

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

HAU YIN TO AND CHENG HYE CHEAH,

*Plaintiffs,*

v.

HSBC HOLDINGS PLC; HSBC BANK PLC;  
HSBC BANK USA, N.A.; HSBC SECURITIES  
SERVICES (BERMUDA) LIMITED; HSBC  
INSTITUTIONAL TRUST SERVICES  
(BERMUDA) LIMITED; HSBC BANK  
BERMUDA LIMITED; HSBC SECURITIES  
SERVICES (LUXEMBOURG) S.A.; HSBC  
PRIVATE BANKING HOLDINGS (SUISSE)  
S.A.; HSBC PRIVATE BANK (SUISSE) S.A.;  
and HSBC FUND SERVICES  
(LUXEMBOURG) S.A.,

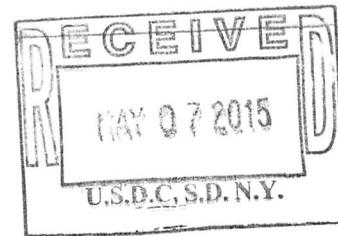
*Defendants.*

15 CV 3590 1

No.

**COMPLAINT**

**JURY TRIAL DEMANDED**



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Plaintiffs Hau Yin To & Cheng Hye Cheah (“Plaintiffs”), by their undersigned attorneys, bring this action against defendants HSBC Holdings plc; HSBC Bank plc; HSBC Bank USA, N.A.; HSBC Securities Services (Bermuda) Limited; HSBC Institutional Trust Services (Bermuda) Limited; HSBC Bank Bermuda Limited; HSBC Securities Services (Luxembourg) S.A.; HSBC Private Banking Holdings (Suisse) S.A.; HSBC Private Bank (Suisse) S.A.; and HSBC Fund Services (Luxembourg) S.A. (collectively, “HSBC” or “Defendants”). Plaintiffs base their allegations on knowledge as to themselves and their own acts. As to other matters, Plaintiffs base their allegations upon the investigation of their attorneys; the investigations set forth in the redacted Amended Complaint filed in *Picard v. HSBC Bank plc, et al.*, Adv. Pro . No. 09-1364 (BRL) (Bankr. S.D.N.Y.) on December 5, 2010 and in the Class Action Complaint filed in *Hill v. HSBC Bank plc, et al.*, No. 14-cv-9745 (S.D.N.Y.) on December 10, 2014; and publicly available documents. Plaintiffs’ investigation into the factual allegations contained herein is continuing, and Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. Bernard L. Madoff (“Madoff”) could not have perpetrated the largest financial fraud in history for as long as he did without the connivance of certain banks, in particular, HSBC.
2. For more than a decade, HSBC enabled Madoff’s fraudulent scheme by encouraging investment into an international network of feeder funds. Through these feeder funds, HSBC funneled billions of dollars into the Investment Advisory division (“IA Business”) of Bernard L. Madoff Investment Securities LLC (“BLMIS”), the fictitious “business” by which Madoff conducted his fraud. In total, HSBC was responsible for directing \$8.9 billion to Madoff and his fraudulent IA Business. In fact, according to an internal report commissioned by HSBC

in September 2008, at least 33% of all moneys invested with Madoff were funneled by and through HSBC.

3. The feeder funds through which HSBC helped sustain Madoff's fraud were numerous and are set forth below (collectively hereinafter referred to as the "Feeder Funds"):

- a. Hermes International Fund Limited ("Hermes International Fund"), an investment fund organized under the laws of the British Virgin Islands, in which Plaintiffs directly invested.
- b. Lagoon Investment Limited ("Lagoon"), an investment fund organized under the laws of the British Virgin Islands and the wholly owned subsidiary of Hermes International Fund. Lagoon was the nominal holder of accounts at BLMIS's IA Business, and invested exclusively in the IA Business.
- c. Lagoon Investment Trust ("Lagoon Trust"), which was created pursuant to a trust deed between Lagoon and Hermes Asset Management Limited ( the investment manager of Hermes International Fund and Lagoon Trust), and is a professional fund recognized in the British Virgin Islands.
- d. Alpha Prime Fund Limited ("Alpha Prime").
- e. Defender Limited ("Defender").
- f. Herald Fund SPC ("Herald Fund").
- g. Herald (Lux) SICAV ("Herald Lux").
- h. Kingate Euro Fund Ltd. ("Kingate Euro").
- i. Kingate Global Fund Ltd. ("Kingate Global").
- j. Landmark Investment Fund Ireland ("Landmark").
- k. Optimal Multiadvisors, Ltd. ("Optimal").

- l. Primeo Fund (“Primeo”).
- m. Senator Fund SPC (“Senator”).
- n. Square One Fund Limited (“Square One”).
- o. Thema Fund Ltd. (“Thema Fund”).
- p. Thema International Fund plc (“Thema International”).
- q. Thema Wise Investments Ltd. (“Thema Wise”).

4. Plaintiffs are investors in Hermes International Fund which, through Lagoon, placed all of Plaintiffs’ investments in BLMIS. Plaintiffs lost their entire investment when Madoff’s fraud was revealed.

5. The role of HSBC in enabling Madoff’s fraud cannot be overstated. HSBC was a critical component of the architecture established by Madoff to constantly bring in new investor money to satisfy withdrawals by earlier investors. Because Madoff was on the verge of exhausting the pool of U.S. investors, Madoff had to turn to potential investors abroad, such as Plaintiffs.

6. As one of the most sophisticated financial institutions in the world and with a powerful brand name, HSBC was the perfect endorsement to convince foreign investors to pour money into the Feeder Funds. Like Plaintiffs, many investors in the Feeder Funds believed they were investing in diverse and thoroughly vetted funds. Unbeknownst to these foreign investors, however, the Feeder Funds funneled their money to BLMIS, fueling and sustaining Madoff’s Ponzi scheme.

7. HSBC played several crucial roles with respect to the Feeder Funds. HSBC acted as custodian and administrator for all the Feeder Funds. HSBC directly marketed the Feeder Funds, including to HSBC’s own private banking clients. HSBC participated in the preparation of the mid-year and annual financial reports issued by the Feeder Funds, including the reports

received by Plaintiffs for the Hermes International Fund, and HSBC's logo was displayed prominently on these reports. In addition, HSBC structured and sold various esoteric financial products – complex swaps and notes – that directed hundreds of millions of dollars into the Feeder Funds and thence to Madoff. For these many roles, HSBC earned tens of millions of dollars in fees.

8. In this manner, all the Feeder Funds bore HSBC's imprimatur. The cachet lent by HSBC's name provided the air of legitimacy necessary to attract money into the Feeder Funds.

9. Because of its many roles and points of contact with Madoff and his operations, HSBC had unparalleled insight into Madoff's fraud long before his confession and arrest in December 2008. As early as 2001, HSBC prepared a due diligence report noting that the investment community was "baffled" by Madoff. In the report, HSBC doubted that the "split-strike conversion" strategy (the "SSC Strategy") which Madoff purported to employ could generate the returns he claimed. HSBC suspected that Madoff might be illegally front-running the market using information he gleaned from his market-making operations or, as a "potentially greater risk," that Madoff was not implementing the SSC Strategy at all. However, driven by the steady returns BLMIS purported to produce, and the fees reaped by HSBC for collaborating with Madoff, HSBC looked the other way.

10. Blinded by the numerous financial incentives that it received, HSBC ignored numerous indicia of Madoff's illegitimate trading activity and fraud, including the following:

- a. Madoff refused to meet with HSBC despite the billions of dollars HSBC helped funnel into BLMIS's IA Business.

- b. BLMIS purported to trade equities and options in volumes so implausibly high that they often exceeded the entire daily reported volume of such options and equities traded on the world's exchanges.
- c. BLMIS account statements sometimes showed securities trades that were executed outside of the daily price range.
- d. Contrary to law and industry practice, BLMIS served as custodian of its customers' funds, *i.e.*, there was no independent third party to verify either that BLMIS's assets existed or that customer funds were maintained in segregated accounts.
- e. BLMIS was too good a deal. Madoff walked away from hundreds of millions of dollars by not charging industry standard management and performance fees. BLMIS also purported to execute trades in a manner that would have required the IA Business to front at least hundreds of millions of dollars to its customers, yet Madoff never charged any of the Feeder Funds for this remarkable accommodation.
- f. BLMIS, which had domestic and international operations with tens of billions of dollars under management, was audited by an unknown and unsophisticated auditor.
- g. BLMIS was insulated from performance volatility. Madoff seemed to possess a near-perfect ability to time purchases and sales of stocks and options, so that BLMIS always managed to enter and exit the markets at precisely the right time on precisely the right day to maximize returns and avoid losses.

- h. BLMIS refused to allow its customers real-time access to their accounts, instead transmitting paper trade confirmations days after the trades were purportedly made – a significant departure from industry practice, and an inexplicable practice at a firm that publicly proclaimed its early adoption of cutting-edge technologies.
- i. BLMIS’s billions of dollars in purported trades never caused observable price displacement or liquidity disruptions in the market.
- j. Madoff refused to identify any of BLMIS’s options trading counterparties to HSBC, or any of the Feeder Funds and their customers who, collectively, risked billions of dollars in exposure to such counterparties.
- k. BLMIS’s reported trading activity frequently deviated from the purported investment strategy of the IA Business.
- l. From the end of 2005 until Madoff’s arrest, BLMIS’s account statements showed transactions with the “Fidelity Spartan U.S. Treasury Money Market Fund” even though the fund had changed its name in August 2005.
- m. BLMIS’s trade confirmations did not comport with industry standards and often used improper or incorrect terminology to describe the trades.

11. HSBC also retained KPMG, in September 2005 and March 2008, to perform due diligence on BLMIS. KPMG twice reported to Defendants the serious fraud and operational risks, many of which were already known to Defendants.

12. Despite the knowledge obtained from all these reports, HSBC took no action. For example, as custodian for the Feeder Funds, HSBC was responsible for safeguarding the assets in those funds. However, HSBC totally abdicated these duties, acquiescing to the appointment of a

*BLMIS-affiliated entity* as sub-custodian, thereby ceding HSBC's custodial duties to BLMIS. HSBC did this even while explicitly acknowledging in internal communications that doing so created a serious risk of theft.

13. As a further example, in those instances when HSBC did perform due diligence on BLMIS, its process bordered on the farcical, with HSBC being allowed to meet with only Madoff himself and no one else from BLMIS, including even the firm's compliance officer.

14. HSBC thus failed in its duties to the investors of the Feeder Funds, and facilitated Madoff's fraud. Had HSBC done what it was supposed to do, Madoff's fraud would have been uncovered much earlier. As a result of HSBC's acquiescence, support and enabling of Madoff's fraud, Plaintiffs have lost virtually their entire investment in the Hermes International Fund.

## **THE PARTIES**

### **I. PLAINTIFFS**

15. Plaintiff Hau Yin To is a resident and citizen of Hong Kong Special Administrative Region of the People's Republic of China.

16. Plaintiff Cheng Hye Cheah is a resident and citizen of Hong Kong Special Administrative Region of the People's Republic of China.

17. Plaintiffs To and Cheah jointly invested in Hermes International Fund which, through a wholly owned subsidiary, Lagoon (another Feeder Fund), placed all of Plaintiffs' investments into BLMIS, without Plaintiffs' knowledge.

### **II. DEFENDANTS**

18. HSBC Holdings plc ("HSBC Holdings") is a public limited corporation, incorporated under the laws of England and Wales, with its principal place of business at 8 Canada Square, London E14 5HQ, United Kingdom. HSBC Holdings is the parent company of what is

known as the HSBC Group, including all the HSBC entities named as Defendants in this Complaint.

19. HSBC Bank plc (“HSBC Bank”) is a banking institution incorporated under the laws of England and Wales with its principal place of business at 8 Canada Square, London E14 SHQ, United Kingdom. HSBC Bank was the payee bank for a large number of the Feeder Funds. All moneys that were deposited with BLMIS by many of the Feeder Funds went through HSBC Bank. All moneys which were withdrawn from BLMIS by these same Feeder Funds went through defendant HSBC Bank.

20. HSBC Bank USA, N.A. (“HSBC Bank USA”) is a national bank chartered by the Office of the Comptroller of the Currency with its principal executive office at 452 Fifth Avenue, New York, New York 10018, and with corporate headquarters at 1800 Tysons Boulevard, Suite 50, McLean, VA. HSBC Bank USA operates many branches in Manhattan and other parts of the United States. Among other things, HSBC Bank USA created structured financial products related to Madoff’s IA Business, and entered into transactions involving those structured products, which ultimately served to increase the amount of money invested with BLMIS’s IA Business.

21. HSBC Securities Services (Bermuda) Limited (“HSSB”), is incorporated under the laws of Bermuda with its principal place of business at 6 Front Street, Hamilton HM 11, Bermuda. HSSB served as administrator to Hermes International Fund and other Feeder Funds, and directed and facilitated the transfer of millions of dollars into and out of BLMIS’s IA Business.

22. HSBC Institutional Trust Services (Bermuda) Limited (“HITSB”) is a corporation organized and existing under the laws of Bermuda with its principal place of business at 6 Front Street, Hamilton HM 11, Bermuda. HITSB served as the custodian for Hermes International Fund and other Feeder Funds.

23. HSBC Bank Bermuda Limited (“HSBC Bank Bermuda”), formerly known as The Bank of Bermuda Limited, is a banking institution with its principal place of business at 6 Front Street, Hamilton HM 11, Bermuda. HSBC Bank Bermuda previously served as the administrator and custodian of Hermes International Fund and other Feeder Funds. HSBC Bank Bermuda entered into at least one sub-custodian agreement with BLMIS.

24. HSBC Securities Services (Luxembourg) S.A. (“HSSL”), formerly known as Bank of Bermuda (Luxembourg) S.A., is a limited liability company incorporated as a société anonyme under the laws of the Grand Duchy of Luxembourg, and maintains its principal place of business at 16 boulevard d’Avranches, 1160 Luxembourg. HSSL served as administrator to Lagoon and other Feeder Funds, and as sub-administrator to Hermes International Fund and other Feeder Funds. HSSL also served as custodian to Herald Fund, Herald (Lux), Lagoon, Primeo and Senator, and sub-custodian to Alpha Prime, Hermes International Fund and Thema Fund. HSSL in turn engaged BLMIS to act as its sub-custodian for those Feeder Funds for which the bank served as custodian or sub-custodian.

25. HSBC Private Banking Holdings (Suisse) S.A. (“HSBC Private Banking Holdings”) is a majority-owned subsidiary of defendant HSBC Bank existing under the laws of Switzerland, with its principal place of business at Quai du General Guisan, 2, P.O. Box 3580, CH-1211, Geneva 3, Switzerland. HSBC Private Banking Holdings, and/or entities under its control, marketed and directed investor moneys to numerous Feeder Funds, including Hermes International Fund.

26. HSBC Private Bank (Suisse) S.A. (“HSBC Private Bank (Suisse)”) is a public company incorporated and existing under the laws of Switzerland, with its principal place of business at Quai du General Guisan, 2, P.O. Box 3580, CH-1211 Geneva 3, Switzerland. It is a

subsidiary of HSBC Private Banking Holdings. HSBC Private Bank (Suisse), and/or entities under its control, marketed the Feeder Funds, including Hermes International Fund.

27. HSBC Fund Services (Luxembourg) S.A. (“HSBC Fund Services”), formerly known as Management International (Luxembourg) S.A., is a wholly-owned subsidiary of HSBC Holdings incorporated under the laws of the Grand Duchy of Luxembourg, and has a registered address at 16 boulevard d’Avranches, 1160 Luxembourg. HSBC Fund Services acted as sub-administrator and sub-registrar for Hermes International Fund.

### **JURISDICTION AND VENUE**

28. This Court has subject matter jurisdiction under 28 U.S.C. § 1334(b) because this action is “related” to a case under title 11 of the United States Code (the “Bankruptcy Code”).

29. The allegations in this Complaint arise from the Ponzi scheme perpetrated by Madoff, through BLMIS. The involuntary Chapter 7 petition against Madoff was substantively consolidated with the separate proceeding against BLMIS filed under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), (the “Consolidated Proceeding”). *See SIPC v. Bernard L. Madoff Inv. Sec., LLC, et al.*, No. 08-ap-1789 (Bankr. S.D.N.Y.). The Consolidated Proceeding is currently pending before United States Bankruptcy Judge Stuart M. Bernstein.

30. This Court has personal jurisdiction over all Defendants pursuant to Rules 301 and 302 of the New York Civil Practice Law and Rules. All Defendants have maintained minimum contacts with New York in connection with the claims asserted in this action.

31. Acting in their capacity as fund administrators and sub-administrators, HSBC Bank Bermuda, HSSB, HSSL and HSBC Fund Services (collectively, the “HSBC Administrator Defendants”) transmitted instructions to BLMIS (located in New York), and received from BLMIS trade confirmations, account statements and other information. The HSBC Administrator Defendants communicated with BLMIS in connection with their duties as fund administrators and

were compensated for such communications. The HSBC Administrator Defendants transmitted false information provided by BLMIS to customers located around the world, including within the United States. The HSBC Administrator Defendants have availed themselves of the laws of the State of New York by undertaking substantial commercial activities in New York.

32. Each HSBC Administrator Defendant which entered into a sub-administrator agreement with BLMIS engaged BLMIS as its agent to act as the sub-administrator of Feeder Fund assets. BLMIS, acting as an agent on behalf of the HSBC Administrator Defendants, committed multiple torts in the State of New York, causing substantial injury to persons in the State of New York and elsewhere in the United States.

33. Acting in their capacity as fund custodian and sub-custodians, HSSL, HITSB and HSBC Bank Bermuda (collectively, the “HSBC Custodian Defendants”) directed and facilitated the transfer of hundreds of millions of dollars to and from BLMIS in New York. Through these activities, the HSBC Custodian Defendants purposefully availed themselves of the laws of the State of New York by undertaking substantial commercial activities in New York. The HSBC Custodian Defendants committed tortious acts both within and outside of New York, causing injury in New York, and reasonably should have expected those acts to have consequences in New York and elsewhere in the United States.

34. Each HSBC Custodian Defendant which entered into a sub-custodian agreement with BLMIS engaged BLMIS as its agent to act as the sub-custodian of fund assets. BLMIS, acting as an agent on behalf of the HSBC Custodian Defendants, committed multiple torts in the State of New York causing substantial injury to persons in the State of New York and elsewhere in the United States.

35. Acting in their capacity as payee banks, certain Defendants, including HSBC Bank, received and facilitated the transfer of Madoff's criminal proceeds out of BLMIS in New York, for the benefit of certain Feeder Funds. These same defendants also facilitated the transfer of funds from the Feeder Funds to BLMIS in New York.

36. Further, certain Defendants, including HSBC Bank and HSBC Bank USA, increased the flow of funds into Madoff's Ponzi scheme by creating, marketing and selling structured financial products. Those products facilitated the investment of hundreds of millions of dollars into the Madoff Feeder Funds. The inflow of funds from those structured products helped to perpetuate Madoff's Ponzi scheme, thus deepening the insolvency of BLMIS and perpetuating Madoff's fraud.

37. HSBC Bank USA is domiciled in the United States, and maintains offices and regularly transacts business in the State of New York. HSBC Bank USA maintained accounts for the HSBC Administrator Defendants and HSBC Custodian Defendants. For example, HSSL, sub-administrator and sub-custodian for Hermes International Fund (among others), informed investors that USD dollar payments to HSSL were to be directed to HSBC Bank USA in New York, New York.

38. Defendants have purposefully availed themselves of the laws of the State of New York by undertaking significant commercial activities in New York. Defendants derived significant revenue from New York. Defendants have committed tortious acts both within and outside of New York, causing injury in New York, and Defendants expected or should have reasonably expected those acts to have consequences in New York.

39. Venue in this Court is proper under 28 U.S.C. § 1391 because many of the transactions, acts and conduct described herein occurred within the jurisdiction of this district.

## **RELATED ACTIONS**

40. On December 5, 2010, Irving H. Picard (“Trustee”), as trustee for the Consolidated Proceeding (the Madoff bankruptcy and BLMIS liquidation), filed an Amended Complaint (Redacted) in Case No. 08-1789 (Bankr. S.D.N.Y.) against HSBC and other entities. On July 28, 2011, the court dismissed the Trustee’s common law claims (counts 20 to 24) for lack of standing and effectively held that those claims belong to the customers of BLMIS.<sup>1</sup> On June 20, 2013, that ruling was affirmed by the United States Court of Appeals for the Second Circuit.<sup>2</sup> The Trustee then sought a *writ of certiorari* from the United States Supreme Court and, on June 30, 2014, the Supreme Court denied the petition.<sup>3</sup>

## **FACTUAL ALLEGATIONS**

### **I. MADOFF’S PONZI SCHEME**

41. BLMIS was founded in 1959 by Madoff and, for most of its existence, operated from its principal place of business at 885 Third Avenue, New York, New York. Madoff, as founder, chairman, chief executive officer and sole owner, operated BLMIS together with several of his friends and family members. BLMIS had three business units: the IA Business, market-making, and proprietary trading.

42. Outwardly, Madoff ascribed the consistent success of the IA Business to the SSC Strategy (the split-strike conversion strategy). Pursuant to that strategy, Madoff purported to invest BLMIS customers’ funds in a basket of common stocks within the S&P 100 Index, a collection of the 100 largest publicly-traded companies. Madoff claimed that this basket of stocks would mimic the movement of the S&P 100 Index. He also asserted that he would carefully time purchases and

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<sup>1</sup> See *Picard v. HSBC Bank plc, et al.*, 454 B.R. 25 (S.D.N.Y. 2011).

<sup>2</sup> See *In re Bernard L. Madoff Inv. Secs. LLC*, 721 F.3d 54 (2d Cir. 2013).

<sup>3</sup> See *Picard v. HSBC Bank plc, et al.*, 134 S. Ct. 2895 (2014).

sales to maximize value and, correspondingly, BLMIS customers' funds would intermittently be out of the market. While out of the market, those funds were purportedly invested in US Treasury bills or in funds holding Treasury bills. A second part of the SSC Strategy was the hedge of Madoff's stock purchases with S&P 100 Index option contracts. Those option contracts functioned as a "collar" limiting both the potential gains and the potential losses on the baskets of stocks. Madoff purported to use proceeds from the sale of S&P 100 Index call options to finance the cost of purchasing S&P 100 Index put options. Madoff also told IA Business customers that he would enter and exit the market between eight and twelve times each year.

43. BLMIS's IA Business customers, including Lagoon, received fabricated monthly or quarterly statements showing that securities were held in, or had been traded through, their accounts. However, the purchases and sales of securities shown in those account statements never occurred, and the reported profits were entirely fictitious. At the hearing where Madoff pled guilty, he admitted that he never purchased any of the securities he claimed to have purchased for the IA Business's customer accounts. In fact, there is no record of BLMIS having cleared a *single* purchase or sale of securities in connection with the SSC Strategy on any trading platform on which BLMIS reasonably could have traded securities.

44. At times prior to his arrest, Madoff told customers and regulators that he purchased and sold the put and call options over-the-counter rather than through an exchange. Yet, there is no evidence that Madoff ever purchased or sold *any* of the options described in customer statements. Additionally, the Options Clearing Corporation, which clears all option contracts based upon the stocks of S&P 100 companies, has no record of the IA Business having bought or sold *any* exchange-listed options on behalf of any IA Business customers.

45. During the relevant period, the IA Business was operated as a Ponzi scheme. Contrary to its falsified monthly account statements, customers of the IA Business did not make any gains on their investments. The money received from investors was not invested in any stocks and options at all. Instead, BLMIS simply used its IA Business customers' deposits to pay other customers' redemptions and to make other transfers.

46. BLMIS was able to survive for as long as it did only because investors in the Feeder Funds were fraudulently induced to bring billions in capital that fueled Madoff's Ponzi scheme.

47. Madoff's scheme continued until December 2008, when the requests for redemptions overwhelmed the flow of new investments and caused the inevitable collapse of his fraud.

## **II. LAGOON, LIKE THE OTHER FEEDER FUNDS, WAS USED TO FUNNEL MONEY INTO MADOFF'S PONZI SCHEME**

48. Like the other Feeder Funds with which HSBC was intimately involved, Hermes International Fund's subsidiary, Lagoon, was merely a vehicle through which funds from international investors were funneled to Madoff and his Ponzi scheme.

49. Hermes International Fund is an open-ended investment company with limited liability and unlimited duration. Hermes International Fund issued several different classes of shares, which were allocated to sub-funds. Between 2002 and 2008, Plaintiffs purchased millions of dollars of shares of one of those sub-funds, known as the Hermes World Sub-Fund.

50. The overall investment objective of Hermes International Fund was "to achieve through the individual Funds, capital appreciation while attempting to limit investment risk by investing in an internationally diversified portfolio of investments designed to provide the opportunity for the [fund] to benefit from different and economic conditions." The specific

investment objective of the Hermes World Sub-Fund was “[t]o be a market neutral vehicle with a low volatility single manager for investors who are risk averse.”

51. The investment objectives of Hermes International Fund and the Hermes World Sub-Fund were consistent with the Hermes International Fund’s bye-laws, which require, among other things, that:

No investment ... shall be made for the account of any Fund or Class, and no holding of any Investment shall be added to for the account of any Fund:

(i) if the value of the Fund or Class holding of securities issued by any one company or body (other than units of unit trusts or Shares of mutual fund corporations) would exceed 10 per cent of the total net assets of the Fund or Class at the most recent Valuation Day;

(ii) if the nominal amount of the Fund or Class holding of a security of any one class in any company or body (other than units of unit trusts or shares of mutual fund corporations) would exceed 10 per cent, of the total nominal amount of all the issued securities of that class immediately after such Investment or any addition thereto has been made;

(iii) if the value of the Fund or Class total holding of securities in the form of unquoted Investments (other than units or unit trusts or shares of mutual fund corporations) would exceed 10 per cent, of the total net assets of the Fund or Class as at the most recent Valuation Day ....

52. All the funds in the Hermes World Sub-Fund were invested in Lagoon. Unbeknownst to Plaintiffs and other investors, Lagoon invested 100% of its assets with BLMIS.

53. In this manner, Lagoon (along with the Hermes World Sub-Fund) was merely a vehicle to funnel money from investors to BLMIS. Underscoring this fact, the injury suffered by Plaintiffs as a result of their investment was individual to them, and not shared equally with all investors in the Hermes World Sub-Fund. As with all Ponzi schemes, not all investors in the Hermes World Sub-Fund suffered the same losses. Those investors who were fortunate to redeem their entire investments before the revelation of Madoff’s fraud recovered all of their investments and possibly more in the form of fictitious “profits.” Other investors, like Plaintiffs, who had not

redeemed their investments or redeemed less than they had invested, suffered extensive financial losses.

54. When Madoff's fraud was revealed in December 2008, Plaintiffs retained close to 10,000 shares in the Hermes World Sub-Fund and lost millions of dollars. Those shares are worthless today.

### **III. HSBC PLAYED A KEY ROLE IN FACILITATING MADOFF'S PONZI SCHEME, AND OWED DIRECT DUTIES TO FEEDER FUND INVESTORS**

55. HSBC played a key role in facilitating the Ponzi scheme, by funneling billions of dollars to Madoff through the Feeder Funds. HSBC was able to achieve this because it acted as custodian, administrator, manager and promoter of the many Feeder Funds. HSBC's name appeared in offering materials as well as financial statements for the Feeder Funds. By lending its names to these funds, HSBC convinced investors, like Plaintiffs, that the Feeder Funds were a safe place to invest their money. For its various roles as administrators, custodians and investment managers of the Feeder Funds, HSBC received tens of millions of dollars in fees.

#### **A. HSBC Knew That Investors In The Feeder Funds Relied On Its Experience And Reputation**

56. HSBC touts itself as "one of the largest banking and financial services organisations in the world" with thousands of offices located in scores of countries and territories. According to the HSBC Holdings 2014 Annual Report, the financial services that HSBC provides include "broking, asset management, financial advisory services ... securities services and alternative investments."

57. With respect to its fund services, HSBC claims on its website: "We have over 100 years' experience in fund services, serving investment managers, including sovereign wealth managers, asset managers, pension funds and insurance companies."

(<http://www.hsbcnet.com/gbm/products-services/securities-services/fund-services>) (last accessed

April 28, 2015). HSBC claims to provide an “edge in fund administration” by offering “accounting and valuation, transfer agency, investment operations and corporate secretarial services ....” Among its roles as a provider of fund services, HSBC touts its abilities as “specialists for fund accounting and valuation services” and as a provider of “world-class secretarial services” with “industry best practices.” HSBC claims to be “a very experienced global team who support traditional fund, hedge fund, fund of hedge fund and private equity” and to have “[a] century of industry experience [which] has helped [HSBC] evolve a range of client-focused innovations in investment operations.”

58. HSBC has also developed a global brand name. According to HSBC Holdings’ 2002 Annual Report, by that year, the HSBC brand name and the hexagonal symbol associated with it had become “a familiar sight around the world.” According to the 2007 Annual Report, HSBC capitalized on “the HSBC brand and global networks ... to reach new customers and offer further services to existing clients ....”

59. Thus, HSBC knew that when investors in the Feeder Funds saw “HSBC” on prospectuses, account statements and financial reports, the investors believed they were tapping into the HSBC “global network,” and that they were backed by HSBC’s purported “core values of integrity, trust and excellent customer service.” (*See* 2002 HSBC Holdings Annual Report at 9.)

60. Specifically for Hermes International Fund, the HSBC name appeared on a number of documents that were disseminated to the fund’s shareholders, including as follows:

- a. HSSL appeared on the cover page of the July 4, 2007 Hermes International Fund prospectus, and was identified as one of the contacts for investors seeking further information.

- b. In the prospectus for Hermes International Fund, HSBC Bank Bermuda was described as having: (i) subsidiaries worldwide, including in New York; (ii) experience servicing offshore investment vehicles for over 30 years; (iii) a client base in excess of 400 mutual funds, pension plans and other forms of investment vehicles; and (iv) over \$11.1 billion in total assets and over \$104 billion in assets under administration in 2000.
- c. The subscription confirmation statements sent to Plaintiffs from 2005 to 2008 indicated HSSL as the custodian of the Hermes World Sub-Fund.
- d. The Hermes World Sub-Fund portfolio summary reports that were sent to Plaintiffs in October 2005, October 2006 and December 2007 had the HSBC brand name and logo emblazoned on the upper right hand corner.
- e. The Hermes International Fund semi-annual reports and annual reports had the HSBC name on the cover sheet, and identified HSBC as custodian/sub-custodian and administrator/sub-administrator of the fund.

**B. HSBC Acted As Administrator Of The Feeder Funds, Including The Hermes International Fund And Lagoon**

61. HSBC, specifically the HSBC Administrator Defendants, served as administrators, registrars, and service agents pursuant to agreements with the Feeder Funds. In this capacity, HSBC was responsible for the day-to-day administration of the funds, which entailed, among other things, issuing and redeeming fund shares, and maintaining the books and records of those funds. For their purported services, the HSBC Administrator Defendants received fees from the Feeder Funds.

62. With respect to Hermes International Fund, in which Plaintiffs invested, Defendant HSBC Bank Bermuda (formerly the Bank of Bermuda Limited) was the administrator of Hermes

International Fund pursuant to a Secretarial and Registrar Agreement, dated April 27, 1992. Management International Bermuda Limited succeeded HSBC Bank Bermuda as the administrator pursuant to a Secretarial and Registrar Agreement, dated October 28, 2003. In 2006, Management International Bermuda Limited changed its name to Defendant HSSB.

63. Defendant HSSL (formerly Bank of Bermuda (Luxembourg) S.A.) was the sub-administrator, sub-registrar and transfer agent of Hermes International Fund. Defendant HSSL was also the administrator for Lagoon. Later, Defendant HSBC Fund Services (formerly Management International (Luxembourg) S.A.) served as the sub-administrator of Hermes International.

64. In performing its various functions under the Secretarial and Registrar Agreements described above, the HSBC Administrator Defendants committed to provide services beyond those of a typical fund administrator. For example, HSBC was responsible for determining the share prices of Hermes International Fund, and for maintaining the accounts and financial records of Hermes International Fund for the proper conduct of the fund's financial affairs.

65. HSBC also had discretionary authority, including: (a) paying out assets of Hermes International Fund, as required, to enable HSBC to perform its duties or to pay other expenses of the fund; (b) the power to draw on the bank accounts of the fund as necessary to perform its duties; (c) employing servants or agents in the performance of its duties as administrator/sub-administrator; (d) delegating its functions, powers, discretions, privileges and duties; and (e) using the name of the fund and signing documents for and on behalf of the fund.

66. In addition to these discretionary powers, the HSBC Administrator Defendants were the agents of Hermes International Fund in its dealings with the public, including Plaintiffs. Among other things, HSBC was authorized to: (a) receive, record and deal with probates, letters

of administration, powers of attorney, dividend mandates, vesting orders, marriage certificates, death certificates, notices of name changes, and other documents affecting the title to shares or dividends payable; (b) send out circulars, notices of meetings, reports, financial statements and other written material to persons entitled to receive such documents under the by-laws of Hermes International Fund; (c) act as proxy agent at meetings of shareholders; and (d) address correspondence from shareholders concerning HSBC's functions and obligations, and otherwise directly communicate with investors in Hermes International Fund.

67. For example, Plaintiffs received from HSBC numerous portfolio summary reports reflecting their investment in Hermes International. Also, in the July 9, 2007 Hermes International Fund prospectus, HSSL was listed as one of the contacts for interested investors.

68. In exchange for the services as administrator and sub-administrator, HSBC received fees, which were based on the net assets of the Hermes International Fund, with a minimum annual amount, plus transaction charges and other charges.

**C. HSBC Acted As Custodian Of The Feeder Funds, Including The Hermes International Fund And Lagoon**

69. In addition to its role as administrator, HSBC, specifically the HSBC Custodian Defendants, entered into custodian agreements with certain of the Feeder Funds. The HSBC Custodian Defendants committed to undertake significant responsibilities, including maintaining segregated accounts; overseeing the administration of the payment and redemption of funds; and otherwise transferring, exchanging, or delivering securities as directed by the Feeder Funds.

70. With respect to Hermes International Fund, in which Plaintiffs invested, Defendant HSBC Bank Bermuda (formerly the Bank of Bermuda Limited) served as the custodian pursuant to a Custodian Agreement, dated April 27, 1992. Defendant HSBC Bank Bermuda appointed Defendant HSSL (formerly Bank of Bermuda (Luxembourg) S.A.) as sub-custodian pursuant to a

Sub-custodian Agreement, dated April 27, 1992. Defendant HSSL was also the custodian of Lagoon.

71. As custodian or sub-custodian of Hermes International Fund, the HSBC Custodian Defendants were responsible for the safe custody of all cash received for the fund. In this regard, HSBC committed to, among other things: (a) provide a valuation of the fund's assets, which in turn determined the share price of Hermes International Fund; and (b) keep books, records and statements necessary "to give a complete record of all cash and Investments held and transactions carried out by it on behalf of the [fund]."

72. HSBC also had independent or discretionary duties, including the authority to: (a) endorse and collect payments received for the account of the fund; (b) maintain a separate account in its books of all investments received by the fund, and to ensure the safekeeping of all investments of the fund, as HSBC thought proper; (c) appoint agents, sub-custodians and delegates as it saw fit, with appropriate notice to the fund; (d) refuse any investment or other transaction if, in its opinion, there were reasonable grounds for believing that the assets of the fund would not be sufficient to cover the transaction; (e) pre-approve any statements, notices or other publications used by the fund containing or referring to the custodian's name; and (f) credit or debit the fund with the proceeds or price of a securities sale or purchase, in its discretion.

73. The HSBC Custodian Defendants were also responsible for interacting with the shareholders of Hermes International Fund. For example, shareholders of Hermes International Fund were directed to address daily inquiries to the HSBC sub-custodian and sub-registrar. Additionally, applications (subscriptions), redemptions and conversions of Hermes International Fund shares were referred to the HSBC sub-custodian and sub-registrar.

74. In exchange for the services as custodian or sub-custodian, HSBC received fees, which were based on the net assets of the Hermes International Fund, with a minimum annual amount, plus transaction charges and other charges.

75. As set forth below, contrary to their duties to the Feeder Fund investors, the HSBC Custodian Defendants did not discharge their responsibilities and did not perform any routine or meaningful activities to verify the existence of the Feeder Fund assets. Instead, the HSBC Custodian Defendants allowed BLMIS to effectively act as custodian for certain of the Feeder Funds, including Hermes International Fund.

**D. HSBC Assisted In The Preparation Of Offering Materials For The Feeder Funds, Including Hermes International Fund And Lagoon**

76. In addition to its various roles as administrator and custodian, HSBC participated in the preparation of prospectuses and other offering materials for the Feeder Funds that were used to solicit investments from foreign investors such as Plaintiffs. For example, HSSL appeared on the cover page of the July 4, 2007 Hermes International Fund prospectus, and was identified as one of the contacts for investors seeking further information. HSBC knew that investors such as Plaintiffs relied on the prospectuses and other offering materials as a significant factor in deciding whether to purchase shares in Hermes International Fund and other Feeder Funds.

77. With respect to Hermes International Fund, HSBC failed to disclose that all the investments in the Hermes World Sub-Fund were invested, via Lagoon, into BLMIS's IA Business. In fund prospectuses, HSBC described the investment strategy of the Hermes World Sub-Fund as follows:

Each of the Hermes World classes is conceived to be a market neutral vehicle for investors who are risk-averse. The structure of the Hermes World USD and Hermes World CHF classes have been changed from a multi-manager to a single manager on the 1st day of January, 1999. This important modification offers the opportunity to invest in a management strategy with little exposure to stock

market fluctuations. The objective is long-term capital appreciation by investing in stocks of the S&P 100 index. The downside risk of the portfolio is neutralized by the purchase of put options based on the same index. The cost of hedging is financed by selling call options on the S&P 100 index. Often, in volatile market conditions, the manager switches to United States Treasury Bills.

78. Unbeknownst to investors, this description was in fact virtually identical to the description of Madoff's SSC Strategy, as described in paragraph 42 above.

79. Apart from failing to disclose this fact, HSBC failed to disclose that placing all of Lagoon's investments with BLMIS breached the by-laws of Hermes International Fund, which prohibited any sub-fund from holding securities issued by any one company or body that would exceed 10 per cent of the total net assets of the sub-fund.

**E. HSBC Marketed Madoff To HSBC's Private Banking Clients**

80. HSBC Private Banking Holdings, HSBC Private Bank (Suisse), HSBC Bank USA, and their related affiliates ("HSBC Private Bank") also played a key role in marketing the Feeder Funds, including Hermes International Fund. Even though HSBC issued overwhelmingly negative due diligence reports noting the many red flags associated with BLMIS, HSBC Private Bank persuaded wealthy clients to invest in the Feeder Funds, which investments were then funneled on to BLMIS, fueling Madoff's Ponzi scheme.

81. HSBC Private Bank's high net-worth clients had relationships of trust and confidence with HSBC Private Bank. These clients trusted HSBC Private Bank, and relied on HSBC's reputation and brand name when deciding among investment strategies. Upon information and belief, without the solicitation by and recommendations of HSBC Private Bank, these individuals would not have invested in the Feeder Funds.

**F. HSBC Owed Duties To Plaintiffs And Other Investors In The Hermes International Fund**

82. As a result of its many functions described above, including the authority and discretionary functions conferred by Hermes International Fund, HSBC was a fiduciary to the investors in Hermes International Fund, including Plaintiffs. HSBC owed Plaintiffs and other investors a duty of care in the performance of its myriad financial services.

83. As alleged above, HSBC was aware that potential and current investors knew that HSBC was providing significant financial services to the Hermes International Fund, and were relying on HSBC in making their investment decisions. HSBC was aware that its myriad roles as administrator, custodian and co-preparer of prospectuses lent significant credibility to the Hermes International Fund, and assured potential and current investors about the quality of the fund, the security of the assets held by the fund, and the accuracy of the reported values of the fund and of the investors' individual accounts.

84. HSBC occupied a superior position and, as fully intended by HSBC, Plaintiffs reposed their trust and confidence in HSBC to perform its various functions when deciding to make their investments in Hermes International Fund, to re-invest in the fund, and to retain their investments in the fund. Plaintiffs also relied on HSBC as a fiduciary in the period after they sent their money for investment, but before their assets were turned over to Madoff.

85. In making and maintaining their investments in Hermes International Fund and, in particular, the Hermes World Sub-Fund, the value of the assets held by the sub-fund and the prices of the shares of the sub-fund were fundamental items of information for Plaintiffs. HSBC, in its roles as administrator/sub-administrator and as custodian/sub-custodian, was responsible for independently calculating and reporting these two critical items of information. The number of shares that Plaintiffs received in exchange for their investment amounts depended on HSBC's net

asset value calculations. Plaintiffs' subsequent reported profits also turned on HSBC's calculations. Therefore, Plaintiffs necessarily relied on HSBC's net asset value calculations. Plaintiffs' initial and subsequent investments were sent directly to HSBC. Plaintiffs reasonably and foreseeably reposed trust and confidence in HSBC to safeguard their assets, to record the securities purchased for them, to monitor anyone else assigned to hold those assets (*i.e.*, BLMIS), and to ensure those third parties were safely holding the assets.

#### **IV. HSBC WAS A CONFLICTED FIDUCIARY WHO CREATED STRUCTURED PRODUCTS TO FURTHER PROFIT FROM MADOFF'S IA BUSINESS**

86. Even though HSBC stood as a fiduciary to investors in the Feeder Funds, HSBC placed itself in a conflicted position by trying to further profit from directing investors' money to Madoff.

87. Beginning in approximately 2006, HSBC itself structured numerous, complex financial instruments (the "Madoff Structured Products") which directed hundreds of millions of dollars into Madoff's Ponzi scheme through various Feeder Funds. The Madoff Structured Products used significant leverage and offered investors the opportunity to earn a multiple of the returns generated by a Feeder Fund without the upfront capital necessary for a direct investment of that size. The Madoff Structured Products also increased the assets flowing into the Feeder Funds in another way: HSBC invested in the Feeder Funds to hedge their exposure under the Madoff Structured Products.

88. HSBC earned significant structuring and financing fees in connection with the Madoff Structured Products.

89. There were two main types of Madoff Structured Products: (i) total return swaps ("swaps"); and (ii) structured notes ("notes"). A swap is a bilateral financial transaction created to "swap" the cash flows of an asset or basket of assets for cash flows of another asset. Swaps

enable investors to achieve multiples of the returns from a reference asset – here, a Feeder Fund – without having to own the asset. In exchange for paying the leveraged return on the reference fund at maturity, the financing institution – here, HSBC – collected significant structuring and financing fees on the leveraged amount. A structured note is a transaction in which a financial institution issues a note to an investor in exchange for a future payment based on the performance of an underlying reference fund, or index. Like swaps, notes typically employ leverage to provide investors with the possibility of multiples of the returns from the reference asset.

90. Generally, in both swaps and notes, the financing institution that has promised a leveraged return on the performance of a reference fund will hedge its risk by investing both its own money and the cash collateral provided by the swap counterparty or note purchaser directly in the reference fund. A note or swap investor makes a synthetic investment in a reference fund, because it is entitled at maturity to the leveraged returns generated by the reference fund, but it is the financing institution that is the actual owner of the reference fund shares.

*1. The HSBC Swaps*

91. Between June 2006 and September 2007, HSBC Bank USA and HSBC Bank entered into seven financing swaps for which the reference funds were several Feeder Funds. These Madoff Structured Products caused hundreds of millions of dollars to be invested with these Feeder Funds, and ultimately, into the IA Business, thereby prolonging Madoff’s Ponzi scheme and deepening the insolvency of BLMIS.

92. The seven swaps used the following Feeder Funds as reference assets: (i) Rye Select Broad Market Fund, L.P. (“Broad Market”); (ii) Sentry; (iii) Harley International (Cayman) Limited (“Harley”); (iv) Thema International; (v) Senator; and (vi) Rye Select Broad Market Portfolio Limited (“Broad Market Portfolio”).

## **2. The Rye XL Fund Swap**

93. In September 2006, HSBC Bank USA entered into a swap with Rye Select Broad Market XL Fund, L.P. (“Rye XL”) with shares of Broad Market serving as the reference fund (the “Rye XL Fund Swap”). As part of the Rye XL Fund Swap, Rye XL received a notional exposure to Broad Market of \$140 million. HSBC funded this exposure by charging Rye XL a fee of LIBOR plus 90 basis points.

94. Initially, the Rye XL Fund Swap had a maximum notional exposure of \$300 million. However, due to increased interest in Broad Market, the size of the swap was increased to \$350 million in October 2006, and then to \$450 million in January 2007. Upon maturity, the Rye XL Swap contemplated a payout to Rye XL of up to 3.5 times the leveraged performance of Broad Market.

95. HSBC Bank USA, which had direct investments in Broad Market, redeemed \$50 million from Broad Market in the fall of 2007, and an additional \$13.5 million in the summer of 2008, at a time when it knew or consciously avoided knowing of Madoff’s fraud.

## **3. The Wickford Fund Swap**

96. In March 2007, HSBC Bank USA entered into a swap transaction with Wickford Fund L.P. (“Wickford”), which provided leveraged exposure to the returns generated by Sentry (the “Wickford Fund Swap”).

97. Wickford received a notional exposure to Sentry of \$10 million in the swap transaction. HSBC Bank USA funded this exposure by charging Wickford a financing fee of LIBOR plus 110 basis points.

## **4. The Santa Clara II Fund Options Swap**

98. In June 2007, HSBC Bank entered into a swap transaction with Santa Clara II Fund (“Santa Clara”) that provided Santa Clara with leveraged exposure to the returns generated by the

feeder fund Harley (the “Santa Clara Options Swap”). Santa Clara received a maximum notional exposure to Harley of \$300 million in the swap transaction. Upon maturity, the Santa Clara Options Swap contemplated a payout to Santa Clara of up to 4.5 times the leveraged performance of Harley. HSBC Bank funded this exposure by charging Santa Clara a financing fee of LIBOR plus 110 basis points.

99. HSBC Bank, which had direct investments in Harley, made redemptions from Harley at a time when it knew or consciously avoided knowing of Madoff’s fraud.

**5. The BNP Paribas Accreting Strike Call Option Transaction**

100. In September 2007, HSBC Bank USA entered into an accreting strike call option transaction, which had the same economics as a total return swap, with BNP Paribas that provided BNP Paribas with leveraged exposure to the returns generated by Harley. As part of the BNP Paribas transaction, BNP Paribas received a notional exposure to Harley of \$70 million. HSBC Bank USA funded this exposure by charging BNP Paribas a financing fee.

101. HSBC Bank USA, which had direct investments in Harley, made redemptions from Harley at a time when it knew or consciously avoided knowing of Madoff’s fraud.

**6. The Gaspee Offshore Swap**

102. Also in July 2007, HSBC Bank entered into a swap transaction with Gaspee Offshore Fund Ltd. (“Gaspee”), which provided leveraged exposure to the Thema International Feeder Fund (the “Gaspee Offshore Swap”). As part of the Gaspee Offshore Swap, Gaspee received a notional exposure to Thema International of \$12.8 million. HSBC Bank funded this exposure by charging Gaspee a financing fee of LIBOR plus 110 basis points. In 2008, when Thema International was redeemed in full, Senator Fund replaced Thema International as the reference fund.

103. Upon maturity, the Gaspee Offshore Swap contemplated a payout to Gaspee of up to 3.5 times the leveraged performance of Senator.

104. HSBC Bank, which had direct investments in Thema International, made redemptions from Thema International and Senator at a time when it knew or consciously avoided knowing of Madoff's fraud.

**7. The Rye Select Broad Market XL Portfolio Limited Swap**

105. HSBC Bank entered into a swap transaction in August 2007 with Rye Select Broad Market XL Portfolio Limited ("Rye XL Portfolio"), in which Class D shares of Broad Market Portfolio served as the reference fund (the "Rye XL Portfolio Swap"). As part of the Rye XL Portfolio Swap, Rye XL Portfolio received a notional exposure to Broad Market Portfolio of \$56 million. Upon maturity, the Rye XL Portfolio Swap agreement contemplated a payout to Rye XL Portfolio of up to 3.5 times the leveraged performance of Broad Market Portfolio.

106. HSBC Bank funded this exposure by charging Rye XL Portfolio a fee of LIBOR plus 90 basis points.

107. HSBC Bank, which had direct investments in Rye XL Portfolio, redeemed \$15.9 million from Rye XL Portfolio during the fourth quarter of 2008, a time when it knew or consciously avoided knowing of Madoff's fraud.

**8. The Wailea Swap**

108. In September 2007, HSBC Bank USA entered into two swap agreements with Wailea Partners L.P. ("Wailea Partners") and Wailea Offshore Fund Ltd. ("Wailea Offshore Fund"). In both swap transactions, Senator served as the reference fund (respectively, the "Wailea Offshore Swap" and the "Wailea Partners Swap"). As part of the Wailea Partners Swap, Wailea Partners received a notional exposure of \$31 million to Senator. As part of the Wailea Offshore Swap, Wailea Offshore Fund received a notional exposure of \$14 million to Senator. Upon

maturity, both these swap agreements contemplated a payout to Wailea Partners and Wailea Offshore Fund of up to 3.5 times the leveraged performance of Senator Fund.

109. HSBC Bank USA funded this exposure by charging Wailea Partners and Wailea Offshore Fund a financing fee of LIBOR plus 110 basis points.

110. HSBC Bank USA, which had direct investments in Senator, made redemptions from Senator at a time when it knew or consciously avoided knowing of Madoff's fraud.

#### **9. The Leveraged Note Programs**

111. By 2006, a number of different financial institutions had created leveraged investment vehicles which, like the Madoff Structured Products, increased investments in the BLMIS IA Business. Between 2005 and 2008, several banks had created leveraged note programs that offered note purchasers multiples of the returns of an underlying feeder fund to which the note program was linked. These notes created an additional access point through which investors could gain exposure to feeder funds that they otherwise could not invest in due to capacity limitations or minimum investment requirements.

112. HSBC benefited from these leveraged note programs that were linked to the performance of Feeder Funds. As investments in the Feeder Funds increased, through investment in the leveraged note programs, the fees HSBC received also increased.

#### **10. The STAIRS Note Programs**

113. HSBC also sought to create leveraged products through which individual high net-worth investors could invest in hedge funds, including gaining exposure to certain Madoff Feeder Funds. Under these leveraged products, which HSBC Bank USA called "leveraged hedge fund basket-linked STAIRS Notes" (the "STAIRS Notes"), individual investors would receive multiples of the returns generated by a basket of hedge funds selected by HSBC Bank USA. The

STAIRS Notes products would have provided yet another avenue by which investors could access BLMIS and by which Madoff could tap into a new source of funds.

114. For example, as of January 9, 2007, HSBC Bank USA was attempting to create a seven-year STAIRS Notes program, with a notional exposure of \$40 million to a reference portfolio comprising two hedge funds, Permal FX Financial and Futures, and Broad Market, a feeder fund that was wholly invested in BLMIS. An investor participating in this STAIRS Note program would have received returns of up to three times that of the referenced fund, less the fees collected by HSBC Bank USA. HSBC also would have benefited from the STAIRS Note programs. For example, in connection with the program described above, HSBC Bank USA would have received net revenues of at least \$588,492 in fees during each of the seven years of the STAIRS Note program.

**V. HSBC KNEW THAT BLMIS’S IA BUSINESS WAS A FRAUD, BUT FAILED IN ITS DUTIES TO INVESTORS, INCLUDING PLAINTIFFS**

115. Based on its many roles and contact with Madoff, HSBC was aware, for at least several years prior to 2008, that Madoff was engaged in a massive fraud. Despite observing and internally reporting the many red flags associated with Madoff’s operations, HSBC failed to further investigate or otherwise take responsive steps. These red flags are described in further detail below.

**A. Madoff’s Secrecy**

116. Although Madoff touted the simplicity of his investment strategy, he refused to provide even the most basic details about how he implemented that strategy. HSBC repeatedly identified Madoff’s secrecy as a red flag. In a 2001 report regarding the feeder fund, Sentry, HSBC noted: “transparency issues prevent us from conducting a proper due diligence.” Ultimately,

HSBC acquiesced in Madoff's inexplicable secrecy, and continued to encourage clients to invest in a wide array of identical Madoff funds and products.

117. Furthermore, any offering documents of the Feeder Funds should have mentioned Madoff or BLMIS, since the Feeder Funds' primary or exclusive investments were with Madoff and BLMIS. However, Madoff insisted to HSBC that his name not be mentioned in the offering documents. Again, HSBC acquiesced to Madoff's demands and kept Madoff's name out of offering documents relating to the Feeder Funds that HSBC assisted in marketing. Thus, the prospectuses for Hermes International Fund never disclosed that all the assets in the Hermes World Sub-Fund were invested, via Lagoon, exclusively with BLMIS.

118. In an internal communication in August 2005, HSBC employees acknowledged that they were concealing Madoff's identity and role in managing the Feeder Funds.

**B. HSBC Abdicated Its Role As Custodian And Allowed Madoff To Act As His Own Custodian**

119. Even though they were the appointed custodians of the Feeder Funds and owed direct duties to Feeder Fund investors to safeguard their assets, the HSBC Custodian Defendants *allowed Madoff to act as his own custodian.*

120. As the HSBC Custodian Defendants knew, their independence was critical to the integrity and trustworthiness of the statements received by customers. Among their duties, the HSBC Custodian Defendants were responsible for ensuring that Madoff actually had the customer funds he purported to have. Also, the HSBC Custodian Defendants were responsible for: maintaining segregated accounts; overseeing the administration of the payment and redemption of funds; and otherwise transferring, exchanging or delivering securities as directed by the Feeder Funds.

121. Contrary to their duties, however, the HSBC Custodian Defendants did not perform any routine or meaningful activities to verify the existence of the Feeder Fund assets. Instead, incredibly, the HSBC Custodian Defendants entered into formal sub-custodian agreements with BLMIS whereby BLMIS acted as custodian in connection with Hermes International Fund and Lagoon, in which Plaintiffs invested, as well the following additional Feeder Funds: Thema International, Thema Fund, Thema Wise, Primeo, Alpha Prime, Herald Fund, Herald Lux, Kingate Euro, Kingate Global, Square One, Senator, Defender and Landmark. In other words, HSBC handed over the keys and allowed the fox to guard the hen-house.

122. As a further red flag, BLMIS agreed to assume these sub-custodian responsibilities for no compensation. The HSBC Custodian Defendants never questioned why BLMIS would be willing to perform these duties without compensation, and did not otherwise question the fact that BLMIS insisted on keeping custody of the assets.

123. Because the HSBC Custodian Defendants abdicated their duties as custodian of Feeder Funds, there was no independent oversight over BLMIS's activities, which was critical to sustaining the Ponzi scheme. Obviously, BLMIS did not perform the duties delegated by HSBC, and the HSBC Custodian Defendants did not even pretend to supervise BLMIS to ensure that BLMIS performed these duties.

124. Even after delegating these duties, however, the HSBC Custodian Defendants continued to collect millions in fees for purportedly acting as custodian. Further, the HSBC Custodian Defendants allowed their names to be used by the Feeder Funds to indicate, inaccurately, that HSBC exercised control over and care of investor assets.

125. HSBC's delegation of its custodial duties violated U.S. industry practices requiring that assets be held by an independent custodian. Without an independent custodian, there can be

no independent verification of assets. Madoff was able to conceal his trading – or the lack thereof – because BLMIS acted as prime broker, custodian and portfolio manager. Given HSBC’s extensive experience as one of the world’s largest custodial banks, HSBC should easily have recognized Madoff’s insistence on keeping custody of the assets he managed for what it was – a hallmark of fraud.

126. Indeed, this was pointed out in stark terms by KPMG, the company that the HSBC retained to review fraud risks at Madoff. KPMG wrote that allowing BLMIS to act as custodian for its own funds created the potential that the trades were “a sham in order to divert client cash.”

127. HSBC itself conceded that this was a serious problem. In every due diligence review performed from at least 2003 through 2008, HSBC repeatedly pointed to BLMIS’s role as a sub-custodian as a fraud risk. For example, HSBC identified as a risk the lack of “independent custody and verification of trading activity away from the investment manager (unlike a standard hedge fund that has a prime broker).” However, HSBC never acted on this concern.

### **C. Negative Cash Balances**

128. On numerous occasions, Madoff appeared to execute the SSC Strategy in a manner which, had it been true, would have left his account-holders with a negative cash balance. This could occur for one of three principal reasons: (i) Madoff did not liquidate a sufficient number of Treasury bills to generate enough cash to purchase a basket of equities; (ii) the account satisfied a redemption request while in the market (BLMIS typically did not purport to sell anything to provide a withdrawal, but simply withdrew money, creating a negative cash event); or (iii) the purported purchase of put options occurred before the sale of corresponding call options, the sale of which was supposed to finance those put options according to the SSC Strategy.

129. In fact, on 832 separate occasions, certain Madoff Feeder Fund accounts went into a negative cash position. This was clear based upon a cursory review of the relevant customer statements. Upon information and belief, HSBC never questioned where Madoff obtained the money he loaned to the Feeder Funds. As one of the world's largest lenders, HSBC had to recognize the absurdity that Madoff was, essentially, lending HSBC's clients hundreds of millions of dollars for no charge whatsoever. But for HSBC's decision to look the other way, HSBC would have known that Madoff was not executing the trades described on customer statements.

**D. The Inadequacy Of Madoff's Auditors**

130. HSBC knew that BLMIS relied on Friebling & Horowitz, an unknown, three-person accounting firm based in a strip mall in Rockland County, New York, to audit a multi-billion dollar investment fund. HSBC was on notice that BLMIS's auditors did not have the competence, resources, technological capabilities or expertise to perform the domestic and international auditing functions associated with BLMIS and its billions under management. Further, HSBC knew that Friebling & Horowitz was not subject to peer review. That BLMIS, with billions of dollars under management, relied on an auditor like Friebling & Horowitz should have raised a warning sign with HSBC. Instead, HSBC acted as if nothing were out of the ordinary and continued to expand their relationships with BLMIS.

131. The absurdity of this situation was not lost on HSBC. HSBC Private Bank identified as a concern "Madoff's lack of [a] realistically independent auditor – Friebling & Horowitz is a very small firm with Madoff as its only major client." Despite being explicitly aware of this red flag, HSBC did nothing.

**E. Madoff's Returns Did Not Mirror Market Conditions**

132. As another obvious red flag, BLMIS's IA Business appeared to be immune from any market instability, enjoying consistent rates of return at all times.

133. For example, through the burst of the dotcom bubble in 2000, the financial disruption caused by September 11, 2001, and the market downturn in 2008, the SSC Strategy produced consistent and positive returns. Even during the last 14 months of BLMIS's existence, the IA Business generated positive returns while the S&P 100 fell nearly 40%. Overall, from January 2000 through November 2008, the Feeder Funds experienced no more than five months of negative returns, while the S&P 100 experienced 53 months of negative returns over the same period.

**F. Madoff Did Not Provide Real-Time Access To IA Business Accounts**

134. Despite Madoff's reputation as an early adopter of advanced trading technology, BLMIS did not provide real-time access to IA Business accounts and sent only paper trade confirmations to its customers. By the mid-2000s, electronic access and immediate investment performance information were industry standard, and routinely required by funds of funds, which engaged in real-time hedging. BLMIS, however, transmitted paper copies of trade confirmations to the Defendants and/or their affiliates or representatives three to four days *after* trades purportedly occurred.

135. HSBC repeatedly sought to receive trade confirmations electronically through the Depository Trust Corporation's electronic systems, yet Madoff consistently refused. His explanation was nonsensical, and itself a red flag. According to Madoff, he feared that these service providers would steal his "strategy" or subject BLMIS's computer system to "hacking." Like the other red flags, this was ignored by HSBC.

**G. Madoff Never Identified His Option Counterparties**

136. Madoff never identified the parties on the other side of the thousands of hedging options transactions he purported to effect each month as part of his SSC Strategy.

137. The SSC Strategy purportedly involved the purchase of a basket of between 35 and 50 S&P 100 equities together with a collar of S&P 100 Index put and call options on those stocks to limit the up-side potential and down-side risks. BLMIS purportedly executed agreements with third parties on behalf of account holders pursuant to the “Master Agreement for OTC Options.”

138. At times, Madoff claimed simply to execute over-the-counter options trades with a network of unidentified counterparties, claiming that their identities were proprietary. At other times, he claimed simply that the counterparties were large, European financial institutions.

139. HSBC had excellent reasons to care about the identity of Madoff’s purported counterparties because it was the Feeder Funds, and not BLMIS, who bore the risk. As custodian and administrator for the Feeder Funds, HSBC ultimately stood to be liable for hundreds of millions of dollars. Had the purported counterparties been unable to meet their obligations, not only would there have been no collar, but the Feeder Fund accounts with BLMIS would have been left exposed to the market without the protections that were so central to the SSC Strategy and they would not have been able to collect on the value of the options contracts.

140. Despite this potential exposure, HSBC, acting as the Feeder Funds’ administrator and/or custodian, failed to perform any reasonable, meaningful or independent inquiry into the counterparties’ ability to perform under the contracts. HSBC did not review, comment on, modify, negotiate or reject any form of draft or final counterparty agreement or OTC transaction confirmation.

141. Furthermore, the HSBC Administrator Defendants failed to discharge their responsibility of valuing over-the-counter options contracts or otherwise verifying the volume or existence of these contracts, even though these were instruments purportedly held by the Feeder Funds in their accounts with BLMIS. To value over-the-counter options contracts, the HSBC

Administrator Defendants needed to obtain at least weekly quotations from options trading counterparties, which was never done because Madoff would not reveal the identities of purported counterparties. The HSBC Administrator Defendants' failure to identify the counterparties therefore enabled the continuation of Madoff's Ponzi scheme.

#### **H. BLMIS's Paper Trade Confirmations Were Archaic And Replete With Inconsistencies**

142. HSBC received trade confirmations from BLMIS containing numerous inconsistencies that should have raised a red flag that Madoff was not implementing the SSC Strategy as he purported to do. However, HSBC ignored these troubling red flags.

143. For example, the trade confirmations did not reflect either the reporting or payment of the "Section 31" fees required by NASD and FINRA rules. This should have raised a red flag with HSBC.

144. BLMIS's trade confirmations erroneously characterized options as "trade origins," rather than transactions, on checklists that appeared on the trade confirmations. The trade confirmations did not indicate the origin of those options trades. BLMIS's trade confirmations accurately characterized other transactions, such as purchases of stocks, as "transactions" and accurately indicated the origins of those other transactions. The inaccurate reporting of options transactions on BLMIS's trade confirmations should have raised a red flag with HSBC that there were irregularities with BLMIS's options trading. HSBC never inquired into this anomaly.

145. The trade confirmations also frequently indicated that BLMIS had effected the same trades as both principal and agent. HSBC saw, but did not question, this paradox. At times, the front of the BLMIS trade confirmations coded purported trades as "principal transactions" while the backs of the trade confirmations stated, "[w]e have acted in the capacity of Agent for

your transaction.” HSBC was aware of this conflicting language, yet failed to make any inquiries to resolve these inconsistencies.

146. Finally, BLMIS’s option trade confirmations often contradicted Madoff’s claim that, from time to time, he purchased options in the over-the-counter market. All of the options trade confirmations contained Committee on Uniform Security Identification Procedures (“CUSIP”) identification numbers, which indicated that the options Madoff utilized were S&P 100 Index options that were traded on the CBOE. Because the BLMIS options trade confirmations contained CUSIP numbers tied to the CBOE, HSBC should have recognized that BLMIS’s purported options trades were not purchased over-the-counter, as Madoff represented.

**I. Madoff Walked Away From Hundreds Of Millions Of Dollars By Employing A Bizarre Fee Structure**

147. In addition to providing interest-free loans on billions of dollars, Madoff imposed an unusual fee structure that, when compared to the fees charged by most investment funds, including those charged by HSBC here, meant that Madoff walked away from hundreds of millions, if not billions, of dollars in fees. Instead of charging a 1% to 2% management fee and a 10% to 20% performance fee typical of investment funds, Madoff charged only \$0.04 per share on stock transactions, and \$1.00 per option contract.

148. As a result of this bizarre fee structure, Madoff effectively forfeited hundreds of millions each year in fees that the Feeder Funds should have expected to pay. Madoff’s explanation, that he was “perfectly happy to just earn commissions,” should never have passed serious muster and was another red flag.

149. HSBC’s Private Bank due diligence team and other investment professionals all were aware that the largesse of this fee structure was an aberration. On at least nine occasions, in reports issued between 2001 and 2008, HSBC Private Bank highlighted Madoff’s fee structure as

a red flag. In 2007, for example, HSBC Private Bank noted, “[t]he lack of transparency involving fees paid to Madoff was disturbing.” HSBC Private Bank later reached the same conclusion as other investment professionals stating, “Things do not add up in terms of Bernie’s compensation structure.” HSBC ignored these warnings, and continued to funnel money into BLMIS through the Feeder Funds.

**J. Many Financial Professionals Publicly Questioned Madoff’s Legitimacy**

150. HSBC ignored not only the red flags obvious from their own relationship with BLMIS’s IA Business, but also the warnings of many industry professionals. In 2001, two industry analysts published articles specifically questioning the legitimacy of BLMIS’s operations and its investment performance. In May 2001, a *MAR/Hedge* newsletter, entitled “Madoff tops charts; skeptics ask how,” reported on industry experts’ bewilderment regarding feeder fund Greenwich Sentry LP’s consistent returns and how such returns could be achieved so consistently and for so long. The article also observed that “others who use or have used the strategy ... are known to have had nowhere near the same degree of success.”

151. On May 7, 2001, *Barron’s* published an article entitled “Don’t Ask, Don’t Tell: Bernie Madoff is so secretive, he even asks investors to keep mum.” In that article, *Barron’s* reported widespread Wall Street skepticism about BLMIS’s IA Business, and noted the lack of transparency regarding the SSC Strategy as a result of Madoff’s unwillingness to answer questions.

152. Both articles suggested that BLMIS had between \$6 billion and \$7 billion in assets under management. The articles noted that some industry experts speculated that Madoff used information gleaned from his market-making business, such as the bid-ask spreads, to front-run the IA Business’s trades and to subsidize and smooth the IA Business’s returns.

153. The *Barron's* article was circulated within HSBC. Yet, no one at HSBC attempted to follow up on any of the issues it raised. HSBC's only response to these articles was to invent their own "answers" – without any independent inquiry – to the troubling questions the articles raised, including whether Madoff was front-running, how Madoff was able to purportedly trade such volumes without noticeably affecting the market, the overall lack of transparency and why Madoff did not charge industry-standard management and performance fees. In addition, HSBC appended the *MAR/Hedge* article to various due diligence reports and often quoted from that article.

**K. BLMIS Account Statements And Confirmations Often Reflected Settlement Anomalies In Options Transactions**

154. HSBC also ignored that a high percentage of options transactions in their BLMIS accounts settled in a time range outside of industry norms. It is common industry practice for options trades to settle on the business day following execution ("T+1"). However, BLMIS's trade confirmations regularly showed options transactions that purportedly settled as much as three days after execution. This allowed Madoff ample time to fabricate trades days after they purportedly took place. HSBC should have been concerned that Madoff's very late settlement policies were enabling fraud.

155. The frequency with which this occurred was staggering. For example, Herald Lux's BLMIS account statements and trade confirmations indicate that, out of 57 options transactions purportedly entered into on behalf of Herald Lux's BLMIS 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.

156. As set forth in the following table, BLMIS purported to enter into thousands of options transactions on behalf of the Feeder Funds' accounts that did not settle on the business day following the execution of the trade:

	Options – Trades not Settling T+1	Options – Percentage Of Trades not Settling T+1
Alpha Prime/Alpha Prime Management	233	51.89%
Aurelia/Equus Partners	479	25.36%
BA Worldwide	468	24.43%
Bank Medici	434	69.89%
Defender	98	94.23%
Eurovaleur	118	16.05%
Genevalor	1,203	29.93%
Geo Currencies	231	35.76%
Herald/Herald Management	233	57.11%
Herald Lux	51	89.47%
Hermes Management/Hermes International Fund/Lagoon/HSBC Fund Services	479	25.36%
HITSB	626	96.31%
HSBC Administrator	2,511	31.60%
HSBC Bank Bermuda	941	18.58%
HSBC Bank (Cayman) Limited	130	17.40%
HSBC Custodian	3,072	30.42%
HSSB	785	35.57%
HSBC Securities Services (Ireland) Ltd./ HSBC Institutional Trust Services (Ireland ) Ltd.	975	31.95%
HSSL	1,497	35.17%
Kingate Euro	239	27.47%
Kingate Global	316	24.71%
Landmark	76	92.68%
Optimal	543	27.90%
Pioneer	12	100.00%
Primeo Fund	130	17.40%
Senator/Regulus/Carruba	136	95.77%
Square One	237	28.18%
Thema International	258	28.04%
Thema Management BVI	108	14.14%
Thema Wise/Thema Fund/Thema Management Bermuda/ Equus	235	41.67%

157. As shown above, options trades did not settle on T+1 approximately one quarter of the time for the Feeder Funds Hermes International Fund and Lagoon, and nearly 100% for some other Feeder Fund accounts held with BLMIS. Settlement anomalies in such high percentages were clear red flags that should have prompted sophisticated financial entities such as the Defendants to conduct further investigations, request verifications of the trades and demand more transparency into BLMIS's operations.

**L. Madoff Purported to Execute Trades That Settled On Days When The Market Was Closed**

158. Many of the account statements and trade confirmations for the Feeder Funds on which HSBC acted as administrator and/or custodian reflected trade dates or trade settlement dates that occurred on a weekend. Because the markets are closed on weekends, trade dates are unlikely to fall on weekends, and settlement dates require banks to be open.

159. For example, the account statements for Lagoon, Optimal, Primeo, Square One, Geo Currencies Ltd., S.A., Kingate Global, Kingate Euro, and Thema International for January 2000 all reported the execution of S&P 100 Index put options and S&P 100 Index call options with a trade date of January 7, 2000 (a Friday) and a settlement date of January 8, 2000 (a Saturday), which was impossible. The relevant Defendants reviewed this trade confirmation and took no action in response to this anomaly.

**M. In Directly Marketing The Feeder Funds To Its Own Private Banking Clients, HSBC Learned Of Numerous Red Flags Concerning Madoff**

160. In the course of actively marketing the Feeder Funds to its clients, HSBC Private Bank came across numerous red flags that indicated the Feeder Funds were suspect. Inexplicably, HSBC failed to act on any of these red flags.

161. HSBC Private Bank began marketing the Feeder Fund, Sentry, to its high net-worth clients as early as 1999. On at least nine separate occasions between 2001 and 2009, HSBC Bank

USA conducted due diligence on Sentry for the purpose of including the fund on its official platform.

162. In July 2001, the HSBC Private Bank due diligence team met with officers of Fairfield Greenwich Group (“Fairfield”). Fairfield created and controlled the Sentry Feeder Fund. At this meeting, Stephen Kinne, a high-ranking member of HSBC Bank USA’s due diligence team, inquired about the many obvious red flags surrounding BLMIS, including Madoff’s choice to forego lucrative fees, the identities of the counterparties to Madoff’s over-the-counter options transactions, and the percentage of securities that Madoff held at the Depository Trust Corporation. None of the Fairfield representatives provided adequate responses to HSBC Bank USA’s questions.

163. On August 7, 2001, HSBC Bank USA issued a due diligence report on Sentry (“2001 Report”). The 2001 Report stated that the due diligence team had been unable to meet with Madoff and that, therefore, the team formed its “opinions” solely on the basis of meetings with Fairfield representatives and a *MAR/Hedge* article on Madoff. The 2001 Report noted that, without meeting Madoff, there was no way for HSBC to assess Madoff’s trading system, risk controls, or compliance procedures. As a result, HSBC Bank USA stated that it was “very difficult” to understand how Madoff was able to make money in such a consistent fashion. The 2001 Report also noted multiple red flags associated with Madoff, including his taking custody of securities and refusal to accept fees at the fund level.

164. In January 2003, HSBC Bank USA issued another due diligence report on Sentry, which noted many of the same concerns identified in the 2001 Report. According to Research Committee Minutes, David Mullane, a member of the due diligence team, warned, “I would not invest in [Sentry] nor would I want investors to invest.”

165. Also in 2003, HSBC Bank USA issued a due diligence report for Ascot Fund, another Madoff Feeder Fund. The report noted similarities between the investment strategies employed by Ascot Fund and Sentry. HSBC Bank USA gave Ascot Fund a 1 rating, the worst possible score.

166. In 2004, HSBC Bank USA issued yet another report regarding Sentry. In addition to noting the previously-mentioned red flags, HSBC Bank USA noted the concern that Madoff's track record was "[t]oo good to be true."

167. HSBC Bank USA's comprehensive knowledge of these many red flags did not prevent HSBC Private Bank from simultaneously encouraging high net-worth investors to invest in the Feeder Funds. In 2004, an HSBC Private Bank adviser in Geneva represented to at least one investor that Kingate Global was part of HSBC's diversified funds and that HSBC was, itself, invested in Kingate Global. Two years later, HSBC Private Bank forwarded marketing materials to the same investor recommending Kingate Global and Sentry for investment. In 2008, when the investor inquired further about Kingate Global, HSBC Private Bank informed the investor that HSBC had completely divested from Kingate due to "problems" with the fund.

168. In November 2004, HSBC Private Bank in Geneva recommended Kingate Global to another investor, touting its 10% to 12% returns. HSBC Private Bank informed the investor that HSBC had sent its own inspectors to confirm that those funds were operating properly, and that it tracked the performance of all hedge funds its clients were invested in, including Kingate.

169. HSBC Private Bank informed another investor in 2004 that HSBC Private Bank did not sell every available fund, but only those that passed HSBC Private Bank's due diligence requirements. At each meeting, the HSBC Private Bank adviser confirmed that HSBC performed

due diligence on all recommended funds. Upon information and belief, these recommendations led these investors to invest in Kingate Global and Sentry.

170. In early 2005, based on the recommendations of an HSBC Private Bank adviser in Zurich, one investor placed \$300,000 in Sentry. At the time, HSBC Private Bank did not inform the investor of its significant concerns regarding Sentry, any other Feeder Funds or BLMIS's IA Business. In 2007 the investor was finally informed by his adviser to "get out" because HSBC had conceded that it did not understand the investment strategy.

171. HSBC Private Bank in New York recommended Sentry to another investor in 2005, assuring him that HSBC was in contact with the fund, was confident in the fund, and was performing due diligence. In September 2005, HSBC provided an "Investment View and Proposal" which listed Sentry as one of the proposed funds. HSBC Private Bank never warned the investor about its concerns regarding Sentry, other Feeder Funds or BLMIS. After Madoff's arrest, however, the same HSBC Private Bank adviser stated that he, in fact, disliked Sentry.

**N. HSBC Learned Of Numerous Red Flags In The Course Of Creating The Madoff Structured Products**

172. In connection with the marketing and sale of the Madoff Structured Products, HSBC was confronted with further, serious red flags that BLMIS's IA Business was not what it purported to be.

173. In 2005, D. Smith, an officer of a Feeder Fund that served as a reference fund for one of the total return swaps, acknowledged in an email to HSBC that Madoff was not a registered investment adviser, that Madoff declined to work with custodians, and that experts in the industry had repeatedly tried but were unable to replicate BLMIS's strategy and returns. Although the Feeder Fund advised HSBC of these red flags, HSBC continued to solicit funds for the Madoff Structured Products.

174. On another occasion, 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.

175. Similarly, HSBC Bank conceded that a swap done in 2007 needed to be hedged “entirely (no delta exposure) ... [because] we do not currently monitor Madoff Strategy trades with sufficient granularity to meet restrictions outlined in the risk mandate ....”

176. In 2008, members of HSBC’s Structured Products Group visited Fix Asset Management (“FIX”) to conduct a due diligence review of the Harley Feeder Fund and FIX. Harley was the reference fund of the structured product transaction under review. HSBC concluded that it was “very familiar” with Madoff’s operations and the SSC Strategy, and was “comfortable with the strategy’s risk,” so it could “proceed with the transaction.” This recommendation came despite the fact that, on multiple occasions, HSBC’s own due diligence had raised significant concerns about investing in BLMIS through other channels.

177. Despite being aware of numerous red flags regarding Madoff, HSBC continued to solicit investors for the Madoff Structured Products.

**O. HSBC Bank Engaged KPMG To Assess Fraud And Operational Risk At BLMIS But Then Ignored KPMG’s Findings**

178. In September 2005, HSBC Bank engaged KPMG to review BLMIS for fraud and related operational risk. KPMG’s review focused on fraud risks in BLMIS’s methods of recording and reporting client funds held by BLMIS, and on HSBC’s ability to detect suspected fraud or misconduct in client funds for which HSBC served as primary custodian. These funds included

Hermes International Fund, as well as Alpha Prime, Herald Fund, Primeo, Square One, Thema International and Thema Fund.

179. KPMG’s findings were detailed in a February 16, 2006, 56-page report entitled “Review of fraud risk and related operational risks at Bernard L. Madoff Investment Securities LLC” (the “2006 KPMG Report”). The 2006 KPMG Report bluntly apprised HSBC of the many indications of an ongoing fraud at BLMIS. For example, the 2006 KPMG Report identified the risk that “client cash is diverted for personal gain,” and “Madoff LLC falsely reports buy/sell trades without actually executing in order to earn commissions.” In addition to these concerns, the 2006 KPMG Report identified a laundry list of other fraud and related operational risks related to BLMIS’s operations 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 BLMIS funds;
- inaccurate allocation of reinvested funds from Fidelity across individual accounts;
- manipulation of option prices to maximize commissions;
- use of BLMIS claim funds to settle options exercised against HSBC;
- 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;
- trade executions made by unauthorized BLMIS 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.

180. Despite the litany of risks identified by KPMG, HSBC continued, and even deepened, its relationship with Madoff. As described above, HSBC even delegated custodial duties to BLMIS.

**P. HSBC Engaged KPMG A Second Time, And Once Again Ignored KPMG's Warnings**

181. After ignoring KPMG's dire warnings in 2006, HSBC asked KPMG to conduct another review of BLMIS in March 2008. The terms and scope of the review were identical to the 2006 review, except that KPMG was also asked to assess the risk of placing HSBC investments with BLMIS. The relevant HSBC custodial clients were identified as Lagoon, Alpha Prime, Herald Fund, Herald (Lux), Primeo, Senator, Thema Wise, Thema International, Defender, Landmark and Kingate Global.

182. KPMG's conclusions were contained in a September 8, 2008, 66-page report entitled "Review of fraud risk and related operational risks at Bernard L. Madoff Investment Securities LLC" (the "2008 KPMG Report"). In the report, KPMG noted that, according to Madoff, HSBC's clients accounted for 33% of BLMIS's assets under management, which totaled approximately \$8 billion at the time.

183. In its 2008 KPMG Report, KPMG identified three additional fraud concerns at BLMIS, not previously identified in the 2006 KPMG Report:

- Client cash being diverted and 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.

184. Yet again, HSBC ignored KPMG's warnings and recommendations. Perversely, HSBC used the 2008 KPMG Report as a marketing tool to encourage additional investment in the BLMIS IA Business. In mid-2008, HSBC was asked to explain Madoff's investment strategy to Andreas Pirkner, an employee of Bank Medici (an investment manager of certain Feeder Funds). In response, HSBC forwarded to Pirkner the 2008 KPMG Report with the comment that the relevant Feeder Funds were in good shape.

185. In this manner, HSBC deliberately buried its head in the sand and gave Madoff a clean bill of health despite numerous, obvious and disturbing red flags.

## **VI. THE AFTERMATH: THE DEFENDANTS UNDERSTATED THEIR FAILURE TO PERFORM DUE DILIGENCE**

186. On December 11, 2008, Madoff was arrested by federal agents for violations of the securities laws, including securities fraud, investment adviser fraud, and mail and wire fraud. Contemporaneously, the Securities and Exchange Commission filed a complaint against Madoff and BLMIS. Four days after Madoff's arrest on December 11, 2008, in a desperate attempt to preserve its public image with investors, HSBC sought to hide its failure to investigate the obvious signs of fraud at BLMIS. In a press release attempting to play down its involvement with and economic exposure to Madoff, HSBC stated that:

In the interests of clarity, HSBC confirms that it has provided financing to a small number of institutional clients who invested in funds with Madoff.

On the basis of information presently available, HSBC is of the view that the potential exposure under these financing transactions is in the region of US\$1 billion. Also, in the context of its normal global custody business, HSBC has custody clients who have invested with Madoff. HSBC does not believe that these custodial arrangements should be a source of exposure to the Group.

187. At a plea hearing on March 12, 2009, Madoff pled guilty to an eleven-count criminal information filed against him by the United States Attorney's Office for the Southern District of New York. Madoff admitted that he "operated a Ponzi scheme through the investment advisory side of [BLMIS]."<sup>4</sup> Additionally, Madoff admitted: "[a]s I engaged in my fraud, I knew what I was doing [was] wrong, indeed *criminal*."<sup>5</sup> Madoff was sentenced on June 29, 2009 to 150 years in prison.

188. On August 11, 2009, a former BLMIS employee, Frank DiPascali, pled guilty to participating in and conspiring to perpetuate the Ponzi scheme. At a plea hearing on August 11, 2009, DiPascali pled guilty to a ten-count criminal information. DiPascali admitted, among other things, that Madoff had been operating a Ponzi scheme since at least the 1980s.<sup>6</sup>

## **CAUSES OF ACTION**

### **COUNT ONE: BREACH OF FIDUCIARY DUTY**

#### **(Against HSBC Administrator Defendants and HSBC Custodian Defendants)**

189. Plaintiffs repeat and re-allege each and every allegation above as if fully set forth herein.

190. As the administrator of Hermes International Fund, HSSB and HSBC Bank

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<sup>4</sup> *United States v. Madoff*, No. 09-CR-213 (DC) (S.D.N.Y. Mar. 12, 2009), Plea Allocation of Bernard L. Madoff at 23 (Dkt. No. 50).

<sup>5</sup> *Id.*

<sup>6</sup> *United States v. DiPascali*, No 09-CR-764 (RJS) (S.D.N.Y. Aug. 11, 2000), Plea Allocation of Frank DiPascali at 47 (Dkt. No. 11).

Bermuda had discretion and control over Plaintiffs' assets in Hermes International Fund (including Lagoon). Among other things, these Defendants were responsible for receiving shareholders' investments, calculating the price of shares of Hermes International Fund, including the Hermes World Sub-Fund, communicating directly with investors by issuing statements and notices, redeeming shares, transferring shares, converting shares, and other general administration of the fund. Defendant HSSL and, later, Defendant HSBC Fund Services were delegated some or all of these responsibilities as the sub-administrator.

191. As the custodian of Hermes International Fund (including Lagoon), HITSB and HSBC Bank Bermuda had discretion and control over Plaintiffs' assets in Hermes International Fund (including Lagoon). Among other responsibilities, these Defendants were responsible for receiving and safeguarding the investments and uninvested cash of the fund, and calculating the net asset value for these assets held by the fund. These Defendants were required to maintain such books, records and statements as were necessary to provide a complete and accurate record of the cash and investments held and transactions carried out by these Defendants. These Defendants were also responsible for transferring fund assets to BLMIS.

192. Defendant HSSL was delegated some or all of these custodial responsibilities as the sub-custodian. HSSL then engaged BLMIS as sub-custodian. Accordingly, Defendants HITSB, HSBC Bank Bermuda and HSSL were responsible for monitoring BLMIS as a sub-custodian, and for ensuring that BLMIS was qualified to hold the fund's assets.

193. HSSB, HSBC Bank Bermuda, HSBC Fund Services, HITSB and HSSL (collectively, "Fiduciary Defendants") touted their expertise in providing fund administration and custodial services. For example, in a prospectus for Hermes International Fund, HSBC Bank Bermuda was described as having: (i) subsidiaries worldwide, including in New York;

(ii) experience servicing offshore investment vehicles for over 30 years; (iii) a client base in excess of 400 mutual funds, pension plans and other forms of investment vehicles; and (iv) over \$11.1 billion in total assets and over \$104 billion in assets under administration in 2000.

194. The Fiduciary Defendants occupied a superior position to Plaintiffs because of (a) their discretionary responsibilities; (b) their superior access to confidential information about fund investments, where the investments were being placed, with whom the investments were being placed, and the security of these investments; and (c) their expertise, which they touted to investors.

195. Plaintiffs were required to place their trust and confidence in the Fiduciary Defendants to fulfill their duties, which Plaintiffs did by investing in and retaining their investments in the Hermes International Fund. Plaintiffs reasonably and foreseeably trusted in the Fiduciary Defendants' purported expertise and skill. The Fiduciary Defendants knew that investors in Hermes International Fund would directly rely on and place their trust in the Fiduciary Defendants when deciding to invest and retain their investments in the fund.

196. The Fiduciary Defendants' discretion, control and superior position over Plaintiffs gave rise to a fiduciary duty and duty of care to Plaintiffs and other investors who invested in the Hermes International Fund.

197. The Fiduciary Defendants breached the duties they owed to Plaintiffs. The Fiduciary Defendants failed to properly discharge their duties as administrator and sub-administrators by, among other things, incorrectly calculating the price of shares in Hermes International Fund, and communicating fictitious valuations to Plaintiffs in statements issued to Plaintiffs. The Fiduciary Defendants also breached their duties as custodians and sub-custodians by, among other things, failing to safeguard fund assets, handing over custody of Plaintiffs'

investments to BLMIS, incorrectly calculating the net asset values for the assets held by Hermes International Fund, and by delegating custodial responsibilities to BLMIS without adequate supervision or control, and by otherwise failing to supervise and monitor BLMIS. The Fiduciary Defendants breached their duties to Plaintiffs by failing to check that Madoff was in fact implementing the SSC Strategy as he claimed, even though HSBC internally raised numerous red flags as to whether that strategy was bona fide, and even though that strategy was explicitly advertised in prospectuses for Hermes International Fund that HSBC helped prepare.

198. The Fiduciary Defendants' fiduciary duties could not be delegated to BLMIS or any third party and the fact that the Fiduciary Defendants entrusted their responsibilities to BLMIS without adequate supervision or control constituted a *per se* breach of fiduciary duty.

199. The Fiduciary Defendants knew of or consciously disregarded Madoff's fraud. Instead of acting in the best interest of the investors in Hermes International Fund, the Fiduciary Defendants furthered Madoff's Ponzi scheme by funneling investments to Madoff. Among other things, Defendants created the Madoff Structured Products that were designed to funnel investments to Madoff, and that generated large fees for HSBC, compromising the performance of their fiduciary duties.

200. Plaintiffs have been damaged as a proximate result of the Fiduciary Defendants' breaches of their duties. Had the Fiduciary Defendants fulfilled their duties, Plaintiffs would not have invested or re-invested in Hermes International Fund, Plaintiffs' assets would not have been turned over to BLMIS, and Plaintiffs would not have lost their investments to Madoff's Ponzi scheme.

201. The Fiduciary Defendants also collected fees in return for the services they purportedly provided. A substantial part of those fees was calculated on the basis of Madoff's fictitious profits.

202. Upon information and belief, one or more of the Fiduciary Defendants served as custodians, administrators, sub-custodians and/or sub-administrators for Hermes International Fund through as late as August 2014.

## **COUNT TWO: AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

### **(Against HSBC Holdings, HSBC Bank, HSBC Bank USA, HSBC Private Banking Holdings and HSBC Private Bank (Suisse))**

203. Plaintiffs repeat and re-allege each and every allegation above as if fully set forth herein.

204. As described above, the Fiduciary Defendants owed a fiduciary duty to the investors in Hermes International Fund (including Lagoon).

205. Defendants HSBC Holdings, HSBC Bank, HSBC Bank USA, HSBC Private Banking Holdings and HSBC Private Bank (Suisse) (collectively, the "Aiding and Abetting Defendants") had actual knowledge of and substantially participated in the breaches of fiduciary duty committed by the Fiduciary Defendants.

206. As described above, HSBC knew of extensive problems concerning BLMIS and issued negative due diligence reports noting the red flags associated with BLMIS. The Aiding and Abetting Defendants knew that the Fiduciary Defendants were in breach of their fiduciary duties by failing to monitor or otherwise investigate BLMIS, and in handing over custody of fund investments to BLMIS.

207. Despite this knowledge, HSBC Private Bank Holdings, HSBC Private Bank (Suisse) and HSBC Bank USA marketed the Feeder Funds to their wealthy clients and directed their clients' moneys to BLMIS through the Feeder Funds, including Hermes International Fund.

208. As described above, HSBC, including HSBC Bank and HSBC Bank USA, also created the Madoff Structured Products, through which HSBC directed hundreds of millions of dollars into Madoff's Ponzi scheme via various Feeder Funds. HSBC earned significant fees in connection with the Madoff Structured Products.

209. As a direct result of the Fiduciary Defendants' breaches of their fiduciary duty, and the Aiding and Abetting Defendants' knowledge of and substantial participation in these breaches, Plaintiffs have suffered damages.

### **COUNT THREE: AIDING AND ABETTING EMBEZZLEMENT**

#### **(Against All Defendants)**

210. Plaintiffs repeat and re-allege each and every allegation above as if fully set forth herein.

211. Plaintiffs bring this claim against all Defendants. All the Defendants aided and abetted Madoff's embezzlement scheme. In addition, all of the Defendants operated as a single, indivisible entity. Therefore, each of the Defendants is liable for the actions of the other Defendants.

212. Madoff committed the largest Ponzi scheme in history through BLMIS, which was funded by the Feeder Funds, including Hermes International Fund and Lagoon. Madoff told customers that their money would be invested pursuant to the SSC Strategy. However, instead of investing the money, Madoff stole that money and did not invest any of the customer funds as he claimed. The Ponzi scheme resulted in billions of dollars of losses to investors in the Feeder Funds that funneled money to BLMIS, including Plaintiffs.

213. HSBC knew or at least consciously avoided knowledge of the embezzling scheme. After performing minimal due diligence on Madoff and BLMIS, HSBC knew that Madoff, through BLMIS, was embezzling customers' monies. Since at least 2006, the Defendants knew, among other things, that: BLMIS's returns were "too good to be true" and could not be reconciled with market conditions; there was a lack of transparency surrounding Madoff and/or BLMIS, including the failure of Madoff and/or BLMIS to ever identify counterparties; Madoff and/or BLMIS used backdated investment recommendations; Madoff and/or BLMIS used delayed, hard copy-only trade confirmations; Madoff and/or BLMIS reported stock trading prices that were outside the range of prices for such stocks on the reported days; and BLMIS's auditor was unregistered and was not subject to peer review.

214. HSBC knew of suspicious conduct by Madoff and/or BLMIS that would have led a reasonably prudent person to suspect that Madoff and/or BLMIS were misappropriating and diverting the funds in BLMIS, a large portion of which was deposited by the Feeder Funds. Despite this knowledge, HSBC purposefully failed to inquire whether Madoff and/or BLMIS were misappropriating and diverting those funds.

215. To the contrary, HSBC knowingly participated in Madoff's and BLMIS's fraud by serving as the sponsor and, ostensibly, custodian, manager, and administrator of the Feeder Funds, thereby providing the funds with an appearance of legitimacy, increasing their level of investment as a result of marketing with the HSBC brand, and providing the infrastructure by which billions of dollars in investments were funneled into BLMIS. HSBC agreed to and implemented irregular procedures that were tailored to accommodate Madoff's suspicious methods.

216. HSBC's assistance was a proximate cause of Madoff's and BLMIS's embezzlement scheme. Without Defendants' assistance, Madoff and BLMIS would not have been able to continue to operate the scheme for over two decades.

217. As a direct and proximate result of HSBC's aiding and abetting of Madoff's and BLMIS's embezzlement, investors in BLMIS, including investors in the Feeder Funds, lost billions of dollars. As a direct and proximate result of HSBC's conduct, Plaintiffs lost their investment in the Hermes World Sub-Fund, which was entirely invested in BLMIS.

#### **COUNT FOUR: AIDING AND ABETTING FRAUD**

##### **(Against All Defendants)**

218. Plaintiffs repeat and re-allege each and every allegation above as if fully set forth herein.

219. As alleged above, BLMIS and Madoff were engaged in a complex and far-reaching fraud to enrich themselves at the expense of investors in the Feeder Funds, including Plaintiffs.

220. Defendants had actual knowledge of and substantially assisted in the fraudulent scheme perpetrated by BLMIS and Madoff.

221. As administrators, custodians, banks and depositaries of the Feeder Funds and BLMIS, Defendants had significant knowledge of the fraud committed by BLMIS. By virtue of their long-standing relationships with BLMIS, their multiple investigations into BLMIS and their communications with clients and investors of the Feeder Funds, Defendants knew that BLMIS was engaged in fraudulent activity.

222. Defendants were confronted with a number of red flags and indicia of fraud by BLMIS and Madoff, but consciously avoided inquiring further and failed to conduct a proper investigation.

223. To the contrary, Defendants substantially assisted BLMIS and Madoff by serving as the sponsor and, ostensibly, custodian, manager, and administrator of the Feeder Funds, thereby providing the funds with an appearance of legitimacy. HSBC marketed Madoff and BLMIS, including to HSBC's own clients. HSBC therefore provided the financial infrastructure by which billions of dollars in investments were funneled into BLMIS. Defendants also created and marketed the Madoff Structured Products. BLMIS and Madoff could not have perpetrated their fraud without Defendants' substantial assistance.

224. As a direct and foreseeable result of BLMIS's fraud, and Defendants' aiding and abetting of BLMIS's fraud, investors in the Feeder Funds, including Plaintiffs, have suffered substantial injury.

#### **COUNT FIVE: NEGLIGENT MISREPRESENTATION**

##### **(Against HSBC Administrator Defendants)**

225. Plaintiffs repeat and re-allege each and every allegation above as if fully set forth herein.

226. Based on their role as the administrator or sub-administrator for Hermes International Fund (including Lagoon), and their special expertise and superior position in providing financial services and calculating fund net asset values, account balances and share prices, the HSBC Administrator Defendants had a special relationship of trust or confidence with Plaintiffs, which required the HSBC Administrator Defendants to provide correct information to Plaintiffs.

227. The HSBC Administrator Defendants induced Plaintiffs to make investments in Hermes International Fund (including Hermes World Sub-Fund and Lagoon), by issuing false net asset values and account balance statements that they disseminated to Plaintiffs or intended to be disseminated to Plaintiffs.

228. The HSBC Administrator Defendants knew that Plaintiffs would rely on the false net asset values and account balance statements for the particular purpose of deciding whether to invest in Hermes International Fund, retain their investments in the fund and to make additional investments in the fund.

229. The HSBC Administrator Defendants' net asset value calculations and account balance information were false. In issuing the statements, the HSBC Administrator Defendants acted recklessly because, as described above, they knew or had access to information indicating that their statements were incorrect.

230. The HSBC Administrator Defendants also acted recklessly by failing to verify the information received from BLMIS despite a duty to scrutinize and independently verify information concerning the net asset values and account balances. In addition, their failure to check or verify the information was reckless because the HSBC Administrator Defendants were aware of the red flags surrounding BLMIS, including the consolidation of the roles of investment manager, custodian and agent in Madoff and BLMIS.

231. The HSBC Administrator Defendants were paid substantial fees for performing these services.

232. Plaintiffs justifiably relied on the HSBC Administrator Defendants' false statements and omissions, including the information contained in the statements issued by the HSBC Administrator Defendants. Plaintiffs were unaware of the falsity when investing in Hermes International Fund. As a result, Plaintiffs suffered substantial injury.

#### **COUNT SIX: UNJUST ENRICHMENT**

##### **(Against All Defendants)**

233. Plaintiffs repeat and re-allege each and every allegation above as if fully set forth herein.

234. Defendants have unjustly benefited through their receipt of customer property that they acquired as a result of perpetuating and participating in Madoff's and BLMIS's Ponzi scheme.

235. HSBC earned these benefits at the expense of investors in the Feeder Funds and cannot justly retain them. Faced with the prospect of losing fees and profits, Defendants chose to ignore compelling evidence of Madoff's and BLMIS's embezzling scheme described above.

236. Defendants helped perpetuate Madoff's fraudulent scheme by ignoring evidence of embezzlement and continuing to structure and sell the Madoff Structured Products in order to keep the Ponzi scheme running and to enrich themselves in the process.

237. Equity and good conscience require full restitution of the monies received by HSBC directly and indirectly from investors in the Feeder Funds, including Plaintiffs. This includes not only the proceeds from Plaintiffs' investments, but also any profits made from HSBC's use of this money. Any profits and fees that HSBC earned through their use of Plaintiffs' investments is recoverable as restitution.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

A. An award against all Defendants, jointly and severally, for compensatory and consequential damages, and as permitted by law, any punitive and exemplary damages, to be determined at trial, but not less than \$8 million;

B. An award against all Defendants for disgorgement and restitution of all monies that Defendants received from investors in the Feeder Funds, including Plaintiffs, including any profits earned from Defendants' use of these monies;

C. Establishment of a constructive trust over the proceeds of the unjust enrichment of Defendants, in favor of Plaintiffs;

- D. Awarding Plaintiffs their reasonable costs and expenses incurred in this action, including attorneys' fees;
- E. Pre-judgment and post-judgment interest; and
- F. Such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: May 7, 2015

HUNG G. TA, ESQ., PLLC



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