

2.13 The Settling Defendants, the Released Parties, and their respective counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of Plaintiff's Lead Counsel, the Escrow Agent or the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Gross Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation or payment of any claims asserted against the Gross Settlement Fund; (v) any losses suffered by, or fluctuations in the value of, the Gross Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses and/or costs incurred in connection with the taxation of the Gross Settlement Fund or the filing of any returns.

d. Settling Defendants' Agreement to Cooperate With Respect to Discovery

2.14 The Settling Defendants agree to cooperate with Lead Plaintiff and Plaintiff's Counsel with respect to any reasonable request for documents, excluding internal HSBC communications, that are not available from the Non-Settling Defendants, directly relevant to a highly material issue concerning claims or causes of action against the Non-Settling Defendants, and not privileged or otherwise protected from discovery. Such cooperation will

also include providing Lead Plaintiff and Plaintiff's Counsel with Settling Defendants' productions to third parties in responses to discovery propounded upon the Settling Defendants in Ireland or through third party discovery in connection with the Action. Settling Defendants agree to produce such requested documentary evidence and make available a witness or witnesses to authenticate documents and no more than two witnesses then employed by the Settling Defendants for deposition and testimony at trial if necessary. No discovery under this section shall occur until 12 months after the Effective Date. Lead Plaintiff shall reimburse the Settling Defendants from the Gross Settlement Fund for all reasonable costs and expenses (including attorneys' fees) incurred in cooperating with any discovery request hereunder.

3. PRELIMINARY APPROVAL ORDER, NOTICE ORDER, AND FAIRNESS HEARING

3.1 Promptly upon the execution of this Second Amended Stipulation, the Settling Parties will file a motion for preliminary approval of the Settlement with the Court, submitting this Second Amended Stipulation and its Exhibits.

3.2 Plaintiff's Lead Counsel shall apply to the Court for entry of a Preliminary Settlement Approval Order, substantially in the form annexed hereto as Exhibit B. Such Order shall, among other provisions, certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3), for settlement purposes only.

3.3 Such Order shall include approval for the mailing of a Notice and publication of a Publication Notice, substantially in the forms of Exhibits A-1 and A-3 attached hereto. The Publication Notice shall be published at least weekly for two weeks in at least one paper of general circulation in each of Ireland, the United Kingdom, Italy, Switzerland, France, Austria, Germany, Russia, Israel, Mexico, Argentina and Brazil and in two financial publications of general world-wide circulation. The Publication Notice shall provide instructions for

accessing the Notice, the Proof of Claim and Release form and other material settlement documents on the internet. The Notice shall include the general terms of the Settlement and the provisions of the Plan of Allocation, substantially in the form attached hereto as Exhibit A-2, and shall describe the procedure by which recipients may submit Proof of Claim and Release forms, attached hereto as Exhibit A-4, object to the Settlement or Plan of Allocation, or request exclusion from the Settlement Class, and shall provide the date and time of the Fairness Hearing.

3.4 The mailing or publication of the Notice and Publication Notice shall not occur until the Court enters the Preliminary Settlement Approval Order.

3.5 To assist in dissemination of the Notice and publication of the Publication Notice, upon preliminary approval of the Settlement the Settling Defendants shall contribute 50% of the actual costs of notice and publication, up to a maximum of \$500,000, and the remaining costs and other Administrative Expenses shall be paid from the Gross Settlement Fund. In the event that the Settlement does not become finally effective, money paid or incurred for notice expenses and other Administrative Expenses shall not be returned or repaid to the Settling Defendants.

3.6 Unless otherwise agreed by the Settling Parties, within five (5) days after the Preliminary Settlement Approval Order is entered, the Settling Parties shall use reasonable best efforts to facilitate the provision to the Settlement Administrator of the name and last known address of each Settlement Class Member who is a shareholder registered on the books of the Fund in a searchable database or other format agreed to by the Settling Parties for the purpose of mailing the Notice to such registered shareholders. Alternatively, HSSI may mail the Notice to registered shareholders and provide confirmation of the mailing to the Settlement Administrator without providing the names and last known addresses of such registered shareholders. In such

event, HSSI shall (1) use best efforts, in compliance with EU data protection legislation, to disclose such names and last known addresses on a confidential basis to the Settlement Administrator for the purposes of administering the Settlement or (2) assist the Settlement Administrator in determining whether persons or entities submitting Proofs of Claims, objections, or requests for exclusions are entitled to do so.

3.7 In approving the form of Notice, the Court shall direct that all registered shareholders forward such Notice to any beneficial owner or party in interest and report to the Settlement Administrator on the action it has taken to comply with this directive. The cost of forwarding and reporting shall be reimbursed on request as a cost of giving Notice.

3.8 Plaintiff's Lead Counsel shall request that, after Notice is given, the Court hold the Fairness Hearing and enter a Judgment for the litigation, in substantially the form attached hereto as Exhibit C.

4. RELEASES

4.1 Upon the Effective Date, as defined in ¶1.7 hereof, the Lead Plaintiff and each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Settling Defendants, whether or not such Settlement Class Member executes and delivers the Proof of Claim and Release or shares in the Net Settlement Fund. In addition, Settlement Class Members who submit a Proof of Claim and Release will execute an express written confirmation of release in the form set forth in Part IV of Exhibit A-4 attached hereto.

4.2 Nothing in this Second Amended Stipulation is intended to release any claims asserted by the Settlement Class against any Non-Settling Defendants, except as expressly provided herein.

4.3 Upon the Effective Date, as defined in ¶1.7 hereof, each of the Released Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and all of the Lead Plaintiff, Settlement Class Members, and Plaintiff's Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims.

4.4 Nothing in this Second Amended Stipulation shall bar the Settling Parties from bringing any action or claim to enforce the terms of this Second Amended Stipulation or the Judgment.

5. BAR ORDERS

a. Order Barring Contribution Claims

5.1 Upon issuance of the Judgment, all persons and entities, including without limitation the Non-Settling Defendants and any other persons later named as defendants in the Action, shall be permanently enjoined, barred and restrained from commencing, prosecuting or asserting any claims or actions for contribution, indemnity, or otherwise against the Settling Defendants seeking, as damages or otherwise, the recovery of all or any part of liability, judgment or settlement which they pay or become obligated to pay or agree to pay to the Settlement Class as a result of such person's or entity's participation in any act, facts, statements or omissions that were or could have been alleged in the Action (whether under federal, state or foreign law or otherwise) as claims, cross-claims, counterclaims, third-party claims or otherwise, whether asserted in the Action in this Court or in any other court, arbitration proceeding, administrative agency or other forum, either in the United States or anywhere else in the world.

5.2 Upon issuance of the Judgment, the Settling Defendants shall be

permanently enjoined, barred and restrained from commencing, prosecuting or asserting any claims or actions for contribution, indemnity, or otherwise against the Non-Settling Defendants seeking, as damages or otherwise, the recovery of all or any part of any liability, judgment or settlement which the Settling Defendants pay or are obligated to pay or agree to pay to any member of the Settlement Class as a result of such persons' participation in any act, facts, statements or omissions that were or could have been alleged in the Action (whether under federal, state or foreign law or otherwise) as claims, cross-claims, counterclaims, third-party claims or otherwise, whether asserted in the Action in this Court or in any other court, arbitration proceeding, administrative agency or other forum, either in the United States or anywhere else in the world. For the avoidance of doubt, this provision does not prevent any of the Settling Defendants from asserting any claims or defenses against any of the Non-Settling Defendants seeking to recover or offset all or any part of any liability, judgment or settlement which Settling Defendants pay or are obligated to pay or agree to pay to persons who are not members of the Settlement Class, including those who have requested exclusion from the Settlement Class, or in connection with claims asserted by any Non-Settling Defendant against any Settling Defendant, including the claims asserted by the Fund in the HTIE Litigation.

5.3 Any final verdict or judgment that may be obtained by the Lead Plaintiff—or one or more members of the Settlement Class bound by a final judgment approving this Second Amended Stipulation—after trial or other contested dispositive proceeding against the Non-Settling Defendants or other person or entity shall be reduced by the amount of the consideration paid by the Settling Defendants pursuant to this Second Amended Stipulation, or the amount that corresponds to the percentage of responsibility, if any, of the Settling Defendants, whichever is greater. Nothing herein shall be deemed to release or otherwise bar or

impair Settling Defendants' claims against any or all of their insurers.

5.4 The Lead Plaintiff agrees that he will, as part of any later settlement by Lead Plaintiff with any Non-Settling Defendant(s), include a provision for the mutual exchange of full and complete releases of all claims against the Settling Defendant(s) and any of its/their partners, principals, officers or directors, to the extent they arise out of the claims in the Amended Complaints, including but not limited to, claims for contribution, indemnity, malpractice, negligence or otherwise arising under federal or state law or of any foreign jurisdiction. The Settling Defendants agree to provide this mutual release of any such Non-Settling Defendant.

b. Irish High Court Order

5.5 It shall be a condition to the Settlement becoming effective (the "Irish High Court Order Condition") that the Irish High Court will have granted the Irish High Court Application attached hereto as Exhibit D, unless this condition is waived by the Settling Defendants. The Irish High Court Order will promptly be posted on the website of the Settlement Administrator.

6. SETTLEMENT ADMINISTRATION

a. Settlement Administrator

6.1 Gilardi & Co. LLC shall serve as the Settlement Administrator. Settling Defendants will have no involvement in the selection of the Settlement Administrator or the formulation of the Plan of Allocation.

6.2 The Settlement Administrator shall be responsible for all actions necessary for the implementation of the Plan of Allocation. The expenses of the Settlement Administrator shall be paid from the Escrowed Funds, unless otherwise ordered by the Court. The Settlement

Administrator shall designate an entity located in Europe to receive, maintain and keep appropriate records of exclusion requests in conformance with such protective orders as the Court may issue, and the expenses of such designee shall also be paid from the Gross Settlement Fund.

b. Supervision and Distribution of the Settlement

6.3 At a time following the Effective Date, and upon such further orders of the Court as may be necessary or convenient, the Settlement Administrator shall, subject to the Plan of Allocation approved by the Court, administer and process the claims submitted by Authorized Claimants, calculate Individual Claim Amounts, and oversee distribution of the Net Settlement Fund pursuant to the Plan of Allocation.

6.4 No distributions shall be made from the Net Settlement Fund except in compliance with the provisions of this Second Amended Stipulation and/or any order of the Court.

6.5 The Escrowed Funds shall be allocated as follows:

- (a) to pay Settling Defendants any refund due under ¶2.4;
- (b) to pay all reasonable costs and expenses actually incurred in locating members of the Settlement Class;
- (c) to pay all reasonable costs and expenses actually incurred in soliciting and processing claims from Claimants, administering claims submitted by Authorized Claimants and calculating Individual Claim Amounts, per ¶6.3 above;
- (d) to pay any other reasonable Administrative Expenses;
- (e) to reimburse Settling Defendants for costs and expenses incurred in cooperating with any discovery request, per to ¶2.14 above;

(f) to pay the Taxes described in ¶1.40 and ¶2.10, above;

(g) to pay any award of attorney's fees, expenses, and Lead Plaintiff service award allowed by the court per ¶¶7.1-7.7 below; and

(h) to distribute the Net Settlement Fund to Authorized Claimants per the Plan of Allocation. The Net Settlement Fund shall be the Settlement Amount after the payment of items (a) through (g) above.

Prior to the Effective Date but not thereafter, the Escrow Agent shall furnish to counsel for the Settling Defendants a monthly accounting of transactions in the Escrow Account and a copy of the monthly statement issued by the bank holding the Escrow Account.

6.6 At a time following the Effective Date, in accordance with the terms of this Second Amended Stipulation and the Plans of Allocation, or such orders of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants subject to and in accordance with the following:

(a) Each Claimant shall be required to submit to the Settlement Administrator a signed and completed Proof of Claim and Release signed under penalty of perjury. All such claim forms must comply with the requirements set forth in Exhibit A-1, Section II.E.

(b) Except as otherwise ordered by the Court, all Claimants who fail to submit a timely, valid Proof of Claim and Release within such time as may be ordered by the Court or otherwise allowed shall be forever barred from receiving any disbursements from the Net Settlement Fund per this Second Amended Stipulation, but shall in all other respects be subject to and bound by the provisions and releases contained herein, and shall be bound by the Judgment. Notwithstanding the foregoing, Plaintiff's Lead Counsel may accept late claims for processing so long as the distribution of the Net Settlement Fund is not materially delayed

thereby.

(c) The Net Settlement Fund shall be distributed to Authorized Claimants in accordance with the Plan of Allocation approved by the Court. However, the Settlement Administrator shall reserve an appropriate amount to cover any unresolved disputes with any Claimant or taxing authority until such dispute is fully and finally resolved.

(d) No funds from the Net Settlement Fund shall be distributed until after all appeals from any Orders approving and effectuating the Settlement as described herein and from the Judgment have been resolved, or the time for any such appeals has expired.

(e) All potential members of the Settlement Class who do not timely and validly request exclusion from the Settlement Class in accordance with the instructions set forth in section IV.C of the Notice attached hereto as Exhibit A-1 shall be subject to and bound by the Judgment and the Second Amended Stipulation, and the provisions and releases contained herein, regardless of whether any such potential Settlement Class Members seek a distribution from the Net Settlement Fund by submitting a Proof of Claim and Release.

6.7 In the event that a balance remains in the Net Settlement Fund after six (6) months from the date of all distributions of the Net Settlement Fund per the Plan of Allocation and consistent with the terms of this Second Amended Stipulation (whether by reason of tax refunds or uncashed checks), such balance will not be refunded or otherwise returned to the Settling Defendants. Plaintiff's Lead Counsel may reallocate such balance among Authorized Claimants in an equitable and economic fashion, or if the foregoing is impractical distribute the balance *cy pres*, subject to the approval of Lead Plaintiff.

6.8 It is understood and agreed by the Settling Parties that any adjustments to the Plan of Allocation, including, but not limited to, any Authorized Claimant's Individual Claim

Amount, are not part of the Second Amended Stipulation and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in the Second Amended Stipulation, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel the Second Amended Stipulation or affect the Finality of the Judgment, or any other orders entered pursuant to the Second Amended Stipulation, or give any party a right to terminate or cancel the Second Amended Stipulation.

7. ATTORNEYS' FEES AND EXPENSES

7.1 In connection with Lead Plaintiff's request for approval of the Settlement and/or thereafter, Plaintiff's Lead Counsel will submit an application or applications (the "Fee and Expense Application") for distributions to Plaintiff's Counsel from the Gross Settlement Fund for: (a) an award of attorneys' fees in the amount of 18% of the Gross Settlement Fund; plus (b) expenses incurred in connection with prosecuting the Action, plus any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid). The Fee and Expense Application shall be filed before the Fairness Hearing and published on the Settlement Administrator's website. Plaintiff's Lead Counsel reserves the right to make additional applications for fees and expenses incurred.

7.2 The fees and expenses, as awarded by the Court, shall be paid to Plaintiff's Lead Counsel, as ordered, immediately, and in no event more than five (5) business days after the Court executes an order awarding such fees and expenses. Plaintiff's Lead Counsel may thereafter allocate the attorneys' fees among Plaintiffs' Counsel in a manner in which they in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Action.

7.3 In the event that the Effective Date does not occur for any reason, including the non-occurrence of the Irish High Court Order Condition, or the Judgment or the order making the Fee and Expense Award is reversed or modified, or the Second Amended Stipulation is canceled or terminated for any other reason, and the Fee and Expense Award has been paid to any extent, then such of Plaintiffs' Counsel who have received any portion of the Fee and Expense Award shall within five (5) business days from receiving notice from the Settling Defendants' counsel or from a court of appropriate jurisdiction, refund to the Gross Settlement Fund such fees and expenses previously paid to them from the Gross Settlement Fund in an amount consistent with such reversal or modification. Each such Plaintiff's Counsel's law firm receiving fees and expenses, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph. Without limitation, Plaintiff's Counsel agree that the Court may, upon application of Settling Defendants and notice to Plaintiff's Counsel, summarily issue orders including, but not limited to, judgments and attachment orders, and may make appropriate findings of or sanctions for contempt, should such law firm fail timely to repay fees and expenses pursuant to this ¶7.3.

7.4 Lead Plaintiff may submit an application for an award for his time, expense, and efforts incurred in the prosecution of the Action. However, in the event that the Effective Date does not occur, or the Judgment or the order approving Lead Plaintiff's application for reimbursement of his time and expenses is reversed or modified, or the Stipulation is canceled or terminated for any other reason, then the Lead Plaintiff shall within five (5) business days from receiving notice from Settling Defendants' counsel or from a court of

appropriate jurisdiction, refund to the Settlement Fund such reimbursement for time and expenses previously paid to him from the Settlement Fund in an amount consistent with such reversal or modification.

7.5 The procedure for and the allowance or disallowance by the Court of any applications by Plaintiff's Counsel for attorneys' fees and expenses, or the expenses of the Lead Plaintiff, to be paid out of the Gross Settlement Fund, are not part of the Settlement set forth in the Stipulation, and are to be considered by the Court in tandem with the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in the Second Amended Stipulation, but any order or proceeding relating to the Fee and Expense Application, or the Lead Plaintiff's time and expense application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Second Amended Stipulation, or affect or delay the finality of the Judgment approving the Second Amended Stipulation and the settlement of the Action set forth herein.

7.6 The Settling Defendants shall have no responsibility for any payment of attorneys' fees and expenses to Plaintiff's Counsel or Lead Plaintiff over and above payment out of the Settlement Fund.

7.7 The Settling Defendants shall have no responsibility for the allocation among Plaintiff's Counsel, and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action, and the Settling Defendants take no position with respect to such matters.

8. CONDITIONS AND EFFECTIVE DATE OF SETTLEMENT

8.1 The Effective Date of the Settlement shall be the date when all the following conditions of the Settlement shall have occurred:

(a) approval by the Court of the Settlement, following Notice to the Class and the Fairness Hearing, pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(b) the occurrence of the Irish High Court Order Condition, provided however that this condition may be waived in writing by the Settling Defendants;

(c) the Settling Defendants no longer having any right under ¶9.1, below, to terminate the Settlement, or having provided to Plaintiff's Lead Counsel written notice waiving such right; and

(d) entry by the Court of the Judgment and such Judgment becoming Final.

8.2 Upon the occurrence of all the events described in ¶8.1, above, any and all remaining interest or right of the Settling Defendants in or to amounts contributed to the Gross Settlement Fund shall be absolutely and forever extinguished.

9. TERMINATION, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

9.1 The Settling Defendants shall have the option to terminate the Settlement in its entirety in the event that Settlement Class Members whose aggregate Net Losses exceed \$300 million or Settlement Class Members who have suffered no Net Loss but whose aggregate account balances based on the Fund's Net Asset Value at valuation date November 28, 2008 exceed \$10 million choose to exclude themselves from the Settlement Class. For purposes of this paragraph, Net Losses will be converted to U.S. dollars using the exchange rate in effect on the date that requests for exclusion are due. All such requests for exclusion must comply with the requirements set forth in Exhibit A-1, Section IV.C.

9.2 In the event that prior to the Effective Date this Second Amended Stipulation shall terminate or become or be declared invalid or unenforceable for any reason, or if it shall become reasonably apparent in the judgment of the Settling Defendants that the events

described in section 8.1 above will not occur, then counsel for Settling Defendants may notify Plaintiff's Lead Counsel and the Escrow Agent in writing, and within five (5) business days after such notification, they shall pay or cause to be paid to the Settling Defendants the balance of the Escrowed Funds, including the Settlement Amount, together with any interest or other income earned thereon, less any Taxes paid or due with respect to such income per ¶6.5(f), less any reasonable Administrative Expenses and notice expenses actually incurred and paid or payable as authorized in this Second Amended Stipulation per ¶6.5(b)-(d).

9.3 With the exception of ¶¶7.3, 9.1-9.4, 10.1, 10.2, and 11.2 (which shall continue in full force and effect), in the event the balance of the Escrowed Funds shall have been paid to the Settling Defendants pursuant to ¶9.2, the terms and provisions of this Second Amended Stipulation shall be null and void and shall have no further force and effect with respect to the Settling Parties, and neither the existence nor terms of this Second Amended Stipulation (nor any negotiations, communications, or acts relating to this Second Amended Stipulation) shall be used in the Action or in any other action or proceeding for any purpose other than to enforce the terms remaining in effect.

9.4 Except as otherwise provided herein, in the event the balance of the Escrowed Funds shall have been returned to the Settling Defendants pursuant to section 9.2, the parties to this Second Amended Stipulation shall be deemed to have reverted to their respective positions in the Action as of one day prior to the date of execution of this Second Amended Stipulation and, except as otherwise expressly provided, the parties shall proceed in all respects as if this Second Amended Stipulation and any related Orders had not been entered, with all of their respective claims and defenses preserved as they existed as on that date.

10. NO ADMISSION OF WRONGDOING

10.1 The Settling Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them with respect to the Action and to compromise claims that are contested and shall not be deemed an admission by any Settling Party as to the merits or justiciability of any claim or defense or any allegation made in the Action.

10.2 This Second Amended Stipulation, whether or not consummated, and any acts performed and any proceedings taken pursuant to it:

(a) shall not be offered by any of the Settling Parties or received against the Settling Defendants as an admission or evidence of the validity or justiciability of any Released Claim, of any fact alleged in the Action, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation;

(b) shall not be offered by any of the Settling Parties or received against the Settling Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Settling Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Second Amended Stipulation; provided, however, that if this Second Amended Stipulation is approved by the Court, the Released Parties may refer to it to effectuate the liability protection granted them hereunder;

(c) shall not be construed against any of the Settling Defendants or the Settlement Class as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

(d) shall not be construed as an admission, concession or presumption against

Lead Plaintiff or any of the Settlement Class Members that any of their claims are without merit, or that any defenses asserted by the Settling Defendants have any merit, or that damages recoverable under the Action would not have exceeded the Gross Settlement Fund.

11. MISCELLANEOUS PROVISIONS

11.1 All of the exhibits attached hereto are incorporated by reference as though fully set forth herein.

11.2 All agreements made relating to the confidentiality of information shall survive the Second Amended Stipulation.

11.3 The parties to this Second Amended Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Settlement Class Members or any Defendant against the Released Parties with respect to the Released Claims. Accordingly, Lead Plaintiff and Released Parties agree not to assert in any forum that the Action was brought by the Lead Plaintiff or defended by Settling Defendants in those actions in bad faith or without a reasonable basis. The Judgment shall contain a finding that none of the Settling Parties nor their counsel committed any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Action.

11.4 The Settling Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's length in good faith by the parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

11.5 This Second Amended Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all parties hereto or their successors-in-interest.

11.6 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

11.7 The administration and consummation of the Settlement as embodied in this Second Amended Stipulation shall be under the authority of the Court, and that Court shall retain jurisdiction for a period of six years for the purpose of enforcing the terms of this Second Amended Stipulation.

11.8 The waiver by one party of any breach of this Second Amended Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Second Amended Stipulation.

11.9 This Second Amended Stipulation and its exhibits, as amended, and any related escrow and administration agreements constitute the entire agreement concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto concerning this Second Amended Stipulation or its exhibits other than those contained and memorialized in such documents.

11.10 This Second Amended Stipulation may be executed by facsimile or email in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to the Second Amended Stipulation shall exchange among themselves signed counterparts, and file with the Court a complete set of executed counterparts.

11.11 This Second Amended Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

11.12 This Second Amended Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have

been prepared by counsel for one of the parties, it being recognized that it is the result of arm's length negotiations between the parties and all parties have contributed substantially and materially to the preparation of this Second Amended Stipulation.

11.13 All counsel and any other person executing this Second Amended Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action, required or permitted to be taken pursuant to the Second Amended Stipulation to effectuate its terms.

11.14 Unless otherwise advised in writing, notices required or permitted by this Second Amended Stipulation shall be submitted by overnight mail, electronic mail, or in person as follows:

Notices to Lead Plaintiff or Plaintiff's Counsel:

Francis A. Bottini, Jr.

Albert Y. Chang

Chapin Fitzgerald Sullivan & Bottini LLP,

550 West C Street, Suite 2000

San Diego, CA 92101

(619) 241-4810 (telephone)

(619) 955-5318 (fax)

fbottini@cfsblaw.com

achang@cfsblaw.com

Brian P. Murray

Murray Frank LLP

275 Madison Avenue, Suite 801

New York, NY 10016

(212) 681-1818 (telephone)

(212) 682-1892 (fax)

bmurray@murrayfrank.com

Darren J. Robbins

Keith F. Park

James I. Jaconette

Robbins Geller Rudman & Dowd LLP

655 West Broadway, Suite 1900
San Diego, CA 92101
(619) 231-1058 (telephone)
(619) 231-1058 (fax)
jamesj@rgrdlaw.com

Notices to Settling Defendants or Settling Defendant's Counsel:

Evan A. Davis
David E. Brodsky
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
(212) 225-2000 (telephone)
(212) 225-3999 (fax)
edavis@cgsh.com

11.15 Lead Plaintiff and Settling Defendants agree to use reasonable best efforts to cooperate with one another in seeking: (i) Court entry of the Preliminary Settlement Approval Order and the Judgment and approval of the Second Amended Stipulation and the Settlement; (ii) entry of the Irish High Court Order; and (iii) to promptly agree upon and execute all such other documentations as may be reasonably required to obtain Final approval by the Court of the Settlement, and to obtain the other necessary Final orders by the Court and Irish High Court.

11.16 The construction and interpretation of this Second Amended Stipulation shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law of the United States requires that federal law governs.

11.17 The Court shall retain jurisdiction for a period of six years with respect to implementation and enforcement of the terms of the Second Amended Stipulation.

IN WITNESS WHEREOF, the parties hereto have caused the Amended Stipulation to be executed dated as of November 27, 2011.

By: 

Neville Seymour Davis

Court Appointed Lead Plaintiff

CHAPIN FITZGERALD
SULLIVAN & BOTTINI LLP

By: _____
Francis A. Bottini, Jr.
Albert Y. Chang
550 West C Street, Suite 2000
San Diego, CA 92101
(619) 241-4810 Phone
(619) 955-5318 Fax

*Lead Counsel for Lead Plaintiff Neville
Seymour Davis*

HSBC HOLDINGS PLC

By: _____
Evan A. Davis

Attorney-in-Fact

HSBC SECURITIES SERVICES
(IRELAND) LTD.

By: _____
Evan A. Davis

Attorney-in-Fact

HSBC INSTITUTIONAL TRUST
SERVICES (IRELAND) LTD.

By: _____
Evan A. Davis

Attorney-in-Fact

HSBC BANK USA, N.A.

By: _____
Evan A. Davis

Attorney-in-Fact

CLEARY GOTTLIEB STEEN &
HAMILTON LLP

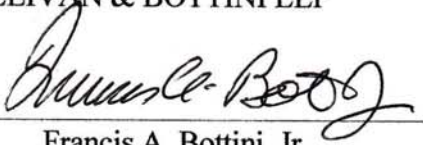
By: _____
Evan A. Davis
David E. Brodsky

One Liberty Plaza
New York, NY 10006
(212) 225-2000 Phone
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By: _____
Neville Seymour Davis

Court Appointed Lead Plaintiff

CHAPIN FITZGERALD
SULLIVAN & BOTTINI LLP

By: 
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*Lead Counsel for Lead Plaintiff Neville
Seymour Davis*

HSBC HOLDINGS PLC

By: _____
Evan A. Davis

Attorney-in-Fact

HSBC SECURITIES SERVICES
(IRELAND) LTD.

By: _____
Evan A. Davis

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By: _____
Neville Seymour Davis

Court Appointed Lead Plaintiff

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Ltd., and HSBC Bank USA, N.A.*

BLACKLINE OF EXHIBIT A - AMENDED AND RESTATED STIPULATION AND
AGREEMENT TO VERSION FILED AUGUST 12, 2011

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

IN RE HERALD, PRIMEO, AND THEMA FUNDS
SECURITIES LITIGATION

ECF Case

Case No. 09 Civ. 0289 (RMB)

This Document Relates to:

Case No. 09 Civ. 2558 (RMB)

NEVILLE SEYMOUR DAVIS,

Plaintiff,

**SECOND AMENDED AND
RESTATED STIPULATION AND
AGREEMENT OF PARTIAL
SETTLEMENT**

vs.

ALBERTO BENBASSAT, STÉPHANE
BENBASSAT, GENEVALOR, BENBASSAT &
CIE, GERALD J.P. BRADY, JOHN HOLLIWELL,
SONJA KOHN, DANIEL MORRISSEY, PETER
SCHEITHAUER, DAVID T. SMITH, WERNER
TRIPOLT, BANK MEDICI AG, UNICREDIT SPA,
HSBC INSTITUTIONAL TRUST SERVICES
(IRELAND) LTD., HSBC SECURITIES
SERVICES (IRELAND) LTD., HSBC BANK USA,
N.A., HSBC HOLDINGS PLC,
PRICEWATERHOUSECOOPERS
INTERNATIONAL LTD.,
PRICEWATERHOUSECOOPERS (DUBLIN),
PRICEWATERHOUSECOOPERS LLP,
PRICEWATERHOUSECOOPERS BERMUDA,
THEMA ASSET MANAGEMENT LIMITED,
THEMA INTERNATIONAL FUND PLC, BA
WORLDWIDE FUND MANAGEMENT
LIMITED, PETER MADOFF, ANDREW
MADOFF, THE ESTATE OF MARK MADOFF,
WILLIAM FRY, JP MORGAN CHASE & CO., and
THE BANK OF NEW YORK MELLON,

Defendants.

**SECOND AMENDED AND RESTATED STIPULATION AND AGREEMENT
OF PARTIAL SETTLEMENT**

This [Second](#) Amended and Restated Stipulation and Agreement of Partial Settlement (the “[Second Amended](#) Stipulation”) dated ~~August 11,~~[November 27,](#) 2011, is made pursuant to Rule 23 of the Federal Rules of Civil Procedure, and entered into by and among lead plaintiff Neville Seymour Davis (the “Lead Plaintiff”), on behalf of himself and the Settlement Class (as defined below), and Defendants HSBC Securities Services (Ireland) Limited (“HSSI”), HSBC Institutional Trust Services (Ireland) Limited (“HTIE”), HSBC Holdings plc and proposed defendant HSBC Bank USA, N.A. (collectively, the “HSBC Defendants” or the “Settling Defendants,” and together with the Lead Plaintiff, the “Settling Parties”).

This [Second](#) Amended Stipulation is intended by the Settling Parties to fully and finally resolve, discharge, and settle the Released Claims (as defined below), subject to the terms and conditions set forth below (the “Settlement”). It restates, amends and supersedes the [First Amended and Restated](#) Stipulation and Agreement of Partial Settlement dated ~~June 7, 2011, as amended on June 17, 2011, and the Supplemental Agreement dated June 7, 2011.~~[August 11, 2011](#) (the “[First Amended Stipulation](#)”).

WHEREAS:

THE LITIGATION

A. On March 19, 2009, Fabian Perrone and Chia-Hung Kao filed a class action complaint in the United States District Court for the Southern District of New York, captioned *Perrone et al. v. Benbassat et al.*, Case No. 09 Civ. 2558 (the “Action”). Plaintiffs Perrone and Kao, on behalf of themselves and other persons and entities who purchased shares of Thema International Fund plc, Primeo Select Fund, Herald USA Fund, and/or Herald (LUX) Fund, brought claims for violations of the federal securities laws and various common law claims against those funds, as well as their directors and service providers, arising out of those funds’ investments

with Bernard L. Madoff Investment Securities (“BLMIS”) and subsequent losses stemming from the Ponzi scheme perpetuated by Bernard L. Madoff.

B. On October 5, 2009, the Court issued an order (the “Consolidation Order”) consolidating the Action for pretrial purposes with other proceedings regarding the Herald, Primeo, and Thema International funds pending in *Repex Ventures v. Madoff et al.*, Case No. 09 Civ. 289 (the “Repex Action”) and *Leonhardt v. Madoff et al.*, Case No. 09 Civ. 2032 (the “Leonhardt Action,” and, collectively with the Repex Action and the Action, the “Consolidated Actions”). The Consolidation Order named Repex Ventures, S.A. of the *Repex* Action as lead plaintiff for investors in the Herald Funds, Dr. Shmuel Cabilly of the *Leonhardt* Action as lead plaintiff for investors in the Primeo Funds, and Neville Seymour Davis of the Action as lead plaintiff for investors in the Thema International Fund.

C. On February 10, 2010, Lead Plaintiff Davis and the other lead plaintiffs filed amended complaints in the Consolidated Actions. The amended complaint filed by Lead Plaintiff Davis (the “Amended Complaint”) was filed on behalf of all persons and entities who either owned shares of Thema International Fund plc or its sub-fund Thema Fund (collectively, the “Fund”), on December 10, 2008 or purchased shares of the Fund between January 12, 2004 and December 14, 2008. The Amended Complaint alleged violations of §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and various state law claims, including breach of contract, gross negligence, breach of fiduciary duty, aiding and abetting breach of fiduciary duty and unjust enrichment. Among others, HSBC Holdings plc, HTIE, and HSSI were named as defendants in the Amended Complaint.

D. Prior to the commencement of the Action, the Fund had commenced proceedings against its custodian, HTIE, in the Irish High Court - Commercial Division, alleging breach of the

Custodian Agreement, unjustifiable failure to perform obligations under laws and regulations relating to Undertakings for Collective Investment in Transferable Securities (UCITS), and various tort claims, in *Thema Int'l Fund plc v. HSBC Institutional Trust Services (Ireland) Ltd.*, Record Nos. 2008/10983P, 2009/565TP and 2009/566TP (H. Ct.) (the “HTIE Litigation”). Sixty-one individual Thema investors also commenced separate proceedings in Dublin between April 3, 2009 and December 10, 2010. The HTIE Litigation and the investor actions were assigned to Judge Frank Clarke of the Commercial List. Two of the investor actions, *Kalix Fund Ltd. v. HSBC Institutional Trust Services (Ireland) Ltd.*, Record No. 3152P/2009 (H. Ct.) and *UBI Banca v. HSBC Institutional Trust Services (Ireland) Ltd.*, Record No. 7189P/2009 (H. Ct.), were selected as cases to progress alongside the HTIE Litigation on a coordinated basis. The other investor actions are effectively held in abeyance pending the outcome of the coordinated cases.

E. In August 2010, counsel for the Lead Plaintiff and counsel for the Settling Defendants communicated regarding the possibility of participating in a mediation. Following initial settlement discussions in New York in November 2010 and in San Diego in December 2010, the parties engaged the Honorable (Ret.) Daniel Weinstein, an experienced mediator and a retired California state court judge, to provide mediation services regarding settlement.

F. On December 5, 2010, subsequent to the commencement of the parties' settlement communications, the SIPC Trustee for the BLMIS Liquidation proceeding pending in the Bankruptcy Court for the Southern District of New York filed an amended complaint against, among others, the Fund and various HSBC entities, including the Settling Defendants. *See Picard v. HSBC Bank plc et al.*, Adv. Pro. No. 09-1364 (S.D.N.Y. Bankr.). In that litigation, the SIPC Trustee seeks to disallow the Fund's customer claim in the BLMIS Liquidation, brings avoidance claims against the Fund, and asserts avoidance and common law claims against HSBC entities and

other defendants, including aiding and abetting and contribution claims in respect of BLMIS's fraud upon and breach of fiduciary duty to its customers. The HSBC Defendants moved to have the SIPC Trustee's case transferred from the Bankruptcy Court to the District Court on February 3, 2011. Following a hearing held on the motion on April 12, 2011, the Honorable Jed Rakoff, United States District Judge, withdrew the reference to resolve preliminary issues of whether the Trustee has standing under the Securities Investor Protection Act to assert the common law claims and whether those claims are preempted under the Securities Litigation Uniform Standards Act of 1998. On July 28, 2011, Judge Rakoff issued a decision dismissing the Trustee's common law claims for lack of standing. [On August 26, 2011, the Trustee filed a Notice of Appeal in the Second Circuit Court of Appeals relating to Judge Rakoff's decision. The Notice of Appeal was withdrawn on November 7, 2011, subject to reinstatement.](#)

G. On February 24 and 25, 2011, a formal mediation presided over by Judge Weinstein took place in New York. Following the formal sessions, the mediator oversaw communications in March and April between the Settling Parties and played a significant role in facilitating the negotiations between the Settling Parties that have resulted in the Settlement.

H. On April 1, 2011, Lead Plaintiff filed a proposed Second Amended Complaint (the "Proposed Amended Complaint," collectively with the Amended Complaint, the "Amended Complaints"). The Proposed Amended Complaint omits the federal securities claims in light of the Supreme Court's 2010 decision in [Morrison v. National Australia Bank](#), added additional factual allegations, and asserts new common law derivative claims for gross negligence, negligence, professional negligence, aiding and abetting negligence, breach of fiduciary duty, and third party beneficiary breach of contract. The Proposed Amended Complaint also added HSBC Bank USA, N.A. as a defendant.

I. On April 5, 2011, the Settling Parties reached an agreement in principle to settle this Action.

J. On April 7, 2011, counsel for the SIPC Trustee filed a complaint against the lead plaintiffs of the Consolidated Actions, seeking to enjoin the Consolidated Actions from proceeding, citing those actions' competition with the SIPC Trustee's suit against HSBC. *See Picard v. Repex Ventures, S.A., et al.*, Case No. 11 AP 01727. ~~Lead Plaintiff Davis has moved to withdraw the reference of that injunction proceeding so that Judge Rakoff may preside over it. Judge Rakoff has accepted Lead Plaintiff's motion to withdraw as related to the SIPC Trustee's action against the HSBC Defendants.~~The SIPC Trustee voluntarily dismissed the action without prejudice on November 14, 2011.

K. The parties have conducted confirmatory discovery that included, inter alia, production of documents by the Settling Defendants and a deposition of a senior HSBC official with knowledge of the Settling Defendants' dealings with and due diligence of BLMIS.

L. On June 7, 2011, the Settling Parties executed ~~the~~ Stipulation and Agreement of Partial Settlement that has been restated, amended ~~and~~ superceded by this Second Amended Stipulation. On June 17, 2011, Lead Plaintiff filed a motion for preliminary approval of the ~~Settlement~~settlement provided for in the First Amended Stipulation.

M. On June 29, 2011, Defendants in the Consolidated Actions filed a joint motion to dismiss on various grounds. The motion became fully briefed on October 28, 2011, and oral argument is scheduled to take place on November 28, 2011.

N. ~~M.~~ On June 30, 2011, Thema filed an application before the Irish High Court seeking, inter alia, directions as to whether ~~in the event this Settlement is finally approved by the Court it would be recognized or enforced in Ireland~~the settlement provided for in the First

Amended Stipulation would be recognized or enforced in Ireland in the event it was finally approved by the Court. On August 4, 2011, the Irish High Court issued a judgment directing that HTIE issue an application before the Irish High Court ~~as to what effect the Settlement~~(the “Irish High Court Application”) as to the recognition and enforcement of the settlement in Ireland and to determine the effect the settlement provided for in the First Amended Stipulation should have had on the Irish proceedings in the event that the ~~Settlement~~settlement provided for in the First Amended Stipulation were to be finally approved. ~~The Irish High Court has scheduled a hearing on HTIE’s anticipated application for October 11, 2011, and indicated that it expects to issue a ruling in mid- to late October 2011.~~ after the fairness hearing. HTIE filed the Irish High Court Application on September 2, 2011 and served the application on the parties to the Irish litigation on the same date. A copy of the Irish High Court Application is attached hereto as Exhibit D. The application stands adjourned until December 5, 2011. HTIE will seek directions on the hearing of the application on December 5, 2011.

O. On September 7, 2011, the Court issued a Decision and Order denying the motion for preliminary approval without prejudice for certain reasons stated therein. The Court also stated however that it “would be pleased to entertain future applications for preliminary approval if and when such applications arise.” Sept. 15, 2011 Decision and Order at 9 n.9, In re Herald, Primeo, and Thema Funds Secs. Litig., 09-CIV-289 (RMB). The Settling Parties then engaged in discussions to address the Court’s concerns, resulting in this Second Amended Stipulation, which the parties executed on November 27, 2011.

P. N.—The Settling Defendants deny any and all allegations of wrongdoing, fault, liability or damage to Lead Plaintiff and the Settlement Class arising out of the conduct, statement, acts or omissions alleged in the Amended Complaints, deny that they engaged in any wrongdoing

whatsoever, and believe that they diligently and adequately discharged their duties as service providers to the Fund in accordance with applicable law. The Settling Defendants and their counsel deny the allegations contained in the Amended Complaints and maintain that they have meritorious defenses to the allegations. However, the Settling Defendants recognize that continued defense of the Action would entail significant burden and expense, and expose the Settling Defendants to substantial liability if their defenses were not successful. Accordingly, the Settling Defendants have concluded it is desirable fully and finally to resolve the Action upon the terms and conditions set forth in this [Second Amended](#) Stipulation, which shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Settling Defendant with respect to any claim of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Settling Defendants have asserted or would assert.

Q. ~~Q.~~ The Lead Plaintiff and his counsel believe that the Action has merit. However, Plaintiff's Counsel recognize and acknowledge the expense, length, difficulties and risks inherent to litigating claims as complex as those contained in the Action. Plaintiff's Counsel have conducted investigations relating to the claims and the underlying events and transactions alleged in the Action. Plaintiff's Counsel have reviewed and analyzed documentary and deposition evidence and have researched the applicable law with respect to the claims of the Lead Plaintiff and the Settlement Class against the Settling Defendants and the potential defenses thereto. Plaintiff's Counsel are mindful of the risk to the class of dismissal of the Action on grounds of, inter alia, forum non conveniens and lack of shareholder standing to assert the claims, some of which are already being asserted in Ireland against HTIE by the Fund, as well as the risk that the Settling Defendants might prevail through a dispositive motion or at trial. Accordingly, the Lead Plaintiff and Plaintiff's Counsel have concluded that it is desirable fully and finally to resolve the

Action upon the terms and conditions set forth in this [Second Amended](#) Stipulation, which shall not be construed or deemed to be a concession by Lead Plaintiff or any Settlement Class Member of any infirmity in the claims asserted in the Action or any other action.

R. ~~P.~~ The parties to this [Second Amended](#) Stipulation recognize that the Action has been filed by the Lead Plaintiff and defended by the Settling Defendants in good faith with adequate basis in fact under Federal Rule of Civil Procedure 11, but nevertheless consider that resolution of the Action is advisable from the point of view of all the Settling Parties.

S. ~~Q.~~ Based upon their investigation and confirmatory discovery as set forth above, Lead Plaintiff and Plaintiff's Counsel have concluded that the terms and conditions of this [Second Amended](#) Stipulation are fair, reasonable and adequate to Lead Plaintiff and the Settlement Class, and are in their best interests, and Lead Plaintiff has agreed to settle the claims raised in the Action against the Settling Defendants pursuant to the terms and provisions of this [Second Amended](#) Stipulation, after considering (a) the substantial benefits that the members of the Settlement Class will receive from settlement of the Action, (b) the delays and attendant costs of protracted litigation, and (c) the risks and uncertainties inherent in litigation and particularly those in this complex litigation due to several factors, ~~including the competing SIPC Proceedings.~~

TERMS OF [SECOND AMENDED](#) STIPULATION AND AGREEMENT OF PARTIAL SETTLEMENT

NOW THEREFORE, without any admission or concession on the part of Lead Plaintiff of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Settling Defendants, it is hereby STIPULATED AND AGREED, by and between the Settling Parties, through their respective counsel, subject to approval of the District Court, pursuant to Rule 23(e) of the Federal

Rules of Civil Procedure and other applicable rules, in consideration of the benefits flowing to the parties hereto from the Settlement herein set forth, that all Released Claims (defined below) as against the Settling Defendants shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

1. DEFINITIONS

As used in this [Second Amended](#) Stipulation, the following terms shall have the following meanings:

1.1 “Action” means the action captioned *Davis v. Benbassat et al.*, Case No. 09 Civ. 2558 (S.D.N.Y.) and consolidated for pre-trial purposes under the caption *In re Herald, Primo and Thema Fund Litigations*, Case No. 09 Civ. 289 (S.D.N.Y).

1.2 “Administrative Expenses” means the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing notice to the Class, locating Class Members, determining the eligibility of any person to be a Settlement Class Member or Authorized Claimant, obtaining information regarding the investment account of each Settlement Class Member with the Fund, and administering, calculating and distributing the Net Settlement Fund to Authorized Claimants. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this [Second Amended](#) Stipulation.

1.3 “Authorized Claimant” means any Settlement Class Member entitled to recovery pursuant to the terms of the [Second Amended](#) Stipulation and the Plan of Allocation.

1.4 “Claimant” means any Settlement Class Member who seeks a disbursement from the Net Settlement Fund and who submits a completed Proof of Claim, [and](#) Release ~~and~~ **Assignment**.

1.5 “Court” means the United States District Court for the Southern District of New York.

1.6 “Defendants” means each and all of the defendants named in the Amended Complaints.

1.7 “Effective Date” means the date upon which all of the conditions specified in ¶8.1 of the [Second Amended](#) Stipulation have been satisfied.

1.8 “Escrow Account” means the account maintained by the Escrow Agent at Citi Private Bank, 787 West 5th Street, Los Angeles, CA 90071.

1.9 “Escrow Agent” means Chapin Fitzgerald Sullivan & Bottini LLP. The Escrow Agent shall perform the duties set forth in this [Second Amended](#) Stipulation.

[1.10](#) ~~“Escrowed Funds” has the meaning defined in ¶2.3 hereof.~~

[1.11](#) ~~1.10~~ “Fairness Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy and reasonableness of the Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure and whether to issue the Judgment.

[1.12](#) ~~1.11~~ “Final” or “Finality,” with respect to the Judgment means: (1) if no appeal is filed, the expiration date of the time provided for under the corresponding rules of the applicable court or legislation for filing or noticing of any appeal from the Judgment; or (2) if there is an appeal from the Judgment, the date of (a) final dismissal of any appeal from the Judgment, or (b) the date of final affirmance on an appeal of the Judgment, the expiration of the time to file a petition for a writ of certiorari or other form of review or the denial of a writ of certiorari or other form of review of the Judgment, and, if certiorari or other form of review is granted, the date of final affirmance of the Judgment following review pursuant to that grant.

Any proceeding or order, or any appeal or petition for a writ of certiorari or other form of review pertaining solely to (i) any application for attorneys' fees, costs or expenses, [\(ii\) any application for a service award to Lead Plaintiff](#), and/or ~~([#iii](#))~~ the Plan of Allocation, shall not in any way delay or preclude the Orders from becoming Final.

[1.13](#) ~~1.12~~ "Fund" means Thema International Fund plc together with its sub-fund Thema Fund.

[1.14](#) ~~1.13~~ "Gross Settlement Fund" ~~means (1) the Settlement Amount and (2) any interest on or other income or gains earned thereon while such amount is held by the Escrow Agent and invested consistent with the terms of this Stipulation~~ [has the meaning defined in ¶2.4 hereof](#).

[1.15](#) ~~1.14~~ "Individual Claim Amount" means the portion of the Net Settlement Fund that the Settlement Administrator determines, pursuant to the terms of this [Second Amended](#) Stipulation and the Plan of Allocation, shall be allocated to each Authorized Claimant.

[1.16](#) ~~1.15~~ "Judgment" means the Settlement Approval Order and Judgment, substantially in the form attached hereto as Exhibit "C," to be entered by the Court approving the terms of this [Second Amended](#) Stipulation pursuant to Federal Rule of Civil Procedure 23 and dismissing the Action with prejudice as against the Settling Defendants.

[1.17](#) ~~1.16~~ "Lead Plaintiff" means Neville Seymour Davis, court-appointed lead plaintiff in the Action.

[1.18](#) ~~1.17~~ "Net Loss" means the loss suffered by a Claimant to the extent his, her or its aggregate investment in the Fund exceeded the amount of proceeds received from the redemption or sale of shares in the Fund.

[1.19](#) ~~1.18~~ "Net Settlement Fund" has the meaning defined in ¶6.5(~~h~~) hereof.

1.20 ~~1.19~~ “Non-Settling Defendants” means the Defendants other than the Settling Defendants named in the Amended Complaints and any other person or entity who is subsequently added as a defendant in a subsequent complaint filed by the Lead Plaintiff.

1.21 ~~1.20~~ “Notice” means the Notice of Proposed Settlement which is to be sent to Settlement Class Members substantially in the form attached hereto as Exhibit “A-1”.

1.22 ~~1.21~~ “Plaintiff’s Lead Counsel” means the law firm of Chapin Fitzgerald Sullivan & Bottini LLP, court-appointed Plaintiff’s Lead Counsel in the Action.

1.23 ~~1.22~~ “Plan of Allocation” means the plan or formula of allocation of the Net Settlement Fund, which is to be sent to Settlement Class Members substantially in the form attached hereto as Exhibit “A-2,” whereby the Net Settlement Fund shall be distributed to Authorized Claimants by the Notice and Claims Administrator. The Settling Defendants shall have no responsibility for and no liability with respect to the Plan of Allocation or any distributions made pursuant thereto or for any estimates of recovery in the Notice or otherwise.

1.24 ~~1.23~~ “Plaintiff’s Counsel” means the Plaintiff’s Lead Counsel and the law firms of Robbins Geller Rudman & Dowd LLP and Murray Frank ~~& Sailer~~ LLP.

1.25 ~~1.24~~ “Preliminary Settlement Approval Order” means an order by the Court, substantially in the form attached as Exhibit “B,” preliminarily approving this Second Amended Stipulation, including the forms and procedure for providing notice to the Settlement Class, conditionally certifying the Lead Plaintiff as the representative of the Settlement Class and Plaintiff’s Lead Counsel as counsel to the Class, establishing a procedure for members of the Settlement Class to follow in order to object to the Settlement set forth in this Second Amended Stipulation, and setting a date for a Fairness Hearing.

1.26 ~~1.25~~ “Proof of Claim, and Release ~~and Assignment~~” means the form to be sent to the Settlement Class Members, substantially in the form attached as Exhibit “A-4”, by which Claimants may make claims against the Net Settlement Fund, and by which Claimants shall make all releases ~~and assignments~~ specified in ~~¶¶2.13, 2.14 and~~ ¶4.1.

1.27 ~~1.26~~ “Publication Notice” means the summary notice of proposed Settlement and hearing for publication substantially in the form attached as Exhibit “A-3”.

1.28 ~~1.27~~ “Released Claims” shall mean all claims, counterclaims, rights, causes of action, or liabilities of every nature and description, whether known or Unknown (as defined herein), whether arising under federal, state, common or foreign law, that were or could have been asserted in the Action or any other action in the United States or elsewhere in any jurisdiction throughout the world in which the Released Parties are domiciled or otherwise subject to jurisdiction, by any Settlement Class Member, that arise out of, are based upon, or related to the allegations, transactions, facts, matters, or occurrences set forth or referred to in the Amended Complaint or the Proposed Amended Complaint concerning or relating to investments in the Fund, or that would be barred by res judicata or collateral estoppel if the claims asserted in the Action had been fully litigated on the merits to a final judgment in favor of the party against whom such claims were brought.

“Released Claims” does not include claims, rights or causes of action or liabilities whatsoever related to the enforcement of the Settlement, including, without limitation, any of the terms of this Second Amended Stipulation or orders or judgments issued by the courts in connection with the Settlement or any claims asserted or that could be asserted against the Non-Settling Defendants.

1.29 ~~1.28~~ “Releasing Parties” means the Lead Plaintiff, the Settlement Class Members and their respective counsel.

1.30 ~~1.29~~ “Released Parties” means the Settling Defendants. Released Parties also shall include the Settling Defendants’ current and former subsidiaries, parents, principals, direct or indirect affiliates, including without limitation HSBC Bank plc, general or limited partners or partnerships, successors and predecessors, heirs, assigns, officers, directors, agents, employees, fiduciaries, and attorneys. Released Parties shall not include the Non-Settling Defendants, except for acts or omissions within the course of any former employment with a Settling Defendant.

~~1.30 — “Reserve Amount” shall be the amount that Lead Plaintiff shall be entitled, for the benefit of the Class and upon approval of the Court, to set aside from the Gross Settlement Fund in a segregated account maintained by Plaintiff’s Lead Counsel in order to fund fees and expenses to be incurred as a result of the litigation of claims and causes of action outside the United States against the Non-Settling Defendants. Any portion of the Reserve Amount not used for prosecution of the Action against the Non-Settling Defendants shall be added to the Net Settlement Fund. Lead Plaintiff currently intends to request approval of the Court of a \$10 million Reserve Amount in connection with the motion for preliminary approval of this Settlement, but reserves his right to seek a greater or lesser Reserve Amount. Settling Defendants will take no position on such application. Prior to the Effective Date, up to \$1 million from the Reserve Amount may be applied to such fees and expenses incurred after entry of the Judgment. No funds shall be paid out from the Reserve Amount before entry of the Judgment. Amounts in excess of \$1 million shall not be paid out until after the Effective Date.~~

1.31 “Settlement” means the settlement of the Action contemplated by this [Second Amended Stipulation](#).

1.32 “Settlement Administrator” means Gilardi & Co. LLC, engaged by Plaintiff’s Lead Counsel and appointed by the Court to perform duties including but not limited to provision of notice to the Settlement Class, calculation of Individual Claim Amounts, and implementation of the Plan of Allocation.

1.33 “Settlement Amount” ~~means the principal amount of \$62.5 million~~[has the meaning defined in ¶2.2 hereof](#).

1.34 “Settlement Class” means, for the purposes of this Settlement only, all persons and entities (other than persons or entities who timely and validly request exclusion from the Settlement Class) who were registered or beneficial owners of shares of Thema International Fund plc or its sub-fund Thema Fund on December 10, 2008, and suffered damages thereby due to the conduct alleged in the Amended Complaints, including the legal representatives, heirs, successors in interest, assigns and transferees, intermediate and remote, of all such foregoing holders and/or owners, immediate and remote. Excluded from the Settlement Class are Defendants and each of their officers and directors, as well as their families and affiliates, provided however that any affiliate of the Settling Defendants acting as agent or nominee for a beneficial owner of shares of the Fund who is not ~~an excluded~~ person or entity described above shall be deemed to be a Settlement Class Member.

1.35 “Settlement Class Member” means a member of the Settlement Class defined in ¶1.34.

1.36 “Settling Defendants” means HSBC Holdings plc, HSBC Institutional Trust Services (Ireland) Limited, HSBC Securities Services (Ireland) Limited and, in the event Plaintiff Counsel’s motion to amend the Amended Complaint is granted, HSBC Bank USA, N.A.

1.37 “Settling Defendants’ Counsel” means Cleary Gottlieb Steen & Hamilton LLP.

1.38 “Settling Parties” means, collectively, the Settling Defendants and Lead Plaintiff.

1.39 ~~“SIPC Trustee” means Irving H. Picard, Trustee appointed by the Securities Investor Protection Corporation for the Liquidation of Bernard L. Madoff Securities.~~

~~1.40~~—“Second Amended Stipulation” means this Second Amended and Restated Stipulation and Agreement of Partial Settlement.

1.40 ~~1.41~~—“Taxes” means (i) any and all applicable taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, (A) with respect to the income or gains earned by or in respect of the Gross Settlement Fund, including, without limitation, any taxes that may be imposed upon Settling Defendants or their counsel with respect to any income or gains earned by or in respect of the Gross Settlement Fund for any period while it is held by the Escrow Agent during which the Gross Settlement Fund does not qualify as a Qualified Settlement Fund for federal or state income tax purposes; or (B) by way of withholding as required by applicable law on any distribution by the Escrow Agent or the Settlement Administrator of any portion of the Gross Settlement Fund to Authorized Claimants and other persons entitled hereto pursuant to this Second Amended Stipulation; and (ii) any and all expenses, liabilities and costs incurred in connection

with the taxation of the Gross Settlement Fund (including without limitation, expenses of tax attorneys and accountants).

1.41 ~~1.42~~ “Unknown Claims” means any and all Released Claims that any of the Lead Plaintiff, Settlement Class Members or Settling Defendants does not know or suspect to exist in his, her or its favor as of the Effective Date and which, if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, including any Unknown Claims, the parties stipulate and agree that upon the Effective Date, the Lead Plaintiff and the Settling Defendants shall expressly waive, and each Settlement Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state of the United States, any principle of common law or any law of any foreign jurisdiction, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiff and Settling Defendants acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement.

2. THE SETTLEMENT

a. Scope and Effect of Settlement

2.1 The obligations incurred pursuant to this [Second Amended](#) Stipulation shall be in full and final disposition of the Action as regards the Settling Defendants.

b. Settlement Monetary Consideration

2.2 In consideration for the release and discharge provided herein, and the

agreement by Lead Plaintiff on behalf of himself and the Settlement Class to the other settlement terms and conditions hereof, ~~on June 27, 2011, the Settling Defendants caused the Settling Defendants will pay a~~ Settlement Amount ~~of \$62.5 million to be paid to the Escrow Agent for the benefit of the Settling Class.~~ The Settlement Amount will depend on the aggregate Net Loss of Settlement Class Members who elect to exclude themselves from the Settlement Class, and shall be:

(a) \$52.5 million in the event the aggregate Net Loss of Settlement Class Members who request exclusion exceeds \$250 million; or

(b) \$55.5 million in the event the aggregate Net Loss of Settlement Class Members who request exclusion exceeds \$150 million but is equal to or less than \$250 million; or

(c) \$62.5 million in the event the aggregate Net Loss of Settlement Class Members who request exclusion is equal to or less than \$150 million.

2.3 To fund the Settlement Amount, the Settling Defendants caused an amount of \$62.5 million (the “Escrowed Funds”) to be paid to the Escrow Agent on June 27, 2011.

2.4 Within fourteen (14) days after the deadline to withdraw requests for exclusion has passed and the aggregate Net Loss of Settlement Class Members who have elected to exclude themselves from the Settlement is determined with reasonable accuracy, Lead Plaintiff shall refund to Settling Defendants \$10 million if the aggregate Net Loss of Settlement Class Members who request exclusion exceeds \$250 million or \$7 million if the aggregate Net Loss of Settlement Class Members who request exclusion exceeds \$150 million but is equal to or less than \$250 million. The amount remaining in escrow after this refund shall be the “Gross Settlement Fund.”

2.5 ~~2.3 Other than as described in ¶2.7, no~~ No amount may be disbursed from

the Gross Settlement Fund prior to the Effective Date, except that: (a) Taxes and other Administrative Expenses described in ¶¶1.2, ~~1.41~~, 1.40, 3.5, and 6.5(~~ab~~)-(~~ed~~) and (f) may be paid from the Gross Settlement Fund as they become due; (b) any award for attorney's fees and expenses that is allowed by the Court pursuant to ¶7.1 and ¶7.2 below, may be paid from the Gross Settlement Fund in accordance with those provisions; ~~and~~ (c) the Settling Defendants may be reimbursed for costs and expenses incurred in cooperating with any discovery request pursuant to ¶2.14 below; (d) Plaintiff's Lead Counsel may be reimbursed \$24,234.71 for expenses incurred in establishing the Settlement account as a Qualified Settlement Fund entity and expenses incurred in attending proceedings before the Irish High Court; and (e) the Gross Settlement Fund may be repaid to the Settling Defendants to the extent authorized under ¶~~2.4~~2.6 and ¶9.2 below.

2.6 ~~2.4~~ In the event the Court does not issue a Judgment, or Judgment is overturned on appeal or by writ, or does not become Final for some other reason, including the non-occurrence of the Irish High Court Order Condition, all of the funds in the Escrow Account not previously spent or committed pursuant to ¶~~2.3~~2.5(a) and ¶~~2.7~~3.5 shall be returned to the Settling Defendants, including interest earned thereon, within five (5) days of receipt of written demand by the Settling Defendants or any one of them as representative for all of them.

c. Settlement Fund

2.7 ~~2.5~~ The Escrow Agent shall invest the ~~Settlement Amount~~Escrowed Funds in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, and shall collect and reinvest all earnings accrued thereon. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court until such time as the funds shall be distributed pursuant to the Plan of Allocation or otherwise disbursed pursuant to this Second Amended Stipulation and/or further order of the

Court.

2.8 ~~2.6~~ The Escrow Agent shall not make disbursements except as provided by this Second Amended Stipulation or by an Order of the Court.

~~2.7~~ — ~~The Gross Settlement Fund shall be used to pay (i) any unpaid portions of the Notice and Administrative Expenses referred to in ¶3.5 and ¶6.5(a)–(b) hereof; (ii) the amount set aside to fund the Reserve Amount; (iii) Taxes; and (iv) any attorneys’ fee and expense award. The balance of the Gross Settlement Fund (inclusive of interest earned) shall be the Net Settlement Fund.~~

2.9 ~~2.8~~ The Settling Parties hereto agree that the ~~Gross Settlement Fund~~ is Escrowed Funds are intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1, and that the Escrow Agent as administrator of the ~~Gross Settlement Fund~~ Escrowed Funds within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible, with the assistance of the Settlement Administrator, for filing tax returns and any other tax reporting for or in respect of the ~~Gross Settlement Fund~~ Escrowed Funds and paying from the ~~Gross Settlement Fund~~ Escrowed Funds any Taxes owed with respect to the ~~Gross Settlement Fund~~ Escrowed Funds. The Settling Parties hereto agree that the ~~Gross Settlement Fund~~ Escrowed Funds shall be treated as a Qualified Settlement Fund from the earliest date possible, and agree to any relation-back election required to treat the ~~Gross Settlement Fund~~ Escrowed Funds as a Qualified Settlement Fund from the earliest date possible.

2.10 ~~2.9~~ All Taxes shall be paid out of the ~~Gross Settlement Fund~~ Escrowed Funds, shall be considered to be an Administrative Expense of the Settlement and shall be timely paid by the Escrow Agent without prior Order of the Court. The ~~Gross Settlement Fund~~ Escrowed Funds or the Escrow Agent shall, to the extent required by law, be obligated to withhold from any

distributions to Authorized Claimants and other persons entitled thereto pursuant to this [Second Amended](#) Stipulation any funds necessary to pay Taxes including the establishment of adequate reserves for Taxes as well as any amount that may be required to be withheld under Treasury Reg. 1.468B-(1)(2) or otherwise under applicable law in respect of such distributions. Further, the ~~Gross Settlement Fund~~[Escrowed Funds](#) shall indemnify and hold harmless the [Settling](#) Defendants and their counsel for Taxes (including, without limitation, taxes payable by reason of any such indemnification payments).

[2.11](#) ~~2.10~~—Settling Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by the Lead Plaintiff, Settlement Class Member or Authorized Claimant of any payment or transfer made pursuant to this [Second Amended](#) Stipulation or derived from or made pursuant to the Settlement Fund.

[2.12](#) ~~2.11~~—Each Authorized Claimant shall be solely responsible for the federal, state ~~and~~, local, [and/or non-United States](#) tax consequences to him, her or it of the crediting of an Individual Claim Amount to him, her or it pursuant to this [Second Amended](#) Stipulation.

[2.13](#) ~~2.12~~—The Settling Defendants, the Released Parties, and their respective counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of Plaintiff's Lead Counsel, the Escrow Agent or the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Gross Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation or payment of any claims asserted against the Gross Settlement Fund; (v) any losses suffered by, or fluctuations in the value of, the Gross Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses and/or costs incurred in connection with the taxation of the Gross Settlement

Fund or the filing of any returns.

~~d.—Assignment to Settling Defendants of Certain Interests~~

~~2.13—Upon the Effective Date, the Lead Plaintiff and each of the Settlement Class Members by virtue of this Settlement Agreement and by operation of the Judgment shall have (1) irrevocably assigned and conveyed to the Settling Defendants all of their interest in any recovery by or benefit accruing to the Fund, or any distribution or payment arising out of the same, on account of current or future Fund litigation against the Settling Defendants or any of their affiliates, including without limitation the HTIE Litigation, and (2) delegated to the Settling Defendants, to the full extent permitted by applicable law, the power and right to act on their behalf in effectuating this assignment and in all matters relating to current or future litigation by the Fund against the Settling Defendants.—In addition, Settlement Class Members who elect to participate in the Settlement by filing a Proof of Claim, Release and Assignment shall confirm the assignment of such interest by executing an express written assignment in the form set forth in Part V(A) of Exhibit A-4 attached hereto.~~

~~e.—Assignment by Claimants of Their Claims Against Non-Settling Defendants to Lead Plaintiff~~

~~2.14—In consideration of the Settlement Amount, Settlement Class Members who elect to participate in the Settlement by filing a Proof of Claim, Release and Assignment will execute an assignment in the form set forth in Part V(B) of Exhibit A-4 attached hereto, irrevocably conveying to Lead Plaintiff the right to pursue, on their behalf and for their benefit, claims concerning or relating to investments in the Fund arising out of, based upon, or relating to the allegations, transactions, facts, matters, or occurrences set forth or referred to in the Amended Complaint or the Proposed Amended Complaint against all Non-Settling Defendants, any of their affiliates, or any other persons or entities in any domestic or foreign forum (the “Assigned~~

~~Claims²⁾). The assignment shall also contain a full and complete release, indemnifying Lead Plaintiff from any and all claims relating to the pursuit of such assigned claims and causes of action.~~

~~2.15—The Honorable Howard B. Wiener (Ret.) shall serve as guardian ad litem for the Settlement Class to oversee Plaintiff’s Lead Counsel with respect to the litigation of the non-settled claims. Justice Wiener’s fees and expenses will be paid out of the Reserve Amount.~~

d. ~~f.~~ Settling Defendants’ Agreement to Cooperate With Respect to Discovery

2.14 ~~2.16~~ The Settling Defendants agree to cooperate with Lead Plaintiff and Plaintiff’s Counsel with respect to any reasonable request for documents, excluding internal HSBC communications, that are not available from the Non-Settling Defendants, directly relevant to a highly material issue concerning claims or causes of action against the Non-Settling Defendants, and not privileged or otherwise protected from discovery. Such cooperation will also include providing Lead Plaintiff and Plaintiff’s Counsel with Settling Defendants’ productions to third parties in responses to discovery propounded upon the Settling Defendants in Ireland or through third party discovery in connection with the Action. Settling Defendants agree to produce such requested documentary evidence and make available a witness or witnesses to authenticate documents and no more than two witnesses then employed by the Settling Defendants for deposition and testimony at trial if necessary. No discovery under this section shall occur until 12 months after the Effective Date. Lead Plaintiff shall reimburse the Settling Defendants from the ~~Reserve Amount~~Gross Settlement Fund for all reasonable costs and expenses (including attorneys’ fees) incurred in cooperating with any discovery request hereunder.

3. PRELIMINARY APPROVAL ORDER, NOTICE ORDER, AND FAIRNESS HEARING

3.1 Promptly upon the execution of this [Second Amended](#) Stipulation, the Settling Parties will file a motion for preliminary approval of the Settlement with the Court, submitting this [Second Amended](#) Stipulation and its Exhibits.

3.2 Plaintiff's Lead Counsel shall apply to the Court for entry of a Preliminary Settlement Approval Order, substantially in the form annexed hereto as Exhibit B. Such Order shall, among other provisions, certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3), for settlement purposes only.

3.3 Such Order shall include approval for the mailing of a Notice and publication of a Publication Notice, substantially in the forms of Exhibits A-1 and A-3 attached hereto. The Publication Notice shall be published at least weekly for two weeks in at least one paper of general circulation in each of Ireland, the United Kingdom, Italy, Switzerland, France, Austria, Germany, Russia, Israel, Mexico, Argentina and Brazil and in two financial publications of general world-wide circulation. The Publication Notice shall provide instructions for accessing the Notice, the Proof of Claim, [and](#) Release ~~and Assignment~~ form and other material settlement documents on the internet. The Notice shall include the general terms of the Settlement and the provisions of the Plan of Allocation, substantially in the form attached hereto as Exhibit A-2, and shall describe the procedure by which recipients may submit Proof of Claim, [and](#) Release ~~and Assignment~~ forms, attached hereto as Exhibit A-4, object to the Settlement or Plan of Allocation, or request exclusion from the Settlement Class, and shall provide the date and time of the Fairness Hearing.

3.4 The mailing or publication of the Notice and Publication Notice shall not occur until the Court enters the Preliminary Settlement Approval Order.

3.5 To assist in dissemination of the Notice and publication of the Publication

Notice, upon preliminary approval of the Settlement the Settling Defendants shall contribute 50% of the actual costs of notice and publication, up to a maximum of \$500,000, and the remaining costs and other Administrative Expenses shall be paid from the Gross Settlement Fund. In the event that the Settlement does not become finally effective, money paid or incurred for notice expenses and other Administrative Expenses shall not be returned or repaid to the Settling Defendants.

3.6 Unless otherwise agreed by the Settling Parties, within five (5) days after the Preliminary Settlement Approval Order is entered, the Settling Parties shall use reasonable best efforts to facilitate the provision to the Settlement Administrator of the name and last known address of each Settlement Class Member who is a shareholder registered on the books of the Fund in a searchable database or other format agreed to by the Settling Parties for the purpose of mailing the Notice to such registered shareholders. Alternatively, HSSI may mail the Notice to registered shareholders and provide confirmation of the mailing to the Settlement Administrator without providing the names and last known addresses of such registered shareholders. In such event, HSSI shall (1) use best efforts, in compliance with EU data protection legislation, to disclose such names and last known addresses on a confidential basis to the Settlement Administrator for the purposes of administering the Settlement or (2) assist the Settlement Administrator in determining whether persons or entities submitting Proofs of Claims, objections, or requests for exclusions are entitled to do so.

3.7 In approving the form of Notice, the Court shall direct that all registered shareholders forward such Notice to any beneficial owner or party in interest and report to the Settlement Administrator on the action it has taken to comply with this directive. The cost of forwarding and reporting shall be reimbursed on request as a cost of giving Notice.

3.8 Plaintiff's Lead Counsel shall request that, after Notice is given, the Court hold the Fairness Hearing and enter a Judgment for the litigation, in substantially the form attached hereto as Exhibit C.

4. RELEASES

4.1 Upon the Effective Date, as defined in ¶1.7 hereof, the Lead Plaintiff and each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Settling Defendants, whether or not such Settlement Class Member executes and delivers the Proof of Claim, and Release ~~and Assignment~~ or shares in the Net Settlement Fund. In addition, Settlement Class Members who submit a Proof of Claim, and Release ~~and Assignment~~ will execute an express written confirmation of release in the form set forth in Part IV of Exhibit A-4 attached hereto.

4.2 Nothing in this Second Amended Stipulation is intended to release any claims asserted by the Settlement Class against any Non-Settling Defendants, except as expressly provided herein.

4.3 Upon the Effective Date, as defined in ¶1.7 hereof, each of the Released Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and all of the Lead Plaintiff, Settlement Class Members, and Plaintiff's Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims.

4.4 Nothing in this Second Amended Stipulation shall bar the Settling Parties from bringing any action or claim to enforce the terms of this Second Amended Stipulation or the

Judgment.

5. BAR ORDERS

a. Order Barring Contribution Claims

5.1 Upon issuance of the Judgment, all persons and entities, including without limitation the Non-Settling Defendants and any other persons later named as defendants in the Action, shall be permanently enjoined, barred and restrained from commencing, prosecuting or asserting any claims or actions for contribution, indemnity, or otherwise against the Settling Defendants seeking, as damages or otherwise, the recovery of all or any part of liability, judgment or settlement which they pay or become obligated to pay or agree to pay to the Settlement Class as a result of such person's or entity's participation in any act, facts, statements or omissions that were or could have been alleged in the Action (whether under federal, state or foreign law or otherwise) as claims, cross-claims, counterclaims, third-party claims or otherwise, whether asserted in the Action in this Court or in any other court, arbitration proceeding, administrative agency or other forum, either in the United States or anywhere else in the world.

5.2 Upon issuance of the Judgment, the Settling Defendants shall be permanently enjoined, barred and restrained from commencing, prosecuting or asserting any claims or actions for contribution, indemnity, or otherwise against the Non-Settling Defendants seeking, as damages or otherwise, the recovery of all or any part of any liability, judgment or settlement which the Settling Defendants pay or are obligated to pay or agree to pay to any member of the Settlement Class as a result of such persons' participation in any act, facts, statements or omissions that were or could have been alleged in the Action (whether under federal, state or foreign law or otherwise) as claims, cross-claims, counterclaims, third-party claims or otherwise, whether asserted in the Action in this Court or in any other court, arbitration proceeding,

administrative agency or other forum, either in the United States or anywhere else in the world. For the avoidance of doubt, this provision does not prevent any of the Settling Defendants from asserting any claims or defenses against any of the Non-Settling Defendants seeking to recover or offset all or any part of any liability, judgment or settlement which Settling Defendants pay or are obligated to pay or agree to pay to persons who are not members of the Settlement Class, including those who have requested exclusion from the Settlement Class, or in connection with claims asserted by any Non-Settling Defendant against any Settling Defendant, including the claims asserted by the Fund in the HTIE Litigation.

5.3 Any final verdict or judgment that may be obtained by the Lead Plaintiff—or one or more members of the Settlement Class bound by a final judgment approving this [Second Amended Stipulation](#)—[after trial or other contested dispositive proceeding](#) against the Non-Settling Defendants or other person or entity shall be reduced by the amount of the consideration paid by the Settling Defendants pursuant to this [Second Amended Stipulation](#), or the amount that corresponds to the percentage of responsibility, if any, of the Settling Defendants, whichever is greater. Nothing herein shall be deemed to release or otherwise bar or impair Settling Defendants' claims against any or all of their insurers.

5.4 The Lead Plaintiff agrees that he will, as part of any later settlement by Lead Plaintiff with any Non-Settling Defendant(s), include a provision for the mutual exchange of full and complete releases of all claims against the Settling Defendant(s) and any of its/their partners, principals, officers or directors, to the extent they arise out of the claims in the Amended Complaints, including but not limited to, claims for contribution, indemnity, malpractice, negligence or otherwise arising under federal or state law or of any foreign jurisdiction. The Settling Defendants agree to provide this mutual release of any such Non-Settling Defendant.

b. Irish High Court ~~Orders~~Order

5.5 ~~In connection with the application heretofore made by Thema to the Irish High Court in the HTIE Litigation, or on their own application, the Settling Defendants, or any one of them acting as representative of all, shall promptly seek a judgment from that Court (the “Irish High Court Order”) regarding (1) the enforceability in Ireland of the releases to be provided under this Stipulation by Settlement Class Members who neither opt out nor file a Proof of Claim, (2) the binding res judicata effect on all Settlement Class Members, including those who neither opt out nor file a proof of claim, of the judgment of dismissal with prejudice to be included in the Judgment entered upon approval of the Settlement, (3) the enforceability in Ireland of the contribution bar order and related judgment reduction as provided for in this Stipulation and (4) that the amount to be excluded from the ad damnum in Thema claim’s against HTIE on account of the consummation of this Settlement is proportional (i.e. in the ratio of the number of shares owned by Class Members to the number of shares outstanding) and not either pro tanto (i.e. only the Settlement Amount) or some other method of adjustment not substantially proportional.~~ It shall be a condition to the Settlement becoming effective (the “Irish High Court Order Condition”) that the Irish High Court will have granted the ~~orders or directions sought in substantial conformity with the position of the Settling Defendants, or given such alternative orders as the Settling Defendants and the Lead Plaintiff deem satisfactory~~Irish High Court Application attached hereto as Exhibit D, unless this condition is waived by the Settling Defendants. The Irish High Court Order will promptly be posted on the website of the Settlement Administrator. ~~The Settling Parties agree to propose a schedule for filing objections, requesting exclusion and the holding of the Fairness Hearing so that all these events are scheduled to occur reasonably after the end of October, the date by which the Irish High Court has indicated its decision will be issued.~~

6. SETTLEMENT ADMINISTRATION

a. Settlement Administrator

6.1 Gilardi & Co. LLC shall serve as the Settlement Administrator. Settling Defendants will have no involvement in the selection of the Settlement Administrator or the formulation of the Plan of Allocation.

6.2 The Settlement Administrator shall be responsible for all actions necessary for the implementation of the Plan of Allocation. The expenses of the Settlement Administrator shall be paid from the ~~Gross Settlement Fund~~ Escrowed Funds, unless otherwise ordered by the Court. The Settlement Administrator shall designate an entity located in Europe to receive, maintain and keep appropriate records of exclusion requests in conformance with such protective orders as the Court may issue, and the expenses of such designee shall also be paid from the Gross Settlement Fund.

b. Supervision and Distribution of the Settlement

6.3 At a time following the Effective Date, and upon such further orders of the Court as may be necessary or convenient, the Settlement Administrator shall, subject to the Plan of Allocation approved by the Court, administer and process the claims submitted by Authorized Claimants, calculate Individual Claim Amounts, and oversee distribution of the Net Settlement Fund pursuant to the Plan of Allocation.

6.4 No distributions shall be made from the Net Settlement Fund except in compliance with the provisions of this Second Amended Stipulation and/or any order of the Court.

6.5 The ~~Gross Settlement Fund~~ Escrowed Funds shall be allocated as follows:

(a) to pay Settling Defendants any refund due under ¶2.4;

(b) ~~(a)~~ to pay all reasonable costs and expenses actually incurred in locating

members of the Settlement Class;

(c) ~~(b)~~ to pay all reasonable costs and expenses actually incurred in soliciting and processing claims from Claimants, administering claims submitted by Authorized Claimants and calculating Individual Claim Amounts, per ¶6.3 above;

(d) to pay any other reasonable Administrative Expenses;

(e) to reimburse Settling Defendants for costs and expenses incurred in cooperating with any discovery request, per to ¶2.14 above;

(f) ~~(e)~~ to pay the Taxes described in ¶~~1.41~~1.40 and ¶~~2.9~~2.10, above;

(g) ~~(d)~~ to pay any award of attorney's fees ~~and~~ expenses, and Lead Plaintiff service award allowed by the court per ¶¶7.1-7.7 below;

~~(e)~~ ~~to fund the Reserve Amount as provided for herein;~~ and

(h) ~~(f)~~ to distribute the Net Settlement Fund ~~(which shall be the amount held by the Escrow Agent after payment of items (a) through (e) above, but increased by the unexpended portion of the Reserve Amount) to Authorized Claimants per the Plan of Allocation to Authorized Claimants per the Plan of Allocation. The Net Settlement Fund shall be the Settlement Amount after the payment of items (a) through (g) above.~~

Prior to the Effective Date but not thereafter, the Escrow Agent shall furnish to counsel for the Settling Defendants a monthly accounting of transactions in the Escrow Account and a copy of the monthly statement issued by the bank holding the Escrow Account.

6.6 At a time following the Effective Date, in accordance with the terms of this Second Amended Stipulation and the Plans of Allocation, or such orders of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants subject to and in accordance with the following:

(a) Each Claimant shall be required to submit to the Settlement Administrator a signed and completed Proof of Claim, and Release ~~and Assignment~~ signed under penalty of perjury. All such claim forms must comply with the requirements set forth in Exhibit A-1, Section II.E.

(b) Except as otherwise ordered by the Court, all Claimants who fail to submit a timely, valid Proof of Claim, and Release ~~and Assignment~~ within such time as may be ordered by the Court or otherwise allowed shall be forever barred from receiving any disbursements from the Net Settlement Fund per this Second Amended Stipulation, but shall in all other respects be subject to and bound by the provisions, and releases, ~~and assignments~~ contained herein, and shall be bound by the Judgment. Notwithstanding the foregoing, Plaintiff's Lead Counsel may accept late claims for processing so long as the distribution of the Net Settlement Fund is not materially delayed thereby.

(c) The Net Settlement Fund shall be distributed to Authorized Claimants in accordance with the Plan of Allocation approved by the Court ~~upon such further notice as may be required~~. However, the Settlement Administrator shall reserve an appropriate amount to cover any unresolved disputes with any Claimant or taxing authority until such dispute is fully and finally resolved.

(d) No funds from the Net Settlement Fund shall be distributed until after all appeals from any Orders approving and effectuating the Settlement as described herein and from the Judgment have been resolved, or the time for any such appeals has expired.

(e) All potential members of the Settlement Class who do not timely and validly request exclusion from the Settlement Class in accordance with the instructions ~~provided at pages 7-8~~ set forth in section IV.C of the Notice ~~annexed~~ attached hereto as Exhibit A-1 shall be

subject to and bound by the Judgment and the [Second Amended](#) Stipulation, and the provisions; [and](#) releases; ~~and assignments~~ contained herein, regardless of whether any such potential Settlement Class Members seek a distribution from the Net Settlement Fund by submitting a Proof of Claim; [and](#) Release ~~and Assignment~~.

6.7 In the event that a balance remains in the Net Settlement Fund after six (6) months from the date of all distributions of the Net Settlement Fund per the Plan of Allocation and consistent with the terms of this [Second Amended](#) Stipulation (whether by reason of tax refunds; [or](#) uncashed checks; ~~or monies recovered from the prosecution of an Assigned Claim~~), such balance will not be refunded or otherwise returned to the Settling Defendants. Plaintiff's Lead Counsel may reallocate such balance among Authorized Claimants in an equitable and economic fashion, or if the foregoing is impractical distribute the balance *cy pres*, subject to the approval of Lead Plaintiff.

6.8 It is understood and agreed by the Settling Parties that any adjustments to the Plan of Allocation, including, but not limited to, any Authorized Claimant's Individual Claim Amount, are not part of the [Second Amended](#) Stipulation and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in the [Second Amended](#) Stipulation, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel the [Second Amended](#) Stipulation or affect the Finality of the Judgment, or any other orders entered pursuant to the [Second Amended](#) Stipulation, or give any party a right to terminate or cancel the [Second Amended](#) Stipulation.

7. ATTORNEYS' FEES AND EXPENSES

7.1 In connection with Lead Plaintiff's request for approval of the Settlement and/or thereafter, Plaintiff's Lead Counsel ~~may~~will submit an application or applications (the "Fee and Expense Application") for distributions to Plaintiff's Counsel from the Gross Settlement Fund for: (a) an award of attorneys' fees in the amount of 18% of the Gross Settlement Fund; plus (b) expenses incurred in connection with prosecuting the Action, plus any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid) ~~as may be awarded by the Court.~~ The Fee and Expense Application shall be filed before the Fairness Hearing and published on the Settlement Administrator's website. Plaintiff's Lead Counsel ~~reserve~~reserves the right to make additional applications for fees and expenses incurred.

7.2 The fees and expenses, as awarded by the Court, shall be paid to Plaintiff's Lead Counsel, as ordered, immediately, and in no event more than five (5) business days after the Court executes an order awarding such fees and expenses. Plaintiff's Lead Counsel may thereafter allocate the attorneys' fees among Plaintiffs' Counsel in a manner in which they in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Action.

7.3 In the event that the Effective Date does not occur for any reason, including the non-occurrence of the Irish High Court Order Condition, or the Judgment or the order making the Fee and Expense Award is reversed or modified, or the Second Amended Stipulation is canceled or terminated for any other reason, and the Fee and Expense Award has been paid to any extent, then such of Plaintiffs' Counsel who have received any portion of the Fee and Expense Award shall within five (5) business days from receiving notice from the Settling Defendants' counsel or from a court of appropriate jurisdiction, refund to the Gross Settlement Fund such fees

and expenses previously paid to them from the Gross Settlement Fund in an amount consistent with such reversal or modification. Each such Plaintiff's Counsel's law firm receiving fees and expenses, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph. Without limitation, Plaintiff's Counsel agree that the Court may, upon application of Settling Defendants and notice to Plaintiff's Counsel, summarily issue orders including, but not limited to, judgments and attachment orders, and may make appropriate findings of or sanctions for contempt, should such law firm fail timely to repay fees and expenses pursuant to this ¶7.3.

7.4 Lead Plaintiff may submit an application for an award for his time, expense, and efforts incurred in the prosecution of the Action. However, in the event that the Effective Date does not occur, or the Judgment or the order approving Lead Plaintiff's application for reimbursement of his time and expenses is reversed or modified, or the Stipulation is canceled or terminated for any other reason, then the Lead Plaintiff shall within five (5) business days from receiving notice from Settling Defendants' counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund such reimbursement for time and expenses previously paid to him from the Settlement Fund in an amount consistent with such reversal or modification.

7.5 The procedure for and the allowance or disallowance by the Court of any applications by Plaintiff's Counsel for attorneys' fees and expenses, or the expenses of the Lead Plaintiff, to be paid out of the Gross Settlement Fund, are not part of the Settlement set forth in the Stipulation, and are to be considered by the Court ~~separately from~~in tandem with the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in the Second Amended Stipulation, ~~and~~but any order or proceeding relating to the Fee and Expense

Application, or the Lead Plaintiff's time and expense application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the [Second Amended](#) Stipulation, or affect or delay the finality of the Judgment approving the [Second Amended](#) Stipulation and the settlement of the Action set forth herein.

7.6 The Settling Defendants shall have no responsibility for any payment of attorneys' fees and expenses to Plaintiff's Counsel or Lead Plaintiff over and above payment out of the Settlement Fund.

7.7 The Settling Defendants shall have no responsibility for the allocation among Plaintiff's Counsel, and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action, and the Settling Defendants take no position with respect to such matters.

8. CONDITIONS AND EFFECTIVE DATE OF SETTLEMENT

8.1 The Effective Date of the Settlement shall be the date when all the following conditions of the Settlement shall have occurred:

~~(a) — the Settling Defendants shall have timely transferred or caused to be timely transferred the Settlement Amount into the Escrow Account;~~

[\(a\)](#) ~~(b)~~ approval by the Court of the Settlement, following Notice to the Class and the Fairness Hearing, pursuant to Rule 23 of the Federal Rules of Civil Procedure;

[\(b\)](#) ~~(c)~~ the occurrence of the Irish High Court Order Condition, provided however that this condition may be waived in writing by the Settling Defendants;

[\(c\)](#) ~~(d)~~ the Settling Defendants no longer having any right under ¶9.1, below, to terminate the Settlement, or having provided to Plaintiff's Lead Counsel written notice waiving such right; and

(d) ~~(e)~~ entry by the Court of the Judgment and such Judgment becoming Final.

8.2 Upon the occurrence of all the events described in ¶8.1, above, any and all remaining interest or right of the Settling Defendants in or to amounts contributed to the Gross Settlement Fund shall be absolutely and forever extinguished.

9. TERMINATION, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

9.1 The Settling Defendants shall have the option to terminate the Settlement in its entirety in the event that Settlement Class Members whose aggregate Net Losses exceed \$~~60~~300 million or Settlement Class Members who have suffered no Net Loss but whose aggregate account balances based on the Fund's Net Asset Value at valuation date November 28, 2008 exceed \$10 million choose to exclude themselves from the Settlement Class. For purposes of this paragraph, Net Losses will be converted to U.S. dollars using the exchange rate in effect on the date that requests for exclusion are due. All such requests for exclusion must comply with the requirements set forth in Exhibit A-1, Section IV.C.

9.2 In the event that prior to the Effective Date this Second Amended Stipulation shall terminate or become or be declared invalid or unenforceable for any reason, or if it shall become reasonably apparent in the judgment of the Settling Defendants that the events described in section 8.1 above will not occur, then counsel for Settling Defendants may notify Plaintiff's Lead Counsel and the Escrow Agent in writing, and within five (5) business days after such notification, they shall pay or cause to be paid to the Settling Defendants the ~~value~~balance of the ~~Gross Settlement Fund~~Escrowed Funds, including the Settlement Amount, together with any interest or other income earned thereon, less any Taxes paid or due with respect to such income per ¶6.5(~~ef~~), less any reasonable Administrative Expenses and notice expenses actually incurred and paid or payable ~~from the Gross Settlement Fund~~ as authorized in

this Second Amended Stipulation per ¶6.5(~~ab~~)-(b), and the Reserve Amount less up to \$1 million of the Reserve Amount actually incurred and expended after entry of the Judgment~~d~~).

9.3 With the exception of ¶¶7.3, 9.1-9.4, 10.1, 10.2, and 11.2 (which shall continue in full force and effect), in the event the balance ~~in the Gross Settlement Fund and the Reserve Amount~~of the Escrowed Funds shall have been paid to the Settling Defendants pursuant to ¶9.2, the terms and provisions of this Second Amended Stipulation shall be null and void and shall have no further force and effect with respect to the Settling Parties, and neither the existence nor terms of this Second Amended Stipulation (nor any negotiations, communications, or acts relating to this Second Amended Stipulation) shall be used in the Action or in any other action or proceeding for any purpose other than to enforce the terms remaining in effect.

9.4 Except as otherwise provided herein, in the event the balance ~~in the Gross Settlement Fund and the Reserve Amount~~of the Escrowed Funds shall have been returned to the Settling Defendants pursuant to section 9.2, the parties to this Second Amended Stipulation shall be deemed to have reverted to their respective positions in the Action as of one day prior to the date of execution of this Second Amended Stipulation and, except as otherwise expressly provided, the parties shall proceed in all respects as if this Second Amended Stipulation and any related Orders had not been entered, with all of their respective claims and defenses preserved as they existed as on that date.

10. NO ADMISSION OF WRONGDOING

10.1 The Settling Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them with respect to the Action and to compromise claims that are contested and shall not be deemed an admission by any Settling Party as to the merits or justiciability of any claim or defense or any allegation made in the Action.

10.2 This [Second Amended](#) Stipulation, whether or not consummated, and any acts performed and any proceedings taken pursuant to it:

(a) shall not be offered by any of the Settling Parties or received against the Settling Defendants as an admission or evidence of the validity or justiciability of any Released Claim, of any fact alleged in the Action, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation;

(b) shall not be offered by any of the Settling Parties or received against the Settling Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Settling Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this [Second Amended](#) Stipulation; provided, however, that if this [Second Amended](#) Stipulation is approved by the Court, the Released Parties may refer to it to effectuate the liability protection granted them hereunder;

(c) shall not be construed against any of the Settling Defendants [or the Settlement Class](#) as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

(d) shall not be construed as an admission, concession or presumption against Lead Plaintiff or any of the Settlement Class Members that any of their claims are without merit, or that any defenses asserted by the Settling Defendants have any merit, or that damages recoverable under the Action would not have exceeded the Gross Settlement Fund.

11. MISCELLANEOUS PROVISIONS

11.1 All of the exhibits attached hereto are incorporated by reference as though

fully set forth herein.

11.2 All agreements made relating to the confidentiality of information shall survive the [Second Amended](#) Stipulation.

11.3 The parties to this [Second Amended](#) Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Settlement Class Members or any Defendant against the Released Parties with respect to the Released Claims. Accordingly, Lead Plaintiff and Released Parties agree not to assert in any forum that the Action was brought by the Lead Plaintiff or defended by Settling Defendants in those actions in bad faith or without a reasonable basis. The Judgment shall contain a finding that none of the Settling Parties nor their counsel committed any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Action.

11.4 The Settling Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's length in good faith by the parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

11.5 This [Second Amended](#) Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all parties hereto or their successors-in-interest.

11.6 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

11.7 The administration and consummation of the Settlement as embodied in this [Second Amended](#) Stipulation shall be under the authority of the Court, and that Court shall retain jurisdiction for a period of six years for the purpose of enforcing the terms of this [Second Amended](#) Stipulation.

11.8 The waiver by one party of any breach of this [Second Amended](#) Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this [Second Amended](#) Stipulation.

11.9 This [Second Amended](#) Stipulation and its exhibits, as amended, and any related escrow and administration agreements constitute the entire agreement concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto concerning this [Second Amended](#) Stipulation or its exhibits other than those contained and memorialized in such documents.

11.10 This [Second Amended](#) Stipulation may be executed by facsimile or email in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to the [Second Amended](#) Stipulation shall exchange among themselves signed counterparts, and file with the Court a complete set of executed counterparts.

11.11 This [Second Amended](#) Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

11.12 This [Second Amended](#) Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's length negotiations between the parties and all parties have contributed substantially and materially to the preparation of this [Second Amended](#) Stipulation.

11.13 All counsel and any other person executing this [Second Amended](#) Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take

appropriate action, required or permitted to be taken pursuant to the [Second Amended](#) Stipulation to effectuate its terms.

11.14 Unless otherwise advised in writing, notices required or permitted by this [Second Amended](#) Stipulation shall be submitted by overnight mail, electronic mail, or in person as follows:

Notices to Lead Plaintiff or Plaintiff's Counsel:

Francis A. Bottini, Jr.

Albert Y. Chang

Chapin Fitzgerald Sullivan & Bottini LLP,
550 West C Street, Suite 2000
San Diego, CA 92101
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(619) 231-1058 (fax)
jamesj@rgrdlaw.com

Notices to Settling Defendants or Settling Defendant's Counsel:

Evan A. Davis

David E. Brodsky

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza

New York, NY 10006
(212) 225-2000 (telephone)
(212) 225-3999 (fax)
edavis@cgsh.com

11.15 Lead Plaintiff and Settling Defendants agree to use reasonable best efforts to cooperate with one another in seeking: (i) Court entry of the Preliminary Settlement Approval Order and the Judgment and approval of the [Second Amended](#) Stipulation and the Settlement; (ii) entry of the Irish High Court ~~Orders~~[Order](#); and (iii) to promptly agree upon and execute all such other documentations as may be reasonably required to obtain Final approval by the Court of the Settlement, and to obtain the other necessary Final orders by the Court and Irish High Court.

11.16 The construction and interpretation of this [Second Amended](#) Stipulation shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law of the United States requires that federal law governs.

11.17 The Court shall retain jurisdiction for a period of six years with respect to implementation and enforcement of the terms of the [Second Amended](#) Stipulation.

IN WITNESS WHEREOF, the parties hereto have caused the [Amended](#) Stipulation to be executed dated as of ~~August 11,~~[November 27,](#) 2011.

(Remainder of page intentionally left blank)

By: _____
Neville Seymour Davis

Court Appointed Lead Plaintiff

CHAPIN FITZGERALD
SULLIVAN & BOTTINI LLP

By: _____
Francis A. Bottini, Jr.
Albert Y. Chang
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*Lead Counsel for Lead Plaintiff Neville
Seymour Davis*

HSBC HOLDINGS PLC

By: _____
Evan A. Davis

Attorney-in-Fact

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(IRELAND) LTD.

By: _____
Evan A. Davis

Attorney-in-Fact

HSBC INSTITUTIONAL TRUST
SERVICES (IRELAND) LTD.

By: _____
Evan A. Davis

Attorney-in-Fact

HSBC BANK USA, N.A.

By: _____
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*Counsel for Defendants HSBC Holdings plc,
HSBC Securities Services (Ireland) Ltd.,
HSBC Institutional Trust Services (Ireland)
Ltd., and HSBC Bank USA, N.A.*