

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BEACON ASSOCIATES LLC I, BEACON
ASSOCIATES LLC II, ANDOVER
ASSOCIATES, L.P., ANDOVER
ASSOCIATES LLC I, ANDOVER
ASSOCIATES (Q) LLC,
Plaintiffs,

vs.

Civil Action No.
1:14-cv-02294 (AJP)

BEACON ASSOCIATES MANAGEMENT
CORP.; ANDOVER ASSOCIATES
MANAGEMENT CORP.; INCOME PLUS
INVESTMENT FUND; DAVID
FASTENBERG, TRUSTEE, LONG ISLAND
VITREO-RETINAL CONSULTANTS 401K
FBO DAVID FASTENBERG, ET.AL.
Defendants.

**MEMORANDUM OF INVESTOR HOWARD SIEGEL
IN RESPONSE TO PLAINTIFFS' REQUEST FOR
DECLARATORY JUDGMENT**

HOWARD SIEGEL, JD, LLM, CPA
PRO SE
154 Porto Vecchio Way
Palm Beach Gardens, FL 33418
Tel: 917-951-5962
Fax: 516-466-6586
561-493-8788
Email: hsiegel99@yahoo.com

Memorandum in Support of using the Net Equity (cash in cash out) method to calculate fund investors distributions of recoveries from the Madoff Bankruptcy Estate and other sources

The fundamental reason for utilizing the net equity method to allocate Beacon's recoveries from the bankruptcy estate results from the methodology used by the Bankruptcy Trustee to determine Beacon's claim against the Bankruptcy estate. The original claim filed by Beacon was based on Beacon's investment in BLMIS, as reflected on its financial statements, in the amount of \$358 million. However, the Trustee has validated Beacon's claim in the amount of \$138 million (before the springing claim of \$21.5 million), based on aggregating the cash in/cash out (CICO) investments of Beacon's investors in the fund, and the transfer of this accumulated net investment to BLMIS as verified by the wire transfers back and forth. Equity requires that each Beacon investor's contribution to the recovery from the Bankruptcy estate be rewarded with an allocation of that recovery commensurate with his contribution to that recovery. Said another way, to allocate Beacon's recovery from the Bankruptcy estate using the valuation method previously used to allocate profits and losses from investment activity would be mixing apples and oranges, and 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 using the prior valuation method.

Prior valuation methodology is consistent with Beacon's Madoff loss of \$358 million reflected on its financial statements. Both derived their value from including Madoff's fictitious profits in their computations. The Trustee's determination, validated by the Courts, that Madoff's fictitious income should not enter into the calculation of a BLMIS investor's basis of recovery, requires that for there to be an equitable result for distributions at the fund level, the same principles enunciated by the Trustee be employed by the fund.

Having established that an equitable distribution result at the fund level requires the use of the net equity method (cash in / cash out - CICO), rather than the Valuation method, the question arises whether there are impediments to using the net equity method from either the fund's operating agreement or the Court's prior decision.

The conclusion is that neither the fund's operating agreement, nor the prior court decision by Magistrate Peck, is a barrier to utilizing the CICO method to allocate the distribution of the fund's recoveries from the Bankruptcy estate. To reach this conclusion the Court's decision needs to be read in the context of what was presented to it and what the Court was asked to decide.

The original complaint for a Declaratory Judgment was filed by Beacon management to resolve a purported controversy among various proposed alternative methodologies for computing members' capital accounts, and thus their sharing ratios, after the Madoff fraud was disclosed. The managing members' "experts" had developed various restatement methods as alternatives to the previously used Valuation method. The fund's investors were provided with their potential distributions of funds on hand from the redemption of the non-Madoff funds under each of the three restatement methods as well as the previously used Valuation method. The complaint then requested that the Court render a declaration that management could proceed with a distribution of Beacon's remaining assets based on the previously used GAAP Valuation methodology.

It is important to note that at the time of filing its request for a Declaratory Judgment in August 2009, the remaining assets that fund management was seeking to distribute consisted solely of the non-Madoff funds that had been liquidated as part of the fund's liquidation process, and that any significant recovery from the Bankruptcy Estate was highly speculative.

Between August of 2009 and February 2010, no action was taken by the Court on the Complaint for Declaratory Judgment. Accordingly, in an attempt to expedite a distribution, the Fastenberg Intervenors, comprised of various fund investors, filed a motion requesting that a judgment be rendered requiring that investor capital accounts and sharing ratios be computed on the basis of previously issued certified financial statements, and that no restatement of sharing ratios or capital accounts was required to reflect that BLMIS was engaged in a Ponzi scheme in prior years. That it be further ordered that Beacon and Beacon management distribute all remaining assets using the "valuation" method. It is again important to note that the remaining assets at this time consisted solely of the non-Madoff funds that had been liquidated, and that any recovery from the Bankruptcy Estate being highly speculative, had not been recorded in any fund financial statements.

A review of the Intervenor's legal memorandum in support of their motion reveals that the purpose of this motion was to obtain a distribution to investors of funds currently held by Beacon I (emphasis added). Again the Intervenors repeat that they are seeking to obtain a distribution from Beacon I of money currently held by Beacon I that was not stolen. In other words, they were not seeking a judgment with respect to the recovery of the stolen Madoff funds, but of the money currently held by Beacon I, which was the money that had been received from the liquidation of the legitimate non-Madoff funds. This distinction is important in determining the reach of the Court's decision in granting the Intervenor's motion. The Intervenor's objective is further amplified by their statement that "Movants seek an order that will allow the victims of Madoff's crimes to get back their money now and move forward with their lives." It was not an attempt to control the treatment of all future distributions from the fund. The balance of the Intervenor's legal memorandum deals mainly with their arguments against the restatement

methods and in favor of the historic Valuation method previously used. In its conclusion, the Intervenor's memorandum requests that "distribution of the assets of Beacon I be made promptly so that these investors who have lost so much can recover what little is available to them...." This would again indicate that the Intervenor's were talking about the remaining assets at that time, composed of non-Madoff funds.

Herrick Feinstein LLP ("Herrick") counsel to the Beacon funds, submitted a memorandum to the Court in which it characterized the Fastenberg Intervenor's motion as seeking the Court's assistance to obtain "a distribution of the remaining assets currently held in the Beacon Funds using the valuation method." It was Herrick's view, as evidenced in its Memorandum to the Court, that the Intervenor's motion was not focused on solidifying long term distribution methodology, but on expediting the distribution of funds currently on hand from the non-Madoff funds.

Further evidence that the Court's prior decision should be read to govern only Beacon's remaining assets on hand at the time of its decision in July 2010, is gleaned from the complaint filed for Declaratory Judgment by Beacon Associates Management Corp., and the Notice of Motion filed by the Fastenberg Intervenor's which precipitated the Court's decision.

At Paragraph 3 of the complaint Management expresses its desire to make a substantial distribution as expeditiously as possible. In Paragraph 3 of the Notice of Motion the Order sought that funds available for distribution take place within two (2) weeks of the expiration of the time to appeal. Clearly, both the Complaint and Notice of Motion refer to the non-Madoff accumulated earnings and capital on hand as the "remaining assets" for distribution. The Court's decision granting the Fastenberg Intervenor's motion directed management to distribute Beacon's assets less holdbacks by August 31, 2010. At that point in time there were no Madoff assets to

which the Court's decision could have applied. Although Beacon had filed a claim with the Madoff Trustee in bankruptcy, the claim had been denied and the Trustee had sued Beacon to recover all distributions received by Beacon from BLMIS. As the investor representative to the team that eventually negotiated a settlement with the Trustee, I can attest that the recovery of Madoff assets was not even a spec on the horizon at the time the Court was analyzing the facts, reaching its conclusions and rendering its decision.

In reviewing the impact of the Court's decision to validate the Valuation method as requested by Beacon management and the Intervenor, it is necessary to consider what information was before the Court. With the exception of a Brief filed on behalf of the Estate of Petronella at the pre-decision hearing, and one other investor's letter to the Court, all memorandum, motions and letters of investors dealt with a comparison of the Valuation method and the three alternative Restatement methods as the means to allocate the non-Madoff funds that were currently on hand. Investors were placed on the horns of a dilemma by virtue of the information provided to them by Beacon management regarding their choices for a post-Madoff fraud disclosure allocation method. On the one hand, the Valuation method that had previously been used was compromised by the inclusion of Madoff's fictitious income in investor's capital accounts for the pre-disclosure existence of the fund. The eventual write off of the Madoff investment carried on the books of the fund and reported for financial statement purposes did not cure the problem, but rather embedded the problem in all future sharing ratios using the Valuation method. This resulted from using the pre-write off sharing ratio to allocate the Madoff write off to investor's capital accounts, thus leaving post-write off sharing ratios in the same tainted relative position as the pre-write off sharing ratios. Accordingly, the use of the Valuation

method favored those investors who had had more fictitious Madoff income posted to their capital accounts over their period as investors.

The Restatement methods were equally troublesome. They were an attempt to purify investors capital accounts on a retroactive basis by removing Madoff's non-existent income month by month from the inception of the fund. The Restatement methods required various assumptions to be made to overcome intervening factors that had occurred since the inception of the fund. These assumptions made the Restatement methods imprecise and accordingly, although they might have been closer to the truth, their sustainability was in doubt and their use possibly would have engendered lengthy litigation. This caused several investors, including myself, who would have received a larger share under one of the Restatement methods, to lobby the Court on behalf of the Valuation method, in order to expedite a distribution of the currently available funds. Although investors were presented with their potential distribution numbers under the Valuation method and the three Restatement methods, they were not provided with their potential distribution numbers under the CICO method. When investors were solicited regarding their preferred method of allocation, the CICO method was not one of their choices and they had no information on which to determine its appropriateness. Investors therefore overwhelmingly selected the Valuation method and the investor preference was furnished to the Court and heavily weighed by it in reaching its decision.

Subsequent calculation of the CICO method of allocation resulted in 213 investors, or sixty-seven percent (67%) of Beacon's 328 eligible investors, receiving a higher allocation than they did under the Valuation method, and had they known this, their preference as relayed to the Court likely would have been different. The CICO method, based on an investor's net investment in the fund, when compared to all other investors' net investment in the fund, was grounded in

economic reality and would have eliminated the inequity inherent in the Valuation method and the imprecision of the Restatement methods. Had all the information been available to investors as well as the Court, the outcome of the Declaratory Judgment proceeding could well have been different. Judge Peck actually indicated during the hearing that he was favorably disposed to the CICO method as it was being applied by Judge Lifland in the Bankruptcy proceeding of the Madoff Estate.

As mentioned earlier, in a brief filed by the Estate of Petronella, the CICO method was advocated and considered by the Court. However, it was presented and considered by the Court as an abstract concept without the numbers behind it to show how investors sharing ratios would be impacted. It was also viewed as a method that would require substantial additional time to develop the numbers, and investors seeking a prompt distribution of the funds available, dismissed CICO as too little too late and urged the Court to do likewise in order to expedite a distribution. The Court obliged investor sentiment. The Court determined that retroactive adjustment to investors sharing ratios, either by using the Restatement methods or by applying the CICO method, was not called for where the funds being distributed were those derived in the ordinary course of the fund's business and fit within the operating agreements control of the allocations of profit, losses, income, gain and credit, and was subject to the agreement between investors embodied in the operating agreement. Further, because the non-Madoff funds under consideration for allocation and distribution were reflected in Beacon's financial statements, they were subject to allocation by the investor's capital account balance reflected in those financial statements. The capital accounts determined pursuant to the Valuation method, as reflected in the financial statements were deemed to have substantial economic effect because the buildup of these capital accounts had been reflected in prior tax returns. Finally, Petronella's arguments

failed because Beacon itself was not a Ponzi scheme, and the attempt to apply Ponzi scheme accounting to it, was superseded by the fund's operating agreement and equity did not demand a different result.

The distribution of capital and earnings attributable to the liquidation of Beacon's investments in non-Madoff funds utilizing the Valuation method to allocate the distribution among the investors was distorted by the inclusion of Madoff's fictitious income in the calculation of investors sharing ratios and resulted in approximately one-third of the investors receiving a portion of the capital and earnings that rightfully belonged to the other two-thirds of the investors. However, there was a nexus between the legitimate earnings of the non-Madoff funds and their prior inclusion in Beacon's financial statements and investors sharing ratios to justify the compromise results that the Court arrived at by following Beacon's operating agreement.

In contrast to the Court's consideration of how assets generated in the ordinary course of the fund's operation were to be allocated to investors, Beacon is now faced with determining how to allocate recoveries from the Madoff Bankruptcy Estate, and equity does demand that a methodology be used that comports with economic reality. Since the Madoff investment was written off in 2008, the cash being recovered from the Bankruptcy Estate was not previously reflected in Beacon's financial statements. In addition, the determination of the amount of cash recovered is directly connected to each investor's CICO net investment. Using any method other than CICO net investment to allocate these funds would distort the economic realities of what has occurred. The prior Court decision, on the other hand, while recognizing that distortion occurred by using the Valuation method, acceded to the overwhelming sentiment of investors, by choosing a methodology that with all its warts still represented a middle of the road approach

with the greatest chance of not being appealed. The Court's rationale and analysis were adequate for it to reach its decision. However, attempting to use capital accounts composed of some cash leftover from the non-Madoff funds as a sharing ratio to allocate the receipt of funds directly tied to investor's CICO net investment, would be unacceptable to the two-thirds of the investors, who would again be required to subsidize other investors on the basis of some unrelated percentage previously determined under the Valuation method. Although all investors are interested in expedited distributions of funds on hand, it would appear that this time around expedience would not outweigh the sheer inequity of an attempt to use the Valuation method to allocate these funds. Neither the Court's prior decision, nor the Operating Agreement of a defunct fund, would appear to be sufficient to overcome this inequity.

In analyzing the application of the Operating Agreement to the determination of the appropriate allocation methodology to be applied to recoveries from the Trustee of previously stolen Madoff capital contributions, obvious gaps appear. It is necessary to follow the trail through the Operating Agreement to understand whether the Valuation method of allocation is mandated by the Operating Agreement in the context of Madoff recoveries and if so, whether the Court should reform the Operating Agreement to comply with economic reality. See Exhibit 1 for the applicable Operating Agreement provisions and the trail through them.

Article VIII is the operative provision of the Operating Agreement dealing with the compilation of Members' Capital Accounts. It provides that a member's capital account will start with the dollar amount of a Member's initial contribution and be increased by additional money contributed and the Member's share of net profits and any separately allocated items of income or gain and decreased by the amount of money actually distributed by the Company to the Member and the Member's share of net losses and any separately allocated items of deduction or

loss. Article IX provides that net profits and losses shall be apportioned among 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. Article IX further provides that undistributed net profits allocated to Member's capital account constitute an additional capital contribution by it to the Company. Although there is a reference to Exhibit A in the definition of Sharing Ratio and a description of the times when sharing ratios need to be calculated, the Operating Agreement is actually silent on the specific method to compute a Member's sharing ratio.

Article VIII details the adds and subtracts to arrive at a Member's capital account specifically a Member's share of profits and losses as well as contributions and withdrawals. Article VIII is silent with respect to recovery of a member's capital that has been invested by the company and stolen as part of a fraud perpetrated by the recipient of the invested funds. Lastly, it is fair to assume that the use of "net profits" as an add to Member's capital does not include both real and imagined profits but only real profits consistent with the Trustee's interpretation of profits, as well as that of the Attorney General of the State of New York, the U.S. Department of Labor, the Bankruptcy Court, the Second Circuit Court of Appeal, the Federal District Court when approving the allocation in the Beacon's settlement with Ivy, and finally the Justice Department in its determination of the method to be used to allocate its recoveries of Madoff investors' losses.

Article XVI states that the Operating Agreement represents the entire agreement among all the Members and between the Members and the Company. We know that the Operating Agreement is vague and ambiguous in certain respects e.g., the calculation of sharing ratios, and completely void of any concept on how to treat recoveries of stolen Member capital. We know

that sharing ratios are computed by the company comparing a Member's capital account at a point in time to all other Members' capital accounts, but we do not know it from the Operating Agreement. The point being that, as with the important concept of sharing ratios, the Operating Agreement does not deal with or control the allocation among members of the Company's share of the Trustee's Madoff recoveries.

The Court referred to the Offering Memorandum, not the Operating Agreement, to amplify the determination of sharing ratios and their binding nature once determined by the managing member. The Court further referenced the fact that Member capital accounts, and therefore sharing ratios, had been reflected on Beacon's books as further evidence that although the capital accounts contained fictitious income, they should not be restated. The nexus to the allocation of legitimate non-Madoff profits and losses was also a factor, as well as the impact of treasury regulations on the determination of whether the allocations have substantial economic effect.

In considering the appropriate factors to determine the calculation of Member sharing ratios with respect to Madoff recoveries, many of the factors considered in ruling for the continued use of the Valuation Method for the allocation of non-Madoff distributions are not present.

The Madoff recoveries are not tied to prior financial statements and were not previously determined by the managing member. Furthermore, selection of the Valuation Method regarding the non-Madoff money was greatly influenced by those advocating an expeditious distribution using a compromise method. Today those advocates are now strongly behind the use of CICO to allocate the Madoff recoveries. The time to stand and fight for an equitable allocation of the Madoff recoveries is now. To do otherwise, and allow the Valuation method to be used, would

result in 213 Members transferring \$11 million out of the \$51 million of Madoff recoveries available for distribution from those whose capital investment "earned" those recoveries to the other 115 investors on the basis of continuing to include Madoff's fictitious income as part of Beacon's allocation process. As more Madoff recoveries are received from the Trustee, this amount wrongly transferred will increase.

The Court's consideration of the CICO method in its prior decision is not determinative of its application to the current situation and should not block the reconsideration of the CICO method's application to the Madoff recoveries. The major issue previously presented to investors was Valuation versus Restatement and investors' overwhelmingly chose Valuation as the lesser evil to Restatement. CICO, in effect, was a "red herring" presented by one investor who was ahead of his time. There was merit to the purity of CICO, but in the context of what had been presented to investors, and the connection of the Valuation Method to the legitimate non-Madoff funds, it was an abstract concept with its equitable result not overwhelming the prior accounting history associated with the Valuation Method. The current situation is totally different and requires the use of the CICO allocation method to prevent the imposition of severely inequitable results.

My own situation provides clarity with what is at stake. My Roth IRA's net investment in Beacon when the Madoff fraud was disclosed in December 2009, was \$1,580 million. In the summer of 2010, pursuant to the Court's decision regarding the non-Madoff money available for distribution, it received approximately \$500,000, leaving \$1,080 million as my unrecovered investment. This amount represents, with minor exceptions, my lost investment in Madoff and aggregated with the other 328 Beacon investors relates to the \$138 million original Beacon claim filed with the Trustee on a CICO basis. As part of the settlement with Trustee, the claim has been

increased by the \$21 million springing claim to \$159 million. The \$21 million is comprised of Beacon's \$19 million settled and paid clawback claim, and the \$2 million of Ivy's settled and paid clawback claim, both of which have been added to Beacon's Madoff claim.

When the \$51.5 million currently available for distribution by Beacon is made, my Roth IRA will receive either \$286 thousand under the CICO method, or \$259 thousand if the Valuation method is used, a difference of \$26.8 thousand. The \$26.8 thousand will be spread amongst those investors who have a higher allocation percentage under the Valuation method because of the inclusion of Madoff's fictitious income in the computation of the Valuation method sharing ratios. \$11 million of the \$51 million distribution will be similarly shifted from the 213 investors to the 115 with higher Valuation method sharing ratios. If one looks at a total recovery from the Trustee hypothetically of \$100 million, the amount shifted is \$22 million. If Beacon was fortunate enough to recover its entire claim for lost capital invested with Madoff of \$159 million, the amount shifted would be \$35.4 million. Since this is a zero sum game, what this means is that if Beacon recovered its entire claim of \$159 million, instead of every investor recovering his entire lost investment and being made whole, if the Valuation method is used to allocate the recovery, 213 investors will be short \$35.2 million of their aggregate lost invested capital recovered by Beacon, and 115 investors will have received \$35.2 million more than their lost invested capital. Obviously at each level of recovery this shifting is going on.

If the CICO method is used and Beacon recovers its entire claim of \$159 million, the 115 investors, who do better under the Valuation method, will recover 100% of their lost Madoff capital, just as the other 213 investors, which is all they are entitled to. If Beacon recovers its entire \$159 million claim and the Valuation method is used to allocate it, my Roth IRA will recover approximately \$85,000 less than its lost invested capital, and that amount will go to other

investors in Beacon. I never signed any agreements or empowered Beacon management to appropriate my Roth IRA's invested capital and transfer it to other Beacon investors.

The equities are clear. If Beacon uses the CICO method to allocate Madoff recoveries, each investor will get back his pro rata share of invested capital attributable to each distribution. If Beacon is fortunate enough to recover its entire lost Madoff investment every investor will recover his entire invested capital. If the Valuation method is used, some investors will recover more than their invested capital and others will recover less. The necessity to use the CICO method to allocate recoveries stems from the Trustee's determination to allow recoveries of only the investors' lost capital investment and not the fictitious income posted to its account. Beacon is not adopting Ponzi scheme accounting per se if it uses CICO to allocate Madoff recoveries, but a method of allocation that equitably allocates Madoff recoveries in symmetry with what the Trustee has determined. To use the Valuation method would be matching apples and oranges and results in the inequitable result described above. The Court needs to rule, that in order to maintain symmetry and fairness with what the Trustee and the Courts have determined regarding Beacon's recoverable amount, that the CICO method must be used to allocate the recoveries among Beacon's investors.

Analyzing the Income-Plus Memorandum

Detailed below is a point by point rebuttal of Income-Plus' Memorandum in support of using the Valuation method to allocate Madoff recoveries. Before analyzing Income Plus' (IP) arguments some general comments are in order. IP's position is motivated by pure greed and is not based on equity for all Beacon investors. IP does not believe that equitable principles should be involved in allocating the recovery of Madoff capital and its arguments to appropriate other investors' capital recoveries are accordingly based principally on procedural grounds. It is in the

context that IP believes that it is entitled to recover more than its lost capital investment, while other investors receive less, that the weakness of its positions should be evaluated by the Court.

IP, at page 7 of its Memorandum, enunciates three reasons why it believes the Valuation method is the proper methodology for allocating and distributing Beacon's recoveries from the Madoff Trustee. First, this Court's prior decision in Beacon Assoc. I definitively resolved the issue. Second, the unambiguous language of the Beacon Operating Agreement requires the use of the Valuation method under general principles of contract law and Erisa law. Finally, a distribution pursuant to the Net Equity Method as defined in the Complaint is unworkable and unfair . . .

Starting with an analysis of the second reason first, that the Beacon Operating Agreement clearly mandates use of the Valuation method, will highlight a fundamental weakness of IP's position. At page 14 of its Memorandum IP clearly states "the documents governing the operation of Beacon require application of the Valuation method to all of Beacon's assets, irrespective of their source."

The memo further states that "Members were assigned a 'capital account' that was equal to [their] proportionate share of the net worth of the company." This of course reflects how a member's opening capital account was determined based on the amount of its capital contribution, not on how its ongoing capital account was determined month by month and year by year.

The memo further states that "on distribution, the operating agreement provides that Beacon's remaining assets are to be distributed to member's in accordance with their positive capital account balances . . ." At this point Beacon management has not allocated Beacon's

Trustee recoveries to members' capital accounts and is awaiting the result of this action before doing so. The point being that IP's information is accurate but totally worthless.

The memo states, "It is automatic that where the language of a contract is unambiguous, the parties intent is determined within the four corners of the contract without reference to external evidence." Citations omitted. The memo cites various other cases for the same position and further states that "[A] contract is unambiguous if the language it uses has a definite and precise meaning as to which there is no reasonable basis for a difference of opinion." Citation omitted. And finally, "Case law commands that an unambiguous contract must be enforced according to the plain meaning of its terms." Citation omitted.

It is important to note at this point that we are not debating how to allocate distributions to members once their capital accounts have been determined but how to determine the appropriate balance in members' accounts as a result of the allocation methodology eventually used by Beacon management to allocate Beacon's Madoff Trustee recoveries.

So the first step is to examine what the Operating Agreement says about computing members' sharing ratios with respect to amounts received by Beacon. As previously noted, while the Operating Agreement defines a sharing ratio and when a sharing ratio needs to be computed or adjusted (see Article I, paragraph 43), it is silent throughout on how management is to compute a member's share ratio percentage. Accordingly, Article XVI, paragraph 1, Entire Agreement, which provides that the Operating Agreement represents the entire agreement among all Members and between the Members and the Company, creates an ambiguity on its face. The Operating Agreement which is supposed to be the sole document to govern all aspects of Beacon's operations, computations and allocations, is silent on one of the most important, if not the most important, computations on how to compute a Member's sharing ratio. Clearly the

parties' intent with respect to the appropriate computation methodology for Members' sharing ratios cannot be determined from the four corners of the Operating Agreement contract among the Members and the company. It is also clear that, on this point the language in the agreement is not definite and precise in meaning as to which there is no reasonable basis for a difference of opinion, there is no language at all.

However, although the Operating Agreement purports to be the sole agreement among the parties, the members also signed a Subscription Agreement in which they agreed to be bound by the terms of the Offering Memorandum. The Offering Memorandum, at page 35, purports to describe the terms of the LLC Agreement which is apparently one and the same as the Operating Agreement. On page 36 of the Offering Memorandum is a paragraph headed "Allocation of Profits and Losses." This paragraph purports to describe a provision of the Operating Agreement which does not exist in the actual Operating Agreement. An ambiguity in and of itself. But assuming for arguments sake that the provision is effective to become that provision, what does it say? "Net profits and losses generally are allocated for financial and tax purposes to your capital accounts in the proportion that your capital accounts bears to all other capital accounts . . . on the last day of each applicable accounting period." First, the word "generally" is not synonymous with "always" or "must be." Secondly, this paragraph in the Offering Memorandum is talking only about the allocation of "net profits and losses" and says nothing about the allocation of a capital recovery which is specifically devoid of any profit component as mandated by the Madoff Trustee. It is reasonable to conclude that the so called contracts which Members signed, purportedly governing allocations, do not cover the nature of the item under consideration for allocation and further, provide some flexibility to determine the appropriate methodology to allocate unusual items, such as the recovery from the Madoff Trustee. What is

also clear is that no Member of Beacon signed a contract or contracts that allowed one group of Members to appropriate the recovery of another group of Members' lost capital.

Turning to IP's first point, that "this Court's prior decision in Beacon Assoc. I, definitively resolved the issue," there are many distinctions between issues resolved in the prior decision and those presently before the Court. As previously discussed, the evidence is clear that the parties in the prior action for a declaratory judgment, both Beacon Management and the Fastenburg Intervenors, sought to gain an expedited distribution of Beacon's remaining assets on hand. The Fastenburg Intervenors were requesting relief with respect to "money not stolen," and Beacon's Management was seeking an expedited distribution of Beacon's remaining assets. The Court in granting the Intervenors' motion directed that Beacon's remaining assets be distributed by August 31, 2013, utilizing the Valuation method. It is clear that based on what was sought, why it was sought, and the Court's ruling regarding the timing of the distribution, that the Court's rulings and rationale regarding Beacon's remaining assets has to be read as remaining assets on hand at that time.

The Court's rationale in arriving at the allocation methodology to be used is particular to the items being allocated, namely the non-Madoff funds received from the liquidation of Beacon's investments in the various non-Madoff legitimate hedge funds. These funds were comprised of both legitimate profits and capital that had a history of a prior allocation method that had been consistently applied and reflected in Beacon's financial statements. The Court, at page 18, further cites to a provision in Beacon's Operating Agreement whereby "All values assigned by the Managing Member are final, binding and conclusive on all of the Members." The Estate of Petronella, arguing for the use of the CICO method to allocate the non-Madoff funds, according to the Court, based its position on the inapplicability of the Operating Agreement

because "there was no agreement as to how to divvy up the remaining assets after a fraud." The Court disposed of that argument by concluding that, "Because the financial statements upon which each member's final capital account balance is based were adopted by management, the Operating Agreement requires that each member's interest equal their capital account balance as stated on Beacon's books as of December 2008."

The recoveries of stolen Madoff Capital do not fit neatly into the Court's prior rationale. First, while the non-Madoff funds being distributed had previously been recorded in the books and financial statements and allocated to members' capital accounts, the same is not true with respect to the allocation of recovered Madoff Capital investments. The Trustee's recoveries have not been previously allocated to Member's capital accounts and the historical import attached by the Court to prior inclusion in the December 2008 financial statements is not applicable. Second, it does not appear that the allocation of the recovery of Member capital is specifically covered by the language of the Operating Agreement which deals with the allocation of profits, gains and losses. Lastly, the provisions of the Offering Memorandum which spell out the allocation method referred to as the Valuation method specifically states that it "generally" applies, leaving room where as here, not applying the method would alleviate the inequitable result of certain Members appropriating the capital recoveries of other Members.

The Court's conclusions that Ponzi scheme accounting was not applicable to Beacon because Beacon was not a Ponzi scheme has validity with respect to the non-Madoff funds previously under consideration. However, using CICO to allocate the Trustee's Madoff recoveries is within the "generally" applicable concept of the Offering Memorandum and does not contravene the Court's prior conclusion, where the Trustee has eliminated any profit element in the funds currently under consideration. CICO is the correct method of allocation to Members'

capital accounts of the funds under consideration and the Offering Memorandum / Operating Agreement sanction its use.

For the above stated reasons, IP's contention that Collateral Estoppel is a bar to the Court's consideration of a different allocation method for the Trustee's recoveries should be rejected by the Court. The issue in the current action is not identical with the issue in the prior action and the applicable rationale is very different. The method of allocating distributions in liquidations does not change as it still relates to members' capital accounts as related to all other members' capital accounts. It is the computation of those Members' capital accounts for purposes of computing their liquidation sharing ratio wherein the current action is distinguishable from the prior action, and requires a different analysis and conclusion by the Court. IP identifies the "identical issue" on page 10 of its Memorandum as "the proper methodology to follow for the distribution of Beacon's assets in liquidation." The method of allocating in liquidation is the same as provided in the Operating Agreement but the issue that is of importance is how to allocate funds to Members' capital accounts, and is very different and deserves to be reviewed by the Court and a new and different conclusion reached.

IP's argument that somehow because Beacon had filed a claim with the Trustee at the time of the initial Declaratory Judgment action, that somehow the ultimate Trustee recovery was sufficiently known to be subject to the Court's initial decision is preposterous. First, Beacon's initial claim was in the amount of \$358 million carried in its financial statements including the fictitious Madoff income previously recorded. This amount was later cut back to \$138 million by eliminating the fictitious profits. The Trustee however rejected the claim and sued Beacon to recover a clawback of Beacon's prior Madoff distributions. Those of us who negotiated the ultimate settlement with the Trustee, Arthur Jakoby, Fund Counsel, Max Fokenflik, investor

counsel, and myself as an investor representative can attest that the road to success was long and the possibility was constant that no settlement would be reached, and litigation would be required. In fact, after the settlement agreement was signed more than two years after the claim was filed, the Trustee notified fund counsel that he was voiding the settlement he had just signed and agreed to, unless certain changes were made. The filing of the claim did not make the issues related to Madoff recoveries part of the prior Court decision.

IP then makes an argument that the source of the funds being distributed should not influence the method used to allocate them. This position is misguided but continues IP's attempt to throw out as many arguments as it can to see if any stick. The facts are that Beacon's remaining assets currently available for distribution consist essentially entirely of Madoff capital recoveries, and it would be inappropriate to allocate them using a method that does not give credit to those investors whose aggregate remaining capital investments gave rise to the amount of the recovery from the Trustee. The members should receive an allocation proportionate to their contribution to the Trustee recovery, which is the CICO method. This method is not specifically prohibited by the Operating Agreement or the Offering Memorandum in the same way that the Operating Agreement does not mandate that a historical sharing ratio always be used. When the assets giving rise to the Members' current allocation percentages have already been distributed, e.g., the non-Madoff funds, the Offering Memorandum's description of how allocation percentages are "generally" computed allows that the allocation percentage can be switched to a more appropriate allocation percentage, not based on the source of the assets to be allocated, but on the nature of the assets, e.g., recoveries of stolen capital directly related to Members' current unrecovered invested capital.

On page 18 of its Memorandum IP states, "c. that applying a Net Equity methodology would require reforming the Operating Agreement, but there is no basis for reformation."

As previously discussed, it appears that a reading of the Offering Memorandum / Operating Agreement would not require a reformation of those contracts to enable the use of the CICO method to allocate Madoff recoveries. If, however, reformation is deemed necessary, ample grounds are derived from the fact that no Member signed any contract with the knowledge or intention to allow another member to appropriate his capital investment or the recovery of his stolen capital investment, which would be the result if the Valuation method is deemed to be required by the Offering Memorandum / Operating Agreement contracts.

On page 20, IP presents its piece de resistance in case the Court recognizes the fatal flaws in its procedural arguments as detailed herein. It seeks to show why the Net Equity Method (CICO) as identified in the complaint, is not an appropriate alternative to the Valuation method, which it claims is provided for in Beacon's Operating Agreement. It cites five reasons for its position. Some of its reasoning is so bizarre and misguided as to give pause with respect to its entire presentation of throwing ideas against the wall to see if any stick.

First, IP claims that the CICO method identified in the Complaint is not the same method followed by the Trustee, because it "has been calculated as the amount of the investor's investment of principal less any withdrawals or distributions received from the funds including the distribution made by the funds in 2010." Somehow IP believes that because the distributions in 2010 were of assets remaining in Beacon after the Madoff fraud was discovered, and prior to the receipt of any Trustee distributions, those distributions had nothing to do with money in and money out of Madoff, and accordingly, the methodology followed by the Madoff Trustee in

context of the SIPA liquidation, has no bearing on the issue presented here. I have to admit my first reaction to this piece of sophist nonsense was huh? which quickly turned to duh?

Tracing members' investments and withdrawals in Beacon allows for the computing of a Member's net investment at any point in time. At this point in time, all prior distributions, including the distribution of the non-Madoff money, have left each Member's remaining investment in Beacon as essentially entirely attributable to Beacon's CICO investment in Madoff. There are essentially no other Beacon investments to be recovered, other than its CICO investment in Madoff, and Members' current CICO investments in Beacon are in mathematical symmetry with Beacon's Madoff recoveries already received and to be received in the future. As I previously described, my own net investment in Beacon at the time of the Madoff fraud disclosure was \$1,580 million, and after the last non-Madoff money distribution of approximately \$500 thousand, my invested capital is \$1,080 million. That is my CICO investment in Beacon and it is all attributable to Beacon's CICO investment in Madoff. By default there is nothing else to which it could be attributable. The same is true for all other members. Arguments that try to confuse and obfuscate the facts by throwing in irrelevant "red herrings" should be ignored by the Court.

Second, IP argues that somehow the only way to purify a Member's capital of fictitious income is to go back and eliminate it at the time it was received, in effect the Restatement method. This is completely unnecessary at this point in time as differentiated from the attempt to purify Members' accounts at the time of the non-Madoff distributions in 2010. In effect, as explained above, the fact that all legitimate non-Madoff money has already been distributed, by default, what remains is a purified CICO investment entirely attributable to Madoff.

IP's third argument is also an attempt to confuse and makes no sense. Somehow IP is unable to distinguish between the recovery of actual Madoff investments made by Beacon and the allocation of those recoveries, as well as damages from derivative suits filed on Beacon's behalf, and those recoveries from damage suits filed directly on behalf of Beacon's investors.

The facts are that the recoveries from the class action suits filed on behalf of Beacon's investors could have been allocated among Beacon's investors under any method that the class action attorneys, as well as the DOL and the NYAG decided, including Beacon's historical Valuation sharing ratios, but they chose the CICO sharing ratios that I and Fastenberg seek to use herein. Their rationale was to assist Beacon investors in recovering their unrecovered Madoff invested capital, and they believed that together with Beacon's recoveries from the Trustee, investors had a chance to recover 100% of their losses. That will only happen for all investors of course, if Beacon's recoveries are also allocated under the CICO method. The result sought in this declaratory action is to allocate Beacon's Trustee recoveries using the same sharing ratios used to allocate the class action settlement. Of further importance is the fact that IP participated in the class action settlement allocation negotiations. It also had the right to object to the use of the CICO method as a member of the class and did not do so. So it is not the use of the CICO method, per se that bothers IP, but the fact that under the CICO method IP will not be able to enrich itself by appropriating other investors' capital recoveries.

When all else fails throw in ERISA as an impediment to fair play. So in their fourth point, IP argues that somehow Beacon's documents become ERISA plan documents and since in their view CICO is inconsistent with Beacon's Operating Agreement it is also inconsistent with ERISA. For all the reasons previously noted herein, CICO is not inconsistent with the Operating Agreement and therefore even if the Operating Agreement becomes an ERISA plan document,

the CICO method is not inconsistent with ERISA, and has been used by IP to partially distribute its recoveries among its investors.

Lastly, IP believes that this Court is unable to determine a method to allocate fund expenses between non-Madoff and Madoff recovered funds. It wants to save the Court from having to enter this "thicket." One method the Court could use to solve this momentous problem is to allocate fund expenses pro rata in an equitable manner (see additional discussion of expense allocation below). IP states the Court will be saved from this dilemma if the Valuation method is used to allocate both Madoff and non-Madoff recoveries. Of course this solution will allow IP to appropriate \$700 thousand of other investors' recoveries.

Analysis of Income Plus Reply Memorandum

The summary analysis of IP's Reply Memo is simply that IP is grasping at straws connected to a position that has no merit in either contract law, because the contract in issue does not support its position, or equity, because logic dictates that the CICO method is the method of allocation that provides an equitable distribution of Madoff recoveries for each and every Beacon investor.

IP believes it can confuse the Court by alleging that the CICO method has computation issues and would generate complicated expense allocation issues. Nothing could be further from the truth. For example, at footnote 4 on page 5, IP cites the fact that certain investors invested solely in Madoff's returns as a reason not to follow the CICO method. The exact opposite is true. So, for example, there is an investor who invested \$10 million tied directly to Madoff. If the Valuation method is used to compute its share of Madoff recoveries, it will receive a share of the recovery based solely on the uninvested cash remaining in its capital account. If the CICO method is used, the investor will recover a proportionate share of Beacon's Madoff recovery

based upon its investment of \$10 million. IP's logic is that this is somehow inconsistent with the investor tying its investment solely to Madoff. Of course the opposite is correct. By allowing this investor to recover a proportionate share of Beacon's Madoff recovery based on its \$10 million investment in Madoff using the CICO method, the investor gets exactly what he bargained for. If there are no Madoff recoveries it gets only its uninvested cash back, as it does not participate in any non-Madoff distributions. Where, however, there are Madoff recoveries it is entitled to its proportionate share consistent with the deal it made. The only way it gets to that equitable position is if the CICO method is used to allocate Madoff recoveries. IP further demonstrates its lack of understanding by arguing that the Valuation method is somehow consistent with this investor's investment deal although it would deny him a share of Beacon's Madoff recovery.

Each one of IP's arguments in its Reply Memo can similarly be picked apart as total nonsense.

Summary of Position in Support of Using the CICO Method to Allocate Recoveries of Madoff Losses from All Sources

The CICO method provides for an equitable allocation among all investors of Madoff recoveries. It is symmetrical with the Trustee's determination to allow only recoveries of lost invested capital excluding fictitious income and returning to Beacon's investors' lost capital in proportion to each investor's contribution to the recovery. Exhibit 2 Allocation of \$51 million Available for Distribution to Each Investor Under Both the Net Equity (CICO) and Valuation Methods and Exhibit 3 Schedule of Recovery Shift at Various Levels of Recovery demonstrate that 213 investors, or 67 percent, of all investors will have \$11 million of the current distributable amount of \$51 million which they are entitled to shifted to other investors. If the Valuation method is used some investors will make a profit by appropriating other investors' capital recoveries, while the other 213 investors will not recover their lost capital investment.

This Court should not permit that inequitable result to occur. A review of Beacon's Operating Agreement, Offering Memorandum and the prior decision by this Court reveals that they are not an impediment to the Court concluding that the CICO method should be used with respect to this distribution and future Madoff recoveries to avoid an unfair result. The Court's prior decision was centered on the historical connection between the Valuation method and the legitimate non-Madoff income and capital being distributed and the reflection of that income and capital in prior Beacon financial statements. There is no such connection between recoveries of lost Madoff capital which have not previously been allocated to investors. As discussed above, the Operating Agreement does not actually provide an allocation method and does not include lost capital recoveries as one of the items that it covers. The Offering Memorandum describes an allocation method that it claims is in the Operating Agreement even though it is not, but it further states the allocation method is "generally" applicable. Accordingly, the Court is free to make a determination of the CICO method as the proper method to allocate Madoff recoveries. The Court needs to do the right thing to insure that Madoff recoveries are equitably distributed among all the investors.

Allocation of Expenses

If the Court determines, as it should, that the CICO method is appropriate to allocate Madoff recoveries among Beacon's investors, an allocation of expenses to the Madoff and non-Madoff distributions should be determined by analyzing what the particular expense related to and the time when it was incurred. Expenses that can be identified to specific activities should be allocated to those activities. Where a specific allocation is not possible a pro rata apportionment should be used based upon a fair apportionment standard. Allocating expenses between Madoff and non-Madoff distributions is not "rocket science" and arguing about its purported complexity

should not be used as a means to prevent an equitable distribution of Beacon's Madoff recoveries.

General expenses should be allocated pro rata. For example, legal expenses in connection with the class action settlement, where significant expenses were incurred by fund counsel but none of the settlement funds flowed through the fund, should be allocated pro rata to both the non-Madoff and Madoff distribution pools since the expenses are not identifiable to generating either distribution pool. Expenses in connection with the 2010 distribution of non-Madoff funds, such as expenses for outside experts, preparation of alternative distribution scenarios, and expenses with the Court hearing to resolve the matter, should be directly allocated to the non-Madoff pool. Expenses in connection with the Madoff Trustee settlement should be allocated to the Madoff recovery distributions. A committee of investors and counsel should be able to resolve the allocation of expenses with the Court's help if necessary. Allocation of expenses should not delay distributions as an adequate reserve can be set up until the matter is resolved.

Treatment of the \$19.7 Million Portion of Beacon's \$69 Million Trustee Recovery

As part of the Trustee settlement the Trustee refused to set off the amount of the clawback against the distribution of Madoff recoveries. Accordingly Beacon was required to issue a check (or wire transfer) for \$19.7 million and received the gross amount of \$69 million from the Trustee. We can debate why the Trustee took this position, but it appears on its face that the Trustee wanted to keep recovery distributions separate from clawback monies paid. Beacon has paid out the \$19.7 million of the \$69 million recovery using Valuation method allocation percentages effectively netting the two amounts. Recoveries from the Trustee should be allocated using the CICO method applied to the entire amount of Madoff Trustee recovery payments without adjustment, in this case \$69 million. The only funds available to pay the clawback

amount were non-Madoff funds and Beacon should not impose the set off that the Trustee refused to allow. To transfer Trustee recoveries to the Valuation method allows for the inequitable allocation of those recoveries. The "springing claim" of \$19.7 million that has been added to Beacon's original claim of \$138 million is the recovery of the clawback amount and the application of the Valuation method should only be applied after the first \$138 million of the claim for Madoff lost capital is fully paid. To subtract the clawback amount from the Trustee's first recovery payment to Beacon and apply the Valuation method to it, is to misplace the timing of the clawback recovery, from the tail end of recoveries where it belongs as an add on recovery to the recovery of the lost capital invested with Madoff. While it belongs at the end, a compromise position would be to pro rate each distribution between the Valuation component recovering the \$19.7 million clawback and the lost capital recovery distributed using the CICO percentages. An adjustment to the current distribution under consideration should be made to correct for the overpayment made to certain investors under the Valuation method.

The above Memorandum is respectfully submitted,

By: /s/ Howard Siegel
Howard Siegel

EXHIBIT 1

THE TRAIL OF APPLICABLE PROVISIONS OF THE
OPERATING AGREEMENT AND THE OFFERING MEMORANDUM

The trail starts with Article I Definitions:

6. **Capital Account.** The account maintained for a Member or Assignee determined in accordance with Article VIII.

7. **Capital Contribution.** The contributions of the Members as set forth in Exhibit A hereto.

29. **Net Losses.** The losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company.

30. **Net Profits.** The income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company.

43. **Sharing Ratio.** The share (expressed as a percentage) of each Member as set forth initially in Exhibit A, and as adjusted from time to time as provided herein, based on the calculations by the Company 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. Sharing Ratios shall be adjusted when a new Member is admitted, when the Company accepts an additional Capital Contribution from an Existing Member, when any Member makes a withdrawal of any part of his or its Capital Account or when the Company makes a distribution to less than all the Members (other than in complete liquidation of their Membership Interests).

The trail moves to Article IV, Accounting and Records, paragraph

3. **Accounts.** The Managing Member shall maintain a record of the Capital Account of each Member in accordance with Article VIII.

and moves to

ARTICLE VIII

CONTRIBUTIONS AND CAPITAL ACCOUNTS

1. **Contributions.** Each Member shall make the Capital Contribution described for that Member in Exhibit A at the time and on the terms specified in the Subscription Agreement executed by such Member in connection with his subscription for an interest in the Company and shall be set forth in Exhibit A. No interest shall accrue on any Capital Contribution and no Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in this Operating Account.

2. **Maintenance of Capital Accounts.** The Company shall establish and maintain Capital Accounts for each Member and Assignee. Each Member's Capital Account shall be increased by (1) the amount of any Money and the fair market value (as determined by the Managing Member at the time of contribution, net of any liabilities assumed or taken subject to by the Company) of any non-cash Property actually contributed by the Member to the capital of the Company, and (2) the Member's share of Net Profits and of any separately allocated items of income or gain (except any gain and income and any loss and deduction allocated to the Member for federal income tax purposes on account of amounts credited to or debited from the Member's Capital

Account). Each Member's Capital Account shall be decreased by (1) the amount of any Money actually distributed by the Company to the Member, (2) the fair market value of any non-cash Property distributed to the Member, as determined by the Managing Member at the time of distribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such Property within the meaning of Section 752 of the Code), and (3) the Member's share of Net Losses and of any separately allocated items of deduction or loss (excluding any loss or deduction allocated to the Member for federal income tax purposes on account of amounts debited from the Member's Capital Account).

3. Distribution of Assets. If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member's allocable share (as determined under Article IX below) of the Net Profits or Net Losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values immediately prior to their distribution.

4. Sale or Exchange of Membership Interest. In the event of a sale or exchange of some or all of a Member's Membership Interest in the Company, the Capital Account of the transferring Member shall become the Capital Account of the Assignee, to the extent it relates to the portion of the Membership Interest transferred.

5. Compliance with Section 704(b) of the Code. The provisions of this Article VIII 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 and XIV and the Capital Contributions made pursuant to this Article VIII. Notwithstanding anything herein to the contrary, this Operating Agreement shall not be construed as creating a deficit restoration obligation or otherwise personally obligating any Member to make a Capital Contribution in excess of the initial Capital Contribution.

6. Application of Capital Contributions. The Managing Member shall apply the Capital Contributions made by the Members as follows:

6.1 An amount equal to the Organization Expenses;

6.2 Substantially all of the remainder of the Capital Contributions shall be used for the purposes described in Article III; and

6.3 Any amount remaining after the above-described applications, as determined by the Managing Member, will be deposited in a bank or money market account maintained by the Managing Member or invested in United States Government securities and short-term interest-bearing instruments in the name of and for the benefit of the Company and used to pay Company expenses.

and then to

ARTICLE IX ALLOCATIONS AND DISTRIBUTIONS

1. Allocations.

1.1 After making any allocations required by Subsection 2, 3 and 4 of this Article IX, Net Profits and Net Losses shall be 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.

5. Distributions.

5.1 The undistributed Net Profits allocated to a Member's Capital Account shall constitute an additional Capital Contribution by it to the Company. No other distributions shall be made by the Company to the Members, except as otherwise provided in Articles XII and XIV hereof or as determined by the Managing Member in its sole discretion.

and finally to

ARTICLE XIV

DISSOLUTION, LIQUIDATION AND TERMINATION

1. Dissolution.

1.1 The Company shall be dissolved, liquidated and its affairs wound up, upon the happening of any of the following events (Dissolution Events):

(i) the withdrawal, removal, bankruptcy or dissolution of the sole Managing Member unless (a) a substitute Managing Member is designated by the Managing Member or by the stockholders of the Managing Member, as the case may be, as permitted under this Agreement, or (b) if no such designation is made or if the Managing Member is removed pursuant to Article VII Section 7, and the business of the Company is continued with the consent of the remaining members whose combined Sharing Ratios represent at least seventy-five percent (75%) of the Sharing Ratios of all Members within 90 days after such withdrawal, removal, dissolution or bankruptcy, as the case may be; and if the Members designate a substitute Managing Member in writing by a vote as set forth in Article VII and such designee consents to become a substituted Managing Member and satisfies the requirement of Article XIII;

(ii) an election by the Managing Member in its sole discretion, or if there is more than one Managing Member, by the unanimous agreement of the Managing Members to terminate the Company; or

(iii) a termination required by operation of law.

1.2 Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the Company has wound up its business and affairs, the Certificate of Formation of the Company has been cancelled and the assets of the Company have been distributed as provided herein.

2. Liquidation.

2.1 Upon dissolution of the Company, the Managing Member, or liquidating trustee if one is appointed, shall:

(i) wind up the affairs of the Company and subject to the provisions of Section 2.2, liquidate such of the Company assets as it considers appropriate, determining in its discretion the time, manner and terms of any sale or other disposition thereof;

(ii) apply and distribute the assets to the payment of all taxes, debts and other obligations and liabilities of the Company to creditors, including the Managing Member for fees owed to it and to other Members who are creditors, and the necessary expenses of liquidation, provided, however, that all debts, obligations and other liabilities of the Company as to which personal liability exists with respect to any Member shall be satisfied, or a reverse shall be established therefore, prior to the satisfaction of any debt, obligation or other liability of the Company as to which no such personal liability exists; and, provided, further, that where a contingent debt, obligation or liability exists, a reserve, in such amount as the Managing Member deems responsible and appropriate, shall be established to satisfy such contingent debt, obligation or liability, which reserve shall be distributed as provided in this Section 2.1 only upon the termination of such contingency; and

(iii) apply and distribute the remaining proceeds to Members in accordance with their positive Capital Account balances taking into account all Capital Account adjustments for the Company's taxable year in which the dissolution occurs. Such liquidation proceeds shall be paid within 60 days of the end of the Company's taxable year or, if later, within 90 days after the date of liquidation, but in no event prior to 30 days after the receipt of final audited financial statements.

2.2 Notwithstanding the provisions of Section 2.1 above, if, on dissolution of the Company, the Managing Member or the liquidating trustee shall determine that an immediate sale or part or all of the Company's assets would cause undue loss to the Company, the Managing Member or the liquidating trustee may, in order to avoid such losses, either:

(i) defer the liquidation of, and withhold from distribution for a reasonable time, any assets of the Company except those necessary to satisfy debts and liabilities of the Company;

(ii) distribute to the Members, in lieu of cash, as tenants in common and in accordance with the provisions of Section 2.1 above, undivided interests in any Company assets and liquidate only such assets as are necessary in order to pay the debts and liabilities of the Company; and

(iii) distribute to the Members, in lieu of cash and in accordance with the provisions of Section 2.1 above, Company assets and liquidate only such assets as are necessary in order to pay the debts and liabilities of the Company (for this purpose a distribution of property other than cash shall be treated as a distribution in cash of an amount equal to the air market value of the property (net

of any liability subject to which the property is distributed) as of the date of distribution).

2.3 When the Managing Member or liquidating trustee has complied with the foregoing, the Members shall execute, acknowledge and cause to be filed an instrument evidencing the cancellation of the Certificate of Formation, after which the Company will be formally wound up.

ARTICLE XV

AMENDMENT

1. **Operating Agreement May Be Modified.** This Operating Agreement may be modified as provided in this Article XV (as the same may from time to time be amended). No Member or Managing Member shall have any vested rights in this Operating Agreement which may not be modified through an amendment to this Operating Agreement except with respect to the rights and obligations that shall have accrued with respect to any Member by reason of his withdrawal from the Company.

2. **Amendment or Modification of Operating Agreement.** This Operating Agreement may be amended or modified from time to time by a written instrument adopted by the Managing Member and executed by Members constituting at least two-thirds (2/3) of the Sharing Ratios of all Members ("Required Consent"). Notwithstanding the foregoing, and so long as an amendment does not negatively and materially impact a Member's Membership Economic Interest, the Managing Member may amend this Operating Agreement without Required Consent.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

1. **Entire Agreement.** This operating Agreement represents the entire agreement among all the Members and between the Members and the Company.

TERMS OF THE LLC AGREEMENT

The following is a description of certain of the provisions governing the Company, which are set forth in the LLC Agreement as they are expected to be in effect as of April 1, 2004, after certain proposed amendments currently pending before the Members are adopted. The description of the terms of the LLC Agreement is qualified in its entirety by reference to the form of such LLC Agreement attached hereto as Exhibit A. Capitalized terms used in this section but not defined in this Memorandum have the meanings given to them in the LLC Agreement. Other provisions of the LLC Agreement may be important to you and are not described below. Accordingly, you are encouraged to read the LLC Agreement in its entirety before subscribing.

Management and Control

The Managing Member has exclusive authority to control the management of the day-to-day business operations and all other aspects of the Company, other than certain events which are subject to approval of a specified percentage in interest of Members as provided in the LLC Agreement. The Managing Member has the right to employ Managers, attorneys, accountants and other personnel. The Managing Member may own, operate and invest in other interests and business ventures.

Liability of Managing Member

The doing of any act or the failure to do any act by the Managing Member, the effect of which may cause or result in loss, liability, damage or expense to the Company or its Members, shall not subject the Managing Member, or its officers, directors, shareholders, employees or affiliates to any liability to the Company or to the Members, except that the Managing Member may be so liable if it is grossly negligent or engages in reckless or intentional misconduct or a knowing violation of law.

Indemnification

See “Risk Factors—Indemnification of the Managing Member.”

Liability of Members

As a Member, you should not generally be held liable for obligations of the Series in which you participate in excess of your capital contribution(s). In addition, the LLC Agreement provides that the assets and liabilities of each Series will be segregated from the assets and liabilities of all other Series. All capital contributions are discretionary. You may, however, be liable (i) for such portion, if any, of a distribution of capital which is in violation of applicable New York law and which is required to be returned to the Company pursuant to such Act, and (ii) for any funds or property of a Series wrongfully distributed to you.

Allocation of Profits and Losses

Net profits and net losses generally are allocated for financial and tax purposes to your Capital Accounts in the proportion that your Capital Account bears to all other Capital Accounts of the Series in which you participate on the last day of each applicable accounting period. Your Capital Account balance is equal to your proportionate share of the Net Worth of the Company. The Managing Member is allocated 1% of each year's net profits, without regard to the net profits or net losses for any other year.

EXHIBIT 2

ALLOCATION SCHEDULE OF \$51 MILLION AVAILABLE FOR
DISTRIBUTION UNDER BOTH THE NET EQUITY (CICO) AND
VALUATION METHODS

Explanation of Allocation Schedule

The allocation Schedule details for each investor his share of the \$51,524,872 currently available for distribution computed under the Net Equity method (CICO) and the Valuation method, the difference between what they would receive under each method, with an indication of under which method the investor does better and the percentage increase or decrease. The Schedule was prepared by Beacon's internal accountant. The Schedule also reflects those investors who were net winners having taken out more than their capital investment and who, accordingly, do not share in distributions under the CICO method. These investors are marked with a "W" in the Schedule and would nevertheless continue to receive distributions using the Valuation method because their historical Valuation percentage, bearing no relationship to the current situation, would be applied to the distributable amount.

On the fifth page of the Schedule my Roth IRA's share of the distributable amount under each method is reflected on the line for investor 315. The Schedule shows that my Roth IRA will receive \$26,877 less if the Valuation method is used. Since this is a zero sum game, if the Valuation method is used, my Roth IRA will always be short that potential capital recovery. The \$26,877 will go to investors whose historical Valuation method percentages are higher and will allow them to receive more than their proportionate share of the recovery based upon their remaining capital investment. Effectively, if the Valuation method is used, these investors will have appropriated my Roth IRA's capital investment by preventing my Roth IRA from recovering its proportionate share of Beacon's recovered capital investment.

The last page of the Schedule shows that of the 329 total Beacon investors 22 are net winners and a relative of a defendant in the Class Action Settlement does not share in recoveries. It also shows that there are 212 other investors besides my Roth IRA or 67 percent of the investors whose capital recoveries are being inappropriately permanently shifted to 115 investors as profit to them, if the Valuation method is used.

BEACON ASSOCIATES PENDING MADOFF TRUSTEE DISTRIBUTION
NET EQUITY (POST 2010 Dist.) VS. VALUATION

NET EQUITY BALANCE (post 2010 Distribution)			VALUATION (Using Dec 31, 2013 UNAUDITED BALANCES)			Difference Net Equity vs. Revised Valuation		B e a c o n A s s o c i a t e s
Reflects Net \$Amt available to distribute (after distribution of Mngt Fee Settlement)			W/out Def. Simon			% Over Net Equity Distribution		
\$	51,524,872		\$	51,524,872		\$	0%	
51,524,872			51,524,872			0		
	103,934	0.20% **		55,333	0.11%		48,401 47% NE	
	61,968	0.12% **		34,072	0.07%		27,896 45% NE	
	60,351	0.12%		69,224	0.17% **	(28,373)	32% V	
	77,091	0.15% **		56,320	0.11%		20,771 27% NE	
	77,091	0.15% **		96,316	0.11%		20,775 27% NE	
	77,091	0.15% **		56,320	0.11%		20,771 27% NE	
	118,901	0.23%		138,782	0.27% **	(19,881)	14% V	
	133,863	0.26%		152,653	0.30% **	(18,790)	12% V	
	2,629,125	5.10% **		65,002	0.13%	2,564,123	98% NE	
W				56,685	0.11% **	(56,685)	V	
	42,498	0.08% **		28,167	0.05%	14,330	34% NE	
	50,875	0.10%		55,881	0.11% **	(5,007)	9% V	
	103,551	0.20% **		55,803	0.11%	47,747	46% NE	
	42,059	0.08%		60,249	0.12% **	(18,190)	30% V	
	206,471	0.40% **		113,843	0.22%	92,628	45% NE	
	43,018	0.08% **		40,142	0.08%	2,876	7% NE	
	89,878	0.17% **		83,156	0.16%	6,722	7% NE	
W				13,238	0.03% **	(13,238)	V	
	43,047	0.08%		45,281	0.09% **	(2,234)	5% V	
	25,813	0.05%		33,478	0.06% **	(7,664)	23% V	
	89,128	0.17% **		58,647	0.11%	30,481	34% NE	
	60,280	0.12% **		50,383	0.10%	9,897	16% NE	
	182,502	0.35%		805,135	1.56% **	(622,633)	77% V	
	119,404	0.23% **		103,078	0.20%	16,326	14% NE	
	132,006	0.26% **		104,294	0.20%	27,712	21% NE	
	90,164	0.17%		101,280	0.20% **	(11,116)	11% V	
	115,756	0.22% **		84,263	0.16%	31,492	27% NE	
	66,296	0.13% **		64,547	0.13%	1,748	3% NE	
	1,762,109	3.42%		2,045,352	3.97% **	(283,243)	14% V	
	105,446	0.20% **		104,532	0.20%	914	1% NE	
	74,539	0.14% **		44,102	0.09%	30,437	41% NE	
	54,589	0.11% **		48,579	0.09%	6,010	11% NE	
	41,901	0.08%		50,884	0.10% **	(8,984)	18% V	
	41,064	0.08% **		26,493	0.05%	14,571	35% NE	
	41,142	0.08% **		23,039	0.04%	18,103	44% NE	
	84,257	0.16% **		68,220	0.13%	16,037	19% NE	
W				92,785	0.18% **	(92,785)	V	
	6,830	0.01%		22,349	0.04% **	(15,519)	69% V	
	142,105	0.28% **		84,484	0.16%	57,621	41% NE	
	45,946	0.09% **		39,615	0.08%	6,331	14% NE	
	337,123	0.65% **		266,553	0.52%	70,570	21% NE	
	85,326	0.17% **		66,121	0.13%	19,205	23% NE	
	37,722	0.07% **		20,440	0.04%	17,282	46% NE	
	217,394	0.42% **		117,153	0.23%	100,241	46% NE	
	19,108	0.04%		51,569	0.10% **	(32,461)	63% V	
	44,288	0.09%		49,337	0.10% **	(5,049)	10% V	
	1,873,992	3.64% **		1,677,353	3.26%	196,439	10% NE	
	395,698	0.77% **		255,465	0.50%	140,233	35% NE	
	2,519,575	4.89% **		1,803,895	3.50%	715,680	28% NE	
	1,410,429	2.74%		1,997,297	3.88% **	(586,869)	29% V	
	180,022	0.35% **		165,870	0.32%	14,152	8% NE	
	562,194	1.09% **		454,112	0.88%	108,083	19% NE	
	1,634,838	3.17%		1,983,758	3.85% **	(348,920)	18% V	
	102,815	0.20% **		57,768	0.11%	45,047	44% NE	
	59,771	0.12%		64,378	0.12% **	(4,607)	7% V	
	99,995	0.12%		84,766	0.16% **	(24,771)	29% V	
	124,643	0.24% **		105,774	0.21%	18,870	15% NE	
	107,706	0.21% **		82,471	0.16%	25,236	23% NE	
	72,821	0.14% **		54,323	0.11%	18,499	25% NE	
	36,249	0.07% **		19,699	0.04%	16,550	46% NE	
	5,178	0.01% **		2,815	0.01%	2,363	46% NE	
W				1,501,476	2.91% **	(1,501,476)	V	
	43,292	0.08%		52,572	0.10% **	(9,281)	18% V	
	511,651	0.99% **		449,478	0.87%	62,172	12% NE	
	51,408	0.10%		54,833	0.11% **	(3,425)	6% V	

BEACON ASSOCIATES PENDING MADOFF TRUSTEE DISTRIBUTION
NET EQUITY (POST 2010 Dist.) VS. VALUATION

NET EQUITY BALANCE (post 2010 Distribution)			VALUATION (Using Dec 31, 2013 UNAUDITED BALANCES)			Difference Net Equity vs. Revised Valuation		B u n d l e d
Reflects Net \$Amt available to distribute (after distribution of Mngt Fee Settlmnt)			W/out Def. Simon			% Over Net Equity Distribution		
\$	51,524,872		\$	51,524,872		\$	0%	
	51,524,872			51,524,872			0	
	166,341	0.32%		172,236	0.33% **	(5,895)	3%	V
	104,050	0.20% **		55,301	0.11%	48,749	47%	NE
	103,235	0.20% **		56,944	0.11%	46,291	45%	NE
	89,039	0.17% **		84,849	0.16%	4,190	5%	NE
	59,068	0.11%		117,209	0.23% **	(58,141)	50%	V
	103,758	0.20% **		55,876	0.11%	47,882	46%	NE
	102,163	0.20% **		59,010	0.11%	43,153	42%	NE
	46,592	0.09% **		38,309	0.07%	8,283	18%	NE
	49,111	0.10% **		33,365	0.06%	15,746	32%	NE
	415,737	0.81% **		230,360	0.45%	185,377	45%	NE
W				231,768	0.45% **	(231,768)		V
	47,024	0.09% **		42,701	0.08%	4,323	9%	NE
	102,163	0.20% **		59,012	0.11%	43,151	42%	NE
	166,649	0.32% **		155,774	0.30%	10,874	7%	NE
	58,806	0.11% **		40,326	0.08%	18,480	31%	NE
	65,990	0.13% **		52,152	0.10%	13,838	21%	NE
	82,267	0.16% **		61,737	0.12%	20,530	25%	NE
	66,229	0.13% **		40,770	0.08%	25,459	38%	NE
	55,022	0.11% **		47,728	0.09%	7,294	13%	NE
	41,452	0.08% **		22,427	0.04%	19,025	46%	NE
	49,298	0.10% **		32,993	0.06%	16,306	33%	NE
	40,177	0.08%		50,859	0.10% **	(10,782)	21%	V
	93,971	0.18% **		75,111	0.15%	18,860	20%	NE
	467,119	0.91%		640,984	1.24% **	(173,864)	27%	V
	1,491,022	2.89%		2,214,420	4.30% **	(723,399)	33%	V
	103,934	0.20% **		55,533	0.11%	48,401	47%	NE
	113,495	0.22% **		101,704	0.20%	11,791	10%	NE
	73,965	0.14% **		62,463	0.12%	11,501	16%	NE
	247,437	0.48% **		163,289	0.32%	84,149	34%	NE
	59,158	0.11% **		39,596	0.08%	19,561	33%	NE
	81,403	0.16% **		47,842	0.09%	33,560	41%	NE
	201,695	0.39% **		123,234	0.24%	78,460	39%	NE
	167,991	0.33%		255,058	0.50% **	(87,067)	34%	V
	198,455	0.39% **		129,601	0.25%	68,854	35%	NE
	162,129	0.31% **		97,058	0.19%	65,070	40%	NE
	47,806	0.09% **		35,928	0.07%	11,878	25%	NE
	58,453	0.11% **		40,882	0.08%	17,471	30%	NE
	15,698	0.03%		38,747	0.08% **	(23,049)	59%	V
	3,764	0.01%		252,854	0.49% **	(249,091)	99%	V
	71,913	0.14%		85,177	0.17% **	(13,265)	16%	V
	50,876	0.10% **		29,893	0.06%	20,983	41%	NE
	51,905	0.10% **		27,868	0.05%	24,037	46%	NE
	101,834	0.20% **		59,659	0.12%	42,175	41%	NE
	127,119	0.25%		139,926	0.27% **	(12,808)	9%	V
	96,634	0.19% **		69,878	0.14%	26,756	28%	NE
	59,851	0.12% **		38,237	0.07%	21,615	36%	NE
	1,438,647	2.79%		1,470,416	2.85% **	(31,769)	2%	V
	83,717	0.16% **		62,004	0.12%	21,712	26%	NE
	92,562	0.18% **		70,088	0.14%	22,474	24%	NE
W	13,622	0.03%		34,002	0.07% **	(20,380)	60%	V
W				570,296	1.11% **	(570,296)		V
				230,994	0.45% **	(230,994)		V
	59,857	0.12%		64,208	0.12% **	(4,351)	7%	V
	34,117	0.07%		42,042	0.08% **	(7,925)	19%	V
	37,214	0.07% **		25,563	0.05%	11,650	31%	NE
	69,017	0.13% **		46,202	0.09%	22,815	33%	NE
	103,919	0.20% **		66,351	0.13%	35,368	34%	NE
	17,313	0.03%		95,861	0.19% **	(78,547)	82%	V
	103,809	0.20% **		53,772	0.11%	48,038	46%	NE
	116,536	0.23% **		61,944	0.12%	54,592	47%	NE
	127,909	0.25%		202,017	0.39% **	(79,107)	37%	V
	278,943	0.54%		279,742	0.54% **	(798)	0%	V
	34,817	0.07% **		29,268	0.06%	5,549	16%	NE
	33,132	0.06% **		27,868	0.05%	5,264	16%	NE
	45,775	0.09% **		39,915	0.08%	5,860	13%	NE

BEACON ASSOCIATES PENDING MADOFF TRUSTEE DISTRIBUTION
NET EQUITY (POST 2010 Dist.) VS. VALUATION

NET EQUITY BALANCE (post 2010 Distribution)			VALUATION (Using Dec 31, 2013 UNAUDITED BALANCES)			Difference Net Equity vs. Revised Valuation		
Reflects Net \$amt available to distribute (after distribution of Mngt Fee Settlmnt)			W/out Def. Simon			% Over Net Equity Distribution		
\$	51,524,872		\$	51,524,872		\$	0	0%
51,524,872			51,524,872			0		
W				79,044	0.15% **	(79,044)		V
W				95,131	0.18% **	(95,131)		V
	258,582	0.50%		323,283	0.63% **	(64,701)	20%	V
	423,596	0.82%		434,457	0.84% **	(10,860)	2%	V
	116,989	0.23%		94,834	0.18%	22,155	19%	NE
	103,811	0.20% **		55,771	0.11%	48,040	46%	NE
	14,727	0.03%		25,345	0.05% **	(10,618)	42%	V
	22,091	0.04%		38,018	0.07% **	(15,927)	42%	V
	24,809	0.05%		54,981	0.11% **	(30,172)	53%	V
	54,931	0.11%		47,907	0.09%	7,024	13%	NE
	61,849	0.12%		34,308	0.07%	27,541	45%	NE
	1,078,080	2.09%		906,027	1.76%	172,053	16%	NE
W				289,850	0.56% **	(289,850)		V
	124,415	0.24%		80,237	0.16%	44,178	36%	NE
	96,536	0.19%		70,070	0.14%	26,467	27%	NE
	98,073	0.19%		54,055	0.10%	44,018	45%	NE
	122,741	0.24%		70,536	0.14%	52,205	43%	NE
	1,131,490	2.20%		758,102	1.47%	373,388	33%	NE
	83,068	0.16%		44,572	0.09%	38,497	46%	NE
	127,570	0.25%		100,023	0.19%	27,547	22%	NE
	181,961	0.35%		162,020	0.31%	19,941	11%	NE
	55,309	0.11%		60,194	0.12%	(4,885)	8%	V
	112,731	0.22%		105,803	0.21%	6,927	6%	NE
	29,080	0.06%		72,770	0.14%	(43,691)	80%	V
W				258,096	0.50%	(258,096)		V
	2,586	0.01%		146,989	0.29%	(144,403)	98%	V
	92,138	0.18%		76,117	0.15%	16,021	17%	NE
	290,285	0.56%		156,987	0.30%	133,298	46%	NE
	83,240	0.16%		44,232	0.09%	39,007	47%	NE
W				60,134	0.12%	(60,134)		V
W				60,132	0.12%	(60,132)		V
W				60,205	0.12%	(60,205)		V
	61,869	0.12%		34,271	0.07%	27,598	45%	NE
	37,646	0.07%		50,734	0.10%	(13,089)	26%	V
	94,587	0.18%		77,062	0.15%	17,525	19%	NE
	782,180	1.52%		1,061,102	2.06%	(278,921)	26%	V
	42,636	0.08%		51,776	0.10%	(9,140)	18%	V
	99,914	0.19%		63,431	0.12%	36,484	37%	NE
	80,828	0.16%		43,777	0.08%	37,051	46%	NE
	41,573	0.08%		22,226	0.04%	19,347	47%	NE
	51,182	0.10%		29,326	0.06%	21,856	43%	NE
	186,228	0.36%		101,659	0.20%	84,569	45%	NE
	115,779	0.22%		84,261	0.16%	31,518	27%	NE
	70,359	0.14%		43,569	0.08%	26,790	38%	NE
	49,957	0.10%		31,694	0.06%	18,264	37%	NE
	239,321	0.46%		568,988	1.10%	(329,667)	58%	V
	45,175	0.09%		41,114	0.08%	4,061	9%	NE
W				110,347	0.21%	(110,347)		V
	34,438	0.07%		36,252	0.07%	(1,814)	5%	V
	83,572	0.16%		95,591	0.19%	(12,019)	13%	V
	27,003	0.05%		35,277	0.07%	(8,274)	23%	V
	1,404,387	2.73%		1,267,329	2.46%	137,059	10%	NE
	83,205	0.16%		89,229	0.17%	(6,024)	7%	V
	63,548	0.12%		43,998	0.09%	19,550	31%	NE
	188,726	0.37%		148,760	0.29%	39,966	21%	NE
	1,156	0.00%		140,379	0.27%	(139,224)	99%	V
D			D			D		
	91,834	0.18%		79,312	0.15%	12,522	14%	NE
	46,985	0.09%		37,538	0.07%	9,447	20%	NE
	831,113	1.61%		445,209	0.86%	385,905	46%	NE
	49,605	0.10%		50,577	0.10%	(971)	2%	V
	40,826	0.08%		44,450	0.09%	(3,624)	8%	V
	41,320	0.08%		35,681	0.07%	5,639	14%	NE
	12,630	0.02%		27,109	0.05%	(14,479)	53%	V
	68,181	0.13%		73,890	0.14%	(5,649)	8%	V

BEACON ASSOCIATES PENDING MADOFF TRUSTEE DISTRIBUTION
NET EQUITY (POST 2010 Dist.) VS. VALUATION

NET EQUITY BALANCE (post 2010 Distribution)			VALUATION (Using Dec 31, 2013 UNAUDITED BALANCES)			Difference Net Equity vs. Revised Valuation		B e n e f i c i t y a u d i t e d
Reflects Net \$Amt available to distribute (after distribution of Mngt Fee Settlmnt)			W/out Def. Simon		% Over Net Equity Distribution			
\$	51,524,872		\$	51,524,872	\$	0%		
51,524,872			51,524,872		0			
W								
	62,175	0.12% **		27,441	0.05% **	(27,441)	V	
	35,615	0.07%		33,669	0.07%	28,506	46% NE	
	50,256	0.10% **		181,785	0.37% **	(156,170)	81% V	
	69,729	0.14%		31,108	0.06%	19,149	38% NE	
	51,813	0.10%		84,678	0.16% **	(14,949)	18% V	
	46,809	0.09%		28,047	0.05%	23,766	46% NE	
	57,014	0.11%		25,932	0.05%	20,878	45% NE	
	42,621	0.08%		31,596	0.06%	25,419	45% NE	
	663,323	1.29%		46,116	0.09%	(3,495)	8% V	
	246,445	0.48%		723,043	1.40%	(59,720)	8% V	
	207,671	0.40%		295,161	0.57%	(48,716)	17% V	
	50,847	0.10%		111,488	0.22%	96,183	46% NE	
	82,517	0.16%		55,933	0.11%	(5,086)	9% V	
	41,449	0.08%		63,843	0.12%	18,674	23% NE	
	76,312	0.13%		48,421	0.09%	(6,972)	14% V	
	107,735	0.21%		57,891	0.11%	18,421	24% NE	
	215,467	0.42%		63,650	0.12%	44,085	41% NE	
	16,949	0.03%		134,715	0.26%	80,752	37% NE	
	47,278	0.09%		18,618	0.04%	(1,669)	9% V	
	64,940	0.13%		37,000	0.07%	10,278	22% NE	
	27,766	0.05%		59,414	0.12%	5,527	9% NE	
	67,505	0.13%		23,343	0.05%	4,424	16% NE	
	69,269	0.13%		64,249	0.12%	3,256	5% NE	
	63,233	0.12%		117,956	0.23%	(48,687)	41% V	
	50,599	0.10%		65,867	0.13%	(2,134)	3% V	
	46,790	0.09%		27,865	0.05%	22,733	45% NE	
	51,180	0.10%		37,954	0.07%	8,836	19% NE	
	165,514	0.32%		29,363	0.06%	21,816	43% NE	
	76,263	0.15%		96,753	0.19%	68,761	42% NE	
	67,392	0.13%		60,603	0.12%	15,659	21% NE	
	46,662	0.09%		155,339	0.30%	(88,147)	57% V	
W				38,203	0.07%	8,460	18% NE	
	198,761	0.39%		497,193	0.96%	(497,193)	V	
	192,003	0.37%		129,160	0.25%	69,601	35% NE	
	190,828	0.37%		142,453	0.28%	49,550	26% NE	
	343,640	0.67%		144,774	0.28%	46,054	24% NE	
	214,617	0.42%		579,233	1.12%	(235,593)	41% V	
	46,682	0.09%		358,084	0.69%	(143,467)	40% V	
	29,969	0.06%		38,162	0.07%	8,520	18% NE	
	17,801	0.03%		45,038	0.09%	(15,069)	33% V	
	35,133	0.07%		17,002	0.03%	799	4% NE	
	501,570	0.97%		92,141	0.18%	(57,008)	62% V	
	392,777	0.76%		573,793	1.11%	(72,222)	13% V	
	55,433	0.11%		313,635	0.62%	73,141	19% NE	
	234,708	0.46%		46,958	0.08%	8,475	15% NE	
	47,901	0.09%		258,037	0.50%	(23,329)	9% V	
	9,525	0.02%		87,569	0.17%	(39,668)	45% V	
W				8,311	0.02%	1,214	13% NE	
	706	0.00%		751	0.00%	(751)	V	
	33,051	0.06%		14,210	0.03%	(13,504)	95% V	
	7,226	0.01%		23,407	0.05%	9,644	29% NE	
	13,350	0.03%		11,981	0.02%	(4,755)	40% V	
	342,426	0.66%		12,746	0.02%	604	5% NE	
	131,444	0.26%		604,997	1.17%	(262,570)	43% V	
	46,983	0.09%		105,539	0.20%	25,905	20% NE	
	47,675	0.09%		37,572	0.07%	9,411	20% NE	
	46,983	0.09%		36,217	0.07%	11,458	24% NE	
	959,763	1.86%		37,574	0.07%	9,409	20% NE	
	8,908	0.02%		517,667	1.00%	442,096	46% NE	
	44,599	0.09%		52,665	0.10%	(43,757)	83% V	
	74,691	0.14%		81,324	0.16%	(36,725)	45% V	
	69,950	0.14%		61,094	0.12%	13,597	18% NE	
	73,700	0.14%		106,334	0.21%	(36,383)	34% V	
				63,039	0.12%	10,660	14% NE	

BEACON ASSOCIATES PENDING MADOFF TRUSTEE DISTRIBUTION
NET EQUITY (POST 2010 Dist.) VS. VALUATION

NET EQUITY BALANCE (post 2010 Distribution)				VALUATION (Using Dec 31, 2013 UNAUDITED BALANCES)				Difference Net Equity vs. Revised Valuation		B u n c i e t h o d
Reflects Net \$Amt available to distribute (after distribution of Mngt Fee Settlement)				W/out Def.				% Over Net Equity Distribution		
\$	51,524,872			\$	51,524,872	Simon	\$	-	0%	
	51,524,872				51,524,872			0		
260	BII	14,455	0.03%	23,585	0.05% **		(9,130)	39%	V	
261	BII	38,140	0.07% **	25,007	0.06%		9,133	24%	NE	
262	BII	63,368	0.12% **	51,923	0.10%		11,447	18%	NE	
263	BII	71,996	0.14% **	40,383	0.08%		31,613	44%	NE	
264	BII	203,961	0.40% **	157,462	0.31%		46,499	23%	NE	
265	BII	277,060	0.54% **	209,210	0.41%		67,850	24%	NE	
266	BII	175,257	0.34% **	149,398	0.29%		25,860	15%	NE	
267	BII	W		402,399	0.78% **		(402,399)		V	
268	BII	114,239	0.22% **	113,339	0.22%		901	1%	NE	
269	BII	66,470	0.13% **	51,299	0.10%		15,172	23%	NE	
270	BII	220,451	0.43% **	146,316	0.28%		74,136	34%	NE	
271	BII	1,037,546	2.01% **	559,751	1.09%		477,795	46%	NE	
272	BII	46,662	0.09% **	38,205	0.07%		8,458	18%	NE	
273	BII	63,226	0.12% **	52,436	0.10%		10,790	17%	NE	
274	BII	47,060	0.09% **	37,423	0.07%		9,638	20%	NE	
275	BII	57,069	0.11% **	31,504	0.06%		25,565	45%	NE	
276	BII	75,372	0.15% **	41,549	0.08%		33,823	45%	NE	
277	BII	90,377	0.18% **	56,290	0.11%		34,087	38%	NE	
278	BII	124,473	0.24%	223,293	0.43% **		(98,820)	44%	V	
279	BII	62,054	0.12% **	54,784	0.11%		7,269	12%	NE	
280	BII	55,569	0.11% **	31,085	0.06%		24,484	44%	NE	
281	BII	71,745	0.14% **	53,933	0.10%		17,812	25%	NE	
282	BII	87,500	0.17% **	66,067	0.13%		21,434	24%	NE	
283	BII	70,133	0.14% **	51,333	0.10%		18,800	27%	NE	
284	BII	50,874	0.10% **	29,924	0.06%		20,950	41%	NE	
285	BII	126,694	0.25% **	123,215	0.24%		3,479	3%	NE	
286	BII	97,491	0.19% **	68,299	0.13%		29,193	30%	NE	
287	BII	33,082	0.06% **	27,056	0.05%		6,026	18%	NE	
288	BII	103,277	0.20% **	56,872	0.11%		46,405	45%	NE	
289	BII	93,065	0.18% **	76,967	0.15%		16,098	17%	NE	
290	BII	66,962	0.13% **	50,293	0.10%		16,668	25%	NE	
291	BII	47,773	0.09% **	30,861	0.06%		16,912	35%	NE	
292	BII	21,967	0.04%	26,960	0.05% **		(4,994)	19%	V	
293	BII	47,675	0.09% **	36,215	0.07%		11,460	24%	NE	
294	BII	143,738	0.28% **	133,375	0.26%		10,363	7%	NE	
295	BII	387,765	0.75% **	277,521	0.54%		110,244	28%	NE	
296	BII	83,517	0.16%	85,391	0.17% **		(1,874)	2%	V	
297	BII	50,833	0.10%	56,019	0.11% **		(5,185)	9%	V	
298	BII	282,369	0.55% **	206,346	0.40%		76,023	27%	NE	
299	BII	182,459	0.35% **	171,643	0.33%		10,816	6%	NE	
300	BII	591,370	1.15% **	397,353	0.77%		194,216	33%	NE	
301	BII	59,765	0.12% **	52,820	0.10%		6,945	12%	NE	
302	BII	49,539	0.10%	61,199	0.12% **		(11,660)	19%	V	
303	BII	20,008	0.04% **	15,247	0.03%		4,761	24%	NE	
304	BII	60,024	0.12% **	45,740	0.09%		14,284	24%	NE	
305	BII	86,638	0.17%	89,653	0.17% **		(3,015)	3%	V	
306	BII	49,763	0.10% **	32,107	0.06%		17,656	35%	NE	
307	BII	44,807	0.09% **	41,855	0.08%		2,953	7%	NE	
308	BII	50,909	0.10% **	42,893	0.08%		8,016	16%	NE	
309	BII	3,257	0.01%	21,122	0.04% **		(17,865)	85%	V	
310	BII	32,018	0.06%	38,402	0.07% **		(6,383)	17%	V	
311	BII	W		110,020	0.21% **		(110,020)		V	
312	BII	77,052	0.15%	129,321	0.25% **		(52,269)	40%	V	
313	BII	460,490	0.89% **	394,545	0.77%		65,944	14%	NE	
314	BII	63,850	0.12% **	56,460	0.11%		7,390	12%	NE	
315	Howard Siegel Roth IAA, National Financial Services	286,148	0.56% **	259,271	0.50%		26,877	9%	NE	
316	BII	67,814	0.13% **	46,865	0.09%		20,949	31%	NE	
317	BII	63,544	0.12% **	57,012	0.11%		6,532	10%	NE	
318	BII	47,675	0.09% **	36,215	0.07%		11,460	24%	NE	
319	BII	27,386	0.05% **	24,108	0.05%		3,278	12%	NE	
320	BII	47,060	0.09% **	37,423	0.07%		9,638	20%	NE	
321	BII	41,119	0.08% **	23,142	0.04%		17,977	44%	NE	
322	BII	W		70,567	0.14% **		(70,567)		V	
323	BII	122,685	0.24% **	110,176	0.21%		12,509	10%	NE	
324	BII	50,106	0.10% **	37,454	0.07%		12,652	25%	NE	

BEACON ASSOCIATES PENDING MADOFF TRUSTEE DISTRIBUTION
NET EQUITY (POST 2010 Dist.) VS. VALUATION

NET EQUITY BALANCE (post 2010 Distribution)			
Reflects Net \$amt available to distribute (after distribution of Mngt Fee Settlement)			
\$	51,524,872		
	51,524,872		

VALUATION (Using Dec 31, 2013 UNAUDITED BALANCES)			
	W/out Def.		Difference Net Equity vs. Revised Valuation
\$	51,524,872	Simon	\$ -
	51,524,872		0

B
c
n
e
f
M
i
e
c
t
i
h
a
u
d

325	BII	W		
326	BII		46,242	0.09%
327	BII		46,489	0.09% **
328	BII		46,489	0.09% **
329	BII		200,474	0.39% **

82,865	0.16% **	(82,865)	V
91,097	0.18% **	(44,855)	49% V
38,642	0.07%	7,948	17% NE
38,544	0.07%	7,946	17% NE
141,357	0.27%	59,117	29% NE

TOTAL For Trustee Distribution	51,524,872	100%	213
TOTAL ELIGIBLE ACTIVE INVESTORS	306		
W EXCLUDES NET WINNERS	22		
D EXCLUDES: Defendants (Sandra Simon waived Trustee allocation)	1		
	329		
TOTAL NET EQUITY BENEFICIAL \$AMOUNT	\$ 34,891,313		213
% OF Total Method who Benefit	67.7%		69.6%
TOTAL VALUATION BENEFICIAL \$AMOUNT			
% OF Total Method who Benefit			

51,524,872	100%	115	0	328
328				
0				
1				1
329				329
\$ 27,991,729		115		115
54.3%		35.1%		

EXHIBIT 3

SCHEDULE OF RECOVERY SHIFT AT
VARIOUS LEVELS OF RECOVERY

Schedule of Recovery Shift at Various Levels

The Schedule of Recovery Shift was prepared by Beacon's internal accountant and shows for the distribution amount currently available and for two additional levels of recovery the amount of capital recovery that will be permanently shifted from 213 investors to the other 115 investors if the Valuation method is used. So if Beacon was fortunate enough to recover its entire claim against the Bankruptcy Estate of \$159 million, \$35,241,370 would be shifted as profit to the 115 investors from the 213 investors and the 213 investors would be short that amount of capital recovery if the Valuation method is used. If the CICO method is used all investors will receive 100 percent of their unrecovered lost capital investment in Madoff.

Gross Distribution	Amount of Shift
\$51M	\$11,358,710
\$100M	\$22,044,053
\$159M	\$35,241,370