SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
FOUR TIMES SQUARE
NEW YORK 10036-6522
TEL: (212) 735-3000
FAX: (212) 735-2000
www.skadden.com

FIRM/AFFILIATE OFFICES
BOSTON
CHICAGO
HOUSTON
LOS ANGELES
PALO ALTO
SAN FRANCISCO
WASHINGTON, D.C.
WILMINGTON
BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

DIRECT DIAL
212-735-4132
DIRECT FAX
917-777-4132
EMAIL ADDRESS
SUSAN.SALTZSTEIN@SKADDEN.COM

MEMO ENDORSED

June 6, 2011

No need for any delay in briefing schedule, etc. in this case. See Court's rules for page limits. Less is always more in these motions and 100+ pages is out of the question.

SO ORDERED:
Date: 6/8/11
Richard M. Berman, U.S.D.J.

BY HAND DELIVERY

Hon. Richard M. Berman
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *In re Herald, Primeo and Thema Securities Litigation*, Master Docket No. 09 Civ. 289

Dear Judge Berman:

We represent defendant UniCredit S.p.A. and certain of its affiliates in the captioned litigation. We write respectfully to request that during the upcoming June 8, 2011 conference the Court allow us to address the issues of scheduling and page limits for the joint submission the defendants are preparing in support of their motions to dismiss and in opposition to plaintiffs' April 1, 2011 motion for leave to amend their complaints further.

By way of background, plaintiffs' proposed amended class action complaints contain 1772 paragraphs in 518 pages and assert 66 claims against 72 separate defendants. As the Court is no doubt aware from our June 1 letter, certain possibly dispositive issues raised by the proposed amended complaints are being briefed (on accelerated schedules) in motions pending before Judges Rakoff and McMahon to dismiss overlapping complaints brought by the Madoff Trustee and incorporated by the class plaintiffs in their proposed new pleadings. These issues include whether: (i) plaintiffs' common law claims are barred by the Securities

Litigation Uniform Standards Act of 1998; (ii) plaintiffs' RICO claims are barred because they are extraterritorial in nature and thereby run afoul of *Morrison*, rely on conduct actionable as fraud and thereby violate the PSLRA "exception" to RICO, fail to allege proximate cause and/or fail plausibly to allege the elements of a RICO claim; and (iii) plaintiffs fail to state claims of aiding and abetting fraud, breach of fiduciary duty, conversion or unjust enrichment.[1] As Your Honor may also recall, Judge Rakoff has also undertaken to determine whether to withdraw the reference from the bankruptcy court of the petition by the Madoff Trustee to enjoin the class action proceedings before Your Honor.

With that background, defendants respectfully intend to make the following two proposals at the June 8 conference:

First, we submit that an adjournment of the current briefing schedule until the motions before Judges Rakoff and McMahon are decided may help the parties sharpen the issues truly in dispute. Absent a relatively brief adjournment such as we propose here, the landscape of this proceeding may change drastically while the motions to dismiss before Your Honor are being briefed, with the inefficiencies that this entails (as we also noted in our June 1 letter to Your Honor in regard to the request for consolidation being pressed by certain class plaintiffs).

Second, and aside from issues of timing, the defendants submit that their legal defenses (including but not limited to lack of personal jurisdiction, *forum non conveniens*, SLUSA preclusion, lack of standing, supervening cause and failure to state a cause of action on any of the 66 claims asserted in the proposed amended complaints) could be presented in single brief of no more than 100 pages, provided that similarly situated "clusters" of defendants are permitted to file addenda to the joint brief to assist the Court in culling from the 1772 paragraphs propounded by the plaintiffs the legally relevant factual allegations in respect to each defendant cluster. Defendants have conferred extensively among themselves to formulate a reasonable proposal in this regard and have carefully grouped ourselves into approximately 13 clusters of related or similarly-situated defendants, each of which proposes to offer the Court an addendum to the joint brief containing an average of 9 pages per cluster. (Indeed, several defendant clusters intend to submit addenda of significantly less than that, and none proposes to submit more than 14 pages.) We are mindful that the Court has in the past regarded the suggestion of bifurcating briefing between threshold

---

[1] Judge Rakoff has scheduled arguments on these issues for June 23, 2011, and September 19, 2011; Judge McMahon has set argument for July 28, 2011.

defenses of universal application and unique defenses applicable to individual claims and defendants as unhelpful. However, absent such bifurcation, we believe this considered proposal offers the best mechanism to ensure that all defenses which this multitude of defendants are entitled to raise in what is, after all, a multi-billion dollar proceeding, are addressed fully and fairly, consistent with the Court's understandable interest in brevity.

We look forward to discussing these issues with the Court on June 8, or as soon thereafter as the Court's schedule permits.

Respectfully,

Susan Saltzstein

Susan L. Saltzstein

cc: All counsel of record (by e-mail)