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March 13, 2015

VIA E-FILING

The Honorable Andrew J. Peck
United States Magistrate Judge
United States Courthouse, Courtroom 20D
500 Pearl Street
New York, NY 10007-1312

***Re: Beacon Associates LLCI, et al. v. Beacon Associates Management Corp.
Civil Case No: 14-cv-2294 (AJP)***

Dear Judge Peck:

We represent plaintiffs Beacon Associates (the “Beacon Fund”) and Andover Associates (the “Andover Fund”) (collectively “Plaintiffs”) in connection with the captioned matter.

Pursuant to the briefing schedule set forth in the Endorsed Letter of January 23, 2015 [Docket No. 53], annexed hereto as Exhibits A and B are submissions of Affected Beacon Investors for considerations of the Court in connection with the investor Holdback issue. The following submissions are attached:

1. **Exhibit A** is a submission by Beacon Affected Investor Melvin Herman IRA, Bear Stearns Custodian, dated February 3, 2015.
2. **Exhibit B** is a submission by Beacon Affected Investor Roberts and Roberts, by its counsel Law Offices of Gerry E. Feinberg, P.C., dated February 25, 2015.¹

As articulated during the January 14, 2015 Court Conference Call, The Beacon Fund is taking a neutral position on the merits of this issue and is merely submitting these letters to the Court on behalf of individual investors.

¹ We have redacted account information from this submission to protect the investor’s confidential information.

H E R R I C K

The Honorable Andrew J. Peck
March 13, 2015
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We thank the Court for its attention to this matter.

Respectfully submitted,

s/ Arthur G. Jakoby

Arthur G. Jakoby

cc: All Parties (via e-mail and e-file)
Melvin Herman (via email)
Alec Roberts (via email)
Gerry E. Feinberg, Esq. (via email)

EXHIBIT A

February 3, 2015

The Honorable Andrew J. Peck
United States Magistrate Judge
United States Courthouse, Courtroom 20D
500 Pearl Street
New York, N.Y. 10007-1312

Re: Melvin S. Herman IRA / Beacon Associates

Dear Judge Peck,

I was an investor in the Beacon Fund and am writing to you to dispute the method of calculation being used in my case for the allocation of distributions from the Beacon Fund as it relates to funds that have been recovered. The Net Equity in the Fund that is being used as it pertains to my account is incorrect. The Net Equity in the Fund being used for my account is \$258,133. The correct amount is actually \$339,502.

My current account in Beacon was opened on April 1, 2005 with a contribution of \$339,502. There were never any withdrawals made from this account until the Fund was being liquidated. I also opened an account with Beacon on July 1, 1999 with a contribution of \$250,000. That account was subsequently closed in its entirety on February 28, 2002. The current account was opened more than three years after the first account was closed. Furthermore, the amount that I invested into Beacon in 2005 was different than what I took out when I closed my first Beacon account in 2002.

The issue today is that these two accounts are being treated as one continuous account for the purpose of calculating my New Equity in connection with my allocation of distributions for the Fund. I should not be penalized in this manner. These were two different accounts. The account that was opened on April 1, 2005 should be treated as new money similar to any other account opened at that time. The earlier account which was closed more than three years prior to the opening of the current account should be treated like all accounts that were opened and then closed. As far as I know there were no clawbacks from any Beacon accounts that were closed in full. In effect treating my accounts as one continuous account unfairly treats me different than the other investors over that same period. There is no basis to treat my two accounts as one account in light the fact that money contributed in 2005 was different than what was liquidated in 2002. If I had taken money out and directly transferred it to a new account I could understand why the two funds would be treated the same because in that case the money never left Beacon. However, in my situation there was a significant gap between the closure of my first account and the opening of my second account

In addition, in a settlement with the trustee Beacon paid a clawback amount which all current investors sustained as it reduced the funds available to us for distribution. If my accounts are

treated as one account I will be unfairly penalized again. The treatment of the first account opened in 1999 and closed in 2002 should be treated the same way as any other account that was opened and closed in full.

I respectfully request that my Net Equity in the Fund be shown correctly as \$339,502 and be the basis for all my distributions.

Sincerley,

A handwritten signature in black ink, appearing to read 'Melvin S. Herman', with a long horizontal flourish extending to the right.

Melvin S. Herman

EXHIBIT B

-----X
BEACON ASSOCIATES LLC I, BEACON
ASSOCIATES LLC II, ANDOVER ASSOCIATES,
L.P., ANDOVER ASSOCIATES LLC I, ANDOVER
ASSOCIATES (QP) LLC,

Index No. 14-CV-2294

Plaintiffs

- VS -

AFFIRMATION

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

Defendants.
-----X

Gerry E. Feinberg, being duly admitted as a member of the Bar of the State of New York, hereby affirms under penalty of perjury as follows:

1. I am a member of the law offices of Gerry E. Feinberg, P.C., attorneys for the Estate of Michael and Malvina Roberts (collectively referred to hereafter as the "Estate") who made investments through a partnership, Roberts and Roberts ("R&R"), with Beacon Associates LLC I ("Beacon"),
2. This affirmation is being submitted in support of their application to modify the method of calculation of the distribution made as a consequence of the Final Distribution Order and Judgment dated October 31, 2014.
3. The Estate has been advised that in determining the Net Equity of the R&R account which remained open, that account and a prior closed account are being

treated as one, resulting in R&R's distribution being \$8,397. The lower distribution figure is arrived at because R&R was considered a "Net Winner" when its initial account was closed with a profit of \$256,921.

4. This "Negative Net Equity" was applied to the opening balance of R&R's new account, reducing the distribution R&R would have received if those accounts were treated separately, by \$191,985. For the following reasons we submit this was incorrect.

5. The first account was opened in 1999 and closed in June of 2002, resulting in distributions of \$1,129,000 on July 1, 2002 and \$122,921.92 on September 2, 2002, with those funds delivered into an account at HSBC (Exhibit "A").

6. Thereafter, on February 18, 2004, sixteen months later, new subscription documents were executed and \$300,000 in new funds were transferred from two different accounts, one with Marine Midland Bank and one with Prudential Securities, JP Morgan Chase (Exhibit "B"). Then, on March 1, 2004, Beacon advised R&R that they 'are pleased to welcome Roberts & Roberts as a member in Beacon Associates, LLC (Exhibit "B").

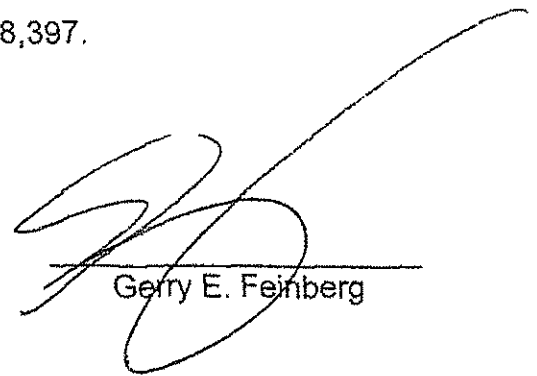
7. Accordingly, the first account was closed with final distribution made as of September 2002 and sixteen months later an entirely new account was opened with the funds from an entirely different source.

8. It is our understanding that it has been judicially determined that there are to be no "claw backs" from accounts which had been closed and that none have occurred with respect to Beacon. This would make logical sense since Beacon was not a ponzi scheme, but only a party injured through its investments with Madoff. Thus, as

an independent investment fund it is a practical impossibility to segregate "profits" generated by Beacon as a whole from fictitious "profits" generated through the Madoff investments, an issue discussed in prior decisions of this Court.

9. Accordingly, it is factually and legally inappropriate to consider the separate and distinct R&R accounts as one for the purposes of calculating R&R's distribution. A separate and distinct account was opened and closed. A new account, requiring new account documents to be executed was opened with the funds from a different source. R&R is entitled to no less than \$200,382, as opposed to \$8,397.

Dated: White Plains, New York
February 2, 2015



Gerry E. Feinberg

Exhibit A

BEACON ASSOCIATES, LLC
SUITE 900, 129 MAIN STREET, WHITE PLAINS, NEW YORK 10601

FILE COPY

TELEPHONE: (914) 948-1556
FAX: (914) 948-1705

July 1, 2002

Mr. Michael A. Roberts
Roberts & Roberts
200 East 62nd Street, #30B
New York, NY 10021-8209

Dear Mr. Roberts:

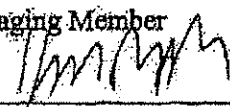
Pursuant to your withdrawal request dated April 29, 2002, please be advised that we have wired \$1,129,000. to HSBC. This amount represents approximately 90% of Roberts & Roberts capital account in Beacon Associates LLC as of June 30, 2002. As soon as the final valuation for June 30th has been completed we will wire the balance.

If you should have any questions, please feel free to contact us.

Very truly yours,

Beacon Associates LLC

By: Beacon Associates Management Corp.,
Managing Member

By: 

President

JD/dnm
cc: Ivy Asset Management Corp.

BEACON ASSOCIATES, LLC

SUITE 900, 128 MAIN STREET, WHITE PLAINS, NEW YORK 10601



FILE COPY

TELEPHONE: (914) 948-1558

FAX: (914) 948-1708

September 3, 2002

Mr. Michael A. Roberts
Roberts & Roberts
200 East 62nd Street, #30B
New York, NY 10021-8209

Dear Mr. Roberts:

Please be advised that we have wired \$122,921.29 to HSBC. This amount represents the balance of your capital account in Beacon Associates LLC as of July 31, 2002.

If you should have any questions, please feel free to contact us.

Very truly yours,

Beacon Associates LLC

By: Beacon Associates Management Corp.,
Managing Member

By: _____
President

JD/dnm

cc: Ivy Asset Management Corp.

BEACON ASSOCIATES, LLC

FILE COPY

SUITE 900, 123 MAIN STREET, WHITE PLAINS, NEW YORK 10601

TELEPHONE: (914) 948-1556

FAX: (914) 948-1708

March 1, 2004

PERSONAL AND CONFIDENTIAL

Mr. Michael A. Roberts
Roberts & Roberts
200 East 62nd Street
New York, New York 10021

Re: Beacon Associates LLC with Roberts & Roberts

Dear Mr. Roberts:

We are pleased to welcome Roberts & Roberts as a member in Beacon Associates, LLC. The opening capital account effective as of March 1, 2004 is \$300,000.

We will keep you advised of Beacon's performance on an ongoing basis.

Very truly yours,

Beacon Associates, LLC

By: Beacon Associates Management Corp.,
Managing Member

By:  _____

HM/dnm

cc: Ivy Asset Management Corp.

ROBERTS & ROBERTS
INVESTMENTS
200 EAST 62ND STREET
NEW YORK, NEW YORK 10021

MALVINA ROBERTS
SENIOR RESEARCH ANALYST

(212) 751-1687
FAX: (212) 751-3546

February 18, 2004

Fax# 212-778-7776

To: Chas. Colwell Prudential Securities NY Futures Sales

RE: Acct, ^{Redacted}

Dear Charles:

Please wire \$299,000.00 (two hundred ninety nine thousand) as per the following instructions:

Chase Manhattan Bank,
191 Mamaroneck Ave.
White Plains, N.Y. 10601



ABA# 021000021

For further credit to: ^{Redacted}
Beacon Associates, LLC

To the benefit of the account of ROBERTS & ROBERTS

Thank You.

Redacted

ROBERTS & ROBERTS		2963
		1-108/210
PAY TO THE ORDER OF	<i>Reason Associates, LLC</i>	DATE <u>2/18/04</u>
<i>One thousand ⁰⁰/₁₀₀</i>		\$ <u>1,000⁰⁰/₁₀₀</u>
Marine Midland Bank  <small>PARK AVENUE OFFICE 250 PARK AVENUE NEW YORK, NEW YORK 10177</small>		DOLLARS 
FOR	<i>Michael A. Roberts</i>	
⑆002963⑆ ⑆021001088⑆		Redacted

Check Applicable Box

Certification By Attorney certify that the within has been compared by me with the original and found to be a true and complete copy.
 Attorney's Affirmation state that I am the attorney(s) of record for action; I have read the foregoing the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by

in the within and know the contents thereof;

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: STATE OF NEW YORK, COUNTY OF ss.:
The name signed must be printed beneath

I, the undersigned, being duly sworn, depose and say: I am

Individual Verification in the action; I have read the foregoing and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Corporate Verification the of a corporation and a party in the within action; I have read the foregoing and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.: (If more than one box is check—indicate after names type of service used.)

I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age and reside at

On I served the within

Service By Mail by mailing a copy to each of the following persons at the last known address set forth after each name below.
 Personal Service on Individual by delivering a true copy of each personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:
 Service by Electronic Means by transmitting a copy to the following persons by FAX at the telephone number set forth after each name below E-MAIL at the E-Mail address set forth after each name below, which was designated by the attorney for such purpose, and by mailing a copy to the address set forth after each name.
 Overnight Delivery Service by dispatching a copy by overnight delivery to each of the following persons at the last known address set forth after each name below.

Sworn to before me on
The name signed must be printed beneath

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,
ANDOVERASSOCIATES (QP) LLC
Plaintiff,

-against-

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

Defendant.

AFFIRMATION

LAW OFFICES OF GERRY E. FEINBERG, P.C.

Attorney for

Office and Post Office Address, Telephone
11 Martine Avenue
WHITE PLAINS, NEW YORK 10606-1934
914-946-4343

To

Signature (Rule 130-1.1-a)

Attorney(s) for

Print name beneath

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Please take notice

NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order
settlement to the HON.
of the within named court, at
on

of which the within is a true copy will be presented for
one of the judges

at M

Dated,

Yours, etc.

LAW OFFICES OF GERRY E. FEINBERG, P.C.

Attorney for

To

Office and Post Office Address
11 Martine Avenue

Attorney(s) for

WHITE PLAINS, NEW YORK 10606-1934