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

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IN RE HERALD, PRIMEO, and THEMA SECURITIES LITIGATION

09 Civ. 289 (RMB)

**ORDER**

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The Court is interested in hearing whether Plaintiff Neville Seymour Davis ("Davis") and Defendants HSBC Holdings plc, HSBC Securities Services (Ireland) Ltd., HSBC Institutional Trust Services (Ireland) Ltd., and proposed defendant HSBC Bank USA, N.A. (collectively, "HSBC Defendants") are willing and able to revise the proposed Stipulation and Agreement of Partial Settlement, dated June 7, 2011 ("Proposed Settlement"), so that it is considerably less conditional than currently. While the Opinion and Order, dated July 28, 2011, of United States District Judge Jed S. Rakoff in Picard v. HSBC Bank PLC, No. 11 Civ. 763; and Picard v. Alpha Prime Fund Ltd., No. 11 Civ. 836, may facilitate this effort, there are also other provisions of the Proposed Settlement that need to be addressed before the Court can (even preliminarily) determine whether the proposal to shareholders is fair, reasonable, and adequate, and not ephemeral. See, e.g., In re Drexel Burnham Lambert Grp. Inc., 995 F.2d 1138, 1146 (2d Cir. 1993). To review the fairness of this settlement in advance of the necessary steps upon which the settlement is expressly conditioned "would be premature." Id.; see In re Sunrise Sec. Litig., 698 F. Supp. 1256, 1257 (E.D. Pa. 1998) ("[A]ny fairness hearing or class notification concerning the proposed settlement would be premature prior to evaluation of the [issues] upon which the settlement is conditioned.").

As discussed on July 21, 2011 (see Tr. of Proceedings before the Ct., dated July 21, 2011), these conditions include at a minimum (i) the effect of any appeal from Judge Rakoff's July 28, 2011 Opinion and Order and/or of any related ruling from, for example, United States

District Judge Colleen McMahon in Picard v. JP Morgan Chase & Co., No. 11 Civ. 913; (ii) the irrevocable assignment to Davis of settling class members' claims against non-settling Defendants (see Proposed Settlement ¶ 2.14); (iii) the $10 million "Reserve Amount" to be set aside from the settlement fund for future litigation against non-settling Defendants (see Proposed Settlement ¶ 1.30); (iv) applications to and rulings by the Irish High Court as to the Proposed Settlement (see Proposed Settlement ¶ 5.5); and (v) the attorneys' fees provision (see Proposed Settlement ¶ 7.5).

The Court is open to a further conference or Davis and the HSBC Defendants can advise the Court by joint letter on or before Wednesday, August 10, 2011 whether these conditions may be modified.

Dated: New York, New York
July 29, 2011

Richard M. Berman

**RICHARD M. BERMAN, U.S.D.J.**