

## EXHIBIT A-1

### **Notice of Pendency and Partial Settlement of Class Action to Investors of Thema International Fund plc**

**TO:** All persons and entities who owned shares either of Thema International Fund plc or its sub-fund Thema Fund (collectively, the “Fund”), either directly or beneficially through a nominee or other representative or agent, on December 10, 2008, and suffered damages thereby due to the conduct alleged in the amended complaint in *Davis v. Benbassat et al.*, Case No. 09 Civ. 2558 (the “Settlement Class”). Please read this notice carefully.

If you wish to comment in favor of the Settlement, or object to the Settlement, you must follow the directions in this notice.

If you do not wish to participate in the Settlement, you must submit a request to be excluded on or before [[●][●], 2012], or else you will be bound by the Settlement, even if you object.

By order of the United States District Court for the Southern District of New York entered on \_\_\_\_\_, 2011, you are hereby notified as follows:

A proposed partial settlement (the “Settlement”) has been reached between certain parties in the consolidated class action pending in the United States District Court for the Southern District of New York brought on behalf of the Settlement Class described above. The Settlement provides for the payment of up to \$62.5 million for the benefit of the Settlement Class, depending on the level of participation by Settlement Class Members, as explained below. The Court has preliminarily approved the Settlement and conditionally certified the Settlement Class for purposes of the Settlement only.

You have received this notice because the parties’ records indicate that you are a member of the Settlement Class. This notice is meant to inform you how you can participate in the Settlement, comment in favor of the Settlement, the Plan of Allocation of the Settlement proceeds, or the application for attorneys’ fees and expenses, object to these matters or elect not to participate in the Settlement.

**This is a Settlement with only some Defendants. Lead Plaintiff intends to continue to prosecute the claims against the defendants who have not settled (“Non-Settling Defendants”).**

#### **I. BACKGROUND OF THE CASE**

In March of 2009, class action lawsuits were filed by various plaintiffs in the United States District Court for the Southern District of New York on behalf of persons and entities who purchased shares of Thema International Fund, Primeo Select Fund, Primeo Executive Fund, Herald USA Fund, and/or Herald (LUX) Fund. Those actions, *Perrone et al. v. Benbassat et al.*, Case No. 09 Civ. 2558, *Repex Ventures, S.A. v. Madoff et al.*, Case No. 09 Civ. 0289, *Leonhardt*

*v. Madoff et al.*, Case No. 09 Civ. 2032, brought claims for violations of the federal securities laws and various common law claims against those funds, their directors and service providers, and arose out of those funds' investments with Bernard L. Madoff Investment Securities ("BLMIS") and their losses stemming from the Ponzi scheme perpetuated by Bernard L. Madoff ("Madoff").

These actions were consolidated by order of the Court on October 5, 2009, and Neville Seymour Davis was named as lead plaintiff for investors in the Fund (the "Lead Plaintiff"). Lead Plaintiff filed an amended complaint in an action captioned *Davis v. Benbassat et al.* (the "Action") on February 10, 2010. Among others, HSBC Holdings plc, HSBC Institutional Trust Services (Ireland) Ltd., and HSBC Securities Services (Ireland) Ltd. were named as defendants in the amended complaint, and HSBC Bank USA, N.A. was added as a defendant in a proposed second amended complaint. These defendants are, together, the "Settling Defendants."

The Settling Defendants deny any liability or wrongdoing of any kind associated with the claims alleged but wish to resolve and settle the lawsuit.

After good-faith negotiations between Plaintiff's Counsel and counsel for the Settling Defendants, Lead Plaintiff and Settling Defendants agreed to settle the Action under the terms and conditions of the Settlement.

Lead Plaintiff and Settling Defendants, and their counsel, have concluded that the Settlement is advantageous considering the risks and uncertainties to each side of continued litigation. The Lead Plaintiff and his counsel believe that the Settlement is fair, reasonable, and adequate and is in the best interest of the members of the Settlement Class.

## **II. SUMMARY OF THE SETTLEMENT**

The paragraphs below provide a summary of the terms and conditions of the Settlement. The full terms and conditions of the Settlement are contained in the Second Amended and Restated Stipulation and Agreement, dated November 27, 2011 (the "Second Amended Stipulation"). Details for obtaining a copy of the Second Amended Stipulation may be found at Part VI below.

### **A. What is the Settlement Amount?**

The Settlement Amount paid by the Settling Defendants for the benefit of the Settlement Class will be one of three amounts, depending on the total "Net Loss" of Settlement Class Members who elect to exclude themselves from the Settlement Class, pursuant to the procedure described in Part IV(C) below. ("Net Loss" means the amount by which a Settlement Class Members' investments in the Fund exceed their redemptions or sales.) The Settlement Amount shall be:

- \$52.5 million in the event the total Net Loss of Settlement Class Members who request exclusion exceeds \$250 million; or

- \$55.5 million in the event the total Net Loss of Settlement Class Members who request exclusion exceeds \$150 million but is equal to or less than \$250 million; or
- \$62.5 million in the event the total Net Loss of Settlement Class Members who request exclusion is equal to or less than \$150 million.

**B. Who is included in the Settlement?**

You are included in the Settlement if you owned shares of the Fund on December 10, 2008.

**C. What is the legal effect of participating in the Settlement?**

To provide for the Settlement Amount, the Settling Defendants will establish a “Gross Settlement Fund” consisting of the Settlement Amount plus any interest that may accrue thereon. If the Court grants final approval of the Settlement, the Action will be dismissed with prejudice against the Settling Defendants.

In exchange for the Settlement Amount, all Settlement Class Members who do not exclude themselves from the Settlement Class will release all claims, counterclaims, rights, causes of action, or liabilities of every nature and description, whether known or unknown, whether arising under federal, state, common or foreign law, that were or could have been asserted in the Action or any other action in the United States or elsewhere in any jurisdiction throughout the world in which the Settling Defendants’ current and former subsidiaries, parents, principals, director or indirect affiliates are domiciled or otherwise subject to jurisdiction, by any Settlement Class Member, that arise out of, are based upon, or relate to the allegations, transactions, facts, matters, or occurrences set forth or referred to in the Action concerning or relating to investments in the Fund, or that would be barred by *res judicata* or *collateral estoppel* if the claims asserted in the Action had been fully litigated on the merits to a final judgment in favor of the party against whom such claims were brought. When a person “releases” claims, that means he or she cannot sue Settling Defendants for any of the claims covered by the release. The parties covered by the release do not include the Non-Settling Defendants except for acts or omissions within the course of any former employment with a Settling Defendant.

**D. Other Conditions of the Settlement**

The Settling Defendants will seek rulings from the court presiding over related litigation in Ireland captioned as *Thema Int’l Fund plc v. HSBC Institutional Trust Services (Ireland) Ltd.*, Record No. 2008/10983P, 2009/565TP and 2009/566TP (H. Ct.) in relation to (1) the enforceability of the releases described above in Ireland, as well as certain other provisions described in the Second Amended Stipulation, (2) the binding effect of the Settlement on Settlement Class Members, including those who neither request exclusion or file a proof of claim, (3) the enforceability in Ireland of the bar on Non-Settling Defendants from bringing any claims for contribution or indemnity against the Settling Defendants, and (4) the amount to be excluded from the Fund’s damages claim against HTIE in the Irish litigation as a result of this

Settlement (the “Irish High Court Order”). It is a condition to the Settlement becoming effective that the Irish High Court grant the orders or directions sought.

A copy of Irish High Court Order once issued will be posted to the Settlement Administrator’s website (www.[●].com).

**E. How can I participate in the Settlement?**

If you wish to receive a distribution from the Settlement, you must timely complete, sign and return the enclosed Proof of Claim and Release Form by mail to the Settlement Administrator. If you do not request exclusion, and if you do not properly and timely complete and return the Proof of Claim and Release Form, you will not receive a distribution from the settlement, but you will still be bound by the release of claims described above.

Proofs of Claim and Release Forms must be submitted by the beneficial owner of the shares serving as the basis of the claim, or on such beneficial owner’s behalf by the legal representative of such owner (such as an executor, administrator, guardian, conservator, trustee or other similar fiduciary). “Beneficial owner” refers to the party possessing beneficial ownership in the shares, even if they are not the owner of record named in the Fund registry, or the “registered shareholder.” Any legal representative submitting a Proof of Claim and Release form on behalf of a beneficial owner must also submit written proof of the legal representative’s authority to so act.

Registered shareholders may not submit Proofs of Claim and Release Forms unless they are beneficial owners or the legal representative of a beneficial owner. Registered shareholders who acted only in a nominee or similar capacity, such as brokerage firms, may not submit Proof of Claim and Release Forms but should take care that those for whom they acted are afforded an opportunity to do so.

**To receive a distribution from the Settlement, you must complete, sign and return your Proof of Claim and Release Form to the Settlement Administrator via first class mail, postmarked no later than [[●][●], 2012].**

The address of the Settlement Administrator is:

*Davis v. Benbassat et al.* Litigation Claim Forms  
c/o Settlement Administrator  
Gilardi & Co. LLC  
P.O. Box 8040  
San Rafael, CA 94912-8040

**F. What will I receive from the Settlement?**

You will receive a share of the “Net Settlement Fund.” The Net Settlement Fund shall consist of the Gross Settlement Fund less taxes and costs of administering the Settlement, and, as discussed below, attorneys’ fees, costs, and Lead Plaintiff’s expense/service award, if approved by the Court.

The Lead Plaintiff estimates that the maximum potential Settlement Amount of \$62.5 million (which, as described above, shall be paid if the total Net Loss of Settlement Class Members who exclude themselves are less than \$150 million) equals approximately 20% of the Net Loss of the Fund, i.e., the amount by which the Fund's deposits into its account with BLMIS exceeded withdrawals. In addition, the Lead Plaintiff estimates that such amount equals approximately 10% of the aggregate Net Loss of the Fund's registered shareholders, i.e., the amount by which registered shareholders' subscriptions to the Fund exceeded redemptions.

The total Net Loss of Settlement Class Members who purchased their shares through a nominee and are not registered shareholders is not discernable by the Lead Plaintiff or the Settling Defendants at this time and may well be substantially different from the aggregate Net Loss of the Fund's registered shareholders. Although the Lead Plaintiff and his counsel cannot determine the exact amount of your payment from the Net Settlement Fund at this time, your payment will be calculated pursuant to the formula described in the Plan of Allocation set forth in exhibit A-2 attached to this notice.

In general, your share of the Net Settlement Fund will depend on many things, including, but not limited to:

- (1) the value of the Net Settlement Fund following the payment of attorneys' fees and all applicable expenses and taxes;
- (2) the amount you invested (*i.e.*, purchased) in shares of the Fund;
- (3) whether you invested in the U.S. Dollar Class or Euro Class of shares;
- (4) whether you redeemed all or a portion of your investment in the Fund;
- (5) the amount of the recognized losses of other Settlement Class Members;
- (6) the number of persons or entities who request exclusion from the Settlement Class; and
- (7) the number of claims submitted by other Settlement Class Members.

In addition to amounts distributed under the Settlement, you will share in any recovery obtained by the Lead Plaintiff through the prosecution of the Action against Non-Settling Defendants.

#### **G. Class Representative**

If the Court approves such payment, a service award totaling €20,000 will be paid to Lead Plaintiff and deducted from the Settlement Amount. This payment is made because of the time and effort expended, risks taken, and value added by the Lead Plaintiff in assisting in the prosecution of the claims in the Action. His services were important in creating the Gross Settlement Fund for the benefit of the Settlement Class. This payment is separate from and in addition to the share of the Net Settlement Fund that Lead Plaintiff may receive as a Settlement Class Member.

#### **H. Plaintiff's Counsel Fees and Costs**

In connection with an application for final approval of the Settlement, Plaintiff's Counsel will seek approval from the Court for payment of attorneys' fees of eighteen percent (18%) of

the Gross Settlement Fund, and expenses which shall not exceed [●]. If approved by the Court these fees and expenses will be deducted from the Gross Settlement Fund.

#### **H. Settlement Administrator Fees and Costs**

The fees and costs of the Settlement Administrator incurred in administering the Settlement, including the costs of disseminating this Notice, shall be paid from the Gross Settlement Fund, in an amount not to exceed [●], unless otherwise ordered by the Court.

### **III. LEAD PLAINTIFF'S AND PLAINTIFF'S COUNSELS' SUPPORT OF THE SETTLEMENT**

The Lead Plaintiff and Plaintiff's Counsel support this settlement. Based on their investigation, their experience in litigating similar complex actions, the Settling Defendants' defenses, the costs and risks of protracted litigation, and the valuable consideration that the Settlement offers, the Lead Plaintiff and Plaintiff's Counsel believe that the Settlement confers substantial immediate benefits upon Settlement Class Members and is in the best interests of the Settlement Class. Their reasons include the inherent risks of not being allowed to try the class claims in this Court, the risk of no recovery or limited recovery if a trial proceeded on the merits, and the inherent delays and uncertainties associated with litigation. No one can confidently predict how the various legal questions at issue, including questions of standing, whether the Settling Defendants owed any duties to the Settlement Class, and the amount of damages, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Plaintiff's Counsel believe the Settlement is fair, reasonable, and adequate.

### **IV. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?**

#### **A. Participating in the Settlement**

If you wish to receive a distribution from the Settlement, you must timely complete and return the enclosed Proof of Claim and Release, as discussed in Part II(D) above.

#### **B. Objecting to the Settlement, the Plan of Allocation, the Application for Attorneys' Fees and Expenses, or the Application for an Expense/Service Award**

If you are a Settlement Class Member, and have not elected to request exclusion from the Settlement Class, you have the right to object to the Settlement, the Plan of Allocation, the application for attorneys' fees and expenses, and the Lead Plaintiff's application for an expense/service award.

To object, you must file with the Clerk of the Court at:

United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312

a statement of your objection in *Davis v. Benbassat et al.*, Case No. 09 Civ. 2558, by no later than [[●][●], 2012]. Your statement must include

- (1) your name, address, telephone number, and e-mail address;
- (2) whether you are objecting to the fairness, reasonableness, or adequacy of the Settlement, the Plan of Allocation, the attorneys' fee and expense application, or Lead Plaintiff's expense/service award application; and
- (3) the reason(s), if any, for each such objection made, including any legal support and/or evidence you wish to bring to the Court's attention or introduce in support of your objection.

In addition, you must include documentation evidencing:

- (1) the aggregate amount invested per share class (*i.e.*, U.S. Dollars or Euro);
- (2) the aggregate amount of any redemptions or sales per share class;
- (3) the number of shares held in each class as of December 10, 2008, and as of the present date; and
- (4) the name of any nominee or agent through which the shares were held.

Your statement of objection and supporting documentation must also be served on the following counsel for the Settling Parties at the below addresses:

**Francis A. Bottini, Jr.**  
**Albert Y. Chang**  
Chapin Fitzgerald  
Sullivan & Bottini LLP  
550 West C Street, Suite 2000  
San Diego, CA 92101

*Plaintiff's Lead Counsel*

**Darren J. Robbins**  
**James I. Jaconette**  
Robbins Geller  
Rudman & Dowd LLP  
655 West Broadway  
Suite 1900  
San Diego, CA 92101

*Additional Plaintiff's Counsel*

**Brian P. Murray**  
Murray Frank LLP  
275 Madison Avenue  
Suite 801  
New York, NY 10016

*Additional Plaintiff's Counsel*

**Evan A. Davis**  
**David E. Brodsky**  
Cleary Gottlieb  
Steen & Hamilton LLP  
One Liberty Plaza  
New York, NY 10006

*Settling Defendants' Counsel*

You also have the right to appear and present your objection at the "Fairness Hearing," at which the Court will consider whether to give final approval to the Settlement. If you wish to present your objection at the Fairness Hearing, you must state your intention to do so in your written objection. You will not be allowed to present reasons for your objection at the Fairness Hearing that you did not describe in your written objection.

**Your objection will not be heard unless it is filed with the Court and served upon respective counsel for Lead Plaintiff and the Settling Defendants by [[●][●], 2012].**

**C. Excluding Yourself from the Settlement**

You have the right to exclude yourself from the Action and the Settlement. If you choose to exclude yourself, you will not be barred from seeking relief with respect to any legal claims and will be free to pursue your individual claims, if any, against the Settling Defendants. However, you will not be eligible to receive the benefits of this Settlement. The Settlement may be terminated if requests for exclusion by Settlement Class Members exceed specified levels described in the Second Amended Stipulation.

If you intend to exclude yourself, you must mail a written, personally signed letter to [European Processing Entity] at the address listed below stating that you wish to be excluded from the Settlement Class and providing your name, address, and telephone number. The written request must also list:

- (1) the aggregate amount you invested per share class (*i.e.*, U.S. Dollars or Euro);
- (2) the aggregate amount of any redemptions or sales per share class;
- (3) the number of shares held in each class as of December 10, 2008, and as of the present date; and
- (4) the name of any nominee or agent through which the shares were held.

**Any request for exclusion must be mailed to the [Name of European Processing Entity] at the following address via first class mail and postmarked no later than [[●][●], 2012].**

**[Name and Address of European Processing Entity]**

**Any request for exclusion must be personally signed by the person requesting exclusion or an authorized signatory of the entity requesting exclusion. Exclusion requests shall not be effective unless the request includes all of the required information described above and is made within the time period stated above, or the exclusion request is otherwise accepted by the Court.**

Requests for exclusion must be submitted and personally signed by the beneficial owner of the shares on which membership in the Settlement Class is based, or on such beneficial owner's behalf by the legal representative of such owner (such as an executor, administrator, guardian, conservator, trustee or other similar fiduciary). Registered shareholders may not submit exclusion requests unless they are beneficial owners or the legal representative of a beneficial owner. Any legal representative submitting an exclusion request on behalf of a beneficial owner must also submit written proof of the legal representative's authority to so act. Registered shareholders who acted only in a nominee or similar capacity may not submit exclusion requests but should take care that those for whom they acted are afforded an opportunity to submit such requests.



Submitting a request for exclusion will not be deemed an appearance before the Court, and will not subject you to the jurisdiction of the U.S. Courts. However, persons or entities that do not timely request exclusion and thereby opt out will be understood to have voluntarily submitted to the Court's jurisdiction for the purposes of ruling on the fairness of the terms and conditions of the Settlement and, if approved, entering judgment implementing the terms of the Second Amended Stipulation. Any such judgment shall be binding on all those who have not requested exclusion and thereby opted out from the Settlement Class.

Any person who has submitted a request for exclusion but wishes to withdraw it may do so by submitting a written revocation request to the [Name of European Processing Entity], provided such revocation request is received no later than [[●][●], 2012].

#### **V. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a final approval hearing (the “Fairness Hearing”) on [[●][●], 2012], in the U.S. Courthouse, 500 Pearl Street, Courtroom 21B, New York, New York to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the Plan of Allocation and Lead Plaintiff’s applications for attorneys’ fees, expenses, and expense/service award. The hearing may be postponed or adjourned without further notice to the Settlement Class.

#### **VI. GETTING MORE INFORMATION**

The above is a summary of the basic terms of the Settlement. The full terms and conditions of the Settlement are contained in the Second Amended Stipulation. You can obtain a copy of the Second Amended Stipulation by contacting: Chapin Fitzgerald Sullivan & Bottini LLP, 550 West C Street, Suite 2000, San Diego, CA 92101, (619) 241-4810 (telephone), (619) 955-5318 (fax). All documents related to the Settlement and the Motions are available for inspection at the offices of the above noted counsel during regular business hours.

Additionally, the Settlement Administrator has posted on its Web site the Second Amended Stipulation and accompanying Exhibits, including this Notice. The Web site address for the Settlement Administrator is [www.\[●\].com](http://www.[●].com). You may also call the Settlement Administrator toll-free at 1-877-230-7552.

The pleadings and other records in this litigation, including the Second Amended Stipulation, are also on file with the Clerk of the Court, and may be examined at any time during regular business hours in the United States District Court, 500 Pearl Street, New York, New York.

#### **VII. SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If you purchased or otherwise acquired shares in the Fund for the beneficial interest of a person or organization other than yourself, the Court has directed that, within seven (7) calendar days of the receipt of the Notice, you either (1) provide to the Settlement Administrator the name and last known address of each person or organization for whom or which you purchased such shares or interests, or (2) request additional copies of this Notice and the Proof of Claim and Release Form, which will be provided to you free of charge, and within seven (7) days of receipt

of such copies mail the Notice and Proof of Claim and Release Form directly to the beneficial owners of the Fund.

If you choose to follow alternative procedure (2), the Court has directed that, upon such mailing, you send a statement to the Settlement Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Gross Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of the beneficial owners. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Settlement Administrator:

*Davis v. Benbassat et al.* Litigation Claim Forms  
c/o Settlement Administrator  
Gilardi & Co. LLC  
P.O. Box 8040  
San Rafael, CA 94912-8040

**PLEASE DO NOT CONTACT THE COURT OR SETTLING DEFENDANTS'  
COUNSEL FOR INFORMATION REGARDING THIS NOTICE**