

**Exhibit 4**

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WRITER'S DIRECT NUMBER

(212) 903-8777

May 27, 2009

**PRIVILEGED & CONFIDENTIAL**  
**ATTORNEY WORK PRODUCT**

Mr. Joel Danziger, President  
Beacon Associates Management Corp.  
123 Main Street  
White Plains, NY 10601

Dear Mr. Danziger:

You have asked for our advice concerning the application of the Amended and Restated Operating Agreement of Beacon Associates LLC I ("Beacon") in determining the proportions in which any distributions that may be made by Beacon to its members should be made.

You have advised us of the following facts, on the accuracy of which we have expressly relied in reaching our conclusions herein.<sup>1</sup>

<sup>1</sup> In those cases in which we have indicated that your accountants, who are Citrin Cooperman & Company LLP, have advised you or us with respect to certain matters, we have also expressly relied on and assumed the substantive correctness of that advice (and our conclusions could be different if such advice were not substantively correct).

This written advice was not intended or written to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer. This advice was written to support the promotion or marketing of the transaction(s) or matters(s) addressed hereby. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor. (This legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

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Beacon is a New York limited liability company. Beacon's sole predecessor entity was formed in 1995.<sup>2</sup> The affairs of Beacon are currently governed by an Amended and Restated Operating Agreement (the "Agreement"), dated as of April 1, 2004, as amended as of November 28, 2005. Beacon is classified as a partnership for Federal income tax purposes.

As contemplated by the Agreement, various persons (including individuals, estates and trusts, and business entities) have from time to time made contributions to the capital of, and thereby become members in, Beacon. As further contemplated by and in accordance with the terms of the Agreement (particularly section 1 of Article XII thereof), Beacon has from time to time made distributions to members therein, as, when, and to the extent such members requested that distributions be made to them. In some cases such distributions were in complete liquidation of a member's interest in Beacon, but in other cases the members receiving distributions continued as members in Beacon with reduced interests.

Beacon periodically sent financial statements to the members therein. Such financial statements, and, in particular, each member's capital account balance as reflected thereon, were computed in accordance with generally accepted accounting principles ("GAAP"). Similarly, each member's capital account balance as reflected on the Schedule K-1 for such member attached to Beacon's U.S. Return of Partnership Income (Form 1065) for each year was computed in accordance with GAAP. As required by GAAP, Beacon utilized an accrual method of accounting, and "marked-to-market" its investments in marketable securities. For purposes of computing each member's "Sharing Ratio" and, thus, the allocation of "Net Profits" and "Net Losses" among the members under the Agreement (as discussed below) in connection with Beacon's financial reporting and tax reporting, reference was made to each member's respective capital account balance as so maintained in accordance with GAAP.

Your accountants have advised you that the capital account balances of the members through December 31, 2007, would not be materially different from their respective balances as so computed in accordance with GAAP if the capital accounts had been maintained in accordance with the capital account maintenance rules set out in Treasury Regulations promulgated under Internal Revenue Code ("Code") section 704(b).

Beacon was a party-in-interest to an account with Bernard L. Madoff Investment Securities LLC ("BMIS"). Substantial funds derived from the contributions made by members in Beacon to the capital of Beacon were remitted to BMIS for investment. From time to time, funds were withdrawn from such

<sup>2</sup> Where appropriate references to "Beacon" include the predecessor entity.

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account and remitted to Beacon. Beacon used such funds for various purposes, including to fund distributions to members in Beacon.

Beacon received regular periodic statements indicating the income purportedly earned on investments maintained, and the balance, in the BMIS account. Beacon took such income, together with Beacon's cash remittances to and from BMIS, into account in computing the carrying value of Beacon's investment in the BMIS account on the books of Beacon. At all times from February 1995 through November 30, 2008, the carrying value of Beacon's investment in Beacon's BMIS account constituted more than 70% of the total carrying value of all of Beacon's assets.

As has been widely reported in the public press, it was discovered on or about December 11, 2008, that BMIS was carrying on a "Ponzi scheme." A trustee has been appointed by a court of appropriate jurisdiction. The trustee has recently reported that, beginning no later than 1996, BMIS did not purchase any securities for the accounts that it purportedly maintained for Beacon and for the other victims of BMIS's Ponzi scheme.

Beacon has incurred substantial losses resulting from BMIS's Ponzi scheme. On December 18, 2008, Beacon announced that it was commencing a process of liquidation. No distributions have been made to any member in Beacon after December 11, 2008.

Your accountants have advised you that they believe that Beacon's loss arising from the Ponzi scheme carried on by BMIS is properly reflected under GAAP as a loss on Beacon's financial statements for the year ended December 31, 2008. However, your accountants have further advised you that the proper treatment of Beacon's loss is not entirely free from doubt and that other accountants might reasonably conclude that GAAP required that Beacon's financial statements for prior years be restated to eliminate the income reported by Beacon with respect to the BMIS account in each year (and, possibly, to treat each remittance of funds by Beacon to BMIS as a loss, at the time of such remittance, and each receipt of funds by Beacon from BMIS as income, at the time of such receipt).

Section 2 of Article XIV of the Agreement provides that, upon dissolution of Beacon and after the winding up of its affairs and the payment of its obligations, the remaining proceeds are to be distributed to the members "in accordance with their positive Capital Account balances taking into account Capital Account adjustments for [Beacon's] taxable year in which the dissolution occurs."

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Section 2 of Article VIII of the Agreement provides for the establishment and maintenance of a Capital Account for each member. That section further provides that each member's Capital Account shall be increased by (1) the amount of any money and the fair market value of any non-cash property actually contributed by the member to the capital of Beacon and (2) the "Member's share of Net Profits and of any separately allocated items of income or gain," and that each member's Capital Account shall be decreased by (1) the amount of any money and the fair market value of any non-cash property actually distributed by Beacon to the member and (2) the "Member's share of Net Losses and of any separately allocated items of deduction or loss." Section 5 of Article VIII of the Agreement provides, in part, "The provisions of this Article VII as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and if necessary, modified to cause the allocations of profits, losses, income, gain and credit pursuant to Article IX to have substantial economic effect under the Regulations promulgated under Section 704(b) of the Code, in light of the Distributions made pursuant to Articles IV [sic] and XIV and the Capital Contributions made pursuant to this Article VIII."

"Net Profits" are defined in section 30 of Article I of the Agreement as the "income and gains of [Beacon] determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by [Beacon]," and "Net Losses" are defined in section 29 of Article I of the Agreement as the "losses and deductions of [Beacon] determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by [Beacon]."

Section 1.1 of Article IX of the Agreement provides that Net Profits and Net Losses are generally "apportioned among the Members in proportion to their Sharing Ratios as reflected in Exhibit A, as amended from time to time, and shall be credited to or debited from the Members' Capital Accounts." Exhibit A, as attached to the Agreement, is blank. However, section 43 of Article I of the Agreement defines "Sharing Ratio" as the "share (expressed as a percentage) of each Member as set forth initially on Exhibit A, as adjusted from time to time as provided herein, based on the calculations by [Beacon] with respect to the Capital Accounts of the Members (other than the Managing Member) at the relevant dates or for the relevant periods, as the case may be." Section 43 of Article I of the Agreement further provides, "Sharing Ratios shall be adjusted when a Member is admitted, when [Beacon] accepts a Capital Contribution from an Existing Member, when any Member makes a withdrawal of any part of his or its Capital Account or when [Beacon] makes a distribution to less than all the members (other than in complete liquidation of their Membership Interests)."

Treasury Regulation section 1.704-1(b)(2)(iv), promulgated under section 704(b) of the Code, contains a comprehensive set of accounting rules relating to the maintenance of capital accounts. Treasury Regulation section 1.704-1(b)(2)(iv)(n)

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provides that the capital accounts of partners will not be considered to be determined and maintained in accordance with the rules of section 1.704-1(b)(2)(iv) unless adjustments to such capital accounts in respect of partnership income, gain, loss, and deduction are made with reference to the Federal tax treatment of such items.

Treasury Regulation section 1.704-1(b)(2)(i) provides that, in order for an allocation to have "substantial economic effect," the allocation must have "economic effect," and the economic effect of the allocation must be substantial. Treasury Regulation section 1.704-1(b)(2)(ii)(b) provides that an allocation will have "economic effect" only if certain requirements are met, one of which is that the partnership agreement provide for the determination and maintenance of the partners' capital accounts in accordance with the rules of Treasury Regulation section 1.704-1(b)(2)(iv).

The Internal Revenue Service has recently issued guidance regarding the allowance for Federal income tax purposes of deductions for losses of victims of Ponzi schemes and other related tax issues. Under Revenue Ruling 2009-9, 2009-14 I.R.B. 735, the victim of a Ponzi scheme is allowed a deduction for a "theft loss" in the year of "discovery." In computing its theft loss deduction, the victim may include in its basis the purported income reported in prior years, as well as any net cash "investment" in the Ponzi scheme. Under Revenue Procedure 2009-20, 2009-14 I.R.B. 749, as applicable to the BMIS Ponzi scheme, Beacon is permitted to claim a theft loss deduction on its return for 2008 equal to approximately 75% of its basis, as so computed, in its BMIS account, provided that Beacon agrees generally to follow the rules set out in Revenue Ruling 2009-9, including that Beacon not amend returns for years prior to the year of discovery to eliminate purported income from the scheme. You have advised us that Beacon intends to claim a theft loss on its return for 2008 computed in accordance with Revenue Procedure 2009-20

In light of the foregoing, we believe that the most reasonable reading of the Agreement is that distributions in liquidation of Beacon should be made in proportion to the positive balances in the members' respective Capital Accounts, as actually reflected on the books of Beacon at December 11, 2008, and as further adjusted for the allocation to them, in accordance with such balances on that date, of their respective distributive shares of Beacon's theft loss deduction computed in accordance with the principles of Revenue Ruling 2009-9 and Revenue Procedure 2009-20 (and other items of income, gain, loss, and deduction from and after that date). In this regard, we note that the Capital Accounts have been maintained in accordance with GAAP, while the Agreement could be read to require that the Capital Accounts be maintained in accordance with the rules of Treasury Regulation section 1.704-1(b)(2)(iv). However, your accountants have advised that (1) the Capital Accounts reflected on Beacon's books through December 31, 2007, were substantially equal to those that would have been maintained had the rules of Treasury Regulation section 1.704-1(b)(2)(iv) been followed and (2) GAAP requires the recognition of Beacon's theft loss arising from BMIS's Ponzi scheme on December 11,

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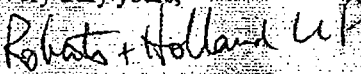
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2008, the same time at which such loss would be recognized for Federal income tax accounting purposes and, thus, for purposes of maintenance of capital accounts under the rules of Treasury Regulation section 1.704-1(b)(2)(iv), and without restatement of the capital accounts maintained in accordance with GAAP for any prior periods. In view of this advice, it does not appear necessary to determine whether section 2 of Article XIV of the Agreement calls for distributions to be proportionate to Capital Accounts maintained in accordance with GAAP, as Beacon has in fact consistently maintained its Capital Accounts, or to Capital Accounts maintained in accordance with the rules of Treasury Regulation section 1.704-1(b)(2)(iv).

Notwithstanding our conclusion, however, we believe, based on our understanding of the advice of your accountants, our reading of the Agreement, and our understanding of New York law, that there is a risk that a court might conclude that distributions made in the manner set forth above did not comport with the members' respective rights. For example, it might be contended that your accountants were incorrect in certain of their conclusions, that GAAP does, in fact, require the restatement of capital accounts for prior periods to eliminate income reported from BMIS or to make other adjustments relating to Beacon's loss in the Ponzi scheme, and that the members' Capital Accounts, as *properly* maintained in accordance with GAAP are, as a result, substantially disproportionate to the amounts reflected on Beacon's books.<sup>3</sup> Similarly, it might be contended that amounts previously distributed to a member, at a time that Beacon had in fact incurred, but was not aware of, all or a portion of its loss on the Ponzi scheme constituted some form of "unjust enrichment," "wrongful distribution," "fraudulent conveyance," or similar concept that should be offset against distributions to that member, thereby increasing amounts distributable to other members.<sup>4</sup> Accordingly, Beacon should consider whether it is appropriate to defer the making of further distributions until the legal issues relating to the appropriate method of making such distributions have been resolved by agreement or by determination of a court of appropriate jurisdiction. Moreover, in light of other circumstances relating to Beacon and BMIS, the making of distributions by Beacon, in whatever proportions, may raise other legal issues. We have not been asked to express any opinion, and we express no opinion, regarding whether Beacon can or should make any distributions at this time.

Very truly yours,


  
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<sup>3</sup> In this regard, the court might conclude that, in view of the Agreement's emphasis in the definitions of Net Profits and Net Losses on "accounting principles consistently applied," the use of GAAP was required in the computation of the members' Capital Accounts for purposes of section 2 of Article XIV of the Agreement, notwithstanding the reference to the rules of Treasury Regulation section 1.704-1(b)(2)(iv) elsewhere in the Agreement.

<sup>4</sup> Indeed, Beacon may want to consider whether it has claims against members or former members who received distributions under the circumstances described in the text.