

# EXHIBIT M

Our Ref: KC/PK/KAL02/2

Your Ref: SD/BMU/659201

22 June, 2011

**By E-mail and Post**

Matheson Ormsby Prentice,  
Solicitors,  
70 Sir John Rogerson's Quay,  
Dublin 2.

**Re: Our Clients: Kalix Fund Limited and Related Investors**  
**Your Client: HSBC Institutional Trust Services (Ireland) Limited**

Dear Sirs,

We refer to your letters and attachments dated 7 and 21 June, 2011.

As you know, we represent 50 investors in Thema International Fund plc ("Thema"), an Irish investment company. These investors were holders of Thema shares or units with a value of around USD 212 million according to final statements provided by HSBC (or around 20% of all Thema investors by value equating to approximately 202,738.2884 Thema USD Class Shares and 634,580.6455 Thema EUR Class Shares) at the time of the suspension of trading. Each of these clients has initiated proceedings against your client in the Commercial Court before Mr Justice Clarke arising from your client's role as the UCITS Custodian of Thema. Other investors who are separately represented have also taken substantial claims so, taken as a whole, a very significant proportion of Thema investors are before the Irish Commercial Court. Your client entered unconditional appearances to these claims, these cases are significantly progressed, considerable costs have been incurred and in the lead investor cases the pleadings are closed and the parties are at the point of exchanging discovery with pre-trial directions to take place in October of this year.

We note your client's decision to settle with certain beneficial owners of shares in Thema in the US as set out in the documentation provided to us, however, our clients reject this settlement completely (the "US Settlement");. Indeed, having reviewed the documentation provided to us the US Settlement appears to be more of an attempt to leverage the US Class Action to reduce your client's global exposure arising from its role as the UCITS Custodian of Thema than a genuine attempt to settle with the body of Thema investors; both in terms of the size of the settlement amount and the conditions attached, which we will deal with below.

It would appear that according to the proposed US Settlement, our clients would now have to incur outlay and expense in order to take steps in the US proceedings (being proceedings to which our clients are not parties), including submitting a so-called 'request for exclusion' and details of their investment histories, in order to further their claims in the Irish Courts. Otherwise, the US Settlement purports unilaterally to cause the release of all claims

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Michael Barker, Andrew Bates, Adrian Benson, Paul Breen, Tom Carney, Kieran Cowhey, Etain de Valera, Brian Dillon, David Dillon, John Doyle, Paul Eustace, Jennifer Fox, Paul Gill, Brian Higgins, Conor Houlihan, Carmel Hynes, Karen Jennings, Conor Keaveny, Paula Kelleher, Brian Kelliher, Lorna Kennedy, Paul Moloney, Benedicte O'Connor, Donnacha O'Connor, Derbhil O'Riordan, Keith Smyth, Mark Thorne, Lorcan Tiernan.

Consultants: Mary Canning, David Lawless, Fiona Mulcahy, Sean Murray.

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and causes of action in any jurisdiction in the world against your clients and the assignment of rights of recovery in the related Thema case. The jurisdiction of a US court to make such an order against parties in Irish proceedings is unexplained and must be doubtful in the extreme.

We note that *'provided certain steps occur and the settlement is approved by the Southern District of New York at the fairness hearing'* certain applications will be made by your client before the Irish Court *"in respect of the litigation which is ongoing in this jurisdiction"*. In a response to a query from Mr Justice Clarke as to the timing of such applications you noted that *"it is difficult to predict exact timing but we anticipate some time in the Autumn of 2011"*. You have not explained the nature of these applications but presumably your client will be seeking ratification of the proposed US Settlement by the Irish Court *ex post facto*. Given that the settlement documentation provides for responses from investors in advance of the fairness hearing in the US it would seem that your client wishes to bind all investors by use of the US class action 'opt-in/opt-out/do nothing' settlement mechanism and to present the Irish Courts with a *fait accompli* in "Autumn 2011".

We absolutely reject the idea that a settlement in a US class action such as this, where we understand the question of the jurisdiction of the US courts has not yet been resolved and is disputed, could have the effect of ousting valid claims before the Irish Courts and forcing parties to take steps in another jurisdiction. None of our clients are US citizens or corporations. They are investors in an Irish fund which is subject to Irish law and regulations. As previously indicated, they are not parties to the US proceedings. They do not know what the effect of taking any step in US proceedings will be. The US Settlement attempts to put them in the situation where they will be forced to seek US legal advice in order to further Irish proceedings despite having absolutely no connection with the US jurisdiction.

We consider the US Settlement to be a matter between your client and any other settling parties. Our clients, who have submitted to the jurisdiction of the Irish Courts, clearly cannot be bound by these proposed terms unless they actively and wilfully take steps to become so bound. Anything more far-reaching would be an unjustifiable infringement on the jurisdiction of the Irish Courts and on our clients' rights.

We have received various directions from the Irish Court as to the conduct and case management of these proceedings and have complied and continue to comply with these. We have not received any direction from the Court that our clients should comply with the terms of the US Settlement and we would question whether such a direction could be made in any event. It is inconceivable that we would now advise our clients to step outside the bounds of the Court's extant directions and begin taking steps in a foreign jurisdiction on the basis of a unilateral notice from your client in order to protect their existing claims in the Irish Courts.

If your client has not already notified possible objections from investor plaintiffs in the Irish Commercial Court to the Court of the Southern District of New York we suggest that this is done so that that court is fully apprised of the purported impact of this settlement as it is currently set out.

You have sufficient information for each of our clients to make whatever calculations are necessary for the US Settlement (providing, of course that such data is used only for this purpose by your client and is not provided to any third party in accordance with Irish Data Protection Law, the Rules of the Superior Courts and the Regulations applicable to your client) so your client should not be hindered in its dealings with any 'settling party'.

Our clients have no wish to take any steps in the US to 'opt in' or 'opt out' of the US Settlement and will continue with the Irish investor proceedings in the normal way in accordance with the directions previously given by the Commercial Court. For the avoidance of all doubt, however, you should be aware that our clients' stance in this regard is not, and must not be read to be, in any way a "step" in the US proceedings or in the various purported "options" set out in the US Settlement documentation or a consent to the jurisdiction of the US Court. The settlement cannot and does not bind our clients and our clients are not obliged to take any step of any sort whatsoever in relation to the settlement and you might confirm by return that you recognise that this is the case.

We will rely on the contents of this letter should your client seek to bind our clients, attempt to affect our clients' rights or to in any way force the release of their claims or limit their recovery pursuant to the proposed US settlement. As plaintiffs in Irish proceedings under the direction of the Irish Courts, while recognising the entitlement of other investors to settle on whatever terms they please, our clients do not consider themselves bound by any term or condition contained in the US Settlement. Quite simply, our clients remain free to continue their proceedings in Ireland without limitation or inhibition.

As you can see we have provided copies of this letter to the Registrar of the Commercial Court and to the Thema related parties.

Yours faithfully



**Dillon Eustace**

**CC:**

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**Attn: Greg Glynn**  
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