

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

In re HERALD, PRIMEO and THEMA
FUNDS SECURITIES LITIGATION,

This Document Relates To:

Repex Ventures, S.A., etc. v.
Bernard L. Madoff, et al.

) Civil Action No. 09 CIV 289 (RMB) (HBP)
) (Consolidated with 09 CIV 2032 and
) 09 CIV 2558)
)
) **ECF Case**
)
)
)
)

In re HERALD, PRIMEO and THEMA
FUNDS SECURITIES LITIGATION,

This Document Relates To:

Repex Ventures, S.A., etc. v.
Bernard L. Madoff, et al.

Civil Action No. 09 CIV 289 (RMB) (HBP)
(Consolidated with 09 CIV 2032 and
09 CIV 2558)

ECF CASE

JURY TRIAL DEMANDED

[PROPOSED] THIRD AMENDED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

TABLE OF CONTENTS

I.	SUMMARY OF THE ACTION	7
II.	PARTIES	16
A.	Plaintiffs	16
B.	The Herald Defendants	16
C.	The Bank Medici Defendants	20
D.	S. Kohn’s Husband and Her Sham New York Businesses	23
E.	The Auditor Defendants.....	25
1.	The E&Y Defendants.....	25
2.	Madoff’s Auditors.....	26
3.	The HSBC Defendants.....	26
4.	The JPMorgan Chase Defendants	27
F.	The Defendants Worked in Concert	30
III.	JURISDICTION AND VENUE	34
A.	The HSBC Defendants.....	1
B.	The JPMorgan Chase Defendants.....	3
C.	The E&Y Defendants.....	4
D.	Defendants’ Conduct Had a Substantial Effect on Commerce Both Internationally and in the United States	4
IV.	NON-DEFENDANT BAD ACTORS	7
V.	FACTUAL ALLEGATIONS RE: RICO.....	24
A.	BMIS Operations	24
B.	Defendant Sonja Kohn.....	27
1.	Sonja Kohn Early Investment Career	27
2.	Madoff Pays S. Kohn Secret Kickbacks.....	28
3.	The Madoff-Kohn Enterprise Sustains the Ponzi Scheme.....	30
4.	Sonja Kohn’s Early Business Dealings With Madoff and BMIS	31
5.	Sonja Kohn Creates Bank Medici.....	33
6.	The Madoff-Kohn Feeder Fund Scheme in New York	35
7.	Sonja Kohn and Madoff Discuss the Herald Funds in New York City	70
8.	Defendant E. Kohn.....	71

9.	<u>Non-Defendant Kohn Family Members</u>	<u>73</u>
10.	<u>S. Kohn and Her Family Also Drew Stolen Money Directly from BMIS</u>	<u>76</u>
11.	<u>Injury caused to Plaintiffs and the Class’ Businesses and Property</u>	<u>77</u>
12.	<u>Sonja Kohn and Herald Asset Management’s Relationship</u>	<u>79</u>
13.	<u>S. Kohn Foresees the Inevitable Collapse of BMIS</u>	<u>80</u>
14.	<u>RICO Defendants’ Pattern of Racketeering Activity</u>	<u>82</u>
VI.	<u>Substantive RICO Allegations</u>	<u>83</u>
A.	<u>Payments from Sham Entity Defendants to Kohn, Kohn Family Defendants, and Related Defendants:</u>	<u>86</u>
B.	<u>Payments from Madoff to Erko, Kohn, and E. Kohn:</u>	<u>89</u>
C.	<u>Payments from Madoff to Tecno Italy and Kohn:</u>	<u>91</u>
D.	<u>Payments from Madoff to Kohn and Tecno Gibraltar:</u>	<u>93</u>
E.	<u>Payments from BMIS to Kohn and Tecno Gibraltar:</u>	<u>94</u>
F.	<u>Payments from BA Worldwide to Eurovaleur:</u>	<u>96</u>
G.	<u>Payments from HAML to Bank Medici and Medici Cayman:</u>	<u>101</u>
H.	<u>Payments from HAML to APM Cayman:</u>	<u>103</u>
I.	<u>Payments from HAML to Bank Austria Cayman:</u>	<u>105</u>
J.	<u>Payments between HAML, Bank Medici, and Pioneer:</u>	<u>106</u>
K.	<u>Payments from HAML to Sofipo:</u>	<u>108</u>
L.	<u>Payments from HAML to Mugnai, de Sury, and Cosulich:</u>	<u>110</u>
M.	<u>Kohn used HAML as a Slush Fund:</u>	<u>111</u>
N.	<u>Kohn Continued the Illegal Scheme After December 11, 2008:</u>	<u>112</u>
VII.	<u>Additional FACTUAL ALLEGATIONS</u>	<u>113</u>
A.	<u>The JPMorgan Chase Defendants</u>	<u>113</u>
1.	<u>JPMorgan Chase’s Herald (USA) Fund Investments and Divestment, and Investment Related Red Flags</u>	<u>114</u>
2.	<u>BMIS’ Account with the JPMorgan Chase Defendants, and BMIS Account Activity Related Red Flags</u>	<u>121</u>
B.	<u>The HSBC Defendants</u>	<u>131</u>
1.	<u>Stock Trade Volumes</u>	<u>132</u>
2.	<u>Option Trade Volumes</u>	<u>134</u>
3.	<u>Negative Cash Balances</u>	<u>136</u>

4.	HSBC’s Internal Red Flags.....	136
C.	The E&Y Defendants.....	141
1.	E&Y Operated As a Unitary International Professional Organization.....	143
2.	The E&Y Defendants Issued Unqualified (Clean) Audit Opinions	147
3.	The 2007 Financial Statements.....	148
4.	The E&Y Defendants’ Audits Knowingly Failed to Meet Luxembourg and International Standards, or Even E&Y’s Own Standards.....	149
5.	The E&Y Defendants Failed to Verify the Existence of the Funds’ Madoff Investments	157
6.	The E&Y Defendants Violated Its Duties to Herald (USA) Investors	159
7.	The E&Y Defendants’ Audit Violated E&Y’s Own Standards	161
D.	Defendants’ Materially False and Misleading Statements	164
1.	Herald (LUX) Prospectuses	168
2.	Herald (LUX) Unaudited Semi-Annual Report and Financial Statement	172
3.	Herald (USA) Offering Memorandum.....	173
4.	Herald (USA)’s Audited Annual and Unaudited Semi-Annual Reports and Financial Statements	175
E.	Outside Investment Professionals’ Red Flags Concerning Madoff	177
VIII.	CLASS ACTION ALLEGATIONS	193
COUNT 1	.....	195
COUNT 2	.....	195
COUNT 3	.....	196
COUNT 4	.....	197
COUNT 5	.....	200
COUNT 6	.....	203
COUNT 7	.....	205
COUNT 8	.....	206
COUNT 9	.....	207
COUNT 10	.....	208
COUNT 11	.....	210
COUNT 12	.....	211
COUNT 13	.....	213

<u>COUNT 14.....</u>	<u>215</u>
<u>COUNT 15.....</u>	<u>217</u>
<u>COUNT 16.....</u>	<u>219</u>
<u>COUNT 17.....</u>	<u>220</u>
<u>COUNT 18.....</u>	<u>228</u>
<u>COUNT 19.....</u>	<u>238</u>
<u>COUNT 20.....</u>	<u>241</u>
<u>COUNT 21.....</u>	<u>244</u>

Lead Plaintiff Repex Ventures, S.A. and plaintiff Dana Trezziova, by their attorneys, submits this Third Amended Class Action Complaint for violation of violations of New York law and/or the federal securities laws (the “Complaint”) Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, et seq., (“RICO”) against Defendants Herald Fund SPC-Herald USA Segregated Portfolio One (“Herald (USA)”) and Herald (LUX), U.S. Absolute Return Fund (“Herald (LUX)”) (collectively, “Herald Funds”); Herald Asset Management Limited (“HAML”); Paul de Sury (“Sury”); Gabriel Safdié (“Safdié”); William A. Jones (“Jones”); Bank Medici (“Medici”); Unicredit S.A. (“Unicredit”); Sonja Kohn (“S. Kohn”); E. Kohn (“E. Kohn”); Erko, Inc., Windsor IBC, Inc. (“Windsor”); Eurovaleur, Inc. (“Eurovaleur”); Infovaleur, Inc. (“Infovaleur”); Peter Scheithauer (“Scheithauer”); Helmuth E. Frey (“Frey”); Andreas Pirkner (“Pirkner”); Friedrich Pfeffer (“Pfeffer”); Franco Mugnai (“Mugnai”); Richard Goddard (“Goddard”); Hannes Saleta (“Saleta”); Bank Austria Creditanstalt (“Bank Austria”); JPMorgan Chase & Co., JPMorgan Chase Bank (“Chase Bank”), N.A., J.P. Morgan Securities LLC, and J.P. Morgan Securities Ltd. (collectively, the “JPMorgan Chase Defendants”); HSBC Securities Services (Luxembourg) S.A., and HSBC Holdings plc (collectively, the “HSBC Defendants”); Ernst & Young S.A., Ernst & Young, Cayman Islands, and Ernst & Young Global Limited (collectively, the “E&Y Defendants”); HSBC Securities Services (Luxembourg) S.A., and HSBC Holdings plc (collectively, the “HSBC Defendants”); and Friehling & Horowitz (“F&H”). Due to their bankruptcy, neither Bernard Madoff (“Madoff”) nor his investment firm Bernard L. Madoff Investment Securities LLC (“BMIS”) are named defendants in this action. Lead Plaintiff alleges Plaintiffs allege the following based upon the investigation of Lead Plaintiff’s their

~~counsel. Lead Plaintiff believes and believe~~ that substantial additional evidentiary support exists for the allegations set forth herein ~~and will be obtained after a reasonable opportunity for formal discovery.~~ Given the scope of Madoff's Ponzi scheme (the "Ponzi scheme"), Defendants' deception, and the deliberately Byzantine structure of the Madoff-Kohn Enterprise (as defined below), certain information about the Madoff Feeder Fund Scheme (as defined below) has been purposefully concealed from Plaintiffs and will only become available through discovery.

I. SUMMARY OF THE ACTION

1. ~~Lead Plaintiff's~~Plaintiffs' claims arise from the massive Ponzi scheme perpetrated by Madoff ~~Madoff~~ through his investment firm BMIS. Madoff, however, did not act alone. For more than twenty years, S. Kohn and Madoff were partners in crime, with S. Kohn soliciting investors to place over \$9.1 billion to grow and perpetuate the Madoff Ponzi scheme. Beginning around 1993, these two co-conspirators initiated the Madoff Feeder Fund Scheme, where Kohn would create a variety of investment funds, solicit investors for those funds, and, without the knowledge of those investors, transfer all of the various funds' assets to Madoff's Ponzi scheme. Without these funds, Madoff's Ponzi scheme could not have continued for as long as it did. No Ponzi scheme can survive without a constant influx of fresh capital, and the Madoff Feeder Fund Scheme provided a flood of cash for Madoff. Although the Madoff Feeder Fund Scheme is distinct from Madoff's Ponzi scheme, they have thrived off of each other for years. The Madoff Feeder Fund Scheme fed, perpetuated, and profited from the Ponzi scheme and grew alongside it as the Ponzi scheme grew.

2. The Madoff Feeder Fund Scheme unjustly and improperly enriched Madoff, S. Kohn, her family, and scores of other individuals and entities, including the largest banks in

Austria and Italy, at the expense of unsuspecting victims– Plaintiffs and other members of the Class.

3. In furtherance of the Madoff Feeder Fund Scheme, the Madoff-Kohn Enterprise, along with their co-conspirators, engaged in a pattern of predicate acts and ignored substantial red flags in violation of New York State law and RICO. Indeed, the RICO Defendants’ alleged twenty-year pattern of racketeering activity is comprised of repeated and related predicate acts of: (i) money laundering in violation of 18 U.S.C. § 1956; (ii) engaging in monetary transactions in property derived from specific unlawful activity in violation of 18 U.S.C. § 1957; (iii) wire fraud in violation of 18 U.S.C. § 1343;(iv) financial institution fraud in violation of 18 U.S.C. § 1344; (v) mail fraud in violation of 18 U.S.C. § 1341; and/or (vi) interstate and international travel in violation of the Travel Act, 18 U.S.C. § 1952.

4. Indeed, according to Madoff, in order to make a profit for themselves, each of the Defendants engaged in “willful blindness” of his Ponzi scheme. “They had to know.” Madoff stated: “I am saying that the banks and funds were complicit in one form or another.” Further, with regard to Defendants’ state of mind Madoff said “the attitude was sort of, ‘If you’re doing something wrong, we don’t want to know.’” Diana B. Henriques, *From Prison, Madoff Says Banks ‘Had to Know’ of Fraud*, N.Y. Times, Feb. 15, 2001, at A1, quoting Madoff. See also Steve Fishman, *The Madoff Tapes*, N.Y. Mag., Mar. 2, 2011, at 91 (“Look, there was complicity, in my view”).

5. Madoff’s description of the circumstances explains the scores of repeated and obvious red flags that confronted each of the Defendants. Those red flags were not unnoticed or overlooked by Defendants. Defendants, and each of them, were complicit in the

Madoff Feeder Fund Scheme. Defendants, and each of them, were not unable to recognize such red flags, but were willfully blind, and intentionally ignored them.

6. As the public learned on December 11, 2008, Madoff stole hundreds of millions of dollars for personal enrichment and misappropriated billions more to perpetuate the scheme, which is, undoubtedly, the largest heist in financial history. As a result, Madoff has been sentenced to 150 years in prison. The Securities and Exchange Commission (“SEC”) and numerous financial agencies are vigorously searching for the stolen funds. ~~And, the tally to date indicates that approximately \$65 billion have disappeared.~~

1. ~~Madoff, however, did not act alone. Madoff deployed a web of sales teams throughout the world, but based in the United States in this instance, that captured tens of billions of dollars in investment vehicles, commonly referred to as feeder funds. These feeder funds were established exclusively for the purpose of investing with Madoff, in what was effectively one integrated and coordinated operation. For this reason, the feeder funds had no offices, employees, or existence, aside from the corporate form in an offshore jurisdiction. A bank account that merely served as a pass through to wire monies to Madoff. All investment operations were carried out by Madoff in New York.~~

2. ~~To lure investors, however, the feeder funds marketed themselves as sophisticated financial institutions that would safeguard investors’ monies and conduct strict oversight of Madoff. But the feeder funds were making hundreds of millions of dollars in fees, and these fees were being paid in real cash that was not fictitious. Cash that they have kept to this day. Not surprisingly, those enormous fees served as a sufficient incentive for the feeder funds to intentionally ignore the blatant signs of Madoff’s wrongdoing, given that the real risk of loss was~~

borne by the investors, not the funds. Madoff had essentially paid off the feeder funds to stop asking questions.

1. — In this instance, Madoff used Sonja Kohn to funnel investors' money from Europe to his headquarters in New York. Starting in the mid-1990's and continuing through 2008, Kohn organized and marketed a number of feeder funds, including the Herald Funds. Lead Plaintiff and other members of the Class invested in one of two feeder funds, Herald (USA) and Herald (LUX). Both funds were established by Kohn through Bank Medici to invest with Madoff. Each was nothing more than a pass-through vehicle that gave one hundred percent of its assets to Madoff. Additionally, the fact that investors' money was being transferred to Madoff was rarely, if ever, disclosed.

2. — Also not disclosed to investors was the fact that Madoff made tens of millions of dollars in payments to Kohn. According to Madoff's secretary, Kohn was paid *at least* \$800,000 per quarter by Madoff for her part in funneling money to Madoff. Kohn was also paid nearly \$526,000 by Cohmad Securities, a Madoff-linked firm. In exchange for these payments, Madoff and Bernard L. Madoff Investment Securities LLC ("BMIS") were able to amass billions of dollars in private investments funneled through Kohn.

3. — Medici, Kohn, and other defendants represented to investors that they would use their respective investors funds for diversified investing in the securities market, and that the investors would share the profits from such investments. Defendants promised steady returns, sometimes in excess of 10% of the investment profits.

~~4. Defendants also represented and reported that existing investors were making profits on their investments, thereby encouraging further investments from new and existing investors.~~

~~5. In truth, Lead Plaintiff and other members of the proposed Class were not sharing in true returns on their investments in the securities market. Instead, Madoff and BMIS systematically stole investor funds for their personal use and for making payments to other investors in order to create the false appearance of safe, steady, high returns on investments.~~

~~6. The Herald Funds and other defendants ignored many red flags that obligated them, as investment professionals, to conduct further and proper due diligence and/or alter their investment decisions. These red flags included, among others:~~

- ~~a. the lack of transparency into BMIS, including Madoff's refusal to disclose his investment strategy;~~
- ~~b. BMIS' returns were abnormally smooth with very little volatility, including only five months of negative returns in the past 12 years;~~
- ~~c. the inability of other funds using a "split strike conversion" strategy (which Madoff purportedly used) to generated returns even remotely comparable to those generated by Madoff;~~
- ~~d. Madoff acted as his own prime broker, while most hedge funds use large well established banks such as Goldman Sachs and Morgan Stanley as their prime brokers;~~

- e. ~~unlike most hedge funds, which charge investment management fees based on the performance of the fund, BMIS only generated revenue through transaction-based commission fees;~~
- f. ~~in 1999, one of Madoff's competitors, Harry Markopolous, sent a letter to the SEC claiming that "Madoff Securities is the world's largest Ponzi Scheme";~~
- g. ~~BMIS' auditor, Fricling & Horowitz, consisted of one office located in a strip mall in New City, New York, which was no larger than a small coffee shop. Defendants not only never contacted F&H to confirm or to inquire about the extent of the supposed audit, but they also never checked F&H's status with the American Institute of Certified Public Accountants ("AICPA"). Had they done so, they would have discovered that F&H filed a form every year with the AICPA certifying that F&H did not conduct any audits. David Fricling, the sole practitioner at F&H, has since been criminally convicted;~~
- h. ~~regulatory filings of the feeder funds showed very small positions in equities, which the feeder funds explained was due to Madoff's strategy of converting all the assets to cash equivalents at the end of every quarter, but there was no record of the estimated \$65 billion in assets being moved all at once; and~~
- i. ~~while investment advisers almost universally have a third-party custodian that assures independence, Madoff was an extremely rare exception who~~

~~demanded that he, through BMIS, be the custodian. This unusual arrangement squarely raised the critical concern of how to verify the existence of assets as well as the integrity of the account statements issued by BMIS. As renowned securities expert and Columbia Law School Professor John Coffee said, “[b]eing your own custodian violates the first rule of common sense, you can’t be your own watchdog.”⁺ In addition, because BMIS was also a broker-dealer, BMIS generated its own trading confirmations for investors as well (via an outdated dot matrix printer). By combining the broker-dealer entity with an investment custodian, BMIS created an insulated, self-sustaining financial enterprise which generated all reporting to its investors—including the Herald Funds—without any third-party oversight.~~

~~7. Defendants’ representations regarding their oversight, thorough manager research, careful due diligence, risk allocation, and portfolio management were false and misleading,~~

⁺~~Cristina McEachern Gibbs, “Proposed Bill: \$100 Million to Crack Down on Wall Street Fraud,” Advanced Trading, January 27, 2009; <http://www.advancedtrading.com/regulations/showArticle.jhtml?articleID=212902968>.~~

because Defendants either conducted no due diligence, or their due diligence was so reckless that they missed these and other obvious warning signs.

8. — Had Defendants conducted proper due diligence investigations, Madoff and BMIS' improper conduct would have been revealed, and Lead Plaintiff and the other members of the Class would not have invested in the Herald Funds.

9. — The Herald Funds and their Fund Managers, however, were not the only Defendants who ignored the obvious red flags surrounding Madoff, so did Ernst & Young S.A., who were at all relevant times the auditor for the Herald Funds

~~The E&Y Defendants' Wrongful Conduct~~

10. — As set forth in detail below, the E&Y Defendants collaborated in providing the audit opinions issued by E&Y to Herald (USA) Fund investors. The E&Y Defendants were required to obtain independent confirmation that Madoff had custody of the Herald (USA) Fund assets. E&Y however, never confirmed that the assets existed — ignoring the most critical aspect of any audit. Instead, the E&Y Defendants simply accepted Madoff's assertion that he held all \$3.2 billion worth of Herald Fund's monies, without ever obtaining any other confirmation. The failure to conduct this routine and most basic auditing procedure is sufficient to establish that the E&Y Defendants conducted no audit at all.

11. — Madoff told feeder fund auditors that the U.S. Treasury Bills were traded through the Government Securities Clearing Corporation (“GSCC”) and held at Bank of New York (“BONY”). While Madoff was a broker-dealer for stocks, he was not a broker-dealer for government securities and, therefore, could not take custody of U.S. Treasury Bills. None of the E&Y Defendants ever contacted GSCC or BONY to confirm the existence of the billions of

dollars in U.S. Treasury Bills reported in the Herald(USA) Funds' balance sheets at the end of each year. If they had, they would have discovered that the U.S. Treasury Bills did not exist.

12. — The E&Y Defendants also never communicated with Madoff's auditors F&H, nor investigated F&H's credentials. One of the first procedures mandated by the auditing standards at issue here (discussed in detail below) required the E&Y Defendants to vet Madoff's auditor. This was due to the fact that both Herald Funds had one hundred percent of their funds invested in Madoff and, in effect, the Herald Funds were nothing more than pass-through vehicles into Madoff. Accordingly, an audit opinion of Herald Funds required that the E&Y Defendants conduct certain procedures on the reliability of Madoff's financial statements. Those financial statements, however, were completely phony. Had the E&Y Defendants conducted even a minimal investigation of F&H, they would have discovered that F&H had never audited BMIS. E&Y, however, never communicated, directly or indirectly, nor sought to communicate with F&H. That, in and of itself, is also sufficient to establish that the audit by E&Y amounted to no audit at all.

13. — Accordingly, Lead Plaintiff asserts common law claims for, *inter alia*, breach of fiduciary duty, gross negligence, negligence, and unjust enrichment, as well as, claims under Section 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j and 78t(a), and Rule 10b-5, 17 C.F.R. § 240.10b5, promulgated thereunder by the SEC.

7. Lead Plaintiff brings this action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of all persons or entities who, (i) owned shares of Herald Funds on December 10, 2008, or (ii) purchased shares of Herald Funds from January 14, 2004 to December 10, 2008 (the "Class Period"), and who were damaged

thereby due to the wrongful conduct alleged in this Complaint (the “Class”). ~~Excluded from the Class are the Defendants, any entity in which Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries, assigns, or immediate family members of any such individual or entity~~“Class”), Plaintiffs assert common law claims for, *inter alia*, breach of fiduciary duty, gross negligence, negligence, unjust enrichment, conversion, and civil conspiracy, as well as RICO. Plaintiffs seek to recover the damages to their investments caused by the Madoff Feeder Fund Scheme.

II. PARTIES

A. Plaintiffs

8. Lead Plaintiff Repex Ventures, S.A. is a corporation incorporated under the laws of the British Virgin Islands. Repex invested in the Herald (LUX) Fund. Plaintiffs’ investments have been taken by Defendants and used as part of the Ponzi-scheme described herein. Lead Plaintiff thereby has been damaged.

~~1. Plaintiff Dana Trezziova invested in the Herald (USA) Fund. Plaintiff’s investment has been taken by Defendants and used as part of the Ponzi-scheme described herein. Lead Plaintiff thereby has been damaged.~~

~~9. Plaintiff Dana Trezziova invested in Herald (USA) Fund. Plaintiff’s investment has been taken by Defendants and used as part of the Ponzi-scheme described herein. Plaintiff thereby has been damaged.~~

B. The Herald Defendants

10. Defendant Herald (USA) also known as Herald Fund SPC, is an exempted segregated portfolio company (or investment fund) organized under the laws of the Cayman

Islands, with a principal place of business at M&C Corporate Services Limited, P.O. Box 309 GT, Uglan House, South Church Street, Georgetown, Grand Cayman, Cayman Islands.

11. Defendant HAML was at all relevant times the investment manager to Herald (USA). Its principle place of business is Whitehall House, 238 North Church Street, ~~P.O. Box 31362~~ Seven Mile Beach, George Town, Grand Cayman, Cayman Islands, B.W.I. Plaintiffs are informed and believe that HAML caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York, as well as causing others to transfer money to the same.

12. Defendant Paul de Sury was at all relevant times a director and ~~control~~ ~~person~~ of HAML. He was also an employee of Non-Defendant Medici S.r.l., a director of the Herald Fund (USA), and the liquidator of Tecno Italy. Plaintiffs are informed and believe that as a director of HAML, Herald Fund, and Medici S.r.l., de Sury caused agreements to be made in New York in that he caused BMIS accounts to be opened in New York. These accounts were used in connection with the Madoff Feeder Fund Scheme. Plaintiffs are informed and believe that de Sury also caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

13. Defendant Gabriel Safdié was at all relevant times a director and ~~control~~ ~~person~~ of HAML.

14. Defendant William A. Jones was at all relevant times a director and ~~control~~ ~~person~~ of HAML.

15. Defendant Herald (LUX) is a Société d'Investissement à Capital Variable (or investment fund) organized under the laws of Luxembourg, with a principal place of business

of 40, avenue Monterey, L-2163 Luxembourg.

2. — Defendant Medici is based in Vienna, Austria and claimed on its web-site to have offices located in New York, Milan, Gibraltar and Zurich. Medici was incorporated in Austria on March 9, 1994 by Kohn under the name Medici Finanz Beratung GmbH and was granted a full banking licence by the Austrian Financial Authority on December 3, 2003, when Bank Austria acquired a 25% interest. Defendant Kohn at all relevant times owned 75 percent of Medici. Bank Austria, which is owned by Defendant UniCredit, at all relevant times held the rest. Medici, at all relevant times, owned, marketed, and served as investment manager and global distributor of the Herald Funds. Today, Medici's management is being overseen by the Austrian government following the government's launch of a probe, on January 15, 2009, into Medici's actions.

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

4. — Defendant Unicredit at all relevant times was a European bank holding company which owned 25% of Medici through its subsidiary Austria Bank.

5. — Defendant Kohn is the founder of Medici, its chairperson, and a 75% owner. At all relevant times she was a control person of Medici. Kohn knew, but did not share with Lead Plaintiff or members of the proposed Class, that she received approximately \$40 million dollars in kickbacks from Madoff for steering billions of dollars from investors to his multi-billion dollar fraud.

~~6. Defendant Scheithauer was Medici's chief executive officer from August 2008 until 2009. He was also a control person of Medici.~~

16. Defendant Helmuth E. Frey was, at all relevant times, chairman and director of Herald (LUX). He was also a director of Medici and served as Medici's chief executive officer from February 2006 to August 2008. ~~He was also a control person of Herald (LUX) and Medici.~~ Plaintiffs are informed and believe that as a director of Bank Medici and Herald (Lux), Frey caused BMIS accounts to be opened in New York, New York. Plaintiffs are informed and believe that Frey also caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

~~7. Defendant Andreas Pirkner was at all relevant times a delegate of the Herald (LUX) board of directors. He was also a director and employee of Medici. He was also a control person of Herald (LUX) and Medici.~~

17. Defendant Friedrich Pfeffer was, at all relevant times, a director of Herald (LUX) and Herald (USA). ~~He was also a control person of both Herald (LUX) and Herald (USA).~~

18. Defendant Franco Mugnai was, at all relevant times, a director of Herald (LUX) and Herald (USA). ~~He was also a control person of both Herald (LUX) & Herald (USA).~~ Plaintiffs are informed and believe that as a director of HAML and the Herald Funds, Mugnai signed Herald Fund's BMIS account opening documents. Plaintiffs are informed and believe that Mugnai also caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

19. Defendant Richard Goddard was at all relevant times a delegate of the Herald

(LUX) board of directors. ~~He was also a control person of Herald (LUX).~~

20. Defendant Andreas Pirkner was at all relevant times a director and employee of Medici, and was involved in the creation, management and distribution of Herald (Lux). Pirkner was the Bank Medici contact for purported due diligence questions regarding the Madoff Feeder Funds. Plaintiffs are informed and believe that as a director of Herald (Lux) and employee of Bank Medici, Pirkner caused BMIS accounts to be opened in New York, New York. Plaintiffs are informed and believe that Pirkner also caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

21. ~~Defendant Hannes Saleta was, at all relevant times, a director of Herald (USA). He was also at all relevant times a control person of Herald (USA).~~

22. ~~Defendant Bank Austria at all relevant times owned 25% of Medici.~~Defendants Herald (USA), Herald (Lux), HAML, de Sury, Safdié, Jones, Frey, Pirkner, Pfeffer, Mugnai, Goddard, Saleta and Scheithauer are collectively known herein as the Fiduciary Defendants, and each owed a fiduciary duty to Plaintiffs and the Class.

C. The Bank Medici Defendants

23. Defendant Medici is based in Vienna, Austria and claimed on its web-site to have offices located in New York, Milan, Gibraltar and Zurich. Medici was incorporated in Austria on March 9, 1994 by S. Kohn under the name Medici Finanz Beratung GmbH and was granted a full banking license by the Austrian Financial Authority on December 3, 2003, when Bank Austria acquired a 25% interest. Defendant S. Kohn, at all relevant times, owned 75 percent of Medici. Bank Austria, which is owned by Defendant UniCredit, at all relevant times,

held the rest. Medici, at all relevant times, owned, marketed, and served as investment manager and global distributor of the Herald Funds. Today, Medici's management is being overseen by the Austrian government following the government's launch of a probe, on January 15, 2009, into Medici's actions. Plaintiffs are informed and believe that Bank Medici caused agreements to be made in New York in that it caused BMIS accounts with regards to at least the Herald Funds, the Primeo Fund, the Alpha Prime Fund, and the Senator Fund to be opened in New York, New York. Plaintiffs are informed and believe that Bank Medici also caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

24. Defendant Unicredit, at all relevant times, was a European bank holding company which owned 25% of Medici through its subsidiary Austria Bank. Defendant UniCredit and its subsidiary, UniCredit Bank, each maintain a New York branch at 150 E. 42nd Street, New York, New York. UniCredit has also operated, directed and controlled numerous subsidiaries and affiliates incorporated and/or doing business in New York, including UniCredit Capital Markets, Inc., UniCredit U.S. Finance, Inc., and UniCredit Capital Markets Conversion, LLC at the 42nd Street address.

25. Defendant S. Kohn is the founder of Medici, its chairperson, and a 75% owner. At certain times, S. Kohn served as the President of Bank Medici's Supervisory Board President. She also owns and controls certain related New York entities, including Medici Fund Management and Medici Finance Services. S. Kohn knew, but did not share with Plaintiffs or members of the proposed Class, that she received approximately \$40 million dollars in kickbacks from Madoff for steering billions of dollars from investors to his multi-billion dollar fraud. S.

Kohn is a citizen of Austria and resided in New York from 1983 to in or around 1994. Each RICO Defendant has a unique relationship with S. Kohn, and S. Kohn established and controls companies in New York that are critical members of the Madoff-Kohn Enterprise, defined *infra*, including Eurovaleur, Infovaleur, Erko, and Windsor (the “Kohn’s New York Sham Businesses”). Further, Plaintiffs are informed and believe that Infovaleur maintains a bank account at defendant Chase Bank in New York, New York. Plaintiffs are also informed and believe that Kohn entered into agreements with Madoff in New York to, *inter alia*, provide investors to BMIS, despite S. Kohn’s understanding that Madoff and BMIS’ entire business was fraudulent. Kohn provided these investors through, *inter alia*, the Herald Funds, so that the Madoff Feeder Fund Scheme would continue to grow and allow, *inter alia*, S. Kohn and Madoff to profit from Plaintiffs and other members of the Class’ stolen funds. Further, Plaintiffs are informed and believed that she caused proceeds of the Madoff Feeder Fund Scheme to be sent to and received from accounts at defendant Chase Bank and Bank of New York in New York, New York.

26. Defendant Scheithauer was Medici’s chief executive officer from August 2008 until 2009, and a director Herald (Lux). He was also Bank Austria’s area manager for foreign business from approximately 1989 to 1999. Plaintiffs are informed and believe that as a director of Herald (Lux), Scheithauer caused BMIS accounts to be opened in New York, New York. Plaintiffs are informed and believe that Scheithauer also caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

27. Defendant Bank Austria, at all relevant times, owned 25% of Medici. It is a

control person of Medici and also a subsidiary of Unicredit. Until 2005 when it was acquired by Unicredit, Bank Austria maintained a New York branch located at 150 E. 42nd Street, New York, New York. Moreover, UniCredit and Bank Austria's Annual Reports and historical records and reports of and filings with the Federal Reserve Board, the SEC, and the Department of State of the State of New York list numerous subsidiaries and affiliates controlled by Bank Austria and incorporated in New York with a principal executive offices at 150 E. 42nd St., New York, New York, and/or doing business in New York. These entities include Bank Austria America, Inc., Bank Austria Holdings Inc., Bank Austria Commercial Paper, Inc., Bank Austria Mortgage Corp., Bank Austria Finance, Inc., Bank Austria Securities, Inc. ("BASI"), BA Alpine Holdings, Inc., Bank Austria Creditanstalt American Corporation, Bank Austria Creditanstalt Trade Finance Services, Inc., Bank Austria Creditanstalt Community Development, Inc., CA IB Securities (New York) Inc. and others. In addition, as early as 1993 and again in 2001, Bank Austria registered with the SEC and sponsored through BASI's offices in New York depository receipts (with tickers including "BAAXY" and "BAAGY") for shares of its common stock to actively trade on exchanges in New York.

D. S. Kohn's Husband and Her Sham New York Businesses

28. Defendant E. Kohn is S. Kohn's husband. Plaintiffs are informed and believe that he is currently a resident of Switzerland, but resided in New York from 1983 through approximately 1994. With S. Kohn, defendant E. Kohn is a beneficial owner of HAML. He is also a director of Medici Realty Ltd. ("Medici Realty"), a Gibraltar entity owned by Bank Medici Gibraltar and Hassans International Law Firm, and the registered agent for Medici Finance Services in New York. This Court has personal jurisdiction over E. Kohn under N.Y.

CPLR 301, 302, and Federal Rule of Civil Procedure 4(k)(1)(A), as Plaintiffs are informed and believe that E. Kohn has maintained minimum contacts with New York in connection with the Counts alleged herein, including but not limited to: E. Kohn caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at J.P. Morgan Chase in New York; E. Kohn has repeatedly and purposefully availed himself of the benefits of conducting business in New York; E. Kohn has committed a tort in New York State, and expects, or should reasonably expect, the Madoff Feeder Fund Scheme in which he participated to damage Plaintiffs' property in New York; and he derives substantial revenue from interstate or foreign commerce.

29. Defendant Erko was incorporated by defendant S. Kohn on April 15, 1987, in New York, New York. As a New York corporation, this Court has personal jurisdiction over Erko. At all relevant times, Kohn was the 100% owner and manager of Erko. Erko's name derives from the first two letters of defendant E. Kohn's first and last names. Erko has no stated or known business purpose.

30. Defendant Windsor is a brokerage firm incorporated by defendant S. Kohn in on July 15, 1987, in New York, New York. As a New York corporation, this Court has personal jurisdiction over defendant Windsor. Its headquarters and principal place of business was, during times relevant herein, located at 67 Wall Street, New York, New York. At all relevant times, S. Kohn was the President and indirect owner of Windsor. Erko was the general partner of Windsor IBC Holdings, the 100% owner of Windsor. Erko and Windsor IBC Holdings shared employees.

31. Defendant Eurovaleur was incorporated by defendant S. Kohn on March 26,

1990, in New York, New York. As a New York corporation, this Court has personal jurisdiction over Eurovaleur. S. Kohn is Eurovaleur’s founder sole shareholder, President and Chief Executive Officer. Its headquarters and principal place of business was, during times relevant herein, located at 230 Park Avenue, New York, New York. Eurovaleur has, during times relevant herein, claimed to be a fund of hedge funds, a New York registered brokerage, a provider of research services, and “a European boutique investment bank”. Eurovaleur registered the “Primeo” trademark in New York. Eurovaleur also registered Internet domain names in New York for key members of the Madoff-Kohn Enterprise: “bankmedicimaestro.com” and “heraldcashplus.com.”

32. Defendant Infovaleur was incorporated by defendant S. Kohn on February 22, 1996, in New York, New York. As a New York corporation, this Court has personal jurisdiction over Infovaleur. At all relevant times, Kohn was the sole owner and manager of Infovaleur. Throughout its existence, it used the same New York mailing address and telephone number as, and shared employees with, Eurovaleur. Infovaleur has also used the same mailing address as the residence of M. and R. Hartstein in Monsey, New York. Infovaleur has no stated or known business purpose. Infovaleur maintains at least one bank account in New York at defendant Chase Bank.

E. The Auditor Defendants

1. The E&Y Defendants

33. Defendant Ernst & Young S.A. was at all relevant times auditor for Herald (LUX) and the agent of Defendant Ernst & Young Global Limited. Ernst & Young S.A. is located in Munsbach, Luxembourg.

34. Defendant Ernst & Young, Cayman Islands was at all relevant times auditor for Herald (USA) and the agent of Defendant Ernst & Young Global Limited.

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

2. Madoff’s Auditors

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

3. The HSBC Defendants

37. Defendant HSBC Securities Services (Luxembourg) S.A. (~~““HSBC (Luxembourg)””~~), formerly known as Bank of Bermuda (Luxembourg) S.A., is a banking institution with an address at 40, Avenue Monterey, L-2163 Luxembourg. HSBC (Luxembourg) served as the custodian of the assets of Herald Funds.

38. Defendant HSBC Holdings plc was at all relevant times a public limited company incorporated in England. It operates worldwide including in the United States and particularly in this District through, among other things, its wholly owned subsidiaries HSBC Bank USA, N.A. (“HSBC Bank USA”) and HSBC Finance Corporation. HSBC markets itself as the “World’s Local Bank”.

39. Defendants HSBC Holdings plc and HSBC (Luxembourg)~~(collectively, the “HSBC Defendants”)~~ each had agency and/or *alter ego* relationships with each other. Thus, each is liable for its own acts, as well as the acts of the other HSBC Defendant.

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

4. Each defendant-The JPMorgan Chase Defendants

40. Defendant JPMorgan Chase & Co. is a financial holding company with its principal place of business located at 270 Park Avenue, New York, New York 10017.

41. According to a Corporate Substantial Shareholder Notice Form 2 dated December 2, 2010 (the “Form 2”), and filed pursuant to the Securities and Futures Ordinance (the “SFO”), which requires disclosure of substantial shareholdings in corporations listed on The Stock Exchange of Hong Kong Limited, until September 2, 2010, JPMorgan Chase & Co. owned and/or maintained a “long position” of 6% or 1,045,962,464 shares of the outstanding stock of defendant HSBC Holdings plc. After September 2, 2010, JPMorgan Chase & Co. owned and/or maintained a “long position” of 5.99% or 1,044,033,679 shares of the outstanding stock of defendant HSBC Holdings plc. During that same time frame, JPMorgan Chase & Co. owned and/or maintained a “short position” of .33% of the outstanding stock of defendant HSBC Holdings plc.

42. Defendant Chase Bank is the consumer and commercial banking subsidiary of JPMorgan Chase & Co. Chase Bank traces its New York, New York origins to Aaron Burr’s 1799 founding of the Manhattan Company at 40 Wall Street, New York, New York and the 1877 founding of Chase National Bank. The two banks merged in 1955 to create Chase Manhattan Bank. In July 1996, Chemical Bank, the primary subsidiary of Chemical Banking Corporation purchased Chase Manhattan Bank. At the time, Chemical Bank, also headquartered in New York, was the third largest bank in the United States with \$182.9 billion in assets. After

Chemical Bank's acquisition of Chase Manhattan Bank, the merged entity continued to be known as Chase Manhattan Bank.

43. In December 2000, Chase Manhattan Bank completed its merger with JPMorgan & Co., and the combined entity became known as JPMorgan Chase & Co. JPMorgan Chase & Co.'s principal place of business located at 270 Park Avenue, New York, New York 10017 is the former principal place of business of Chemical Bank. Further, JPMorgan Chase & Co. retains Chemical Bank's stock price history.

44. Plaintiffs are informed and believe that throughout the Class Period, all monetary financial transactions to and from Madoff and/or BMIS were funneled through the Chase Bank Account #000000140081703 (the "BMIS Bank Account"), maintained in New York, New York.

45. Madoff and/or BMIS originally opened the BMIS Bank Account with Chemical Bank in New York, New York. See *SIPA v. Madoff; Picard v. JPMorgan Chase & Co.*, Adv. Pro No. 10-04932 (Bk. S.D.N.Y. Dec. 12, 2010) (the "*JPMorgan Chase Bankruptcy Complaint*") at ¶ 178. Throughout the Class Period, plaintiffs are informed and believe that Chase Bank also "acted as guarantor and common depository for products [JPMorgan Chase] structured and issued related to the [BMIS] feeder funds." *Id.* at ¶ 21.

46. Plaintiffs are informed and believe that Chase Bank currently maintains approximately 400 branches located within New York, Bronx, Westchester, Putnam, Rockland, Orange, Dutchess and Sullivan counties.

47. Defendant J.P. Morgan Securities LLC is a JPMorgan Chase & Co. subsidiary which provides security brokerage and underwriting services within the United States.

Prior to September 1, 2010, J.P. Morgan Securities LLC was known and operated as J.P. Morgan Securities Inc. J.P. Morgan Securities' principal place of business is also 270 Park Avenue, New York, New York 10017.

48. Defendant J.P. Morgan Securities Ltd. provides security brokerage services. Its principal place of business is located at 125 London Wall, London, EC2Y 5AJ, United Kingdom.

49. According to the SFO's "Directions and instructions for completion of Form 2," subtitled "General Notes", "a corporation disclosing a notifiable interest in a Hong Kong corporation under [the SFO]" must, in Box 22, disclose information regarding other entities that corporation controls. Specifically, the SFO General Notes state, in relevant part, that:

If you are entitled to exercise, or control the exercise of, one-third or more of the voting power at general meetings of a corporation, or the corporation or its directors are accustomed to act in accordance with your directions, and that corporation is interested in shares of the listed corporation concerned then give details of that corporation (referred to in these notes as a "controlled corporation") in Box 22. If there is more than one corporation that you control then details of each controlled corporation must be stated separately in Box 22.

50. According to the Form 2 filed by JPMorgan Chase & Co., and noted *supra*, JP Morgan Chase & Co. identifies defendant JP Morgan Securities Ltd. as an entity which JP Morgan Chase & Co. is "entitled to exercise, or control the exercise of, one-third or more of the voting power at general meetings of a corporation, or the corporation or its directors are accustomed to act in accordance with your directions".

51. Further, defendant JP Morgan Securities Ltd. "routinely conducts business in New York, New York, and its employees regularly work with JPMorgan Chase employees in the New York, New York offices and attend meetings at those offices." *JPMorgan Chase*

Bankruptcy Complaint at ¶ 24.

52. Defendants JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, and J.P. Morgan Securities Ltd. (as collectively defined *supra*, “JPMorgan Chase”) each had agency and/or *alter ego* relationships with each other. Thus, each is liable for its own acts, as well as the acts of the other JP Morgan Chase Defendants. Further, the JP Morgan Chase Defendants the JPMorgan Chase Defendants aided and abetted each of the other Defendants, along with Non-Defendant bad actors Madoff and BMIS, in some or all of the activities alleged herein.

F. The Defendants Worked in Concert

53. The Fiduciary Defendants had a duty to the putative Plaintiffs and Class members to use and manage their investment funds with due care, and/or -to disseminate accurate and truthful information with respect to the value of such funds. ——— Each of the Defendants aided and abetted the Fiduciary Defendants in breaching their fiduciary duties owed to Plaintiffs and the Class.

54. Each defendant participated in the fraud complained of herein and/or was aware of, or willfully or recklessly disregarded numerous red flags showing that ~~their~~ the statements made by the Fiduciary Defendants and the E&Y Defendants, concerning the value and/or nature of ~~Lead Plaintiff's~~ Plaintiffs' and the Class^{1'} investment, were materially false or misleading. Moreover, each defendant herein helped perpetuate the fraud. Indeed, if each of the defendants had not acted with Madoff, BMIS and/or S. Kohn, Madoff, BMIS and/or S. Kohn would not have been able to access and steal the investments. Plaintiffs and the Class made with BMIS.

FACTUAL ALLEGATIONS

9. — ~~Defendants have plundered the investments of Lead Plaintiff and the putative Class by using its invested capital in a giant Ponzi scheme ultimately conducted by or through defendant BMIS.~~

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

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

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

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

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

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

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

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

18. — Bank Medici funneled the most money of any firm in Europe into Madoff's \$50 billion scam. Kohn, Medici's founder and 75% owner, and Madoff have a long history of working together. Madoff and Kohn most likely met in New York, where Kohn began her investing career in the 1980s.

19. — In 1985, Kohn and her husband, Erwin, bought a house in Monsey, a New York suburb with an Orthodox Jewish community, property records show. She kept this house until at least 2007, when records show it she transferred an interest in the property to her daughter.

20. — In 1987, Kohn set up a brokerage firm on 67 Wall Street called Windsor IBC. According to New York state records, Kohn formed three New York corporations, Eurovaleur,

~~Inc. in 1990, Valeur Securities, Inc. in 1992, and Infovaleur, Inc. in 1996. Records show that Kohn controlled all three corporations.~~

~~21. — According to a February 19, 2009 article from Bloomberg, entitled “*Sonja Kohn Wooded Bernard Madoff Billions With Medici Fantasy*” by Matthias Wabl, Eurovaleur, Inc. was marketed accounts for Madoff, according to a money manager who accompanied Kohn to a 1991 meeting with Madoff in New York. The article states that Madoff greeted Kohn with a big hug and a kiss as they arrived, said the person who asked not to be identified.~~

~~22. — In 1994, Kohn founded Medici Finanz Beratung GmbH in Vienna. According to the February 19 Article, that same year she helped create the first of three Bank Austria Primeo funds that invested with Madoff, according to the former Bank Austria employee. She introduced executives of Bank Austria, now owned by Milan-based UniCredit SpA, to Madoff in New York at the time, the person said. The Primeo funds face almost \$1.1 billion of losses from the Madoff scam and Primeo investors are part of the present consolidated action.~~

~~23. — Kohn’s company received a banking license and was renamed Bank Medici in 2003, when it posted a loss. Bank Medici boosted fee income to 9.72 million euros (\$12.2 million) in 2007, from 1.38 million euros in 2003, by gaining new clients in Austria, Germany, Switzerland, Italy and the U.S., according to fee payment tables in its income statement.~~

~~55. Bank Medici, through Kohn and others met with Madoff in his offices in New York City numerous times to discuss the Herald Funds, among other funds, supposed investments. Specifically, according to Madoff’s calendar, HAML, Sury, Medici, Unicredit, S. Kohn met with Madoff in his offices in New York City at least on the following dates, according to Madoff’s appointment calendar: August 23, 2005; March 27, 2006; October 31, 2006;~~

November 26, 2007; and September 23, 2008., E. Kohn, Kohn's Sham New York Businesses, Scheithauer, Frey, Pirkner, Mugnai, and Bank Austria are collectively part of the "Madoff-Kohn Enterprise"(collectively, the "RICO Defendants") The Madoff-Kohn Enterprise is a deliberately complex association-in-fact that Madoff and S. Kohn jointly conceived in New York. Members of the Madoff-Kohn Enterprise acted in concert with S. Kohn and Madoff to perpetrate the Madoff Feeder Fund Scheme.

24. — ~~Kohn's meetings with Madoff in New York were part of Bank Medici's due diligence on Madoff, as manager and control person of the Herald Funds. According to a February 1, 2009 Bloomberg article, entitled, "Madoff's Well-Treated Feeder Funds Suspected Shady Trades But Backed Off," the due diligence accomplished during these meetings was limited:~~

~~The feeders were the gatekeepers, and they qualified for royal treatment. A money manager for a family office recalls accompanying Sonja Kohn, whose Vienna-based Bank Medici funneled \$3.2 billion to Madoff, to a meeting with Madoff in New York in 1991.~~

~~He says Madoff treated her as if she were the Queen of England. The money manager also says Madoff wouldn't answer any questions about his strategy.~~

25. — ~~While supposedly performing due diligence on Madoff and looking out for investors' best interests, unknown to investors, Kohn was receiving tens of millions of dollars in kickbacks from Madoff in exchange for her steering billions into his fraud.~~

26. — ~~On February 11, 2009, the Massachusetts Securities Division suspended Cohmad Securities Corp.'s ("Cohmad") state broker-dealer license. Cohmad was one of the "feeder funds" to Madoff's investment business. It was co-founded by Madoff and Maurice Jay (Sonny) Cohn in February 1985. According to Massachusetts regulators, Cohmad and Bernard L.~~

~~Madoff Investment Securities exhibited a “deeply intertwined relationship.” A complaint filed by Massachusetts regulators indicates that Cohmad paid \$87,792 a year for six years, for a total a total of \$526,000, to defendant Kohn, all the while Kohn was not associated with neither Cohmad nor employed by the firm.~~

~~27. — On July 3, 2009, the *Wall Street Journal* reported that U.S. and British prosecutors had alleged that Kohn was paid more than \$40 million in kickbacks for funneling \$3.5 billion in investments to Madoff from funds she controlled. Specifically, U.S. investigators noticed a flow of payments totaling about \$32 million over 10 years from Mr. Madoff’s advisory firm, Bernard L. Madoff Investment Securities LLC, to Infovaleur Inc., a New York company that was “owned by Sonja Kohn personally,” according to a U.S. affidavit filed on April 6.~~

~~28. — The same article states that Grant Thornton U.K. LLP, the accounting firm liquidating Mr. Madoff’s London-based unit, Madoff Securities International Ltd., discovered a bank receipt that triggered a U.K. investigation, according to a March 24 affidavit filed with Austrian prosecutors by the Serious Fraud Office, a U.K. government agency responsible for prosecuting complex fraud cases. The bank receipt referenced a check that Madoff International paid to a company called Erko Inc. (taken from the first two letters of Erwin Kohn’s first and last names) and which was deposited in a Vienna bank account, according to the U.K. affidavit. The affidavit said the Serious Fraud Office had determined that both Erko and the bank account were controlled by Kohn. The fraud office also said in the affidavit it was unable to locate a registration for Erko. The U.K. affidavit alleges that Mr. Madoff’s London subsidiary paid about GBP 7 million (\$11.5 million) over five years to Erko. A British prosecutor alleges in the~~

document that Mr. Madoff attempted to hide payments to Ms. Kohn by “falsely” declaring them in his company accounts as payment for research reports.

29. — Finally, in an article entitled “*The Madoff Chronicles, Part II WHAT THE SECRETARY SAW “Hello, Madoff!”*” published in the June 2009 edition of *Vanity Fair*, written by both Mark Seal and Madoff’s secretary Eleanor Squillari, Ms. Squillari states that Kohn “was always thrilled to meet with Bernie, and always sent in staggering quarterly invoices—never less than \$800,000—for her commissions.”

30. — After Madoff was exposed, Kohn amazingly filed a claim for alleged Madoff losses in the SIPA Liquidation case filed in the Southern District of New York Bankruptcy court entitled *In re: Bernard L. Madoff Investment Securities LLC*. She gave her address as Windsor, IBC, Inc. at 200 Liberty Square in New York City.

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

32. — All Defendants knew or were reckless for not knowing that their representations about their investment activities were false and misleading, and that their concealment of the true nature and status of the investments would materially mislead putative Class members. Defendants also knowingly and substantially participated or acquiesced in the unlawful and

fraudulent manipulation of investment capital placed with them for investment in the securities market.

33. — During the Class Period, Defendants made false and misleading statements and omissions to Lead Plaintiff and the Class in prospectuses (and associated supplements) and offering memoranda for the Herald Funds (collectively, the “Offering Memoranda”).

Herald (LUX) Prospectuses

34. — The Herald (LUX) Prospectus was dated March, 2008. An updated Prospectus was published by Herald (LUX) during August 2008.

35. — Both Herald (LUX) Prospectuses omit any mention of the Herald Funds’ investment in Madoff and include false and misleading statements, including, but not limited to:

The Fund’s Investment Objective

The objective of the Fund is to achieve long term appreciation through diversification of investments.

* * *

1. The Fund

In accordance with the requirements of the UCITS Directive and the correspondent provisions of the 2002 Law, all Sub Funds invest in accordance with the principle of risk spreading in transferable securities and other permitted assets which may comprise units of UCITS and UCIs, deposits with credit institutions

* * *

3. Risk Consideration

* * *

The Fund will implement strategies by using different types of securities which all carry inherent correlated and uncorrelated risks

The Fund is dependent upon the Investment Manager's evaluation of global financial markets. . . .

* * *

The Investment Manager believes that its investment activities attempt to moderate risk through diversification.

* * *

Futures and Options

The Fund may invest in futures and option contracts.

* * *

- III. a) (i) The Fund will invest no more than 10% of the net assets of any Sub-Fund in transferable securities and money market instruments issued by the same issuing body.
- (ii) The Fund may not invest more than 20% of the net assets of any Sub-Fund in deposits made with the same body.

* * *

- b) Moreover, where the Fund holds on behalf of a Sub-Fund, investments in transferable securities and money market instruments of issuing bodies which individually exceed 5% of the net assets of such Sub-Fund, the total of all such investments must not account for more than 40% of the total net assets of such Sub-Fund.

* * *

Notwithstanding the individual limits laid down in paragraph a), the Fund may not combine for each Sub-Fund:

- investments in transferable securities or money market instruments issued by a single body;
 - deposits made with a single body, and/or
 - exposures arising from OTC derivative transactions undertaken with a single body
- in excess of 20% of its net assets.
- f) Notwithstanding the above provisions, the Fund is authorised to invest up to 100% of the net assets of any Sub-Fund, in accordance with the principle of risk spreading, in transferable securities and money market

~~instruments issued or guaranteed by a Member State of the EU, by its local authorities or agencies, or by another member State of the OECD, including the federal agencies of the United States of America, Federal National Mortgage Association and Federal Home Loan Mortgage Corporation, or by public international bodies of which one or more Member States of the EU are members, provided that such Sub-Fund must hold securities from a least six different issues and securities from one issue do not account for more than 30% of the net assets of such Sub-Fund.~~

~~* * *~~

~~VI. a) The Fund may acquire units of the UCITS and/or other UCIs referred to in paragraph I (1) c), provided that no more than 10% of a Sub-Fund's net assets be invested in aggregate in the units of such UCITS or other UCIs.~~

~~* * *~~

~~The Investment Manager, to whom the Board of Directors of the Fund has delegated under its responsibility such functions, employs a risk management process which enables the monitoring and measurement at any time the risk of the positions and their contribution to the overall risk profile of each Sub-Fund.~~

~~36. The above statements were false and misleading when made. Despite the considerable fees charged to investors and the repeated representations that Herald (LUX) would diversify its investments to limit risk, all of the Herald (LUX)'s assets were "invested" in a single entity, BMIS, where they were quickly stolen through the Madoff Ponzi scheme. Furthermore, Defendants Herald (LUX), Medici, Kohn, Pfeffer, Scheithauer, Frey, Pirkner, Mugnai, and Goddard (collectively, the "Herald (LUX) Defendants") each knew, or were reckless for not knowing, that Herald (LUX) was formed with the sole purpose of supplying investors' funds to Madoff. The Herald (LUX) Defendants knew that the only investment management performed by Medici was funneling investors' money to Madoff.~~

~~37. — Furthermore, defendant HSBC (Luxembourg), the custodian of Herald (LUX) knew or was reckless for not knowing that the above statements were false or misleading. HSBC (Luxembourg) had been Herald (USA)'s custodian for years by this time, and had transferred over a billion dollars to Madoff from Herald (USA). Additionally, by the time of the August 2008 Prospectus, HSBC (Luxembourg) had transferred millions of dollars from Herald (LUX) to Madoff.~~

~~38. — Despite the considerable fees charged to investors and the repeated representations of the Herald (LUX) Defendants and HSBC (Luxembourg), Lead Plaintiff and the Class' funds were stolen through the Madoff Ponzi scheme. This could have been avoided if Defendants had fulfilled their duties to Lead Plaintiff and the Class, if Defendants had lived up to their own representations, and if Defendants had adequately and reasonably investigated, monitored, and conducted due diligence of Madoff and BMIS. Had Defendants conducted due diligence, they would have discovered at least the multiple red flags identified herein. At the very least, as described *infra*, like hedge fund investment advisors Aksia LLC, Defendants should have been able to discover the existence of facts which would put them on notice of the red flags identified therein.~~

~~39. — In failing to do so, Defendants breached their legal duties to Lead Plaintiff and the Class, resulting in the complete loss of Lead Plaintiff's and the Class' investments. At the same time, Defendants paid themselves millions of dollars in fees, predicated on phony profits.~~

~~Herald (LUX) Unaudited Semi-Annual Report and Financial Statement~~

~~Herald (LUX) only issued one Unaudited Semi-Annual Report and Financial Statement (the "Herald (LUX) Report") published by "HSBC" and the Herald (LUX) directors. Only one~~

report was issued, due to the fact that Madoff's fraud was exposed less than a year after Herald (LUX) was incorporated. However the Herald (LUX) report contained numerous false or misleading statements in its statement of operations, statement of assets, change in assets, and schedule of investments. Each number concerning the fund was false or misleading because investors' assets had already been stolen via Madoff's fraudulent Ponzi scheme. Herald (LUX) Defendants and HSBC (Luxembourg) were reckless for not knowing of Madoff's fraud due to the many red flags they saw, as alleged throughout this complaint.

Herald (USA) Offering Memorandum

40. All versions of Herald (USA)'s Offering Memorandum, from 2004 until 2008 stated the following:

INVESTMENT OBJECTIVE AND STRATEGY

The Fund's objective is to provide investors with long term capital growth while minimizing risks through the use of a very active trading style. The Fund will utilize a multi strategy approach with respect to investment and management of the Fund's assets. The Fund, based upon the recommendation of the Investment Manager in consultation with the Investment Adviser(s), will appoint, on a continuous basis, investment managers ("Managers") managing collective investment schemes and/or discretionary portfolio management accounts ("accounts") with different backgrounds in terms of investment strategies, markets and financial instruments. The Investment Manager in consultation with the Investment Adviser(s) will consider a number of factors in supervising the selection of Managers, including, but not limited to, their experience and market performance, trading strategy and techniques, areas of expertise and judgment.

* * *

Nature of Investments

The Fund does not have any pre-determined philosophy with respect to the types of financial instruments that should be invested in and instead expects that through selection of various Managers and the allocation of assets to different accounts and/or collective investment schemes, there will be ultimate diversity of investment of the Fund's assets in financial instruments in different markets

~~capitalizing on investment opportunities present throughout the world, thus reducing risks through diversification.~~

~~* * *~~

~~INVESTMENT RISKS~~

~~The Fund is dependent upon the Investment Manager's evaluation of global financial markets.~~

~~* * *~~

~~Performance~~

~~The Investment Manager believes that its investment activities attempt to moderate risk through diversification and the careful selection of Managers.~~

~~41. — The above statements were false and misleading when made. Despite the considerable fees charged to investors and the repeated representations that Herald (USA) would diversify its investments to limit risk, all of the Herald (USA)'s assets were "invested" in a single entity, BMIS, where they were quickly stolen through the Madoff Ponzi scheme. Furthermore, Defendants Herald (USA), HAML, de Sury, Safdié, Jones, Medici, Kohn, Scheithauer, Frey, Pfeffer, Mugnai, Saleta (collectively, the "Herald (USA) Defendants") each knew, or were reckless for not knowing, that Herald (USA) was formed with the sole purpose of supplying investors' funds to Madoff. Additionally, from the time Herald (USA) was formed in 2004 until Madoff's fraud was in 2008, the Herald (USA) Defendants each knew that the only investment performed by HAML was funneling investors' money to Madoff.~~

~~42. — Furthermore, defendant HSBC (Luxembourg), the custodian of Herald (USA) knew or was reckless for not knowing that the above statements were false or misleading. HSBC (Luxembourg) had been Herald (USA)'s custodian from 2004 to 2009, and had transferred over a billion dollars to Madoff from Herald (USA).~~

**Herald (USA)'s Audited Annual and Unaudited Semi-Annual
Reports and Financial Statements**

43. — From its inception, a Herald (USA) Unaudited Semi-Annual Report and Financial Statement and a Audited Annual Report were issued every year. These reports were issued by HSBC and the Herald (USA) directors. Each of these reports contained numerous false or misleading statements in its statement of operations, statement of assets, change in assets, and schedule of investments. Each number concerning the fund was false or misleading because investors' assets had already been stolen via Madoff's fraudulent Ponzi scheme. Herald (USA) Defendants, HSBC (Luxembourg) were reckless for not knowing of Madoff's fraud due to the many red flags they saw, as alleged throughout this complaint.

44. — Herald (USA) has stated that Ernst & Young, Cayman Islands was Herald (USA)'s auditor. However, the Independent Auditor's Report accompanying each of Herald (USA)'s Annual Reports is on the letterhead of "Ernst & Young" and is signed by "Ernst & Young." Other than the letterhead providing an address for Ernst & Young in the Cayman Islands, there is no indication that an entity calling itself "Ernst & Young, Cayman Islands" was solely responsible for the opinion letter.

45. — Each Independent Auditor's Report states that "We have audited the accompanying financial statements . . . which comprise the statement of net assets, including the schedule of investments. . . . And the statement of net income, and changes of net assets[.] They also stated that "We conducted our audit in accordance with International Standards on Auditing." They also provided an Opinion, which stated "in our opinion, the financial statements give a true and fair view of the financial position of Herald Fund SPC as of December 31 [of the

year then ending] and of its financial performance for the year then ending in accordance with accounting principles generally accepted in Luxembourg.”

46. — Ernst & Young’s statements in its audit opinion were false and misleading when made. Each of these reports contained numerous false or misleading statements in its statement of operations, statement of assets, change in assets, and schedule of investments. Each number in the audited financial statements concerning the fund were false or misleading because investors’ assets had already been stolen via Madoff’s fraudulent Ponzi scheme. Herald (USA) Defendants, HSBC, and Ernst & Young were reckless for not knowing of Madoff’s fraud due to the many red flags they saw, but ignored, as alleged throughout this complaint.

47. — Despite the considerable fees charged to investors and the repeated representations of the Herald (LUX) Defendant, Herald (USA) Defendants, HSBC and E&Y that the Herald Funds were profitable and growing, Lead Plaintiff and the Class’ funds were stolen through the Madoff Ponzi scheme. This could have been avoided if the Defendants had fulfilled their duties to Lead Plaintiff and the Class, if these defendants had lived up to their own representations, and if Defendants had adequately and reasonably investigated, monitored, and conducted due diligence of Madoff and BMIS. Had Defendants conducted due diligence, they would have discovered at least the multiple red flags identified herein. At the very least, as described *infra*, like hedge fund investment advisors Aksia LLC, Defendants should have been able to discover the existence of facts which would put them on notice of the red flags identified therein.

48. — In failing to do so, Defendants breached their legal duties to Lead Plaintiff and the Class, resulting in the complete loss of Lead Plaintiff's and the Class' investments. At the same time, Defendants paid themselves millions of dollars in fees, predicated on phony profits.

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

Red Flags Concerning Madoff

50. — For years since the inception of Madoff's scheme, there have been myriad warnings meaningful to investment professionals that Madoff and/or BMIS were perpetrating a fraud on investors. Some of the red flags, which were ignored by all defendants, are discussed in the paragraphs that follow.

51. — In 1992, the SEC filed a lawsuit against accountants Frank Avellino and Michael Bienes, who sold \$441 million in unregistered securities to 3,200 people beginning in 1962, promising them returns of 13.5 to 20 percent, and invested the money entirely with Madoff. As a result of the SEC investigation, Avellino and Bienes agreed to shut down their business and reimburse their clients. No action was taken against Madoff.

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

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

- a. "Madoff has reported positive returns for the last 11 plus years in assets managed on behalf of the feed fund known as Fairfield Sentry [The] other [feeder] funds have demonstrated equally positive track records using the same strategy for much of that period."
- b. "Those who question the consistency of the returns . . . include current and former traders, other money managers, consultants, quantitative analysts and fund of funds executive, many of whom are familiar with the so-called split-strike conversion strategy used to manage the assets."
- c. These individuals "noted that others who use or have used the strategy . . . are known to have had nowhere near the same degree of success."
- d. "The best known entity using a similar strategy, a publicly traded mutual fund dating from 1978 called Gateway, has experienced far greater volatility and lower returns during the same period."
- e. "The strategy and trading, [Madoff] says, are done by signals from a proprietary 'black box' system that allows for human intervention to take into account the 'gut feel of the firm's professionals."
- f. "As for specifics of how the firm manages risk and limits the market impact of moving so much capital in and out of positions, Madoff

responds by saying, 'I'm not interested in educating the world on our strategy, and I won't get into the nuances of how we manage risk.'"

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

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

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

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

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

e. —“Adding further mystery to Madoff’s motives is the fact that he charges no fees for his money management services.”

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

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

55. —On November 7, 2005, Markopolous submitted another letter to the SEC, titled “The World’s Largest Hedge Fund is a Fraud,” in which he set forth in detail, over 17 single-spaced pages and a two-page attachment, how Madoff’s returns could not be real. Markopolous identified 29 red flags that were signs of highly suspicious activity in BMIS, including, among others:

- a. —“*why would B[ernie] M[adoff] settle for charging only undisclosed commissions when he could earn standard hedge fund fees of 1% management fee = 20% of the profits?*” (Emphasis in original.)
- b. —“The third party hedge funds and fund of funds that market this hedge fund strategy that invests in BM don’t name and aren’t allowed to name Bernie Madoff as the actual manager in their performance summaries or marketing literature *Why the need for such secrecy? If I was the world’s largest hedge fund and had great returns, I’d want all the publicity I could garner and would want to appear as the world’s largest hedge fund in all the industry rankings.*” (Emphasis in original.)
- c. —“*It is mathematically impossible for a strategy using index call options and index put options to have such a low correlation to the market where its returns are supposedly being generated from. This makes no sense! However, BM’s performance numbers show only 7 extremely small [monthly] losses during 14 ½ years and these numbers are too good to be true. The largest one month loss was only 55 basis points (0.55%) or just over one-half of one percent! And BM never had more than a one month losing streak!*” (Emphasis in original.)
- d. —“*Madoff does not allow outside performance audits.*” (Emphasis in original.)
- e. —“*Madoff’s returns are not consistent with the one publicly traded option income fund with a history as long as Madoff’s.*” (Emphasis in original.)

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

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

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

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

b. ———— Madoff’s auditor, F&H, operated out of a 13 x 18 foot location in New City, New York, and included one partner in his late 70s who lives in Florida, a secretary, and one active accountant, whereas most hedge funds are audited by a Big 3 accounting firm.

e. ~~_____ Aksia discovered the 2005 letter from Markopolous to the SEC described above.~~

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

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

59. ~~_____ Madoff, instead of using an outside prime broker as nearly all hedge funds do, was his own prime broker and custodian of all the assets he managed. A December 13, 2008 article in *The Wall Street Journal* quoted Chris Addy, founder of Castle Hall Alternatives, which vets hedge funds for clients, as follows: "There was no independent custodian involved who could prove the existence of assets . . . There's clear and blatant~~

conflict of interest with a manager using a related party broker dealer. Madoff is enormously unusual in that this is not a structure I've seen."

60. ————— In her book entitled *"Too Good to Be True"* by Erin E. Arvedlund (author of the 2001 Barron's article on Madoff) the author noted that Madoff's leaving money on the table by not charging the customary 2% on assets and 20% of profits that other hedge funds charged their customers. As an example, Arvedlund estimated that Fairfield Sentry charged its investors \$1.2 billion in fees for investing with Madoff. "Why would a savvy investor like Madoff leave that type of money on the table?"

61. ————— Arvedlund also noted that other potential Madoff investors quickly learned there was something wrong. In 1997, Rob Picard, of the Royal Bank of Canada, along with other executives to meet Madoff because certain clients wanted to borrow money to invest with Madoff. Within 15 minutes, Picard realized he had stumbled onto a fraud. "Madoff stuttered when he tried to explain his options strategy and right away I realized he either didn't understand it, or he wasn't doing what he said he was doing." Picard also wondered why Madoff was never mentioned anywhere as one of the biggest hedge funds on Wall Street. As a result, Picard suspected that something wasn't right and after the meeting Royal Bank of Canada customers redeemed out of the Tremont fund (a Madoff feeder fund).

62. ————— Another red flag was the fact that Madoff left no footprints, it was as if he didn't exist. As reported by Arvedlund, none of the big trades he supposedly executed in the dwindling S&P 100 index options trading pits could ever be found. Alex Johnson from

the Chicago Board Options Exchange had heard that Madoff's option trading on that exchange has stopped in the early 1990s.

63. ————— Joe Gieger, a managing director at fund-of-hedge-funds shop GAM told Arvedlund that representatives from the \$39.2 billion asset management firm visited Madoff early on and decided against investing with him. Once in 1998 when David Smith, chief investment director of GAM's funds-of-hedge-funds group visited Madoff, GAM could not triangulate the returns with what Madoff claimed to be his strategy. Then in 2001 GAM made another visit, and again rejected Madoff.
64. ————— As James Newman, vice president of due diligence at Ermitage, a fund-of-funds, wrote to clients "From the onset I was denied the opportunity to perform a detailed due diligence review. We take a dim view on any fund, regardless of size, industry status, or 'its good enough for them' type reasons that restricts our due diligence process." He declined to invest.
65. ————— Société Générale ("SocGen") also concluded that Madoff was not legitimate after sending its own due diligence team to New York in 2003. As reported by The New York Times on December 17, 2008, in an article entitled, European Banks Tally Losses Linked To Fraud, SocGen's due diligence "was conducted by three people who visited Mr. Madoff's headquarters in the red granite skyscraper on Third Avenue in Manhattan." The bankers concluded that "something wasn't right. ... It's a strategy that can lose sometimes, but the monthly returns were almost all positive."
66. ————— Jeffrey S. Thomas, chief investment officer at Atlantic Trust, which manages \$13.5 billion, said that on several occasions over the years it had "reviewed and declined

to invest with Madoff.” In studying where to place its clients’ funds, the firm said it spotted a number of “red flags” in Madoff’s operation. Chief among those was a lack of an outside firm to handle trades and accounting for the funds, and the inability to document how Madoff made profits.

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

68. As alleged in *Picard v. Herald Fund SPC*, Adv. Pro. No. 09-1359 (Bnkr. S.D.N.Y., 2009), on September 8, 2004, HSBC (Luxembourg), then known as the Bank of Bermuda (Luxembourg) S.A., entered into a Sub-Custody Agreement with BMIS whereby BMIS would act as the sub-custodian for certain funds for which HSBC (Luxembourg), as the Bank of Bermuda (Luxembourg) S.A., was the custodian.

69. On or about September 30, 2004, BMIS received a notice that the Bank of Bermuda (Luxembourg) S.A. was changing its name to HSBC Securities Services (Luxembourg) S.A. effective October 1, 2004.

70. In January 2008, HSBC (Luxembourg), as HSBC Securities Services (Luxembourg) S.A., entered into a Sub-Custody Agreement with BMIS. BMIS held these funds in New York, New York for the benefit of HSBC (Luxembourg).

III. BOTH HERALD FUNDS WERE CLIENTS OF BMIS. PICARD STATES THAT ACCORDING TO BMIS' RECORDS, HERALD JURISDICTION AND VENUE

56. This Court has jurisdiction over the Plaintiffs' claims for violations of RICO under 18 U.S.C. § 1964. In addition, this Court has jurisdiction over the state law claims pursuant to the following:

- a. the Court's supplemental jurisdiction, 28 U.S.C. § 1367(a); and
- b. the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) ("CAFA").

57. With respect to CAFA, (i) the amount in controversy exceeds the jurisdictional amount of \$5,000,000, and (ii) the Class consists of hundreds, and perhaps thousands of individuals, and (iii) at least one Plaintiff is a citizen of a foreign state and one Defendant is a citizen of New York.

58. The exercise of personal jurisdiction over the Defendants by this Court is appropriate and will not offend traditional notions of fair play and substantial justice because each of the Defendants sued under New York law had sufficient minimum contacts with New York.

59. Venue is proper in this judicial district under 18 U.S.C. § 1965, 28 U.S.C. § 1391, and 28 U.S.C. §§ 1408 and 1409(a). The injury to the business and property of the Plaintiffs occurred, in substantial part, in New York. Madoff, BMIS, S. Kohn and other members of the Madoff-Kohn Enterprise: (i) organized and directed the Madoff Feeder Fund Scheme from, among other places, New York; (ii) fed the Ponzi scheme via BMIS' bank account number xxxxxxxxxxxx703 (the "703 Account") at J.P. Morgan Chase in New York; and (iii) drew secret kickbacks of Madoff Ponzi scheme victims from the 703 Account and from Madoff's Bank of New York Inc. account number xxxxxxxxxxxx621 (the "621 Account").

Moreover, Irving Picard (“Picard”), court appointed trustee for BMIS, states that according to BMIS’ records Herald USA maintained an account with BMIS through its custodian, HSBC (Luxembourg), that was designated account IFR109 (the “Herald USA Account”). The Herald USA Account was opened on or about April 1, 2004, when a Customer Agreement, an Option Agreement, and a Trading Authorization Limited to Purchases and Sales of Securities and Options (the “Account Agreements”) were executed and delivered to BMIS at BMIS’ headquarters at 885 Third Avenue, New York, New York.

60. Venue is also proper in this judicial district under 18 U.S.C. § 1965(b) because, to the extent that any Defendant may reside outside of this district, the ends of justice require such Defendant or Defendants to be brought before this Court. Additionally, many of the Defendants maintain offices and conduct substantial business in this District.

61. Defendants knew that the sole purpose of the Herald Funds was to funnel money directly to Madoff and BMIS. They were always intended to be feeder funds for Madoff. To invest dollars in the Herald Funds, investors needed to send their money directly to New York banks.

62. Bank Medici stated in on its website that it had offices located in New York City. Bank Austria had offices located at 150 E. 42nd Street in New York City. E&Y has offices in New York City. HSBC has offices located in New York City.

63. Bank Medici, through its founder, chairperson, and 75% owner, S. Kohn, met with Madoff in his offices in New York City numerous times to discuss providing him with investor’s money. Specifically, according to Madoff’s calendar, S. Kohn met with Madoff in his offices in New York City on the following dates, among others: August 23, 2005; March 27,

2006; October 31, 2006; November 26, 2007; and September 23, 2008. He also met with Dr. Ursula Rand from Medici in New York on December 6, 2005, May 9, 2006, October 23, 2006, March 19, 2007, October 30, 2007, May 20, 2008, and September 29, 2008.

64. S. Kohn’s meetings with Madoff in New York were part of Bank Medici’s purported due diligence on Madoff. According to a February 1, 2009 *Bloomberg* article, entitled, “Madoff’s Well-Treated Feeder Funds Suspected Shady Trades But Backed Off,” the due diligence accomplished during these meetings was limited:

The feeders were the gatekeepers, and they qualified for royal treatment. A money manager for a family office recalls accompanying Sonja Kohn, whose Vienna-based Bank Medici funneled \$3.2 billion to Madoff, to a meeting with Madoff in New York in 1991.

He says Madoff treated her as if she were the Queen of England. The money manager also says Madoff wouldn’t answer any questions about his strategy.

65. On July 3, 2009, *The Wall Street Journal* reported that U.S. and British prosecutors had alleged that S. Kohn was paid more than \$40 million in kickbacks for funneling \$3.5 billion in investments to Madoff from funds she controlled. Specifically, prosecutors alleged that two companies controlled by S. Kohn, Infovaleur and Erko, Inc., had received \$32 million and £7 million, respectively. Infovaleur was located at 767 Fifth Avenue, in New York City.

66. Finally, in an article entitled “*The Madoff Chronicles, Part II WHAT THE SECRETARY SAW*” *Hello, Madoff!*” published in the June 2009 edition of *Vanity Fair*, written by both Mark Seal and Madoff’s secretary Eleanor Squillari, Ms. Squillari states that S. Kohn “was always thrilled to meet with Bernie, and always sent in staggering quarterly invoices—

never less than \$800,000—for her commissions.”

67. Accordingly, Defendants conducted and/or failed to conduct the requisite due diligence in New York with respect to Madoff. As set forth in detail herein, the due diligence conducted in New York did not meet the adequate standard of care, and, thus, (i) constituted conduct that was more than merely preparatory to the wrongdoing; and (ii) directly caused Plaintiffs and the Class’ losses.

68. At all relevant times, the Herald Funds maintained an account with BMIS in New York, through their custodian. Additionally, the Herald Funds accounts were opened when a Customer Agreement, an Option Agreement, and a Trading Authorization Limited to Purchases and Sales of Securities and Options (the “Account Agreements”) were executed and delivered to BMIS at BMIS’ headquarters at 885 Third Avenue, New York, New York. The Account Agreements were to be performed in New York, New York through securities trading activities that would take place in New York, New York.

69. The Customer Agreement signed by BMIS and the Herald (USA) Funds states that all transactions are subject to the Securities Exchange Act of 1934, the Commodities Exchange Act, the rules and regulations of the SEC, the Board of Governors of the Federal Reserve System and the Commodities Futures Trading Commission, and all laws of the United States. The Herald (USA) Funds voluntarily made transactions with BMIS subject to these laws.

71. ~~On information and belief, Herald (LUX) also signed the same agreements as Herald (USA). It was BMIS’s custom and practice to have all of its customers sign such Customer Agreements.~~

~~72. Picard states that the Account Agreements were to be performed in New York, New York through securities trading activities that would take place in New York, New York. The Herald Funds' accounts were held in New York, New York, through BMIS. HSBC and HSBC Securities Services (Luxembourg) S.A. consistently wired funds to BMIS's bank accounts in New York, New York for application to the Herald Funds' accounts and the conducting of trading activities. All Defendants have intentionally taken advantage of the benefits of conducting transactions in the State of New York and, therefore, have submitted themselves to the jurisdiction of this Court for the purposes of this proceeding.~~

~~73. Between April 1, 2004 and the filing date of this complaint, HSBC and HSBC (Luxembourg), for the benefit of Herald (USA), invested \$1,533,741,975 with BMIS through 42 separate wire transfers directly into BMIS' account at JPMorgan Chase & Co. in New York, New York, Account #000000140081703 (the "BMIS Bank Account"). HSBC and HSBC (Luxembourg), for the supposed benefit of Herald (LUX), also transferred hundreds of millions of dollars to the same account.~~

~~74. As disclosed in Herald (USA)'s investor application form, investors who wished to invest U.S. dollars in Herald (USA) were required to deposit their investments into banks located in this District. In the beginning of the Class Period Herald (USA) dollar deposits were sent directly by investors to CitiBank N.A. account #66080020, located on Park Avenue, New York, which belonged to the Bank of Bermuda (Luxembourg) S.A. and later HSBC Securities Services (Luxembourg) S.A. (after the name change). Later Herald (USA) account was shifted to HSBC Bank USA. It was from these accounts that~~

~~funds would be wired to the BMIS Bank Account—On information and belief, Herald (LUX) funds were also first deposited in HSBC Securities Services (Luxembourg) S.A.'s account at the HSBC Bank USA prior to being wired to the BMIS Bank Account.~~

~~75. Had any Defendant conducted due diligence into Madoff and BMIS, they would have discovered at least some the dozens of red flags identified herein. At the very least, like Aksia, Defendants should have been able to discover the existence of Markopolous' letter, which would put them on notice of the red flags identified therein.~~

70. —~~SUBSTANTIVE~~ Additionally, Herald (USA) and Bank of Bermuda (Luxembourg) S.A. both maintained accounts at Citibank NA located in this district at 399 Park Avenue, New York City. Investors in Herald (USA) worldwide were directed to transfer their U.S. Dollar denominated funds into Bank of Bermuda (Luxembourg) account numbered xxxxx308 for further credit to Herald (USA)'s account numbered xxxxx000 at this branch of Citibank.

71. Accordingly, the Herald Funds and the Defendants conducted activities in New York which (i) constituted conduct that was more than merely preparatory to the wrongdoing; and (ii) directly caused Plaintiffs and the Class' losses. In particular, the Herald Funds and Defendants conducted and/or failed to conduct the requisite due diligence in New York with respect to Madoff.

A. The HSBC Defendants

72. HSBC and HSBC Luxembourg consistently wired funds, for the benefit of the Herald Funds, directly into BMIS' account at JPMorgan Chase & Co. in New York, New York, Account No. 000000140081703 (the "BMIS Bank Account").

73. After HSBC purchased Bank of Bermuda (Luxembourg) Herald Funds' customer agreement changed so that U.S. Dollar denominated investors in the Herald Funds were directed to make their investments through HSBC Bank USA, N.A. located in the District. This account became an entry point for Herald (USA) U.S. dollar investments, regardless of the origin of the investment, and even though banks across the world accept dollar deposits, including foreign HSBC affiliates. HSBC Luxembourg was the beneficiary of an account for these purposes both with HSBC Bank USA, N.A. and Citibank.

74. The principal executive offices of HSBC Bank USA are located at 452 Fifth Avenue, New York, New York. HSBC Bank USA operates over three hundred branches in New York. In connection with the allegations set forth in this complaint, HSBC Bank acted in New York for the benefit of, on behalf of, and with the knowledge and consent of, HSBC Luxembourg.

75. Further, representatives of HSBC Holdings plc met with Madoff, repeatedly, in New York in 2008. Specifically, Brian Pettitt, Head of HSBC Securities Services Network Management, met with Madoff in his office in New York City on February 21, 2008 and November 19, 2008, according to Madoff's calendar. HSBC's Web site explains that HSBC Securities Services "provides custody and administration services to institutional fund managers." The HSBC Defendants are being sued in this action in connection with precisely these same administrative and custodial functions. The Web site further states that HSBC Securities Services provides services in over fifty countries, indicating that the HSBC Defendants here are legal entities that form part of the HSBC Securities Services division.

76. A January 2007 article in a publication called *Financial Services Research*,

which mentions both Mr. Pettitt and HSBC Securities Services, places the type of due diligence which HSBC would have conducted on the Herald Funds squarely within his division's responsibility:

Since the HSBC Group's acquisition of the Bank of Bermuda in February 2004, [HSBC Securities Services] has encountered *the new challenge of conducting risk assessments on prime brokers* whose hedge fund clients use [HSBC Securities Services'] Alternative Fund Services as their hedge fund administrator. "Given that the prime broker [*i.e.*, Madoff] is typically appointed by the hedge fund [*i.e.*, the Herald Funds], many prime brokers struggle to understand why they should be subject to due diligence by a global custodian," notes Mick Underwood [Head of Custody Network Management at HSBC].

(Emphasis added.)

77. Thus, HSBC (through Mr. Pettitt) met with Madoff, in New York, to perform precisely the due diligence that is at issue in this action.

78. Accordingly, the HSBC Defendants conducted activities in New York which (i) constituted conduct that was more than merely preparatory to the wrongdoing; and (ii) directly caused Plaintiffs and the Class' losses. In particular, the HSBC Defendants conducted and/or failed to conduct the requisite due diligence in New York with respect to Madoff.

B. The JPMorgan Chase Defendants

79. The JPMorgan Chase Defendants' business is all centered at 270 Park Avenue, New York, New York 10017, which is the headquarters of defendants JPMorgan Chase & Co., Chase Bank and J.P. Morgan Securities LLC. Furthermore, defendant JPMorgan Chase & Co. exercises and/or controls the exercise of the voting of defendant J.P. Morgan Securities Ltd. and/or defendant J.P. Morgan Securities Ltd. acts in accordance with directions issued from this District at and/or from JPMorgan Chase & Co.'s headquarters. As a result, all primary

operating decisions for each of the JPMorgan Chase Defendants are made in this District.

Defendant JP Morgan Securities Ltd. also “routinely conducts business in New York, New York, and its employees regularly work with JPMorgan Chase employees in the New York, New York offices and attend meetings at those offices.” JPMorgan Chase Bankruptcy Complaint at ¶ 24.

80. Moreover, Chase Bank maintained the BMIS Bank Account, through which all monies received from Plaintiffs and the Class were funneled, in this District. In addition, Chase Bank “acted as guarantor and common depository for products [JPMorgan Chase] structured and issued related to the [BMIS] feeder funds” from its offices located in this District. See JPMorgan Chase Bankruptcy Complaint at ¶ 21.

C. The E&Y Defendants

81. The E&Y Defendants’ conduct in the United States represented the centerpiece and fundamental aspect of the wrongful conduct at the heart of the claims against the E&Y Defendants. Ernst & Young (Cayman Islands) knew that all of the Herald Fund assets were located with Madoff in New York, but did not disclose this fact to investors. Ernst & Young (Cayman Islands) needed to communicate with Madoff to complete any type of audit. At year end, at a minimum, it would have needed a confirmation and most likely would need to visit Madoff to confirm the location of fund assets.

D. Defendants’ Conduct Had a Substantial Effect on Commerce Both Internationally and in the United States

82. According to the SIPC Trustee, Madoff’s Ponzi scheme caused investors to believe their investments were in good hands, earning profits and had grown to approximately \$65 billion when in reality their investments had been stolen and not exist. Defendants’ wrongful taking, or unjust enrichment from monies invested by members of the Class, caused

substantial harm to thousands of United States citizens from all 50 states whose supposed wealth evaporated overnight. This wealth had served to collateralize the investments and assets of thousands of United States citizens who had to liquidate these assets and suffered real losses.

83. Defendants' wrongful conduct permitted Madoff to perpetuate his Ponzi scheme. The nature of a Ponzi scheme required that Madoff use the funds from new investors to pay old ones. The international investors in Herald Funds provided Madoff with over a billion dollars to continue his Ponzi scheme. But for the billion plus dollars that the Herald Funds gave to Madoff, the scheme would have unraveled substantially earlier and not damaged thousands of United States citizens. Similarly, but for the withdrawal of hundreds of millions of dollars from Madoff in the later years of his Ponzi scheme which were effectively taken from United States citizens, substantially fewer United States citizens would have been harmed by Madoff's Ponzi scheme. Class members would not have invested with Herald Funds but for Defendants' wrongful conduct.

84. The effect of the feeder funds in perpetuating Madoff's Ponzi scheme has been widely reported in the press. According to the Wall Street Journal's article, "Mad Men," published on January 7, 2009, "[f]eeder funds appear to explain [] the longevity of money manager Bernie Madoff." Other news agencies issued similar reports:

85. Time Magazine published an article entitled, "How Madoff's Feeder Funds Stole My Retirement," which noted, "Bernard Madoff built his \$65 billion Ponzi empire at least half on the backs of his feeder funds." The feeder funds allowed Madoff "to keep his house of cards standing much longer than he otherwise could have with his ragtag band of family members, small time accountants," according to the same article.

86. The New York Times published an article entitled, “In Fraud Case, Middlemen in Spotlight,” which reported that the feeder funds “were essentially pouring billions of dollars each into Bernard L. Madoff Investment Securities.”

87. Madoff’s Ponzi scheme had additional substantial and direct effects on U.S. citizens:

a. It is estimated that the Internal Revenue Service (“IRS”) will lose up to \$17 billion in lost tax revenue. In some instances, the IRS may have to refund filers who paid taxes on fictitious gains from Madoff. Individual states may also lose substantial tax revenue due to Madoff.

b. The effect of Madoff on U.S. charities and their respective beneficiaries is substantial and well-documented. The collateral effect of Madoff’s Ponzi scheme has sent “shock waves throughout the medical and scientific communities - with far-reaching implications for everything from diabetes research to palliative care. Philanthropy experts say that the negative effect of the Madoff scandal on health care could ultimately affect millions of people.” As a result, “hospitals, food banks, schools and community outreach programs throughout the world are being forced to cut life-giving services as they watch millions of dollars in grants from large Jewish charities dry up in the wake of Bernard Madoff’s alleged \$50 billion Ponzi scheme.

c. The insurance industry has reported that it will be affected by Madoff’s scheme in the “range of direct insured losses ... between \$760 million and \$3.8

billion ... with the maximum potential exposed insurance limits at more than \$6 billion.”

d. United States banks have also been affected by Madoff, including lending institutions, like Wells Fargo, who recently recorded losses of \$294 million related to customers who were unable to pay their mortgages because they were wiped out by Madoff. Similarly, hedge funds have seen substantial redemptions: “The Madoff scandal has contributed to redemptions that could shrink the hedge fund industry by half, to \$1 trillion, by the end of the year.” and

e. Investors who suffered enormous losses at the hands of Madoff included, “pensioners, municipal workers, students on scholarship, and middle class Americans, not just wealthy investors.”

88. Accordingly, Defendants’ wrongful conduct had a substantial effect in the United States and upon United States citizens.

89. International commerce has also been affected. Thousands of individuals from all over the globe either directly invested with Madoff and BMIS, or through the various feeder funds.

IV. NON-DEFENDANT BAD ACTORS

90. In addition to Non-Defendant bad actors Madoff and BMIS, certain other individuals and/or entities are responsible for wrongdoing, but are not named as defendants.

91. Non-Defendant Netty Blau (“Blau”) is defendant S. Kohn’s mother and a citizen of Austria. Blau owned and managed the sham business, Tecno Italy. Blau, as manager of Tecno Italy, facilitated the performance of S. Kohn’s agreements with Madoff in New York

that were vital to the Madoff Feeder Fund Scheme. Plaintiffs are informed and believe that Blau received proceeds of the Madoff Feeder Fund Scheme from accounts at defendant Chase Bank in New York, New York

92. Non-Defendant Moishe Hartstein (“M. Hartstein”) is S. Kohn’s son in-law. He is a director of investment banking at Non-Defendant Palladium Capital Advisors, LLC (“Palladium”), and has also acted on behalf of Eurovaleur, which maintains its offices at location as Palladium. M. Hartstein and his wife R. Hartstein, live in a house in Monsey, New York sold to them by S. Kohn and E. Kohn on December 26, 2009. This residence also served as a mailing address for Infovaleur.

93. Non-Defendant Rina Hartstein (“R. Hartstein”) is S. Kohn’s daughter. Plaintiffs are informed and believe that R. Hartstein personally received a transfer of stolen Ponzi investor property from S. Kohn, via Infovaleur, after Madoff confessed. Plaintiffs are informed and believe that R. Hartstein received proceeds of the Madoff Feeder Fund Scheme from accounts maintained with defendant Chase Bank in New York, New York.

94. Non-Defendant Mordechai Landau (“Landau”) is also S. Kohn’s son-in-law. Together, Landau and defendant S. Kohn owned the Austrian sham business, M-Tech. Plaintiffs are informed and believe that Landau received proceeds of the Madoff Feeder Fund Scheme from accounts maintained with defendant Chase Bank in New York, New York.

95. Non-Defendant Robert Alan Kohn (“R. Kohn”) is S. Kohn’s son. Plaintiffs are informed and believe R. Kohn received proceeds of the Madoff Feeder Fund Scheme from accounts maintained with defendant Chase Bank.

96. Non-Defendant Robert Reuss (“Reuss”) is a citizen of Austria and, during times relevant herein, acted as in-house counsel for Bank Medici, despite the fact that he may not be an attorney. He is also a former Vice President of Eurovaleur and a former employee of Infovaleur. Plaintiffs are informed and believe that Reuss caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank and Bank of New York in New York, New York.

97. Non-Defendant Palladium Capital Advisors, LLC (“Palladium”) is broker-dealer, formed in Delaware on May 12, 2004, and registered with the SEC. Palladium maintains its principal place of business at the same New York address as Eurovaleur and Infovaleur. As of April 1, 2005, M. Hartstein, Palladium’s director of investment banking, registered with the Financial Industry Regulatory Authority (“FINRA”) as a broker and with the SEC as a securities principal with Palladium.

98. Non-Defendant Daniele Cosulich (“Cosulich”) ran the day-to-day activities of HAML. He is a resident of the United Kingdom. Plaintiffs are informed and believe that Cosulich was an employee of Medici S.r.l. from March 15, 2007 to September 8, 2008 and acted in the capacity of Bank Medici at all relevant times. He was also the Managing Director of S. Kohn’s Austrian sham business, Sofipo. Plaintiffs are informed and believe that Cosulich caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

99. Non-Defendant Tecno Development & Research S.r.l. (“Tecno Italy”) was a Milan-based company incorporated on February 21, 2002 and liquidated on December 5, 2008.

It was located in the same offices as Medici S.r.l.—Via Andegari 18, 20121 Milan, Italy—and shared at least two of the same employees, defendant de Sury and Non-Defendant Mariadelmar Raule (“Raule”). Non-Defendant Blau managed and co-owned Tecno Italy. On information and belief, S. Kohn owned and controlled Tecno Italy. Plaintiffs are informed and believe that Tecno Italy received proceeds of the Madoff Feeder Fund Scheme from accounts at defendant Chase Bank in New York, New York. S. Kohn and Blau, through Tecno Italy, entered into agreements vital to the Madoff Feeder Fund Scheme with Madoff in New York, New York.

100. Non-Defendant Raule was an employee of Medici S.r.l. from 2006 to 2008 and was an employee of Tecno Italy, both of which operated from the same offices in Milan. Raule was also an employee of HAML. She was the assistant to both Kohn and Mugnai, who was director of both HAML and Herald Fund. Raule is a citizen of Italy. Plaintiffs are informed and believe that Raule caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

101. Non-Defendant Tecno Development & Research Ltd. (“Tecno Gibraltar”) was incorporated on January 3, 2007 in Gibraltar, and is located in the offices of Line Management, which is associated with Hassans. On information and belief, S. Kohn owns and controls Tecno Gibraltar. Plaintiffs are informed and believe that Tecno Gibraltar received proceeds of the Madoff Feeder Fund Scheme from accounts at defendant Chase Bank in New York, New York. Defendant S. Kohn and Shlomo (Momy) Amselem (“Amselem”), through Tecno Gibraltar, entered into agreements vital to the Madoff Feeder Fund Scheme with Madoff in New York, New York.

102. Non-Defendant Amselem is the lone director of Tecno Gibraltar. He is also an employee of Line Management, which is associated with Hassans. Amselem is an Israeli national and resident of Gibraltar. Plaintiffs are informed and believe that Amselem, through Tecno Gibraltar, received proceeds of the Madoff Feeder Fund Scheme from accounts at J defendant Chase Bank in New York, New York. Plaintiffs are also informed and believe that S. Kohn, through Amselem and as sole director of Tecno Gibraltar, entered into agreements vital to the Madoff Feeder Fund Scheme with Madoff in New York, New York

103. Non-Defendant Sofipo Austria GmbH (“Sofipo”) is an Austrian private banking/wealth management firm registered on January 4, 2006. Sofipo is owned by Bank Medici. On information and belief, S. Kohn owns and controls Sofipo. Until April 21, 2009, Sofipo was registered at the same address as Bank Medici. Plaintiffs are informed and believe that Sofipo caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

104. Non-Defendant M-Tech is an Austrian data processing and information technology company founded on November 30, 2000. From January 4, 2002 until January 4, 2007, S. Kohn owned 50% of M-Tech until she sold her interest in M-Tech to her son-in-law, Landau. Kohn served as M-Tech’s managing director from January 4, 2002 until November 29, 2003. M-Tech also employed Bank Medici director, Pirkner and Landau as managing directors. M-Tech went into liquidation in 2007. Plaintiffs are informed and believe that M-Tech received proceeds of the Madoff Feeder Fund Scheme from accounts at defendant Chase Bank in New York, New York.

105. Non-Defendant Absolute Portfolio Management Ltd. (“APM Cayman”) was incorporated by Non-Defendant Manfred Kastner (“Kastner”) under the laws of the Cayman Islands on April 19, 1999. APM Cayman received payment from HAML for its sister company MediciFinanz’s marketing and distribution of certain of the Madoff-Kohn Enterprise Feeder Funds. Plaintiffs are informed and believe that APM Cayman caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

106. Non-Defendant MediciFinanz Consulting GmbH (“MediciFinanz”) was incorporated by Non-Defendant Kastner in Germany on October 10, 1996. Bank Medici had an indirect ownership interest in MediciFinanz, and MediciFinanz operated as a branch of Bank Medici. MediciFinanz marketed and distributed certain of the Madoff-Kohn Enterprise Feeder Funds in Germany. Plaintiffs are informed and believe that MediciFinanz caused proceeds of the Madoff Feeder Fund Scheme to be sent to an account at defendant Chase Bank in New York, New York.

107. Non-Defendant Medici S.r.l. (“Medici S.r.l.”) is the Italian branch of Bank Medici incorporated on October 24, 1997. Bank Medici held a majority shareholding until 2004, after which it appears to have held a 100% shareholding. Medici S.r.l. shared offices and personnel with Tecno Italy and HAML. Plaintiffs are informed and believe that Medici S.r.l. caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

108. Non-Defendant Medici Cayman Island Ltd. (“Medici Cayman”) is a foreign

company incorporated on April 20, 2007 in the Cayman Islands. It is a wholly owned branch of Bank Medici. Plaintiffs are informed and believe that Medici Cayman caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

109. Non-Defendant Bank Medici Gibraltar AG (“Bank Medici Gibraltar”) is Bank Medici’s Gibraltar branch, Bank Medici Gibraltar, and opened in January 2005. Bank Medici Gibraltar is located in Hassans’ offices. Bank Medici Gibraltar held itself out as a joint venture with Hassans. Plaintiffs are informed and believe that Bank Medici Gibraltar caused proceeds of the Madoff Feeder Fund Scheme to be sent to accounts at defendant Chase Bank in New York, New York

110. Non-Defendant Hassans is a Gibraltar law firm and is counsel to S. Kohn, Herald Fund, and on information and belief, HAML. Bank Medici Gibraltar and Medici Realty are located in Hassans’ offices. Certain Hassans partners and associates also hold non-lawyer corporate positions at certain Holding Company Defendants controlled by Kohn, Hassans, or other members of the Madoff-Kohn Enterprise. These entities are part of a complex corporate structure that conceals the fact that Kohn and her husband are the beneficial owners of HAML. On information and belief, this structure also conceals Kohn’s ownership of Tecno Gibraltar. Plaintiffs are informed and believe that Hassans caused or facilitated the sending and receipt of proceeds of the Madoff Feeder Fund Scheme to and from accounts owned or controlled by Kohn and other members of the Madoff-Kohn Enterprise.

111. Non-Defendant ReviTrust Services Est. (“Revi”) is a Liechtenstein company

that operates as a corporate registry and trust formation agent in Liechtenstein and Switzerland.
Plaintiffs are informed and believe that Revi received proceeds of the Madoff Feeder Fund
Scheme from accounts at defendant Chase Bank in New York, New York.

112. Non-Defendant Kastner owns and controls MediciFinanz and APM Cayman.
He is an Austrian citizen. Kastner and S. Kohn created MediciFinanz and APM Cayman. He
was also an employee of Medici Cayman from 2000 until 2001. Plaintiffs are informed and
believe that Kastner caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and
received from accounts at defendant Chase Bank in New York owns and controls MediciFinanz
and APM Cayman.

113. Non-Defendant Josef Duregger (“Duregger”) was the head of the
Participations Department at Bank Medici beginning in 2006 and is also a member of Bank
Austria Cayman’s Supervisory Board. He was a director of BA Worldwide from 1993 until
2003 and a director of Primeo Fund. He was also a member of Bank Austria’s commercial
representation board from 1991 until 1993 and from 1999 to the present. Duregger continues to
serve as a member of Bank Medici’s Advisory Board. Duregger became a director for
UniCredit CA-IB Securities UK Ltd. (“UniCredit UK”), a UniCredit subsidiary, on November
14, 2007. He is a citizen of Austria. Plaintiffs are informed and believe that as a director of
Primeo Fund and an employee of both Bank Medici and Bank Austria, Duregger facilitated
agreements vital to the Madoff Feeder Fund Scheme with Madoff in New York and caused
BMIS accounts to be opened in New York, New York. Duregger also caused proceeds of the
Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase

Bank in New York, New York.

114. Non-Defendant Werner Tripolt (“Tripolt”) joined Bank Medici in 2007 as an assistant to the managing board of directors and officially became a member of the board on January 2008. Tripolt was responsible for the entire financial policy of Bank Medici, including credit and debit management, regulatory reporting, the bank’s company shareholdings, fund operations, and its infrastructure. He is a citizen of Austria. Plaintiffs are informed and believe that as a director at Bank Medici, Tripolt caused BMIS accounts to be opened in New York. Tripolt also caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York joined Bank Medici in 2007 as an assistant to the managing board of directors and officially became a member of the board on January 2008. Tripolt was responsible for the entire financial policy of Bank Medici, including credit and debit management, regulatory reporting, the bank’s company shareholdings, fund operations, and its infrastructure.

115. Non-Defendant Andreas Schindler (“Schindler”) was the head of asset management at Bank Medici. Schindler helped create Herald (Lux) and served on its board in 2008. He also helped create Herald (Lux) and served on its board in 2008. He is a citizen of Austria. Plaintiffs are informed and believe that as a director of Herald (Lux) and an employee of Bank Medici, Schindler caused BMIS accounts to be opened in New York. Plaintiffs are also informed and believe that Schindler caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

116. Non-Defendant BA Worldwide Fund Management Ltd. (“BA Worldwide”)

was a subsidiary of Bank Austria incorporated in the British Virgin Islands on September 29, 1993. BA Worldwide was voluntarily liquidated on or about February 22, 2008. BA Worldwide was the investment adviser to Primeo Fund from December 15, 1993 until April 25, 2007. Radel-Leszczyński was the President of BA Worldwide. Hemetsberger, Krestchmer, Nograsek, and Duregger served as directors of BA Worldwide. Plaintiffs are informed and believe that BA Worldwide caused Primeo Fund to make agreements with BMIS in New York. Plaintiffs are informed and believe that BA Worldwide also made agreements with, and transferred proceeds of the Madoff Feeder Fund Scheme to, Eurovaleur, a New York corporation. Plaintiffs are also informed and believe that BA Worldwide caused the proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

117. Non-Defendant Bank Austria Cayman Islands Ltd. (“Bank Austria Cayman”) is a branch of Bank Austria incorporated on October 12, 2000 in the Cayman Islands. Plaintiffs are informed and believe that Bank Austria Cayman caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

118. Non-Defendant Gerhard Randa (“Randa”) was chairman of Bank Austria from 1995 to 2003. He is a citizen of Austria. Randa was instrumental to the creation of Primeo Fund. On information and belief, he introduced S. Kohn to Bank Austria in the early 1990s. Plaintiffs are informed and believe that Randa caused and facilitated the opening of Primeo Fund’s BMIS accounts in New York. Plaintiffs are also informed and believe Randa caused

proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

119. Non-Defendant Fredrich Kadrnoska (“Kadrnoska”) was a director and member of the management board of Bank Austria from 1995 to 2003. He was also a director of UniCredit. He is a citizen of Austria. Plaintiffs are informed and believe that Kadrnoska caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

120. Non-Defendant Stefan Zapotocky (“Zapotocky”) was the Director of Equities, and beginning in 1991, Head of Asset Management at Bank Austria beginning in 1991. Zapotocky was also a member of the Bank Austria’s board of directors from 1997 until 2000. His responsibilities at Bank Austria included oversight of investments and the creation of Primeo Fund and overseeing Bank Austria’s direct account with BMIS. He also served on Primeo Fund’s and Alpha Prime Fund’s boards of directors. He is Zapotocky is a citizen of Austria. Plaintiffs are informed and believe that as a director of Primeo Fund and Alpha Prime Fund, Zapotocky caused BMIS accounts to be opened in New York. Zapotocky, on behalf of Bank Austria, traveled to New York two to three times a year to meet with Madoff to discuss Primeo Fund. Plaintiffs are also informed and believe that Zapotocky caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

121. Non-Defendant Ursula Radel-Leszczynski (“Radel-Leszczynski”) was first hired at Bank Austria in 1996 and became a President of BA Worldwide in 2000. She is a

citizen of Austria. Plaintiffs are informed and believe that as a director of BA Worldwide and an employee of Bank Austria, Radel-Leszczyński caused BMIS accounts to be opened in New York. Radel-Leszczyński, on behalf of Bank Austria and BA Worldwide, was in regular communication with Madoff and others in New York. She traveled to New York two to three times a year to meet Madoff to discuss certain of the Madoff-Kohn Enterprise Feeder Funds. Plaintiffs are informed and believe that Radel-Leszczyński also caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at Chase Bank in New York, New York.

122. Non-Defendant Werner Kretschmer (“Kretschmer”) was a director of Bank Austria from May 2006 until May 2008 and a director of Bank Medici from 2004 until 2006. Kretschmer was also a director of BA Worldwide. He is a citizen of Austria. Plaintiffs are informed and believed that as a director of Bank Medici, Bank Austria, and BA Worldwide, Kretschmer caused BMIS accounts to be opened in New York. Kretschmer, on behalf of Bank Austria, traveled to New York two to three times a year to meet with Madoff to discuss certain of the Madoff-Kohn Enterprise Feeder Funds. Plaintiffs are informed and believe that Kretschmer also caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and from accounts at defendant Chase Bank in New York, New York.

123. Non-Defendant Wilhelm Hemetsberger (“Hemetsberger”) was a director of Bank Austria from February 2001 to May 2008. He was also a director of BA Worldwide from 1993 to 2003. He is an Austrian citizen. As a director of Bank Austria and BA Worldwide, Hemetsberger caused BMIS accounts to be opened in New York. Hemetsberger, on behalf of

Bank Austria, traveled to New York two to three times a year to meet with Madoff to discuss the Madoff-Kohn Enterprise Feeder Funds. Plaintiffs are informed and believe that Hemetsberger caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and received from accounts at defendant Chase Bank in New York, New York.

124. Non-Defendant Harold C. Nogrsek (“Nogrsek”) worked at Bank Austria from 1991 to 2004. In 1991, Nogrsek served as the Head of the Financial Investment Division at Bank Austria. In 1997, he became the Bank Austria employee responsible for all investments. Nogrsek served as a director of BA Worldwide, Alpha Prime Fund, and Primeo Fund. He is an Austrian citizen. Plaintiffs are informed and believe that as a director of Bank Austria, BA Worldwide, Alpha Prime Fund, and Primeo Fund, Nogrsek caused BMIS accounts to be opened in New York. Plaintiffs are also informed and believe that Nogrsek caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and from accounts at defendant Chase Bank in New York.

125. Non-Defendant Pioneer Global Asset Management S.p.A. (“Pioneer”) is a company organized under the laws of Italy on October 19, 2000, and is wholly owned by UniCredit. Pioneer’s wholly-owned, controlled, and directed subsidiary, Pioneer Alternative Investments (New York) Limited, does business in and maintains its principal executive office in New York at 330 Madison Avenue, New York, New York, and, according to publicly available records of FINRA, Pioneer’s wholly-owned, controlled, and directed subsidiary, Pioneer Funds Distributor, Inc., operates and is licensed to sell securities in New York. In addition, in its annual report for 2006, UniCredit expressly acknowledged that Pioneer’s “global network

reaches from Sydney, Beijing and Milan to New York” and designated the focal point of its alternative investment and hedge fund management services as New York. Plaintiffs are informed and believe that Pioneer caused proceeds of the Madoff Feeder Fund Scheme to be both sent to and from accounts at defendant Chase Bank in New York, New York. Its agents communicated regularly with Reuss and others in New York in connection with the Madoff Feeder Fund Scheme.

126. Non-Defendant Alessandro Profumo (“Profumo”) served as CEO of UniCredit from 1997 until September 21, 2010. He is an Italian citizen.

127. Non-Defendant Gianfranco Guty (“Guty”) served as Substitute Deputy Chairman of UniCredit from 2006 until 2008. Prior to this appointment, Guty served on the board of UniCredit from 2005 until 2008. Guty served as a director of Bank Medici and PrivatLif AG (“PrivatLif”). PrivatLif is a Liechtenstein based insurance company associated with Bank Medici of which Kohn is the majority shareholder. He is an Italian citizen.

128. Non-Defendant Brera Servizi Aziendale S.r.l. (“Brera”) is located in Milan, Italy, and was incorporated on November 7, 1981. It was the 95% owner of Tecno Italy, with the remaining 5% owned by Non-Defendant Blau. On information and belief, Brera held this interest in Tecno Italy in trust for S. Kohn. .

129. Non-Defendant Redcrest Investments, Inc. (“Redcrest”) is a company located in the British Virgin Islands and incorporated on January 20, 2003. It is the ultimate parent of Tecno Gibraltar, Herald Consult, Line Holdings, Line Management, and Line Group.

130. Non-Defendant Line Group Ltd. (“Line Group”) is a company incorporated

in Gibraltar on January 14, 2008 and wholly owned by Redcrest. Line Group owns 100% of Line Management. Certain Line Group directors are Hassans partners or associates.

131. Non-Defendant Line Management Services Ltd. (“Line Management”) is a company incorporated in Gibraltar on March 22, 1995. Line Management is wholly owned by Line Group. Line Management owns 100% of Line Holdings. Certain Line Management directors are Hassans partners or associates. Amselem, Tecno Gibraltar’s sole director is an employee of Line Management.

132. Non-Defendant Line Holdings Ltd. (“Line Holdings”) is a company incorporated in Gibraltar on July 15, 1988, and is wholly owned by Line Management. Line Holdings holds 100% of Herald Consult in trust for E. Kohn. Certain Line Holdings directors are Hassans partners or associates.

133. Non-Defendant Herald Consult Ltd. (“Herald Consult”) is a company incorporated in Gibraltar on March 12, 2004, and wholly owned by Line Holdings. Herald Consult owns 100% of HAML.

134. Non-Defendant Frank DiPascali (“DiPascali”) was, during times relevant herein, BMIS’ chief financial officer. On August 11, 2009, he pled guilty to charges including conspiracy, securities fraud, investment-adviser fraud, falsification of books, mail fraud, wire fraud, international money-laundering, perjury and federal income tax invasion. During his guilty plead he told the federal court judge hearing his case that he and others knew, as early as the 1990s, that no sales were taking place in Madoff’s Investment Business, and that he had lied under oath to the SEC. He is a citizen of the United States.

135. Non-Defendant Cohmad Securities Corporation (“Cohmad”) is a corporation organized and existing under the laws of the State of New York. Its principal place of business is 885 Third Avenue, New York, New York. Cohmad is registered with the United States Securities and Exchange Commission (“SEC”) and is a member of FINRA. Cohmad was one of the “feeder funds” to Madoff’s investment business. It was co-founded by Madoff and Maurice Jay (Sonny) Cohn (“Cohn”) in February 1985. According to Massachusetts regulators, Cohmad and BMIS exhibited a “deeply intertwined relationship.” On February 11, 2009, the Massachusetts Securities Division suspended Cohmad’s state broker-dealer license.

136. Non-Defendant Cohn (“Cohn”) is one of the owners of Cohmad and serves as its Chairman and CEO. Cohn is a citizen and a resident of the State of New York.

137. Non-Defendant Madoff Securities International Ltd (“MSIL”) is BMIS’ foreign affiliate located in London. Madoff created MSIL in 1983.

138. Non-Defendant Leon Flax (“Flax”) a director of MSIL from 1986 to 2009. He is a citizen of South Africa.

139. Non-Defendant Steven Raven (“Raven”) was a director of MSIL in 1983, and then formally rejoined the board from 1992 to 2008. He is a citizen of the United Kingdom.

140. Non-Defendant Primeo Fund (“Primeo Fund”) is an investment fund organized under the laws of the Cayman Islands on November 18, 1993.

141. Non-Defendant Thema International Fund plc (“Thema International”) is an investment fund organized under the laws of Ireland on May 9, 1996.

142. Non-Defendant Alpha Prime Fund Ltd. (“Alpha Prime Fund”) is a

partnership investment fund organized under the laws of Bermuda on March 12, 2003.

143. Non-Defendant Senator Fund SPC (“Senator Fund”) is an investment fund organized under the laws of the Cayman Islands on March 12, 2006.

144. Non-Defendant Albert LaRocca (“La Rocca”) was, during times relevant herein, an agent of Non-Defendant Pioneer. La Rocca is a citizen of Italy.

145. Non-Defendant Paul Tiranno (“Tiranno”) was, during times relevant herein, an agent of Non-Defendant Pioneer. Tiranno is a citizen of New York.

146. Non-Defendant Gerila Beteiligungsverwaltungs GmbH (“Gerila”) was an S. Kohn Slush Fund Recipient. Gerila is a German company created by Kastner.

147. Non-Defendant Alexandra Lavi (“Lavi”) was, during times relevant herein, an agent of Bank Medici. Lavi is an Israeli citizen.

148. Non-Defendant Susanne Giefing (“Giefing”) was, during times relevant herein, an agent of Bank Medici. Giefing is an Austrian citizen.

149. Non-Defendant Medici Realty Ltd. (“Medici Realty”) was, during times relevant herein, an agent of Bank Medici. Medici Realty is a Gibraltarian company created by Kohn and Hassans.

150. Non-Defendant FundsWorld Financial Services Ltd. (“FundsWorld”) was, during times relevant herein, an agent of Bank Medici. FundsWorld is a company that Kohn created in Ireland and operated from Milan, Italy.

151. Non-Defendant Anne Kritzer (“Kritzer”) was, during times relevant herein, an agent of Non-Defendant Eurovaleur. Kritzer is an Austrian citizen.

152. Non-Defendant Thomas Grasso (“Grasso”) was, during times relevant herein, an agent of Non-Defendant Eurovaleur. Grasso is a Swiss citizen.

153. Non-Defendant Medici Fund Management Co., Inc. (“Medici Fund Management”) has no known business purpose. Until 1999, Medici Fund Management was a Delaware company registered to do business in New York. Plaintiffs are informed and believe that Medici Fund Management was used by Kohn to further the Madoff Feeder Fund Scheme.

154. Non-Defendant Medici Finance Services, Inc. (“Medici Finance Services”) has no known business purpose. Until July 29, 2009, Medici Finance Services was a New York corporation. Plaintiffs are informed and believe that Medici Finance Services was used by Kohn to further the Madoff Feeder Fund Scheme. Its registered agent was E. Kohn, at Eurovaleur’s 767 Fifth Avenue address.

17.V. FACTUAL ALLEGATIONS CONCERNING THE E&Y DEFENDANTSRE: RICO

155. Defendants have stolen the investments of Plaintiffs and the other members of the Class by using its invested capital in a giant Ponzi-scheme ultimately conducted by or through Madoff and/or BMIS.

A. BMIS Operations

156. BMIS, at all relevant times, was a broker-dealer and investment adviser registered with the SEC. BMIS formally engaged in three operations: investment adviser services, market making services, and proprietary trading. According to the BMIS website, prior to its very public collapse, BMIS among the top 1% of U.S. Securities firms.

157. Non-Defendant Madoff founded BMIS in 1959 by Madoff and was primarily operated from its headquarters located at 885 Third Avenue in New York City. Madoff claimed

that BMIS conducted business in three primary areas: investment advisory services, market-making, and proprietary trading. The Madoff Feeder Fund Scheme was designed to keep Madoff's purported investment advisory business ("Madoff's Investment Business") afloat by providing a constant influx of fresh capital.

158. To perpetuate the Ponzi scheme, BMIS produced fabricated monthly or quarterly statements to Madoff's Investment Business customers purporting to indicate which securities were traded in their accounts. On information and belief, other key members of the Madoff-Kohn Enterprise, such as Bank Austria, UniCredit, Bank Medici, and HAML had access to every fabricated monthly statement sent to the Madoff-Kohn Enterprise Feeder Funds as early as 1993, and knew or would have known, if they completed any meaningful due diligence, that BMIS and/or Madoff's business was entirely fraudulent.

159. BMIS' falsified every monthly account statement it produced so that it appeared as if all of the purported accounts with Madoff's Investment Business had made substantial gains. Regrettably for its investors, BMIS was only able to survive for as long as it did by using the stolen principal invested by some customers to pay other customers. The Madoff Feeder Fund Scheme facilitated the Ponzi scheme's survival for over twenty years as it simultaneously depleted BMIS' assets and enriched Madoff, defendant S. Kohn and, *inter alia*, other members of the Madoff-Kohn Enterprise.

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

management at BMIS.

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

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

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

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

165. Shortly thereafter it was discovered that Madoff had not purchased a single security in 13 years. The Trustee in the bankruptcy case, Irving Picard said on February 20, 2009 during a meeting with investors at a lower Manhattan museum that “There is no evidence to indicate securities were purchased for customer accounts.” In so doing, Picard confirmed the massive Ponzi scheme Madoff confessed to at the time of his December 11, 2008 arrest. In fact, according to a December 19, 2008 *Bloomberg* article, U.S. government regulators investigating

Madoff found evidence that the scheme began at least as early as the 1970s. David Scheer, Bernard's Misconduct Said to Date to 1970s, Bloomberg, Dec. 19, 2008.

B. Defendant Sonja Kohn

166. Defendant S. Kohn was born in 1948 in Vienna, Austria. She married defendant E. Kohn in 1970, and early in their marriage they operated an import-export business in Vienna. Plaintiffs are informed and believe that it was during this period of their life that the Kohns made wealthy and influential contacts in Vienna and Eastern Europe, including important government officials.

167. Property records show that in 1985 defendants S. Kohn and E. Kohn bought a house in Monsey, New York. They kept this house until at least 2007, when records show it they transferred an interest in the property to their daughter.

168. Plaintiffs are informed and believe that as part of the Madoff Feeder Fund Scheme, S. Kohn through, *inter alia*, Bank Medici funneled over \$2 billion through the BMIS Bank Account in support of Madoff's scam. S. Kohn, Medici's founder and 75% owner, and Madoff have a long history of working together. Madoff and S. Kohn most likely met in New York, where S. Kohn began her investing career in the 1980s.

1. Sonja Kohn Early Investment Career

169. In 1985, Kohn began working at Merrill Lynch & Co. ("Merrill") in New York as a retail stock broker. According to the Bankruptcy Trustee, Kohn has no formal training or education in finance or economics.

170. That same year, while working at Merrill, Kohn met Cohn of Cohmad. At the time, Cohn and Cohmad were in the business of soliciting accounts for BMIS and operated

out of the same building as BMIS.

171. Kohn told Cohn that she was the “biggest producer” at Merrill and was looking for a partner with whom to do business. Cohn declined Kohn’s offer.

172. A few months later, Cohn introduced Kohn to Madoff. Madoff paid Cohmad at least \$526,000 for this introduction. Cohn has testified to the SEC that Kohn indeed brought accounts to BMIS after he introduced Kohn to Madoff. On information and belief, Kohn and Madoff agreed that she would be paid under a different structure than the Cohmad sales representatives. Rather than being paid a commission based on the amount of money she brought in for Madoff, S. Kohn would be paid a flat fee. This flat fee fluctuated over time, but was usually over \$6.5 million per year. In fact, Madoff appears to have paid Kohn before she ever brought a single account into BMIS.

2. Madoff Pays S. Kohn Secret Kickbacks

173. Madoff kept internal records noting which BMIS accounts were attributable to S. Kohn. On information and belief, Madoff destroyed these records prior to his confession on December 11, 2008 as they were not among the BMIS records seized by the authorities after Madoff confessed.

174. Madoff had a single employee dedicated to processing his kickbacks to S. Kohn. Madoff directed this employee to: (i) tell no one inside or outside of BMIS that Madoff was paying S. Kohn; and (ii) never leave any documentation relating to S. Kohn unattended. Similarly, Kohn directed this employee to only speak directly to Kohn and never through a third-party. Kohn also directed this employee to never mail Madoff’s checks to her. Rather, Kohn or her emissary would personally pick up her checks at Madoff’s New York or London office.

175. Kohn directed Madoff to pay her through Infovaleur. Madoff's employee, however, always thought that the checks were payable to Kohn's New York Sham Entity Eurovaleur. Indeed, Eurovaleur and Infovaleur share the same address and telephone number.

176. When this BMIS employee called Kohn at Infovaleur's number, a Eurovaleur representative would answer. Like Kohn, Madoff and his employees did not distinguish among S. Kohn's Sham Entities and considered them all alter egos of Kohn.

177. On July 3, 2009, the *Wall Street Journal* reported that U.S. and British prosecutors had alleged that S. Kohn was paid more than \$40 million in kickbacks for funneling \$3.5 billion in investments to Madoff from funds she controlled. Specifically, U.S. investigators noticed a flow of payments totaling about \$32 million over 10 years from BMIS to defendant Infovaleur, a New York company that was "owned by Sonja Kohn personally," according to a U.S. affidavit filed on April 6, 2009.

178. The same article states that Grant Thornton U.K. LLP, the accounting firm liquidating Mr. Madoff's London-based unit, Madoff Securities International Ltd., discovered a bank receipt that triggered a U.K. investigation, according to a March 24, 2009 affidavit filed with Austrian prosecutors by the Serious Fraud Office, a U.K. government agency responsible for prosecuting complex fraud cases. The bank receipt referenced a check that Madoff International paid to defendant Erko and which was deposited in a Vienna bank account, according to the U.K. affidavit. The affidavit said the Serious Fraud Office had determined that both Erko and the bank account were controlled by S. Kohn. The fraud office also said in the affidavit it was unable to locate a registration for Erko. The U.K. affidavit alleges that Mr.

Madoff’s London subsidiary paid about GBP 7 million (\$11.5 million) over five years to Erko. A British prosecutor alleges in the document that Mr. Madoff attempted to hide payments to Ms. S. Kohn by “falsely” declaring them in his company accounts as payment for research reports.

179. Finally, in an article entitled “The Madoff Chronicles, Part II WHAT THE SECRETARY SAW”Hello, Madoff!” published in the June 2009 edition of *Vanity Fair*, written by both Mark Seal and Madoff’s secretary Eleanor Squillari, Ms. Squillari states that S. Kohn “was always thrilled to meet with Bernie, and always sent in staggering quarterly invoices— never less than \$800,000—for her commissions.”

3. The Madoff-Kohn Enterprise Sustains the Ponzi Scheme

180. In addition to funds from Madoff Feeder Fund Scheme, S. Kohn was responsible for directing billions of dollars more to Madoff in exchange for secret payoffs. The accounts for which Madoff paid Kohn are set forth below:

<u>PONZI SCHEME INFLOW ATTRIBUTABLE TO KOHN</u>			
<u>BMIS ACCOUNT</u>	<u>ACCOUNT NUMBER</u>	<u>OPENING DATE</u>	<u>TOTAL INVESTMENT</u>
<u>Howard Gottlieb</u>	<u>1G0067</u>	<u>April 18, 1989</u>	<u>\$3,000,000</u>
<u>Mayfair Corporation</u>	<u>1FN026</u>	<u>March 23, 1992</u>	<u>\$1,000,054</u>
<u>Lagoon Investment Ltd.</u>	<u>1FN021</u>	<u>May 1, 1992</u>	<u>\$134,624,947</u>
<u>RIP Investments LP</u>	<u>1CM222</u>	<u>May 12, 1993</u>	<u>\$3,000,000</u>
<u>Primeo Fund</u>	<u>1FN060</u>	<u>December 30, 1993</u>	<u>\$1,210,000</u>
<u>Investments Alanis SA</u>	<u>1FN064</u>	<u>August 26, 1994</u>	<u>\$5,399,950</u>
<u>Lagoon Investment Ltd.</u>	<u>1FN066</u>	<u>December 29, 1994</u>	<u>\$2,100,000</u>
<u>Paolo Dini</u>	<u>1FN072</u>	<u>January 23, 1995</u>	<u>\$1,005,545</u>
<u>GeoCurrencies Ltd. S.A.</u>	<u>1FN079</u>	<u>June 8, 1995</u>	<u>\$5,054,863</u>
<u>Bank Austria AG</u>	<u>1FN082</u>	<u>August 15, 1995</u>	<u>\$1,500,000</u>
<u>Zin Investments Ltd.</u>	<u>1FN085</u>	<u>December 7, 1995</u>	<u>\$3,249,985</u>
<u>Optimal Multiadvisors Ltd.</u>	<u>1FN091</u>	<u>February 29, 1996</u>	<u>\$90,049,985</u>

<u>Primeo Fund (Class B)</u>	<u>1FN092</u>	<u>March 1, 1996</u>	<u>\$370,483,000</u>
<u>Harley International Fund Ltd.</u>	<u>1FN094</u>	<u>April 24, 1996</u>	<u>\$2,351,341,277</u>
<u>Thema International Fund</u>	<u>1FN095</u>	<u>July 1, 1996</u>	<u>\$1,043,697,424</u>
<u>Lagoon Investment Ltd.</u>	<u>1FN096</u>	<u>July 26, 1996</u>	<u>\$500,000</u>
<u>Plaza Investments Int'l</u>	<u>1FR002</u>	<u>November 25, 1996</u>	<u>\$534,069,268</u>
<u>Leisure Enterprises Inc.</u>	<u>1FR007</u>	<u>January 24, 1997</u>	<u>\$3,500,000</u>
<u>Optimal Multiadvisors Ltd.</u>	<u>1FR008</u>	<u>January 28, 1997</u>	<u>\$1,667,445,900</u>
<u>FC Investment Holdings Ltd.</u>	<u>1FR011</u>	<u>March 7, 1997</u>	<u>\$2,674,988</u>
<u>Lagoon Investment Ltd.</u>	<u>1FR015</u>	<u>April 29, 1997</u>	<u>\$49,862,000</u>
<u>Lagoon Investment Ltd.</u>	<u>1FR016</u>	<u>April 29, 1997</u>	<u>\$422,908,000</u>
<u>Iron Reserves Ltd.</u>	<u>1FR022</u>	<u>June 2, 1997</u>	<u>\$3,999,980</u>
<u>Triangle Diversified Investments</u>	<u>1FR042</u>	<u>June 22, 1998</u>	<u>\$1,000,000</u>
<u>Lexus Worldwide Ltd.</u>	<u>1FR064</u>	<u>November 1, 1999</u>	<u>--</u>
<u>Alpha Prime Fund</u>	<u>1FR097</u>	<u>June 13, 2003</u>	<u>\$399,941,000</u>
<u>Herald Fund SPC</u>	<u>1FR109</u>	<u>April 1, 2004</u>	<u>\$1,533,741,975</u>
<u>Mayfair Corporation</u>	<u>1M0206</u>	<u>August 11, 2004</u>	<u>--</u>
<u>Senator Fund</u>	<u>1FR128</u>	<u>September 6, 2006</u>	<u>\$247,499,980</u>
<u>Herald (Lux)</u>	<u>1FR135</u>	<u>March 17, 2008</u>	<u>\$255,600,000</u>
<u>TOTAL INTO PONZI SCHEME</u>			<u>\$9,139,460,121</u>

4. Sonja Kohn's Early Business Dealings With Madoff and BMIS

181. S. Kohn's business dealings with Madoff began years before the start of the Madoff Feeder Fund Scheme. In 1987, S. Kohn set up defendant Windsor, and it was through Windsor that S. Kohn initial began to bring clients to BMIS.

182. The first investor Kohn brought to BMIS was Howard Gottlieb ("Gottlieb"), her former business partner. After she arranged a meeting between Madoff and Gottlieb at BMIS in New York, she convinced Gottlieb to invest \$3 million with BMIS, and on April 18, 1989, through Windsor, she helped Gottlieb open BMIS account number 1G0067. 232.

183. As it was her first client she brought to Madoff, Plaintiffs are informed and believe that she kept a close eye on Gottlieb's BMIS account. To that end, on November 14,

1989, Gottlieb, on behalf of Kohn, directed BMIS via facsimile to send duplicate copies of his account statements to Kohn, in care of Windsor. This correspondence ensured that Kohn and Windsor had visibility with respect to Gottlieb's account, which allowed her to monitor his purported investment.

184. Gottlieb's account went on to earn an almost 50% return on investment in just under four years, and Kohn was aware of every purported transaction that BMIS pretended to execute on Gottlieb's behalf.

185. However, in 1990, Gottlieb severed his business and personal relationships with S. Kohn. On information and belief, Gottlieb was uncomfortable with the fact that S. Kohn was receiving commissions for bringing accounts, including his own, to Madoff. On information and belief, Kohn told Gottlieb that she was paid by Cohmad, rather than telling him the true nature of her secret agreement with Madoff.

186. Gottlieb then sent his BMIS statements to a certified investment management analyst, Ronald J. Surz ("Surz"), who was unable to explain the returns that BMIS was reporting and told Gottlieb that BMIS' stated returns were impossible. Gottlieb subsequently closed his BMIS account on June 24, 1993.

187. However, as early as at least 1991, S. Kohn's corporation Eurovaleur, Inc. (the "February 19 Article") marketed accounts for Madoff, according to a money manager who accompanied S. Kohn to a 1991 meeting with Madoff in New York. The article states that Madoff greeted S. Kohn with a big hug and a kiss as they arrived, according to a person who asked not to be identified. See Matthias Wabl, *Sonja Kohn Wooed Bernard Madoff Billions With*

Medici Fantasy, Bloomberg, February 19, 2009 (the “February 19th Article).

188. Indeed, S. Kohn originally held herself out as extremely close to Madoff and suggested to potential investors that their special relationship yielded special returns on direct investments with BMIS. In fact, Madoff secretly paid S. Kohn in exchange for feeding money into the Ponzi scheme. This agreement between S. Kohn and Madoff was kept secret, and was unknown to many within BMIS. After the beginning of the Madoff Feeder Fund Scheme, this agreement was also kept secret from Madoff-Kohn Enterprise Feeder Fund investors.

189. S. Kohn concealed the Ponzi scheme and her theft from BMIS’ investors by using her elaborate network of sham businesses including her New York Sham Businesses and certain Non-Defendant businesses located in, *inter alia*, Italy and Gibraltar, as outlined *supra*. Plaintiffs are informed and believe that Kohn contrived to further conceal these secret kickbacks by invoicing BMIS for worthless “market research” that was summarily ignored and destroyed by Madoff’s employees.

190. With Kohn and Madoff’s agreement in place, Kohn immediately began soliciting investors for Madoff’s Ponzi scheme in New York, and laying the foundation for the Madoff-Kohn Enterprise.

5. Sonja Kohn Creates Bank Medici

191. Around the end of 1993, S. Kohn founded Medici Finanz Beratung GmbH in Vienna. According to the February 19th Article, that same year she helped create the first of three Bank Austria Primeo funds that invested with Madoff, according to the former Bank Austria employee. She introduced executives of Bank Austria, now owned by Milan-based UniCredit SpA, to Madoff in New York at the time, the person said. These events marked the

beginning of the Madoff-Kohn Enterprise. The Primeo funds were the first funds created as part of the Madoff Feeder Fund Scheme and investors in them suffered almost \$1.1 billion of losses from the Madoff scam. Primeo investors are part of the present consolidated action.

192. S. Kohn's company received a banking license and was renamed Bank Medici in 2003, when it posted a loss. Bank Medici boosted fee income to €9.72 million (USD\$12.2 million) in 2007, from €1.38 million in 2003, by gaining new clients in Austria, Germany, Switzerland, Italy and the U.S., according to fee-payment tables in its income statement.

193. S. Kohn established Medici in Austria as a mechanism to solicit investors for the Ponzi scheme in New York. Although Medici purported to be a licensed and regulated bank in Vienna, it acted, under the protective aegis of Bank Austria, as an alter ego of S. Kohn.

194. Austria lent S. Kohn and Medici the imprimatur of legitimacy they needed to begin soliciting investors for BMIS on a breathtaking scale. For this, Bank Austria took its share of the proceeds of the Madoff Feeder Fund Scheme. Bank Austria, for its various roles in the Madoff Feeder Fund Scheme, received at least \$31 million, and on information and belief, many times this amount, not including the fictitious profits it took from its direct account at BMIS.

195. Medici had no banking infrastructure of its own. At all relevant times, it was a *de facto* branch of Bank Austria operating under the "Medici" name. All its accounts and portfolios were held and administered by Bank Austria, and Medici had a revolving door with Bank Austria through which Bank Austria personnel staffed Bank Medici, even when such individuals had no relevant professional experience in Bank Medici's purported "fund of hedge

funds” business. On information and belief, Madoff made sure S. Kohn prohibited all Medici employees from revealing Madoff’s involvement with any of the investments managed, marketed, or distributed by Bank Medici.

196. In exchange for staffing and maintaining Bank Medici, Bank Austria received 25% plus one share of its stock. S. Kohn owns the balance. Bank Medici existed only to solicit money from unsuspecting investors to be provided money to BMIS, for which Madoff secretly paid S. Kohn through her Kohn’s New York Sham Businesses. Bank Medici itself received at least \$62 million in 2007 and 2008 alone for its role in the Madoff Feeder Fund Scheme, and on information and belief, many times this amount over the course of the Madoff Feeder Fund Scheme.

6. The Madoff-Kohn Feeder Fund Scheme in New York

197. Kohn established and controls certain Defendants that had or have no legitimate business purpose and existed or exist only to receive stolen funds from Madoff. Certain of these sham entities are incorporated in New York, such as Kohn’s New York Sham Businesses. Kohn also maintained other sham entities which were incorporated in Europe, such as Tecno Italy and Tecno Gibraltar. They are all critical members of the Madoff-Kohn Enterprise and are how Kohn was paid for her participation in the Madoff Feeder Fund Scheme. In exchange for sustaining the Ponzi scheme, Kohn received at least \$62 million in stolen funds directly from Madoff and/or BMIS. These and hundreds of millions of dollars and other illicit proceeds of the Madoff Feeder Fund Scheme unjustly and fraudulently enriched Madoff, S. Kohn and their family and funded the expansion of the Madoff-Kohn Enterprise.

198. On information and belief, by 1987, Kohn, via Erko, was already receiving

secret kickbacks of stolen funds from Madoff. These payments were made by check and personally picked up by S. Kohn and E. Kohn in London. The kickbacks to Erko for S. Kohn's participation in the Madoff-Kohn Enterprise, related to her feeding Bank Austria Primeo Fund investors' funds to Madoff, began around 1994. These kickbacks from Madoff continued through 2001 and in sum totaled at least \$11 million.

199. In 2002, the kickbacks that Madoff paid to S. Kohn through Erko began to pass through Tecno Italy instead. Madoff transmitted these payments via wire in foreign commerce. Kohn, Blau, and Raule received and processed these kickbacks for their benefit and for the benefit of Tecno Italy, Medici S.r.l., Brera, and other members of the Madoff-Kohn Enterprise in furtherance of the Madoff Feeder Fund Scheme. The kickbacks to Tecno Italy continued until 2007 and totaled at least \$14 million.

200. Finally, in 2007, Kohn began receiving Madoff's kickbacks via Tecno Gibraltar in 2007 in place of Tecno Italy. Kohn and Amselem received and processed these kickbacks for their own benefit and for the benefit of Tecno Gibraltar, Line Holdings, Line Management, Line Group, Redcrest, and other members of the Medici Enterprise in furtherance of the Madoff Feeder Fund Scheme. These kickbacks totaled at least \$4,400,000. On information and belief, Kohn distributed this stolen investor property to her family and other members of the Madoff-Kohn Enterprise.

201. In the meantime, in 1998, S. Kohn began receiving a separate stream of kickbacks from Madoff through Infovaleur. Infovaleur drew these illegitimate proceeds from Madoff's 703 Account and 621 Account. These kickbacks were the sole source of Infovaleur's

income, and were subsequently transferred by Kohn to other members of the Madoff-Kohn Enterprise, including: her friend and long-time business associate, Kastner, and Scheithauer, the former CEO of Bank Medici, until as late as March 2009. On information and belief, these payments are ongoing. Kohn and Reuss received and processed these kickbacks in furtherance of the Madoff Feeder Fund Scheme. These kickbacks to Infovaleur continued until 2008 and totaled at least \$32 million.

202. Incorporated in New York by Kohn on February 22, 1996, Infovaleur has no legitimate business purpose and has always existed solely to receive stolen investor property from BMIS and to further the Madoff Feeder Fund Scheme. From 2000 to 2008, Infovaleur was BMIS' third highest paid "vendor," although Infovaleur provided nothing of value to BMIS.

203. These kickbacks to Kohn through Infovaleur were authorized and executed by Madoff. At all relevant times, Reuss managed the day-to-day operations of Infovaleur and served as its contact for BMIS with respect to these transactions. Reuss, on behalf of Kohn and Infovaleur, mailed invoices to BMIS for worthless services under Kohn's sham invoicing system in furtherance of the Madoff Feeder Fund Scheme. On information and belief, Reuss sent these invoices through the U.S. Mail. Madoff transmitted his payments to Kohn and Infovaleur via check and they were picked up in person at BMIS by Kohn or her emissaries.

204. Like all of her sham businesses, the Kohn Family Defendants treated Infovaleur as a personal checking account. As early as 2002, and as recently as 2009, after Madoff confessed to running a Ponzi scheme, Infovaleur transferred over \$900,000 to S. Kohn and members of her family, and over \$1,000,000 to her other sham businesses, Palladium and M-

Tech, which are owned and operated by her sons-in-law, M. Hartstein and Landau. In furtherance of the Madoff Feeder Fund Scheme, Kohn also made payments, through Infovaleur, to Kastner and Scheithauer.

205. Incorporated in New York by Kohn on April 15, 1987, Erko has never had a legitimate business purpose and existed solely to receive stolen funds from Madoff and later to further the Madoff Feeder Fund Scheme.

206. Throughout Erko's existence, it never had an address other than that of S. Kohn's counsel in New York. On information and belief, Erko employed certain individuals who worked for Kohn at Windsor, and Erko is the general partner of Windsor's holding company.

207. On information and belief, beginning in 1987, S. Kohn and E. Kohn traveled to London from New York and elsewhere to pick up checks from Madoff and his affiliates. On December 12, 1997 and January 12, 1998, Flax sent facsimiles via wire on MSIL letterhead to BMIS wherein Flax requested that BMIS transfer \$200,000 and \$323,500, respectively, to MSIL to fulfill Madoff's requests to pay Erko. Kohn and Erko caused this transmission by invoicing Madoff at MSIL. In 1998, the New York Secretary of State dissolved Erko, presumably for non-payment of taxes. In keeping with Kohn's practice of disregarding the corporate form of her multiple sham businesses, Erko continued to invoice Madoff and receive kickbacks until 2002. Kohn, via Erko, invoiced Madoff from an address in Vienna that, on information and belief, is her childhood home.

208. Although Erko stopped receiving payments from Madoff in 2002, it was

directly succeeded by Tecno Italy, which was directly succeeded by Tecno Gibraltar in 2007. Tecno Italy is a Milan-based company incorporated on February 21, 2002. Kohn's mother, Blau, was responsible for overseeing the day-to-day activities of Tecno Italy. S. Kohn, via Eurovaleur, registered the internet domain name of Tecno Italy in New York on January 30, 2004. At all relevant times, Tecno Italy had no legitimate business purpose and existed only to receive stolen funds from BMIS and further the Madoff Feeder Fund Scheme. From May 21, 2002 through January 2, 2007, Tecno Italy received secret kickbacks of stolen investor property. Kohn and Tecno Italy invoiced Madoff at MSIL, and Flax and Raven authorized and executed these transfers. Madoff paid Kohn through Tecno Italy via wire in foreign commerce.

209. As with many of the sham businesses owned and controlled by Kohn, Tecno Italy had strong connections to Bank Medici. Tecno Italy was located in the same offices as Medici S.r.l. at Via Andegari 18, 20121 Milan, Italy and shared at least two of the same employees, Raule and de Sury. Tecno Italy liquidated its assets on December 5, 2008, one week before Madoff confessed.

210. Kohn also received correspondence for HAML and Bank Medici, and/or Medici S.r.l., at the same address. Kohn treated Medici S.r.l. and Tecno Italy as indistinguishable entities. In addition to being a key employee of Tecno Italy, Raule was its contact with respect to the transfers from Madoff at MSIL, as executed by Flax and Raven. Raule was also an employee of Medici S.r.l. and served as a secretary to Mugnai, a director of HAML and Herald Fund.

211. The May 22, 2002 invoice from Tecno Italy to Madoff at MSIL contains

handwritten notes regarding Madoff's payment approval. The June 28, 2002 invoice from Tecno Italy also notes Madoff's approval and contains the handwritten notation "EKohn" and his Austrian phone number. The September 26, 2002 invoice contains the handwritten notation "3rd October 2002. Discussed with Bernie who approved payment today." Kohn caused Tecno Italy to send its invoices to Madoff via wire in foreign commerce.

212. Tecno Gibraltar was incorporated on January 3, 2007. Tecno Gibraltar's mailing address is located in the offices of Line Management, which is associated with Hassans and HAML. On information and belief, S. Kohn owns and controls Tecno Gibraltar. Its ownership structure is obscured by a complex web of interrelated companies orchestrated by, and including, Hassans. Tecno Gibraltar's sole director is Amselem, an Israeli national residing in Gibraltar. Amselem is an employee of Line Management, a company associated with Hassans.

213. At all relevant times, Tecno Gibraltar had, on information and belief, no legitimate business purpose and existed only to receive stolen funds from BMIS and further the Madoff Feeder Fund Scheme. In May 2007, Tecno Gibraltar replaced Tecno Italy as a vehicle for S. Kohn to kickbacks from Madoff. At all relevant times, Amselem was responsible for overseeing the day-to-day operations of Tecno Gibraltar. On at least June 4, 2007, Amselem corresponded with Flax at MSIL via e-mail in relation to confirming Madoff's kickbacks to Kohn through Tecno Gibraltar. Kohn and Tecno Gibraltar invoiced Madoff at both BMIS and MSIL, and Madoff, Flax, and Raven authorized and executed these transfers. The April 24, 2007 and July 5, 2007 Tecno Gibraltar invoices to Madoff at MSIL were payable to Wachovia

Bank, NA in New York. On information and belief, Tecno Gibraltar sent each invoice to Madoff at MSIL via facsimile. The funds transmitted to Kohn and Tecno Gibraltar were provided by Madoff, and each payment is stolen investor property.

214. Each of Tecno Gibraltar's invoices to Madoff at BMIS was payable to an account at NatWest Offshore Limited Gibraltar for ultimate credit to a Tecno Gibraltar account. On information and belief, Tecno Gibraltar sent each invoice to BMIS in New York via mail or facsimile. Each invoice is marked by hand "TECNOKOHN." The January 14, 2008 invoice is also marked "BLM Special."

215. S. Kohn laid some of the the groundwork for attracting unwary investors in the Madoff Feeder Fund Scheme in New York, primarily through Eurovaleur. The collapse of the Berlin Wall in 1989 created new opportunities for S. Kohn to solicit investors for BMIS from Eastern and Central Europe, particularly her ancestral home of Austria. On information and belief, S. Kohn characterized Austria as the gateway to new investment opportunities in Eastern Europe. At the same time, she characterized herself as "Austria's woman on Wall Street," and the gateway to Madoff. On information and belief, however, less than 10% of the investments in the Medici Enterprise Feeder Funds originated in Austria.

216. With this fertile ground in mind, she created Eurovaleur to market Madoff abroad. Through Eurovaleur, Kohn moved beyond soliciting individual BMIS accounts, such as Gottlieb's, and began to feed staggering amounts of money into BMIS. On information and belief, Kohn also intended to leverage her connections with European financial institutions, particularly Bank Austria and UniCredit, to expand the Madoff-Kohn Enterprise and further the

Madoff Feeder Fund Scheme. Kohn laid the groundwork for Bank Medici itself through Eurovaleur by, among other things, registering the Internet domain name “bankmedicimaestro.com” in New York.

217. Kohn incorporated Eurovaleur in New York on March 26, 1990, and she is its sole shareholder. The company remains active in New York and Kohn is listed as its President and CEO. Eurovaleur held itself out to potential investors in BMIS under various guises, including a fund of hedge funds, a New York registered brokerage, a provider of research services, and “a European boutique investment bank.”

218. At all relevant times, on information and belief, Eurovaleur had no legitimate business purpose. It later became as a member of the Madoff-Kohn Enterprise and was used to further the Madoff Feeder Fund Scheme. Eurovaleur received proceeds of the Madoff Feeder Fund Scheme, including, on information and belief, stolen funds, through 2008.

219. Through Eurovaleur, S. Kohn, M. Hartstein, and on information and belief, Reuss solicited investors for BMIS as early as 1991. Although Madoff was paying Kohn millions of dollars, Kohn, on information and belief, had brought only four accounts to BMIS by the time the Medici Enterprise’s first BMIS feeder fund Primeo Fund opened its first account on December 30, 1993.

220. With the imprimatur of Eurovaleur and the exclusivity of her special relationship with Madoff, Kohn finally began to solicit the wealthy European investors that she had always sought. On information and belief, Eurovaleur hosted luncheon events in New York for various international financiers.

221. On information and belief, Kohn introduced wealthy international investors to Madoff as early as 1991. When Kohn brought these investors to BMIS, Madoff would greet Kohn “with a big hug and a kiss.” Prior to and during the Madoff-Kohn Feeder Fund Scheme, Madoff credited Kohn for bringing at least six Benbassat-related accounts to BMIS. Kohn’s relationship with the Benbassat family continued for the duration of the Madoff Feeder Fund Scheme and contributed to the growth of the Madoff-Kohn Enterprise.

222. In 1996, Benbassat “gave” Kohn, through Eurovaleur, a 10% ownership interest in Thema International’s investment management company as a “thank you” for introducing him to Madoff. Also beginning in 1996, Kohn’s relationship with the Benbassat family led to Bank Medici distributing and marketing Thema International. In 2006, Bank Medici became the investment manager to Thema International and received fees for this purported service.

223. On January 6, 2000, Grasso, on behalf of Kohn and Eurovaleur, sent a facsimile on Eurovaleur letterhead to Mark Madoff at BMIS enclosing Italian newspaper articles regarding S. Kohn’s Milan-based online investment sales platform, FundsWorld. This correspondence evidences Kohn’s coordination with Madoff and BMIS in relation to the solicitation of investors for the Ponzi scheme.

224. FundsWorld, owned and created by S. Kohn, offered mutual and hedge funds to institutional and wealthy investors. On information and belief, S. Kohn established FundsWorld to sell access to the Madoff-Kohn Enterprise Feeder Funds. FundsWorld paid Eurovaleur €750,000 in December 2000 and €1.5 million on December 31, 2002.

225. In addition to soliciting investors for BMIS, Eurovaleur functioned as an alter ego of, and money laundering mechanism for S. Kohn and the Kohn Family Defendants. In addition to Kohn's family, Eurovaleur employed Reuss, Grasso, and Kritzer.

226. On information and belief, S. Kohn met Bank Austria's chairman, Randa, in the early 1990s. S. Kohn was introduced to Randa by Zapotocky. Around the same time, S. Kohn also met Scheithauer at a Bank Austria function in New York. Kohn, Randa, and Scheithauer all discussed investment opportunities for Eastern European investors and governments in hedge funds and "alternative investments."

227. Randa wanted to build Bank Austria into a global brand and the flagship financial institution of Eastern and Central Europe. At that time Bank Austria had recently been established by a merger of two Austrian banks, Zentralsparkasse und Kommerzialbank AG and Österreichische Länderbank AG. Randa was the head of the new Bank Austria and responsible for its aggressive growth. Randa shared Kohn's view of the new Europe, and felt that Bank Austria was poised to expand its role in the Central and Eastern European banking sectors.

228. On information and belief, Kohn informed Randa, Scheithauer, and Zapotocky about Madoff and the consistent returns that he generated for the accounts that Kohn had thus far fed into BMIS. Kohn and Zapotocky met with Madoff in New York briefly and agreed that Bank Austria would market and distribute feeder funds into BMIS.

229. On information and belief, Kohn and Zapotocky conceived the Cayman Islands-based Primeo Fund in New York. The Primeo Fund was the first of the Madoff-Kohn Enterprise Feeder Funds. Madoff and S. Kohn, through Eurovaleur, conspired with Bank

Austria, Randa, Zapotocky, Scheithauer, Nogrsek, and Duregger to create Primeo Fund. On August 12, 1993, Kohn, through Eurovaleur, sent a trademark application to the United States Patent and Trademark Office (“USPTO”) via the U.S. Mail to register the “Primeo” trademark. On November 1, 1994, the USPTO granted Eurovaleur’s trademark application. The mark remained registered to Eurovaleur until 2001, when Eurovaleur assigned the “Primeo” trademark to Bank Austria.

230. Kohn and Eurovaleur held the mark for over seven years. On December 17, 2001, Defendants Nogrsek and Duregger, on behalf of Bank Austria, sent via the U.S. Mail, a letter to the USPTO appointing Bank Austria’s New York attorney as Bank Austria’s domestic representative as part of the assignment process of the “Primeo” trademark. Bank Austria still owns the “Primeo” trademark. These mailings were necessary to ensure the continuity of Primeo Fund and further the Madoff Feeder Fund Scheme.

231. Kohn, Bank Austria, Randa, Scheithauer, Zapotocky, Kretschmer, Nogrsek, and Kadrnoska conspired to market Primeo Fund as a diversified “fund of funds” while concealing the fact that Madoff and BMIS would act as both investment manager and de facto custodian. In furtherance of the Madoff Feeder Fund Scheme, Bank Austria generated misleading Primeo Marketing materials and distributed them to other members of the Madoff-Kohn Enterprise.

232. Primeo Fund is an open-ended investment fund incorporated in the Cayman Islands on November 18, 1993, created by Kohn, Eurovaleur, Bank Austria, Randa, Scheithauer, Zapotocky, Kretschmer, Kadrnoska, and Hemetsberger. On information and belief, Primeo Fund

was initially capitalized entirely by Bank Austria's own funds.

233. Throughout the majority of its existence, Primeo Fund was 100% invested through BMIS, holding account numbers 1FN060 and 1FN092. Primeo Fund also fed hundreds of millions of dollars into BMIS indirectly through other Madoff-Kohn Enterprise Feeder Funds: Herald Fund, Alpha Prime Fund, and Kohn, Eurovaleur, Bank Austria, Bank Medici and its branches, HAML, and other members of the Madoff-Kohn Enterprise marketed, distributed, and sold Primeo Fund.

234. Beginning with the 1993 launch of Primeo Fund, Kohn, Zapotocky, Radel-Leszczynski, Kretschmer, and Hemetsberger traveled from Europe to New York, personally and on behalf of Bank Medici, Bank Austria, and BA Worldwide, to meet with Madoff at BMIS headquarters to discuss the Madoff-Kohn Enterprise Feeder Funds. Similar meetings continued two to three times a year for the next fifteen years. On information and belief, the purpose of these meetings was to discuss with Madoff how best to market Primeo Fund, and later the other Madoff-Kohn Enterprise Feeder Funds, in furtherance of the Madoff Feeder Fund Scheme.

235. On information and belief, during these visits, Kohn, Zapotocky, Kretschmer, Hemetsberger, and Radel-Leszczynski also traveled to Bank Austria's New York branch. Kohn and Reuss facilitated these travels through Eurovaleur in New York. For example, on September 10, 2004, Reuss sent an e-mail, with a Eurovaleur signature, confirming a meeting between Madoff, Radel-Leszczynski, and Hemetsberger.

236. With the New York architecture of the Madoff-Kohn Enterprise in place, Kohn left New York around 1994 and returned to her birthplace, Vienna. Although she had no

formal position at Bank Austria, on information and belief, Kohn worked closely with Bank Austria, Randa, and Scheithauer to build the architecture of Bank Medici. Kohn, BA Worldwide, and Primeo Fund.

237. Soon after Kohn's arrival in Austria, Kohn sought to aggressively market Primeo Fund in Europe. To that end, Bank Austria incorporated BA Worldwide to be the supposed investment manager of Primeo Fund, despite the fact that Madoff actually performed these roles and would continue to do so for the duration of the Madoff Feeder Fund Scheme.

238. Bank Austria owned 95% of BA Worldwide and a majority of its board members were Bank Austria employees. Radel-Leszczyński served as BA Worldwide's president after 2000 and was responsible for its management and operation at all relevant times.

239. BA Worldwide was the investment adviser to Primeo Fund from December 15, 1993 until April 25, 2007, when Pioneer took over this role at UniCredit's direction. On information and belief, BA Worldwide existed only to service the Medici Enterprise Feeder Funds.

240. BA Worldwide received fees based on the net asset value of Primeo Fund, calculated on a monthly basis. BA Worldwide received at least \$55 million for its participation in this component of the Madoff Feeder Fund Scheme. Eurovaleur in New York received 20% of these fees for serving as a sub-adviser to BA Worldwide. Bank Austria, Duregger, and Radel-Leszczyński directed these payments to Kohn and Eurovaleur through BA Worldwide. On information and belief, the purpose of this agreement was to compensate Kohn for introducing Bank Austria to Madoff.

241. BA Worldwide also served as the investment adviser to Thema International and to Alpha Prime Fund. These funds paid BA Worldwide advisory fees, typically 0.2% of the net asset value of the fund, calculated on a monthly basis. BA Worldwide received at least \$13 million for its participation in this component of the Madoff Feeder Fund Scheme.

242. Prior to Bank Austria's wholesale distribution of Primeo Fund in 1996, Kohn provided Bank Austria with direct access to BMIS. On information and belief, Randa, Kadrnoska, Kretschmer, Zapotocky, and Nograsek directed and supervised the creation of Bank Austria's direct BMIS account.

243. On August 29, 1995, Kritzer, on behalf of Kohn, sent a facsimile from New York to BMIS naming Bank Austria executive, Kretschmer, as the contact for Bank Austria's direct BMIS account number 1FN082. This facsimile was sent via wire on Eurovaleur letterhead. Bank Austria's Account Maintenance File ("AMF"), recovered from BMIS, contains Bank Austria's Zapotocky's business card. This card has handwritten notation containing Kohn's name and phone number.

244. Bank Austria closed its direct account with BMIS in 1996 as it began to distribute Primeo Fund in earnest. Bank Austria, through its membership in the Medici Enterprise and participation in the Madoff Feeder Fund Scheme, continued to profit from the Ponzi scheme without the exposure of a direct account with BMIS.

245. Bank Austria's account received fictitious profits from BMIS in the amount of \$249,627.82. Bank Austria received three transfers of stolen funds from BMIS over the life of its direct account. On July 10, 1996, BMIS transmitted via wire in foreign commerce

\$1,743,641 to Bank Austria. On August 8, 1996, BMIS sent a check via the U.S. Mail in the amount of \$1,351 to Bank Austria. Finally, on September 20, 1996, BMIS sent a check via the U.S. Mail in the amount of \$826 to Bank Austria. On information and belief, Randa, Kadrnoska, Kretschmer, and Zapotocky directed these withdrawals from the Bank Austria direct BMIS account. These checks were processed and received by Bank Austria.

246. On December 21, 1995, Kohn sent a facsimile to BMIS, on Eurovaleur letterhead, wherein she announced that Primeo Fund would begin issuing Class B shares and opening a new account with BMIS. This correspondence resulted in Primeo Fund opening BMIS account number 1FN092. Kohn, Randa, Scheithauer, Zapotocky, Kretschmer, Kadrnoska, Hemetsberger, and Bank Austria were instrumental to the creation of this fund and introduced Bank Austria officials to Madoff and other representatives of BMIS in New York.

247. With Primeo Fund now in place, Kohn and Bank Austria sought to create a mechanism by which they could widely distribute it to Central and Eastern European investors. Modeled on Eurovaleur, Kohn and Bank Austria created Bank Medici.

248. Bank Austria already owned a company that Kohn could use for this purpose. Bank Medici began as a company named “Anton-Schwarz GmbH,” which was wholly owned by Bank Austria. In 1994, Bank Austria sold Kohn 90% of Anton- Schwarz GmbH and kept 10% ownership. Kohn named her new company various iterations of the “Medici” name, eventually settling on “Bank Medici.”

249. Kohn and Bank Medici immediately began marketing and distributing Primeo Fund, expanding upon what Eurovaleur started in New York in 1991. Kohn was and is

the majority shareholder of Bank Medici. Bank Austria held a minority share. At all relevant times, Bank Austria operated Bank Medici as a de facto “branch” and referred to it internally as “Branch 1199.”

250. Bank Medici and Bank Austria had a “revolving door” of officers, directors, and employees. The following Defendants all acted for both Bank Austria and Bank Medici: Kohn, Scheithauer, Kretschmer, Nograsek, Duregger, and Guppy (of UniCredit). On information and belief, this mutual Kohn/Bank Austria ownership and operating structure as to Bank Medici remains in place to this day.

251. On information and belief, Kohn refused to serve on Bank Medici’s management board, because under Austrian corporate law that board has the “real power.” Rather, Kohn served on Bank Medici’s supervisory board, which is relatively powerless, even as she controlled Bank Medici using other titles. On information and belief, Kohn preferred this arrangement because members of the supervisory board may avoid legal liability for the actions of a company’s activities.

252. Bank Austria entered into several “Contracts of Agency” with Bank Medici under which all transactions of customers acquired and advised by Bank Medici were to take place via Bank Austria. Bank Medici has no banking infrastructure of its own. All of its accounts and portfolios are held and administered by Bank Austria. Bank Austria also agreed to assist Bank Medici in undertaking its due diligence obligations. On information and belief, Bank Medici paid Bank Austria for these services.

253. On information and belief, Kohn and Bank Medici prevented certain Bank

Austria personnel from conducting any internal examination of Madoff, BMIS, or the Madoff-Kohn Enterprise Feeder Funds. When these Bank Austria personnel sought information about the performance and structure of the Madoff-Kohn Enterprise Feeder Funds, they were referred to Pirkner. Pirkner was manifestly unqualified to answer any questions about these or any other purported fund of hedge fund investment vehicles.

254. Pirkner has admitted to the Austrian authorities that he and Bank Medici had no visibility into the Madoff-Kohn Enterprise Feeder Funds, particularly its largest, Herald Fund, through which Primeo Fund also invested. In the same interview, however, Pirkner claimed that he personally implemented the supposed “collar” in Madoff’s SSC Strategy.

255. Bank Austria lent its name and credibility to, and hence validated and bolstered Madoff, Kohn, Bank Medici, and the Madoff-Kohn Enterprise Feeder Funds. Madoff, Kohn and Bank Medici controlled Bank Austria’s and the Madoff-Kohn Enterprise Feeder Funds’ relationship with Madoff and BMIS. In at least one instance, Bank Austria’s parent corporation fired an employee for questioning the legitimacy of Herald Fund’s returns.

256. On information and belief, Bank Medici also terminated those who sought information about Madoff, BMIS, and the Madoff-Kohn Enterprise Feeder Funds. In 2008, Kohn solicited Thomas Lachs (“Lachs”), a prominent Austrian investor, to market and distribute Herald (Lux). When Lachs sought information about the investment manager for Herald (Lux), Kohn directed Scheithauer to terminate Bank Medici’s distribution and marketing relationship with Lachs.

257. Nonetheless, Bank Austria not only tolerated the activity of its rogue branch,

it encouraged, facilitated, and profited from it. In 2003, Bank Austria helped Kohn and Bank Medici procure an Austrian banking license from the Austrian government. On information and belief, Bank Medici's application was supported by Bank Austria and, specifically, its head, Randa. After Bank Austria and Randa helped Bank Medici procure its banking license, Bank Austria's holding in Bank Medici increased from 10% to 25%.

258. Bank Medici's acquisition of an Austrian banking license was a critical point in the Madoff Feeder Fund Scheme. Bank Medici could now create its own Madoff investment vehicles from which Bank Austria could profit while maintaining a purported distinction in corporate form from Kohn and Bank Medici.

259. Herald Fund is the largest of the Madoff-Kohn Enterprise Feeder Funds and fed at least \$1.5 billion into BMIS over its five-year existence. Herald Fund was incorporated in the Cayman Islands on March 24, 2004, and created by Kohn, Eurovaleur, Bank Austria, and Bank Medici. At all relevant times, Herald Fund was 100% invested through BMIS, holding account number 1FR109.

260. Herald Fund also generated hundreds of millions of dollars in management, distribution, and other fees for AM, Bank Medici, Bank Austria, UniCredit, and Pioneer. Kohn, Eurovaleur, Bank Austria, Bank Medici and its branches, HAML, and other members of the Madoff-Kohn Enterprise marketed, distributed, and sold Herald Fund. Herald Fund's purported investment manager was HAML, although Bank Medici oversaw its day-to-day operations.

261. Bank Medici went on to be the primary marketer, distributor, and investment manager of Herald (Lux) and received an annual management fee equal to 2% of its net asset

value and a performance fee equal to 10% of any increase in its net asset value, both calculated on a monthly basis. Bank Medici received at least \$2 million for participating in this component of the Madoff Feeder Fund Scheme.

262. Bank Medici also marketed, distributed, and managed Thema International, for which it received an annual fee up to 0.5% of the fund's net asset value. On information and belief, Bank Medici received at least \$45 million for participating in this component of the Madoff Feeder Fund Scheme. 295. From 2006 to 2008, HAML paid Bank Medici at least \$13 million as Herald Fund's largest distributor. On information and belief, these fees were Bank Medici's primary source of income. Kohn, Mugnai, de Sury, Cosulich, Bank Medici Gibraltar, Herald Consult, and Line Holdings, through HAML, transmitted these payments via wire to Bank Medici and Medici Cayman.

263. HAML, Bank Medici, Bank Austria, and UniCredit are the operating nucleus of the "lure in investor money" component of the Madoff Feeder Fund Scheme which provided money to Madoff and BMIS. Without Herald Fund, the Madoff-Kohn Enterprise would not have HAML. Without HAML, Bank Medici, Bank Austria, and UniCredit could not have continued to further the Madoff-Kohn Enterprise by feeding money into BMIS. Kohn treated HAML as indistinguishable from Bank Medici itself and Kohn operated HAML from Bank Medici's offices. HAML acted as a money laundering machine for the Madoff-Kohn Enterprise and as a personal checking account for Kohn.

264. Kohn, through HAML, routinely wired millions of dollars to entities and individuals affiliated with Kohn, including de Sury, Mugnai, and Cosulich. These three Milan-

based Defendants were directors of HAML, and each had unique relationships with Kohn, outside of HAML. Mugnai and Cosulich operated the Madoff-Kohn Enterprise's central funding mechanism. De Sury authorized hundreds of millions of dollars in payments to other members of the Madoff-Kohn Enterprise.

265. S. Kohn created HAML under the laws of the Cayman Islands on March 12, 2004. Its true ownership structure is obscured by a labyrinth of interrelated companies engineered by Hassans, and including Hassans. The ultimate beneficial owners of HAML, however, are S. Kohn and her husband, E. Kohn.

266. Although HAML was registered in the Cayman Islands, it operated from, among other places, Vienna, and Medici S.r.l.'s offices in Milan. Bank Austria Cayman leased HAML its office space in the Cayman Islands. Bank Austria Cayman, at Duregger's direction, accepted almost \$60,000 from HAML over the course of the Madoff Feeder Fund Scheme. Kohn, Mugnai, de Sury, Cosulich, Herald Consult, and Line Holdings, and HAML, transmitted these payments via wire to Bank Austria Cayman.

267. Mugnai and S. Kohn both worked at Medici S.r.l. and shared a personal secretary in Raule. De Sury and Cosulich also worked for Kohn at Medici S.r.l. From June 2006 to October 2008, Kohn, Herald Consult, and Line Holdings, through HAML, transmitted over \$500,000 via wire to Mugnai, de Sury, and Cosulich. Days after Madoff's confession, on December 17, 2008, Kohn, through HAML, transferred €15,000 to de Sury.

268. On December 15, 2008, days after Madoff confessed to running a Ponzi scheme, HAML transferred \$6.5 million and €6.5 million to accounts in Gibraltar held by

Hassans. Hence, HAML is also critical to the “illegal payments” component of the Madoff Feeder Fund Scheme. Kohn, Mugnai, de Sury, and Cosulich, through HAML, transmitted these payments via wire to Hassans, Line Group, and Line Management.

269. Kohn, Bank Medici, and Bank Austria sought to distribute Herald Fund as widely as possible. Bank Medici and Bank Austria used all of their affiliates to assist in the marketing and distribution of Herald Fund. On information and belief, APM Cayman, Sofipo, Medici Cayman, and Bank Austria Cayman all received proceeds of the Madoff Feeder Fund Scheme designated as “retrocession fees” from HAML for distributing Herald Fund.

270. Kohn, Bank Austria, and Bank Medici created branded and de facto branches through which they marketed and distributed the Madoff-Kohn Enterprise Feeder Funds. Bank Medici’s branches include at least the following: (i) Medici S.r.l. in Milan, Italy; (ii) Medici Cayman; (iii) MediciFinanz; (iv) APM Cayman; and (v) Bank Medici Gibraltar, a “joint venture” with Hassans. Medici S.r.l. 305. Bank Medici’s Italian branch Medici S.r.l. is located in Milan and shares an office with HAML. Medici S.r.l. also shared an address with Tecno Italy, and both employed Raule. De Sury was an employee of Medici S.r.l. On information and belief, Kohn, de Sury, and other members of the Madoff-Kohn Enterprise solicited investors for the Madoff-Kohn Enterprise Feeder Funds through Medici S.r.l.’s offices.

271. Bank Medici’s Cayman branch received payments from HAML designated as “retrocession fees” for soliciting investors for the Madoff-Kohn Enterprise Feeder Funds beginning at least as early as September 24, 2007. On information and belief, S. Kohn, Kastner, and other members of the Madoff-Kohn Enterprise solicited investors for the Madoff-Kohn

Enterprise Feeder Funds through Medici Cayman's offices.

272. In November 2004, Bank Medici and Hassans announced the opening of their "joint venture" Bank Medici Gibraltar. It ultimately opened in January 2005. On information and belief, and as set forth fully below in relation to Hassans, Kohn and other members of the Madoff-Kohn Enterprise solicited investors for the Madoff-Kohn Enterprise Feeder Funds through Bank Medici Gibraltar's offices.

273. MediciFinanz operated as Bank Medici's de facto branch in Germany. Bank Medici owned 50% of both MediciFinanz and APM Cayman. Kastner owned the other 50% of both MediciFinanz and APM Cayman. Kastner managed both MediciFinanz and APM Cayman. On information and belief, Kohn recruited Kastner to the Madoff-Kohn Enterprise to distribute the Madoff-Kohn Enterprise Feeder Funds.

274. On information and belief, Kohn introduced Kastner to Madoff in New York in the late 1990s. Shortly thereafter, Kastner returned to Germany and, with Kohn, created MediciFinanz. On information and belief, Kohn and Kastner also created APM Cayman to launder the funds received from HAML to Kastner and MediciFinanz.

275. Kastner, through MediciFinanz, was a primary distributor and marketer of Primeo Fund, Thema International, Alpha Prime Fund, and Herald Fund in Germany. Kohn, through HAML, paid Kastner through APM Cayman, for his distribution and marketing of the Madoff-Kohn Enterprise Feeder Funds.

276. On information and belief, Bank Austria directly mailed Kastner the marketing materials for Primeo Fund.

277. Beginning on February 10, 2006, APM Cayman received almost \$13 million in payments from HAML via wire transfer. The subject lines in the transfers refer to these payments as “retrocession fees.” These “retrocession fees” are kickbacks for selling the Madoff-Kohn Enterprise Feeder Funds. Kastner, through APM Cayman, was the second-largest recipient of transfers from HAML after Bank Medici itself. Kohn, Mugnai, de Sury, Cosulich, Herald Consult, and Line Holdings, through HAML, transmitted these payments via wire to APM Cayman, MediciFinanz, and Kastner.

278. Kastner, through APM Cayman, also received \$780,047 from Infovaleur. Even within the structure of the Madoff-Kohn Enterprise, this personal payment from Kohn to one of her Bank Medici branches was unusual. It was not, however, the only personal payment that Kohn made to Kastner.

279. Kastner also owns Gerila, through which Kastner received a loan of almost \$1 million from Kohn, which was transferred to Kastner using HAML’s accounts. On information and belief, this transfer was a personal loan from Kohn to Kastner in connection with his divorce. Kohn, Mugnai, de Sury, Cosulich, Herald Consult, and Line Holdings, through HAML, transmitted these payments via wire to Kastner.

280. Until April 21, 2009, Sofipo was registered at the same address as Bank Medici and operated as an internal mechanism to distribute the Madoff-Kohn Enterprise Feeder Funds. Kohn was an assistant chair of Sofipo. Cosulich replaced Kohn as Sofipo’s managing director. In keeping with Kohn’s practice of disregarding corporate formalities, she treated Sofipo, Bank Medici, and HAML as interchangeable.

281. On information and belief, Kohn and certain other members of the Madoff-Kohn Enterprise solicited investors for the Madoff-Kohn Enterprise Feeder Funds through Sofipo's offices.

282. Starting in 2007, Kohn, through HAML, began transmitting fees to Sofipo in furtherance of the Madoff Feeder Fund Scheme. HAML effected these payments to Sofipo via wire in foreign commerce. Between November 2007 and October 2008, HAML transferred these proceeds of the Madoff Feeder Fund Scheme to Sofipo. Kohn, Mugnai, de Sury, Cosulich, Herald Consult, and Line Holdings, through HAML, transmitted these payments via wire to Sofipo.

283. Alpha Prime Fund is a Bermuda-based investment fund incorporated on March 12, 2003. At all relevant times, Alpha Prime Fund was 100% invested through BMIS, holding account number 1FR097. Alpha Prime Fund fed approximately \$400 million into BMIS over its five-year existence.

284. Alpha Prime Fund was created by Kohn, Zapotocky, and Radel-Leszczyński, and was a functional "clone" of Primeo Fund. Zapotocky created this additional mechanism to feed investors into BMIS to further the Madoff Feeder Fund Scheme and enrich himself, Madoff, and S. Kohn. S. Kohn served as a director of Alpha Prime Fund. On information and belief, Zapotocky received at least \$8 million for his participation in this component of the Madoff Feeder Fund Scheme.

285. On information and belief, Kohn, Kohn, Eurovaleur, Bank Austria, Bank Medici and its other branches, HAML, and other members of the Madoff-Kohn Enterprise

marketed, distributed, and sold Alpha Prime Fund. BA Worldwide was Alpha Prime Fund's investment adviser beginning in 2003.

286. Senator Fund is a Cayman Island-based investment fund incorporated on July 14, 2006. At all relevant times, Senator Fund was 100% invested through BMIS, holding account number 1FR128. Senator Fund fed at least \$247 million into BMIS over its two-year existence. - 99 - 325. Senator Fund was created by Radel-Leszczynski and was a functional clone of Alpha Prime Fund, which was in turn a functional clone of Primeo Fund. Radel-Leszczynski created this additional mechanism to feed money into BMIS to further the Madoff Feeder Fund Scheme and enrich herself, Madoff, Kohn, and Bank Medici. On information and belief, Radel-Leszczynski received millions of dollars in fees for her participation in this component of the Madoff Feeder Fund Scheme.

287. On information and belief, Kohn, Eurovaleur, Bank Austria, Bank Medici and its branches, HAML, and other members of the Madoff-Kohn Enterprise marketed, distributed, and sold Senator Fund. On February 20, 2002, Radel-Leszczynski sent a facsimile to DiPascali at BMIS requesting approval of language describing the investment strategy she, BA Worldwide, Bank Austria, and Bank Medici used to market Primeo Fund to investors. The facsimile was sent from a Bank Medici facsimile machine on BA Worldwide letterhead.

288. On July 10, 2006, Radel-Leszczynski, on behalf of BA Worldwide, sent a facsimile to Madoff regarding on a recent meeting she had with him at BMIS headquarters in New York. In the correspondence, Radel-Leszczynski profusely and obsequiously thanked Madoff for "granting" her a new BMIS direct account. The purpose of the facsimile was to

confirm that the account holder would be Senator Fund, and to arrange for the account opening documents to be sent to the fund's custodian.

289. On September 25, 2006, Radel-Leszczyński, on behalf of BA Worldwide, sent another facsimile to Madoff to notify him that she would serve as his primary - 100 - contact for Primeo Fund, Alpha Prime Fund, and Senator Fund. Radel-Leszczyński also proposed a future meeting with Madoff on October 23 of that year, purportedly to discuss this role.

290. Hassans is a Gibraltar law firm and counsel to key members of the Medici Enterprise, including Kohn, Herald Fund, and, on information and belief, HAML. Kohn has a longstanding relationship with Hassans and its senior partner, James Levy. Hassans also provides legal services to Benbassat.

291. Hassans has provided (and continues to provide) critical legal and corporate services for Kohn and HAML, including the establishment and maintenance of trusts and other structures that Kohn and E. Kohn used to launder stolen proceeds of the Madoff Feeder Fund Scheme. Immediately after Madoff's confession, Kohn summoned a team of Hassans lawyers to Bank Medici's offices in Austria to coordinate Kohn's legal strategy.

292. Hassans assisted Kohn in the creation and management of HAML. When S. Kohn sought to conceal the fact that she and her husband were the beneficial owners of HAML, Hassans supplied the necessary corporate camouflage. These Hassans-related entities purport to offer private company management and private banking services to, among other Defendants, HAML and Tecno Gibraltar.

293. Certain partners and associates at Hassans also hold non-legal corporate

positions at certain Holding Company Defendants controlled by Hassans, Kohn, or other members of the Madoff-Kohn Enterprise. They include Redcrest, Line Group, Line Management, Line Holdings, and Herald Consult. These are part of a deliberately complex structure orchestrated by S. Kohn to disguise her and E. Kohn's ownership of HAML.

294. Tecno Gibraltar did not have its own offices. Rather, Tecno Gibraltar was co-located with Line Management, one of the Holding Company Defendants whose officers and directors are comprised of Hassans employees. The plaque on the building in which Line Management is located reads "Line Management, Associated with Hassans." Amselem, Tecno Gibraltar's lone director, is also an employee at Line Management.

295. Bank Medici Gibraltar is a "joint venture" with Hassans and is located in its offices. On information and belief, the Hassans conference rooms devoted to Bank Medici Gibraltar have chairs festooned with the Bank Medici's heraldic crest. On information and belief, Kohn and other members of the Madoff-Kohn Enterprise solicited investors for the Madoff-Kohn Enterprise Feeder Funds in the offices of Hassans/Bank Medici Gibraltar.

296. Bank Medici Gibraltar and Hassans also jointly own Medici Realty. Both are located in the offices of Hassans. E. Kohn is a director of Medici Realty. Kohn Receives Kickbacks from Madoff Care of Hassans

297. Hassans received transfers from Kohn via HAML. Rather, these transfers represent Kohn's and Hassans' efforts to conceal the proceeds of the Madoff Feeder Fund Scheme. For example, on December 15, 2008, days after Madoff confessed to running a Ponzi scheme, HAML transferred \$6.5 million to accounts held by Hassans. On information and

belief, S. Kohn initiated these transfers just before Madoff confessed on December 11, 2008.

298. UniCredit has been involved with Madoff and BMIS since at least 2000 through its wholly owned investment arm, Pioneer. Prior to UniCredit's acquisition of Bank Austria in 2005, Pioneer invested in certain BMIS feeder funds established by the Benbassats through Kohn. Pioneer also invested in BMIS feeder funds Fairfield Sentry Ltd. and Kingate Global Fund Ltd. Kohn Facilitates UniCredit's Acquisition of Bank Austria.

299. In 2005, UniCredit acquired Bank Austria and, hence, Bank Medici, and BA Worldwide. On information and belief, Kohn's relationship with UniCredit predates its acquisition of Bank Austria. On information and belief, while Profumo was the CEO of UniCredit, he enjoyed a close working relationship with Kohn. During UniCredit's acquisition of Bank Austria, Randa was the COO of Bank Austria's holding company.

300. On information and belief, Kohn bragged about her relationship with Profumo and would often remark that he frequently called her directly. Bank Medici employees understood that Kohn introduced UniCredit and Bank Austria and facilitated the acquisition.

301. Shortly after the acquisition, UniCredit undertook to examine its newly acquired additional involvement with BMIS. UniCredit identified significant defects in the relationships between and among Bank Austria, Bank Medici, BA Worldwide, and Primeo Fund.

302. Rather than refusing to continue to do business with BMIS, UniCredit undertook to further the Madoff Feeder Fund Scheme by disguising Primeo Fund's 100% investment in BMIS. UniCredit effected this deception not by divesting Primeo Fund from BMIS, but by directing Primeo Fund to close its direct account with BMIS and invest in BMIS

indirectly through Herald Fund and other Madoff-Kohn Enterprise Feeder Funds.

303. At the same time, UniCredit replaced BA Worldwide with Pioneer as Primeo Fund's investment manager. So as not to upset the relationship with Madoff, UniCredit hired BA Worldwide's Radel-Leszczynski, Madoff's personal contact and the "figurehead" of Primeo Fund, and placed her at Pioneer.

304. UniCredit sought to obfuscate Primeo Fund's investment structure by electing to invest in BMIS indirectly through Herald Fund, Alpha Prime Fund, and on information and belief, Thema International. Although this decision cost Primeo Fund's investors more in fees, and further enriched Kohn, HAML, Bank Medici, BA Worldwide, Radel-Leszczynski, Zapotocky, and others, the result was the same: 100% investment in BMIS.

305. Primeo Fund's prospectus promised diversification and never mentioned Madoff or BMIS. The concealed indirect investment in BMIS allowed Primeo Fund to appear to comply with its prospectus, while in fact Primeo Fund was still 100% invested with BMIS.

306. On April 2, 2007, Cosulich, the managing director of Sofipo, sent a facsimile to BMIS from a Sofipo facsimile machine using HAML letterhead. Cosulich, on behalf of Kohn, notified BMIS that: (i) Herald Fund planned to infuse \$35 million of Primeo Fund's money into Herald Fund's BMIS account; and (ii) at the direction of UniCredit, Profumo, and Guty, Primeo Fund would stop investing directly with BMIS and begin covertly investing indirectly through Herald Fund.

307. On April 30, 2007, Pirkner sent a facsimile to BMIS, on behalf of Kohn and Bank Medici, attaching Herald Fund's board of directors resolution accepting Primeo Fund's

shares and agreeing to invest these shares into BMIS. The Herald Fund resolution contains Mugnai's signature as director of Herald Fund. After the integration of UniCredit, Pioneer, Bank Austria, Bank Medici, and Primeo Fund, UniCredit began to be paid in the pattern and practice of the Madoff-Kohn Enterprise.

308. In 2007, Pioneer paid over \$1,394,350 to Bank Medici for, on information and belief, the privilege of UniCredit's undisclosed access to BMIS. The same year, UniCredit memorialized its participation in the Madoff-Kohn Feeder Fund Scheme and entry into the Madoff-Kohn Enterprise by, on information and belief, directing Pioneer to produce false prospectuses that concealed Primeo Fund's investment in BMIS. In 2008, Kohn, through HAML, kicked back to Pioneer approximately \$10 million in Herald Fund's extra fees from this arrangement. These payments were, on information and belief, the product of Kohn's conspiracy with UniCredit, Pioneer, Profumo, and Guty to invest Primeo Fund through Herald Fund. Kohn, Mugnai, de Sury, Cosulich, Herald Consult, and Line Holdings, through HAML, transmitted these payments via wire to Pioneer.

309. After UniCredit's acquisition of Bank Austria, it appointed key members of the Madoff-Kohn Enterprise to prominent positions at UniCredit. Radel-Leszczyński was hired at UniCredit's Pioneer. Hemetsberger was named to UniCredit's Executive Management Committee in 2006. Kretschmer became UniCredit's Global Head of Retail, Executive Vice President of Asset Management, and Country Head of Austria and Eastern Europe. Kadrnoska joined UniCredit's board in December 2005. Duregger joined the board of a UniCredit subsidiary, UniCredit UK, on November 14, 2007.

310. Herald (Lux) was one of Kohn and Bank Medici's last efforts to feed money into BMIS before Madoff confessed to running a Ponzi scheme. Herald (Lux) was incorporated in Luxembourg on February 18, 2008, and was created by Kohn, Eurovaleur, Bank Austria, Bank Medici, Kastner, and Frey solely for the purpose of investing with BMIS. Herald (Lux) fed at least \$255 million into BMIS.

311. Kohn, Eurovaleur, Bank Austria, Bank Medici and its branches, HAML, and other members of the Madoff-Kohn Enterprise marketed, distributed, and sold Herald (Lux) and transferred the proceeds to Madoff and BMIS. Bank Medici was the fund's investment manager and Scheithauer was a director.

312. Like her sham businesses, Kohn treated the Madoff-Kohn Enterprise Feeder Funds as interchangeable as they all were 100% invested with BMIS. On information and belief, Kohn disregarded the directions of Bank Austria and Bank Medici clients to place their money with specific Madoff-Kohn Enterprise Feeder Funds. In particular, Kohn and Bank Medici steered investors into Herald (Lux) when she, Bank Medici, and HAML were directing redemptions from Herald Fund. At the same time, she was placing Herald Fund investors' money with Herald (Lux).

313. For example, in 2008, Kohn told Bank Medici client Elena Shpe ("Shpe") that her money would be invested in Herald Fund when it was, in fact, invested in Herald (Lux). Kohn, Bank Medici, Bank Austria, and other members of the Madoff-Kohn Enterprise represented that Herald Fund and Herald (Lux) were different investments. In fact, they and all the Madoff-Kohn Enterprise Feeder Funds were functionally identical, doing nothing more than

feeding investors' money into BMIS. Kohn and other members of the Madoff-Kohn Enterprise conspired to disguise this fact.

314. In the months leading up to Madoff's confession, Kohn embarked on a campaign to "diversify" Bank Medici given that over 90% of its revenue came from Madoff's Ponzi scheme. In early 2008, Kohn, through HAML, transferred \$5.3 million to Revi to launder proceeds of the Madoff Feeder Fund Scheme and for the ostensible purpose of capitalizing several purported insurance companies. Kohn, Mugnai, de Sury, Cosulich, Herald Consult, and Line Holdings through HAML, transmitted these payments via wire to Revi.

315. Hence, S. Kohn needed to distance herself from Bank Medici and install someone who could credibly operate outside of the realm of the Madoff-Kohn Enterprise's pattern of racketeering activity. On information and belief, Kohn and her husband planned to move to Switzerland to protect themselves from liability and shield the stolen proceeds of the Madoff Feeder Fund Scheme once BMIS collapsed.

316. Prior to their move, Kohn replaced Frey as head of Bank Medici and installed her longtime friend, and former Bank Austria executive, Scheithauer. Scheithauer was intimately involved with the creation and management of Primeo Fund and understood the structure of the Madoff-Kohn Enterprise and how the Madoff Feeder Fund Scheme operated.

317. Scheithauer's new role at Bank Medici was to introduce private banking services and oversee its expansion into insurance products for the wealthy. Kohn specifically instructed Scheithauer not to diminish Bank Medici's roles with respect to Herald Fund and Herald (Lux). Rather, Kohn directed Scheithauer to grow these new aspects of Bank Medici

until revenue from those funds represented approximately half of Bank Medici's total profits. Scheithauer was willing to cash his paycheck from HAML, and his "bonus" from Kohn's Infovaleur in New York, and focus on making Bank Medici appear legitimate. On August 25, 2008, weeks before beginning he joined Bank Medici, Kohn and Reuss, through Infovaleur, sent proceeds of the Madoff Feeder Fund Scheme to Scheithauer.

318. At the same time, BMIS was receiving more withdrawal requests than new investors' deposits. On information and belief, Madoff began telling certain Medici Enterprise Feeder Fund representatives that if they did not reduce their monthly withdrawals, they would be cut off from BMIS. Kohn began seeking other sources of cash to meet investors' withdrawals from Herald Fund, so as to honor Madoff's requests while continuing to profit from the Madoff Feeder Fund Scheme for as long as possible.

319. Nonetheless, Kohn, via HAML, was directing massive withdrawals from Herald Fund. Just before Madoff confessed, Herald Fund withdrew \$536 million from BMIS, including \$423 million in one transfer on November 4, 2008. On October 20, 2008, Kohn, through HAML, transferred almost \$3 million to Pioneer. Two days later, Kohn, through HAML, made two transfers to Bank Medici: one for over \$1 million and another for €275,071. Although Kohn had not paid Kastner or APM for months, on October 22, 2008, Kohn, through HAML, transferred over \$1.8 million to Kastner through APM Cayman. This extraordinary payment was made in three installments on the same day.

320. On November 12, 2008, Kohn, through HAML, transferred \$1.2 million to Pioneer. On November 20, 2008, Kohn, through HAML, transferred \$361,434 and €142,958 to

Bank Medici. On the same day, Kohn, through HAML, transferred \$62,729 to Medici Cayman.

321. In addition to concealing stolen funds and other proceeds of the Madoff Feeder Fund Scheme, Kohn needed to explain Bank Medici's blanket exposure to BMIS to its clients. A few days after Madoff's confession, Bank Medici client and Herald (Lux) investor, Shpe, contacted her Bank Medici investment agent, Lavi, and demanded answers.

322. Like all who invested in the Madoff-Kohn Enterprise Feeder Funds through Bank Medici, Bank Austria, BA Worldwide, and Pioneer, the fact that every cent of every investment was fed directly to BMIS was never disclosed.

323. On information and belief, to the extent that anyone specifically asked if Madoff and/or BMIS was involved in these investments, Bank Medici, through its representatives, Kohn, Scheithauer, Tripolt, Duregger, Frey, Pirkner, Schindler, Lavi, and Cosulich, categorically denied any involvement. Also, on information and belief, the same was true for Bank Austria representatives, such as Randa, Kadrnoska, Zapotocky, Kretschmer, Nograsek, Hemetsberger, and Radel-Leszczyński.

324. In light of these misrepresentations, Shpe was, on information and belief, upset. On December 23, 2008, Shpe attended a meeting in Austria with Lavi and Scheithauer to discuss her investments with Bank Medici. During the meeting, Scheithauer stated to Shpe that he too was surprised that the bank's investments were involved with BMIS, and that she should not engage in "blame games." On information and belief, Kohn expressly directed Scheithauer and others to make the misrepresentation that the Madoff-Kohn Enterprise Feeder Funds were not invested with BMIS.

325. On information and belief, after meeting with Scheithauer, Shpe was finally able to reach Kohn via telephone. Kohn, like Scheithauer, denied any knowledge of Bank Medici's exposure to BMIS. Kohn also lied about her personal financial exposure to BMIS, and claimed that she also lost money with BMIS.

326. On information and belief, immediately after speaking with Kohn, Shpe contacted Lavi for the last time. During this conversation, Lavi admitted that Kohn and Bank Medici knew that the Madoff-Kohn Enterprise Feeder Funds were all 100% invested in BMIS. Moreover, Lavi told Shpe that Kohn prohibited all Bank Medici employees from revealing Madoff's involvement with any of the investments managed, marketed, or distributed by Bank Medici.

327. On May 28, 2009, the Austrian government seized control of Bank Medici's assets. On June 24, 2009, the Austrian government stripped Bank Medici of its banking license. Kohn and Bank Austria still operate Bank Medici as 20:20 Medici AG.

328. Kohn continued the Madoff Feeder Fund Scheme long after Madoff's confession using Eurovaleur and Infovaleur in New York, Tecno Gibraltar, HAML, and Hassans. On December 17, 2008, Kohn, through HAML, laundered €15,000 to de Sury. On January 6, 2009, Kohn, through Infovaleur, laundered \$70,587 to M. Hartstein, \$57,334 to R. Kohn (care of Eurovaleur), and \$26,438 to R. Hartstein. On January 30, 2009, Kohn, through Infovaleur, laundered \$6,020 to Palladium. On February 2, 2009, Kohn, through Tecno Gibraltar, laundered almost \$300,000 to her husband, E. Kohn. On March 3, 2009, Kohn, through Infovaleur, laundered almost \$30,000 to Palladium. On March 4, 2009, Kohn, through

Infovaleur, laundered \$4,000 to M. Hartstein. On information and belief, this dissipation is ongoing.

329. Madoff effected payments or other transfers of more than \$642,326,889 (the “Madoff Feeder Fund Scheme Transfers”) to, or for the benefit of, Infovaleur, Tecno Gibraltar, Tecno Italy, Erko, Bank Austria, and Herald Fund.

7. **Sonja Kohn and Madoff Discuss the Herald Funds in New York City**

330. Bank Medici, through S. Kohn and others, met with Madoff in his offices in New York City numerous times to discuss, *inter alia*, the Herald Funds’ supposed investments. Specifically, according to Madoff’s appointment calendar, S. Kohn met with Madoff in his offices in New York City at least on the following dates: August 23, 2005; March 27, 2006; October 31, 2006; November 26, 2007; and September 23, 2008.

331. S. Kohn’s meetings with Madoff in New York were part of Bank Medici’s purported due diligence on Madoff, as manager of the Herald Funds. According to a February 1, 2009 *Bloomberg* article, entitled, “Madoff’s Well-Treated Feeder Funds Suspected Shady Trades But Backed Off,” the due diligence accomplished during these meetings was limited:

The feeders were the gatekeepers, and they qualified for royal treatment. A money manager for a family office recalls accompanying Sonja Kohn, whose Vienna-based Bank Medici funneled \$3.2 billion to Madoff, to a meeting with Madoff in New York in 1991.

He says Madoff treated her as if she were the Queen of England. The money manager also says Madoff wouldn’t answer any questions about his strategy.

332. While supposedly performing due diligence on Madoff and looking out for investors’ best interests, unknown to investors, S. Kohn was receiving tens of millions of dollars

in kickbacks from Madoff in exchange for her steering billions into his fraud.²

8. Defendant E. Kohn

333. S. Kohn's husband, defendant E. Kohn, is intimately involved in his wife's business affairs and has participated in the Madoff Feeder Fund Scheme since its inception. His precise residence throughout the Madoff Feeder Fund Scheme is difficult to ascertain. He appears to have maintained multiple residences in New York, Austria, Switzerland, and, on information and belief, Israel. On information and belief, E. Kohn maintained a residence in Austria while living with his wife in New York as they helped build the architecture of the Madoff-Kohn Enterprise and initiated the Madoff Feeder Fund Scheme.

334. On information and belief, E. Kohn laundered proceeds of the Madoff Feeder Fund Scheme, including stolen investor property in the form of secret kickbacks from Madoff, through real estate transactions in Austria.

335. As alleged fully below, HAML operated as the central funding and money laundering machine for the Madoff-Kohn Enterprise. S. Kohn and E. Kohn also treated HAML as one of the many Kohn family checking accounts.

336. E. Kohn traveled to London from New York on behalf of Erko to pick up Madoff's secret kickbacks to Kohn as early as 1987. Madoff paid these particular kickbacks to S. Kohn, via Erko, by among other means, physical checks. E. Kohn would then deposit the funds in an unknown family account for the benefit of himself and his wife. These travels were made with the intent to distribute the proceeds of unlawful activity, enriching the Madoff-Kohn

² A complaint filed by Massachusetts regulators also indicates that Cohmad paid \$87,792 a year for six years, for a total a total of \$526,000, to defendant S. Kohn, all the while S. Kohn was not associated Cohmad or employed by the

Enterprise in furtherance of the Madoff Feeder Fund Scheme.

337. E. Kohn was a director of Medici Realty in Gibraltar. Medici Realty is a joint venture between Bank Medici Gibraltar and Hassans. Plaintiffs are unaware of the precise role of Medici Realty in the Madoff-Kohn Enterprise and the Madoff Feeder Fund Scheme. Medici Realty is, however, located in the same offices as Hassans and Bank Medici Gibraltar. E. Kohn was also a director of FundsWorld in Milan, Italy. On information and belief, Kohn created FundsWorld to sell access to BMIS through the Madoff-Kohn Enterprise Feeder Funds.

338. On information and belief, E. Kohn was present at certain meetings with S. Kohn, Scheithauer, and other Bank Medici representatives in which they misrepresented the role of BMIS in the Madoff-Kohn Enterprise Feeder Funds.

339. Over the course of the Madoff Feeder Fund Scheme, E. Kohn accepted regular payments of stolen funds laundered by S. Kohn through Infovaleur in New York. Between at least March 27, 2002 and March 11, 2003, E. Kohn received at least nineteen of these payments via check from Infovaleur's New York account at J.P. Morgan Chase totaling over \$100,000. Certain of these checks appear to have been structured to avoid U.S. transaction reporting requirements. For example, on March 27, 2002, S. Kohn, via Infovaleur, transmitted three checks to E. Kohn each in the amount of \$3,026.20.

340. After Madoff confessed, E. Kohn conspired with his wife to conceal the proceeds of the Madoff Feeder Fund Scheme. On February 2, 2009, Kohn caused Tecno Gibraltar to transfer \$299,994.97 to certain Swiss bank accounts controlled by E. Kohn.

firm.

9. Non-Defendant Kohn Family Members

341. In addition to S. Kohn and E. Kohn's role in, *inter alia*, Plaintiffs' RICO violations, other Non-Defendant Kohn family members assisted the Defendants in ensuring the continuance of the Ponzi scheme.

342. Indeed, Kohn's mother, Non-Defendant Blau, plays a key role in her daughter's business affairs and has participated in at least the Italian components of the Madoff Feeder Fund Scheme. Blau purported to be the "manager" of Kohn's Sham Entity, Tecno Italy, as it received a steady stream of kickbacks from Madoff. 189. Blau also owned the 5% of Tecno Italy that was not held in trust by Brera. Brera held its interest in Tecno Italy in trust for a beneficiary that is, on information and belief, S. Kohn.

343. Plaintiffs are informed and believe that Blau conspired with Kohn and other Tecno Italy employees, such as Raule, to receive at least twenty payments totaling over \$14 million from Madoff between at least May 21, 2002 and January 2, 2007.

344. Indeed, since the fraudulent nature of Madoff and/or BMIS' business has become public, S. Kohn's family has diligently attempted to hide the nature of the fraud of S. Kohn's role in the Madoff Feeder Fund Scheme.

345. In fact, on September 14, 2009, Plaintiffs are informed and believe that the Trustee attempted to take the deposition of S. Kohn's son-in-law, Non-Defendant M. Hartstein. M. Hartstein is a defendant in one of Picard's actions attempting to recover money on behalf of investors who directly invested with BMIS, but is not named as a party herein. During that deposition M. Hartstein invoked his Fifth Amendment privilege at least 135 times. He refused to state, among many other things: his date of birth; his citizenship; whether he has an occupation

or a profession; whether he was married to his wife, R. Hartstein; whether he knows his mother-in-law, Kohn; whether he knows his father-in-law, E. Kohn; whether he has any children; whether he had worked for, or even heard of, Eurovaleur; whether he had worked for, or even heard of, Palladium; whether he had heard of Erko; whether he had heard of Bank Medici; and whether he had ever heard of Madoff.

346. As noted *supra*, M. Hartstein currently lives in Monsey, New York with his wife, R. Hartstein. The Hartsteins purchased this house from Kohn and E. Kohn in December 2006 which was, on information and belief, financed with two payments of stolen BMIS' investors' funds, totaling \$440,000. At different times, this residence also served as a mailing address for Infovaleur and R. Kohn.

347. Further, Non-Defendant M. Hartstein conspired with S. Kohn to operate Eurovaleur, with whom he was registered in New York as a broker in July 1998. On information and belief, M. Hartstein solicited investors for the Madoff-Kohn Enterprise Feeder Funds at Eurovaleur. M. Hartstein was also registered as a broker for Palladium in January 2005, and remains registered as of this filing.

348. Plaintiffs are informed and believe that M. Hartstein also received money from Infovaleur, both personally and through Palladium. S. Kohn, through Infovaleur, directed at least sixteen payments to, or for, M. Hartstein via check beginning as early as February 19, 2002. At least four of these payments occurred after Madoff confessed to running a Ponzi scheme and continued until at least March 4, 2009.

349. On September 15, 2009, Plaintiffs are informed and believe that the Trustee

also attempted to take the deposition of S. Kohn's daughter R. Hartstein. R. Hartstein is a defendant in one of Picard's actions attempting to recover money on behalf of investors who directly invested with BMIS, but is not named as a party herein. Apparently, R. Hartstein invoked her Fifth Amendment privilege well over 500 times. R. Hartstein refused to state, among many other things: her citizenship; whether she has an occupation or a profession; the whereabouts of her brother, R. Kohn; whether M. Hartstein or their children live with her in Monsey, New York; and whether she had heard of Eurovaleur, Infovaleur, Erko, Windsor, M-Tech, FundsWorld, Tecno Italy, Tecno Gibraltar, Bank Medici, or Madoff.

350. Plaintiffs are informed and believed that Non-Defendant R. Hartstein has received proceeds of the Madoff Feeder Fund Scheme from S. Kohn via Infovaleur in New York via check. R. Hartstein received \$26,438.33 in stolen funds on January 6, 2009, less than a month after Madoff confessed to running a Ponzi scheme.

351. S. Kohn's Son-in-Law, Non-Defendant Landau, is married to her daughter, Yvonne Landau, and is a resident of Israel. Landau and S. Kohn owned Kohn's Austrian Sham Entity M-Tech. On December 29, 2006, S. Kohn sold her interest in M-Tech to Landau.

352. Plaintiffs are informed and believe that Landau accepted payments via check from S. Kohn, via Infovaleur, both personally and through M-Tech. S. Kohn, through Infovaleur, laundered at least \$102,000 to or for the benefit of Landau over a ten month period in 2007-2008, including after the dissolution of M-Tech.

353. S. Kohn's son, Non-Defendant R. Kohn, is S. Kohn's and E. Kohn's son. R. Kohn appears to be concealing his current whereabouts and does not appear in any public record

databases. R. Kohn, like other members of the Kohn family, acted on behalf of Eurovaleur. Plaintiffs are informed and believe that R. Kohn accepted checks of stolen funds from S. Kohn, via Infovaleur, between 2004 and 2009. Plaintiffs are informed and believe that on January 6, 2009, less than a month after Madoff confessed to running a Ponzi scheme, S. Kohn, through Infovaleur, laundered \$57,334.03 to R. Kohn care of Eurovaleur.

10. S. Kohn and Her Family Also Drew Stolen Money Directly from BMIS

354. S. Kohn arranged to receive money that Madoff stole by setting up an elaborate network of companies in New York and elsewhere that existed solely to receive kickbacks from Madoff. At the same time, S. Kohn took calculated measures to distance herself and others from the Ponzi scheme. Although S. Kohn and her co-conspirators fed billions of dollars of other people's money into the Ponzi scheme, neither S. Kohn nor any member of her family ever established a direct account with BMIS.

355. To disguise her receipt of payments from Madoff, S. Kohn devised a sham invoicing system that had no connection to S. Kohn's actual activities -- soliciting investors for Madoff, and feeding their money into BMIS. S. Kohn invoiced Madoff for fabricated "market research" that was summarily ignored and destroyed by Madoff's employees. Such "market research" was completely useless as Madoff never invested a single cent received by his Ponzi scheme. Madoff did not pay S. Kohn for her sham invoices in the manner that BMIS paid its actual vendors. Rather, Madoff indicated that S. Kohn's sham invoices were paid as "BLM Special." Madoff's "BLM Special" designation was for payments that had nothing to do with the purported business of BMIS. Instead, it was used for gifts to family members, forgiven loans

to friends, payment of personal expenses, and charitable contributions. Madoff's payments to S. Kohn were not for services rendered. Rather, they were kickbacks for S. Kohn's solicitation of investors' money to fuel and sustain the Ponzi scheme.

11. Injury caused to Plaintiffs and the Class' Businesses and Property.

356. Each Defendant member of the Madoff-Kohn Enterprise conspired to participate in, and committed acts in furtherance of, the Illegal Scheme to: (i) feed investors' money into the Ponzi scheme; and (ii) enrich themselves in the process via kickbacks from Madoff, unearned fees, compensation, bonuses, and other proceeds of the Illegal Scheme. All of Kohn's kickbacks and certain of these proceeds of the Illegal Scheme have been stolen from investors. As a proximate result of the Illegal Scheme, Plaintiffs and the Class have suffered an injury in fact to their business and property for which Plaintiff and the Class are entitled to reimbursement in the form of, among other things, monetary damages trebled under RICO. The total amount lost by Plaintiffs and the Class in the Ponzi scheme is approximately \$2.0 billion. By this action Plaintiffs and the Class seeks damages in at least that amount, trebled under RICO.

357. S. Kohn fed at least \$9.1 billion of other people's money into the Ponzi scheme. S. Kohn and the Madoff-Kohn Enterprise fed almost \$4 billion of this total through the following so-called feeder funds into BMIS, including Primeo Fund, Thema International, Herald Fund, Alpha Prime Fund, Senator Fund, and Herald (Lux) (together, the "Madoff-Kohn Enterprise Feeder Funds"). Although each of the Madoff-Kohn Enterprise Feeder Funds had nominally different operating structures or regulatory regimes, they were functionally identical, as each was invested exclusively through BMIS.

358. Primeo Fund fed at least \$371 million, Thema International fed over \$1billion, Herald (USA) Fund fed at least \$1.5 billion, Alpha Prime Fund fed almost \$400 million, Senator Fund fed at least \$247 million, and Herald (Lux) Fund fed at least \$255 million into the Ponzi scheme.

359. Members of the Madoff-Kohn Enterprise conspired to conceal the fact that each Madoff-Kohn Enterprise Feeder Fund was merely a pass-through to BMIS. To bolster this deception, certain of the Madoff-Kohn Enterprise Feeder Funds invested in each other. This allowed Madoff, S. Kohn and their co-conspirators to avoid regulatory and investor scrutiny, fostered the illusion of diversification, and disguised the fact that UniCredit, Bank Austria, Medici, HAML, and other members of the Madoff-Kohn Enterprise did nothing but feed money into BMIS through the nominally different Madoff-Kohn Enterprise Feeder Funds.

360. S. Kohn, Eurovaleur, Medici and its branches, HAML, and at least thirty other members of the Madoff-Kohn Enterprise sold the Madoff-Kohn Enterprise Feeder Funds around the world and all took a “cut”, based upon fictional non-existent returns. For over fifteen years, the Madoff-Kohn Enterprise Feeder Funds generated hundreds of millions of dollars in “retrocession fees”, “management fees,” “distribution fees,” and other illicit proceeds of the Madoff Feeder Fund Scheme for S. Kohn, Medici, Bank Austria, BA Worldwide, UniCredit, HAML, and other members of the Madoff-Kohn Enterprise.

361. Additionally, S. Kohn solicited at least thirty direct BMIS accounts for Madoff. These include not only the Madoff-Kohn Enterprise Feeder Funds but, among others, Harley International (Cayman) Ltd. (“Harley”), Plaza Investments International (“Plaza”), and

Optimal Multiadvisors Ltd. (“Optimal”). Harley fed over \$2.3 billion into the Ponzi scheme.

Plaza fed over half a billion dollars into the Ponzi scheme. Optimal fed over \$1.6 billion into the Ponzi scheme.

12. Sonja Kohn and Herald Asset Management’s Relationship

362. HAML, another of S. Kohn’s alter egos, was the primary funding mechanism for the Madoff-Kohn Enterprise. Scheithauer, a former officer of Bank Austria, one of the creators of Primeo Fund, a director of Herald (Lux), and CEO of Bank Medici, understood that Bank Medici could not exist without HAML. Scheithauer knew that Bank Medici did nothing in return for the money that S. Kohn, through HAML, paid it. In fact, Scheithauer characterized all of HAML’s payments to Bank Medici as “a gift” from S. Kohn.

363. With proceeds of the Madoff Feeder Fund Scheme, S. Kohn, HAML, and Bank Austria opened branded and de facto Bank Medici “branches” around the world. HAML purported to “manage” Herald Fund and siphoned approximately \$100 million from its fake returns from 2004 to 2008. Over the course of the Madoff Feeder Fund Scheme, HAML made over 142 transfers totaling at least \$50 million to other members of the Madoff-Kohn Enterprise.

364. To investors in the Madoff-Kohn Enterprise Feeder Funds, HAML and Bank Medici both claimed that they, not Madoff or BMIS, selected the individual equities that BMIS pretended to purchase for investors. Bank Medici and HAML claimed that they ran Madoff’s so-called “Split-Strike Conversion” strategy (“SSC Strategy”), and that BMIS was merely an executing broker. UniCredit, Bank Austria, and Bank Medici were aware that HAML and Bank Medici did not perform these fictitious services.

365. S. Kohn, Zapotocky, Kretschmer, Hemetsberger, Radel-Leszczyński, and

other representatives of Bank Medici, Bank Austria, and BA Worldwide frequently traveled to New York to seek the advice, counsel, and consent of Madoff and BMIS on how to market, explain, and sell the Madoff-Kohn Enterprise Feeder Funds to potential investors.

366. Together, they and other members of the Madoff-Kohn Enterprise conspired to reap hundreds of millions of dollars for services that they never performed and never intended to perform.

13. S. Kohn Foresees the Inevitable Collapse of BMIS

367. As the Ponzi scheme approached its inevitable collapse on December 11, 2008, S. Kohn conspired to protect herself, her family, and key members of the Madoff-Kohn Enterprise.

368. In the months leading up to and after Madoff's confession, S. Kohn directed certain members of the Madoff-Kohn Enterprise to conceal the proceeds of the Madoff Feeder Fund Scheme.

369. Just before Madoff confessed, S. Kohn directed Herald Fund to withdraw \$536 million from BMIS, including \$423 million in one transfer on November 4, 2008. S. Kohn's associate, Giefing, executed Herald Fund's withdrawal on behalf of S. Kohn's HAML. BMIS' bank account at J.P. Morgan Chase held approximately \$500 million the day before Herald Fund's \$423 million withdrawal. Herald Fund withdrew the other \$113 million just a month before. This \$536 million is almost sixteen times the total that Herald Fund had ever withdrawn before.

370. On information and belief, S. Kohn and her husband maintained personal bank accounts at Bank Medici. Just days before Madoff confessed, S. Kohn directed her

husband to withdraw all of their personal assets from any member of the Madoff-Kohn Enterprise, including Bank Austria, which had the potential to be exposed to liability for its participation in the Madoff Feeder Fund Scheme.

371. On December 11, 2008, Madoff was arrested by federal agents for violations of the criminal securities laws, including, inter alia, securities fraud, investment adviser fraud, as well as mail and wire fraud. Contemporaneously, the United States Securities and Exchange Commission (“SEC”) filed a complaint in the District Court that remains pending. The SEC complaint alleges that Madoff and BMIS engaged in fraud through the investment adviser activities of BMIS.

372. On December 12, 2008, the international news media publicized Madoff’s arrest around the world after Madoff’s confession, S. Kohn (through at least HAML, Tecno Gibraltar, Infovaleur, and Eurovaleur) continued to direct transfers of the proceeds of the Madoff Feeder Fund Scheme to Hassans, E. S. Kohn, R. Hartstein, M. Hartstein, R.S. Kohn, de Sury, and Palladium.

373. Days after Madoff confessed, S. Kohn completed a transfer of almost \$15 million to Hassans, counsel to key members of the Madoff-Kohn Enterprise. S. Kohn appears to have initiated this transfer immediately prior to Madoff’s confession. Inter alia, Plaintiffs are informed and believe that S. Kohn directed millions of dollars in other such transfers before and after Madoff’s confession through Infovaleur in New York to R. Kohn (care of Eurovaleur), R. Hartstein, M. Hartstein, and Palladium. On information and belief, this dissipation is ongoing. In fact, Plaintiffs are informed and believe that on February 2, 2009, S. Kohn also sent defendant

E. Kohn nearly \$300,000 on February 2, 2009 through Tecno Gibraltar. On information and belief, Kohn continues to operate the Madoff Feeder Fund Scheme and conceal its proceeds.

374. Tellingly, at his plea hearing, Madoff admitted that he never purchased any of the securities which appeared on the BMIS' statements. Similarly, according to the bankruptcy trustee there is no evidence that Madoff ever purchased or sold any of the options described in customer statements. The Options Clearing Corporation, which clears all exchange-listed option contracts based on the stocks of S&P 100 companies, has no record of the Madoff's Investment Business having bought or sold any exchange-listed options on behalf of any Madoff's Investment Business customers.

375. After Madoff confessed, S. Kohn's first BMIS client, Gottlieb spoke to the Chicago Tribune and stated that he figured out that Madoff was a fraud years ago. "On close examination of the returns, the purported trading and all the rest of it, it didn't add up as being a legitimate investment." Mary Ellen Podmolik, *Wary Investor Caught Off-Guard in Bernard Madoff Case*, Chicago Tribune, February 6, 2009, quoting Gottlieb.

376. On information and belief, S. Kohn has not returned to New York (or the United States) since Madoff confessed. Rather, she has conducted and continues to conduct the affairs of the Madoff-Kohn Enterprise from Europe and elsewhere through her family and her New York Sham Businesses.

14. RICO Defendants' Pattern of Racketeering Activity

377. The RICO Defendants' racketeering activity in furtherance of the Illegal Scheme forms a "pattern" in that more than two predicate acts were committed within ten years of each other as per 18 U.S.C. § 1961(5), as alleged above. Each of the RICO Defendants'

actions were undertaken to further the Illegal Scheme and enrich each RICO Defendant and the Madoff-Kohn Enterprise, expand the scope of the Madoff-Kohn Enterprise, and perpetuate the Madoff-Kohn Enterprise and Illegal Scheme. RICO Defendants' acts in furtherance of the Illegal Scheme are related and have similar purposes, results, participants, victims, or methods of commission, are systematic in nature, and are not isolated events. RICO Defendants' acts in furtherance of the Illegal Scheme are part of the Madoff-Kohn Enterprise's regular way of doing business.

VI. SUBSTANTIVE RICO ALLEGATIONS

378. Bank Austria's account received fictitious profits from BMIS in the amount of \$249,627.82. Bank Austria received three transfers of stolen investor property from BMIS over the life of its direct account. On July 10, 1996, BMIS transmitted via wire in foreign commerce \$1,743,641 to Bank Austria. On August 8, 1996, BMIS sent a check via the U.S. Mail in the amount of \$1,351 to Bank Austria. Finally, on September 20, 1996, BMIS sent a check via the U.S. Mail in the amount of \$826 to Bank Austria. These checks were processed and received by Bank Austria. This stolen investor property was under the custody and control of J.P. Morgan Chase, an FDIC-insured, New York-based financial institution. These transactions constitute financial institution fraud under 18 U.S.C. § 1344. The August 8, 1996, and September 20, 1996, transactions also constitute mail fraud under 18 U.S.C. § 1341. The July 10, 1996 wire constitutes a violation of 18 U.S.C. § 1343. This transmission also constitutes a monetary transactions in criminally derived property under 18 U.S.C. § 1957. Under § 1957, this transaction exceeds \$10,000.

379. Starting no later than 1998, Kohn, through Kohn's New York Sham Entity,

Infovaleur, received transfers of stolen investor property from Madoff and BMIS in furtherance of the Illegal Scheme. On the dates and amounts set forth below, Infovaleur affected these corrupt kickbacks from Madoff to Kohn and Infovaleur. These transfers were authorized and executed by Madoff. Kohn and Infovaleur invoiced BMIS via the U.S. Mail and the funds were transmitted via check. Reuss, on behalf of Kohn and Infovaleur, mailed the invoices to BMIS. On information and belief, Reuss sent these invoices through the U.S. Mail in furtherance of the Illegal Scheme and in violation of 18 U.S.C. § 1341. The funds transmitted to Kohn and Infovaleur are stolen investor property.

380. These transactions constitute the laundering of monetary instruments, monetary transactions in criminally derived property, mail fraud, and Financial Institution Fraud in violation of 18 U.S.C. §§ 1956, 1957, 1341, and 1344. These checks were processed and received by Kohn and Infovaleur, and this stolen Investor property was under the custody and control of Chase Bank, an FDIC-insured, New York-based financial institution, which was controlled and/or worked in concert with the other JPMorgan Chase Defendants.

381. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud. All transactions exceeded \$10,000, and were therefore violated of 18 U.S.C § 1957. The transfers set forth below reflect the dates and amounts of the invoices that Infovaleur sent to BMIS in New York. This list contains the invoices in the Madoff Trustee’s possession and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
July 15, 1998	\$221,000.00	BMIS	Infovaleur

<u>November 11, 1998</u>	<u>\$398,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>February 2, 1999</u>	<u>\$492,500.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>April 20, 1999</u>	<u>\$548,500.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>August 10, 1999</u>	<u>\$401,700.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>October 13, 1999</u>	<u>\$470,830.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>January 6, 2000</u>	<u>\$470,830.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>April 10, 2000</u>	<u>\$450,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>May 22, 2000</u>	<u>\$300,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>July 12, 2000</u>	<u>\$750,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>October 16, 2000</u>	<u>\$750,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>January 16, 2001</u>	<u>\$750,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>May 1, 2001</u>	<u>\$750,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>July 13, 2001</u>	<u>\$750,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>October 2, 2001</u>	<u>\$481,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>November 15, 2001</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>February 14, 2002</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>April 10, 2002</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>July 3, 2002</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>October 9, 2002</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>January 17, 2003</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>April 22, 2003</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>July 15, 2003</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>October 20, 2003</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>February 10, 2004</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>May 4, 2004</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>July 26, 2004</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>November 3, 2004</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>February 2, 2005</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>July 14, 2005</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>November 28, 2005</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>January 3, 2006</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>April 5, 2006</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>May 4, 2006</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>July 25, 2006</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>November 27, 2006</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>February 2, 2007</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>April 24, 2007</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>September 5, 2007</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>October 16, 2007</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>May 6, 2008</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>May 19, 2008</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>

<u>August 4, 2008</u>	<u>\$875,000.00</u>	<u>BMIS</u>	<u>Infovaleur</u>
<u>TOTAL</u>	<u>\$32,484,360.00</u>	<u>MADOFF</u>	<u>KOHN</u>

A. Payments from Sham Entity Defendants to Kohn, Kohn Family Defendants, and Related Defendants:

382. Starting in 2002, Kohn, through her New York Sham Entity and alter ego Infovaleur, transferred stolen investor property to herself, E. Kohn, M. Hartstein, R. Hartstein, Landau, R. Kohn, and Scheithauer. On the dates set forth below, in the amounts set forth below, Infovaleur effected these illegal payments to the above-named Defendants. Each of these payments was transmitted to Kohn, E. Kohn, M. Hartstein, R. Hartstein, Landau, R. Kohn, and Scheithauer via check. For example, on information and belief, Kohn used funds from Infovaleur to finance the sale of Kohn's New York residence to M. Hartstein and R. Hartstein.

383. Also on information and belief, Scheithauer is a personal friend of Kohn and received a \$15,000 payment from Infovaleur prior to his employment at Bank Medici. This dissipation of stolen investor property continued even after Madoff's confession. On February 2, 2009, Kohn, through her Gibraltarian Sham Entity, Tecno Gibraltar, transferred \$299,994.97 of stolen Investor property via wire in foreign commerce to her husband E. Kohn.

384. The Infovaleur transfers constitute laundering of monetary instruments, monetary transactions in criminally derived property, and financial institution fraud in violation of 18 U.S.C. §§ 1956, 1957, and 1344, respectively, in furtherance of the Illegal Scheme. These checks were processed and received by the above-named Defendants, and this stolen Investor property was under the custody and control of J.P. Morgan Chase, an FDIC-insured, New York-based financial institution and banker to Infovaleur and BMIS.

385. The Tecno Gibraltar transfer constitutes laundering of monetary instruments, monetary transactions in criminally derived property, and wire fraud in violation of 18 U.S.C. §§ 1956, 1957, and 1343, respectively, in furtherance of the Illegal Scheme.

386. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud. To the extent any of these payments are less than \$10,000, they are not monetary transactions in criminally derived property under 18 U.S.C. § 1957, but still constitute the other predicate acts alleged herein. This list reflects records of checks drawn on Infovaleur's New York bank account at J.P. Morgan Chase and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>March 27, 2002</u>	<u>\$3,026.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>March 27, 2002</u>	<u>\$3,026.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>March 27, 2002</u>	<u>\$3,026.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>June 17, 2002</u>	<u>\$3,026.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>June 25, 2002</u>	<u>\$3,026.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>July 30, 2002</u>	<u>\$3,026.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>July 30, 2002</u>	<u>\$3,026.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>September 12, 2002</u>	<u>\$3,026.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>September 12, 2002</u>	<u>\$3,026.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>September 12, 2002</u>	<u>\$3,026.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>September 12, 2002</u>	<u>\$3,032.40</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>October 30, 2002</u>	<u>\$3,336.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>October 30, 2002</u>	<u>\$3,336.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>October 30, 2002</u>	<u>\$3,336.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>December 9, 2002</u>	<u>\$3,336.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>December 30, 2002</u>	<u>\$3,336.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>January 6, 2003</u>	<u>\$43,367.50</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>January 15, 2003</u>	<u>\$3,336.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>February 19, 2003</u>	<u>\$102,500.00</u>	<u>Infovaleur</u>	<u>M. Hartstein</u>
<u>March 11, 2003</u>	<u>\$3,336.20</u>	<u>Infovaleur</u>	<u>E. Kohn</u>
<u>August 26, 2004</u>	<u>\$1,947.87</u>	<u>Infovaleur</u>	<u>M. Hartstein</u>
<u>August 26, 2004</u>	<u>\$2,703.93</u>	<u>Infovaleur</u>	<u>R. Kohn</u>
<u>December 21, 2004</u>	<u>\$4,000.00</u>	<u>Infovaleur</u>	<u>M. Hartstein</u>

<u>September 30, 2005</u>	<u>\$2,925.00</u>	<u>Infovaleur</u>	<u>M. Hartstein</u>
<u>January 10, 2006</u>	<u>\$4,269.00</u>	<u>Infovaleur</u>	<u>M. Hartstein</u>
<u>December 20, 2006</u>	<u>\$400,000.00</u>	<u>Infovaleur</u>	<u>Kohn</u>
<u>December 26, 2006</u>	<u>\$40,000.00</u>	<u>Infovaleur</u>	<u>Kohn</u>
<u>March 28, 2007</u>	<u>\$7,000.00</u>	<u>Infovaleur</u>	<u>M. Hartstein</u>
<u>September 17, 2007</u>	<u>\$5,000.00</u>	<u>Infovaleur</u>	<u>Landau</u>
<u>August 25, 2008</u>	<u>\$15,000.00</u>	<u>Infovaleur</u>	<u>Scheithauer</u>
<u>October 31, 2008</u>	<u>\$105,000.00</u>	<u>Infovaleur</u>	<u>M. Hartstein</u>
<u>January 6, 2006</u>	<u>\$70,587.18</u>	<u>Infovaleur</u>	<u>M. Hartstein</u>
<u>January 6, 2009</u>	<u>\$57,334.03</u>	<u>Infovaleur</u>	<u>R. Kohn c/o Eurovaleur</u>
<u>January 6, 2009</u>	<u>\$26,438.33</u>	<u>Infovaleur</u>	<u>R. Hartstein</u>
<u>February 2, 2009</u>	<u>\$299,994.97</u>	<u>Tecno Gibraltar</u>	<u>E. Kohn</u>
<u>March 4, 2009</u>	<u>\$4,000.00</u>	<u>Infovaleur</u>	<u>M. Hartstein</u>
<u>TOTAL</u>	<u>\$1,248,715.61</u>	<u>KOHN</u>	<u>KOHN FAMILY ET AL.</u>

387. In addition, Kohn, through Infovaleur, transferred stolen investor property to APM Cayman, Palladium, and M-Tech. On the dates and in the amounts set forth below, Infovaleur effected these illegal payments to the above-named Defendants. On information and belief, these payments were made at the direction of Kohn to benefit M. Hartstein, Landau, and Kastner at the expense of the BMIS investors. Each of these payments was transmitted to APM Cayman, Palladium, and M-Tech via check. At all relevant times, M. Hartstein was a principal of Palladium, Landau was a principal of M-Tech, and Kastner was a principal of APM Cayman.

388. These payments of stolen Investor property constitute laundering of monetary instruments, monetary transactions in criminally derived property, and financial institution fraud in violation of 18 U.S.C. §§ 1956, 1957, and 1344. These checks were processed and received by the above named Defendants, and this stolen Investor property was under the custody and control of Chase Bank, an FDIC-insured, New York based financial institution, controlled and/or working in concert with the other JPMorgan Defendants. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed.

R. Civ. P. 9(b) with respect to circumstances constituting fraud. To the extent any of these payments are less than \$10,000, they are not monetary transactions in criminally derived property under 18 U.S.C. §1957, but still constitute the other predicate acts alleged herein. This list reflects records of checks drawn on Infovaleur's New York bank account at J.P. Morgan Chase and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>August 10, 2006</u>	<u>\$36,000.00</u>	<u>Infovaleur</u>	<u>Palladium</u>
<u>March 7, 2007</u>	<u>\$7,802.66</u>	<u>Infovaleur</u>	<u>Palladium</u>
<u>March 21, 2007</u>	<u>\$105,047.15</u>	<u>Infovaleur</u>	<u>APM Cayman</u>
<u>March 21, 2007</u>	<u>\$300,000.00</u>	<u>Infovaleur</u>	<u>APM Cayman</u>
<u>August 27, 2007</u>	<u>\$23,351.74</u>	<u>Infovaleur</u>	<u>Palladium</u>
<u>February 14, 2008</u>	<u>\$28,246.09</u>	<u>Infovaleur</u>	<u>Palladium</u>
<u>June 11, 2008</u>	<u>\$27,619.61</u>	<u>Infovaleur</u>	<u>Palladium</u>
<u>June 30, 2008</u>	<u>\$72,000.00</u>	<u>Infovaleur</u>	<u>M-Tech</u>
<u>July 18, 2008</u>	<u>\$25,000.00</u>	<u>Infovaleur</u>	<u>M-Tech</u>
<u>August 6, 2008</u>	<u>\$375,000.00</u>	<u>Infovaleur</u>	<u>APM Cayman</u>
<u>January 30, 2009</u>	<u>\$6,020.96</u>	<u>Infovaleur</u>	<u>Palladium</u>
<u>March 3, 2009</u>	<u>\$29,203.99</u>	<u>Infovaleur</u>	<u>Palladium</u>
<u>TOTAL</u>	<u>\$1,035,292.20</u>	<u>KOHN</u>	<u>KOHN CO-CONSPIRATORS</u>

B. Payments from Madoff to Erko, Kohn, and E. Kohn:

389. On December 12, 1997 and January 12, 1998, Flax sent a facsimile on MSIL letterhead to BMIS wherein Flax requested that BMIS transfer \$200,000 and \$323,500, respectively, to MSIL to fulfill Madoff's request to pay Kohn's New York Sham Entity and alter ego Erko. Kohn and Erko caused this transmission by invoicing Madoff at MSIL. This correspondence resulted in Erko receiving stolen investor property in furtherance of the Illegal Scheme. On information and belief, these secret kickbacks began as early as 1987. The transfers set forth below reflect the dates and amounts of the invoices that Erko sent to Madoff at MSIL from New York and elsewhere. The transfers appear to have been transmitted via check and

picked up in person at MSIL by either Kohn or E. Kohn. On information and belief, beginning in 1987, Kohn and E. Kohn traveled to London from New York and elsewhere to pick up these checks in violation of the Travel Act under 18 U.S.C. § 1952 and in furtherance of the Illegal Scheme.

390. The December 12, 1997 and January 12, 1998 correspondences were transmitted via wire in foreign commerce and in violation of 18 U.S.C. § 1343. The transfers from Madoff constitute the laundering of monetary instruments and monetary transactions in criminally derived property in violation of 18 U.S.C. §§ 1956 and 1957, respectively, in furtherance of the Illegal Scheme. Under 18 U.S.C. § 1957, all transactions exceed \$10,000. The information alleged herein is pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud.

391. This list contains the invoices in the Bankruptcy Trustee’s possession and, on information and belief, is not exhaustive, as transfers of stolen investor property from Madoff to Erko began as early as 1987, five years before the Trustee currently has records in relation to these illegal transfers.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>January 31, 1994</u>	<u>\$51,650.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>April 28, 1994</u>	<u>\$59,700.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>July 8, 1994</u>	<u>\$70,300.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>October 3, 1994</u>	<u>\$71,100.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>February 27, 1995</u>	<u>\$67,775.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>April 18, 1995</u>	<u>\$60,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>July 20, 1995</u>	<u>\$63,500.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>October 24, 1995</u>	<u>\$68,700.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>January 17, 1996</u>	<u>\$85,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>April 17, 1996</u>	<u>\$106,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>July 11, 1996</u>	<u>\$138,700.00</u>	<u>MSIL</u>	<u>Erko</u>

<u>October 16, 1996</u>	<u>\$175,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>January 26, 1997</u>	<u>\$232,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>April 11, 1997</u>	<u>\$341,900.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>July 9, 1997</u>	<u>\$329,900.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>October 7, 1997</u>	<u>\$430,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>December 29, 1997</u>	<u>\$523,500.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>March 19, 1998</u>	<u>\$511,500.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>June 29, 1998</u>	<u>\$375,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>September 28, 1998</u>	<u>\$375,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>December 30, 1998</u>	<u>\$375,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>March 30, 1999</u>	<u>\$375,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>June 30, 1999</u>	<u>\$375,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>September 27, 1999</u>	<u>\$375,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>December 27, 1999</u>	<u>\$375,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>March 24, 2000</u>	<u>\$375,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>May 16, 2000</u>	<u>\$125,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>June 29, 2000</u>	<u>\$500,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>September 26, 2000</u>	<u>\$500,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>December 28, 2000</u>	<u>\$500,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>March 26, 2001</u>	<u>\$500,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>June 26, 2001</u>	<u>\$500,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>August 24, 2001</u>	<u>\$321,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>September 28, 2001</u>	<u>\$775,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>December 18, 2001</u>	<u>\$775,000.00</u>	<u>MSIL</u>	<u>Erko</u>
<u>TOTAL</u>	<u>\$11,058,054.00</u>	<u>MADOFF</u>	<u>KOHN</u>

C. Payments from Madoff to Tecno Italy and Kohn:

392. Starting in 2002, Kohn’s Italian Sham Entity Tecno Italy received transfers of stolen Investor property from Madoff in furtherance of the Illegal Scheme. These transfers were authorized and executed by Flax and Raven. Kohn and Tecno Italy invoiced Madoff at MSIL. The transfers were transmitted via wire in foreign commerce. At all relevant times, Medici S.r.l. and Tecno Italy were located at the same address and employed certain of the same individuals. Kohn also received correspondence for HAML and Bank Medici and/or Medici S.r.l. at the same address. Kohn treated Medici S.r.l. and Tecno Italy as indistinguishable

entities. Blau was responsible for overseeing the day-to-day activities of Tecno Italy and owned 5% of its shares. In addition to being a key employee of Tecno Italy, Raule was its contact with respect to the transfers from Madoff at MSIL (as executed by Flax and Raven).

393. Raule was also an employee of Medici S.r.l. Raule served as the secretary to Kohn and Mugnai. The funds transmitted to Tecno Italy and Kohn were provided by Madoff, and each payment is stolen Investor property. The May 22, 2002 invoice from Tecno Italy to Madoff at MSIL contains handwritten notes regarding Madoff’s payment approval. The June 28, 2002 invoice from Tecno Italy also notes Madoff’s approval and contains the handwritten notation “Erwin Kohn” and his Austrian phone number 0043xxxxxxxxx. The September 26, 2002 invoice contains the handwritten notation “3rd October 2002. Discussed with Bernie who approved payment today.”

394. The invoices were sent by wire in foreign commerce and in violation of 18 U.S.C. § 1343. These payments constitute the laundering of monetary instruments, monetary transactions in criminally derived property, and wire fraud in violation of 18 U.S.C. §§ 1956, 1957, and 1343, respectively, in furtherance of the Illegal Scheme. Under 18 U.S.C. § 1957, all transactions exceeded \$10,000. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud. The transfers set forth below reflect the dates and amounts of the invoices that Tecno Italy sent to MSIL. This list contains the invoices in the Bankruptcy Trustee’s possession and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>May 21, 2002</u>	<u>\$775,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>

<u>June 28, 2002</u>	<u>\$775,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>September 26, 2002</u>	<u>\$775,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>January 10, 2003</u>	<u>\$775,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>April 2, 2003</u>	<u>\$775,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>July 1, 2003</u>	<u>\$775,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>October 1, 2003</u>	<u>\$775,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>February 3, 2004</u>	<u>\$775,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>June 10, 2004</u>	<u>\$701,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>July 8, 2004</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>October 4, 2004</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>January 11, 2005</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>April 7, 2005</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>July 1, 2005</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>October 3, 2005</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>January 9, 2006</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>March 27, 2006</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>July 3, 2006</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>October 4, 2006</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>January 2, 2007</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Italy</u>
<u>TOTAL</u>	<u>\$14,601,000.00</u>	<u>MADOFF</u>	<u>KOHN</u>

D. Payments from Madoff to Kohn and Tecno Gibraltar:

395. Starting in 2007, Kohn’s Gibraltarian Sham Entity, Tecno Gibraltar, received transfers of stolen Investor property from Madoff in furtherance of the Illegal Scheme. These transfers were authorized by Madoff and executed by Flax and Raven. Kohn and Tecno Gibraltar invoiced Madoff at MSIL. The funds were transmitted via wire in foreign commerce. At all relevant times, Amselem was responsible for overseeing the day-today operations of Tecno Gibraltar. On at least June 4, 2007, Amselem corresponded with Flax at MSIL via e-mail, in relation to confirming the transfers below. The funds transmitted to Kohn and Tecno Gibraltar were provided by Madoff, and each payment is stolen investor property. The April 24, 2007,

May 31, 2007, and June 1, 2007, Tecno Gibraltar invoices to Madoff at MSIL were payable to Wachovia Bank NA in New York. On information and belief, Tecno Gibraltar sent each invoice to Madoff at MSIL via facsimile. The June 4, 2007 correspondence between Amselem and Flax constitutes wire fraud under 18 U.S.C. § 1343. The invoices were sent by wire in foreign commerce and constitute wire fraud under 18 U.S.C. § 1343. The transfers that followed constitute the laundering of monetary instruments, monetary transactions in criminally derived property, and wire fraud in violation of 18 U.S.C. §§ 1956, 1957, and 1343, respectively, in furtherance of the Illegal Scheme.

396. These transactions exceed \$10,000, the minimum threshold for liability under 18 U.S.C. § 1957. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud. The transfers set forth below reflect the dates and amounts of the invoices that Tecno Italy sent to Madoff at MSIL. This list contains the invoices in the Bankruptcy Trustee’s possession and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>April 24, 2007</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Gibraltar</u>
<u>July 5, 2007</u>	<u>\$700,000.00</u>	<u>MSIL</u>	<u>Tecno Gibraltar</u>
<u>TOTAL</u>	<u>\$1,400,000.00</u>	<u>MADOFF</u>	<u>KOHN</u>

E. Payments from BMIS to Kohn and Tecno Gibraltar:

397. Starting in 2007, Kohn’s Gibraltarian Sham Entity Tecno Gibraltar received transfers of stolen Investor property directly from BMIS in furtherance of the Illegal Scheme. These transfers were authorized and executed by Madoff and BMIS. On the dates set forth below, in the amounts set forth below, Kohn, Amselem, and Tecno Gibraltar caused payments of

stolen Investor property to be made by BMIS to Kohn and Tecno Gibraltar by invoicing BMIS. The funds were transmitted via wire in foreign commerce.

398. Each of Tecno Gibraltar’s invoices to Madoff at BMIS was payable to account number xxxx xxx xxx xxx (CHIPS xxxxxx) at NatWest Offshore Limited Gibraltar for ultimate credit to Tecno Gibraltar account number xxxx-xxxxxxxx. On information and belief, Tecno Gibraltar sent each invoice to BMIS in New York via mail or facsimile. Each invoice is marked by hand “TECNOKOHN.” The January 14, 2008 invoice is also marked “BLM Special.”

399. The invoices were sent either by wire or the U.S. Mail in violation of either 18 U.S.C. §§ 1341 or 1343. The monetary transfers that followed are laundering of monetary instruments, transactions in criminally derived property, wire fraud, and financial institution fraud in violation of 18 U.S.C. §§ 1956, 1957, 1343, and 1344 respectively. Under 18 U.S.C. § 1957, all transactions exceeded \$10,000. These wires were processed and received by Tecno Gibraltar, and this stolen investor property was under the custody and control of J.P. Morgan Chase, an FDIC-insured, New York-based financial institution. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud.

400. The transfers set forth below reflect the dates and amounts of the invoices that Tecno Italy sent to BMIS in New York. This list contains the invoices in the Trustee’s possession and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>January 10, 2008</u>	<u>\$750,000.00</u>	<u>BMIS</u>	<u>Tecno Gibraltar</u>
<u>February 6, 2008</u>	<u>\$750,000.00</u>	<u>BMIS</u>	<u>Tecno Gibraltar</u>
<u>June 2, 2008</u>	<u>\$750,000.00</u>	<u>BMIS</u>	<u>Tecno Gibraltar</u>

<u>August 8, 2008</u>	<u>\$750,000.00</u>	<u>BMIS</u>	<u>Tecno Gibraltar</u>
<u>TOTAL</u>	<u>\$3,000,000.00</u>	<u>MADOFF</u>	<u>KOHN</u>

F. Payments from BA Worldwide to Eurovaleur:

401. Since 1996, Radel-Leszczyński was employed by BA Worldwide and was responsible for its day-to-day activities, including the illegal transactions with Kohn’s New York Sham Entity Eurovaleur alleged below. Duregger served as a director for BA Worldwide. As part of the Madoff-Kohn Enterprise, BA Worldwide was a wholly owned subsidiary of Bank Austria. Bank Austria was responsible for overseeing the purported investment management activities of BA Worldwide. Bank Austria’s director Kretschmer directly supervised Radel-Leszczyński. Kretschmer was also an employee of BA Worldwide. At all relevant times, Eurovaleur had no legitimate business purpose and existed only to further the Illegal Scheme. Starting in at least 1993, and lasting until at least 2005, Eurovaleur received payments from BA Worldwide. These payments were made at the direction of BA Worldwide, Bank Austria, and Radel-Leszczyński and resulted from BA Worldwide’s agreement to pay Eurovaleur 20% of the income received from its various roles as investment manager and investment adviser to Primeo Fund, Alpha Prime Fund, and Thema International Fund. These payments to Eurovaleur were purportedly for sub-advisory services. On information and belief, Eurovaleur received these payments in exchange for Kohn’s introduction of fellow Madoff-Kohn Enterprise members to Madoff and BMIS. These payments constitute the laundering of monetary instruments and monetary transactions in criminally derived property in violation of 18 U.S.C. §§ 1956 and 1957, respectively, in furtherance of the Illegal Scheme.

402. The following chart sets forth the dates and dollar amounts for these

transactions. To the extent any of these payments are less than \$10,000, they are not Monetary Transactions in Criminally Derived Property under 18 U.S.C. §1957, but still constitute the Laundering of Monetary Instruments. This list reflects records of the wires drawn on BA Worldwide's bank account and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>January 1, 1996</u>	<u>\$1,796.68</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>February 1, 1996</u>	<u>\$1,796.68</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>March 1, 1996</u>	<u>\$1,796.68</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>April 1, 1996</u>	<u>\$1,796.68</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>May 1, 1996</u>	<u>\$1,796.68</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>June 1, 1996</u>	<u>\$1,796.68</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>July 1, 1996</u>	<u>\$1,796.68</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>August 1, 1996</u>	<u>\$1,796.68</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>September 1, 1996</u>	<u>\$1,796.68</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>October 1, 1996</u>	<u>\$1,796.68</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>November 1, 1996</u>	<u>\$1,796.68</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>December 1, 1996</u>	<u>\$1,796.68</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>January 1, 1997</u>	<u>\$9,022.20</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>February 1, 1997</u>	<u>\$9,022.20</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>March 1, 1997</u>	<u>\$9,022.20</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>April 1, 1997</u>	<u>\$9,022.20</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>May 1, 1997</u>	<u>\$9,022.20</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>June 1, 1997</u>	<u>\$9,022.20</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>July 1, 1997</u>	<u>\$9,022.20</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>August 1, 1997</u>	<u>\$9,022.20</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>September 1, 1997</u>	<u>\$9,022.20</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>October 1, 1997</u>	<u>\$9,022.20</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>November 1, 1997</u>	<u>\$9,022.20</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>December 1, 1997</u>	<u>\$9,022.20</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>January 1, 1998</u>	<u>\$26,285.30</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>February 1, 1998</u>	<u>\$26,285.30</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>March 1, 1998</u>	<u>\$26,285.30</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>April 1, 1998</u>	<u>\$26,285.30</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>

<u>May 1, 1998</u>	<u>\$26,285.30</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>June 1, 1998</u>	<u>\$26,285.30</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>July 1, 1998</u>	<u>\$26,285.30</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>August 1, 1998</u>	<u>\$26,285.30</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>September 1, 1998</u>	<u>\$26,285.30</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>October 1, 1998</u>	<u>\$26,285.30</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>November 1, 1998</u>	<u>\$26,285.30</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>December 1, 1998</u>	<u>\$26,285.30</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>January 1, 1999</u>	<u>\$45,454.60</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>February 1, 1999</u>	<u>\$45,454.60</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>March 1, 1999</u>	<u>\$45,454.60</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>April 1, 1999</u>	<u>\$45,454.60</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>May 1, 1999</u>	<u>\$45,454.60</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>June 1, 1999</u>	<u>\$45,454.60</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>July 1, 1999</u>	<u>\$45,454.60</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>August 1, 1999</u>	<u>\$45,454.60</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>September 1, 1999</u>	<u>\$45,454.60</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>October 1, 1999</u>	<u>\$45,454.60</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>November 1, 1999</u>	<u>\$45,454.60</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>December 1, 1999</u>	<u>\$45,454.60</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>January 1, 2000</u>	<u>\$60,196.79</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>February 1, 2000</u>	<u>\$60,196.79</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>March 1, 2000</u>	<u>\$60,196.79</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>April 1, 2000</u>	<u>\$60,196.79</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>May 1, 2000</u>	<u>\$60,196.79</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>June 1, 2000</u>	<u>\$60,196.79</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>July 1, 2000</u>	<u>\$60,196.79</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>August 1, 2000</u>	<u>\$60,196.79</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>September 1, 2000</u>	<u>\$60,196.79</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>October 1, 2000</u>	<u>\$60,196.79</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>November 1, 2000</u>	<u>\$60,196.79</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>December 1, 2000</u>	<u>\$60,196.79</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>January 1, 2001</u>	<u>\$93,636.59</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>February 1, 2001</u>	<u>\$93,636.59</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>March 1, 2001</u>	<u>\$93,636.59</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>April 1, 2001</u>	<u>\$93,636.59</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>

<u>May 1, 2001</u>	<u>\$93,636.59</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>June 1, 2001</u>	<u>\$93,636.59</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>July 1, 2001</u>	<u>\$93,636.59</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>August 1, 2001</u>	<u>\$93,636.59</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>September 1, 2001</u>	<u>\$93,636.59</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>October 1, 2001</u>	<u>\$93,636.59</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>November 1, 2001</u>	<u>\$93,636.59</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>December 1, 2001</u>	<u>\$93,636.59</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>January 1, 2002</u>	<u>\$96,786.03</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>February 1, 2002</u>	<u>\$96,786.03</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>March 1, 2002</u>	<u>\$96,786.03</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>April 1, 2002</u>	<u>\$96,786.03</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>May 1, 2002</u>	<u>\$96,786.03</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>June 1, 2002</u>	<u>\$96,786.03</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>July 1, 2002</u>	<u>\$96,786.03</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>August 1, 2002</u>	<u>\$96,786.03</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>September 1, 2002</u>	<u>\$96,786.03</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>October 1, 2002</u>	<u>\$96,786.03</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>November 1, 2002</u>	<u>\$96,786.03</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>December 1, 2002</u>	<u>\$96,786.03</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>January 1, 2003</u>	<u>\$118,475.88</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>February 1, 2003</u>	<u>\$118,475.88</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>March 1, 2003</u>	<u>\$118,475.88</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>April 1, 2003</u>	<u>\$118,475.88</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>May 1, 2003</u>	<u>\$118,475.88</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>June 1, 2003</u>	<u>\$118,475.88</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>July 1, 2003</u>	<u>\$118,475.88</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>August 1, 2003</u>	<u>\$118,475.88</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>September 1, 2003</u>	<u>\$118,475.88</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>October 1, 2003</u>	<u>\$118,475.88</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>November 1, 2003</u>	<u>\$118,475.88</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>December 1, 2003</u>	<u>\$118,475.88</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>January 1, 2004</u>	<u>\$134,922.65</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>February 1, 2004</u>	<u>\$134,922.65</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>March 1, 2004</u>	<u>\$134,922.65</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>April 1, 2004</u>	<u>\$134,922.65</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>

<u>May 1, 2004</u>	<u>\$134,922.65</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>June 1, 2004</u>	<u>\$134,922.65</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>July 1, 2004</u>	<u>\$134,922.65</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>August 1, 2004</u>	<u>\$134,922.65</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>September 1, 2004</u>	<u>\$134,922.65</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>October 1, 2004</u>	<u>\$134,922.65</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>November 1, 2004</u>	<u>\$134,922.65</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>December 1, 2004</u>	<u>\$134,922.65</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>January 1, 2005</u>	<u>\$136,724.00</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>February 1, 2005</u>	<u>\$136,724.00</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>March 1, 2005</u>	<u>\$136,724.00</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>April 1, 2005</u>	<u>\$136,724.00</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>May 1, 2005</u>	<u>\$136,724.00</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>June 1, 2005</u>	<u>\$136,724.00</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>July 1, 2005</u>	<u>\$136,724.00</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>August 1, 2005</u>	<u>\$136,724.00</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>September 1, 2005</u>	<u>\$136,724.00</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>October 1, 2005</u>	<u>\$136,724.00</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>November 1, 2005</u>	<u>\$136,724.00</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>December 1, 2005</u>	<u>\$136,724.00</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>January 1, 2006</u>	<u>\$145,276.98</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>February 1, 2006</u>	<u>\$145,276.98</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>March 1, 2006</u>	<u>\$145,276.98</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>April 1, 2006</u>	<u>\$145,276.98</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>May 1, 2006</u>	<u>\$145,276.98</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>June 1, 2006</u>	<u>\$145,276.98</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>July 1, 2006</u>	<u>\$145,276.98</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>August 1, 2006</u>	<u>\$145,276.98</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>September 1, 2006</u>	<u>\$145,276.98</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>October 1, 2006</u>	<u>\$145,276.98</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>November 1, 2006</u>	<u>\$145,276.98</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>December 1, 2006</u>	<u>\$145,276.98</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>January 1, 2007</u>	<u>\$151,859.14</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>February 1, 2007</u>	<u>\$151,859.14</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>March 1, 2007</u>	<u>\$151,859.14</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>
<u>April 1, 2007</u>	<u>\$151,859.14</u>	<u>BA Worldwide</u>	<u>Eurovaleur</u>

TOTAL	\$11,030,368.96	BA WORLDWIDE	KOHN
--------------	------------------------	---------------------	-------------

G. Payments from HAML to Bank Medici and Medici Cayman:

403. Kohn and E. Kohn are the beneficial owners of HAML. On the dates set forth below, in the amounts set forth below, HAML affected these transfers to Bank Medici and Medici Cayman. Starting in 2006, Kohn, through HAML (which is located in the same office as Medici Cayman, Bank Austria Cayman, and APM Cayman) began transmitting money to Bank Medici and Medici Cayman. HAML effected these payments to Bank Medici and Medici Cayman via wire in foreign commerce. Over the course of almost three years (February 2006 through November 2008), HAML knowingly transferred these criminally derived proceeds of the Illegal Scheme to Bank Medici and Medici Cayman, which furthered the Illegal Scheme and unjustly enriched the xxx Enterprise.

404. These payments constitute the laundering of monetary instruments, monetary transactions in criminally derived property, and wire fraud in violation of 18 U.S.C. §§ 1956, 1957, and 1343, respectively. To the extent any of these payments are less than \$10,000, they are not monetary transactions in criminally derived property under 18 U.S.C. §1957, but still constitute the other predicate acts alleged herein. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud. This list reflects records of the wires drawn on HAML's bank account and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>February 7, 2006</u>	<u>€387,244.58</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>February 7, 2006</u>	<u>\$84,159.90</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>February 10, 2006</u>	<u>\$2,000.00</u>	<u>HAML</u>	<u>Bank Medici</u>

<u>February 10, 2006</u>	<u>€6,526.60</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>April 28, 2006</u>	<u>€360,354.22</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>April 28, 2006</u>	<u>\$87,064.53</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>July 20, 2006</u>	<u>€407,432.71</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>July 20, 2006</u>	<u>\$101,824.00</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>October 23, 2006</u>	<u>€405,931.17</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>October 23, 2006</u>	<u>\$109,316.54</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>January 25, 2007</u>	<u>€406,388.30</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>January 25, 2007</u>	<u>\$116,406.76</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>February 20, 2007</u>	<u>€911.39</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>March 21, 2007</u>	<u>€6,911.33</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>March 21, 2007</u>	<u>\$750.00</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>April 17, 2007</u>	<u>€122,629.21</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>April 17, 2007</u>	<u>€121,819.61</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>April 17, 2007</u>	<u>\$29,385.65</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>April 17, 2007</u>	<u>\$28,991.95</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>April 25, 2007</u>	<u>€1,848.75</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>April 25, 2007</u>	<u>€201,641.29</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>April 25, 2007</u>	<u>\$65,630.31</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>May 24, 2007</u>	<u>€141,443.85</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>May 24, 2007</u>	<u>\$31,042.70</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>June 19, 2007</u>	<u>€142,870.21</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>June 19, 2007</u>	<u>\$100,000.00</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>June 19, 2007</u>	<u>\$55,728.67</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>July 30, 2007</u>	<u>€219,708.42</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>July 30, 2007</u>	<u>\$128,042.01</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>August 24, 2007</u>	<u>€128,113.15</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>August 24, 2007</u>	<u>\$80,591.73</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>September 18, 2007</u>	<u>€129,795.39</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>September 18, 2007</u>	<u>\$83,039.38</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>September 26, 2007</u>	<u>\$120,000.00</u>	<u>HAML</u>	<u>Medici Cayman</u>
<u>October 17, 2007</u>	<u>€187,590.98</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>October 17, 2007</u>	<u>\$135,535.59</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>October 31, 2007</u>	<u>\$22,456.70</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>October 31, 2007</u>	<u>€2,307.38</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>November 16, 2007</u>	<u>€139,274.86</u>	<u>HAML</u>	<u>Bank Medici</u>

<u>November 16, 2007</u>	<u>\$143,052.69</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>December 17, 2007</u>	<u>€134,935.23</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>December 17, 2007</u>	<u>\$152,887.48</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>January 22, 2008</u>	<u>\$449,164.40</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>February 20, 2008</u>	<u>€132,184.65</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>February 20, 2008</u>	<u>\$322,036.43</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>March 18, 2008</u>	<u>€132,466.37</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>March 18, 2008</u>	<u>\$255,458.46</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>April 17, 2008</u>	<u>\$377,681.59</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>May 19, 2008</u>	<u>€146,479.06</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>May 19, 2008</u>	<u>\$285,539.98</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>June 18, 2008</u>	<u>€143,589.33</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>June 18, 2008</u>	<u>\$290,700.10</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>July 20, 2008</u>	<u>€407,432.71</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>July 23, 2008</u>	<u>\$670,822.62</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>July 23, 2008</u>	<u>€243,331.82</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>August 21, 2008</u>	<u>\$356,367.89</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>August 21, 2008</u>	<u>€145,624.77</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>September 19, 2008</u>	<u>\$363,667.44</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>September 19, 2008</u>	<u>€145,943.22</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>October 22, 2008</u>	<u>\$1,019,256.17</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>October 22, 2008</u>	<u>€275,071.06</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>November 20, 2008</u>	<u>€142,958.32</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>November 20, 2008</u>	<u>\$361,434.62</u>	<u>HAML</u>	<u>Bank Medici</u>
<u>November 20, 2008</u>	<u>\$62,729.22</u>	<u>HAML</u>	<u>Medici Cayman</u>
<u>TOTAL</u>	<u>\$13,633,488.56</u>	<u>HAML</u>	<u>BANK MEDICI</u>

H. Payments from HAML to APM Cayman:

405. In the late 1990s, on two separate occasions, Kohn and Kastner traveled to BMIS' headquarters in New York. The purpose of these travels was to confer with Madoff in relation to the distribution of the Madoff-Kohn Enterprise Feeder Funds. These travels constitute violations of the Travel Act under 18 U.S.C. § 1952.

406. Starting in 2006, Kohn, through HAML, began transmitting money to APM

Cayman. HAML effected these payments to APM Cayman via wire in foreign commerce. Over the course of almost three years (February 2006 through October 2008), HAML knowingly transferred these criminally derived proceeds of the Illegal Scheme to APM Cayman, which furthered the Illegal Scheme and unjustly enriched the Madoff-Kohn Enterprise. On the dates set forth below, in the amounts set forth below, HAML affected these transfers to APM Cayman. On information and belief, these were retrocession fees made in consideration of MediciFinanz's role as the largest distributor of Herald Fund, Primeo Fund, Herald (Lux), and Thema International in Germany.

407. The HAML wires constitute the laundering of monetary instruments, monetary transactions in criminally derived property, and wire fraud in violation of 18 U.S.C. §§ 1956, 1957, and 1343, respectively, in furtherance of the Illegal Scheme.

408. To the extent any of these payments are less than \$10,000, they are not monetary transactions in criminally derived property under 18 U.S.C. §1957, but still constitute the other predicate acts alleged herein. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud. This list reflects records of the wires drawn on HAML's bank account and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>February 10, 2006</u>	<u>€232,669.64</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>February 10, 2006</u>	<u>€23,797.30</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>February 10, 2006</u>	<u>\$79,741.05</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>February 10, 2006</u>	<u>\$10,330.96</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>April 28, 2006</u>	<u>€324,286.80</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>April 28, 2006</u>	<u>€55,327.46</u>	<u>HAML</u>	<u>APM Cayman</u>

<u>April 28, 2006</u>	<u>\$94,031.28</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>April 28, 2006</u>	<u>\$7,323.48</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>July 20, 2006</u>	<u>\$102,556.13</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>July 20, 2006</u>	<u>\$7,330.23</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>July 20, 2006</u>	<u>€489,735.73</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>July 20, 2006</u>	<u>€45,861.89</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>July 20, 2006</u>	<u>€32,951.00</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>October 23, 2006</u>	<u>€665,611.22</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>October 25, 2006</u>	<u>\$96,745.34</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>April 25, 2007</u>	<u>€616,548.19</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>April 25, 2007</u>	<u>\$99,813.29</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>July 24, 2007</u>	<u>€692,227.05</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>July 24, 2007</u>	<u>\$129,845.63</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>August 14, 2007</u>	<u>\$28,009.02</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>October 17, 2007</u>	<u>€577,992.83</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>October 17, 2007</u>	<u>\$520,003.55</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>October 17, 2007</u>	<u>\$53,895.12</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>January 22, 2008</u>	<u>€621,763.02</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>January 22, 2008</u>	<u>\$645,841.71</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>January 22, 2008</u>	<u>\$81,386.58</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>March 18, 2008</u>	<u>\$28,000.00</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>April 17, 2008</u>	<u>€582,515.08</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>April 17, 2008</u>	<u>€569,887.13</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>April 17, 2008</u>	<u>\$72,117.34</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>July 23, 2008</u>	<u>\$352,523.21</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>July 23, 2008</u>	<u>\$82,110.19</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>July 23, 2008</u>	<u>€678,554.98</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>October 22, 2008</u>	<u>\$88,837.47</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>October 22, 2008</u>	<u>\$731,982.70</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>October 22, 2008</u>	<u>€767,283.07</u>	<u>HAML</u>	<u>APM Cayman</u>
<u>TOTAL</u>	<u>\$12,940,394.34</u>	<u>HAML</u>	<u>APM Cayman</u>

I. Payments from HAML to Bank Austria Cayman:

409. Starting in 2006, Kohn, through HAML (which is located in the same office as Bank Austria Cayman, Medici Cayman, and APM Cayman), began transmitting moneys to

Bank Austria Cayman. HAML effected these payments to Bank Austria Cayman via wire in foreign commerce. In fifteen months (November 2006 through January 2008), HAML knowingly transferred these criminally derived proceeds of the Illegal Scheme to Bank Austria Cayman, which furthered the Illegal Scheme and unjustly enriched the Madoff-Kohn Enterprise. On the dates set forth below, in the amounts set forth below, HAML affected these transfers to Bank Austria and Bank Austria Cayman.

410. These payments constitute the laundering of monetary instruments, monetary transactions in criminally derived property, and wire fraud in violation of 18 U.S.C. §§ 1956, 1957, and 1343, respectively.

411. The January 12, 2006, August 14, 2007, and January 8, 2008 transfers are less than \$10,000. Hence, they are not monetary transactions in criminally derived property under §1957, but still constitute the other predicate acts alleged herein. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud. This list reflects records of the wires drawn on HAML's bank account and on information and belief is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>November 22, 2006</u>	<u>\$25,000.00</u>	<u>HAML</u>	<u>Bank Austria Cayman</u>
<u>January 12, 2007</u>	<u>\$3,293.00</u>	<u>HAML</u>	<u>Bank Austria Cayman</u>
<u>August 14, 2007</u>	<u>\$3,086.18</u>	<u>HAML</u>	<u>Bank Austria Cayman</u>
<u>January 8, 2008</u>	<u>\$3,926.37</u>	<u>HAML</u>	<u>Bank Austria Cayman</u>
<u>January 23, 2008</u>	<u>\$24,000.00</u>	<u>HAML</u>	<u>Bank Austria Cayman</u>
<u>TOTAL</u>	<u>\$59,305.55</u>	<u>HAML</u>	<u>BANK AUSTRIA CAYMAN</u>

J. Payments between HAML, Bank Medici, and Pioneer:

412. On April 25, 2007, Pioneer replaced BA Worldwide as the investment

manager and adviser to Primeo Fund. UniCredit, Profumo, and Guty, through Pioneer, conspired to mask Primeo Fund's investment with BMIS by undertaking to invest the fund indirectly through Herald Fund, Alpha Prime Fund, and Kohn, through Bank Medici, conspired to market, distribute, and sell Primeo Fund in furtherance of this misdirection. For agreeing to market and distribute Primeo Fund, Pioneer paid Bank Medici \$1,394,350 on or about 2007. This payment constitutes a monetary transaction in criminally derived property under 18 U.S.C. § 1957.

413. Starting no later than July 2008, Kohn, through HAML, began transmitting retrocession fees to UniCredit's Pioneer for marketing, distributing, and selling Herald Fund (into which UniCredit conspired with Kohn and Eurovaleur, among others, to disguise Primeo Fund's investment in BMIS) in furtherance of the Illegal Scheme and enriching the Madoff-Kohn Enterprise.

414. These payments constitute the laundering of monetary instruments, monetary transactions in criminally derived property, and wire fraud in violation of 18 U.S.C. §§ 1956, 1957, and 1343, respectively. HAML effected these payments to Pioneer via wire in foreign commerce. On the dates set forth below, in the amounts set forth below, HAML affected these transfers to Pioneer.

415. Under 18 U.S.C. § 1957, all payments exceeded \$10,000. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud. This list reflects records of the wires drawn on HAML's bank account and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>July 21, 2008</u>	<u>\$2,376,839.07</u>	<u>HAML</u>	<u>Pioneer</u>
<u>August 7, 2008</u>	<u>\$1,136,888.72</u>	<u>HAML</u>	<u>Pioneer</u>
<u>September 17, 2008</u>	<u>\$1,228,499.43</u>	<u>HAML</u>	<u>Pioneer</u>
<u>October 20, 2008</u>	<u>\$3,493,016.43</u>	<u>HAML</u>	<u>Pioneer</u>
<u>November 12, 2008</u>	<u>\$1,204,544.30</u>	<u>HAML</u>	<u>Pioneer</u>
<u>TOTAL</u>	<u>\$9,439,787.95</u>	<u>HAML</u>	<u>PIONEER</u>

416. On Tuesday, December 11, 2008, Madoff was arrested and confessed to running a Ponzi scheme. His arrest was publicized around the world. The following Monday, Kohn, through HAML, finalized the transmissions of two payments to accounts in Gibraltar held by Hassans. These payments constitute the laundering of monetary instruments, monetary transactions in criminally derived property, and wire fraud in violation of 18 U.S.C. §§ 1956, 1957, and 1343, respectively. HAML effected these payments to Hassans via wire in foreign commerce.

417. Under 18 U.S.C. § 1957, these payments exceeded \$10,000. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud. This list reflects records of the wires drawn on HAML's bank account and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>December 15, 2008</u>	<u>\$6,500,000</u>	<u>HAML</u>	<u>Hassans</u>
<u>December 15, 2008</u>	<u>€6,500,000</u>	<u>HAML</u>	<u>Hassans</u>
<u>TOTAL</u>	<u>\$15,201,550</u>	<u>HAML</u>	<u>HASSANS</u>

K. Payments from HAML to Sofipo:

418. On April 2, 2007, Cosulich, director of HAML and the Managing Director of Sofipo, sent a facsimile to BMIS from a Sofipo facsimile machine using HAML letterhead.

Cosulich notified BMIS that: (i) Herald Fund planned to infuse \$35 million of Primeo Fund's money into Herald Fund's BMIS account; and (ii) at UniCredit's direction, Primeo Fund would stop investing directly with BMIS and begin covertly investing indirectly through Herald Fund.

419. Starting in 2007, Kohn, through HAML, began transmitting fees to Sofipo in furtherance of the Illegal Scheme. HAML effected these payments to Sofipo via wire in foreign commerce. Between November 2007 through October 2008, HAML knowingly transferred these criminally derived proceeds of the Illegal Scheme to Sofipo, which furthered the Illegal Scheme and unjustly enriched the Madoff-Kohn Enterprise. On the dates set forth below, in the amounts set forth below, HAML affected these transfers to Sofipo.

420. These payments constitute the laundering of monetary instruments, monetary transactions in criminally derived property, and wire fraud in violation of 18 U.S.C. §§ 1956 and 1343, respectively, in furtherance of the Illegal Scheme.

421. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud. This list reflects records of the wires drawn on HAML's bank account and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>November 16, 2007</u>	<u>€424.01</u>	<u>HAML</u>	<u>Sofipo</u>
<u>April 17, 2008</u>	<u>€1,025.87</u>	<u>HAML</u>	<u>Sofipo</u>
<u>July 23, 2008</u>	<u>\$690.21</u>	<u>HAML</u>	<u>Sofipo</u>
<u>July 23, 2008</u>	<u>€409.38</u>	<u>HAML</u>	<u>Sofipo</u>
<u>October 22, 2008</u>	<u>\$703.69</u>	<u>HAML</u>	<u>Sofipo</u>
<u>October 22, 2008</u>	<u>€352.37</u>	<u>HAML</u>	<u>Sofipo</u>
<u>TOTAL</u>	<u>\$4,760.31</u>	<u>HAML</u>	<u>SOFIPO</u>

L. Payments from HAML to Mugnai, de Sury, and Cosulich:

422. Mugnai, de Sury, and Cosulich oversaw the day-to-day operations of HAML and each distributed Herald Fund. Mugnai, de Sury, and Cosulich received retrocession fees from HAML for soliciting investors into the Ponzi scheme.

423. Starting in 2006, Kohn, via HAML, transmitted these fees to Mugnai, de Sury, and Cosulich in furtherance of the Illegal Scheme. HAML affected these transfers to the above named Defendants via wire in foreign commerce. The following chart sets forth that Mugnai, de Sury, and Cosulich engaged in monetary transactions of criminally derived property with HAML, along with the dates and dollar amounts for these transactions.

424. These transfers constitute the laundering of monetary instruments, monetary transactions in criminally derived property, and wire fraud in violation of 18 U.S.C. §§ 1956, 1957, and 1343, respectively, in furtherance of the Illegal Scheme. To the extent any of these payments are less than \$10,000, they are not Monetary Transactions in Criminally Derived Property under 18 U.S.C. §1957, but still constitute the other predicate acts alleged herein. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud. This list reflects records of the wires drawn on HAML's bank account and, on information and belief, is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>June 1, 2006</u>	<u>€2,273.28</u>	<u>HAML</u>	<u>Mugnai</u>
<u>August 1, 2006</u>	<u>€10,671.73</u>	<u>HAML</u>	<u>Mugnai</u>
<u>October 23, 2006</u>	<u>€35,137.62</u>	<u>HAML</u>	<u>Mugnai</u>
<u>January 25, 2007</u>	<u>€33,694.96</u>	<u>HAML</u>	<u>Mugnai</u>
<u>March 13, 2007</u>	<u>€10,000.00</u>	<u>HAML</u>	<u>de Sury</u>

<u>April 25, 2007</u>	<u>€32,673.25</u>	<u>HAML</u>	<u>Mugnai</u>
<u>July 24, 2007</u>	<u>€20,230.27</u>	<u>HAML</u>	<u>Mugnai</u>
<u>October 17, 2007</u>	<u>€23,634.79</u>	<u>HAML</u>	<u>Mugnai</u>
<u>January 22, 2008</u>	<u>€24,530.66</u>	<u>HAML</u>	<u>Mugnai</u>
<u>January 23, 2008</u>	<u>\$696.20.00</u>	<u>HAML</u>	<u>Mugnai</u>
<u>March 18, 2008</u>	<u>€19,000.00</u>	<u>HAML</u>	<u>de Sury</u>
<u>April 17, 2008</u>	<u>€22,463.43</u>	<u>HAML</u>	<u>Mugnai</u>
<u>April 30, 2008</u>	<u>€30,000.00</u>	<u>HAML</u>	<u>de Sury</u>
<u>May 15, 2008</u>	<u>€30,000.00</u>	<u>HAML</u>	<u>Cosulich</u>
<u>July 23, 2008</u>	<u>\$710.58</u>	<u>HAML</u>	<u>Mugnai</u>
<u>July 23, 2008</u>	<u>€17,444.71</u>	<u>HAML</u>	<u>Mugnai</u>
<u>August 21, 2008</u>	<u>€20,000.00</u>	<u>HAML</u>	<u>de Sury</u>
<u>October 22, 2008</u>	<u>\$790.96</u>	<u>HAML</u>	<u>Mugnai</u>
<u>October 22, 2008</u>	<u>€18,249.59</u>	<u>HAML</u>	<u>Mugnai</u>
<u>December 17, 2008</u>	<u>€15,000.00</u>	<u>HAML</u>	<u>de Sury</u>
<u>TOTAL</u>	<u>\$522,350.80</u>	<u>HAML</u>	<u>KOHN CO-CONSPIRATORS</u>

M. Kohn used HAML as a Slush Fund:

425. At all relevant times, Kohn furthered the Illegal Scheme and fortified the Madoff-Kohn Enterprise through payments to various individuals and entities with no legitimate connection to HAML, Bank Medici, Bank Austria or other members of the Madoff-Kohn Enterprise. Kohn disregarded the corporate formalities of her Sham Entities and treated them like a personal piggy bank.

426. For example, starting in 2008, Kohn, through HAML, began transmitting fees to Revi in furtherance of the Illegal Scheme. HAML effected these payments to Revi via wire in foreign commerce. On information and belief, these payments were used to capitalize Kohn's latest tranche of Sham Entities, in an effort to create an exit strategy for when BMIS collapsed. In 2008, HAML knowingly transferred these criminally derived proceeds of the Illegal Scheme to Revi, which furthered the Illegal Scheme and unjustly enriched the Madoff-

Kohn Enterprise. On the dates set forth below, in the amounts set forth below, HAML affected these transfers to Revi. Also, Kohn made a large one-time payment to Gerila. On information and belief, this payment was a personal loan from Kohn to her close personal friend, Kastner, a German financial executive who owned and managed APM Cayman and MediciFinanz. On information and belief, the purpose of this loan was to help Kastner pay for expenses associated with his divorce. The following chart sets forth that HAML knowingly engaged in monetary transactions of criminally derived property with Gerila, along with the dates and dollar amounts for these transactions. These transfers constitute the laundering of monetary instruments, monetary transactions in criminally derived property, and wire fraud in violation of 18 U.S.C. §§ 1956, 1957, and 1343, respectively, in furtherance of the Illegal Scheme.

427. These transactions exceed \$10,000, the minimum threshold for liability under 18 U.S.C. § 1957. The table below and the information alleged herein are pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud. This list reflects records of the wires drawn on HAML’s bank account and on information and belief is not exhaustive.

<u>Date</u>	<u>Amount</u>	<u>From</u>	<u>To</u>
<u>January 9, 2008</u>	<u>\$2,000,042.00</u>	<u>HAML</u>	<u>Revi</u>
<u>January 9, 2008</u>	<u>€2,000,028.51</u>	<u>HAML</u>	<u>Revi</u>
<u>March 26, 2008</u>	<u>€600,000.00</u>	<u>HAML</u>	<u>Gerila</u>
<u>March 27, 2008</u>	<u>€250,000.00</u>	<u>HAML</u>	<u>Revi</u>
<u>TOTAL</u>	<u>\$6,265,313.93</u>	<u>HAML</u>	<u>REVI/GERILA</u>

N. Kohn Continued the Illegal Scheme After December 11, 2008:

428. At all relevant times, including after Madoff’s confession, Kohn, UniCredit,

Bank Austria, Bank Medici, Zapotocky, Scheithauer, Lavi, and Radel-Leszczyński conspired to conceal the role of BMIS and Madoff in the Madoff-Kohn Enterprise Feeder Funds.

429. On December 23, 2008, Shpe met with Scheithauer and Lavi to discuss her investment with Herald (Lux) in light of Bank Medici's exposure to BMIS. On information and belief, Scheithauer and Lavi denied having knowledge of Bank Medici's exposure to BMIS. Later that day Kohn telephoned Shpe to deny having known that Herald (Lux) invested with BMIS. At all relevant times, Scheithauer served as a director of Herald (Lux). This correspondence was made with the intention to defraud and furthered the Illegal Scheme. Soon after this phone call, Lavi called Shpe to confess that Kohn personally instructed her and all Bank Medici employees not to disclose to clients that their assets were invested with BMIS. The December 23, 2008 telephone call from Kohn was transmitted via wire in foreign commerce and in violation of 18 U.S.C. § 1343. The information alleged herein is pled in accordance with the particularity requirements of Fed. R. Civ. P. 9(b) with respect to circumstances constituting fraud.

VII. ADDITIONAL FACTUAL ALLEGATIONS

A. The JPMorgan Chase Defendants

430. As noted *supra*, the JPMorgan Chase Defendants aided and abetted: (i) the Fiduciary Defendants' breach of their fiduciary duties owed to the Class, and (ii) Non-Defendant bad actors Madoff and BMIS' fraud, in some or all of the activities alleged herein. Plaintiffs are informed and believe that JPMorgan Chase and/or its subsidiaries and/or agents acted as Madoff and/or BMIS' primary banker. Moreover, the JPMorgan Chase defendants made substantial investments in the Herald (USA) Fund and, as a result of internal due diligence, encountered red

flags which allowed them to timely divest in their Herald Funds' investments before and at the detriment of plaintiffs and other members of the Class.

1. JPMorgan Chase's Herald (USA) Fund Investments and Divestment, and Investment Related Red Flags

431. Beginning in or about June of 2007, the JPMorgan Chase Defendants began investing in the Herald (USA) Fund, with a proposal of \$225 million for Herald (USA) investments. See JPMorgan Chase Bankruptcy Complaint at ¶ 106.

432. In early 2007, the JPMorgan Chase Defendants began due diligence related to JPMorgan Chase's investments with BMIS, eventually attempting to receive information regarding the risks of investment in the Herald (USA) Fund. See, e.g., JPMorgan Chase Bankruptcy Complaint at ¶¶ 95-102. In communications attempting to discern identifying information from Madoff regarding over-the-counter ("OTC") trades made on behalf of the Herald (USA) Fund, Madoff and/or BMIS refused to provide any identifying information regarding the OTC counterparties. ¶102.

433. According to one of the JPMorgan Chase departments, Equity Exotics, "investors, sub-Custodians, auditors, etc rely solely on Madoff produced statements and have *no real way of verifying positions at Madoff itself,*' and *'[f]raud — given the significant reliance on BLM for verification of assets held, and no real way to confirm those valuations, fraud presents a material risk.'*" *Id.* at ¶ 103 (emphasis added).

434. During this time frame, JPMorgan Chase representatives also visited, *inter alia*, Bank Medici. While the JPMorgan Chase representatives were apparently able to review the Herald Funds' customer, option and trading agreements, they left believing that the Feeder

Funds “may be hesitant to press for more details because they did ‘not want to upset the relationship with Madoff.’” *Id.* at ¶ 104.

435. Then, on June 15 2007, a JPMorgan Chase Risk Officer apparently sent an email which stated:

For whatever its worth, I am sitting at lunch with [another JPMorgan Chase employee] who just told me that *there is a well-known cloud over the head of Madoff and that his returns are speculated to be part of a [P]onzi scheme*-he said if we google the guy we can see articles for ourselves-Pls do that and let us know what you find.

Id. at p.1, ¶ 111 (emphasis added).

436. The JPMorgan Chase Risk Officer further warned that “you will recall that Refco was also regulated by the same crowd [SEC, NYSE, NASD] and there was noise about them for years before it was discovered to be rotten to the core. Hopefully this is not the case here by given [the JPMorgan Chase employee’s] view, I think we owe it to ourselves to investigate further.” *Id.* at ¶ 112.

437. Refco, the company referenced by the JPMorgan Chase Risk Officer, was, at one time, the largest U.S. futures trader on the Chicago Mercantile Exchange, servicing approximately 200,000 accounts allegedly valued at \$4 billion. As outlined *infra*, this was the second time a JPMorgan Chase employee referenced Refco in connection with Madoff and/or BMIS’ business practices.

438. Refco had its initial public offering (the “IPO”) on August 16, 2005, claiming that over the four years prior to its IPO it had earnings growth of approximately 33%. However, on October 10, 2005, it became evident that much of Refco’s alleged value was a

sham as the company announced in a press release that its Chief Executive Officer (the “CEO”) had hidden \$430 million in bad debts from its auditors and investors. To avoid write-offs the CEO apparently bought the bad debts from company and then paid back the bad debt with money borrowed from Refco itself. Two days after the announcement, the Refco CEO was arrested and charged with a count of securities fraud. Three days after the announcement, the New York Stock Exchange halted the trading of Refco common stock. Seven days after the announcement, Refco filed for Chapter 11 bankruptcy protections, at the time the fourth largest bankruptcy filing in the history of the United States, with over \$1 billion in investor capital evaporating between the date of the IPO and the Chapter 11 filing. Eight days after the announcement (just over two months after the IPO), the New York Stock Exchange delisted Refco’s common stock. Less than two years after the announcement, during the Class Period, a JPMorgan Chase Risk officer intimated that Madoff and/or BMIS’ business was possibly similar to Refco and should be further investigated.

439. Notably, on February 15, 2008, the Refco CEO pleaded guilty to 20 counts of securities and wire fraud. According to prosecutors he had moved more than \$1 billion in debt off the company's books to an entity he controlled, Refco Group Holdings Inc. Less than five months after his guilty plea, he was sentenced to 16 years in federal prison.

440. Similarly, but on a much larger scale, just over five months after the Refco CEO’s sentencing, on December 10, 2008, Madoff and/or BMIS’ business was revealed to be entirely fraudulent. Approximately three months later, on March 12, 2009, Madoff pleaded guilty to 11 counts of fraud, money laundering, perjury and theft. Three months after that,

Madoff was sentenced to 150 years in federal prison.

441. Despite these grave concerns regarding the legitimacy of Madoff and/or BMIS' business, JPMorgan Chase apparently only conducted a Google search and forwarded an article regarding a proposed SEC regulator change, asking "one of the juniors [to] look into this rumor about Madoff". *Id.* at ¶ 113. However, the JPMorgan Chase Risk Officer apparently "cautioned, 'Mr. Madoff will not allow us to conduct any due diligence on him directly and we are forced to rely on the diligence of third parties. . . . I told [two other JPMorgan Chase employees that] we don't do \$1 bio 'trust me' deals and we need to do our own due diligence on Madoff or this wasn't going to happen." *Id.* at ¶ 115.

442. The only further due diligence completed was a telephone conversation between the Risk Officer and Madoff, before JPMorgan Chase pressed forward with their Herald Funds investment in June 2007. *Id.* at ¶¶ 106, 115.

443. Then, in "August 2007, while analyzing information provided by Herald, [a JPMorgan Chase employee] noted that despite T-bills rallying, 'the move does not justify the magnitude of the gain that Bank Medici is claiming.'" *JPMorgan Chase Bankruptcy Complaint* at ¶ 118.

444. In November 2007, while "organizing quarterly calls" to certain feeder funds, including the Herald (USA) Fund, another JPMorgan Chase employee "emphasized that they needed to meet with managers from all three funds in order to 'assess what the returns [were] driven from and ensure we get a consistent answer from all three." *Id.* at ¶ 119.

445. In April 2008, at JPMorgan Chase's request, defendants Bank Medici and S.

Kohn agreed to provide JPMorgan Chase with risk reports related to the Herald Funds. ¶ 131.

However, as of October 2008, those reports had not yet been produced. Id.

446. However, by June of 2008, JPMorgan Chase had “approximately \$150 million invested.” Id. at ¶123.

447. On June 7, 2008, a JPMorgan Chase team traveled to Vienna “to perform a ‘very thorough refresh’ of its initial due diligence”, after JPMorgan Chase “learned that its main contact at Bank Medici, [defendant] Andreas Pirkner, was departing”. Id. at ¶ 123. In response to the Vienna meeting, JPMorgan Chase “downgraded Herald’s risk rating to the lowest rating”, and one of the JPMorgan Chase employees “noticed aspects of Herald’s operation that caused him to direct [JPMorgan Chase] to verify that Herald’s assets actually existed at B[MIS].” Id. at ¶ 124.

448. Accordingly, on July 10, 2008, JPMorgan Chase scheduled a meeting with [defendant] S. Kohn during which she “did not provide credible responses to a number of questions related to the managed accounts Bank Medici had with B[MIS]”. Id. at ¶¶ 124-25. As a result, JPMorgan Chase simply “affirmed Herald’s recently downgraded due diligence rating”. Id. at ¶ 125.

449. In September and October of 2008, JPMorgan Chase continued its further due diligence into the feeder funds, “commenc[ing] an ‘exposure health check’”, and resulting in a JPMorgan Chase team contacting the managers of, *inter alia*, the Herald Funds. As part of this check, JPMorgan Chase now requested:

(a) each BMIS feeder fund’s net asset value, both at the end of the first quarter and as of the date of the request; (b) any visible

redemptions currently in the pipeline; © whether the fund’s liquidity profile experienced any changes or events, specifically at B[]MIS; (e) whether B[]MIS experienced any changes or events; (f) whether the account documents between B[]MIS and its feeder funds had been modified in any way; and (g) the percentage of fund assets represented by structured products.

Id. at ¶128.

450. In response to JPMorgan Chase’s further inquiries, defendants S. Kohn and Bank Medici refused to provide JPMorgan Chase with the risk reports she had agreed to provide in April 2008, unless JPMorgan Chase signed a confidentiality agreement. Id. at ¶ 131.

451. Because of the unsatisfactory nature of defendants S. Kohn and Bank Medici’s responses to JPMorgan Chase’s inquiries, in October 2008, JPMorgan Chase’s due diligence team met with, *inter alia*, defendant S. Kohn. Id. at ¶132. According to one of the team members, in response to JPMorgan Chase’s inquiries, S. Kohn, along with the Head of Risk Management of another BMIS feeder fund, “seem[ed] very defensive and almost scared of Madoff. They seem[ed] unwilling to ask him any difficult questions and seem[ed] to be considering his ‘interests’ before those of the investors.” Id. at ¶137.

452. Moreover, during their conversation with defendant S. Kohn, S. Kohn informed JPMorgan Chase that “she had never even thought to ask Madoff who the [OTC] counterparties were, and she was reluctant to ask him about it now.” Id. at ¶ 134.

453. At that time, that same JPMorgan Chase due diligence team member questioned whether F&H “was even competent to conduct an audit of an investment firm with ‘\$650m in shareholder capital.’” Id. at ¶ 135. According to that JPMorgan Chase employee, JPMorgan Chase “could not just rely only on a long history and trust in an adviser, a mistake that investors with [Petters, a Minnesota based Ponzi scheme operator, also an F&H client,] were

now regretting.” *Id.* at ¶138. Indeed, another JPMorgan Chase employee “suggested, ‘Let’s go see Friebling and Horowitz the next time we’re in NY . . .to see that the address isn’t a car wash at least.’” *Id.*

454. The JPMorgan Chase due diligence team’s October 2008 reference to the Petters fraud was in addition to the June 2007 Refco fraud reference by the JPMorgan Chase Risk Officer outlined *supra*. Petters was the former CEO of Petters Group Worldwide, headquartered in Minnesota and claiming to be in the business of purchasing and selling consumer electronic goods. However, those goods did not exist, and on September 24, 2008, the FBI raided Petters’ headquarters. Petters resigned from the company on September 29, 2008. On December 2, 2009, a jury found Petters guilty of 20 counts of wire fraud, mail fraud, money laundering and conspiracy for operating a \$3.65 billion Ponzi scheme. Approximately four months later he was sentenced to 50 years in federal prison.

455. Clearly, the JPMorgan Chase Defendants knew or should have also known that Madoff and/or BMIS’ business was fraudulent. Telling, *inter alia*, at least twice in approximately a year and four months, JPMorgan Chase employees compared Madoff and/or BMIS’ business to two of the largest frauds of the 21st Century. However, instead of alerting authorities as they were required to do, at least because of their obligations as BMIS and/or Madoff’s bankers pursuant to federal law, as outlined *infra*, the JPMorgan Chase Defendants kept their mouths shut to ensure their own profits at the expense of Plaintiffs and the other members of the Class.

456. In fact, JPMorgan Chase’s further “exposure health check” resulted in the following findings:

(a) lack of transparency; (b) resistance on Madoff’s part to provide meaningful disclosure; © involvement of Madoff’s family throughout B[L]MIS; (d) lack of effective due diligence and monitoring by the B[]MIS feeder funds; (e) fear of Madoff preventing investors from asking any serious questions as long as performance was strong; (f) lack of an independent and competent auditor; and (g) unanswered questions regarding B[L]MIS’s trading, as no one outside of Madoff understood how it was done.

Id. at ¶140.

457. The JPMorgan Chase team member who, *inter alia*, questioned F&H’s competency as an audit of such a large fund, now found “that it was a mistake for [JPMorgan Chase] to rely[] on Madoff’s integrity (or Fairfield or Medici’s belief in Madoff’s integrity) and the quality of the due diligence work (initial and on-going) done by the custodians . . . to ensure that the assets actually exist and are properly custodied.” *Id. at ¶ 142.*

458. During later in the month of October 2008, JPMorgan Chase “requested redemptions totaling \$154 million from Herald”, all the while being “careful not to discuss with third parties its redemptions from B[L]MIS- related products or its decision to cease any new involvement with B[L]MIS.” *Id. at ¶¶ 147, 149.* At the time of Madoff’s arrest, JPMorgan Chase had redeemed “all but \$35 million” of its investments in the Feeder Funds. *Id. at ¶ 151.*

459. JPMorgan Chase’s redemptions are particularly troubling considering its special relationship with Madoff as it was through JPMorgan Chase, and more specifically through Chase Bank, that all of the monies funneled to Madoff were wired.

2. BMIS’ Account with the JPMorgan Chase Defendants, and BMIS Account Activity Related Red Flags

460. As outlined *supra*, Madoff and/or BMIS maintained the BMIS Bank Account with Chase Bank, a subsidiary of JPMorgan Chase & Co. As a result, the JPMorgan Chase

Defendants collected “an estimated half a billion dollars in fee and interest payments” on the BMIS Bank Account. ¶172. The JPMorgan Chase Defendants had a special relationship with Madoff and/or BMIS because they, through defendant Chase Bank, acted as Madoff and/or BMIS’ personal bankers and maintained the BMIS Bank Account.

461. Since prior to the start of the Class Period, every national bank, including Chase Bank, must comply with the Bank Secrecy Act, 31 U.S.C 5311, et seq. (the “BSA”). To ensure compliance with the BSA, every national bank must monitor its compliance. The BSA states:

208.63 - Procedures for monitoring Bank Secrecy Act compliance.

(a) Purpose. This section is issued to assure that all state member banks establish and maintain procedures reasonably designed to assure and monitor their compliance with the provisions of the Bank Secrecy Act (31 U.S.C. 5311, et seq.) and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103, requiring recordkeeping and reporting of currency transactions.

(b) Establishment of BSA compliance program(1) Program requirement. Each bank shall develop and provide for the continued administration of a program reasonably designed to ensure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(2) Customer identification program. Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

(c) Contents of compliance program. The compliance program shall, at a minimum: (1) Provide for a system of internal controls to assure ongoing compliance; (2) Provide for independent testing for compliance to be conducted by bank personnel or by an outside party; (3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and (4) Provide training for appropriate personnel.

[63 FR 37655, July 13, 1998, as amended at 68 FR 25111, May 9, 2003]

462. According to the Office of the Comptroller of the Currency (the “OCC”), the governmental agency ensuring national banks’ compliance with federal banking laws, this means national banks, such as Chase bank, “must, at a minimum:”

1. provide for a system of internal controls to assure ongoing compliance;
2. provide for independent testing for compliance;
3. designate an individual responsible for coordinating and monitoring day-to-day compliance; and
4. provide training for appropriate personnel. In addition, the implementing regulation for section 326 of the PATRIOT Act requires that every bank adopt a customer identification program as part of its BSA compliance program.

(Available at: www.occ.treas.gov/topics/compliance-bsa/bsa/bsa-regulations/index-bsa-regulations.html?submenuheader=0)

463. During the Class Period, the Bank Secrecy Act further required, with regards to “Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program”, that, *inter alia*:

(a) Purpose and scope. This section ensures that national banks file a Suspicious Activity Report when they detect a ***known or suspected violation of Federal law or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act.*** This section applies to all national banks as well as any Federal branches and agencies of foreign banks licensed or chartered by the OCC.

* * *

(c) [Suspicious Activity Reports (“SAR(s)”] required. A national bank shall file a SAR with the appropriate Federal law enforcement agencies and the Department of the Treasury in accordance with the form's instructions, by sending a completed SAR to FinCEN in the following circumstances:

* * *

(2) Violations aggregating \$5,000 or more where a suspect can be identified. Whenever the national bank detects any *known or suspected Federal criminal violation, or pattern of criminal violations, . . . involving a transaction or transactions conducted through the bank and involving or aggregating \$5,000 or more in funds or other assets where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations or that it was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects. . . .*

(3) *Violations aggregating \$25,000 or more regardless of potential suspects.* Whenever the national bank detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating \$25,000 or more in funds or other assets . . . where the bank believes . . . that the bank was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(4) *Transactions aggregating \$5,000 or more that involve potential money laundering or violate the Bank Secrecy Act.* Any transaction (which for purposes of this paragraph (c)(4) means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, or purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the national bank and involving or aggregating \$5,000 or more in funds or other assets, if the bank knows, suspects, or has reason to suspect that: (i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law; (ii) The transaction is designed to evade any regulations

promulgated under the Bank Secrecy Act; or (iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

61 FR 4337, Feb. 5, 1996.

464. When the bank detects a violation of the Bank Secrecy Act, it must file an SAR within 30 days, and if the “reportable violation is ongoing . . . notify, by telephone, an appropriate law enforcement authority and the OCC”. 61 FR 4337(d).

465. In addition, on October 26, 2001, former President Bush enacted into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56 (the “Patriot Act”). The Patriot Act, *inter alia*, amends the anti-money laundering provisions of the Bank Secrecy Act, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, to “promote the prevention, detection, and prosecution of money laundering and the financing of terrorism. Regulations implementing the Bank Secrecy Act appear at 31 CFR part 103 . . . after finding that reasonable grounds exist for concluding that a foreign jurisdiction, foreign financial institution, class of international transactions, or type of account is of ‘primary money laundering concern,’ to require domestic financial institutions and domestic financial agencies to take certain ‘special measures’ against the primary money laundering concern.” *Patriot Act*, 74 Fed. Reg. 39606 (July 13, 2006).

466. This section of the Patriot act allows the Secretary of the Treasury, “after finding that reasonable grounds exist for concluding that a foreign jurisdiction, foreign financial institution, class of international transactions, or type of account is of “primary money

laundering concern,” to require domestic financial institutions and domestic financial agencies to take certain “special measures” against the primary money laundering concern.” *Id.*

467. Despite being a regulated national bank, during the Class Period, Chase Bank, along with the other JPMorgan Chase Defendants, who either controlled Chase Bank and/or worked in concert with Chase Bank, ignored their federal obligations with regards to Madoff, BMIS, the Herald Funds, and the BMIS Bank Account.

468. Indeed the JPMorgan Chase Defendants knew or, in the absence of negligence, gross negligence or recklessness, should have known that the Herald Funds (foreign entities) and BMIS and/or Madoff were laundering money through the BMIS Bank Account.

469. To ensure compliance with the federal regulations, national banks such as Chase Bank, are required to “know your customer”. 12 C.F.R. § 208.62. What this means is the bank must understand their customer’s business so the bank can appropriately monitor the account and understand what might constitute suspicious activity on that account. Chase Bank knew or, in the absence of negligence, gross negligence or recklessness, should have known that Madoff and/or BMIS were allegedly in the business of investing shareholders’ money, but, in reality, as a basic examination of the BMIS Bank Account would have informed the JPMorgan Chase Defendants, Madoff and/or BMIS were really in the business of money laundering and stealing their customers’ money.

470. The JPMorgan Chase Defendants, however, did not take their responsibility to “know [their] customer” seriously.

471. National banks, including Chase Bank, frequently use a sponsor to meet their “know your customer” obligations, and, in fact, Chase Bank assigned a sponsor to the BMIS

Bank Account (the “BMIS Bank Account Sponsor”). The sponsor is responsible for assisting the bank in ensuring it complies with federal banking regulations.

472. Tellingly, during a banking examination held in early 2008, the BMIS Bank Account Sponsor (a Chase Bank employee) “responded that he did not even know what a client sponsor was, much less that he was the sponsor for B[MIS]’s accounts.” JPMorgan Chase Complaint at ¶191. In fact, the BMIS Bank Account Sponsor “had received no training regarding his duties as a client sponsor and had taken no action to discharge those duties. When shown a document in which he had recertified that he had performed his duties as a client sponsor, [the BMIS Bank Account Sponsor (and Chase Bank employee)] stated that he did not have any recollection of the duties of a sponsor or of the recertification process.” Id.

473. Disturbingly, the BMIS Bank Account Sponsor had been in charge of the account for more than ten and “[didn’t] know what the checking account was used for.” Id. at 192. This is despite the fact that the BMIS Bank Account Sponsor did, in connection with his duties, receive BMIS’ financial statements, including Financial and Operational Combined Uniform Single Reports (“FOCUS Reports”), a periodic regulatory report filed by broker-dealers with the SEC. Id. at 194.

474. According to the Bankruptcy Trustee, the JPMorgan Chase Defendants were “in possession of at least fifteen [BMIS] regulatory filings” which with “even a cursory review would have revealed numerous inconsistencies and falsehoods.” Id. at 194. The reports received by the JPMorgan Chase Defendants’ included two annual audited financial statements (“Annual Audited Reports”) and 13 quarterly FOCUS Reports for the periods between November 1, 2004 and September 30, 2008. Id. The Bankruptcy Trustee believes that the BMIS

Bank Account Sponsor had “began receiving quarterly FOCUS Reports from BLMIS as early as October 2001.” *Id.*

475. Among other things, both the FOCUS Reports and Annual Audited Reports require broker-dealers to list the amount of their cash on hand, as well as all of its other assets and liabilities. The JPMorgan Chase Defendants knew, or in the absence of negligence, gross negligence, or recklessness should have known that the reports often did not show BMIS’ assets and liabilities, including: (a) cash held in the BMIS Account; (b) loans provided to BMIS by the JPMorgan Chase Defendants; and (c) related collateral on the loans JPMC extended to BMIS. *Id.* at 201. In fact, “BMIS consistently under reported the amount of cash it held on its FOCUS Reports—a fact to which [the JPMorgan Chase Defendants were] privy by virtue of its maintenance of [the BMIS Bank Account].” *Id.* at 202.

476. For example, as of December 31, 2006, the ending balance of the BMIS Bank Account was \$394,700, and the amount in overnight deposits (which also needed to be reported on the reports) was \$295 million, totaling \$295,394,700 of cash on hand. However, the December 2006 FOCUS Report only provided for \$4,882,332 cash on hand, a \$290,512,368 difference, only approximately 16.5% of the actual amount. *Id.* at 203.

477. Similarly, from November 2005 through June 2006, BMIS had an outstanding \$95 million loan with the JPMorgan Chase Defendants. Despite this, the FOCUS Report for the period ending December 2005, a report in the JPMorgan Chase Defendants’ possession, reported that BMIS had no outstanding banking obligation. *Id.* at 205.

478. U.S. and Canadian government obligations” and “encumbered securities.” The \$95 million loan from the JPMorgan Chase Bank Defendants to BMIS was collateralized by

a \$100 million Federal Home Loan Bank Bond. *Id.* at 206. On its December 2005 Focus Report, BMIS reported that it had a government bond valued at \$72,232,950. The JPMorgan Chase Defendants knew or should have known that the amount reported on that Focus Report was only 72.2% of the value of the bond which collateralized their \$75 million loan. *Id.* Moreover, despite the fact that the purported bond holding was clearly encumbered by the loan issued to BMIS by the JPMorgan Chase Defendants, BMIS' December 2005 Focus Report claimed that BMIS had no "encumbered securities". *Id.* Had the JPMorgan Chase Defendants been meeting their obligations due under the federal banking regulations, *inter alia*, outlined *supra*, the JPMorgan Chase Defendants would have noticed these red flags and notified the proper authorities.

479. Further, in or about early 2006, an employee in J.P. Morgan Securities LL's Credit Risk Management, the department that manages credit worthiness of JPMorgan Chase's transaction counterparties, stated, after completing very brief due diligence on F&H, that "a quick check found that they are not registered [sic] with the Public Company Accounting Oversight Board, nor are they subject to peer reviews from the American Institute of Certified Public Accountants. Additionally, they have no website to provide background on their organization." *JPMorgan Chase Bankruptcy Complaint* at ¶ 88.

480. Most importantly, while complying with their duties under Banking Secrecy Act, as outlined *supra*, the JPMorgan Chase Defendants should have monitored the account and noticed severe banking irregularities. Tellingly, BMIS frequently engaged in repeated transactions with the same parties, often on the same day, with no obvious purpose. For example, during 2002, BMIS initiated 318 separate outgoing transactions to with one of its

customers, each in the very odd amount of \$986,301. *Id.* ¶224. Similarly odd was the fact that from December 2001 to March 2003, the total monthly dollar amounts flowing into the BMIS Back Account from that same customer were almost always equal to the total monthly dollar amounts going out of the BMIS Banking Account to that customer. *Id.* ¶225. These facts are *prima facie* indicators that BMIS was engaging in money laundering and fraud, and put the JPMorgan Chase Defendants on notice of the fraudulent nature of Madoff and BMIS' business years prior to the start of the Class Period.

481. The BMIS Bank Account also had a pattern of large dollar transactions. Indeed, between 1998 and 2008, BMIS transferred \$84 billion, over 75% of the wires and checks that flowed out of the BMIS Bank Account, to just four customers. *Id.* ¶226. According to the Bankruptcy Trustee, it also was typical for BMIS, through the BMIS Bank Account, to enter into individual transactions with the Feeder Funds for hundreds of millions of dollars. *Id.*

482. Moreover, between the first quarter of 2006 and the end of the first quarter of 2007, the BMIS Bank Account demonstrated a significant increase in the total dollar amount transacted, with an increase in activity of the average dollar amount of each transaction by over \$60 million, from \$17 million to \$78 million. *Id.* ¶227. Another indication that BMIS and Madoff's business was fraudulent was the occurrence of dramatic spikes in the BMIS Bank Account's offshore activity. *Id.* ¶229. "Between 2004 and 2008, the dollar amount and volume of the [] Account's international wire transfers with high and medium risk jurisdictions increased 83% and 67%, respectively." *Id.*

483. "In addition, many transactions in the [BMIS Bank] Account involved handwritten checks totaling hundreds of millions of dollars in a single day. This is not only

unusual on its face, but it is particularly unusual given that B[MIS would issue multiple checks on the same day to the same customer. At the very least, this activity should have prompted a check-kiting investigation, which undoubtedly would have revealed more suspicious behavior.”
Id. at ¶230. Moreover, the majority of the Account’s transactions were actually conducted by check. Id. at ¶231. “For example, in December 2001, the [] Account received checks from same customer noted above, each in the amount of \$90 million, on a daily basis—a pattern of activity with no identifiable business purpose.”

484. Somehow, the JPMorgan Chase Defendants were not even concerned when, for example, there were approximately \$1.1 billion in transactions on the BMIS Bank Account in one month (March 2008). Id. at 237.

485. Put simply, the JPMorgan Chase Defendants did not do their job. They ignored banking regulations and they ignored substantial numbers of red flags regarding both a bank account they were responsible for monitoring and outside red flags regarding the fraudulent nature of Madoff and BMIS’ business operations – all so they could make a substantial profit at the expense of Plaintiffs and the other members of the Class.

B. The HSBC Defendants

486. As noted *supra*, the HSBC Defendants were allegedly the primary custodians and administrators of the monies invested with the Herald Funds. However, in actuality, HSBC violated industry practices and allowed Madoff and BMIS to retain the much of the Feeder Funds’ billions in assets.

487. Beginning in approximately 2006, the HSBC Defendants created structured financial products which directed hundreds of millions of dollars into Madoff’s Ponzi scheme

through, inter alia, the Herald Funds. See, e.g., SIPA v. Madoff; Picard v. HSBC Bank PLC, et al., Adv. Pro No. 09-1364 (Bk. S.D.N.Y. Dec. 5, 2010) (the “HSBC Bankruptcy Complaint”) at ¶¶ 145-80; 245. “HSBC admitted its inability to confirm trade data by comparison to an independent data set. ‘Calculations on investment guidelines for the underlying funds for these transactions such as risk measures, position and sector concentration percentages are being calculated by Madoff and sent to Product Control [at HSBC]. This process, which differs from the normal process ... is due to lack of transparency of detailed fund information.’” Id. at ¶ 249.

1. Stock Trade Volumes

488. In July 2006, when BMIS registered with the SEC as an investment advisor, BMIS allegedly had \$11.7 billion in assets under management. Id. at ¶149. As a result of this filing, and other similar filings, as custodian of the Herald Funds, the HSBC Defendants knew or, in the absence of negligence, gross negligence and/or recklessness, should have known that BMIS’ trading would have consisted in a large portion of number of publically traded stocks. Indeed, “[a]t times BMIS’s . . . trades . . . approached or exceeded the entire volume of trades in those stocks on the composite tape, which includes all listed and unlisted market volumes.” Id. at ¶ 149; see also ¶ 150.

In fact, across all of the accounts of the funds for which the HSBC Administrator Defendants served as administrator, there were 484 purported trades in stocks which, when extrapolated across the entire Madoff’s Investment Business, would have exceeded the entire volume of trades in those stocks on the composite tape, an additional 445 which, if similarly extrapolated, would have represented more than 50% of the volume traded in those stocks on the composite tape. Across all of the accounts of the funds for which HSBC served as custodian there were 454 purported transactions where B[MIS]’s trades represented more than 50% of the purportedly traded stock’s

volume on the composite tape and an additional 484 where B[]MIS's trades exceeded the entire volume of the purportedly traded stock on the composite tape.

HSBC Bankruptcy Complaint at ¶ 151.

489. Another clear red flag which the HSBC Defendants, as the Herald Funds custodians, knew or should have noticed was the fact that Madoff purported to execute trades “outside the daily price range”. *Id.* at ¶ 161. While both Bank Medici and the Herald (USA) fund only had 22 purported trades executed “outside [of] the transacted security’s daily price range”, other funds for which HSBC and/or its subsidiaries acted as custodian had substantial numbers of purported trades which were outside a stock’s price range on a particular day. *Id.* at ¶¶ 162-63. For example, Genevalor had 568 purported trades of stocks which did not trade at the particular price Madoff claimed he received on a specific date; Eurovaleur had 141 purported trades outside of the daily price; Aurelia Fund Management Ltd./Equus Asset Management Partners, L.P. Partners had 277; BA Worldwide Fund Management Ltd. had 304; HSBC Bank Bermuda Ltd. (“HSBC Bermuda”) had 815; HSBC Bank (Cayman) Ltd. (“HSBC Cayman”) had 141; HSBC Secs. Svcs. (Bermuda) Ltd. had 278; HSBC Secs. Svcs. (Ireland) Ltd. /HSBC Institutional Trust Svcs. (Ireland) Ltd. (collectively, “HSBC Ireland”) had 417; and defendant HSBC Luxembourg had 566. *Id.* at ¶ 163. “In fact, across all of the HSBC Administrator Defendants’ accounts, there were 1,116 equity transactions executed at a price above the daily high or below the daily low for the purportedly traded security.” *Id.* at ¶ 164.

490. Further, “Madoff purported to execute trades that settled on days when the market was closed.” *Id.* at ¶¶ 225-26.

491. Another troubling red flag that the HSBC Defendants, as the Herald Funds’

custodians, knew or should have noticed was that “Madoff appeared to have a near-perfect ability to buy low and sell high not only from day to day, but *within* each trading day. *Id.* at ¶181 (emphasis in original). Madoff’s ridiculously positive trades were statistically impossible. Indeed, 80.75% of Bank Medici’s stock purchases were below the midpoint of the daily trading range, and 71.77% of its sales were above the midpoint. Similarly, 82.55% of Herald (USA)’s purchases were below the midpoint, while 74.58% of its sales were above it. For Herald (Lux), 67.59% of the purchases were below the midpoint, while 63.33% of the sales were above it. With regards to Herald Luxembourg (the Herald Funds’ administrator), 78.33% were above the midpoint of the daily trading range, and 71.43% were below it. *Id.* at 183. In fact, “Madoff was buying low 77.9% of the time and selling high 71.18% of the time.” *Id.* at 184.

2. Option Trade Volumes

492. Further, Madoff claimed to trade options at rates higher than existed in the option market. *See id.* at ¶¶ 156-160. In fact, “the option volume reported to BMIS’ customers exceeded the total volume of comparable options contracts traded on the [Chicago Board Options Exchange (“CBOE”)] by many hundreds and even thousands of times.” *Id.* at ¶ 156. Moreover, “there were days on which Madoff purportedly executed options trades, but publicly available records show that no options that had the same purchase date, strike price, and expiration date as those Madoff purportedly traded on the CBOE on those days.” *Id.* at ¶ 158. With regards to the defendant, 59.15% of Bank Medici’s option trading “exceeded the total volume of contracts for options with the same purchase date, strike price, and expiration date traded on the CBOE”; Herald (USA) had 55.89% transactions over the CBOE’s volume; Herald (Lux) had 54.39% over the CBOE’s volume; and HSBC (Luxembourg) had 65.42% over the

CBOE's volume. Moreover, other feeder funds had even higher percentages of purported option trades over the CBOE's volume. For example, HSBC Bermuda purportedly traded at 91.06% over the CBOE's volume; HSBC Institutional Trust Svcs. (Bermuda) Ltd. ("HSBC Trust Bermuda") purportedly traded at 87.58% over the CBOE's volume; and HSBC Ireland purportedly traded at 86.65% over the CBOE's volume. *Id.*

493. Tellingly, "virtually all" of Madoff/BMIS' speculative option trades were profitable. *Id.* at ¶ 196. Indeed, Bank Medici had 16 trades with a net gain of \$38,411,760; Herald (USA) had 8 trades with a net gain of \$23,000,802; Herald (Lux) had 4 trades with a net gain of \$1,419,670; and HSBC Luxembourg had 220 trades with a net gain of \$81,188, 258. *Id.* Further, HSBC Bermuda had 275 trades with a net gain of \$191,254,924; HSBC Trust Bermuda had 22 trades with a net gain of \$15,301,450; HSBC Cayman had 58 trades with a net gain of \$20,009,432; and HSBC Secs. Svcs. (Bermuda) Ltd. at 220 trades with a net gain of \$81,188,258. *Id.*

494. "B[MIS's trade confirmations regularly showed options transactions that purportedly settled as much as three days after execution. . . . For example, Herald (Lux)'s BMIS account statements and trade confirmations indicate that out of 57 options transactions purportedly entered into on behalf of Herald (Lux)'s BMIS account, only six settled on the business day following execution, meaning that 89.47% of all of the purported options activity in Herald (Lux)'s account did not comply with standard trading practices." ¶ 221. Similarly, 69.69% or 434 Bank Medici's options trades did not settle on the business day following the execution of the trade; 57.11% or 233 of Herald (USA)'s; 89.47% or 51 of Herald (Lux)'s; and 35.17% or 1,497 of HSBC Luxembourg. The HSBC Defendants knew or in the absence of

recklessness should have also been on notice regarding the fraudulent nature of Madoff/BMIS' purported option trading as, collectively, 37.40% of the other related HSBC entities' options trade did not settle on the business day following the execution of the trade. *Id.*

3. Negative Cash Balances

495. “[O]n 832 separate occasions, the Feeder Fund Defendants' BMIS accounts went into negative cash position.” *HSBC Bankruptcy Complaint* at ¶ 173. What this means is Madoff was “lending HSBC hundreds of millions of dollars for no charge whatsoever.” *Id.* at 176. With regards to the Defendants' accounts associated with the Herald Funds, Bank Medici's account went 93 days with negative cash balances over 34 occasions; Herald (USA)'s account went 64 days with negative cash balances over 24 occasions; Herald (Lux)'s account went 2 days with negative cash balances on 2 days on 2 occasions; and Herald Luxembourg's account went 2,101 days with negative cash balances over 591 occasions. *Id.* at ¶ 176. The HSBC Defendants knew or, in the absence of negligence, gross negligence or recklessness, should have also been on notice regarding the fraudulent nature of Madoff/BMIS' business as, collectively, the other related HSBC entities' options trade went 13,018 days with negative cash balances over 3,973 occasions. *Id.* Moreover, 19 other feeder funds accounts, for which HSBC related entities acted as custodian and/or administrator, went 9,651 days with negative cash balances over 2,878 occasions.

4. HSBC's Internal Red Flags

496. The HSBC Defendants knew and/or, in the absence of negligence, gross negligence or recklessness, had reason to know of that Madoff and/or BMIS' business was fraudulent as early as 2001. According to an internal HSBC document from 2001:

Bernie Madoff's 12 year track record trading a split strike conversion strategy on the S&P 100, is quite simply astounding. His annualized return of 15%, (net of a 20% performance fee), at a risk of 3%, yields a sharpe ratio of 3.3. Over this period the fund has endured only 4 down months, (the maximum of which was down 0.5%), and has now gone almost 6 years without a drawdown.

HSBC Bankruptcy Complaint at ¶186 (emphasis in original).

497. Another internal HSBC document emphasized the likely fraudulent nature of Madoff and/or BMIS' business in January 2003. According to that document, "[i]t is unclear how [Madoff's] strategy has generated a track record with almost no down months." Id. at ¶187.

498. Indeed, even though Madoff and/or BMIS were allegedly trading billions of dollars in stock and options, BMIS never transmitted any information electronically. Instead, when the HSBC Defendants requested trade confirmation information, Madoff and/or BMIS transmitted incomplete "paper copies of trade confirmations to the Defendants and/or their affiliates or representatives three to four days after trades purportedly occurred." Id. at ¶ 188; see also ¶¶ 204-08. Errors found on BMIS' trade confirmations included:

- Failing to include "the reporting or payment of the 'Section 31' fees required by NASD and FINRA rules";
- Failing to properly "characterize[d] options as 'trade origins,' rather than transactions";
- Stating that BMIS acted "as both principal and agent";
- Always providing of Committee on Uniform Security Identification Procedures ("CUSIP") identification numbers with regards to option trades, despite the fact that "Madoff's claim that . . . he [at times] purchased options in the over-the-counter market", which would not include CUSIP numbers.

499. See HSBC Bankruptcy Complaint at ¶¶ 205-08.

500. Madoff also never provided the HSBC Defendants with information identifying his alleged hedging options transactions. HSBC Bankruptcy Complaint at ¶ 190. Instead of providing the identifying information, Madoff would inform the HSBC Defendants that: (i) the information was “proprietary”; (ii) the “the counterparties were large, European financial institutions”; and/or (iii) the “counterparties were American pension funds.” Despite the vagueness of these responses, the HSBC Defendants continued to do business with Madoff and/or BMIS, even though the HSBC Defendants knew the feeder funds, including the Herald Funds, were at risk if the options were not executed as claimed. See, id. at ¶ 192.

501. As noted *infra*, Madoff and/or BMIS did not charge any of the Defendants, including the HSBC Defendants, fees in connection with their BMIS investments. Instead, Madoff and BMIS’ alleged earnings were only from commissions. This “fee structure effectively abandoned between \$255 million and \$682 million each year in fees that the HSBC Defendants should have expected to pay.” Id. at ¶ 212. Indeed, “HSBC Private Bank highlighted Madoff’s fee structure as a red flag on at least nine occasions in reports issued between 2001 and 2008.” Id. at ¶ 213.

502. Clearly, the HSBC Defendants knew or, in the absence of negligence, gross negligence or recklessness, should have known Madoff and/or BMIS’ purported business activities were fraudulent. Indeed, in September 2005, the HSBC Defendants engaged KPMG to assess BMIS’ business in relation to the funds, including the Herald Funds, to which the HSBC Defendants allegedly served as the primary custodian. See HSBC Bankruptcy Complaint at ¶¶ 305-08. As part of its review, KPMG provided the HSBC Defendants with its findings in a

February 16, 2006 report entitled “Review of fraud risk and related operational risks at Bernard L. Madoff Investment Securities LLC” (the “KPMG 2006 Report”). According to the 56-page KPMG 2006 Report, 25 “fraud and related operational risks were identified throughout the process whereby Madoff LLC receive, check and account for client funds”, including:

- falsification of client mandates;
- embezzlement of client funds;
- use of fabricated client instructions to disguise poor proprietary positions;
- failure to segregate client funds from B[]MIS funds;
- diversion of client funds for Madoff's personal gain;
- inaccurate allocation of reinvested funds from Fidelity across individual accounts;
- manipulation of option prices to maximize commissions;
- use of B[]MIS claim funds to settle options exercised against HSBC;
- practice of exercising options without informing the client that the option was set to expire;
- use of client funds to make opportunistic trades that deviated from the SSC Strategy;
- diversion of cash resulting from the sale of equities and Treasury bills;
- systematic over-valuing of positions and the failure to report positions to HSBC in order to manipulate control relationships;
- stocks were not held in client names;
- inflation of call values to disguise misappropriation or poor positions;
- unauthorized trading in client accounts;
- trades executions made by unauthorized B[]MIS staff members;
- sham trades to divert client cash;
- front-running order flow in the market-making business;
- false reporting of trades without execution to collect commissions; and
- falsification of trade confirmations.

503. HSBC Bankruptcy Complaint at ¶ 306; Boris Groendahl, Bloomberg.com, HSBC Was Told About Madoff ‘Fraud Risks in Two KPMG Reports, Mar. 18, 2011 (the “Groendahl Article”).

504. Moreover, “KPMG was particularly concerned that it could not identify the owners of individual HSBC client assets, and that controls in place at B[]MIS might not prevent fraud or errors in client accounts.” HSBC Bankruptcy Complaint at ¶ 307; see also Groendahl

Article.

505. At the time KPMG issued the KPMG 2006 Report, “HSBC was custodian for eight funds that had invested \$2 billion with Madoff”. Groendahl Article.

506. Despite having custodial duties for billions in investments, the HSBC Defendants did nothing in response to the KPMG 2006 Report; instead continuing to allow Madoff and/or BMIS to fraudulently funnel, through Chase Bank, billions of dollars rightfully owned by, *inter alia*, Herald Fund investors.

507. Despite their decision to ignore the KPMG 2006 Report, in March 2008, the HSBC Defendants again retained KPMG to review Madoff and/or BMIS’ business activity, including those activities related to the Herald Funds. *HSBC Bankruptcy Complaint* at ¶ 309. As a result of that review, on September 8, 2008, KPMG issued a second 66-page report (the “KPMG 2008 Report”), which noted three additional fraudulent concerns:

- Client cash is diverted-signatures falsified on *client* instruction in an attempt to legitimize an unauthorized transaction (i.e., redemption)[:]
- Madoff LLC claim funds have been used to settle options exercised against HSBC[;]
- Stocks are intentionally not allocated a fair price from the bulk trade.

Id. at ¶ 311; see also Groendahl Article.

508. Despite their custodial duties having a four-fold increase over an approximately two and a half years period, to at least \$8 billion in investments with BMIS, and despite receiving these additional red flags, the HSBC Defendants simply continued to conduct business with Madoff and/or BMIS and encourage investments in, *inter alia*, the Herald Funds by allowing the Fiduciary Defendants to inform investors that the HSBC Defendants were purportedly acting as the Herald Funds’ administrators and custodians, leading the Herald

Funds' investors to believe that the HSBC Defendants were looking over their interests.

509. The KPMG reports were based on “information Madoff and his staff provided, which was his staff provided, which wasn't independently verified”. In creating the reports, “KPMG reviewed samples of trades and account statements . . . to test the risks and detected no discrepancies . . . Even so, the firm suggested HSBC ‘consider undertaking a periodic review which includes tracing a sample of client trades back to the bulk order.’”
Groendahl Article. KPMG's recommendation was prudent. However, HSBC apparently did nothing, despite, as noted *supra*, “listed fraud risk number 5 as ‘client cash is diverted for personal gain’ and risk number 18 as ‘trade is a sham in order to divert client cash.’ [And that] there were concerns ‘Madoff LLC falsely reports buy/sell trades without actually executing them in order to earn commission’ and ‘BLM falsifies accounting records which are provided to HSBC.’” *Id.*

510. HSBC's inactivity in light of the KPMG reports is further troubling because, as identified *supra*, in both reports KPMG identified risk “number 2 was that ‘BLM embezzles client funds,’ using the initials as shorthand for Bernard L. Madoff. To prevent it, KPMG recommended in both 2006 and 2008 that HSBC ‘establish a process to monitor monthly statements’ and reconcile them with contributions from clients.” *Id.* However, it appears that HSBC did nothing further to evaluate and monitor the red flag.

C. The E&Y Defendants

511. As set forth in detail below, the E&Y Defendants collaborated in providing the audit opinions issued by E&Y to Herald (USA) Fund investors. E&Y issued clean audit opinions with respect to the Herald (USA) Fund despite knowing that E&Y had not obtained

sufficient, competent evidential matter to support its opinions that the Funds' financial statements were free of material misstatements with respect to the claimed assets. The E&Y Defendants were required to obtain independent confirmation that Madoff had custody of the Herald (USA) Fund assets. E&Y however, never confirmed that the assets existed – ignoring the most critical aspect of any audit. Instead, the E&Y Defendants improperly and brazenly “accepted” Madoff’s assertion that he held all \$3.2 billion worth of Herald Fund’s monies, without ever obtaining proper confirmation, without which a clean audit opinion could not issue.. The failure to conduct this routine and most basic auditing procedure is sufficient to establish that the E&Y Defendants conducted no audit at all.

512. Madoff told feeder fund auditors that the U.S. Treasury Bills were traded through the Government Securities Clearing Corporation (“GSCC”) and held at Bank of New York (“BONY”). While Madoff was a broker-dealer for stocks, he was not a broker-dealer for government securities and, therefore, could not take custody of U.S. Treasury Bills. None of the E&Y Defendants ever contacted GSCC or BONY to confirm the existence of the billions of dollars in U.S. Treasury Bills reported in the Herald (USA) Funds’ balance sheets at the end of each year. If they had, they would have discovered that the U.S. Treasury Bills did not exist.

513. The E&Y Defendants also never communicated with Madoff’s auditors F&H, nor investigated F&H’s credentials. One of the first procedures mandated by the auditing standards at issue here (discussed in detail below) required the E&Y Defendants to vet Madoff’s auditor. This was due to the fact that both Herald Funds had one-hundred percent of their funds invested in Madoff and, in effect, the Herald Funds were nothing more than pass-through vehicles into Madoff. Accordingly, an audit opinion of Herald Funds required that the E&Y

Defendants conduct certain procedures on the reliability of Madoff's financial statements. Those financial statements, however, were completely phony. Had the E&Y Defendants conducted even a minimal investigation of F&H, they would have discovered that F&H had never audited BMIS. E&Y, however, never communicated, directly or indirectly, nor sought to communicate with F&H. That, in and of itself, is also sufficient to establish that the audit by E&Y amounted to no audit at all.

1. E&Y Operated As a Unitary International Professional Organization

514. E&Y Global serves as an umbrella organization which coordinates the assurance, tax, transaction, and advisory services of its E&Y member firms worldwide. E&Y Global's literature and its global Web site refer to its constituent member firms, including E&Y Cayman, as "Ernst & Young" or "E&Y." For example, E&Y's 2009 Annual Report, entitled "Global Annual Review," states that "Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited." (Global Annual Review, at 40). E&Y's Global Code of Conduct contains identical language. (Code of Conduct contains identical language. (Code of Conduct, at 15). Accordingly, Lead Plaintiff is Plaintiffs are referring to all Ernst & Young entities when using the term "E&Y."

515. The Global Annual Review leaves no doubt that E&Y functionsthe E&Y Defendants function as one integrated entity with centralized control. The section entitled "Shaping our business for the future," states:

Creating a global mindset

At Ernst & Young we are creating both a global structure and a global mindset that are unique in our profession and can best meet the demands of today's and tomorrow's business.

Most professional services organizations are simply collections of national practices. Each locally controlled firm has its own management and decision-making processes and its own board and governance oversight. This model served the partners of those practices well in the past. Today it is outdated and is not in keeping with what clients demand. The world has become too fast and too complex.

At Ernst & Young we understand that. *We have one strong global leadership team that sets one single global strategy and agenda.* To ensure we are efficient and effective, we have organized our legal entities into similarly sized business units in terms of both people and revenues. *These business units, almost all of which are purposely not single countries, are grouped into geographic Areas across the Americas, Europe and Asia-Pacific. Each business unit's leadership team works directly with their Area and global leaders to ensure flawless execution. This structure is streamlined — it allows us to make decisions quickly, and ensures that we execute our strategy and provide high-quality service wherever in the world our clients do business.*

Creating our global mindset and structure are ongoing processes. We've been working with our partners to bring down the barriers to working together seamlessly across borders, and we have succeeded in realigning our previously country-focused organization into a more integrated global one. This organization means our clients get faster response and more tailored services. They get broader, more experienced teams, with deeper industry knowledge. Our people get greater opportunity to pursue the global careers they desire. And our regulators see our structure as helping us deliver consistent, high-quality service across the globe.

(Global Annual Review, at 8, 10; emphasis added).

516. As ~~all~~ a hierarchical ~~entities~~entity with centralized control, the E&Y ~~has~~Defendants have one Chairman and CEO, James S. Turley, and member firms have obligations to E&Y.

517. The Global Annual Review further confirms that the network is structured like a corporation. According to the Global Annual Review, ““Our *global organization and its*

management and governance structures are vital elements to delivering on our promise to stakeholders and clients and achieving our strategy of market leadership. We have centered these structures on two guiding principles: separating management and governance roles; and *operating Ernst & Young as a global business with one shared strategy, led and overseen by a single management team*.³¹ (Global Annual Review, at 35).

518. The Global Annual Review describes four “global bodies”³²

_____ the Global Executive, effectively a Board of Directors, which is chaired by Mr. Turley and comprised of the COO; five Area Managing Partners; the Global Managing Partners of People, Markets, Quality & Risk Management, and Operations & Finance; and global Service Line Vice Chairs for Assurance, Advisory, Tax, and Transaction Advisory Services;

_____ the Global Executive Committees for People, Quality & Risk Management, Operations & Finance, Markets, Assurance, Advisory, Tax, and Transaction Advisory Services, which are responsible for making recommendations to the Global Executive and are chaired by members of the Global Executive and comprised of representatives from the five Areas;

_____ the Global Practice Group, which “seeks to ensure common understanding across member firms of Ernst & Young’s strategic objectives and consistency of execution across the organization”³³ and is comprised of members of the Global Executive, Global Executive Committees, and sub-Area leaders; and

_____ the Global Advisory Council, comprised of approximately forty partners, elected by their peers from member firms across the five Areas, which advises E&Y on policies and strategies. “The approval of the Global Advisory Council is required for a number of significant matters that could affect the organization.”³⁴ (Global Annual Review, at 35).

_____ These four governance bodies (the Global Executive, Global Executive Committees, Global Practice Group, and Global Advisory Council) provide a global governance structure that is housed within E&Y Global. In effect, the E&Y member firms (including E&Y Cayman) act as agents of E&Y Global.

Indeed, throughout its Global Annual Review, E&Y stresses the importance of global consistency throughout the organization:

“[

“[O]ur regulators see our structure as helping us deliver consistent, high-quality service across the globe.” (Global Annual Review at 10).

“

“Ensuring International Financial Reporting Standards really mean the same thing across the globe is critical and a goal we work to support.” (Global Annual Review at 23).

“

“Quality is at the heart of our objective to deliver seamless, consistent, high quality client service, worldwide.” (Global Annual Review at 32).

“

“Globally consistent terms and conditions and statements of work means that our global clients contract with our member firms in a consistent manner throughout the world.” (Global Annual Review at 32).

“[

a. _____ “[Global Financial Information System] provides client teams with timely, consistent information with respect to their engagement and account financial information, helping them to better plan work and serve their clients. The system also enhances our ability to manage our own operations more effectively, using consistent key performance metrics and sharing best practices across our organization.” (Global Annual Review at 35).

In sum, E&Y states in its (Global Annual Review at 35).

519. In sum, E&Y states in its Global Annual Review that “[o]ver the past few years [it has] taken great strides towards globalizing the way we go to market.”

125.520. To complete the parallel between E&Y and any corporation, the Global Annual Review provides aggregate results for E&Y that are the hallmarks of the annual report of any Fortune 500 company. For example, the Global Annual Review states that E&Y is composed of more than 144,000 people (at 37), and generated \$21.4 billion in total worldwide

revenues in 2009 (at 36). It breaks down revenue by geographic area, service line, and client type (at 36). And it describes the percentage of Global 500 and Global 2000 companies served by E&Y (at 36). The Global Annual Review of E&Y is, thus, no different than the annual report of McDonald's, Exxon, or Microsoft.

2. The E&Y Cayman Defendants Issued Unqualified (Clean) Audit Opinions

126.521. The E&Y Cayman Defendants audited Herald (USA) every year between at least 2004 and 2007. The Herald Funds also listed Ernst & Young as the Funds' auditor in the Offering Memoranda and in the Subscription Agreement signed by new investors. Each year the E&Y Defendants issued an unqualified audit opinion — also commonly referred to as a “clean audit opinion” — stating that the financial statements at issue conformed with the requisite auditing standards. *See, e.g.,* the Herald (USA)'s financial statements for the year ending December 31, 2007 (“2007 Financial Statements” or “2007 FS”).

127.522. The 2007 Financial Statements included the E&Y Defendants unqualified audit opinion with respect to Herald (USA). (2007 FS, at 3-4). The opinion is entitled “Independent Auditor's Reports” and states, in relevant part: Herald (USA) has stated that Ernst & Young, Cayman Islands was Herald (USA)'s auditor. However, the Independent Auditor's Report accompanying each of Herald (USA)'s Annual Reports is on the letterhead of “Ernst & Young” and is signed by “Ernst & Young.” Other than the letterhead providing an address for Ernst & Young in the Cayman Islands, there is no indication that an entity calling itself “Ernst & Young, Cayman Islands” was solely responsible for the opinion letter.

128.523. Each Independent Auditor's Report states that “We have audited the accompanying financial statements . . . which comprise the statement of net assets, including the

schedule of investments. . . And the statement of net income, and changes of net assets[.] They also stated that ““We conducted our audit in accordance with International Standards on Auditing.”” They also provided an Opinion, which stated ““in our opinion, the financial statements give a true and fair view of the financial position of Herald Fund SPC as of December 31, 2007, and of its financial performance for the year then ending in accordance with accounting principles generally accepted in Luxembourg.””

129.524. The audit opinion is signed, ““Ernst & Young,”” and dated March 12, 2008. (2007 FS, at 4).

3. The 2007 Financial Statements

130.525. The 2007 Financial Statements included a Schedule of Investments as of December 31, 2007. (2007 FS, at 8). This schedule reflected how the assets of Herald (USA) were supposedly being held at the end of each respective year.

131.526. In 2007, Herald (USA) supposedly held (i) \$16,715 in a Fidelity Spartan U.S. Treasury Money Market Fund, and \$1,849,150,117 in U.S. Treasury Bills. Net of other unspecified assets and liabilities, the net asset value at the end of 2007 attributable to the ~~putative~~ Class were supposedly \$1,833,977,065. (2007 FS, at 8).

132.527. The 2007 Financial Statements included a Statement of Net Assets as of December 31, 2007. (2007 FS, at 5). This Statement of Net Assets reflected the same amount of supposed net assets as the Schedule of Investments. *Id.*

133.528. The 2007 Financial Statements also included a Statement of Operations and Net Assets for 2007. (2007 FS, at 6). The Statement of Operations and Net Assets reflected a purported ““net realized gain”” of \$142,982,900 for 2007. *Id.* The Statement of Operations and

Changes in Net Assets also reflected the following expenses:

- c. “Management and Advisory Fees,” of \$25,934,106 in 2007 to HAML;
- d. “Performance fees,” payable to HAML of \$10,013,145 in 2007;
- e. “Administration and custodial fees,” payable to HSBC Luxembourg, of \$1,182,956 in 2007; and
- f. “Audit and professional fees,” payable, in part, to E&Y Cayman, of \$663,150 in 2007.

529. The Statement of Operations and Net Assets 2007 also reflected:

- “Income” of \$8,098,028 in 2007; and
- Net Realized Gain of \$142,982,900 2007

4. The E&Y Cayman’s Defendants’ Audits Knowingly Failed to Meet Luxembourg and International Standards, or Even E&Y’s Own Standards

530. In 2002, ~~an~~ a European Commission (EC) Regulation No. 1606/2002 was passed by the European Parliament and the European Council of Ministers, which requires all European Union (EU) member states to adopt International Financial Reporting Standards (IFRSs), formerly known as IAS, issued by the International Accounting Standards Board as adopted by the EU. As a result, all EU-listed companies are required to prepare their consolidated financial statements following IFRSs, beginning on January 1, 2005. Listed companies in Luxembourg therefore follow IFRSs in preparation of their consolidated accounts. According to a 2006 self-assessment prepared by the Institute of Companies' Auditors (IRE) as a part of the International Federation of Accountants' (IFAC) Member Body Compliance Program, audit of financial statements in Luxembourg is conducted in accordance with

International Standards on Auditing (ISAs) issued by the Auditing and Assurance Standards Board (IAASB).

531. Through its Auditing Standards Board, the AICPA has in its Statements of Accounting Standards codified a detailed interpretation of GAAS, which is cited as “AU” in this complaint. ISAs are consistent with U.S. GAAS in all material respects. Accordingly, references herein to GAAS and ISA are intended to be synonymous and references to GAAS are intended to include references to ISA.

532. Generally Accepted Accounting Principles (“GAAP”) are those principles recognized by the accounting profession as the uniform rules, conventions, and procedures necessary to define generally accepted accounting principles in the United States. AU §§ 411. The International Financial Reporting Standards (“IFRS”) govern the framework for the preparation of financial statements adopted by the International Accounting Standards Board. The IFRS mirror GAAP with respect to the form and content of the Funds’ financial statements. References herein to GAAP and IFRS are intended to be synonymous and, accordingly, references to GAAP shall include references to IFRS.

533. The AICPA and the IAASB prohibit members from expressing an opinion or stating affirmatively that financial statements or other financial data “present fairly” in conformity with generally accepted accounting principles, if such information departs from applicable accounting principles.

534. There are ten Generally Accepted Auditing Standards established by the AICPA which E&Y had a duty to follow in the audits of the Funds: General Standards, Standards of Field Work, and Standards of Reporting:

General Standards

1. The auditor must have adequate technical training and proficiency to perform the audit.
2. The auditor must maintain independence in mental attitude in all matters relating to the audit.
3. The auditor must exercise due professional care in the performance of the audit and the preparation of the report.

Standards of Field Work

1. The auditor must adequately plan the work and must properly supervise any assistants.
2. The auditor must obtain a sufficient understanding of the entity and its environment, including its internal control, to assess the risk of material misstatement of the financial statements whether due to error or fraud, and to design the nature, timing, and extent of further audit procedures.
3. The auditor must obtain sufficient appropriate audit evidence by performing audit procedures to afford a reasonable basis for an opinion regarding the financial statements under audit.

Standards of Reporting

1. The auditor must state in the auditor's report whether the financial statements are presented in accordance with generally accepted accounting principles (GAAP).
2. The auditor must identify in the auditor's report those circumstances in which such principles have not been consistently observed in the current period in relation to the preceding period.
3. When the auditor determines that informative disclosures are not reasonably adequate, the auditor must so state in the auditor's report.
4. The auditor must either express an opinion regarding the financial statements, taken as a whole, or state that an opinion cannot be expressed, in the auditor's report. When the auditor cannot express an overall opinion, the auditor should state the reasons therefor in the auditor's report. In all cases where an auditor's name is associated with financial statements, the auditor should clearly indicate the character of the

auditor's work, if any, and the degree of responsibility the auditor is taking, in the auditor's report.

535. (AU §§ 150.02.) The International Standards on Auditing are effectively the same as GAAS insofar as material to E&Y's audits of the Funds' financial statements. See ISA 200 "Objective and General Principles Governing an Audit of Financial Statements."

536. E&Y was thus required to exercise due professional care "to plan and perform the audit to obtain *reasonable assurance* about whether the financial statements are free of material misstatement, *whether caused by error or fraud.*" AU §§ 110.02 (emphasis added); see also AU § 230.03 (concerning the auditor's responsibility to conduct their work exercising due professional care); ISA 240 ("The Auditor's Responsibility to Consider Fraud and Error in an Audit of Financial Statements"); ISA 300 ("Planning").

537. In order to state an opinion with regard to an audited entity's financial statements, GAAS states that "the auditor must obtain a sufficient understanding of the entity and its environment, including its internal controls, as to assess the risk of material misstatement of the financial statements, whether due to error or fraud." AU §§ 314.01; see also ISA 310 ("Knowledge of Business").

538. Audit risk and materiality must be considered by the auditor in designing the nature, timing, and extent of audit procedures and in evaluating the results of those procedures. AU §§ 312.01. GAAS requires the auditor to use professional judgment and, in particular, professional skepticism in determining whether a risk factor is present and should be considered in identifying and assessing the risks of material misstatement due to fraud. AU §§ 230.07-09, 316.12, 316; see also ISA 400 ("Risk Assessments and Internal Controls").

539. In particular, the auditor is required to consider the competency and

sufficiency of the audit evidence. Since audit evidence is gathered and evaluated throughout the audit, professional skepticism should be exercised throughout the audit process. AU §§ 230.08; *see also* ISA 200.

540. Moreover, GAAS recognizes that the audit of an entity with securities investments requires special procedures: “The inherent risk for an assertion about a derivative or security is its susceptibility to a material misstatement, assuming there are no related controls.” AU §§ 332.08.

541. Thus, when auditing the existence of a security, auditors must perform substantive procedures, such as confirmations with the security’s issuer or physical inspections of the security.

Existence assertions address whether the derivatives and securities reported in the financial statements through recognition or disclosure exist at the date of the statement of financial position. Occurrence assertions address whether derivatives and securities transactions reported in the financial statements, as a part of earnings, other comprehensive income, or cash flows or through disclosure, occurred. Paragraph 19 provides guidance on the auditor’s determination of the nature, timing, and extent of substantive procedures to be performed. Examples of substantive procedures for existence or occurrence assertions about derivatives and securities include—

- Confirmation with the issuer of the security.
- Confirmation with the holder of the security, including securities in electronic form, or with the counterparty to the derivative.
- Confirmation of settled transactions with the broker-dealer or counterparty.
- Confirmation of unsettled transactions with the broker-dealer or counterparty.

- *Physical inspection of the security or derivative contract.*
- Reading *executed* partnership or similar agreements.
- *Inspecting* underlying agreements and other forms of supporting documentation, in paper or electronic form, for the following:
 - Amounts reported
 - Evidence that would preclude the sales treatment of a transfer
 - Unrecorded repurchase agreements
- *Inspecting supporting documentation for subsequent realization or settlement after the end of the reporting period.*
- *Performing analytical procedures.* For example, the absence of a material difference from an expectation that interest income will be a fixed percentage of a debt security based on the effective interest rate determined when the entity purchased the security provides evidence about existence of the security.

(AU §§ 332.21; emphasis added).

542. Specifically for audits of large funds, the AICPA *Audit & Accounting Guide, Investment Companies* (the “Guide”) directs auditors of investment funds to gain an understanding of the attitude of the fund’s management concerning internal control and its importance in reliable financial reporting. Guide §§ 5.64. Auditors must consider testing the fund’s control and monitoring procedures. Guide §§ 5.64. The Guide further directs auditors to consider whether the fund’s investment in an underlying fund is so significant as to require modification of financial statements. Guide §§ 5.48.

543. As a member firm of E&Y Global, E&Y Cayman was bound by the foregoing standards and guidelines.

544. Indeed, because the E&Y Defendants knew or, in the absence of gross negligence, negligence or recklessness, should have known that Herald (USA) was a conduit for investments that were controlled by Madoff, the E&Y Defendants was required to plan and conduct audits that verified the existence of Herald (USA)'s investments. In order to do so, E&Y was required to understand the Herald (USA)'s "information systems for derivatives and securities," including its investments held by BMIS. AU §§ 332.05. An understanding of Herald (USA)'s internal controls was particularly important to a properly planned audit because, absent effective internal controls, Herald (USA) was not in a position to accurately and reliably validate the existence, or value, of the investments through BMIS.

545. Moreover, in addition to the requirements imposed by the foregoing standards, E&Y should have treated BMIS as a service organization because its services were part of Herald (USA)'s information system for derivatives and securities that affected (1) how Herald (USA)'s derivatives and securities transactions were purportedly initiated and (2) the accounting records, supporting information, and specific accounts in the financial statements involved in the processing and reporting of Herald (USA)'s derivatives and securities transactions. AU §§§§ 332.11, 332.20, and 324; *see also* ISA 402 ("Audit Considerations Relating to Entities Using Service Organization").

546. E&Y was thus required to consider the controls put in place by BMIS:

Following the guidance in Section 324, Service Organizations, a service organization's services are part of an entity's information system for derivatives and securities if they affect any of the following:

a. How the entity's derivatives and securities transactions are initiated.

_____b. The accounting records, supporting information, and specific accounts in the financial statements involved in the processing and reporting of the entity's derivatives and securities transactions.

(AU §§ 332.11.)

547. The E&Y wasDefendants were also required to perform additional procedures required in situations where, as here, there is a lack of segregation of duties at a service organization. With respect to Herald (USA), BMIS initiated the securities transactions held and serviced the securities as custodian and prepared trading and account information. This heightened risk required E&Y to perform additional procedures to opine on the financial statements of the Funds. AU §§ 332.16 specifically directs that confirmations from service organizations are not sufficient audit evidence.

548. Moreover, where, as here, the service organization (BMIS) both initiated the transactions and held and serviced the securities, the greater risk of fraud requires the auditor to perform additional procedures, including site visits to inspect documentation, and identification of controls by the service organization:

If one service organization initiates transactions as an investment adviser and also holds and services the securities, all of the information available to the auditor is based on the service organization's information. The auditor may be unable to sufficiently limit audit risk without obtaining audit evidence about the operating effectiveness of one or more of the service organization's controls. An example of such controls is establishing independent departments that provide the investment advisory services and the holding and servicing of securities, then reconciling the information about the securities that is provided by each department.

(AU §§ 332.20; emphasis added).

549. In light of the nature of Herald (USA) and of the circumstances surrounding it, E&Y also had an obligation to discuss with BMIS' independent auditor, F&H, the result of F&H's most recent audit of BMIS. Guide §§ 5.59; AU §§ 332.11. In this regard, E&Y was required to examine the control environment at BMIS and should have either requested or performed additional tests of controls. Guide §§§§ 5.66–67.

550. Because F&H's "audits" of BMIS were unsatisfactory, E&Y had the additional obligation to apply appropriate auditing procedures:

If the investee's financial statements are not audited, or if the investee auditor's report is not satisfactory to the investor's auditor for this purpose, the investor's auditor should apply, or should request that the investor arrange with the investee to have another auditor apply, appropriate auditing procedures to such financial statements, considering the materiality of the investment in relation to the financial statements of the investor.

(AU §§ 332.30).

5. The E&Y Defendants Failed to Verify the Existence of the Funds' Madoff Investments

551. The E&Y Defendants failed in its obligation to obtain reasonable assurance that the assets included in Herald (USA)'s Schedule of Investments in fact existed and were appropriately valued.

552. Contrary to the applicable accounting standards, the E&Y Defendants failed to gather sufficient, competent evidential matter to support its opinions that the Funds' financial statements were free of material misstatements with respect to the claimed assets, instead inappropriately relying on the Funds' management's management's representations. AU §§ 333; *see also* ISA 580 ("Management Representations"). As a result, although the E&Y

Defendants opined that the billion plus dollar valuations of Herald (USA)'s investments were fairly presented in the financial statements, the E&Y Defendants failed to determine whether the assets, which constituted nearly 100% of the Funds' value, even existed.

553. The E&Y Defendants also did not perform the necessary procedures to audit the existence of the transactions which constituted the split-strike conversion strategy. The E&Y Defendants were aware that Herald (USA) was purportedly using that strategy, a nontraditional options trading strategy. Due to the strategy's heavy use of options trading, E&Y should have performed substantive procedures or testing.

554. Had the E&Y Defendants undertaken the proper analysis and testing of the strategy purportedly employed by Madoff, it would have determined that the strategy, including the claimed liquidation of all positions at the middle and end of each year to acquire U.S. Treasury bonds, could not have functioned as described within market parameters. Moreover, the E&Y Defendants would have determined that BMIS' claimed consistent, positive returns were not achievable.

555. In addition, despite its knowledge of the interconnection between Herald (USA) and ~~and~~ BMIS, and of Herald (USA)'s reliance on the supposed integrity of BMIS' operations, the E&Y Defendants did not review the data required by the auditing standards with respect to an auditor's obligation to examine the "controls over derivatives and securities transactions from their initiation to their inclusion in the financial statements." The E&Y Defendants did not test the trades supposedly made by BMIS or confirm the actual existence of securities in BMIS' accounts. If The E&Y Defendants had made any such efforts, it would have discovered the securities did not exist.

556. The E&Y Defendants also improperly relied on the financial information provided by BMIS without inquiring into F&H, BMIS' auditor, even though F&H had represented to the AICPA that it did not perform audits and was, therefore, not subject to the annual peer review process. - The E&Y Defendants should have, but did not, perform additional procedures such as visiting the offices of F&H to discuss the audit procedures. Had the E&Y Defendants taken this necessary step, it would have discovered that there was no effective audit of BMIS.

6. The E&Y Defendants Violated Its Duties to Herald (USA) Investors

557. As the independent party charged with certifying that it had reasonable assurance that Herald (USA)'s financial statements were free of material misstatements, The E&Y Defendants failed to meet its obligation to Herald (USA)'s investors when it issued its audit opinions — opinions upon which it knew those parties would see and rely upon.

558. Had the E&Y Defendants performed appropriate audits (as it represented it had), it would have learned that the securities transactions purportedly conducted by Madoff did not occur and the assets of Herald (USA) did not exist.

559. In addition, even the limited audit work that the E&Y Defendants must have conducted would have given it actual knowledge or information that it willfully ignored, that:

•• BMIS was not audited pursuant to GAAS by a “qualified and reputable independent audit firm”;

• Herald (USA) and the other Defendants, performed no meaningful due diligence on BMIS;

- = Herald (USA) did not test the validity of Madoff's performance or strategy;
- = Herald (USA) had no process in place to verify the fair value of the investments purportedly made by BMIS;
- = Herald (USA) did not verify the supposed trades made by Madoff with counterparties or other third parties and, thus, did not verify the existence of the securities and other assets.

560. The E&Y Defendants breached its duties as the independent auditor of Herald (USA) at least as follows:

- = E&Y failed to exercise due professional care and professional skepticism in its audit of Herald (USA). Specifically, E&Y failed to use professional skepticism “when considering the risk of material misstatement due to fraud”;
- = E&Y failed to obtain a sufficient understanding of Herald (USA) and its environment, including its internal controls, to assess the risk of material misstatement of the financial statements whether due to error or fraud;
- = E&Y failed to obtain sufficient competent audit evidence with respect to existence of Herald (USA)'s investments through BMIS and E&Y did not perform the necessary procedures to audit the existence of the Funds' securities;

• E&Y failed to obtain an understanding of the internal controls (or lack thereof) of BMIS and did not perform the necessary procedures to audit the occurrence of the transactions which constituted the purported split-strike conversion strategy, such as confirmation with counterparties, confirmation of settled transactions, physical inspection of the securities, or performance of analytical procedures;

• E&Y failed to perform additional procedures required in situations where, as here, there was a lack of segregation of duties at a service organization. Numerous red flags, discussed above, indicating that Madoff was a fraud existed and required E&Y to investigate further and perform additional audit procedures prior to opining on the presentation of Herald (USA)'s financial positions.

• Any reliance by E&Y on the financial statements of BMIS was improper because F&H was not qualified or able to audit BMIS in accordance with GAAP.

7. The E&Y Cayman's Defendants' Audit Violated E&Y's Own Standards

561. The E&Y's Defendants' Web site contains a guide to its audits of hedge funds, entitled “Serving the Hedge Fund Industry: Seasoned Professionals for a Time of Change” (the “Audit Guide”). In it, the E&Y ~~boasts~~ Defendants boast that it is “a leader in serving the hedge fund industry” and notes that it “[s]erves approximately 40% of the global

hedge fund industry.”” (Audit Guide, at 2.)

562. In particular, the E&Y boasts~~Defendants boast~~ that its audits of hedge funds pay “attention to risk.”” The Audit Guide states that the E&Y “Defendants” collaborate[s] with clients to reduce risk,”” through, *inter alia*, “[a] global audit methodology, consistently applied.”” The Audit Guide continues:

Attention to risk

Our longstanding experience in the industry provides us with uncommon insights into the spectrum of potential risks and the necessary internal controls. Valuation has increasingly become one of the most challenging areas that funds and their boards of directors face. In uncertain market conditions, coupled with the proliferation of ever more complex and innovative financial instruments and product designs, hedge fund managers demand an experienced and broad team of professionals to serve them. Our audit teams leverage the knowledge and skills of our entire asset management practice, including those of internal valuation professionals in the areas of derivatives, structured products and private company valuations.

(Audit Guide, at 5).

563. Noting the increased use of “early warning systems”” to detect risk at asset management firms, the E&Y ~~represents~~Defendants represent that it has tools to assist in detecting risk:

Risk Management Advisory Services

In this environment of heightened stakeholder expectations, firms are formalizing their risk functions to establish and put into operation early warning systems. ***We have proven methodologies, tools and experience to assist asset management firms in identifying, monitoring and managing risk effectively and efficiently.***

(Audit Guide, at 8; emphasis added).

564. The E&Y Defendants further represents that it is able to “investigate unusual financial activity” and “perform electronic evidence discovery”:

Fraud Investigation and Dispute Services

The financial services landscape continues to be redefined, as internal controls, risk management and regulatory compliance have risen to unprecedented levels. In addition to the demand for greater accountability, our clients must manage heightened scrutiny from the media and public. When conflicts arise, firms must respond with speed and efficiency to investigate the underlying facts and then remedy the issue. *Our professionals investigate unusual financial activity, perform electronic evidence discovery and review financial reports — all with the sensitivity and urgency you require. Our knowledge comes from our experience dealing with matters of accounting malpractice, anti-corruption and regulatory compliance.*

(Audit Guide, at 9; emphasis added).

565. The E&Y Defendants even represents that it is able to assess risk throughout the “entire transaction lifecycle,” and, specifically, that its auditors “perform thorough buy-side and sell-side due diligence”:

Strategic transaction support

Our professionals address the entire transaction lifecycle. We can help you determine the true value of an asset, set up the right business and tax structure and execute the deal. And we will support your operational due diligence process. Whether it’s a domestic or cross-border investment, our teams work proactively to offer structuring advice related to the acquisition of assets that can drive value in the form of greater after-tax return.

We combine proven practices and consistent methodologies with fresh thinking, giving you the advice you need to make informed decisions, mitigate risk and achieve a successful outcome. And there are many other ways we can assist in transactions:

1. *Perform thorough buy-side and sell-side due diligence*

2. Assess and quantify risk

(Audit Guide, at 9; emphasis added).

566. Finally, to do all this, ~~the E&Y represents~~Defendants represent that it draws on its ~~“worldwide industry resources, knowledge and experience.”~~ ~~“Using our far-flung network of global resources, we can mobilize our team anywhere in the world.”~~ (Audit Guide, at 12).

567. Given its leadership in the hedge fund audit business, it is not surprising that Herald (USA) was not the only Madoff feeder fund audited by ~~the E&Y~~. ~~Lead Plaintiff is~~ ~~Defendants~~. ~~Plaintiffs are~~ aware of at least eight additional feeder funds audited by ~~the E&Y~~. ~~Defendants~~. ~~The E&Y's~~ ~~Defendants'~~ audits of Madoff's feeder funds provided E&Y with a unique ability and opportunity to verify information about BMIS. That information, particularly in the aggregate, should have raised significant suspicions about Madoff. These suspicions also should have been obvious because ~~the E&Y~~ ~~Defendants~~ coordinated the audits of the feeder funds on a global basis.

~~**JURISDICTION AND VENUE**~~

~~76. This Court has jurisdiction over the Exchange Act claims asserted herein pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331.~~

~~77. This Court has jurisdiction over the state law claims pursuant to~~

~~a. the Court's supplemental jurisdiction, 28 U.S.C. § 1367(a); and~~

~~b. the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) (“CAFA”).~~

~~With respect to CAFA, (i) the amount in controversy exceeds the jurisdictional amount of \$5,000,000, and (ii) the Class consists of~~

hundreds, and perhaps thousands of individuals, and (iii) at least one Plaintiff is a citizen of a foreign state and one Defendant is a citizen of New York.

78. — The exercise of personal jurisdiction over the Defendants by this Court is appropriate and will not offend traditional notions of fair play and substantial justice because each of the Defendants sued under New York law had sufficient minimum contacts with New York.

79. — Venue in this judicial District is proper pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1391(b), because substantial acts in furtherance of the alleged wrongdoing and/or its effects have occurred within this District. Additionally, Defendants maintain offices and conduct substantial business in this District.

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

THE COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO THE EXCHANGE ACT

81. — Defendants knew that the sole purpose of the Herald Funds was to funnel money directly to Madoff and BMIS. They were always intended to be feeder funds for Madoff. All significant conduct (including trading and due diligence on Madoff) was to take place in New York. To invest dollars in the Herald Funds, investors needed to send their money directly to New York banks.

~~82. — Further, in creating a fund whose sole objective was to provide money to Madoff, Defendants took advantage of the exemplary reputation of the laws and securities markets of the United States as being the best regulated and most efficient markets in the world. Having benefitted from the advantages of the United States, they cannot now seek to disavow the concomitant obligations which include being subject to the laws of the United States.~~

~~83. — Accordingly, all Defendants availed themselves of the benefits and privileges of investing in the United States, pursuant to its laws and regulations. It was foreseeable that, having chosen to operate an investment fund that was invested “primarily” in the United States, Defendants would be hauled into court in the United States.~~

~~The Conduct and Effects Tests Are Both Met~~

~~84. — Bank Medici stated in on its website that it had offices located in New York City. Bank Austria had offices located at 150 E. 42nd Street in New York City. E&Y has offices in New York city. HSBC has offices located in New York City.~~

~~85. — Bank Medici, through its founder, chairperson, and 75% owner, Sonja Kohn, met with Madoff in his offices in New York City numerous times to discuss providing him with investor's money. Specifically, according to Madoff's calendar, Kohn met with Madoff in his offices in New York City on the following dates, among others: August 23, 2005; March 27, 2006; October 31, 2006; November 26, 2007; and September 23, 2008. He also met with Dr. Ursula Rand from Medici in New York on December 6, 2005, May 9, 2006, October 23, 2006, March 19, 2007, October 30, 2007, May 20, 2008, and September 29, 2008.~~

~~86. — Kohn's meetings with Madoff in New York were part of Bank Medici's due diligence on Madoff. According to a February 1, 2009 Bloomberg article, entitled, “Madoff's~~

Well Treated Feeder Funds Suspected Shady Trades But Backed Off," the due diligence accomplished during these meetings was limited:

The feeders were the gatekeepers, and they qualified for royal treatment. A money manager for a family office recalls accompanying Sonja Kohn, whose Vienna-based Bank Medici funneled \$3.2 billion to Madoff, to a meeting with Madoff in New York in 1991.

He says Madoff treated her as if she were the Queen of England. The money manager also says Madoff wouldn't answer any questions about his strategy.

87. — On July 3, 2009, the Wall Street Journal reported that U.S. and British prosecutors had alleged that Kohn was paid more than \$40 million in kickbacks for funneling \$3.5 billion in investments to Madoff from funds she controlled. Specifically, prosecutors alleged that two companies controlled by Kohn, Infovaleur and Erko, Inc., had received \$32 million and £7, respectively. Infovaleur was located at 767 Fifth Avenue, in New York City.

88. — Finally, in an article entitled "*The Madoff Chronicles, Part II WHAT THE SECRETARY SAW*" "*Hello, Madoff!*" published in the June 2009 edition of Vanity Fair, written by both Mark Seal and Madoff's secretary Eleanor Squillari, Ms. Squillari states that Kohn "was always thrilled to meet with Bernie, and always sent in staggering quarterly invoices—never less than \$800,000—for her commissions."

89. — Accordingly, Defendants conducted and/or failed to conduct the requisite due diligence in New York with respect to Madoff. As set forth in detail herein, the due diligence conducted in New York did not meet the adequate standard of care, and, thus, (i) constituted conduct that was more than merely preparatory to the wrongdoing; and (ii) directly caused Lead Plaintiff's losses. _____

D. At all relevant times, the Herald Funds maintained an account with BMIS in

New York, through their custodian. Additionally, the Herald Funds accounts were opened when a Customer Agreement, an Option Agreement, and a Trading Authorization Limited to Purchases and Sales of Securities
Defendants' Materially False and Misleading Statements

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

569. All Defendants, except the JPMorgan Chase Defendants, knew or recklessly disregarded that their representations about their investment activities were materially false and misleading, and that their concealment of the true nature and status of the investments would materially mislead Class members.

570. All Defendants, including the JPMorgan Chase Defendants, knowingly and substantially participated or acquiesced in the unlawful and fraudulent manipulation of investment capital placed with them for investment in the securities market.

571. During the Class Period, all Defendants, except the JPMorgan Chase Defendants, made materially false and misleading statements and omissions to Plaintiffs and the other members of the Class in prospectuses (and associated supplements) and offering memoranda for the Herald Funds (collectively, the "Offering Memoranda").

1. Herald (LUX) Prospectuses

572. The Herald (LUX) Prospectus was dated March, 2008. An updated

Prospectus was published by Herald (LUX) during August 2008.

573. Both Herald (LUX) Prospectuses omit any mention of the Herald Funds' investment in Madoff and include materially false and misleading statements, including, but not limited to:

The Fund's Investment Objective
The objective of the Fund is to achieve long-term appreciation through diversification of investments.

* * *

1. The Fund

In accordance with the requirements of the UCITS Directive and the correspondent provisions of the 2002 Law, all Sub-Funds invest in accordance with the principle of risk spreading in transferable securities and other permitted assets which may comprise units of UCITS and UCIs, deposits with credit institutions

* * *

3. Risk Consideration

* * *

The Fund will implement strategies by using different types of securities which all carry inherent correlated and uncorrelated risks . .

The Fund is dependent upon the Investment Manager's evaluation of global financial markets. . . .

* * *

The Investment Manager believes that its investment activities attempt to moderate risk through diversification.

* * *

Futures and Options (the "Account Agreements") were executed and delivered to BMIS at BMIS' headquarters at 885 Third Avenue, New

York, New York. The Account Agreements were to be performed in New York, New York through securities trading activities that would take place in New York, New York.

The Fund may invest in futures and option contracts.

* * *

III. a) (i) The Fund will invest no more than 10% of the net assets of any Sub-Fund in transferable securities and money market instruments issued by the same issuing body.

(ii) The Fund may not invest more than 20% of the net assets of any Sub-Fund in deposits made with the same body.

* * *

b) Moreover, where the Fund holds on behalf of a Sub-Fund, investments in transferable securities and money market instruments of issuing bodies which individually exceed 5% of the net assets of such Sub-Fund, the total of all such investments must not account for more than 40% of the total net assets of such Sub-Fund.

* * *

Notwithstanding the individual limits laid down in paragraph a), the Fund may not combine for each Sub-Fund:

- investments in transferable securities or money market instruments issued by a single body.
- deposits made with a single body, and/or
- exposures arising from OTC derivative transactions undertaken with a single body
in excess of 20% of its net assets.

f) Notwithstanding the above provisions, the Fund is authorised to invest up to 100% of the net assets of any Sub-Fund, in accordance with the principle of risk spreading, in transferable securities and money market instruments issued or guaranteed by a Member State of the EU, by its local authorities or agencies, or by another member State of the OECD, including the federal agencies of the United States of America, Federal National Mortgage Association and Federal Home Loan Mortgage Corporation, or by public international bodies of which one or more Member States of the EU are members, provided that such Sub-Fund must hold securities from a least six

different issues and securities from one issue do not account for more than 30% of the net assets of such Sub-Fund.

* * *

VI. a) The Fund may acquire units of the UCITS and/or other UCIs referred to in paragraph I) (1) c), provided that no more than 10% of a Sub-Fund's net assets be invested in aggregate in the units of such UCITS or other UCIs.

* * *

The Investment Manager, to whom the Board of Directors of the Fund has delegated under its responsibility such functions, employs a risk-management process which enables the monitoring and measurement at any time the risk of the positions and their contribution to the overall risk profile of each Sub-Fund.

574. The above statements were materially false and misleading when made.

Despite the considerable fees charged to investors and the repeated representations that Herald (LUX) would diversify its investments to limit risk, all of the Herald (LUX)'s assets were "invested" in a single entity, BMIS, where they were quickly stolen through the Madoff Ponzi scheme. Furthermore, Defendants Herald (LUX), Medici, S. Kohn, Pfeffer, Scheithauer, Frey, Pirkner, Mugnai, and Goddard (collectively, the "Herald (LUX) Defendants") each knew, or were reckless for not knowing, that Herald (LUX) was formed with the sole purpose of supplying investors' funds to Madoff. The Herald (LUX) Defendants knew that the only investment management performed by Medici was funneling investors' money to Madoff.

575. Furthermore, defendant HSBC (Luxembourg), the custodian of Herald (LUX) knew or recklessly disregarded that the above statements were materially false or misleading. HSBC (Luxembourg) had been Herald (USA)'s custodian for years by this time, and had transferred over a billion dollars to Madoff from Herald (USA). Additionally, by the

time of the August 2008 Prospectus, HSBC (Luxembourg) had transferred millions of dollars from Herald (LUX) to Madoff.

576. Despite the considerable fees charged to investors and the repeated representations of the Herald (LUX) Defendants and HSBC (Luxembourg), Plaintiffs and the Class' funds were stolen through the Madoff Ponzi scheme. This could have been avoided if the Fiduciary Defendants had fulfilled their duties owed to Plaintiffs and the Class, if Defendants, other than JPMorgan Chase, had lived up to their own representations, and if Defendants had adequately and reasonably investigated, monitored, and conducted due diligence of Madoff and BMIS. Defendants knew or willfully ignored at least the multiple red flags identified herein.

577. In failing to do so, Defendants breached their legal duties to Plaintiffs and the other members of the Class, resulting in the complete loss of the investment of the Plaintiffs and the other members of the Class. At the same time, each of the Defendants improperly received substantial purported fees under the false premise of fictitious earning, with monies wrongfully converted or stolen from the Herald Funds .

2. **Herald (LUX) Unaudited Semi-Annual Report and Financial Statement**

578. Herald (LUX) only issued one Unaudited Semi-Annual Report and Financial Statement (the "Herald (LUX) Report") and it was published by "HSBC" and the Herald (LUX) directors. Only one report was issued, due to the fact that Madoff's fraud was exposed less than a year after Herald (LUX) was incorporated. However the Herald (LUX) report contained numerous materially false or misleading statements in its statement of operations, statement of assets, change in assets, and schedule of investments. Each number concerning the fund was materially false or misleading because by the time of the reports publication, the investors' assets

had already been stolen via Madoff’s fraudulent Ponzi scheme. Herald (LUX) Defendants and HSBC (Luxembourg) were reckless for not knowing of Madoff’s fraud due to the many red flags they saw, as alleged throughout this complaint.

3. Herald (USA) Offering Memorandum

579. All versions of Herald (USA)’s Offering Memorandum, from 2004 until 2008 stated the following:

INVESTMENT OBJECTIVE AND STRATEGY

The Fund’s objective is to provide investors with long-term capital growth while minimizing risks through the use of a very active trading style. The Fund will utilize a multi-strategy approach with respect to investment and management of the Fund’s assets. The Fund, based upon the recommendation of the Investment Manager in consultation with the Investment Adviser(s), will appoint, on a continuous basis, investment managers (“Managers”) managing collective investment schemes and/or discretionary portfolio management accounts (“accounts”) with different backgrounds in terms of investment strategies, markets and financial instruments. The Investment Manager in consultation with the Investment Adviser(s) will consider a number of factors in supervising the selection of Managers, including, but not limited to, their experience and market performance, trading strategy and techniques, areas of expertise and judgment.

* * *

Nature of Investments

The Fund does not have any pre-determined philosophy with respect to the types of financial instruments that should be invested in and instead expects that through selection of various Managers and the allocation of assets to different accounts and/or collective investment schemes, there will be ultimate diversity of investment of the Fund’s assets in financial instruments in different markets capitalizing on investment opportunities present throughout the world, thus reducing risks through diversification.

* * *

INVESTMENT RISKS

The Fund is dependent upon the Investment Manager's evaluation of global financial markets.

* * *

Performance

The Investment Manager believes that its investment activities attempt to moderate risk through diversification and the careful selection of Managers.

580. The above statements were false and misleading when made. Despite the considerable fees charged to investors and the repeated representations that Herald (USA) would diversify its investments to limit risk, all of the Herald (USA)'s assets were given to BMIS which each of the Defendants knew or willfully ignored was a Ponzi scheme. Furthermore, Defendants Herald (USA), HAML, de Sury, Safdié, Jones, Medici, S. Kohn, Scheithauer, Frey, Pfeffer, Mugnai, Saleta (collectively, the "Herald (USA) Defendants") each knew, or were reckless for not knowing, that Herald (USA) was formed with the sole purpose of supplying investors' funds to Madoff. Additionally, from the time Herald (USA) was formed in 2004 until Madoff's fraud was in 2008, the Herald (USA) Defendants each knew that the only investment performed by HAML was funneling investors' money to Madoff.

581. Furthermore, defendant HSBC (Luxembourg), the custodian of Herald (USA) knew or was reckless for not knowing that the above statements were materially false or misleading. HSBC (Luxembourg) had been Herald (USA)'s custodian from 2004 to 2009, and had transferred over a billion dollars to Madoff from Herald (USA).

4. Herald (USA)'s Audited Annual and Unaudited Semi-Annual Reports and Financial Statements

582. From its inception, a Herald (USA) Unaudited Semi-Annual Report and Financial Statement and an Audited Annual Report were issued every year. These reports were issued by HSBC and the Herald (USA) directors. Each of these reports contained numerous false or misleading statements in its statement of operations, statement of assets, change in assets, and schedule of investments. Each number concerning the fund was materially false or misleading because investors' assets had already been stolen via Madoff's fraudulent Ponzi scheme. The Herald (USA) Defendants and HSBC (Luxembourg) knew or willfully ignored red flags outlined herein which demonstrated that BMIS entire business was fraudulent.

583. Herald (USA) has stated that Ernst & Young, Cayman Islands was Herald (USA)'s auditor. However, the Independent Auditor's Report accompanying each of Herald (USA)'s Annual Reports is on the letterhead of "Ernst & Young" and is signed by "Ernst & Young" (the "Opinion Letter(s)") Other than the letterhead providing an address for Ernst & Young in the Cayman Islands, there is no indication that an entity calling itself "Ernst & Young, Cayman Islands" was solely responsible for the Opinion Letter(s).

584. Each Independent Auditor's Report states that "We have audited the accompanying financial statements . . . which comprise the statement of net assets, including the schedule of investments. . . . And the statement of net income, and changes of net assets[.] They also stated that "We conducted our audit in accordance with International Standards on Auditing." They also provided an Opinion, which stated "in our opinion, the financial statements give a true and fair view of the financial position of Herald Fund SPC as of December 31 [of the year then ending] and of its financial performance for the year then ending in

accordance with accounting principles generally accepted in Luxembourg.”

585. The E& Y Defendants’ statements in the audit opinion were false and misleading when made. Each of these reports contained numerous false or misleading statements in its statement of operations, statement of assets, change in assets, and schedule of investments. Each number in the audited financial statements concerning the fund were false or misleading because investors’ assets had already been stolen via Madoff’s fraudulent Ponzi scheme. The Herald (USA) Defendants, the HSBC Defendants , and the E&Y Defendants were reckless for not knowing of Madoff’s fraud due to the many red flags they saw, but ignored, as alleged throughout this complaint.

586. Despite the considerable fees charged to investors and the repeated representations of the Herald (LUX) Defendants, Herald (USA) Defendants, the HSBC Defendants and the E&Y Defendants that the Herald Funds were profitable and growing, Plaintiffs and the other members of the Class’ funds were stolen through the Madoff Ponzi scheme. This could have been avoided if the Defendants had lived up to their own representations, and if Defendants had adequately and reasonably investigated, monitored, and conducted due diligence of Madoff and BMIS. Had Defendants conducted due diligence, they would have discovered at least the multiple red flags identified herein. At the very least, as described *infra*, like hedge fund investment advisors Aksia LLC, each of Defendants knew or willfully ignored the red flags indicating that BMIS was a Ponzi scheme.

587. In failing to do so, the Fiduciary Defendants breached their legal duties owed to Plaintiffs and the other members of the Class. Further each of the Defendants aided and abetted the Fiduciary Defendants’ breach, and aided and abetted BMIS and Madoff’s fraud.

These violations of New York law resulted in the complete loss of Plaintiffs and the other members of the Class' investments. At the same time, each of the Defendants received substantial fees, predicated on phony profits.

E. Outside Investment Professionals' Red Flags Concerning Madoff

588. For years since the inceptions of Madoff's scheme, there have been myriad warnings meaningful to investment professionals that Madoff and/or BMIS were perpetrating a fraud on investors. Defendants knew or willfully ignored at least some of these red flags outlined below.

589. In 1992, the SEC filed a lawsuit against accountants Frank Avellino and Michael Bienes, who sold \$441 million in unregistered securities to 3,200 people beginning in 1962, promising them returns of 13.5 to 20 percent, and invested the money entirely with Madoff. As a result of the SEC investigation, Avellino and Bienes agreed to shut down their business and reimburse their clients. No action was taken against Madoff.

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

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

592. "Madoff has reported positive returns for the last 11-plus years in assets managed on behalf of the feed fund known as Fairfield Sentry . . . [The] other [feeder] funds

have demonstrated equally positive track records using the same strategy for much of that period.

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

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

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

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

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

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

599. “Madoff, who believes that he deserves ‘some credibility as a trader for 40

years,' says: 'The strategy is the strategy and the returns are the returns.' He suggests that those who believe there is something more to it and are seeking an answer beyond that are wasting their time."

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

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

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

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

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

. . . This investor declined to be quoted by name. Why? Because Madoff politely requests that his investors not reveal that he runs their money.”

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

606. On November 7, 2005, Markopolous submitted another letter to the SEC, titled “The World’s Largest Hedge Fund is a Fraud,” in which he set forth in detail, over 17 single-spaced pages and a two-page attachment, how Madoff’s returns could not be real. Markopolous identified 29 red flags that were signs of highly suspicious activity in BMIS, including, among others:

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

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

609. “It is mathematically impossible for a strategy using index call options and

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

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

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

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

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

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

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

616. Madoff's auditor, F&H, operated out of a 13 x 18 foot location in New City, New York, and included one partner in his late 70s who lives in Florida, a secretary, and one active accountant, whereas most hedge funds are audited by a Big 4 accounting firm.

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

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

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

620. Madoff, instead of using an outside prime broker as nearly all hedge funds do, was his own prime broker and custodian of all the assets he managed. A December 13, 2008

article in *The Wall Street Journal* quoted Chris Addy, founder of Castle Hall Alternatives, which vets hedge funds for clients, as follows: “There was no independent custodian involved who could prove the existence of assets . . . There’s clear and blatant conflict of interest with a manager using a related-party broker-dealer. Madoff is enormously unusual in that this is not a structure I’ve seen.”

621. In her book entitled “*Too Good to Be True*” by Erin E. Arvedlund (author of the 2001 Barron’s article on Madoff) the author noted that Madoff left money on the table by not charging the customary 2% on assets and 20% of profits that other hedge funds charged their customers. As an example, Arvedlund estimated that Fairfield Sentry charged its investors \$1.2 billion in fees for investing with Madoff. “Why would a savvy investor like Madoff leave that type of money on the table?”

622. Arvedlund also noted that other potential Madoff investors quickly learned there was something wrong. In 1997, Rob Picard, of the Royal Bank of Canada, along with other executives, met with Madoff because certain clients wanted to borrow money to invest with Madoff. Within 15 minutes, Picard realized he had stumbled onto a fraud. “Madoff stuttered when he tried to explain his options strategy and right away I realized he either didn’t understand it, or he wasn’t doing what he said he was doing.” Picard also wondered why Madoff was never mentioned anywhere as one of the biggest hedge funds on Wall Street. As a result, Picard suspected that something wasn’t right and after the meeting Royal Bank of Canada customers redeemed out of the Tremont fund (a Madoff feeder fund).

623. Another red-flag was the fact that Madoff left no footprints, it was as if he didn’t exist. As reported by Arvedlund, none of the big trades he supposedly executed in the

dwindling S&P 100 index options trading pits could ever be found. Alex Johnson from the Chicago Board Options Exchange had heard that Madoff's option trading on that exchange has stopped in the early 1990s.

624. Joe Gieger, a managing director at fund of hedge funds shop GAM told Arvedlund that representatives from the \$39.2 billion asset management firm visited Madoff early on and decided against investing with him. Once in 1998 when David Smith, chief investment director of GAM's funds of hedge funds group visited Madoff, GAM could not triangulate the returns with what Madoff claimed to be his strategy. Then in 2001 GAM made another visit, and again rejected Madoff.

625. As James Newman, vice president of due diligence at Ermitage, a fund of funds, wrote to clients "From the onset I was denied the opportunity to perform a detailed due diligence review. We take a dim view on any fund, regardless of size, industry status, or 'its good enough for them' type reasons that restricts our due diligence process." He declined to invest.

626. Société Générale ("SocGen") also concluded that Madoff was not legitimate after sending its own due diligence team to New York in 2003. As reported by The New York Times on December 17, 2008, in an article entitled, European Banks Tally Losses Linked To Fraud, SocGen's due diligence "was conducted by three people who visited Mr. Madoff's headquarters in the red-granite skyscraper on Third Avenue in Manhattan." The bankers concluded that "something wasn't right. ... It's a strategy that can lose sometimes, but the monthly returns were almost all positive."

627. Jeffrey S. Thomas, chief investment officer at Atlantic Trust, which manages

\$13.5 billion, said that on several occasions over the years it had “reviewed and declined to invest with Madoff.” In studying where to place its clients’ funds, the firm said it spotted a number of “red flags” in Madoff’s operation. Chief among those was a lack of an outside firm to handle trades and accounting for the funds, and the inability to document how Madoff made profits.

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

629. As alleged in *Picard v. Herald Fund SPC*, Adv. Pro. No. 09-1359 (Bnkr. S.D.N.Y., 2009), on September 8, 2004, HSBC (Luxembourg), then known as the Bank of Bermuda (Luxembourg) S.A., entered into a Sub-Custody Agreement with BMIS whereby BMIS would act as the sub-custodian for certain funds for which HSBC (Luxembourg), as the Bank of Bermuda (Luxembourg) S.A., was the custodian.

630. On or about September 30, 2004, BMIS received a notice that the Bank of Bermuda (Luxembourg) S.A. was changing its name to HSBC Securities Services (Luxembourg) S.A. effective October 1, 2004.

631. In January 2008, HSBC (Luxembourg), as HSBC Securities Services (Luxembourg) S.A., entered into a Sub-Custody Agreement with BMIS. BMIS held these funds

in New York, New York for the benefit of HSBC (Luxembourg).

632. Both Herald Funds were clients of BMIS. Picard states that according to BMIS' records, Herald USA maintained the Herald USA Account with BMIS through its custodian, HSBC (Luxembourg), and that the Account Agreements were executed and delivered to BMIS at BMIS' headquarters at 885 Third Avenue, New York, New York.

633. The Customer Agreement signed by BMIS and ~~the Herald Funds (USA)~~ states that all transactions are subject to the Securities Exchange Act of 1934, the Commodities Exchange Act, the rules and regulations of the SEC, the Board of Governors of the Federal Reserve System and the Commodities Futures Trading Commission, and all laws of the United States. ~~The Herald Funds (USA)~~ voluntarily made transactions with BMIS subject to these laws.

~~90. — Accordingly, the Herald Funds and the Defendants conducted activities in New York which (i) constituted conduct that was more than merely preparatory to the wrongdoing; and (ii) directly caused Lead Plaintiff's losses. In particular, the Herald Funds and Defendants conducted and/or failed to conduct the requisite due diligence in New York with respect to Madoff.~~

~~The E&Y Defendants~~

~~91. — The E&Y Defendants' conduct in the United States represented the centerpiece and fundamental aspect of the wrongful conduct at the heart of the claims against the E&Y Defendants. Ernst & Young (Cayman Islands) knew that all of the Herald Fund assets were located with Madoff in New York. Ernst & Young (Cayman Islands) needed to communicate~~

~~with Madoff to complete any type of audit. At year end, at a minimum, it would have needed a confirmation and most likely would need to visit Madoff to confirm the location of fund assets.~~

~~The HSBC Defendants~~

92. ~~HSBC and HSBC Luxembourg consistently wired funds, for the benefit of the Herald Funds, directly into BMIS' account at JPMorgan Chase & Co. in New York, New York, Account No. 000000140081703 (the "BMIS Bank Account").~~

93. ~~According to the Herald Funds' customer agreements, investments in the Herald Funds which were made in U.S. currency were required to be wired to New York. HSBC Bank USA also became an entry point for all Herald (USA) U.S. dollar investments, regardless of the origin of the investment, and even though banks across the world accept dollar deposits, including foreign HSBC affiliates. HSBC Luxembourg was the beneficiary of an account for these purposes both with HSBC Bank USA, Inc and Citibank.~~

94. ~~The principal executive offices of HSBC Bank USA are located at 452 Fifth Avenue, New York, New York. HSBC Bank USA operates over three hundred branches in New York. HSBC Bank acted in New York for the benefit of, on behalf of, and with the knowledge and consent of, HSBC Luxembourg.~~

95. ~~Further, representatives of HSBC Holdings plc met with Madoff, repeatedly, in New York in 2008. Specifically, Brian Pettitt, Head of HSBC Securities Services Network Management, met with Madoff in his office in New York City on February 21, 2008 and November 19, 2008, according to Madoff's calendar. HSBC Securities Services is a division of HSBC. HSBC's Web site explains that HSBC Securities Services "provides custody and administration services to institutional fund managers." The HSBC Defendants are being sued in~~

~~this action in connection with precisely these same administrative and custodial functions. The Web site further states that HSBC Securities Services provides services in over fifty countries, indicating that the HSBC Defendants here are legal entities that form part of the HSBC Securities Services division.~~

96. — ~~A January 2007 article in a publication called Financial Services Research, which mentions both Mr. Pettitt and HSBC Securities Services, places the type of due diligence which HSBC would have conducted on the Herald Funds squarely within his division's responsibility:~~

~~Since the HSBC Group's acquisition of the Bank of Bermuda in February 2004, [HSBC Securities Services] has encountered *the new challenge of conducting risk assessments on prime brokers* whose hedge fund clients use [HSBC Securities Services'] Alternative Fund Services as their hedge fund administrator. "Given that the prime broker [*i.e.*, Madoff] is typically appointed by the hedge fund [*i.e.*, the Herald Funds], many prime brokers struggle to understand why they should be subject to due diligence by a global custodian," notes Mick Underwood [Head of Custody Network Management at HSBC].~~

~~(Emphasis added.)~~

97. — ~~Thus, HSBC (through Mr. Pettitt) met with Madoff, in New York, to perform precisely the due diligence that is at issue in this action.~~

98. — ~~Accordingly, the HSBC Defendants conducted activities in New York which (i) constituted conduct that was more than merely preparatory to the wrongdoing; and (ii) directly caused Lead Plaintiff's losses. In particular, the HSBC Defendants conducted and/or failed to conduct the requisite due diligence in New York with respect to Madoff.~~

~~**Defendants' Conduct Had a Substantial Effect In the United States**~~

99. — ~~According to the SIPC Trustee, Madoff's Ponzi scheme caused investors to believe they had approximately \$65 billion in assets when in reality those assets did not exist. Billions of dollars of these fictitious assets caused substantial harm to thousands of United States~~

~~citizens whose supposed wealth evaporated overnight. This wealth had served to collateralize investments and assets of thousands of United States citizens who had to liquidate these assets and suffered real losses.~~

~~100.—Defendants' wrongful conduct permitted Madoff to perpetuate his Ponzi scheme. The nature of a Ponzi scheme required that Madoff use the funds from new investors to pay old ones. The Herald Funds provided Madoff with billions of dollars to continue his Ponzi scheme. But for the billion plus dollars that the Herald Funds gave to Madoff, the scheme would have unraveled substantially earlier and not damaged thousands of United States citizens. Similarly, but for the withdrawal of hundreds of millions of dollars from Madoff in the later years of his Ponzi scheme which were effectively taken from United States citizens, substantially fewer United States citizens would have been harmed by Madoff's Ponzi scheme. Herald Funds would not have invested with Madoff but for Defendants' wrongful conduct.~~

~~101.—The effect of the feeder funds in perpetuating Madoff's Ponzi scheme has been widely reported in the press. According to the Wall Street Journal's article, "Mad Men," published on January 7, 2009, "[f]eeder funds appear to explain [] the longevity of money manager Bernie Madoff." Other news agencies issued similar reports:~~

- ~~a.—*Time Magazine* published an article entitled, "How Madoff's Feeder Funds Stole My Retirement," which noted, "Bernard Madoff built his \$65 billion Ponzi empire at least half on the backs of his feeder funds." The feeder funds allowed Madoff "to keep his house of cards standing much longer than he otherwise could have with his ragtag band of family members, small time accountants," according to the same article.~~

b. ~~The New York Times published an article entitled, "In Fraud Case, Middlemen in Spotlight," which reported that the feeder funds "were essentially pouring billions of dollars each into Bernard L. Madoff Investment Securities."~~

102. ~~Madoff's Ponzi scheme had additional substantial and direct effects on U.S. citizens:~~

a. ~~It is estimated that the Internal Revenue Service ("IRS") will lose up to \$17 billion in lost tax revenue. In some instances, the IRS may have to refund filers who paid taxes on fictitious gains from Madoff. Individual states may also lose substantial tax revenue due to Madoff.~~

b. ~~The effect of Madoff on U.S. charities and their respective beneficiaries is substantial and well-documented. The collateral effect of Madoff's Ponzi scheme has sent "shock waves throughout the medical and scientific communities—with far-reaching implications for everything from diabetes research to palliative care. Philanthropy experts say that the negative effect of the Madoff scandal on health care could ultimately affect millions of people." As a result, "hospitals, food banks, schools and community outreach programs throughout the world are being forced to cut life-giving services as they watch millions of dollars in grants from large Jewish charities dry up in the wake of Bernard Madoff's alleged \$50 billion Ponzi scheme.~~

- e. — ~~The insurance industry has reported that it will be affected by Madoff's scheme in the "range of direct insured losses ... between \$760 million and \$3.8 billion ... with the maximum potential exposed insurance limits at more than \$6 billion."~~
- d. — ~~United States banks have also been affected by Madoff, including lending institutions, like Wells Fargo, who recently recorded losses of \$294 million related to customers who were unable to pay their mortgages because they were wiped out by Madoff. Similarly, hedge funds have seen substantial redemptions: "The Madoff scandal has contributed to redemptions that could shrink the hedge fund industry by half, to \$1 trillion, by the end of the year." and~~
- e. — ~~Investors who suffered enormous losses at the hands of Madoff included, "pensioners, municipal workers, students on scholarship, and middle class Americans, not just wealthy investors."~~

103. — ~~Accordingly, Defendants' wrongful conduct had a substantial effect in the United States and upon United States citizens.~~

634. — On information and belief, Herald (LUX) also signed the same agreements as Herald (USA). It was BMIS' custom and practice to have all of its customers sign such Customer Agreements.

635. Picard states that the Account Agreements were to be performed in New York, New York through securities trading activities that would take place in New York, New York. The Herald Funds' accounts were held in New York, New York, through BMIS. HSBC

and HSBC Securities Services (Luxembourg) S.A. consistently wired funds to BMIS' bank accounts in New York, New York for application to the Herald Funds' accounts and the conducting of trading activities. All Defendants have intentionally taken advantage of the benefits of conducting transactions in the State of New York and, therefore, have submitted themselves to the jurisdiction of this Court for the purposes of this proceeding.

636. Between April 1, 2004 and the filing date of this complaint, HSBC and HSBC (Luxembourg), for the benefit of Herald (USA), invested \$1,533,741,975 with BMIS through 42 separate wire transfers directly into BMIS' account at JPMorgan Chase & Co. in New York, New York, Account #000000140081703 (the "BMIS Bank Account"). HSBC and HSBC (Luxembourg), for the supposed benefit of Herald (LUX), also transferred hundreds of millions of dollars to the same account.

637. As disclosed in Herald (USA)'s investor application form, investors who wished to invest U.S. dollars in Herald (USA) were required to send checks or wire transfers of funds from overseas locations into banks located in this District. Each of these international transfers were either instances of mail fraud under 18 U.S.C. § 1341 in furtherance of the Illegal Scheme or instances of wire fraud under 18 U.S.C. § 1343 in furtherance of the Illegal Scheme. The exact time, date, and amount of these transfers are peculiarly within the knowledge of Defendants. Under information and belief, these transfers numbered into the thousands.

638. In the beginning of the Class Period Herald (USA) dollar deposits were sent directly by investors to CitiBank N.A. account #66080020, located on Park Avenue, New York, which belonged to the Bank of Bermuda (Luxembourg) S.A. and later HSBC Securities Services (Luxembourg) S.A. (after the name change). Later Herald (USA) account was shifted to HSBC

Bank USA. It was from these accounts that funds would be wired to the BMIS Bank Account
On information and belief, Herald (LUX) funds were also first deposited in HSBC Securities
Services (Luxembourg) S.A.'s account at the HSBC Bank USA prior to being wired to the BMIS
Bank Account.

639. Had any Defendant conducted due diligence into Madoff and BMIS, they
would have discovered at least some of the dozens of red flags identified herein. At the very
least, like Aksia, Defendants should have been able to discover the existence of Markopolous'
letter, which would put them on notice of the red flags identified therein.

VIII. CLASS ACTION ALLEGATIONS

640. Plaintiffs brings this action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of all persons or entities who, (i) owned shares of the Herald Funds on December 10, 2008, or (ii) purchased shares of the Herald Funds from January 12, 2004 to December 10, 2008 (the “Class Period”), and were damaged thereby due to the wrongful conduct alleged in this Complaint (the “Class”). Excluded from the Class are the Defendants; any entity in which Defendants have a controlling interest; and the officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries, assigns, or immediate family members of any such individual or entity.

641. The Class is so numerous that joinder of all members is impracticable. Although the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that Class members number at least in the hundreds and perhaps thousands.

642. Plaintiffs will fairly and adequately protect the interests of the members of

the Class. Plaintiffs are members of the Class, his claims are typical of the claims of all Class members, and he does not have interests antagonistic to, or in conflict with, those of the Class. In addition, Plaintiffs have retained competent counsel experienced in class action litigation.

643. Plaintiffs²³ claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants²³ wrongful conduct in violation of federal and common law.

644. There are numerous questions of law and fact which are common to the Class and which predominate over any questions affecting individual members, including:

- a. whether the federal ~~securities laws were~~RICO statute was violated by Defendants²³ acts as alleged herein;
- b. whether the common law was violated by Defendants²³ acts as alleged herein;
- a. ~~whether~~ whether Defendants²³ conduct alleged herein was intentional, reckless, grossly negligent, or negligent in violation of duties owed to Plaintiffs and the other members of the Class and, therefore, in violation of the common law;
- c. ~~whether the Court has personal and subject matter jurisdiction over Defendants; and~~
- d. whether, and to what extent, Plaintiffs and the other members of the Class were damaged.

645. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since a multiplicity of actions could result in an unwarranted

burden on the judicial system and could create the possibility of inconsistent judgments.

Moreover, a class action will allow redress for many persons whose claims would otherwise be too small to litigate individually. There will be no difficulty in the management of this action as a class action.

COUNT 1

CIVIL CONSPIRACY AGAINST ALL DEFENDANTS

646. Plaintiffs repeat and reallege all the allegations in this Complaint that are not part of the Counts (paragraphs 1 through 646) as if fully set forth in this Count. This Count is asserted against all Defendants for breach of Civil Conspiracy pursuant to New York law.

647. Defendants formed a common understanding and agreement to carry out unlawful acts which harmed Plaintiffs and the other members of the Class.

648. Defendants shared a knowing and malicious intent to injure Plaintiffs and the other members of the Class and to wrongfully deprive and defraud the property of Plaintiffs and the other members of the Class.

649. The conspiracy was carried out by means of fraudulent acts by Defendants as described above, including acts done on behalf of the Herald Funds, which were done pursuant to and in furtherance of the common understanding and agreement.

650. As the results of Defendants' conspiracy, Plaintiffs and the other members of the Class have suffered damages in an amount to be determined at trial.

COUNT 2

CONVERSION AGAINST HAML, HERALD (USA), THE HERALD (LUX) DEFENDANTS, AND THE HSBC DEFENDANTS

651. Plaintiffs repeat and reallege all the allegations in this Complaint that are not

part of the Counts (paragraphs 1 through 646) as if fully set forth in this Count. This Count is asserted against HAML, Herald (USA), the Herald (LUX) Defendants and the HSBC Defendants for conversion pursuant to New York law.

652. HAML, Herald (USA), the Herald (LUX) Defendants and the HSBC Defendants, through the unlawful “investment” of funds of Plaintiffs and the other members of the Class in BMIS, misappropriated and converted funds belonging to Plaintiffs and the other members of the Class.

653. The unlawful investment in BMIS of the Plaintiffs’ investments was not pursuant to the agreement with Plaintiffs and the Class and was, by unlawful means, used to directly benefit HAML, Herald (USA), the Herald (LUX) Defendants and the HSBC Defendants.

654. As a result of the conversion by HAML, Herald (USA), the Herald (LUX) Defendants and the HSBC Defendants, Plaintiffs and the other members of the Class suffered economic losses in an amount to be proven at trial.

COUNT 3

AIDING AND ABETTING CONVERSION AGAINST ALL DEFENDANTS

655. Plaintiffs repeat and reallege all the allegations in this Complaint that are not part of the Counts (paragraphs 1 through 646) as if fully set forth in this Count. This Count is asserted against all Defendants for aiding and abetting under New York law.

656. HAML, Herald (USA), the Herald (LUX) Defendants and the HSBC Defendants, through the unlawful “investment” of funds of Plaintiffs and the other members of the Class in BMIS, misappropriated and converted funds belonging to plaintiffs and the Class.

657. All Defendants had actual knowledge of the conversion of funds, “invested”

in BMIS, belonging to Plaintiffs and the other members of the Class.

658. All Defendants substantially assisted this conversion of funds belonging to Plaintiffs and the other members of the Class.

659. Without Defendants substantial assistance, the conversion of the funds of Plaintiffs and the other members of the Class would not have been possible.

660. As a result of each of the Defendants' actions, Plaintiffs and the other members of the Class suffered economic losses in an amount to be proven at trial.

COUNT 4

BREACH OF FIDUCIARY DUTY AGAINST THE HERALD (USA) AND HERALD (LUX) DEFENDANTS

661. ~~Lead Plaintiff repeats~~ Plaintiffs repeat and realleges all the allegations in this Complaint that are not part of the Counts (paragraphs 1 through ~~207646~~) as if fully set forth in this Count. This Count is asserted against the Herald (LUX) and Herald (USA) Defendants for breach of fiduciary duty pursuant to New York law.

662. ~~Lead Plaintiff~~ Plaintiffs and the other members of the Class entrusted their assets to the Defendants named in this Count by investing in the Herald Funds and reposed confidence in them with respect to the management of those assets. The Defendants named in this Count were in a superior position as to the management and control of those assets, in their capacities as advisers, their parent and selling agent, the directors of the Funds, and the Funds themselves, and in a superior position to manage, control, and oversee Madoff. As a result, ~~Lead Plaintiff~~ Plaintiffs and the Class placed their trust and confidence in the Defendants named in this Count.

663. The Defendants named in this Count accepted that repose of trust and

confidence and held themselves out as providing superior client investment services and as having policies and procedures in place to ensure that:

- a. the Herald Funds would follow their policies and investment guidelines;
- b. sufficient operational controls were in place to safeguard ~~Lead Plaintiff~~Plaintiffs' and the Class's' assets; and
- c. transactions would be properly conducted.

664. ~~Lead Plaintiff~~Plaintiffs and the other members of the Class reasonably and foreseeably trusted the purported expertise and skill of the Defendants named in this Count.

665. The Defendants named in this Count therefore owed a fiduciary duty to ~~Lead Plaintiff~~Plaintiffs and the Class with respect to the management, oversight, and protection of ~~Lead Plaintiff's~~Plaintiffs' and the Class's' assets invested in the Herald Funds.

666. In accordance with their fiduciary duties to ~~Lead Plaintiff~~Plaintiffs and the Class, the Defendants named in this Count were obligated to:

- a. deal fairly and honestly with ~~Lead Plaintiff and~~Plaintiffs and the other members of the Class;
- b. act with loyalty and good faith towards ~~Lead Plaintiff and~~Plaintiffs and the other members of the Class;
- c. manage and operate the investments of ~~Lead Plaintiff~~Plaintiffs and the other members of the Class exclusively for the best interest of ~~Lead Plaintiff and~~Plaintiffs and the other members of the Class;

- d. make recommendations and execute transactions in accordance with the goals, investment objectives, and permissible degree of risk and instruction of ~~Lead Plaintiff~~Plaintiffs and the Class; and
- e. oversee the investment of ~~Lead Plaintiff's~~Plaintiffs' and the Class's² assets to confirm they were maintained in a prudent and professional manner.

667. The Defendants named in this Count breached their fiduciary duties to ~~Lead Plaintiff~~Plaintiffs and the Class by:

- a. failing to act with reasonable care to ensure that the investment opportunity presented to ~~Lead Plaintiff~~Plaintiffs and the Class was suitable and in accordance with their investment goals and intentions;
- b. failing to perform adequate due diligence before investing with Madoff;
- c. failing to invest ~~Lead Plaintiff's~~Plaintiffs' and the Class's² assets with adequate diligence or monitoring;
- d. failing to monitor Madoff on an ongoing basis to any reasonable degree;
- e. failing to take adequate steps to confirm BMIS's² purported account statements, transactions, and holdings of the Herald Funds's² assets;
- f. failing to exercise the degree of prudence, diligence, and care expected of financial professionals managing client funds;
- g. profiting and allowing their affiliates to unlawfully profit at the expense of ~~Lead Plaintiff~~Plaintiffs and the Class; and

h. engaging in transactions that were designed to and did result in a profit to Defendants named in this Count at the expense of ~~Lead Plaintiff~~Plaintiffs and the Class.

668. As a result of the Defendants named in this Count's breaches of their fiduciary duties, ~~Lead Plaintiff~~Plaintiffs and the Class have lost all, or substantially all, of their respective investments in the Herald Funds.

669. As a result of the Defendants named in this Count's breaches of their fiduciary duties, ~~Lead Plaintiff~~Plaintiffs and the Class have been forced to pay excessive investment, performance, and management fees in exchange for investment services that were never provided.

670. The damages suffered by ~~Lead Plaintiff~~Plaintiffs and the Class were a direct and foreseeable result, proximately caused by the Defendants named in this Count's breaches of their fiduciary duties.

671. By reason of the foregoing, the Defendants named in this Count are jointly and severally liable to ~~Lead Plaintiff~~Plaintiffs and the Class.

672. As a result of the Defendants named in this Count's breaches of their fiduciary duties, ~~Lead Plaintiff~~Plaintiffs and the Class have suffered damages with respect to their investments in the Herald Funds in an amount to be determined at trial.

COUNT 25

**GROSS NEGLIGENCE AGAINST THE HERALD (LUX) AND HERALD (USA)
DEFENDANTS**

673. ~~Lead Plaintiff repeats~~Plaintiffs repeat and realleges all the allegations in this

Complaint that are not part of the Counts (paragraphs 1 through ~~207~~646) as if fully set forth in this Count. This Count is asserted against the Herald (Lux) Defendants and the Herald (USA) Defendants for gross negligence pursuant to New York law.

674. The Defendants named in this Count had a special relationship with ~~Lead Plaintiff~~Plaintiffs and the other members of the Class that gave rise to a duty to exercise due care in the management of ~~Lead Plaintiff's~~Plaintiffs' and the Class'' assets invested in the Herald Funds and in the selection and monitoring of Madoff and BMIS.

675. This special relationship arose from, among other things, the following:

- a. the managers were responsible for executing trading activities on behalf of the Herald Funds; and
- b. the Defendants named in this Count agreed that they would exercise the requisite level of care in selecting and monitoring investments of the Herald Funds.

676. The Defendants named in this Count grossly failed to exercise due care, and acted in disregard of their duties, and thereby injured ~~Lead Plaintiff~~Plaintiffs and the Class.

677. The Defendants named in this Count grossly failed to exercise the degree of prudence, caution, and good business practice that would be expected of any reasonable investment professional.

678. The Defendants named in this Count grossly failed to:

- a. perform necessary and adequate due diligence before investing in Madoff;
- b. monitor Madoff on an ongoing basis to any reasonable degree;

- c. take adequate steps to confirm Madoff's purported account statements, transactions and holdings of Herald Fund assets;
- d. take reasonable steps to ensure that the investments of the assets of ~~Lead Plaintiff~~ Plaintiffs and the Class were made and maintained in a prudent and professional manner;
- e. take reasonable steps to preserve the value of ~~Lead Plaintiff's~~ Plaintiffs' and the Class's investments; and
- f. exercise generally the degree of prudence, caution, and good business practices that would be expected of any reasonable investment professional.

679. If the Defendants named in this Count had not been grossly negligent with respect to ~~Lead Plaintiff's~~ Plaintiffs' and the Class's assets invested in the Herald Funds, the Defendants named in this Count would not have entrusted ~~Lead Plaintiff's~~ Plaintiffs' and the Class's assets invested in the Herald Funds to Madoff.

680. As a direct and proximate result of the Defendants named in this Count's ~~gross negligence's~~ with respect to ~~Lead Plaintiff's~~ Plaintiffs' and the Class's assets invested in the Herald Funds, ~~Lead Plaintiff~~ Plaintiffs and the members of the Class have lost all, or substantially all, of their investment in the Herald Funds.

681. By reason of the foregoing, the Defendants named in this Count are jointly and severally liable to ~~Lead Plaintiff~~ Plaintiffs and the Class in an amount to be determined at trial.

COUNT 36

NEGLIGENCE AGAINST THE HERALD (LUX) AND HERALD (USA) DEFENDANTS

682. ~~Lead Plaintiff repeats~~Plaintiffs repeat and realleges all the allegations in this Complaint that are not part of the Counts (-paragraphs 1 through ~~207~~646) as if fully set forth in this Count. This Count is asserted against the Herald (LUX) Defendant and the Herald (USA) Defendants for negligence pursuant to New York law.

683. The Defendants named in this Count had a special relationship with ~~Lead Plaintiff~~Plaintiffs and the Class that gave rise to a duty to exercise ~~due~~reasonable care in the management of ~~Lead Plaintiff's~~Plaintiffs' and the Class^{'s} assets invested in the Herald Funds and in the selection and monitoring of Madoff for the Herald Funds.

684. This special relationship arose from, among other things, the following:

- a. Madoff was responsible for executing trading activities on behalf of the Herald Funds under the direction of the Funds^{'s} Advisers; and
- b. the Defendants named in this Count agreed that they would exercise the requisite level of care in selecting and monitoring investment managers to whom they entrusted the investment assets of the Herald Funds.

685. The Defendants named in this Count failed to exercise reasonable ~~due~~ care, and acted in disregard of their duties, and thereby injured ~~Lead Plaintiff~~Plaintiffs and the Class.

686. The Defendants named in this Count failed to exercise the degree of prudence, caution, and good business practice that would be expected of any reasonable investment professional.

687. The Defendants named in this Count failed to:

- a. perform necessary and adequate due diligence, before investing all of the Herald Funds assets with Madoff;
- b. monitor Madoff on an ongoing basis to any reasonable degree;
- c. take adequate steps to confirm Madoff's purported account statements, transactions, and holdings of the Herald Funds' assets;
- d. take reasonable steps to ensure that the investments of the assets of ~~Lead Plaintiff~~ Plaintiffs and the Class were made and maintained in a prudent and professional manner;
- e. take reasonable steps to preserve the value of ~~Lead Plaintiff's~~ Plaintiffs' and the Class' investments; and
- f. exercise generally the degree of prudence, caution, and good business practices that would be expected of any reasonable investment professional.

688. If the Defendants named in this Count had not been negligent with respect to ~~Lead Plaintiff's~~ Plaintiffs' and the Class' assets invested in the Herald Funds, the Defendants named in this Count would not have entrusted ~~Lead Plaintiff's~~ Plaintiffs' and the Class' assets invested in the Herald Funds to Madoff.

689. As a direct and proximate result of the Defendants named in this Count's negligence with respect to ~~Lead Plaintiff's~~ Plaintiffs' and the Class' assets invested in the Herald Funds, ~~Lead Plaintiff~~ Plaintiffs and other members of the Class have lost all, or substantially all, of their investment in the Herald Funds.

690. By reason of the foregoing, the Defendants named in this Count are jointly

and severally liable to ~~Lead Plaintiff~~Plaintiffs and the other members of the Class in an amount to be determined at trial.

COUNT 47

**UNJUST ENRICHMENT AGAINST THE HERALD (LUX) AND HERALD (USA)
DEFENDANTS**

~~Lead Plaintiff repeats~~

691. Plaintiffs repeat and realleges all the allegations in this Complaint that are not part of the Counts (paragraphs 1 through ~~207~~646) as if fully set forth in this Count. This Count is asserted against the Herald (LUX) Defendants and the Herald (USA) Defendants for unjust enrichment pursuant to New York law.

692. ~~Lead Plaintiff~~Plaintiffs and the other members of the Class base their unjust enrichment claim on the receipt or retention of fees and other monies that the Defendants named in this Count obtained at the expense of ~~Lead Plaintiff~~Plaintiffs and the Class, and to which they were not entitled, including, but not limited to, management and advisory fees.

693. ~~Lead Plaintiff~~Plaintiffs and the other members of Class further base their unjust enrichment claim on the receipt or retention of commissions and other monies that the Defendants named in this Count charged ~~Lead Plaintiff~~Plaintiffs and the Class at the time of investment in, switches between, or redemptions of shares in the Herald Funds, and to which they were not entitled.

694. The Defendants were unjustly enriched because they received ~~unfair~~unfairly high compensation for the performance of their duties considering their utter failure to perform as a reasonable investment professional would be expected to perform.

695. The Defendants named in this Count were enriched at the expense of ~~Lead~~

~~Plaintiff and the~~Plaintiffs and the other members of the Class, including by taking ~~Lead~~
~~Plaintiff's~~Plaintiffs' and the Class's monies in the form of commissions and other fees for their
purported management of ~~Lead Plaintiff's~~Plaintiffs' and the Class's investment, and the
purported, but in fact non-existent, capital appreciation of such assets.

696. ~~Lead Plaintiff~~Plaintiffs and the Class involuntarily conferred a benefit upon
the Defendants named in this Count without ~~Lead Plaintiff~~Plaintiffs and the Class receiving
adequate benefit or compensation in return. The Defendants named in this Count appreciated
this benefit and accepted and retained the benefit under inequitable circumstances.

697. Equity and good conscience require the Defendants named in this Count to
refund all fees and other monies they received at ~~Lead Plaintiff's~~Plaintiffs' and the Class's
expense.

COUNT 58

IMPOSITION OF CONSTRUCTIVE TRUST AGAINST HERALD (LUX) AND HERALD (USA) DEFENDANTS

698. ~~Lead Plaintiff repeats~~Plaintiffs repeat and realleges all the allegations in this
Complaint that are not part of the Counts (-paragraphs 1 through ~~207646~~) as if fully set forth in
this Count. This Count is asserted against the Herald (LUX) Defendants and the Herald (USA)
Defendants for imposition of constructive trust pursuant to New York law.

699. The Defendants named in this Count had a fiduciary or confidential
relationship with ~~Lead Plaintiff~~Plaintiffs and the Class.

700. The Defendants named in this Count agreed to manage ~~Lead~~
~~Plaintiff's~~Plaintiffs' and the Class's investment capital in the Herald Funds in accordance with

that fiduciary relationship.

701. The Defendants named in this Count were compensated by ~~Lead Plaintiff~~Plaintiffs and the Class, including by the receipt or retention of improperly calculated fees and other monies.

702. The Defendants named in this Count were unjustly enriched by the receipt or retention of monies, including management and performance fees that were predicated on fictitious profits, and other compensation.

703. ~~Lead Plaintiff~~Plaintiffs and the Class are entitled to have a constructive trust imposed on the amount of all monies and other compensation in the possession of the Defendants named in this Count, which relate to their fees or any other monies from ~~Lead Plaintiff~~Plaintiffs and the Class, the amount of which is yet to be determined.

COUNT 69

BREACH OF CONTRACT AGAINST THE HERALD FUNDS AND THEIR RESPECTIVE DIRECTORS

~~Lead Plaintiff repeats~~

704. Plaintiffs repeat and realleges all the allegations in this Complaint that are not part of the Counts (paragraphs 1 through ~~207~~646) as if fully set forth in this Count. This Count is asserted against the Herald Funds and their respective directors for breach of contract pursuant to New York law.

705. Plaintiff and the Class had a contractual relationship with the Herald Funds and their directors, as evidenced by the Subscription Agreement, executed in connection with their investment in the Herald Funds.

706. By virtue of the contractual relationship between the parties, these

defendants agreed that (i) ~~Lead Plaintiff's~~Plaintiffs' and the Class¹⁷ monies would be invested in legitimate enterprises with a potential for capital appreciation, and (ii) that the investments would be diversified.

707. These obligations were material terms of the agreement.

708. These obligations were also fundamental assumptions of the agreement embraced by both ~~Lead Plaintiff~~Plaintiffs and the Class on the one hand, and these defendants on the other.

709. ~~Lead Plaintiff~~Plaintiffs and the Class fully performed their contractual obligations to these defendants by paying the money owed for their investments.

710. These defendants breached their contract with ~~Lead Plaintiff~~Plaintiffs and the Class: because these Defendants invested the monies of the Plaintiffs and the other members of the Class in a Ponzi scheme.

711. By reason of the foregoing, these defendants are jointly and severally liable to ~~Lead Plaintiff and~~Plaintiffs and the other members of the Class in an amount to be determined at trial.

COUNT 710

GROSS NEGLIGENCE AGAINST E&Y CAYMAN

712. ~~Lead Plaintiff repeats~~Plaintiffs repeat and realleges certain allegations in this Complaint that are not part of the Counts (paragraphs ~~13-46, 89-94, 106, and 118-207~~1 through 646) as if fully set forth in this Count. This Count is asserted against E&Y Cayman for gross negligence pursuant to New York law.

713. E&Y Cayman had a special relationship with ~~Lead Plaintiff~~Plaintiffs and the Class that gave rise to a duty of care. E&Y Cayman issued audit opinions directly to ~~Lead Plaintiff~~Plaintiffs and the Class as investors and shareholders in the Herald (USA) Fund. E&Y Cayman knew that the audit opinions about the Herald (USA) Fund would be relied upon by ~~Lead Plaintiff~~Plaintiffs and the other members of the Class in deciding to make or retain their investments in the Herald (USA) Fund in that, among other things, E&Y Cayman knew that ~~defendants it~~ advised ~~Lead Plaintiff and~~Plaintiffs and the other members of the Class that it audited the Herald Funds' financial statements and had given the Herald (USA) Fund unqualified audit opinions.

714. ~~Lead Plaintiff~~Plaintiffs and the Class foreseeably and reasonably relied, directly or indirectly, on E&Y Cayman to exercise such care as ordinarily exercised by auditors generally and as required by GAAS, ISA and other applicable auditing and accounting standards in conducting the audits of the Herald Funds.

715. E&Y Cayman was grossly negligent in knowingly failing to properly audit the Herald (USA) Fund in accordance with GAAS, ISA and other applicable auditing and accounting standards. E&Y Cayman nevertheless was grossly negligent in issuing unqualified audit opinions that the Herald (USA) Funds' financial statements fairly represented the financial condition of the fund despite the fact that the financial statements of Herald (USA) Funds did not comply with GAAP or international accounting standards.

716. E&Y Cayman acted with gross negligence by failing to conduct the requisite procedures concerning BMIS. Among other things, E&Y Cayman failed to perform any procedures to gain an understanding of BMIS's business pursuant to GAAS and ISA.

717. E&Y Cayman ignored numerous red flags surrounding Madoff. E&Y Cayman acted with gross negligence as to the consequences of the Herald Funds' incorrect financial statements.

718. Had E&Y Cayman not acted with gross negligence, it would not have issued the unqualified audit opinions.

719. As a result of the gross negligence of E&Y Cayman, ~~Lead Plaintiff~~Plaintiffs and the Class have lost all, or substantially all, of their investment in the Herald Funds.

COUNT 911

NEGLIGENCE AGAINST E&Y CAYMAN

720. ~~Lead Plaintiff repeats~~Plaintiffs repeat and realleges certain allegations in this Complaint that are not part of the Counts (paragraphs ~~13-46, 89-94, 106, and 118-207~~1 through 646) as if fully set forth in this Count. This Count is asserted against E&Y Cayman for negligence pursuant to New York law.

721. E&Y Cayman had a special relationship with ~~Lead Plaintiff~~Plaintiffs and the Class that gave rise to a duty of care. E&Y Cayman issued audit opinions directly to ~~Lead Plaintiff~~Plaintiffs and the Class as investors and shareholders in the Herald (USA) Fund. E&Y Cayman knew that the audit opinions about the Herald (USA) Fund would be relied upon by ~~Lead Plaintiff~~Plaintiffs and the Class in deciding to make or retain their investments in the Herald Funds in that, among other things, E&Y Cayman knew that defendants advised ~~Lead Plaintiff~~Plaintiffs and other members of the Class that it audited the Herald (USA) Funds' financial statements and had given the Herald (USA) Fund unqualified audit opinions.

722. ~~Lead Plaintiff~~Plaintiffs and the Class foreseeably and reasonably relied,

directly or indirectly, on E&Y Cayman to exercise such care as ordinarily exercised by auditors generally and as required by GAAS, ISA and other applicable auditing and accounting standards in conducting the audits of the Herald (USA) Fund.

723. E&Y Cayman was negligent in failing to properly audit the Herald (USA) Fund in accordance with GAAS, ISA and other applicable auditing and accounting standards. E&Y Cayman nevertheless negligently issued unqualified audit opinions that the Herald (USA) Fund's financial statements fairly represented the financial condition of the fund.

724. E&Y Cayman acted negligently by failing to conduct the requisite procedures concerning BMIS. Among other things, E&Y Cayman failed to perform any procedures to gain an understanding of BMIS's business pursuant to GAAS and ISA.

725. E&Y Cayman ignored numerous red flags surrounding Madoff. E&Y Cayman acted with negligence as to the consequences of the Herald Funds' incorrect financial statements.

726. Had E&Y Cayman not acted negligently, it would not have issued the unqualified audit opinions.

727. As a result of the negligence of E&Y Cayman, ~~Lead Plaintiff~~Plaintiffs and the Class have lost all, or substantially all, of their investment in the Herald Funds.

~~COUNT 1012~~

GROSS NEGLIGENCE AND NEGLIGENCE AGAINST E&Y GLOBAL

728. ~~Lead Plaintiff repeats~~Plaintiffs repeat and realleges certain allegations in this Complaint that are not part of the Counts (paragraphs ~~13-46, 89-94, 106, and 118-207~~1 through 646) as if fully set forth in this Count. This Count is asserted against E&Y Global for gross

negligence and negligence pursuant to New York law.

729. E&Y Cayman, in the conduct of its audits of the Herald Funds²⁷ financial statements, was performing the duties expected and provided for by E&Y to its audit clients.

730. E&Y²⁸'s 2009 Annual Report, entitled “Global Annual Review,” states that “Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited.” (Global Annual Review, at 40).

731. As all hierarchical entities with centralized control, E&Y has one Chairman and CEO, James S. Turley, and member firms have obligations to E&Y.

732. The Global Annual Review further confirms that the network is structured like a corporation. According to the Global Annual Review, “Our global organization and its management and governance structures are vital elements to delivering on our promise to stakeholders and clients and achieving our strategy of market leadership. We have centered these structures on two guiding principles: separating management and governance roles; and operating Ernst & Young as a global business with one shared strategy, led and overseen by a single management team.” (Global Annual Review, at 35).

733. Four governance bodies (the Global Executive, Global Executive Committees, Global Practice Group, and Global Advisory Council) provide a global governance structure that is housed within E&Y Global. In effect, the E&Y member firms (including E&Y Cayman) act as agents of E&Y Global.

734. By virtue of E&Y Global²⁹'s control, directly or indirectly through the Global Executive, Global Executive Committees, Global Practice Group, and Global Advisory Council, over its member firms (including E&Y Cayman), E&Y Global is liable for the gross negligence

or negligence of E&Y Cayman.

~~————~~ **COUNT 113**

BREACH OF FIDUCIARY DUTY AGAINST HSBC (LUXEMBOURG)

735. ~~Lead Plaintiff repeats~~Plaintiffs repeat and realleges all the allegations in this Complaint that are not part of the Counts (-paragraphs 1 through ~~207646~~) as if fully set forth in this Count. This Count is asserted against the ““HSBC (Luxembourg) for breach of fiduciary duty pursuant to New York law.

736. In providing administrative services to the Herald Funds, HSBC (Luxembourg) was responsible for Custodial, accounting, registrar, and transfer services, including reporting the Herald Funds’ NAV. HSBC (Luxembourg) occupied a superior position over ~~Lead Plaintiff~~Plaintiffs and the Class because it had superior access to confidential information about Madoff’s purported investments, including the purported location, security, and value of the purported assets.

737. In providing custodial services to the Herald Funds, HSBC (Luxembourg) was responsible for acting with reasonable skill, care, and diligence in the appointment and monitoring of BMIS, and were responsible for the periodic oversight of BMIS in connection with the custody of the assets of the Herald Funds.

738. HSBC (Luxembourg) held themselves out as providing superior custodial services to financial firms. Specifically, HSBC (Luxembourg) held themselves out, in their role as custodians, as part of HSBC, one of the world’s largest financial institutions, with an obligation, among other things, to monitor and oversee the custody of assets held by entities other than HSBC (Luxembourg).

739. HSBC (Luxembourg) charged a premium for their custodial and administrative services to the Herald Funds.

740. HSBC (Luxembourg) held itself out as providing superior administrative services to financial firms. Specifically, HSBC (Luxembourg) held itself out, in its role as custodian and administrator, as part of HSBC, one of the world's largest financial institutions, with an obligation, among other things, to calculate the NAV reported to investors on a monthly basis.

741. HSBC (Luxembourg)'s superior position necessitated that ~~Lead Plaintiff~~Plaintiffs and the Class repose their trust and confidence in HSBC (Luxembourg) to fulfill its duties, and ~~Lead Plaintiff~~Plaintiffs and the Class did so by investing and continuing to invest in the Herald Funds.

742. HSBC (Luxembourg) accepted ~~Lead Plaintiff's~~Plaintiffs' and the Class's repose of trust and confidence.

743. ~~Lead Plaintiff~~Plaintiffs and the Class reasonably and foreseeably trusted HSBC (Luxembourg)'s purported expertise and skill, and HSBC (Luxembourg) recognized that ~~Lead Plaintiff~~Plaintiffs and the Class would rely on and repose their trust in HSBC (Luxembourg) when deciding to invest and retain their investments in the Herald Funds.

744. HSBC (Luxembourg)'s superior position over ~~Lead Plaintiff~~Plaintiffs and the Class gave rise to a fiduciary duty and duty of care on the part of the Administrator to ~~Lead Plaintiff~~Plaintiffs and the Class, who invested in the Herald Funds.

745. HSBC (Luxembourg) breached its fiduciary duties to ~~Lead Plaintiff~~Plaintiffs and the Class by, *inter alia*, failing to discharge properly its responsibilities as custodian and

administrator, including the calculation of the NAVs and review of information provided by Madoff.

746. ~~Lead Plaintiff~~Plaintiffs and the Class have been damaged as a proximate result of the HSBC (Luxembourg)'s breach of fiduciary duties.

~~————~~**COUNT 1214**

GROSS NEGLIGENCE AGAINST HSBC (LUXEMBOURG)

747. ~~Lead Plaintiff repeats~~Plaintiffs repeat and realleges all the allegations in this Complaint that are not part of the Counts (paragraphs 1 through ~~207~~646) as if fully set forth in this Count. This Count is asserted against HSBC (Luxembourg) for gross negligence pursuant to New York law.

748. In providing administrative services to the Herald Funds, HSBC (Luxembourg) was responsible for custodial, accounting, registrar, and transfer services, including reporting the Herald Funds' NAV. HSBC (Luxembourg) occupied a superior position over ~~Lead Plaintiff~~Plaintiffs and the Class because it had superior access to confidential information about Madoff's purported investments, including the purported location, security, and value of the purported assets.

749. In providing custodial services to the Herald Funds, HSBC (Luxembourg) was responsible for acting with reasonable skill, care, and diligence in the appointment and monitoring of BMIS, and were responsible for the periodic oversight of BMIS in connection with the custody of the assets of the Herald Funds.

750. HSBC (Luxembourg) held themselves out as providing superior custodial services to financial firms. Specifically, HSBC (Luxembourg) held themselves out, in their role

as custodians, as part of HSBC, one of the world's largest financial institutions, with an obligation, among other things, to monitor and oversee the custody of assets held by entities other than HSBC (Luxembourg).

751. In providing custodial and administrative services to the Herald Funds, HSBC (Luxembourg) had a special relationship with ~~Lead Plaintiff~~Plaintiffs and the Class that gave rise to a duty to exercise due care in the performance of its duties.

752. HSBC (Luxembourg)'s duty of care to ~~Lead Plaintiff~~Plaintiffs and the Class was based on and arose from, among other things, its duty to calculate the Herald Funds' NAV reported to investors on a monthly basis.

753. HSBC (Luxembourg) knew or was reckless in not knowing that ~~Lead Plaintiff~~Plaintiffs and the Class were relying on it to exercise reasonable care in providing its services to the Herald Funds, and ~~Lead Plaintiff~~Plaintiffs and the Class did reasonably and foreseeably rely on HSBC (Luxembourg) to exercise such care by investing and continuing to invest in the Herald Funds.

754. HSBC (Luxembourg) was grossly negligent in its duties as custodian and administrator. HSBC (Luxembourg) relied, with gross negligence, on information provided by Madoff in calculating the NAV, and relayed such incorrect information to ~~Lead Plaintiff~~Plaintiffs and the Class without scrutiny, verification, confirmation, or review of the information. HSBC (Luxembourg) was obligated to scrutinize, verify, confirm or review independently the information it was providing in calculating the NAV, but grossly failed to do so. HSBC (Luxembourg) grossly failed to exercise the degree of prudence, caution, and good business practice that would be expected of any reasonable financial professional.

755. HSBC (Luxembourg) was not entitled to rely on the information provided by Madoff because of the red fags surrounding Madoff; the consolidation of the role of investment manager, custodian and execution agent in Madoff; and because the information was manifestly incorrect.

756. ~~Lead Plaintiff's~~Plaintiffs' and the Class's investment in the Herald Funds has been completely, or substantially, lost, and, thus, ~~Lead Plaintiff~~Plaintiffs and the Class have been damaged as a proximate result HSBC (Luxembourg)'s gross negligence.

~~————~~**COUNT 1315**

NEGLIGENCE AGAINST HSBC (LUXEMBOURG)

757. ~~Lead Plaintiff repeats~~Plaintiffs repeat and realleges all the allegations in this Complaint that are not part of the Counts (-paragraphs 1 through ~~207646~~) as if fully set forth in this Count. This Count is asserted against HSBC (Luxembourg) for negligence pursuant to New York law.

758. In providing administrative and custodial services to the Herald Funds, HSBC (Luxembourg) had a special relationship with ~~Lead Plaintiff~~Plaintiffs and the Class that gave rise to a duty to exercise due care in the performance of its duties.

759. In providing administrative services to the Herald Funds, HSBC (Luxembourg) was responsible for custodial, accounting, registrar, and transfer services, including reporting the Herald Funds's NAV. HSBC (Luxembourg) occupied a superior position over ~~Lead Plaintiff~~Plaintiffs and the Class because it had superior access to confidential information about Madoff's purported investments, including the purported location, security, and value of the purported assets.

760. In providing custodial services to the Herald Funds, HSBC (Luxembourg) was responsible for acting with reasonable skill, care, and diligence in the appointment and monitoring of BMIS, and were responsible for the periodic oversight of BMIS in connection with the custody of the assets of the Herald Funds.

761. HSBC (Luxembourg) held themselves out as providing superior custodial services to financial firms. Specifically, HSBC (Luxembourg) held themselves out, in their role as custodians, as part of HSBC, one of the world's largest financial institutions, with an obligation, among other things, to monitor and oversee the custody of assets held by entities other than HSBC (Luxembourg).

762. HSBC (Luxembourg)'s duty of care to ~~Lead Plaintiff~~Plaintiffs and the Class and the Class was based on and arose from, among other things, its duty to calculate the NAV reported to investors on a monthly basis.

763. HSBC (Luxembourg) knew or was reckless in not knowing that ~~Lead Plaintiff~~Plaintiffs and the Class were relying on it to exercise reasonable care in providing its services to the Herald Funds, and ~~Lead Plaintiff~~Plaintiffs and the Class did reasonably and foreseeably rely on HSBC (Luxembourg) to exercise such care by investing and continuing to invest in the Herald Funds.

764. HSBC (Luxembourg) was negligent in its disregard for its duties as administrator and custodian of the Herald Funds. HSBC (Luxembourg) relied on information provided by Madoff in calculating the NAV, and relayed such incorrect information to ~~Lead Plaintiff~~Plaintiffs and the Class without scrutiny, verification, confirmation, or review of the information. HSBC (Luxembourg) failed to exercise the degree of prudence, caution, and good

business practice that would be expected of any reasonable financial professional.

765. HSBC (Luxembourg) was not entitled to rely on the information provided by Madoff because of the red flags surrounding Madoff; the consolidation of the role of investment manager, custodian and execution agent in Madoff; and because the information was manifestly incorrect.

766. ~~Lead Plaintiff's~~Plaintiffs' and the Class's investment in the Herald Funds has been completely, or substantially, lost, and, thus, ~~Lead Plaintiff~~Plaintiffs and the Class have been damaged as a proximate result of HSBC (Luxembourg)'s negligence.

~~————~~**COUNT 1416**

UNJUST ENRICHMENT AGAINST HSBC (LUXEMBOURG)

767. ~~Lead Plaintiff repeats~~Plaintiffs repeat and realleges all the allegations in this Complaint that are not part of the Counts (paragraphs 1 through ~~207~~646) as if fully set forth in this Count. This Count is asserted against HSBC (Luxembourg) for unjust enrichment pursuant to New York law.

768. ~~Lead Plaintiff~~Plaintiffs and the Class base their unjust enrichment claim on the receipt or retention of fees and other monies that HSBC (Luxembourg) obtained at the expense of ~~Lead Plaintiff~~Plaintiffs and the Class, and to which they were not entitled, including, but not limited to, those specified in the Offering Memoranda.

769. HSBC (Luxembourg) was enriched at the expense of ~~Lead Plaintiff~~Plaintiffs and the Class, including by taking ~~Lead Plaintiff's~~Plaintiffs' and the Class's monies in the form of fees for their purported custody or oversight of the custody of ~~Lead Plaintiff's~~Plaintiffs' and the Class's investment, and the purported, but in fact non-existent, capital appreciation of such

assets.

770. ~~Lead Plaintiff~~Plaintiffs and the Class involuntarily conferred a benefit upon HSBC (Luxembourg) without ~~Lead Plaintiff~~Plaintiffs and the Class receiving adequate benefit or compensation in return. HSBC (Luxembourg) appreciated this benefit and accepted and retained the benefit under inequitable circumstances.

771. Equity and good conscience require HSBC (Luxembourg) to refund all fees and other monies they received at ~~Lead Plaintiff's~~Plaintiffs' and the Class²⁷ expense.

~~_____~~ **COUNT 1517**

~~FOR VIOLATIONS OF RULE 10b-5(b) AND SECTION 10(b) OF THE EXCHANGE ACT~~ **UNJUST ENRICHMENT AGAINST THE HERALD (LUX) AND HERALD (USA), JPMORGAN CHASE DEFENDANTS**

772. ~~Lead Plaintiff repeats~~Plaintiffs repeat and realleges all the allegations in this Complaint that are not part of the Counts (paragraphs 1 through ~~207646~~) as if fully set forth in this Count. This Count is asserted against the ~~Herald (LUX)~~JPMorgan Chase Defendants ~~and the Herald (USA) Defendants and is based upon Rule 10b-5(b) promulgated for unjust enrichment pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) New York law.~~

104. ~~Defendants subject to this Count recklessly or knowingly made various deceptive and untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to Lead Plaintiff and the Class. The purpose and effect of said false and misleading~~

statements was, among other things, to induce Lead Plaintiff and the Class to purchase shares in the Herald Funds.

105.—During the Class Period, Defendants subject to this Count sold the Herald Funds based on false and misleading statements and omissions. Investors in the Herald Funds or their nominees were provided copies of the Offering Memoranda. These documents, however, contained uniform misrepresentations and material omissions and induced Lead Plaintiff and the Class to invest in the Herald Funds.

106.—The Offering Memoranda specifically stated that only the representations in the Offering Memoranda were to be relied upon by investors.

107.—The Defendants subject to this Count, as acknowledged in their own documents, recognized the fundamental importance of proper due diligence, strict monitoring, and oversight of the investment manager, adviser, administrator and custodian, and their obligation to perform these functions. Nevertheless, the Defendants subject to this Count recklessly or knowingly failed to perform due diligence that they recognized was essential and required by standard industry practice. Defendants subject to this Count also recklessly or knowingly disregarded the red flags surrounding Madoff and that should have alerted them, as experienced investment professionals, to the need for heightened scrutiny.

108.—As set forth below in this Count, the Defendants subject to this Count recklessly or knowingly misrepresented to Lead Plaintiff and other members of the Class that their assets were being invested in a diversified manner. The Defendants subject to this Count failed to disclose to Lead Plaintiff and other members of the Class the material facts that in reality no one had conducted any meaningful due diligence on Madoff prior to establishing the Herald Funds'

~~investments with Madoff; no one was meaningfully monitoring, verifying, or confirming Madoff's trade activity; effectively there was no transparency into Madoff's operations; and no one had an independent, factual basis for stating that Lead Plaintiff and the Class' investments would ne diversified. Furthermore, no defendant mentioned that the investments would be going solely to Madoff.~~

~~109.—The statements concerning how investments would be diverse were false and misleading. In reality, no such strategy was being executed because investors' assets were being funneled into Madoff's Ponzi scheme and no other securities transactions were ever conducted. Further, the Offering Memoranda failed to disclose to Lead Plaintiff and other members of the Class the material fact that the Defendants subject to this Count had no factual basis for their representations about the Herald Funds' investment strategy because they knew all monies would be invested with Madoff.~~

~~110.—By reason of the foregoing, Defendants subject to this Count directly violated Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder in that they recklessly or knowingly made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.~~

~~111.—Lead Plaintiff and the Class, in ignorance of the false and misleading statements and omissions made recklessly or knowingly by Defendants subject to this Count, relied, to their detriment, on such misleading statements and omissions in purchasing shares in the Herald Funds. Lead Plaintiff and the Class have suffered substantial damages with respect to their~~

investments in the Herald Funds as a result of the wrongs alleged herein in an amount to be proven at trial.

COUNT 16

~~FOR VIOLATIONS OF RULE 10b-5(b) AND SECTION 10(b) OF THE EXCHANGE
ACT AGAINST THE E&Y DEFENDANTS~~

~~112.—Lead Plaintiff repeats and realleges certain allegations in this Complaint that are not part of the Counts (paragraphs 13-46, 89-94, 106, and 118-207) as if fully set forth in this Count. This Count is asserted against the E&Y Defendants and is based upon Rule 10b-5(b) promulgated pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b).~~

~~113.—E&Y Cayman issued audit opinions that constituted the presentation of false and misleading information as to the assets of the Herald (USA) Fund. Instead of more than a billion, as represented, virtually no assets actually existed. These statements were made recklessly or knowingly and constitute deceptive and untrue statements of material facts and omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. These statements induced Lead Plaintiff and the Class to invest in the Herald Funds.~~

~~114.—E&Y Cayman made the following false and misleading statements. E&Y Cayman issued audit opinions for every calendar year between at least 2003 and 2007 with respect to the Herald (USA) Funds' financial statements. In each of these opinions, E&Y Cayman (i) stated that it conducted the audits in accordance with auditing standards generally accepted in the Luxembourg and (ii) Each Independent Auditor's Report states that "We have audited the accompanying financial statements . . . which comprise the statement of net assets,~~

~~including the schedule of investments. . . . And the statement of net income, and changes of net assets[.] They also stated that “We conducted our audit in accordance with International Standards on Auditing.” They also provided an Opinion, which stated “in our opinion, the financial statements give a true and fair view of the financial position of Herald Fund SPC as of December 31, 200[4-7], and of its financial performance for the year then ending in accordance with accounting principles generally accepted in Luxembourg.”~~

~~115. Each of those statements was false. The statements were false for the following reasons:~~

- ~~a. E&Y Cayman knew, or was reckless in not knowing that, the Herald Funds' financial statements did not reflect the financial position of the Herald (USA) Fund as of December 31, 200[4-7];~~
- ~~b. E&Y Cayman knew, or was reckless in not knowing, that its audits of the Herald [USA] Fund did not meet, were in violation of, and were not in accordance with GAAS;~~
- ~~c. E&Y Cayman did not confirm the existence of the Herald (USA) Fund's supposed assets. While purporting to conduct an audit pursuant to GAAS, E&Y Cayman did not take the most fundamental and obvious steps in confirming the existence of the Herald (USA) Fund's assets, and did not do so despite the requirements pursuant to GAAS, as set forth above;~~
- ~~d. E&Y Cayman acted recklessly in making the false statements alleged in this Count and its conduct in performing the audits was highly~~

~~unreasonable and represented an extreme departure from the standards of ordinary care;~~

~~e. — E&Y Cayman knew facts or had access to information suggesting that its audit opinions were not accurate or failed to check information that it had a duty to monitor and which would have demonstrated the falsity of its statements when made; and~~

~~f. — E&Y Cayman knew that substantially all of the Herald (USA) Fund's assets were funneled to Madoff. Yet, E&Y Cayman failed, as described above, to conduct the minimal steps necessary to independently confirm the existence of the Herald (USA) Fund's assets, so that the Herald (USA) Fund's audits failed to uncover the fact that the assets did not exist.~~

~~116. — To issue unqualified audit opinions that the Herald (USA) Fund had over a billion dollars of assets without any independent confirmation that any of the assets actually existed is a textbook definition of a reckless audit because it failed to comply with GAAS and the requisite accounting standards and constitutes, essentially, no audit at all. Issuing clean audit opinions in the circumstances here, with the multiple red flags set forth above, is even more reckless yet. The failure of E&Y Cayman to acquire evidential matter from independent third parties, such as counterparties to the alleged trades by BMIS or the custodian of the U.S. Treasury Bills, or to acquire direct personal knowledge, such as by inspections and physical examination of the assets, not only was a blatant violation of auditing standards, but violated the most common sense and obvious purpose of an audit — to confirm that reported assets in fact exist.~~

~~117. The E&Y Defendants had agency and/or alter ego relationships with each other, as set forth above. E&Y Global is the principal of E&Y Cayman. Accordingly, E&Y Global is liable for the acts of E&Y Cayman.~~

~~118. In ignorance of the false and misleading statements described in this Count, Lead Plaintiff and the Class relied, to their detriment, on such misleading statements and omissions contained in E&Y Cayman's unqualified audit opinions by investing in the Herald Funds. Lead Plaintiff and the Class have suffered substantial damages with respect to their investments in the Herald Funds as a result of the wrongs alleged herein in an amount to be proven at trial.~~

~~**COUNT 17**~~

~~**FOR VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT
AGAINST E&Y GLOBAL**~~

~~119. Lead Plaintiff repeats and realleges certain allegations in this Complaint that are not part of the Counts (paragraphs 13-46, 89-94, 106, and 118-207) as if fully set forth in this Count. This Count is asserted against E&Y Global pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).~~

~~120. E&Y Global is a controlling person within the meaning of Section 20(a) of the Exchange Act, as alleged herein.~~

~~121. E&Y Global had the power to influence and control and did influence and control, directly or indirectly, the decision making of E&Y Cayman, including the content and dissemination of the audit opinions of the Herald (USA) Fund that were false and misleading, by virtue of E&Y Global's participation in, and control and awareness of, the operations, audit procedures, audit work, and audit standards of E&Y Cayman.~~

~~122. E&Y Global had direct and supervisory involvement and control in the day-to-day operations, audit procedures, audit work, and audit standards of E&Y Cayman and, therefore, is presumed to have had the power to control or influence the audit statements, audit procedures, and conduct giving rise to the primary securities violations alleged in this Complaint.~~

~~123. As a direct and proximate result of the wrongful conduct alleged in this Count, Lead Plaintiff and the Class suffered damages in connection with their purchases of shares in the Herald Funds in an amount to be proven at trial.~~

773. Plaintiffs and the Class base their unjust enrichment claim on the receipt or retention of fees and other monies that JPMorgan Chase obtained at the expense of Plaintiffs and the Class, and to which they were not entitled, including, but not limited to, monies received: (i) as a result of the JPMorgan Chase Defendants' divestment of their investments in BMIS at a time when they knew or should have known of Madoff and/or BMIS' unlawful and/or fraudulent conduct, (ii) as fees and/or profits from the BMIS Bank Account; and/or (iii) as the result of purported loans to BMIS and/or Madoff.

774. The JPMorgan Chase Defendants were enriched at the expense of Plaintiffs and the Class as a result of the JPMorgan Chase Defendants' receipt of monies (i) as a result of the JPMorgan Chase Defendants' divestment of their investments in BMIS at a time when they knew or should have known of Madoff and/or BMIS' unlawful and/or fraudulent conduct, (ii) as fees and/or profits from the BMIS Bank Account; and/or (iii) as the result of purported loans to BMIS and/or Madoff

775. Plaintiffs and the Class involuntarily conferred a benefit upon the JPMorgan

Chase Defendants without Plaintiffs and the Class receiving adequate benefit or compensation in return. JPMorgan Chase appreciated this benefit and accepted and retained the benefit under inequitable circumstances.

776. Equity and good conscience require JPMorgan Chase to refund all fees and other monies they received at Plaintiffs' and the Class' expense.

COUNT 18

FOR VIOLATIONS OF RULE 10b-5(b) AND SECTION 10(b) OF THE EXCHANGE ACT AGAINST HSBC (LUXEMBOURG)

Lead Plaintiff repeats **ALL DEFENDANTS' AIDING AND ABETTING BREACHES OF FIDUCIARY DUTY**

124.—~~Plaintiffs repeat and realleges all the allegations in this Complaint that are not part of the Counts (1 through 207) as if fully set forth in this Count. This Count is asserted against the HSBC (Luxembourg) pursuant to Rule 10b-5(b) promulgated under Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b).~~

125.—~~HSBC (Luxembourg) issued false statements containing inflated NAV calculations and account balance information. HSBC (Luxembourg) issued these statements, at a minimum, on a monthly basis throughout the Class Period. In issuing these statements, HSBC (Luxembourg) acted recklessly or knowingly because the Administrator knew or had access to information indicating that its statements were not accurate. HSBC (Luxembourg) acted recklessly by failing to check or verify the information received from BMIS despite a duty to scrutinize and verify independently the information relating to the NAV and account balances. HSBC (Luxembourg) failure to check or verify the information was also reckless because it was~~

aware of the red flags surrounding Madoff, including the consolidation of the roles of investment manager, custodian, and execution agent.

126.—Lead Plaintiff and the Class justifiably relied on the information contained in the HSBC (Luxembourg)'s statements. Further, HSBC (Luxembourg) as paid substantial fees for performing administrative services.

127.—As a direct and proximate result of the wrongful conduct alleged in this Count, Lead Plaintiff and the Class suffered damages in connection with their purchases of shares in the Herald Funds in an amount to be proven at trial.

COUNT 19

~~FOR VIOLATIONS OF RULES 10b-5(a) AND 10b-5(c) AND SECTION 10(b) OF THE EXCHANGE ACT AGAINST ALL DEFENDANTS EXCEPT THE E&Y DEFENDANTS~~

128.—Lead Plaintiff repeats and realleges all the allegations in this Complaint that are not part of the Counts (1 through 207) as if fully set forth in this Count. This Count is asserted against all Defendants and is based upon Rules 10b-5(a) and 10b-5(c) promulgated pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b).

129.—Defendants employed devices, schemes and artifices to defraud and engaged in acts, practices and a course of business that operated as a fraud and deceit upon the purchasers of shares in the Herald Funds, in violation of Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c). In furtherance of this unlawful plan, scheme and course of conduct, Defendants took the actions set forth herein.

130.—Defendants, individually and collectively, were responsible for safeguarding Lead Plaintiff's and Class members' investments. In this role, Defendants were obligated to perform,

~~and represented that they had performed, due diligence on Madoff. Through such due diligence, Defendants had knowledge of, or were extremely reckless in not knowing of, Madoff's Ponzi scheme, described herein.~~

~~131.— In ignorance of the fact that the Herald Funds were feeder funds for Madoff's Ponzi scheme, Lead Plaintiff and the Class, relying on Defendants' due diligence, purchased shares in the Funds during the Class Period.~~

~~132.— Defendants benefitted financially from Lead Plaintiff's and Class members' purchases of shares in the Herald Funds. In particular, Defendants received compensation, fees, commissions, kickbacks, and other payments based on (i) the Herald Funds' net asset value; and (ii) Lead Plaintiff's and Class members' subscriptions to the Herald Funds.~~

~~133.— Defendants engaged in the fraudulent activity described above knowingly and intentionally, or in such an extremely reckless manner, as to constitute willful deceit and fraud upon Lead Plaintiff and the Class.~~

~~134.— But for Defendants' fraud, none of the securities that were sold to Lead Plaintiff and the Class could have been sold.~~

~~135.— Upon public disclosure of the true facts which had been misrepresented or concealed by Defendants, as alleged herein, Lead Plaintiff's and Class members' investments lost all of their value.~~

~~136.— As a direct and proximate result of Defendants' wrongful conduct, Lead Plaintiff and the Class suffered damages in connection with their respective purchases of shares of the Herald Funds, for which the Defendants named in this Count are jointly and severally liable.~~

COUNT 20

~~FOR VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT
AGAINST ALL DEFENDANTS EXCEPT THE E&Y DEFENDANTS~~

777. ~~Lead Plaintiff repeats and realleges all the allegations in this Complaint that are not part of the Counts (paragraphs 1 through 207-646) as if fully set forth in this Count. This Count is asserted against all defendants, except the E&Y Defendants pursuant to Section 20(a) for aiding and abetting the breach(es) of fiduciary duty owed to Plaintiffs and the Exchange Act, 15 U.S.C. § 78t(a) Class by the Fiduciary Defendants.~~

~~137.—Each defendant acted as controlling persons within the meaning of Section 20(a) of the Exchange Act, as alleged herein.~~

~~138.—Medici controlled the Herald Funds and caused them to become feeder funds for Madoff's Ponzi scheme. It had the power to control, and did control, the general business affairs of Herald Funds and the power to directly or indirectly control or influence the specific corporate policy (i.e., the failure to conduct due diligence) of Pioneer and the Funds which resulted in primary liability. Medici knew, or was reckless in not knowing, that the Herald Funds' investments were non-existent, as alleged herein.~~

~~139.—Kohn controlled the Herald Funds and Medici, through her 75% ownership stake in Medici, and caused the Herald Funds become feeder funds for Madoff's Ponzi scheme. She had the power to control, and did control, the general business affairs of Medici and the Herald Funds, and the power to directly or indirectly control or influence the specific corporate policy (i.e., the failure to conduct due diligence) of Medici and the Herald Funds which resulted in primary liability. Kohn knew, or was reckless in not knowing, that the Herald Funds' investments were non-existent, as alleged herein.~~

140.—UniCredit controlled Medici through Bank Austria, its wholly owned subsidiary. Through its 25% ownership of Medici, UniCredit had the power to control, and did control, the general business affairs of Medici and the Herald Funds, and the power to directly or indirectly control or influence the specific corporate policy (*i.e.*, the failure to conduct due diligence) of Medici and the Funds which resulted in primary liability. UniCredit knew, or was reckless in not knowing, that the Funds' investments were non-existent, as alleged herein.

141.—Bank Austria was a control person of Medici. Through Medici, Bank Austria was also a control person of the Herald Funds. Thus, Bank Austria had the power to control, and did control, the general business affairs of Medici and the Herald Funds, and the power to directly or indirectly control or influence the specific corporate policy (*i.e.*, the failure to conduct due diligence) of Medici and the Herald Funds which resulted in primary liability. Bank Austria knew, or was reckless in not knowing, that the Herald Funds' investments were non-existent, as alleged herein.

142.—Certain defendants were, for portions of the Class Period, directors and/or delegates of directors of the Herald Funds. These defendants had the power to control, and did control, the general business affairs of the Herald Funds, and the power to directly or indirectly control or influence the specific corporate policy (*i.e.*, the failure to conduct due diligence) of the Herald Funds which resulted in primary liability. These director defendants knew, or were reckless in not knowing, that the Herald Funds' investments were non-existent, as alleged herein.

143.—The invest managers, Medici and Herald Asset Management Limited, were control persons of the Herald Funds. They had the power to control, and did control, the general business affairs of the Herald Funds, and the power to directly or indirectly control or influence

~~the specific corporate policy (i.e., the failure to conduct due diligence) of the Herald Funds which resulted in primary liability. The invest managers knew, or were reckless in not knowing, that the Herald Funds' investments were non-existent, as alleged herein.~~

~~144. HSBC (Luxembourg) was a control person of the Herald Funds. It had the power to control, and did control, the general business affairs of the Herald Funds, and the power to directly or indirectly control or influence the specific corporate policy (i.e., the failure to conduct due diligence) of the Herald Funds which resulted in primary liability. HSBC (Luxembourg) knew, or was reckless in not knowing, that the Herald Funds' investments were non-existent, as alleged herein.~~

~~145. HSBC was a control person of HSBC (Luxembourg). It had the power to control, and did control, the general business affairs of the Herald Fund's administrator and the custodian, and the power to directly or indirectly control or influence the specific corporate policy (i.e., the failure to conduct due diligence) of the administrator and custodians which resulted in primary liability. HSBC knew, or was reckless in not knowing, that the Funds' investments were non-existent, as alleged herein.~~

~~146. As a direct and proximate result of the wrongful conduct alleged in this Count, Lead Plaintiff and the Class suffered an economic loss and damages in connection with their purchases of shares in the Herald Funds in an amount to be proven at trial.~~

778. The Fiduciary Defendants each owed a fiduciary duty to its customers: Plaintiffs and the Class. The Fiduciary Defendants breached their fiduciary duties by perpetrating the Ponzi scheme described herein, which resulted in billions of dollars in losses to Plaintiffs and the Class. Each of the Defendants knew or consciously disregarded the breach(es).

but still actively participated in the breach(es). Each of Defendants' participation in the breach(es) allowed and/or assisted one or more of the Fiduciary Defendants' perpetuation of their breach(es).

779. Upon information and belief, each Defendant, individually, aided and abetted the breach(es) of fiduciary duties by one or more of the Fiduciary Defendants. Moreover, each of the Defendants worked in concert with the other Defendants, and each is liable for the actions of the other Defendants. Each defendant knowingly provided substantial assistance to the other defendants in the breach of their duties.

780. Plaintiffs and the Class entrusted their assets to the Fiduciary Defendants by investing in the Herald Funds and reposed confidence in them with respect to the management of those assets. The Fiduciary Defendants were in a superior position as to the management and control of those assets, in their capacities as advisers, their parent and selling agent, the directors of the Funds, and the Funds themselves, and in a superior position to manage, control, and oversee the actions of the other Fiduciary Defendants. As a result, Plaintiffs and the Class placed their trust and confidence in the Fiduciary Defendants named in this Count.

781. The Fiduciary Defendants accepted that repose of trust and confidence and held themselves out as providing superior client investment services and as having policies and procedures in place to ensure that:

782. the Herald Funds would follow their policies and investment guidelines;

783. sufficient operational controls were in place to safeguard Plaintiffs' and the Class' assets; and

784. transactions would be properly conducted.

785. Plaintiffs and the Class reasonably and foreseeably trusted the purported expertise and skill of the Fiduciary Defendants.

786. The Fiduciary Defendants therefore owed a fiduciary duty to Plaintiffs and the Class with respect to the management, oversight, and protection of Plaintiffs' and the Class' assets invested in the Herald Funds.

787. In accordance with their fiduciary duties to Plaintiffs and the Class, the Fiduciary Defendants were obligated to:

- a. deal fairly and honestly with Plaintiffs and the Class;
- b. act with loyalty and good faith towards Plaintiffs and the Class;
- c. manage and operate the investments of Plaintiffs and the Class exclusively for the best interest of Plaintiffs and the Class;
- d. make recommendations and execute transactions in accordance with the goals, investment objectives, and permissible degree of risk and instruction of Plaintiffs and the Class; and
- e. oversee the investment of Plaintiffs' and the Class' assets to confirm they were maintained in a prudent and professional manner.

788. The Fiduciary Defendants breached their fiduciary duties to Plaintiffs and the Class by:

- a. failing to act with reasonable care to ensure that the investment opportunity presented to Plaintiffs and the Class was suitable and in accordance with their investment goals and intentions;

- b. failing to perform adequate due diligence before investing with Madoff and/or BMIS;
- c. failing to invest Plaintiffs' and the Class' assets with adequate diligence or monitoring;
- d. failing to monitor Madoff and/or BMIS on an ongoing basis to any reasonable degree;
- e. failing to take adequate steps to confirm BMIS' purported account statements, transactions, and holdings of the Herald Funds' assets;
- f. failing to exercise the degree of prudence, diligence, and care expected of financial professionals managing client funds;
- g. profiting and allowing their affiliates to unlawfully profit at the expense of Plaintiffs and the Class; and
- h. engaging in transactions that were designed to and did result in a profit to Defendants named in this Count at the expense of Plaintiffs and the Class.

789. As a result of the Fiduciary Defendants' breaches of their fiduciary duties, Plaintiffs and the Class have lost all, or substantially all, of their respective investments in the Herald Funds.

790. Each of the Defendants knew or consciously disregarded that, during the Class Period, the Fiduciary Defendants were:

- a. failing to act with reasonable care to ensure that the investment opportunity presented to Plaintiffs and the Class was suitable and in accordance with their investment goals and intentions;

- b. failing to perform adequate due diligence before investing with Madoff and/or BMIS;
- c. failing to invest Plaintiffs' and the Class' assets with adequate diligence or monitoring;
- d. failing to monitor Madoff and/or BMIS on an ongoing basis to any reasonable degree;
- e. failing to take adequate steps to confirm BMIS' purported account statements, transactions, and holdings of the Herald Funds' assets;
- f. failing to exercise the degree of prudence, diligence, and care expected of financial professionals managing client funds;
- g. profiting and allowing their affiliates to unlawfully profit at the expense of Plaintiffs and the Class; and
- h. engaging in transactions that were designed to and did result in a profit to Defendants named in this Count at the expense of Plaintiffs and the Class.

791. Despite being aware of extensive red flags regarding the breaches, as outlined *supra*, each of the Defendants participated in, and provided substantial assistance to the Fiduciary Defendants' breach(es) of their fiduciary duties owed to Plaintiffs and the Class by, *inter alia*: (i) funneling billions of dollars to Madoff and BMIS through the BMIS Bank Account; (ii) lending BMIS and/or Madoff millions of dollars which allowed the Ponzi scheme to continue; and/or (iii) manufacturing, issuing and/or ignoring false or misleading information regarding the Herald Funds, all while receiving large profits for themselves at the expense of Plaintiffs and the Class. In fact, each of the Defendants' actions and/or inactions perpetuated the

subject breach(es) of fiduciary duties owed to Plaintiffs and the Class.

792. Indeed, according to Madoff, the Defendants engaged in “willful blindness” of his fraud in order to make a profit. “They had to know”. “But the attitude was sort of, ‘If you’re doing something wrong, we don’t want to know.’ ” “I am saying that the banks and funds were complicit in one form or another.” Diana B. Henriques, *From Prison, Madoff Says Banks ‘Had to Know’ of Fraud*, N.Y. Times, Feb. 15, 2011, at A1, quoting Madoff. See also Steve Fishman, *The Madoff Tapes*, N.Y. Mag., Mar. 2, 2011, at 91 (“Look, there was complicity, in my view.”).

793. Each of the Defendants’ actions and/or inactions was assistance in the breach(es) and was a proximate cause of the breach. Without Defendants’ assistance, the Ponzi scheme would not have existed throughout the Class Period.

794. As a result of each of Defendants’ aiding and abetting of the Fiduciary Defendants’ breaches, Plaintiffs and the Class suffered damages with respect to their investments in the Herald Funds in an amount to be determined at trial

795. The damages suffered by Plaintiffs and the Class were a direct and foreseeable result, proximately caused by the Defendants’ aiding and abetting of the Fiduciary Defendants’ breach(es) of their fiduciary duties owed to Plaintiffs and the Class.

COUNT 19

ALL DEFENDANTS’ AIDING AND ABETTING FRAUD

796. Plaintiffs repeat and reallege all the allegations in this Complaint that are not part of the Counts (paragraphs 1 through 646) as if fully set forth in this Count. This Count is asserted against all Defendants for aiding and abetting the fraudulent conduct of non-parties

Madoff and/or BMIS.

797. Madoff and/or BMIS committed a massive fraud. Each of the Defendants knew or consciously disregarded Madoff and/or BMIS' fraud, but still lent substantial assistance to Madoff and/or BMIS which perpetuated the fraud. Without the Defendants assistance to Madoff and/or BMIS, the Ponzi Scheme would have collapsed. Instead, each of the Defendants purposefully refrained from confirming the fraud so that they could profit from it. The Defendants' actions and/or inactions proximately caused billions of dollars in damages sustained by Plaintiffs and the Class.

798. Upon information and belief, each Defendant, individually, aided and abetted Madoff and/or BMIS' fraud. Moreover, each of the Defendants worked in concert with the other Defendants, and each is liable for the actions of the other Defendants.

799. Each of the Defendants was in a superior position as to the management and control of Plaintiffs and the Class' assets, in their capacities as advisers, their parent and selling agent, the directors of the Herald Funds, the custodians of the Herald Funds, the Herald Funds themselves, the auditors of BMIS and/or the Herald Funds, the primary banking entity for Madoff and/or BMIS, and/or as a sophisticated investors with superior access to manage, control and oversee the actions of the other Defendants.

800. Despite being aware of extensive red flags regarding the Ponzi Scheme and fact that Madoff and BMIS were conducting a wholly fraudulent enterprise, Defendants each knew or consciously disregarded those red flags in order to personally profit from the fraud.

801. As a result of Madoff and/or BMIS' fraudulent conduct, Plaintiffs and the Class have lost all, or substantially all, of their respective investments in the Herald Funds. As

outlined supra, each of the Defendants participated in, and provided substantial assistance to Madoff and/or BMIS by, inter alia: (i) funneling billions of dollars to Madoff and BMIS through the BMIS Bank Account; (ii) lending BMIS and/or Madoff millions of dollars which allowed the Ponzi scheme to continue; and/or (iii) manufacturing, issuing and/or ignoring false or misleading information regarding the Herald Funds, all while receiving large profits for themselves at the expense of Plaintiffs and the Class. In fact, each of the Defendants' actions and/or inactions perpetuated the Madoff and/or BMIS' fraudulent conduct.

802. Indeed, according to Madoff, the Defendants engaged in "willful blindness" of his fraud in order to make a profit. "They had to know". "But the attitude was sort of, 'If you're doing something wrong, we don't want to know.' " "I am saying that the banks and funds were complicit in one form or another." Diana B. Henriques, *From Prison, Madoff Says Banks 'Had to Know' of Fraud*, N.Y. Times, Feb. 15, 2011, at A1, quoting Madoff. See also Steve Fishman, *The Madoff Tapes*, N.Y. Mag., Mar. 2, 2011, at 91 ("Look, there was complicity, in my view.").

803. Each of the Defendants' actions and/or inactions was assistance in Madoff and/or BMIS' fraud and was a proximate cause of the fraud. Without Defendants' assistance, the Ponzi scheme would not have existed throughout the Class Period.

804. As a result of each of Defendants' aiding and abetting Madoff and/or BMIS' fraud, Plaintiffs and the Class suffered damages with respect to their investments in the Herald Funds in an amount to be determined at trial

805. The damages suffered by Plaintiffs and the Class were a direct and foreseeable result, proximately caused by the Defendants' aiding and abetting of Madoff and/or

BMIS' fraud.

COUNT 20

CIVIL RACKETEERING – 18 U.S.C. § 1962(c)
AGAINST THE MADOFF-KOHN ENTERPRISE DEFENDANTS

806. Plaintiffs repeat and reallege all the allegations in this Complaint that are not part of the Counts (paragraphs 1 through 646) as if fully set forth in this Count. This Count is asserted against the Madoff-Kohn Enterprise Defendants.

807. At all times relevant to this Complaint, all members of the Madoff-Kohn Enterprise were “persons” as defined by 18 U.S.C. § 1961(3).

808. At all times relevant to this Complaint, all members of the Madoff-Kohn Enterprise as alleged herein engaged in the operation or management of the Madoff-Kohn Enterprise, which is an enterprise as defined by 18 U.S.C. § 1961(4), the activities of which affect interstate and foreign commerce.

809. At all times relevant to this Complaint, all members of the Madoff-Kohn Enterprise Defendants conducted the Madoff-Kohn Enterprise’s affairs through a pattern of racketeering activity alleged herein that was directed at the business and property of Plaintiffs and the other members of the Class since at least 1985.

810. The Madoff-Kohn Enterprise: (i) is an ongoing association-in-fact with a decision-making framework or mechanism for controlling the association; (ii) has associated members with a common purpose that function as a continuing unit; and (iii) is separate and apart from the pattern of racketeering activity. Conduct of the members of the Madoff-Kohn Enterprise, as it relates to the Madoff Feeder Fund Scheme, is for the most part directed by S. Kohn and her instrumentality Bank Medici, a branch of Bank Austria, which acted through,

among others, Randa and Zapotocky.

811. S. Kohn orchestrated the siphoning of stolen property directly from Plaintiffs and the other members of the class through her family and her network of sham businesses in New York and elsewhere.

812. These defendants, as members of the Madoff-Kohn Enterprise, are participants in the Madoff Feeder Fund Scheme in different capacities, functions, and roles calculated to enrich and expand the Madoff-Kohn Enterprise so that it could continue to perpetrate the Madoff Feeder Fund Scheme.

813. Madoff-Kohn Enterprise governance occurred through frequent communications among its members by means of interstate and international wire communication via telephone, facsimile, and e-mail in interstate and foreign commerce in addition to travel to and from New York and internationally.

814. The predicate acts form a “pattern of racketeering activity” and are all part of a common criminal plan to perpetrate the Madoff Feeder Fund Scheme and enrich the Medici Enterprise through the Defendants’ criminal and fraudulent conduct. The Madoff Feeder Fund Scheme began in or about 1993 when S. Kohn started the Primeo funds, continued through Madoff’s confession on December 11, 2008, and may be ongoing. S. Kohn has concealed stolen property and other criminally derived proceeds of the Madoff Feeder Fund Scheme since the collapse of the Ponzi scheme.

815. All of the predicate acts relate to one another because they represent a common scheme to further the Madoff Feeder Fund Scheme and enrich the Madoff-Kohn Enterprise. Each of the over 1,000 predicate acts by the members of the Madoff-Kohn Enterprise

is also attributable to S. Kohn herself. The predicate acts progressed in a logical fashion as the Madoff Feeder Fund Scheme expanded from its core in New York and as it fed Madoff and BMIS in New York. S. Kohn received stolen property directly from plaintiffs and the class at least quarterly from at least 1994 until 2008 with few (if any) interruptions to this pattern of transfers.

816. Each transfer in this twenty-year pattern constitutes repeated and related predicate acts of: (i) money laundering in violation of 18 U.S.C. § 1956; (ii) engaging in monetary transactions in property derived from specific unlawful activity in violation of 18 U.S.C. § 1957; (iii) wire fraud in violation of 18 U.S.C. § 1343; (iv) financial institution fraud in violation of 18 U.S.C. § 1344; (v) mail fraud in violation of 18 U.S.C. § 1341; and/or (vi) interstate and international travel in violation of the Travel Act, 18 U.S.C. § 1952.

817. The effect of the collapse of BMIS on interstate commerce is a matter of public record and a fact of which this Court can take judicial notice. S. Kohn and other Defendants used and exploited U.S. financial institutions, the USPTO, lawyers in New York, other states and overseas, as well as interstate and international telephone, facsimile, e-mail, and wire transfer communications from no later than 1993 to the present. The activities of the Medici Enterprise directly affected U.S. interstate and foreign commerce through the Madoff Feeder Fund Scheme.

818. As a direct and proximate result of the violations set forth above, Plaintiffs and the other members of the Class have been injured in their business and property. The Defendants' violations of 18 U.S.C. § 1962(c) are the proximate cause of these losses. Under the provisions of 18 U.S.C. § 1964(c), Plaintiffs are entitled to bring this action and recover herein

treble damages, the cost of bringing this suit, prejudgment interest, and recoverable attorneys' fees.

COUNT 21

CIVIL RACKETEERING – 18 U.S.C. § 1962(d) AGAINST THE MADOFF-KOHN ENTERPRISE DEFENDANTS

819. Plaintiffs repeat and reallege all the allegations in this Complaint that are not part of the Counts (paragraphs 1 through 646) as if fully set forth in this Count. This Count is asserted against the Madoff-Kohn Enterprise Defendants.

820. The members of the Madoff-Kohn Enterprise entered into a series of agreements between and among each other to engage in a conspiracy to violate 18 U.S.C. § 1962(c). All members of the Madoff-Kohn Enterprise entered into at least one agreement with at least one other member to join the conspiracy, took acts in the furtherance of the conspiracy, and knowingly participated in the conspiracy.

821. Members of the Madoff-Kohn Enterprise agreed and conspired to violate 18 U.S.C. § 1962(c) by participating, directly or indirectly, in the conduct of the affairs of the Madoff-Kohn Enterprise through a pattern of racketeering activity, including an agreement that the conspirators, or one of them, would commit or cause the commission of two or more racketeering acts constituting such a pattern.

822. By engaging in the overt acts and other conduct alleged herein, these defendant have agreed to conspire and did so conspire in violation of 18 U.S.C. § 1962(d) to engage in illegal predicate acts that formed a pattern of racketeering activity as defined by 18 U.S.C. § 1961(5) and otherwise agreed to violate 18 U.S.C. § 1962(c).

823. Each Defendant named as members of the Madoff-Kohn Enterprise

conspired to perpetrate the Madoff Feeder Fund Scheme. As co-conspirators, these defendants are liable for all of the actions committed by all of the co-conspirators within the conspiracy and are liable for all of the damages sustained by plaintiffs and the class that were caused by any members of the conspiracy, regardless of whether the defendants were themselves directly involved in a particular aspect of the Madoff-Kohn Enterprise. As a direct and proximate result of the violations set forth above, plaintiffs have been injured in its business and property. The Defendants' violations of 18 U.S.C. § 1962(d) are the proximate cause of these losses. Under the provisions of 18 U.S.C. § 1964(c), Plaintiffs are entitled to bring this action and recover herein treble damages, the cost of bringing this suit, prejudgment interest, and recoverable attorneys' fees.

PRAYER FOR RELIEF

 WHEREFORE, ~~Lead Plaintiff~~Plaintiffs, on behalf of ~~himself~~themselves and other members of the Class, demands judgment against Defendants as follows:

- (a) declaring this action to be a proper class action maintainable pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and declaring ~~Lead Plaintiff a~~Plaintiffs as proper Class representatives;
- (b) awarding damages suffered by ~~Lead Plaintiff~~Plaintiffs and the Class as a result of the wrongs complained of herein, together with appropriate interest;
- (c) awarding ~~Lead Plaintiff~~Plaintiffs and the Class punitive damages, where appropriate, suffered as a result of the wrongs complained of herein;
- (d) declaring that Defendants have been unjustly enriched and imposing a constructive trust to recoup Defendants'' fees, unjust benefits, and other assets for

- the benefits of ~~Lead Plaintiff~~Plaintiffs and the Class;
- (e) enjoining Defendants from using the Herald Funds²' assets to defend this action or to otherwise seek indemnification from the Funds for their wrongful, deceitful, reckless, or negligent conduct as alleged herein;
- (f) awarding ~~Lead Plaintiff~~Plaintiffs and the Class costs and disbursements and reasonable allowances for the fees of ~~Lead Plaintiff's~~Plaintiffs' and Class²' counsel and experts, and reimbursement of expenses; and
- (g) granting such other and further relief as the Court may deem just and proper.

JURY DEMAND

 Plaintiff demands a trial by jury.

Dated: ~~February 10, 2010~~April 1, 2011

BRODY

STULL, STULL &

Timothy J. Burke (Admitted *pro hac vice*)
10940 Wilshire Boulevard
Suite 2300
Los Angeles, California 90024
(310) 209-2468 (Tel)
(310) 209-2087 (Fax)

Email: service@ssbla.com

Email: service@ssbla.com

STULL, STULL & BRODY

Jules Brody (JB-9151)

Patrick Slyne (PS-1765)

6 East 45th Street

New York, New York 10017

(212) 687-7230 (Tel)

(212) 490-2022 (Fax)

**Lead Counsel for Lead Plaintiff Repex Ventures, Plaintiff Dana Trezziova and the
Proposed Class
(Repex action only)**

Appendix A

Defined Term

Definition

621 Account:

Bank of New York Inc. account number
xxxxxxxxxxx621

703 Account:

JPMorgan Chase account number xxxxxxxxxxxx703

Account Agreements:

Customer Agreement, an Option Agreement, and a
Trading Authorization Limited to Purchases and Sales
of Securities and Options, of the Herald USA
Account opened on or about April 1, 2004, executed
and delivered to BMIS at BMIS' headquarters at 885
Third Avenue, New York, New York.

Alpha Prime Fund:

Alpha Prime Fund Ltd.

AMF:

Bank Austria's Account Maintenance File

APM Cayman:

Absolute Portfolio Management Ltd.

BA Worldwide:

BA Worldwide Fund Management Ltd.

Bank Austria:

Bank Austria Creditanstalt

Bank Austria Cayman:

Bank Austria Cayman Islands Ltd.

Bank Medici Gibraltar:

Bank Medici Gibraltar AG

BASI:

Bank Austria Securities, Inc.

Blau:

Netty Blau

BMIS:

Bernard L. Madoff Investment Securities LLC

BMIS Bank Account:

Chase Bank Account #000000140081703

BONY:

Bank of New York

Brera:

Brera Servizi Aziendale S.r.l.

<u>CAFA:</u>	<u>Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2)</u>
<u>CBOE:</u>	<u>Chicago Board Options Exchange</u>
<u>Chase Bank:</u>	<u>JPMorgan Chase Bank, N.A.</u>
<u>Class:</u>	<u>All persons or entities who, (i) owned shares of Herald Funds on December 10, 2008, or (ii) purchased shares of Herald Funds from January 14, 2004 to December 10, 2008, and were damaged thereby due to the wrongful conduct alleged in this Complaint</u>
<u>Class Period:</u>	<u>All persons or entities who, (i) owned shares of Herald Funds on December 10, 2008, or (ii) purchased shares of Herald Funds from January 14, 2004 to December 10, 2008</u>
<u>Cohmad:</u>	<u>Cohmad Securities Corporation</u>
<u>Cohn:</u>	<u>Maurice Jay (Sonny) Cohn</u>
<u>Cosulich:</u>	<u>Daniele Cosulich</u>
<u>CUSIP:</u>	<u>Committee on Uniform Security Identification Procedures</u>
<u>DiPascali:</u>	<u>Frank DiPascali</u>
<u>Duregger:</u>	<u>Josef Duregger</u>
<u>E&Y Defendants:</u>	<u>Ernst & Young S.A., Ernst & Young, Cayman Islands, and Ernst & Young Global Limited</u>
<u>E. Kohn:</u>	<u>Edwin Kohn</u>
<u>Erko:</u>	<u>Erko, Inc.</u>
<u>Eurovaleur:</u>	<u>Eurovaleur, Inc.</u>
<u>F&H:</u>	<u>Friehling & Horowitz</u>
<u>February 19th Article:</u>	<u>Matthias Wabl, Sonja Kohn Wood Bernard Madoff Billions With Medici Fantasy, Bloomberg, February</u>

19, 2009

Fiduciary Defendants

Defendants Herald (USA), Herald (Lux), HAML, de
Sury, Safdié, Jones, Frey, Pirkner, Pfeffer, Mugnai,
Goddard, Saleta and Scheithauer

FINRA:

Financial Industry Regulatory Authority

Flax:

Leon Flax

Frey:

Helmuth E. Frey

FundsWorld:

FundsWorld Financial Services Ltd.

GAAP:

Generally Accepted Accounting Principles

Gerila:

Gerila Beteiligungsverwaltungs GmbH

Giefing:

Susanne Giefing

Goddard:

Richard Goddard

Gottlieb:

Howard Gottlieb

Grasso:

Thomas Grasso

Groendahl Article:

"HSBC Was Told About Madoff Fraud Risks in Two
KPMG Reports," Mar. 18, 2011, Boris Groendahl,
Bloomberg.com

GSCC:

Government Securities Clearing Corporation

Gutty:

Gianfranco Gutty

HAML:

Herald Asset Management Limited

Harley:

Harley International (Cayman) Ltd.

Hemetsberger:

Wilhelm Hemetsberger

Herald (LUX):

Herald (LUX) U.S. Absolute Return Fund

Herald (LUX) Defendants:

Herald (LUX), Medici, S. Kohn, Pfeffer, Scheithauer,
Frey, Pirkner, Mugnai, and Goddard

<u>Herald (LUX) Report:</u>	<u>Unaudited Semi-Annual Report and Financial Statement issued by Herald (LUX)</u>
<u>Herald (USA):</u>	<u>Herald Fund SPC-Herald USA Segregated Portfolio One</u>
<u>Herald Consult:</u>	<u>Herald Consult Ltd.</u>
<u>Herald Funds:</u>	<u>Herald Fund SPC-Herald USA Segregated Portfolio One and Herald (LUX)</u>
<u>Herald USA Account:</u>	<u>Herald USA account with BMIS through its custodian, HSBC (Luxembourg), that was designated account 1FR109</u>
<u>HSBC (Luxembourg):</u>	<u>HSBC Securities Services (Luxembourg) S.A.</u>
<u>HSBC Bermuda:</u>	<u>HSBC Bank Bermuda Ltd.</u>
<u>HSBC Cayman:</u>	<u>HSBC Bank (Cayman) Ltd.</u>
<u>HSBC Defendants:</u>	<u>HSBC Securities Services (Luxembourg) S.A., and HSBC Holdings plc</u>
<u>HSBC Ireland:</u>	<u>HSBC Secs. Svcs. (Ireland) Ltd. and HSBC Institutional Trust Svcs. (Ireland) Ltd.</u>
<u>HSBC Trust Bermuda:</u>	<u>HSBC Institutional Trust Svcs. (Bermuda) Ltd.</u>
<u>IFRS:</u>	<u>International Financial Reporting Standards</u>
<u>Jones:</u>	<u>William A. Jones</u>
<u>JPMorgan Chase:</u>	<u>JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, and J.P. Morgan Securities Ltd.</u>
<u>JPMorgan Chase Bankruptcy Complaint:</u>	<u>SIPA v. Madoff; Picard v. JPMorgan Chase & Co., Adv. Pro No. 10-04932 (Bk. S.D.N.Y. Dec. 12, 2010)</u>
<u>JPMorgan Chase Defendants:</u>	<u>JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, and J.P. Morgan Securities Ltd.</u>
<u>Kadarnoska:</u>	<u>Fredrich Kadarnoska</u>

<u>Kastner:</u>	<u>Manfred Kastner</u>
<u>Kohn's New York Sham Businesses:</u>	<u>Erko, Inc., Windsor IBC, Inc., Eurovaleur, Inc., and Valeur Securities, Inc.</u>
<u>KPMG 2006 Report:</u>	<u>Report entitled "Review of fraud risk and related operational risks at Bernard L. Madoff Investment Securities LLC" dated February 16, 2006, issued by KPMG to the HSBC Defendants</u>
<u>KPMG 2008 Report:</u>	<u>Report dated September 8, 2008, issued by KPMG to the HSBC Defendants</u>
<u>Krestchmer:</u>	<u>Werner Krestschmer</u>
<u>Kritzer:</u>	<u>Anne Kritzer</u>
<u>La Rocca:</u>	<u>Albert LaRocca</u>
<u>Lachs:</u>	<u>Thomas Lachs</u>
<u>Landau:</u>	<u>Mordechai Landau</u>
<u>Lavi:</u>	<u>Alexandra Lavi</u>
<u>Line Group:</u>	<u>Line Group Ltd.</u>
<u>Line Holdings:</u>	<u>Line Holdings Ltd.</u>
<u>Line Management:</u>	<u>Line Management Services Ltd.</u>
<u>M. Hartstein:</u>	<u>Moishe Hartstein</u>
<u>Madoff:</u>	<u>Bernard Madoff</u>
<u>Madoff Feeder Fund Scheme:</u>	<u>A vast illegal scheme masterminded by S. Kohn and Madoff soliciting Plaintiffs and others to invest over \$9.1 billion in funds which existed merely to provide a new source of capital necessary for Madoff to maintain a Ponzi scheme.</u>
<u>Madoff-Kohn Enterprise:</u>	<u>A deliberately complex association-in-fact that Madoff and S. Kohn conceived in, and largely directed from, New York. Members of the Madoff-Kohn Enterprise acted in concert with S. Kohn and Madoff to perpetrate the Madoff Feeder Fund</u>

	<u>Scheme.</u>
<u>Madoff-Kohn Enterprise Feeder Funds:</u>	<u>Primeo Fund, Thema International, Herald Fund, Alpha Prime Fund, Senator Fund, and Herald (Lux)</u>
<u>Medici:</u>	<u>Bank Medici</u>
<u>Medici Cayman:</u>	<u>Medici Cayman Island Ltd.</u>
<u>Medici Finance Services:</u>	<u>Medici Finance Services, Inc.</u>
<u>Medici Fund Management:</u>	<u>Medici Fund Management Co., Inc.</u>
<u>Medici Realty:</u>	<u>Medici Realty Ltd.</u>
<u>Medici S.r.l.:</u>	<u>Medici S.r.l.</u>
<u>MediciFinanz:</u>	<u>MediciFinanz Consulting GmbH</u>
<u>Merrill:</u>	<u>Merrill Lynch & Co.</u>
<u>MSIL:</u>	<u>Madoff Securities International Ltd.</u>
<u>Mugnai:</u>	<u>Franco Mugnai</u>
<u>Nograsek:</u>	<u>Harold C. Nograsek</u>
<u>Opinion Letter(s):</u>	<u>Independent Auditor's Report accompanying each of Herald (USA)'s Annual Reports, on the letterhead of "Ernst & Young, " signed by "Ernst & Young"</u>
<u>Optimal:</u>	<u>Optimal Multiadvisors Ltd.</u>
<u>OTC:</u>	<u>Over-the-counter</u>
<u>Palladium:</u>	<u>Palladium Capital Advisors, LLC</u>
<u>Pfeffer:</u>	<u>Friedrich Pfeffer</u>
<u>Picard:</u>	<u>Irving Picard</u>
<u>Pioneer:</u>	<u>Pioneer Global Asset Management S.p.A.</u>

<u>Pirkner:</u>	<u>Andreas Pirkner</u>
<u>Plaza:</u>	<u>Plaza Investments International</u>
<u>Ponzi scheme:</u>	<u>Madoff's Ponzi scheme</u>
<u>Primeo Fund:</u>	<u>Primeo Fund</u>
<u>Profumo:</u>	<u>Alessandro Profumo</u>
<u>R. Hartstein:</u>	<u>Rina Hartstein</u>
<u>R. Kohn:</u>	<u>Robert Alan Kohn</u>
<u>Radel-Leszczyński:</u>	<u>Ursula Radel-Leszczyński</u>
<u>Randa:</u>	<u>Gerhard Randa</u>
<u>Raule:</u>	<u>Mariadelmar Raule</u>
<u>Raven:</u>	<u>Steven Raven</u>
<u>Redcrest:</u>	<u>Redcrest Investments, Inc.</u>
<u>Reuss:</u>	<u>Robert Reuss</u>
<u>Revi:</u>	<u>ReviTrust Services Est.</u>
<u>RICO:</u>	<u>Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, et seq.</u>
<u>S. Kohn:</u>	<u>Sonja Kohn</u>
<u>Safdié:</u>	<u>Gabriel Safdié</u>
<u>Saleta:</u>	<u>Hannes Saleta</u>
<u>Scheithauer:</u>	<u>Peter Scheithauer</u>
<u>Schindler:</u>	<u>Andreas Schindler</u>
<u>SEC:</u>	<u>Securities and Exchange Commission</u>
<u>Senator Fund:</u>	<u>Senator Fund SPC</u>
<u>Shpe:</u>	<u>Elena Shpe</u>

<u>SocGen:</u>	<u>Société Générale</u>
<u>Sofipo:</u>	<u>Sofipo Austria GmbH</u>
<u>SSC Strategy:</u>	<u>"Split-Strike Conversion" strategy</u>
<u>Sury:</u>	<u>Paul de Sury</u>
<u>Surz:</u>	<u>Ronald J. Surz</u>
<u>Tecno Gibraltar:</u>	<u>Tecno Development & Research Ltd.</u>
<u>Tecno Italy:</u>	<u>Tecno Development & Research S.r.l.</u>
<u>the Audit Guide:</u>	<u>"Serving the Hedge Fund Industry: Seasoned Professionals for a Time of Change," available on the Ernst & Young website</u>
<u>the CEO:</u>	<u>Refco's Chief Executive Officer</u>
<u>the Guide:</u>	<u>AICPA Audit & Accounting Guide, Investment Companies</u>
<u>the IPO:</u>	<u>Refco's initial public offering</u>
<u>Thema International:</u>	<u>Thema International Fund plc</u>
<u>Tiranno:</u>	<u>Paul Tiranno</u>
<u>Tripolt:</u>	<u>Werner Tripolt</u>
<u>Unicredit:</u>	<u>Unicredit S.A.</u>
<u>UniCredit UK:</u>	<u>UniCredit CA-IB Securities UK Ltd.</u>
<u>USPTO:</u>	<u>United States Patent and Trademark Office</u>
<u>Valeur:</u>	<u>Valeur Securities, Inc.</u>
<u>Windsor:</u>	<u>Windsor IBC, Inc.</u>
<u>Zapotocky:</u>	<u>Stefan Zapotocky</u>