UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BEACON ASSOCIATES LLC, et al.,

Plaintiffs,

-against-

BEACON ASSOCIATES MANAGEMENT CORP., et al.,

Defendants.

14 Civ. 2294 (AJP)

ORDER

ANDREW J. PECK, United States Magistrate Judge:

The Court previously ordered that money received by Beacon from the Madoff Trustee should be distributed according to the "Net Equity Method" until all investors are made whole (i.e., have received back all of their principal invested in Beacon), after which further distributions will be made under the "Valuation Method." (Dkt. No. 51: Final Distrib. Order & Judgment at pp. 3-5.) The issue presently before the Court is how to treat nineteen so-called "Holdback" accounts which had transactions with related Beacon accounts (including Beacon members who closed their account and later reopened an account).

After reviewing all of the parties' submissions on this issue (Dkt. Nos. 65, 69-77, 79-90), the Court holds that, in equity and fairness, each related account should be treated as a single entity for purposes of determining Net Equity.

As Beacon member Income-Plus Investment Fund explained:

> The reason for tracking from the initial investment rather than just when an account was re-opened was straight forward and is best explained by example. Assume for the purpose of this example Fund A made an initial investment in

> Beacon of $1 million and that the investment grew over time to $2 million, without any withdrawals. If that assumption were true, Fund A would have had a "net equity" investment of $1 million but an account value of $2 million. If Fund A then merged into Fund B and Beacon opened a new account to reflect the name change from Fund A to B, Beacon's books and records would reflect an initial cash-in investment for Fund B of $2 million when Fund B had, in reality, only $1 million in "net equity" at the time of the initial investment of its predecessor, Fund A. As a result, the only way to understand Fund B's true "net equity" would be to trace Fund B's investment back to Fund A's initial investment of $1 million . . . . Without that tracing, Fund B would have an inflated "net equity" investment of $2 million, instead of only the original $1 million actually invested.

(Dkt. No. 69: Income-Plus Br. at 4.)

The AIJED Funds argue that while this approach should apply to the other Holdback Investors, it should not apply to AIJED, because the investors in the two AIJED Funds were different. (See generally Dkt. No. 76: AIJED Br.) AIJED I invested in Beacon in 1997. In 2005, AIJED II was formed and Beacon "transferred" millions of dollars (the Court will not publicly disclose the exact amount in this Opinion) on its books from AIJED I to AIJED II as the latter's investment in Beacon. Obviously, as in the hypothetical example above, that amount included fictitious Madoff profits. In fairness, the AIJED Funds should not receive the benefit of those fictitious profits until all other Beacon members receive back the principal they invested in Beacon. While the AIJED Funds argue that "there was no material overlap in the identity of the investors" in AIJED I and AIJED II (AIJED Br. at 2) that is both incorrect[1/] and in any event irrelevant to the Court's equity-based decision.

AIJED I and II, and not their investors, were members of Beacon. Had all of AIJED I's investors cashed out and been replaced by entirely new investors, the entity on Beacon's books

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[1/] As AIJED admits elsewhere in its papers, "41 of [AIJED I's] approximately 100 members redeemed their investment in [AIJED I] in June, 2005 and reinvested in AIJED" II. (AIJED Br. at 5.)

still would be AIJED I. AIJED I and AIJED II are related and in equity and fairness should be treated as such for purposes of Beacon's Net Equity distribution.

CONCLUSION

For the reasons discussed above, in equity and fairness, AIJED I and AIJED II, and each related "Holdback Investor," should be treated by Beacon as a single entity for purposes of determining Net Equity.

SO ORDERED.

Dated: New York, New York
April 8, 2015

Andrew J. Peck
United States Magistrate Judge

Copies **by ECF** to: All Counsel