

## **Exhibit 2**

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# **BEACON ASSOCIATES LLC I**

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**Amended and Restated  
Operating Agreement**

**(a New York Limited Liability Company)**

**Dated: As of April 1, 2004**

**OPERATING AGREEMENT  
OF  
BEACON ASSOCIATES LLC I**

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AMENDED AND RESTATED  
OPERATING AGREEMENT  
OF  
BEACON ASSOCIATES LLC I

This Amended and Restated Operating Agreement of BEACON ASSOCIATES LLC I, a limited liability company organized pursuant to the Law, is entered into and shall be effective as of April 1, 2004, by and among the Company and the persons executing this Operating Agreement as Members.

WITNESSETH:

WHEREAS, the Company received the Required Consent to amend certain provisions of this Operating Agreement and such Consent was effective as of the date hereof; and

WHEREAS, all of the parties hereto desire to continue the Company; and

WHEREAS, all of the parties hereto desire to amend and restate in full this Operating Agreement;

NOW, THEREFORE, the parties hereto hereby agree, notwithstanding the terms of any prior agreement, instrument or document constituting or relating to the Company, that, as of the date hereof, the Company shall be governed by, and operated pursuant to, the terms and provisions of this Second Amended and Restated Operating Agreement as hereinafter set forth.

ARTICLE I

DEFINITIONS

For purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

1. **Additional Member.** A Member other than an initial Member or a Substitute Member who has acquired a Membership Interest from the Company.
2. **Articles.** The Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Secretary of State of the State of New York.
3. **Assignee.** A transferee of a Membership Economic Interest who has not been admitted as a Substituted Member.
4. **Bankrupt Member.** A Member who: (1) has become the subject of an Order for Relief under the United States Bankruptcy Code; or (2) has initiated, either in an original

Proceeding or by way of answer in any state insolvency or receivership proceeding, an action for liquidation, arrangement, composition, readjustment, dissolution, or similar relief.

5. **Business Day.** Any day other than Saturday, Sunday or any legal holiday observed in the State of New York.

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 on Exhibit A hereto.

8. **Code.** The Internal Revenue Code of 1986, as amended from time to time.

9. **Company.** BEACON ASSOCIATES LLC I, a limited liability company formed under the Law, and any successor limited liability company.

10. **Company Liability.** Any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

11. **Company Minimum Gain.** An amount determined by first computing for each Company Nonrecourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding Taxable Year with the Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with Section 704 of the Code and the Regulations issued thereunder, as the same may be issued and interpreted from time to time. A Member's share of Company Minimum Gain at the end of any Taxable Year equals: the sum of Nonrecourse Deductions allocated to that Member (and to that Member's predecessors in interest) up to that time and the distributions made to that Member (and to that Member's predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable to an increase in Company Minimum Gain minus the sum of that Member's (and that Member's predecessors in interest) aggregate share of the net decreases in Company Minimum Gain plus their aggregate share of decreases resulting from revaluations of Company Property subject to one or more Company Nonrecourse Liabilities.

12. **Company Nonrecourse Liability.** A Company Liability to the extent that no Member or Related Person bears the economic risk of loss (as defined in Section 1.752-2 of the Regulations) with respect to the liability.

13. **Company Property.** Any Property owned by the Company.

14. **Disposition (Dispose).** Any sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation or other transfer, absolute or as security or encumbrance (including dispositions by operation of law).

15. **Dissolution Event.** An event, the occurrence of which will result in the dissolution of the Company under Article XIV unless the Members agree to the contrary as provided herein.

16. **Distribution.** A transfer of Property to a Member on account of a Membership Economic Interest as described in Article IX.

17. **Effective Date.** The date of filing of the Articles of Organization of the Company with the New York Secretary of State.

18. **Fiscal Year.** Fiscal year shall mean, with respect to the Company, the calendar year.

19. **Law.** The New York Limited Liability Company Law and all amendments to the Law.

20. **Majority.** The affirmative vote or consent of Members described as a "Majority" in Article VI hereof.

21. **Management Right.** The right of a Member to participate in the management of the Company, including the rights to information and to consent to or approve actions of the Company.

22. **Managing Member.** Beacon Associates Management Corp. or such other Person who becomes an additional or substitute managing member as provided for herein and who is selected to manage the affairs of the Company under Article VII hereof.

23. **Member.** An initial Member, Special Member, Substituted Member or Additional Member, and, unless the context expressly indicates to the contrary, includes the Managing Member and Assignees.

24. **Member Minimum Gain.** An amount determined by first computing for each Member Nonrecourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Member Minimum Gain is determined by comparing the Member Minimum Gain on the last day of the immediately preceding Taxable Year with the Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Member Minimum Gain and increases and decreases in Member Minimum Gain are intended to be computed in accordance with Section 704 of the Code and the Regulations issued thereunder, as the same may be issued and interpreted from time to time.



25. **Member Nonrecourse Liability.** Any Company Liability to the extent the liability is nonrecourse under New York law, and on which a Member or Related Person bears the economic risk of loss under Section 1.752-2 of the Regulations because, for example, the Member or Related Person is the creditor or a guarantor.

26. **Membership Economic Interest.** The rights of a Member or, in the case of an Assignee, the rights of the assigning Member in Distributions (liquidating or otherwise) and allocations of the profits, losses, gains, deductions and credits of the Company. A Membership Economic Interest does not include any Management Rights.

27. **Membership Interest.** The complete rights of a Member in the Company constituting the Membership Economic Interest and Management Rights.

28. **Money.** Cash or other legal tender of the United States, or any obligation that is immediately reducible to legal tender without delay or discount. Money shall be considered to have a fair market value equal to its face amount.

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.

31. **Nonrecourse Liabilities.** Nonrecourse Liabilities include Company Nonrecourse Liabilities and Member Nonrecourse Liabilities.

32. **Notice.** Notice shall be in writing. Notice to the Company shall be considered given, when mailed by first class mail, postage prepaid, addressed to the Managing Member in care of the Company at the address of the principal office of the Company as set forth in Article II. Notice to a Member shall be considered given when mailed by first class mail, postage prepaid, addressed to the Member at the address reflected in Exhibit A to this Operating Agreement unless the Member has given the Company a Notice of a different address.

33. **Offering Memorandum.** The Confidential Offering Memorandum of the Company and the exhibits thereto currently used in connection with the offer and sale of Membership Interests, as amended from time to time.

34. **Offsettable Decrease.** Any allocation that causes or increases a deficit in the Member's Capital Account (determined by applying the provisions of Section 1.704-1(b)(2)(ii)(d)) as of the end of the taxable year to which the allocation relates.

35. **Organization.** A Person other than a natural person. Organization includes, without limitation, corporations (both non-profit and other corporations), partnerships (both limited and general), trusts, joint ventures, limited liability companies, limited liability partnerships and unincorporated associations, but the term does not include joint tenancies and tenancies by the entirety.

36. **Organization Expenses.** Those expenses incurred in the organization of the Company and the continued offering of Membership Interests, including the costs of preparation of the Offering Memoranda, this Operating Agreement, solicitation materials and related documents, printing and publication expenses and filing fees.

37. **Person.** An individual, trust, estate, or any incorporated or unincorporated Organization permitted to be a Member of a limited liability company under the laws of the State of New York.

38. **Proceeding.** Any administrative, judicial or other adversary proceeding, including, without limitation, litigation, arbitration, administrative adjudication and mediation and appeal or review of any of the foregoing.

39. **Property.** Any property, real or personal, tangible or intangible, including money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

40. **Regulations.** Except where the context indicates otherwise, the permanent, temporary, proposed, or proposed and temporary regulations of the Department of the Treasury under the Code, as such regulations may be lawfully changed from time to time.

41. **Related Person.** A person having a relationship to a Member that is described in Section 1.752-4(b) of the Regulations.

42. **Resignation.** The act by which a Managing Member ceases to be a Managing Member.

43. **Sharing Ratio.** The share (expressed as a percentage) of each Member as set forth initially on 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).

44. **Subscription Agreement.** The Agreement between an Additional Member and the Company described in Article XIII.

45. **Substitute Member.** An Assignee who has been admitted to all of the rights of membership pursuant to this Operating Agreement.

46. **Taxable Year.** The taxable year of the Company as determined pursuant to Section 706 of the Code.

47. **Taxing Jurisdiction.** Any state, local or foreign government that collects tax, interest or penalties, however designated, on any Member's share of the income or gain attributable to the Company.

## ARTICLE II

### FORMATION

1. **Organization.** The Members organized the Company as a New York limited liability company pursuant to the provisions of the Law.

2. **Agreement.** For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members executing this Operating Agreement hereby agree to the terms and conditions of this Operating Agreement, as it may from time to time be amended according to its terms. It is the express intention of the Members that this Operating Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of this Operating Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the Law, this Operating Agreement shall govern, even when inconsistent with, or different than, the provisions of the Law or any other law or rule.

3. **Name.** The name of the Company is BEACON ASSOCIATES LLC I, and all business of the Company shall be conducted under that name or under any other name, but in any case, only to the extent permitted by applicable law.

4. **Effective Date.** This Amended and Restated Operating Agreement shall become effective as of April 1, 2004.

5. **Term.** The Company shall be dissolved and its affairs wound up in accordance with the Law and this Operating Agreement.

6. **Registered Agent and Office.** The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles as filed in the office of the Secretary of State of the State of New York. The Managing Member may, from time to time, change the registered agent or office through appropriate filings with the State of New York. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Managing Member shall promptly designate a replacement registered agent or file a notice of change of address, as the case may be.

7. **Principal Office.** The principal office of the Company shall be located at 123 Main Street, Suite 900, White Plains, New York 10601, or at such other address as the Managing Member shall from time to time designate.

#### 8. **Payment of Organization Expenses and Other Expenses.**

8.1 The Company will pay all Organization Expenses and will reimburse the Managing Member for such costs to the extent the Managing Member advances them.

8.2 The Company will bear all (i) transaction costs and investment related expenses incurred in connection with the Company's and the investment managers' trading activities, including brokerage, broker-dealer markups, clearing, margin interest, and custodial expenses, (ii) routine legal, accounting, auditing, tax preparation, and

related fees and expenses, (iii) the Managing Member Fee described in Article VII, Section 10.1, (iv) extraordinary expenses (e.g., litigation costs and indemnification obligations), if any, (v) advisory fees to the Managers for trading the Company's assets, and (vi) the Company's proportionate share of the expenses of any investment pool in which it invests. The Company also will pay for all customary direct and indirect overhead and operating expenses incurred in its operation (including, but not limited to, employee compensation and benefits, rent, telephone, postage, supplies, insurance and other administrative expenses), in an amount not to exceed one percent (1%) per annum of the Company's Net Worth (the "1% Limit"), and will reimburse the Managing Member for all such costs up to the 1% Limit to the extent the Managing Member advances them. The Company's "Net Worth" means the total assets of the Company less all Company liabilities, each determined on the basis of generally accepted accounting principles in the United States, except that the organizational portion of Organization Expenses are amortized over 60 months.

### ARTICLE III

#### NATURE OF BUSINESS

1. **Purpose.** The purpose and character of the business of the Company are to invest and trade, either for its own account or through other partnerships and entities, in securities and financial instruments of every kind and description including, but not limited to, equity securities, securities options, forward contracts, futures contracts and options thereon, convertible securities, cash commodities, cash equivalents (including, but not limited to, U.S. Treasury Instruments, money market instruments and bank accounts), interest-bearing and interest-sensitive securities and stock and other market indexes, as investor, trader, market-maker and arbitrageur, and to engage in margin trading, short selling, and such other lawful securities business as the Managing Member may determine, if authorized by appropriate regulatory authorities. The Company may also become a member of one or more recognized securities exchanges and may act as a broker and dealer on any such exchange or the over-the-counter market. Such business purpose shall include the doing of any and all things incident thereto or connected therewith. The Company shall carry out the foregoing activities pursuant to the arrangements set forth in this Operating Agreement. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this Article III. The Company exists only for the purpose specified in this Article III, and may not conduct any other business without the consent of a Majority of the Members. The authority granted to the Managing Member hereunder to bind the Company shall be limited to actions necessary or convenient to this business.

ARTICLE IV

ACCOUNTING AND RECORDS

1. Records to be Maintained. The Company shall maintain the following records at the Principal Office:

1.1 A current list of the full name and last known business address of each Member;

1.2 A copy of the Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any Articles have been executed;

1.3 Copies of all federal, foreign, state and local income tax returns and reports, if any, for the three most recent years;

1.4 Copies of this Operating Agreement including all amendments thereto;

1.5 All financial statements for the three most recent years;

1.6 A writing or other data compilation from which information can be obtained through retrieval devices into reasonably usable form setting forth the following:

1.6.1 the amount of the Capital Contributions of each Member;

and

1.6.2 any right of a Member to receive, or of the Company to make, distributions to a Member which include a return of all or any part of the Member's Capital Contribution.

2. Reports to Members.

2.1 The Managing Member shall provide reports at least annually to the Members, other than Assignees, at such time and in such manner as the Managing Member may determine reasonable.

2.2 The Managing Member shall provide all Members with those information returns required by the Code and the laws of any state.

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

## ARTICLE V

### NAMES AND ADDRESSES OF MEMBERS

The names and addresses of the Members are as reflected on Exhibit A attached hereto and by this reference made a part hereof as if set forth fully herein. Exhibit A shall be revised from time to time to reflect changes to the Members.

## ARTICLE VI

### RIGHTS AND DUTIES OF MEMBERS

1. **Management Rights.** All Members (other than Assignees) who have not withdrawn pursuant to Article XII hereof shall be entitled to vote on any matter submitted to a vote of the Members. Notwithstanding the foregoing, the following actions require the affirmative vote of the Members whose combined Sharing Ratios represent at least seventy-five percent (75%) of the Sharing Ratios of all Members:

- 1.1 the continuation of the Company after a Dissolution Event; and
- 1.2 subject to Article VII, Section 8, the election of a Managing Member to fill a vacancy.

2. **Majority.** Unless specifically provided otherwise herein, whenever the Members are entitled to vote on any matter under the Law or this Operating Agreement, or whenever any matter is required or allowed to be approved by a Majority of the Members or a Majority of the remaining Members under the Law or this Operating Agreement, such matter shall be considered approved or consented to upon the receipt of the affirmative approval or consent, either in writing or at a meeting of the Members, of Members whose combined Sharing Ratios aggregate at least fifty-one percent (51%) of the Sharing Ratios of all the Members entitled to vote on a particular matter. Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority. In the case of a Member who has Disposed of that Member's entire Membership Economic Interest to an Assignee, but has not been removed as provided below, the Sharing Ratio of such Assignee shall be considered in determining a Majority and such Member shall have the right to vote or consent with respect to such Sharing Ratio.

3. **Liability of Members.** No Member shall be liable as such for the liabilities of the Company, except as required by law. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Operating Agreement or the Law shall not be grounds for imposing personal liability on the Members or Managing Member for liabilities of the Company.

4. **Indemnification.** The Company shall indemnify the Managing Member, including its shareholders, officers, directors, employees, affiliates, Advisory Board Members, and agents (including the "Investment Consultant", as defined in the Offering Memorandum) (collectively, "Indemnifiable Parties") for all costs, losses, liabilities, settlement amounts, and damages paid or incurred by the Indemnifiable Parties in connection with the business of the Company

(including all reasonable attorney and accountants fees) (collectively, "Losses"), to the fullest extent provided or allowed by the laws of the State of New York.

4.1 No Indemnifiable Party shall be liable, responsible or accountable in damages or otherwise to the Company or any of the Members for, and the Company shall indemnify the Indemnifiable Parties against, and hold them harmless from all Losses incurred by reason of any act or omission performed or omitted by an Indemnifiable Party in a manner reasonably believed by the Indemnifiable Party to be both within the scope of authority granted to such party (directly or indirectly) by this Operating Agreement and to be in the best interests of the Company or the Members, provided that such Loss is not found by a court of competent jurisdiction upon entry of a final judgment to be the result of fraud, gross negligence or willful misconduct, and further provided, that the satisfaction of any indemnification shall be from, and limited to Company assets. The Members shall not have any personal liability whatsoever on account of the provisions of this Article VI.

4.2 The Indemnifiable Parties shall be entitled to receive from the Company, upon application therefor, advances to cover the costs of defending any claim or action against him or it, provided that such advances shall be repaid to the Company, without interest, if the Indemnifiable Party is found by a court of competent jurisdiction upon entry of a final judgment to have violated any of the standards set forth in the preceding Paragraph 4.1. All rights of the Managing Member or any other Indemnifiable Party to indemnification shall survive the dissolution of the Company and the withdrawal or removal of the Managing Member, provided that a claim for indemnification hereunder is made by or on behalf of the person seeking such indemnification prior to the time distribution upon liquidation of the assets of the Company is made pursuant to Article XIV hereof.

4.3 Neither the Managing Member nor any other Indemnifiable Party shall have any liability to the Company for any losses suffered due to the action or inaction of any investment manager or other agent retained by the Company whether through negligence, dishonesty or otherwise, provided that the investment manager or other agent was selected by the Managing Member with reasonable care. The Managing Member may consult with counsel and accountants in respect of the Company's affairs and be fully protected and justified in any action or inaction which is taken in accordance with the advice or opinion of such persons, provided that they were selected with reasonable care.

5. Representations and Warranties. Each Member, and in the case of an Organization, the person(s) executing this Operating Agreement on behalf of the Organization, hereby represents and warrants to the Company and each other Member that: (a) if that Member is an Organization, it is duly organized, validly existing, and in good standing under the laws of its state of organization and that it has full organizational power to execute and agree to this Operating Agreement and to perform its obligations hereunder; (b) the Member is acquiring its Membership Interest in the Company for the Member's own account as an investment and without an intent to distribute the Membership Interest; and (c) the Member acknowledges that the Membership Interests have not been registered under the Securities Act of 1933, as amended,

or any state securities laws, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements.

6. Conflict of Interests.

6.1 A Member, including a Managing Member, shall be entitled to enter into transactions for his own account that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company, it being expressly understood that some of the Members may enter into transactions that are similar to the transactions into which the Company may enter. Notwithstanding the foregoing, Members shall account to the Company and hold as trustee for it any property, profit or benefit derived by the Member, without the consent of the other Members, in the conduct and winding up of the Company business or from a use or appropriation by the Member of Company property, including information developed exclusively for the Company and opportunities expressly offered to the Company.

6.2 A Member, including a Managing Member, does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member, including a Managing Member, may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a person who is not a Member, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member has a direct or indirect interest in the transaction if (i) the transaction is fair to the Company, or (ii) either the Managing Member, if disinterested, or a Majority of the disinterested Members, in either case knowing the material facts of the transaction and the Member's interest therein, authorizes, approves or ratifies the transaction.

7. Designation of Special Members. The Managing Member shall have the authority to designate certain Members as Special Members. A Special Member shall have the same rights and obligations as a Member, except that the Membership Interest held by a Special Member will, in the discretion of the Managing Member, (i) not be charged the same fees as other Members, and/or (ii) not be subject to the same withdrawal restrictions as other Members, and/or (iii) not participate in some or all of the Net Profit or Net Loss attributable to certain specified investments if the Managing Member determines that a Member may not do so for legal, tax, regulatory or other reasons, and/or (iv) not be subject to such other provisions as the Managing Member may specify. A Special Member shall include, but not be limited to (i) the Managing Member, any member of the Managing Member, or a director, officer, shareholder or employee of any of the foregoing, (ii) an Individual Retirement Account of any person enumerated in (i), (iii) an employee benefit plan within the meaning of Section 3(3) of ERISA maintained or sponsored by or for the benefit of any person enumerated in (i) or an affiliate of such person, and (iv) such other persons as the Managing Member in its sole discretion may designate. Each Special Member shall be designated as a Special Member in the books and records of the Company. A Special Member may lose his/its designation as a Special Member at the sole discretion of the Managing Member.



ARTICLE VII

MANAGING MEMBER

1. **Original Managing Member.** The ordinary and usual decisions concerning the business affairs of the Company shall be made by the Managing Member. There shall be one Managing Member who must be a Member of the Company. The initial Managing Member shall be: BEACON ASSOCIATES MANAGEMENT CORP.

2. **Term of Office as Managing Member.** The Managing Member shall serve until the earlier of:

2.1 the dissolution of the Managing Member (unless the stockholders of the Managing Member designate a successor), or the bankruptcy of the Managing Member;

2.2 removal of the Managing Member for cause in accordance with Paragraph 7 hereinafter; or

2.3 voluntary withdrawal by the Managing Member on 90 days' prior notice to the Company unless the Managing Member shall have designated a successor Managing Member.

3. **Authority of Members to Bind the Company.** The Members hereby agree that only the Managing Member and authorized agents of the Company shall have the authority to bind the Company. No Member other than a Managing Member shall take any action as a Member to bind the Company, and a Member shall be obligated to indemnify the Company for any costs or damages incurred by the Company as a result of the unauthorized action of such Member. The Managing Member has the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company, including without limitation:

3.1 the institution, prosecution and defense of any Proceeding in the Company's name;

3.2 the purchase, receipt, lease or other acquisition, ownership, holding, improvement, use and other dealing with, Property, wherever located;

3.3 the sale, conveyance, mortgage, pledge, lease, exchange and other disposition of Property;

3.4 the entering into contracts and guaranties; incurring of liabilities; borrowing money, issuance of notes, bonds and other obligations; and the securing of any of the obligations of the Company by mortgage or pledge of any of its Property or income;

3.5 the lending of money, investment and reinvestment of the Company's funds and receipt and holding of Property as security for repayment, including, without limitation, the loaning money to, and otherwise helping Members, officers, employees, and agents;

3.6 the conduct of the Company's business, the establishment of Company offices, and the exercise of the powers of the Company within or without the State of New York;

3.7 the appointment of investment managers, employees and agents of the Company (including attorneys, auditors, and accountants), the defining of their duties and the establishment of their compensation;

3.8 the payment or donation of money, or any other act that furthers the business and affairs of the Company;

3.9 the payment of compensation, or additional compensation to employees on account of services previously rendered to the Company, whether or not an agreement to pay such compensation was made before such services were rendered;

3.10 the participation in partnership agreements, joint ventures or other associations of any kind with any person or persons; and

3.11 the indemnification of Members or any other Person.

4. **Actions of the Managing Member.** The Managing Member has the power to bind the Company as provided in this Article VII. No act of a Member in contravention of such determination shall bind the Company to Persons having knowledge of such determination.

5. **Compensation of Managing Member.** The Managing Member shall not in its capacity as Managing Member receive, directly or indirectly, any salary, fees, compensation, commissions, reimbursements, profits or distributions from the Company, except any amount thereof to which it is entitled under this Operating Agreement or as set forth in the Offering Memorandum.

6. **Managing Member's Standard of Care.** A Managing Member's duty of care in the discharge of the Managing Member's duties to the Company and the other Members is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law. In discharging its duties, a Managing Member shall be fully protected in relying in good faith upon the records required to be maintained under Article IV and upon such information, opinions, reports or statements by any of the Members, investment managers or agents, or by any other person, as to matters the Managing Member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid. Notwithstanding the foregoing, nothing in this Operating Agreement shall in any way constitute a waiver or limitation of any rights which the Members may have under federal or state securities law or BRISA.

7. **Removal of Managing Member.** A Managing Member may be removed only for cause by the affirmative vote of Members whose combined Sharing Ratios represent at least seventy-five percent (75%) of the Sharing Ratios of all Members.

8. Election of Managing Member to Fill Vacancy. In the event that the Managing Member shall be unable or unwilling to serve for any reason (other than if the Managing Member is removed pursuant to Article VII, Section 7) and if the Managing Member or the stockholders of the Managing Member shall not have designated a successor Managing Member, and the Members vote to reconstitute the Company in compliance with Article XIV, the vacancy thereby created shall be filled by the affirmative vote of Members whose combined Sharing Ratios represent at least seventy-five percent (75%) of the Sharing Ratios of all Members.

9. Admission of Successor and Additional Managing Member. A Managing Member may (i) cause to be admitted to the Company an additional Managing Member or Members with such participation in the existing Managing Member's Interest as the existing Managing Member and such additional Managing Member or Members may agree upon; or (ii) substitute in its stead as Managing Member any entity which has, by merger, consolidation or otherwise, acquired substantially all of its assets or shares and continued its business; provided, however, in the case of clause (i), that the existing Managing Member shall be primarily responsible for the performance of the rights, powers and duties of the Managing Member hereunder, and provided further that the foregoing provisions shall not be available to the Managing Member in the event of its removal pursuant to Article VII, Section 7 herein. Each Member hereby Consents to the admission of any additional or successor Managing Member pursuant to this Section 9 and no further approval of any Member shall be required. Without the Consent of any other Member the Managing Member may issue additional shares, and any one or more of the shareholders of the Managing Member may transfer any or all of its shares owned by them, to any Person whatsoever.

10. Payments to the Managing Member. The Managing Member shall receive the following:

10.1 Managing Member Fee. On or before the last day of each month, the Company shall make guaranteed payments on behalf of each Member (within the meaning of Section 707(c) of the Code) to the Managing Member (the "Managing Member Fee") on account of such month in amounts equal to one-eighth of one percent (.125%) per month of the Capital Account balances of each Member (less any amounts attributable to the Managing Member and adjusted for any amounts attributed to any Special Member that the Managing Member determines is not subject to payment of the full Managing Member Fee) as of the last business day of the preceding month. An adjusting payment to the Managing Member shall be made as of the end of the last month of the Company's fiscal year based on the aggregate value of the Capital Accounts of all Members (less the modifications set forth in the preceding sentence for the Managing Member and Special Members) as of the end of such month. A pro rata Managing Member Fee will be charged to Members on any amount permitted to be withdrawn from a Member's Capital Account during any month, which amount will be deducted from the Managing Member Fee payable by the Company on account of such month so that the Managing Member will receive no more than the Managing Member Fee of .125% of the Capital Account balance of a Member at the end of the prior month.

10.2 Investment Consultant Fee. The Investment Consultant (as defined in the Offering Memorandum) may receive from the Managing Member a monthly consulting fee (the "Investment Consultant Fee") with respect to the services to be provided by it to the Managing

Member pursuant to separate agreement between the Managing Member and the Investment Consultant. Any such Investment Consultant Fee shall be paid by the Managing Member from the Managing Member Fee and no part thereof shall be charged to the Company.

## 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 Agreement.

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.

## 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.

1.2 Items of income, deduction, gain, loss, or credit that are recognized by the Company for federal income tax purposes ("Tax Items") shall be allocated for each Taxable Year among the Members (consistent with each Member's varying interest in the Company during such Taxable Year) in such manner as to reflect as nearly as possible the economic effect of amounts credited to or debited against each Member's Capital Account during such Taxable Year and prior Taxable Years. Allocations pursuant to this Section 1.2 are made solely for income tax purposes and shall not be reflected as an adjustment to any Member's Capital Account.

1.3 Notwithstanding anything in the foregoing to the contrary, there shall at all times be allocated to the Managing Member (and credited to it), 1% of the Net Profits for each Taxable Year for accounting, bookkeeping and federal income tax purposes.

2. Company Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain for a Taxable Year, each Member must be allocated items of income and gain for that Taxable Year equal to that Member's share of the net decrease in Company Minimum Gain.

A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of the Company Minimum Gain at the end of the immediately preceding Taxable Year. A Member's share of any decrease in Company Minimum Gain resulting from a revaluation of Company Property equals the increase in the Member's Capital Account attributable to the revaluation to the extent the reduction in minimum gain is caused by the revaluation. A Member is not subject to the Company Minimum Gain chargeback requirement to the extent the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing or other change in the debt instrument causing it to become partially or wholly a Recourse Liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of Section 1.752-2 of the Regulations) for the newly guaranteed, refinanced or otherwise changed liability.

3. **Member Minimum Gain Chargeback.** If during a Taxable Year there is a net decrease in Member Minimum Gain, any Member with a share of that Member Minimum Gain (as determined under Section 1.704-2(i)(5) of the Regulations) as of the beginning of that Taxable Year must be allocated items of income and gain for that Taxable Year (and, if necessary, for succeeding Taxable Years) equal to that Member's share of the net decrease in the Company Minimum Gain. A Member's share of the net decrease in Member Minimum Gain is determined in a manner consistent with the provisions of paragraph (g)(2) of Section 1.704-2 of the Regulations. A Member is not subject to this Member Minimum Gain chargeback, however, to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Liability due to a conversion, refinancing or other change in the debt instrument that causes it to become partially or wholly a Company Nonrecourse Liability. The amount that would otherwise be subject to the Member Minimum Gain chargeback is added to the Member's share of Company Minimum Gain. In addition, rules consistent with those applicable to Company Minimum Gain shall be applied to determine the shares of Member Minimum Gain and Member Minimum Gain chargeback to the extent provided under the Regulations issued pursuant to Section 704(b) of the Code.

4. **Qualified Income Offset.** In the event any Member, in such capacity, receives an Offsettable Decrease, such Member will be allocated items of income and gain (consisting of a pro rata portion of each item of Company income and gain for such year) in an amount and manner sufficient to offset such Offsettable Decrease as quickly as possible.

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.

5.2 If the Managing Member makes advances to the Company of funds for the payment of expenses, the Managing Member shall have the right to repayment of all such advances prior to any distributions to the Members.

5.3 No distribution shall be made in respect of any Membership Interest to the extent that, after giving effect to the distribution, all liabilities of the Company, other than

liabilities to the Members on account of their Membership Interests, exceed the fair market value of the Company's assets. The Managing Member may withhold from any amount payable to any Member, any taxes required to be paid or withheld by the Company on behalf of or for the account of such Member. Any such taxes shall be deemed to be a distribution or payment to such Member, reducing the amount otherwise distributable to such Member pursuant to this Operating Agreement and reducing the Capital Account of such Member.

## ARTICLE X

### TAXES

1. Elections. The Managing Member may make any tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company.

2. Taxes of Taxing Jurisdictions. To the extent that the laws of any Taxing Jurisdiction require, each Member requested to do so by the Managing Member will submit an agreement indicating that the Member will make timely income tax payments to the Taxing Jurisdiction and that the Member accepts personal jurisdiction of the Taxing Jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such Taxing Jurisdiction the amount of tax, penalty and interest determined under the laws of the Taxing Jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a distribution for purposes of Article IX. The Managing Member may, where permitted by the rules of any Taxing Jurisdiction, file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the Taxing Jurisdiction, in which case the Company shall inform the Members of the amount of such tax, interest and penalties so paid.

3. Tax Matters Partner. The Managing Member shall act as the tax matters partner of the Company pursuant to Section 6231(a)(7) of the Code. The tax matters partner shall take such action as may be necessary to cause each other Member to become a notice partner within the meaning of Section 6223 of the Code.

4. Method of Accounting. The records of the Company shall be maintained on the accrual method of accounting or such other method as may be required by the Code or chosen by the Managing Member.

## ARTICLE XI

### DISPOSITION OF MEMBERSHIP ECONOMIC INTERESTS

1. Disposition. Any Member or Assignee may dispose of all or a portion of the Member's or Assignee's Membership Economic Interest upon compliance with this Section 1. No Membership Economic Interest shall be disposed of:

1.1 if such disposition, alone or when combined with other transactions, would result in a termination of the Company within the meaning of Section 708 of the Code;

1.2 without an opinion of counsel satisfactory to the Managing Member that such assignment is subject to an effective registration under, or exempt from the registration requirements of, the applicable state and federal securities laws; and

1.3 unless and until the Company receives from the Assignee the information and agreements that the Managing Member may reasonably require, including but not limited to the agreement of the Assignee to be bound by the terms of this Operating Agreement as an Assignee and any taxpayer identification number and any agreement that may be required by any Taxing Jurisdiction.

2. **Dispositions not in Compliance with this Article Void.** Any attempted Disposition of a Membership Economic Interest, or any part thereof, not in compliance with this Article is null and void ab initio. In addition to all other remedies available to the Company by reason of the breach of the terms of this Article XI, the Company shall have the right to acquire the Membership Interest attempted to be so transferred at the lesser of the price paid as consideration for any such transfer, and the amount which would have been paid had the transferring Member withdrawn from the Company.

## ARTICLE XII

### WITHDRAWAL OF A MEMBER

1. **Withdrawal.** No Member shall, without the consent of the Managing Member in its sole discretion, be entitled to withdraw any part of its Capital Account, except as follows:

1.1 any Member may withdraw all or a portion of the capital from his Capital Account quarterly upon at least 60 days' prior written notice (which notice may be waived by the Managing Member) as of January 1st, April 1st, July 1st and October 1st of any calendar year, or more frequently at the discretion of the Managing Member. All withdrawals shall be deemed made after the end of such quarterly period and prior to the commencement of the following quarterly period;

1.2 the entire Membership Interest of any one or more of the Members may be terminated by the Managing Member at any time for any reason by prior Notice to such Members;

1.3 in the event that the Membership Interest in the Company of any Member is terminated in accordance with this Article XII, then, subject to Paragraph 2 hereof, any positive balance in such Member's Capital Account, as of the end of the period of termination with respect thereto, after giving effect to the allocation of Net Profits or Net Losses with respect to such period, shall be paid to such Member, to the extent of ninety percent (90%) thereof within 90 days after such termination and the balance within 30



days after receipt by the Managing Member of the audited financial statements of the Company for the year in which such termination occurs.

2. **Distributions.** Notwithstanding anything to the contrary contained herein, if a distribution to be made under this Article XII would, in the opinion of the Managing Member, after giving effect to such distribution, to any other distribution requested by, or owing to, any other Member and to any other scheduled or anticipated payments, result in the Company's failure to comply with any applicable requirements as to the maintenance of net capital (the "Net Capital Requirements") under the Securities Act, the Securities Exchange Act of 1934, as amended, the rules of any governmental authority having jurisdiction of the Company or under the rules of any securities exchange of which the Company is a member, or if other extraordinary circumstances exist in the good faith opinion of the Managing Member, then the Managing Member shall postpone the distribution until it can be made in conformity with the Net Capital Requirements, or the Managing Member otherwise determines it is in the Company's best interests to do so. Any such capital so retained by the Company shall continue to be subject to all debts and obligations of the Company. In the event of such a postponement, the Managing Member shall use its best efforts to make such distribution permissible in conformity with the Net Capital Requirements as soon as may reasonably be practicable; provided that the Managing Member need not take any action which it considers to be disadvantageous to the Company as a whole. The Managing Member shall be entitled, in its sole discretion, to determine which of any such postponed distributions shall be made if, at any time, any or some (but not all) postponed distributions may be made in conformity with the Net Capital Requirements.

3. **Continuation.** In the event of the termination of the Membership Interest of any Member in accordance with this Article XII, the Company shall not be terminated or its assets liquidated, and the business of the Company shall be continued thereafter by the Managing Member and the remaining Members on the terms and conditions set forth in this Operating Agreement.

### ARTICLE XIII

#### ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS

1. **Rights of Assignees.** The Assignee of a Membership Economic Interest has no right to participate in the management of the business and affairs of the Company or to become a Member. The Assignee is only entitled to receive the Distributions and return of capital, and to be allocated the Net Profits and Net Losses attributable to the Membership Economic Interest assigned to the Assignee.

2. **Admission of Substitute Members.** An Assignee of a Membership Economic Interest shall be admitted as a Substitute Member and admitted to all the rights of the Member who initially assigned the Membership Economic Interest only with the approval of the Managing Member. The Managing Member may grant or withhold the approval of such admission for any reason in its sole and absolute discretion. The Substitute Member shall be admitted only after compliance with the requirements set forth in Paragraph 4 herein and, in such event, shall have all the rights and powers and is subject to all the restrictions and liabilities of the Member originally assigning the Membership Economic Interest. The admission of a Substitute Member, without more, shall not release the Member originally assigning the

Membership Economic Interest from any liability to the Company that may have existed prior to the approval.

3. Admission of Additional Members. The Managing Member may permit the admission of Additional Members and determine the Capital Contributions and Sharing Ratios of such Members. Members shall be admitted only after compliance with the requirements of Paragraph 4 herein.

4. Requirements for Admission of Substitute or Additional Members.

4.1 If this Operating Agreement shall be amended to reflect the admission or substitution of a Member, the amendment to this Operating Agreement shall be signed by the Managing Member, the Person to be substituted or added and the assigning Member or his attorney-in-fact, if applicable.

4.2 If this Operating Agreement shall be amended to reflect the replacement of the Managing Member by a substituted Managing Member or the admission of an additional Managing Member, such amendment shall be signed by the substituted Managing Member or additional Managing Member, provided however, that the designation of an additional or substitute or successor Managing Member pursuant to Article VII Section 9 shall be in a written notice by the existing Managing Member and delivered to the Members, and no further action or amendment to this Agreement shall be required.

4.3 No person shall become a Member, except an initial Member, unless such Person shall have:

(i) become a party to, and adopted all of the terms and conditions of, this Operating Agreement;

(ii) if such Person is a corporation, partnership or trust, provided the Managing Member with evidence satisfactory to counsel to the Company of such Person's authority to become a Member under the terms and provisions of this Operating Agreement; and

(iii) furnished to the Company such legal opinions and other documents with respect to compliance with the provisions of federal and state securities laws as counsel to the Company may reasonably request.

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 requirements 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 reserve shall be established therefor, 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 reasonable 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 of 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 fair 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.

2. **No Partnership Intended for Nontax Purposes.** The Members have formed the Company under New York Law, and expressly did not intend to form either a general partnership under the New York Partnership Law or a limited partnership under the New York Revised Limited Partnership Act. The members do not intend to be partners one to another, or partners as to any third party. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

3. **Rights of Creditors and Third Parties under Operating Agreement.** This Operating Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members and their successors and assignees in accordance with the terms hereof. This Operating Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Operating Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

4. **Meetings of Members.** Meetings of the Members may be held from time to time if deemed appropriate in the sole discretion of the Managing Member. There shall be no requirement of an annual meeting of the Company or its Members.

## ARTICLE XVII

### POWER OF ATTORNEY

#### 1. Appointment.

1.1 Each Member, by his execution hereof, hereby makes, constitutes and appoints the Managing Member as his true and lawful agent and attorney-in-fact, with full power of substitution and full power and authority in his name, place and stead, to make, execute, sign, acknowledge, swear to, record and file (i) this Operating Agreement and any amendment to this Operating Agreement; (ii) the Articles and all amendments thereto required or permitted by law or the provisions of this Operating Agreement; (iii) all certificates and other instruments deemed advisable by the Managing Member to carry out the provisions of this Operating Agreement and applicable law or to permit the Company to become or to continue as a limited liability company wherein the Members have limited liability in a jurisdiction where the Company may be doing business; (iv) all instruments that the Managing Member deems appropriate to reflect a change or modification of this Operating Agreement or the Company in accordance with this Operating Agreement, including without limitation the substitution of assignees as Members and amendments to this Operating Agreement; (v) all conveyances and other instruments or papers deemed advisable by the Managing Member to effect the dissolution and termination of the Company; (vi) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Company; and (vii) all other instruments or papers which may be required or permitted by law to be filed on behalf of the Company.

1.2 Each Member, and the Company, by its respective execution hereof, hereby authorizes and appoints the Managing Member as its true and lawful agent and attorney-in-fact, with full power of substitution and full power and discretionary authority to act in the Company's name, place and stead, to make all or any portion of the Company's investment decisions for the Company's account and risk and to vote all proxies.

#### 2. Coupled with an Interest

2.1 The foregoing power of attorney:

(i) is coupled with an interest and shall be irrevocable and survive the incompetency or bankruptcy of the Member granting the same;

(ii) may be exercised by the Managing Member either by signing separately as attorney-in-fact for each Member or, after listing all of the Members executing an instrument, by a single signature of the Managing Member acting as attorney-in-fact for all of them;

(iii) shall survive the delivery of an assignment by a Member of the whole or any fraction of his Membership Interest; except that, where the assignee of the whole of such Member's Membership Economic Interest has been approved by the

Managing Member for admission to the Company as a substituted Member, the power of attorney of the assignor shall survive the delivery of such assignment for the sole purpose of enabling the Managing Member to execute, swear to, acknowledge and file any instrument necessary or appropriate to effect such substitution; and

(iv) will terminate upon the substitution of another Member in such Member's Membership Interest in the Company or upon the complete withdrawal of such Member from the Company.

3. **Execution and Delivery.** Each Member shall execute and deliver to the Managing Member within 5 days after receipt of the Managing Member's request therefor such further designations, powers-of-attorney and other instruments as the Managing Member deems necessary or appropriate to carry out the terms of this Operating Agreement.

IN WITNESS WHEREOF, we have hereunto set our hand and seals on the date set forth beside our names.

BEACON ASSOCIATES MANAGEMENT  
CORP., Managing Member

\_\_\_\_\_

Date

By: \_\_\_\_\_

Name:

Title: -

MEMBERS

By: BEACON ASSOCIATES MANAGEMENT  
CORP., Managing Member

By: \_\_\_\_\_

Name:

Title:

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**BEACON ASSOCIATES LLC I**  
(a New York Limited Liability Company)

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**SUPPLEMENT**  
to  
**CONFIDENTIAL OFFERING MEMORANDUM**

**Securities Offered:** Limited Liability Interests ("Interests")

**Managing Member:** Beacon Associates Management Corp.  
123 Main Street  
Suite 900  
White Plains, New York 10601

\* \* \*

This is a Supplement to the Confidential Offering Memorandum dated August 9, 2004 (the "Offering Memorandum") of Beacon Associates LLC I (the "Company"), and contains updated information concerning an investment in the Company.

\* \* \*

**THE OFFERING MEMORANDUM AND THIS SUPPLEMENT  
SHOULD BE READ TOGETHER AS ONE DOCUMENT**

November 28, 2005

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**Book No.**

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**Name of Offeree**



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BEACON ASSOCIATES LLC I

Supplement

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This Supplement supercedes any materially inconsistent provisions in the Offering Memorandum. Where applicable, reference should be made to the Offering Memorandum for more detailed information. All capitalized terms which are not defined in this Supplement have the meanings set forth in the Offering Memorandum.

\* \* \* \*

A. The Offering Memorandum and the LLC Agreement are modified to include the following additional requirement:

**Condition to Acceptance of New Capital Contributions from and after February 1, 2006**

Beginning on February 1, 2006, a minimum two-year holding period requirement will be imposed on the acceptance of all Capital Contributions, whether from new investors seeking to become Members, or from existing Members wishing to make additional Capital Contributions. Capital Contributions (plus or minus all gains or losses thereon) made from and after February 1, 2006 will not be permitted to be withdrawn until the Withdrawal Date following the second anniversary of those Capital Contributions (except in the case of demonstrated extraordinary circumstances found in each instance to be acceptable by the Managing Member after reasonable inquiry). Examples of events which may be found to constitute "extraordinary circumstances" include (i) if continuing to hold an interest in the Company becomes illegal; (ii) in the event of a Member's death or total disability, (iii) if any key personnel of the Managing Member, currently Joel Danziger or Harris Markhoff, should die, become incapacitated or cease to be involved in the management of the Company on behalf of the Managing Member for an extended period; or (iv) in the event of a merger or reorganization of the Company. Following this two-year holding period, the normal quarterly withdrawal privilege will apply as described under "Terms of the LLC Agreement" in the Offering Memorandum. Capital Contributions made by Members prior to February 1, 2006, including profits and losses related thereto, will not be subject to this minimum two-year holding period requirement.

The following sections of the Offering Memorandum should be read in conjunction with the foregoing two-year holding period requirement:

- Summary – Securities Offered (page 4)
- Summary – Withdrawals (page 6)
- Offering of Interests – (page 30)
- Terms of the LLC Agreement – Withdrawals (page 35)

An amendment to the LLC Agreement authorizing the imposition of the two-year holding period requirement also is enclosed for your information.

B. The following sections of the Offering Memorandum are modified to read as follows:

**Investment Consultant – Page 2**

Pursuant to an agreement between the Managing Member and Ivy Asset Management Corp., a Delaware corporation, (“**Investment Consultant**”), the Investment Consultant provides the following services: (i) consulting advice to the Managing Member with respect to Manager selection and allocation of the Company’s assets among Managers and Investment Pools (“**Consulting Services**”); and (ii) certain administrative and accounting services for the benefit of the Company (“**Administrative Services**”). The Investment Consultant does not have any discretion to invest or allocate the Company’s assets. All investment and allocation decisions for the Company’s benefit are made in the sole discretion of the Managing Member. The Investment Consultant is registered as an Investment Adviser under the Investment Advisers Act of 1940 (the “**Advisers Act**”) and as a commodity trading adviser (“**CTA**”) under the Commodity Exchange Act, as amended (the “**CE Act**”).

**Managing Member Fees – Page 6**

On or before the end of each month, a management fee (the “**Managing Member’s Fee**”) on account of such month is paid to the Managing Member as compensation for services rendered in an amount equal to 1/8 of 1% of the value of each Member’s Capital Account at the end of the prior month (a 1½% annual rate). The Managing Member pays a portion of the Managing Member’s Fee, as well as a portion of the Managing Member’s 1% profit allocation (see “**Allocation of Profits and Losses**”), to the Investment Consultant pursuant to an agreement between the parties for the Consulting Services rendered by the Investment Consultant to the Managing Member. Effective January 1, 2006, the fee for Administrative Services performed by the Investment Consultant will be paid by the Company. The amount of this payment relative to the net assets of the Company will be immaterial. Accordingly, the payment will have a negligible impact on the investment returns to Members.

C. **Subscription Documents**

Applications for Interests must be made by completing the revised Subscription Documents, copies of which may be obtained from the Managing Member.

**AMENDMENT TO AMENDED AND RESTATED OPERATING AGREEMENT OF  
BEACON ASSOCIATES LLC I**

AMENDMENT made and entered into as of the 1st day of November, 2005 (the "Amendment") to the Amended and Restated Operating Agreement (the "Agreement") made and entered into as of the 1st day of April, 2004 among Beacon Associates Management Corp. (the "Managing Member") of Beacon Associates LLC I (the "Company") and those persons who executed the Agreement as Members of the Company, whether in counterpart, by separate instrument or other authorization.

WHEREAS, Paragraph 2 of Article XV of the Agreement authorizes the Managing Member to amend the Agreement without the Required Consent of Members so long as an amendment does not negatively and materially impact a Member's Membership Economic Interest;

WHEREAS, the Amendment will operate prospectively with respect to Capital Contributions made from and after February 1, 2006 only; and

WHEREAS, the Managing Member has determined that the Amendment is in the best interest of the Company.

NOW, THEREFORE, the Agreement is hereby amended as follows:

1. Paragraph 1.1 of Article XII is restated to read as follows:

1.1 any Member may withdraw all or a portion of the capital from his Capital Account quarterly upon at least 60 days' prior written notice (which notice may be waived by the Managing Member) as of January 1st, April 1st, July 1st and October 1st of any calendar year (the "Quarterly Withdrawal Date"), or more frequently at the discretion of the Managing Member. Notwithstanding the foregoing, all Capital Contributions made from and after February 1, 2006 shall be subject to such additional, modified or changed withdrawal rights as shall be set forth in the Offering Memorandum and related Subscription Agreement as a condition to having such Capital Contribution accepted by the Company. All withdrawals shall be deemed made as of the Quarterly Withdrawal Date or as of such other withdrawal date as may be permitted;

2. The Agreement may be further modified as necessary to effectuate the foregoing amendment, and may be amended and restated to reflect all such amendments.
3. In the event of a conflict between the terms of the Agreement and this Amendment, this Amendment shall control.

IN WITNESS WHEREOF, the Managing Member has hereunto set its hand as of the day and year set forth above.

MANAGING MEMBER

BEACON ASSOCIATES MANAGEMENT CORP.

By \_\_\_\_\_  
Joel Danziger, President