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February 20, 2015

VIA ECF

The Honorable Andrew J. Peck
United States Magistrate Judge
United States Courthouse, Courtroom 20D
500 Pearl Street
New York, NY 10007-1312

*Re: Beacon Associates LLC I, et al. v. Beacon Associates Management Corp.
Civil Case No: 14-cv-2294 (AJP)*

Dear Judge Peck:

In accordance with Your Honor's Order of January 26, 2015, I am writing to several discovery issues concerning the Affected Investors as identified in Your Honor's Order. As Your Honor may recall, in connection with making the Court ordered computations of the distribution amounts, computation questions arose regarding 19 different Beacon Fund accounts (the "Affected Beacon Accounts") which affected the "cash in/cash out" calculation of the amount distributed to those accounts. In essence, there are questions about whether transfers between apparently related accounts resulted in a transferee account getting credit for a "cash in" amount which included "profits" earned in the transfer account. If they did, it would appear that the "profit" portion of the transfer should be excluded from the transferee's cash in amount.

The dispute regarding two related entities, AIJED International Ltd. ("AIJED OFF-SHORE") and AIJED Associates LLC ("AIJED ON-SHORE")¹ (collectively "AIJED"), is complex and resulted in a multi-million dollar holdback: AIJED ON-SHORE is a multi-million dollar net winner, and AIJED OFF-SHORE, which started with a transfer of \$6,979,000 from AIJED ON-SHORE, is a multi-million dollar loser.

A small number of my clients are the subject of holdbacks because accounts held in part for their benefit in the name of a fund called First Frontier, were transferred on Beacon's books from First Frontier to individual accounts in the names of those clients. In all, 19 accounts and a fewer number of investors are affected by these re-calculations and holdbacks.

¹ AIJED ON-SHORE established a liquidating trust in December 2008, which is treated as effectively the same account as AIJED ON-SHORE.

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There are two disputes over AIJED'S request for documents, both of which are very straight-forward. AIJED's counsel, requested "All investor information that the Beacon Fund[s] previously produced to the Challenging Investors or their counsel;" I have objected on the ground that all such information was given to me based on a confidentiality agreement I entered into with the Beacon Funds. Mr. Jakoby, for the Beacon Funds, has raised an objection to the production of some, but apparently not all, of this information, and I respectfully request that the Court resolve this issue on the basis of the objection of the Beacon Funds.


AIJED's second request was:

All post-October 31, 2014 communications between the Beacon Fund, Mr. Folkenflik, Mr. Whiteley, or their respective law firms, on the one hand, and any Affected Beacon Investor, on the other, purporting to notify a Affected Beacon Investor of any calculation regarding the Affected Beacon Investor's respective alleged net equity position or otherwise discussing an Affected Beacon Investor's position in the Beacon Fund.

With respect to my communications with my clients, they are mostly, but not entirely, privileged, and I have asserted privilege. I am producing non-privileged responsive material that does not fit into the Beacon Fund confidentiality category described above.

I have requested that AIJED produce for me documents sufficient to show the investors in each AIJED account, their histories of deposits and withdrawals, and the relationships among those investors (i.e. parent/ child, entity/beneficiary or owner, trust/grantor, etc.). AIJED's counsel has offered some production which he believes will satisfy my request, and some follow-up if I believe it is necessary. As a result, I do not know that there will be a dispute, but given the Court's Order, I wanted to alert the Court to the fact that a dispute could arise, although hopefully it will not.

Respectfully,



Max Folkenflik

MF/ec

cc: Arthur Jakoby, Esq. (via email)
Brian Whitely, Esq. (via email)
Leah Kelman, Esq. (via email)
Rachel Presa, Esq. (via email)
Mitchell Hurley, Esq. (via email)