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October 3, 2014

## **VIA E-FILING**

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:

We represent Beacon Associates LLC I, Beacon Associates LLC II, Andover Associates LLC I, Andover Associates QP LLC, and Andover Associates, L.P. (the "Funds" or "Plaintiffs") in connection with the captioned matter.

Pursuant to the scheduling order in the referenced matter, the purpose of this letter is to report to and advise the Court, in summary, of the positions taken by investors in any investor submission received by our office on or before September 26, 2014.

First, on June 9, 2014, we sent a letter to all Beacon and Andover investors informing each investor of the nature of the captioned lawsuit including the positions taken by the Income Plus group and the Fastenberg Group. We advised each investor of this Court's Scheduling Order and the dates for submission of briefs. We further advised them that we would be posting updates of the case as well as copies of the income Plus and Fastenberg Memoranda of Law (and all other court filings) at web page [www.herrick.com/beaconandover](http://www.herrick.com/beaconandover).

We received four investor position statements with respect to the issues in this case. The investor submissions are annexed hereto as Exhibits A - D.

Additionally, we note that two investors, Howard Siegel and Robert E. Decker, have advised us that they wish to speak at the Fairness Hearing on October 7, 2014.

The following chart provides a summary of the positions advanced in the attached submissions. We have listed the investors in the order the briefs received.

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<u>DATE RECEIVED</u>	<u>INVESTOR</u>	<u>DISTRIBUTION POSITION</u>	<u>Summary of Position</u>
6/23/14	Robert E. Decker (Ex. A hereto)	Net Equity Method	The valuation method treats the Madoff investment as a standard financial investment and unfairly benefits investors who were left with less net equity because of the money they withdrew. In 2009/2010, the Valuation Method was selected "out of desperation and expediency," but the Net Equity Method has been the default method of distribution.
9/3/14	Ironworkers Local 6 Pension Fund (Ex. B hereto)	Valuation Method	Investor will receive an estimated recovery of \$332,329 under the Valuation Method, but no recovery under the Net Equity method.
9/23/14	Raubvogel Investors (Jay Raubvogel, individually, Jay Raubvogel IRA, M. Raubvogel Co., Inc. Trust) (Ex. C hereto)	Valuation Method	Raubvogel Investors incorporate by reference the arguments advanced by Defendant Income-Plus Investment Fund. (1) The assets of the Fund should be valued in accordance with their relative capital account balances, pursuant to the Operating Agreement; (2) equitable relief is not appropriate where there are controlling provisions in the operating agreement; and (3) despite fictitious profits in each partner's capital account balance, accounts should not be ignored and should not be restated to extract fictitious profits.
9/24/2014	Howard Siegel (Ex. D hereto)	Net Equity Method	The Net Equity Method should be applied here because (1) using the valuation method would require those investors whose net capital contributions generated the recovery amount to subsidize other fund investors whose contribution to the actual recovery was less than the amount they would receive

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			<p>using the valuation method; (2) fictitious profits should not be calculated as part of the investors' basis of recovery; using any method other than a cash in/cash out method would distort the economic realities of what has occurred; (3) the Fund operating agreement and the Court's prior decision are no impediment to a finding that a net equity distribution is proper here.</p> <p>With respect to expenses, expenses that can be identified to a specific activity should be allocated against that activity. If specific allocation is not possible, a pro rata apportionment should be used.</p> <p>No part of the \$69 million recovery from the Bankruptcy Trustee should be allocated to the recovery of the \$19.7 million clawback payment. To do so would amount to a setoff of that amount against the \$69 million that the Bankruptcy Trustee refused to allow. The recovery of the \$19.7 million is a springing claim and as such should only be recovered after investors have recovered their entire lost investment in Madoff of \$138 million.</p>
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Respectfully submitted,

s/ Arthur G. Jakoby \_\_\_\_\_

Arthur G. Jakoby

cc: All Parties (via ECF)