

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BEACON ASSOCIATES LLC I, BEACON  
ASSOCIATES LLC II, ANDOVER  
ASSOCIATES LLC I, ANDOVER  
ASSOCIATES (q) LLC,

*Plaintiffs,*

vs.

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

*Defendants.*

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

**REPLY MEMORANDUM IN FURTHER SUPPORT OF AIJED  
INTERNATIONAL LTD.'S APPLICATION FOR RELEASE OF FUNDS  
DUE PURSUANT TO THIS COURT'S OCTOBER 31, 2014 ORDER**

**TABLE OF CONTENTS**

	<b>Page</b>
PRELIMINARY STATEMENT.....	1
ARGUMENT.....	3
I.    AIJED’S NET EQUITY MUST BE CALCULATED SEPARATELY FROM ASSOCIATES’ NET EQUITY.....	5
II.   AIJED SHOULD BE CREDITED WITH THE FULL BASIS OF ITS 2005 CONTRIBUTION TO BEACON.....	9
III.  ████████ SHOULD HAVE HER NET EQUITY CALCULATED LIKE ANY OTHER BEACON INVESTOR.....	13
CONCLUSION.....	14

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<i>Beacon Assocs. Mgmt. Corp. v. Beacon Assocs. LLC I</i> , 725 F. Supp. 2d 451 (S.D.N.Y. 2010).....	1
<i>Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC</i> , 522 B.R. 41 (S.D.N.Y. Bankr. Dec. 5, 2014) .....	passim

**PRELIMINARY STATEMENT**

As AIJED demonstrated in its opening brief, AIJED has substantial Net Equity in Beacon and is currently entitled to a distribution of more than \$ [REDACTED]<sup>1</sup> After filing its opening papers, AIJED discovered that the issue before this Court was recently considered and resolved by Bankruptcy Judge Bernstein in a decision issued in *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, 522 B.R. 41 (S.D.N.Y. Bankr. Dec. 5, 2014) (“*Madoff III*”) (copy attached as Exhibit A to the Declaration of Rachel J. Presa (“Presa Decl.”).)

The question determined in *Madoff III* is materially identical to the issue presented in this dispute. Here, the Challenging Investors argue that AIJED opened its account at Beacon in 2005 with what they call a “transfer” of \$ [REDACTED] from a related but independent fund called Associates. Fastenberg Br. at 8; Income Plus Br. at 2. It is undisputed that Associates had approximately \$ [REDACTED] in Net Equity in its own account at the time of the 2005 transaction. *See, e.g.*, Folkenflik Decl, Ex. F. According to Fastenberg, the principle question before this Court is how much of the \$ [REDACTED] in available Net Equity should be credited to AIJED’s account.<sup>2</sup>

In *Madoff III*, the court determined “the appropriate methodology for computing the ‘net equity’ in a customer account” at BLMIS “where the balance of the account depends, to some

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<sup>1</sup> “Beacon” refers collectively to Beacon Associates LLC I (“Beacon I”) and Beacon Associates LLC II (“Beacon II”). Beacon II is a passive investor in Beacon I. *See Beacon Assocs. Mgmt. Corp. v. Beacon Assocs. LLC I*, 725 F. Supp. 2d 451, 453 n. 2 (S.D.N.Y. 2010). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Order, and in the Memorandum in Support of AIJED International Ltd.’s Application for Release of Funds Due Pursuant to this Court’s October 31, 2014 Order (“AIJED Br.”).

<sup>2</sup> Fastenberg and most of the other Challenging Investors have all but abandoned their original argument – that the separate accounts of AIJED and Associates should somehow be combined for purposes of calculating Net Equity. Only Income Plus continues to seriously advocate for treating these two discrete investors as one, but it does so based on made-up allegations that Associates transferred money to AIJED in 2006 and 2008. As discussed in the Argument section below, Income Plus’s allegations are utterly refuted by the actual evidence – of which Income Plus offers none – and by common sense, since even Income Plus now admits that there was never any material overlap between the investors in AIJED and investors in Associates.

extent, on amounts previously ‘transferred’ into that account from another BLMIS account.” *Madoff III*, 522 B.R. at 46. The Trustee, Irving Picard, concluded that the “Inter Account Method” is “***the only method consistent with***” prior decisions from the Southern District of New York (“*Madoff I*”) and Second Circuit Court of Appeals (“*Madoff II*”) and establishing the net equity method as the basis for distributing assets to investors in Madoff. *Id.* at 49 (emphasis added).

Under the Inter Account Method, “the Trustee calculates the net equity in the transferor account using the Net Investment Method and credits the transfer up to that amount in the transferee account. The transferor and transferee accounts remain separate and their balances are computed separately.” *Id.* at 55-56. In this case, AIJED’s account – the “transferee account” – must be credited with the amount of the “net equity in the transferor account” – Associates’ account – at the time of the 2005 transfer, or just over [REDACTED]. Based on the Inter Account Method, AIJED’s Net Equity should be reduced from [REDACTED] to [REDACTED], resulting in AIJED’s entitlement to a current distribution from Beacon of [REDACTED].<sup>3</sup>

As Fastenberg pointed out in his opening papers here, the Order entered by this Court on October 31, 2014 “mirrors precisely what [Mr. Picard] has done” in establishing the net equity method as the basis for distributing assets to investors in BLMIS, an approach that was expressly confirmed in *Madoff I* and *Madoff II*. Fastenberg Br. at 11. Fastenberg also notes that while *Madoff I* and *Madoff II* “arose in other contexts, [] ***the equities they recognize are directly applicable to the matter before this Court.***” *Id.* at 13 (emphasis added). It follows that the calculation of Net Equity in AIJED’s account must be determined in accordance with the Inter Account Method, the “only method consistent with” the cases upon which the Order itself was

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<sup>3</sup> In its opening brief, AIJED argued that it is entitled to credit for the full [REDACTED] because AIJED and Beacon recognized that the transaction was substantively equivalent to an investment of new cash. AIJED Br. at 15-16. That argument appears to have been made and rejected in *Madoff III*. 522 B.R. at 54.

expressly based. Counsel for Fastenberg was served with papers in *Madoff III*, and is on the list of persons who receive electronic notice of all decisions and other activity in that case, *see* Presa Declaration, Ex. B, but did not bring Judge Bernstein's decision to this Court's attention.

While *Madoff III* vitiates Fastenberg's argument that the Net Equity transferred to AIJED in 2005 should be "reallocated" back to Associates based on an arbitrary "ratio," *Madoff III* actually benefits Mr. Folkenflik's other clients in this dispute. Under *Madoff III*, the Holdback Investors represented by Mr. Folkenflik are entitled to the full value of the amounts transferred to their accounts from [REDACTED] on April 1, 2002, because at the time [REDACTED] had more than adequate net equity to cover the entire amount of the transfers. The Holdback Investors thus have an additional approximately [REDACTED] in Net Equity basis to divide among them based on *Madoff III*, sums that of course will not be available for distribution to Fastenberg and the other Challenging Investors Mr. Folkenflik also represents.

Finally, Mr. Folkenflik argues that one of the Holdback Investors, [REDACTED], should be treated differently than all of the others, and that her recovery should be enhanced in a manner that finds no support in the Order, any of the *Madoff* decisions, or Beacon's past practices. Mr. Folkenflik's proposed departure from the Net Equity method for [REDACTED] should be rejected.

### **ARGUMENT**

Income Plus, alone among the Challenging Investors, continues to primarily argue that the separate accounts of AIJED and Associates should be combined for purposes of calculating Net Equity. As demonstrated below, Income Plus's argument is contrary to the plain terms of the Order and commonsense, and its contention that that Associates made "transfers" to AIJED in 2006 and 2008 is simply and demonstrably false. Indeed, the "netting" argument is so manifestly inconsistent with the Order and principles of fairness, it has largely been abandoned by the other Challenging Investors.

Instead, Fastenberg and the other Challenging Investors now focus on reducing the credit given to AIJED for its initial investment in Beacon in 2005. As the Court is aware, in June 2005, [REDACTED] investors withdrew from Associates and reinvested in AIJED. Contemporaneously, Associates withdrew \$ [REDACTED] from Beacon to permit the departing investors to resubscribe in AIJED. Beacon booked the internally as a “transfer” from Associates to AIJED, but Beacon, Associates and AIJED all expressly recognized that substantively it was “withdrawal and NEW investment” by AIJED. Hurley Dec. Ex. H. For purposes of calculating Net Equity, Beacon always has credited the full amount of the \$ [REDACTED] transfer to AIJED’s account, and debited the full amount against Associate’s account. It is undisputed that at the time of the 2005 transaction, Associates had just over [REDACTED] in Net Equity.

Fastenberg argues that because AIJED did not insist on a series of cash wire transfers to fund its initial investment in Beacon, that transaction should be considered an “inter account transfer[] between related accounts.” *E.g.* Fastenberg Br. at 2. According to Fastenberg, “inter account transfers” require Beacon to “reallocate” Net Equity between the transferee and transferor accounts based on a ratio where the numerator is the stated amount of the transfer and the denominator is the net asset value in the transferor’s account just before the transfer. *Id.* at 12-15. While there are numerous ratios that could be used to allocate the transfers, each of which would affect investors differently depending on how they are situated, the one Fastenberg chose would result in neither AIJED nor Associates having any remaining Net Equity.

Fortunately, the Court need not choose among arbitrary ratios for purposes of allocating Net Equity, but should instead employ the simple, bright line rule recently adopted in *Madoff III*. Under that “Inter Account Method” – which Mr. Picard identified as the “only” approach to dealing with inter account transfers that is consistent with” the net equity method adopted in the

Order – AIJED should be credited with the full amount of the transfer up to the amount of Net Equity in Associates’ account at the time – [REDACTED]

**I. AIJED’S NET EQUITY MUST BE CALCULATED SEPARATELY FROM ASSOCIATES’ NET EQUITY**

Income Plus continues to urge “combining” AIJED’s account with Associates’ account for purposes of calculating Net Equity. It is undisputed, however that AIJED and Associates are different Beacon customers, with separate accounts and entirely different investor bases. Thus, under the express terms of the Order, AIJED’s Net Equity *must* be calculated separately from AIJED’s Net equity:

[Beacon] shall compute *each investor’s* remaining unpaid investment in [Beacon] based upon *each investor’s* total cash contributions and subtract any cash distributions or withdrawals to *that investor . . .* resulting in *the investor’s* remaining “Net Equity.”

Hurley Decl. Ex. A at 5 (emphasis added). This is exactly what Beacon did in early November 2014 when it concluded that AIJED had substantial Net Equity, and that AIJED was therefore entitled to a current additional distribution of [REDACTED].

AIJED and Associates are different investors not just in form, but also in substance. Indeed, Income Plus and the other Challenging Investors have now had weeks to review AIJED’s investor lists and compare them to Associates’ investors, and *none of the Challenging Investors – not even Income Plus – contend that there was any material overlap between the investors in AIJED and the investors in Associates.* Fastenberg Br. *passim*; Income Plus Br. *passim*. It would be wildly unfair to offset the millions of dollars in net contributions made by AIJED and its investors against the withdrawals taken by Associates and its different investors from Beacon.

As [REDACTED] expressly acknowledges, moreover, Beacon was not the only neutral party to review Beacon’s books and conclude that Net Equity for each of AIJED and Associates must be calculated separately. Income Plus Br. at 3. The Brattle Group reached precisely the



same conclusion when it determined the Net Equity of each of Beacon’ investors in connection with the 2013 Settlement Distributions. *See* Whiteley Decl. Ex. 2, ¶ 8 (attaching Affidavit of Lynda S. Borucki of the Brattle Group).

To ensure its calculations were accurate, the Brattle Group received “data for investors in Beacon . . . in native Excel format,” made itself available to field questions from, and perform calculations at the request of, any and all counsel involved in the dispute – including, presumably, Messrs. Whiteley and Folkenflik – and spent upwards of 500 hours determining how much Net Equity was available to each investor. *Id.* Ex. 2, ¶¶ 5-41. Among other things, the Brattle Group “spent considerable time with the Beacon-Andover team validating the data for the Beacon/Andover investors, checking names and investor mappings,” work which “served as a check on [Beacon’s] analysis and vice versa.” *Id.* ¶ 14.

Based on its exhaustive analysis, the Brattle Group determined that AIJED’s Net Equity must be determined separately from Associates – exactly the same conclusion originally reached by Beacon. Income Plus nevertheless argues that AIJED’s account should be combined with Associates’ account because, supposedly, Beacon and the Brattle Group combined accounts of other “similarly situated” investors for purposes of calculating Net Equity. Income Plus Br. at 4. Income Plus’s contention is simply false. Beacon and the Brattle Group netted contributions and withdrawals made to and from certain accounts *that were owned by the same investor*, but Income Plus cannot cite to a single instance where either the Brattle Group or Beacon “combined” two accounts owned by *different* investors like AIJED and Associates.<sup>4</sup>

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<sup>4</sup> Piling hearsay on hearsay, Income Plus submits an affidavit from the President of Income Plus’s investment manager claiming that “the merged accounts of certain ERISA funds” invested in Beacon “were treated as a single entity for the purposes of determining their Net Equity” in connection with the Settlement Distribution, but Income Plus provides no documents or other evidence to support its claim. As the Court is aware, Income Plus and the other Challenging Investors refused to produce account information for any investors in Beacon in connection with this dispute, and any argument based on alleged but unproven facts concerning “merged ERISA accounts” or any other investor information that was not produced in discovery should be rejected. *See* Feb. 25,

Beacon’s separate calculation of Net Equity for each of AIJED and Associates is also consistent with relevant case law. In *Madoff I*, for instance, the Second Circuit held that one of the salient features of the net equity method is that the fund can make distribution determinations based on a review of its own books and records. *In re Bernard Madoff Inv. Secs. LLC*, 654 F.3d 229, 238-39 (2d Cir. 2011). Here, AIJED and Associates are indisputably identified on Beacon’s books and records as different investors with separate accounts, who made separate contributions and withdrawals to Beacon:

<u>Year</u>		<u>AIJED Int’l Ltd.</u>	<u>AIJED Associates</u>
1997	ADD		
1998	ADD		
1999	ADD		
2000	ADD		
2001	ADD		0
2002	ADD		
	WITHDRAWAL		
2003	WITHDRAWAL		!
2004	WITHDRAWAL		
<b>2005</b>	<b>TRANSFER</b>		)
	WITHDRAWAL		
2006	ADD	5	
2007	WITHDRAWAL	(	
2008	ADD	0	
<b>Subtotal</b>			)
2010	(Non-Madoff)	)	
2013	(Non-Madoff)	(	
	(Settlement)	(	
	(Settlement)		--

2015 Tr. at 15:8-11. In any event, Income Plus’s contention is irrelevant, since neither AIJED and Associates, nor their separate Beacon accounts, were ever “merged.” Instead AIJED and Associates were and remained separate investors with separate accounts in Beacon throughout their existence.

<sup>5</sup> Unlike all other Beacon investors, both AIJED’s account and Associates’ account were invested solely in BLMIS. The small “non-Madoff” distribution to AIJED and Associates represents the portions of their respective Madoff accounts that were held in cash when the fraud was discovered in 2008. Gordon Decl. ¶¶ 21, 25.

<sup>6</sup> A small part of the Settlement proceeds was split among all Beacon investors, regardless of whether the investor had positive Net Equity. Hence, Associates received a small distribution, despite the fact that it had previously withdrawn more from Beacon than it contributed. Gordon Decl. ¶ 26.

**Total Remaining Net Equity** [REDACTED] [REDACTED]

*E.g.*, Hurley Decl. Ex. F; *see also Madoff III*, 522 B.R. at 53 (praising Inter Account Method for transfers because it properly focuses on deposits and withdrawals by investors as reflected on debtor’s books of account). ***Significantly, the only entry on Beacon’s books and records identified as a “transfer” from Associates to AIJED is in connection with AIJED’s initial investment in 2005.***

As noted elsewhere, Beacon booked this transaction as a “transfer” for its own administrative convenience, though even Beacon always recognized that substantively it was a “withdrawal and NEW investment.” *See, e.g.*, AIJED Br. at 6, Hurley Decl. Ex. H. Without the slightest support in logic or the evidence, Income Plus insists that Associates made additional “transfers” to AIJED in 2006 and in 2008, even though Beacon’s own records identify the 2006 and 2008 transactions as “ADDs” and “WITHDRAWALS”, not as “TRANSFERS.” *See, e.g.*, Hurley Decl. Ex. F; Gordon Decl. Ex. B, Second Declaration of Arthur S. Gordon (“Second Gordon Decl.”) ¶ 5.<sup>7</sup> Indeed, other contemporaneous records confirm that each of the 2006 and 2008 transactions cited by Income Plus involved actual cash-in and cash-out wire transfers between either (i) Beacon and AIJED on the one hand, or (ii) Beacon and Associates on the other. Second Gordon Decl. ¶¶ 4-11, Exs. C-I. In short, there were no “transfers” between Associates and AIJED, at least after AIJED’s initial investment in 2005.<sup>8</sup>

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<sup>7</sup> Income Plus’s declarant claims that he has reviewed certain Beacon spreadsheets that contain “notations” indicating that the transactions in 2006 and 2008 were “transferred from one Beacon account to another.” Incredibly, Income Plus does not bother to attach copies of the spreadsheets upon which its declarant supposedly relied, and any argument based on their supposed contents must be rejected. For its part, AIJED has received at least nine spreadsheets prepared by Beacon both before and after this dispute commenced that reflect account activity for each of AIJED and Associates. The only entry on any of those records that Beacon identifies as a transfer from Associates to AIJED is in connection with AIJED’s initial investment in Beacon in 2005.

<sup>8</sup> Income Plus’s claim that Associates transferred money to AIJED after 2005 does not make the least sense in any event. Jeanneret Decl. ¶ 5. All of the Challenging Investors, including Income Plus, now admit tacitly that AIJED and Associates had entirely different investors in 2006 and 2008. Associates could not, would not and did

Indeed, counsel for Fastenberg – who first proposed combining AIJED’s and Associates’ accounts for Net Equity purposes in the first place – has largely abandoned his initial argument. Mr. Folkenflik could hardly do otherwise. In addition to Fastenberg, Mr. Folkenflik also represents most of the 18 other Holdback Investors who transferred money out of their separate [REDACTED] accounts and deposited that money into individual accounts in Beacon in 2002. Fastenberg Br. at 4. While Mr. Folkenflik concedes that each such investor should have [REDACTED] [REDACTED] account netted against its *own* individual Beacon account, he also argues – correctly, and obviously – that it would be unfair for any of those investors to have its contributions and withdrawals netted against contributions and withdrawals made by a *different* Holdback Investor merely because both investors were once [REDACTED] account holders. The same logic applies to AIJED and Associates, and their separate accounts and different investor bases.

**II. AIJED SHOULD BE CREDITED WITH THE FULL BASIS OF ITS 2005 CONTRIBUTION TO BEACON**

No longer able to seriously contend that the separate accounts of AIJED and Associates should be netted against one another, Fastenberg has changed the focus of his objection. Fastenberg now primarily argues that the amount credited to AIJED’s account in connection with the 2005 “transfer” should be reduced, and most of that value should be “reallocated” back to Associates’ separate account.

In light of *Madoff III*, AIJED can see the merit in capping AIJED’s initial Beacon investment at \$6,426,075 for purposes of calculating Net Equity.<sup>9</sup> However, Fastenberg’s

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not transfer assets belonging to its investors to AIJED and its different investors. The two funds were separate investors and must be treated separately for purposes of calculating Net Equity.

<sup>9</sup> AIJED has argued that the full \$ [REDACTED] should be considered a contribution to Beacon by AIJED, since Beacon and AIJED both recognized that substantively the “transfer” from Associates was a “NEW investment” by AIJED. AIJED Br. at 15-16. AIJED acknowledges, however, that a very similar argument advanced by a BLMIS customer was rejected in *Madoff III*. 522 B.R. at 54.

proposal to “reallocate” Net Equity back to Associates based on an arbitrarily selected ratio is contrary to both this Court’s Order and the *Madoff* decisions, and should be rejected.

The Order requires Beacon to distribute its assets to investors “in accordance with the Net Equity method.” Hurley Ex. A, at 3. As Fastenberg expressly admits, the Order was designed to “mirror[] precisely” the approach taken by Mr. Picard and the Second Circuit in *Madoff I* for “computing the amounts payable” to investors in BLMIS according to the net equity method, and hence the *Madoff* cases “are directly applicable in the matter before this Court.” Fastenberg Br. at 11, 13. In the recently decided *Madoff III* case, the court recognized that “using the Inter Account Method to calculate the amount of [] inter account transfers is the only method consistent with [Madoff I] and [Madoff II].” *Madoff III*, 522 B.R. at 49.

There can be no doubt that *Madoff III* addressed and decided the very same question Fastenberg claims is at issue here. According to Fastenberg, “the Court is presented with the question of . . . applying the Net Investment Method . . . where there has been inter-account transfers between related accounts.” Fastenberg Br. at 15. Likewise, in *Madoff III*:

The motion before the Court concerns the appropriate methodology for computing the ‘net equity’ of a customer account maintained at [BLMIS] where the balance in the account depends, to some extent, on amounts previously ‘transferred’ into that account from another BLMIS account.

*Madoff III*, 522 B.R. at 46. Following exhaustive review and analysis of *Madoff I* and *Madoff II*, Judge Bernstein agreed with Mr. Picard that the “Inter Account Method” is the correct – indeed “the only” – approach to take consistent with the net investment method. *Id.* 522 B.R. at 49.

Under the Inter Account Method, “the Trustee calculates the net equity in the transferor account using the Net Investment Method and credits the transfer up to that amount in the transferee account. The transferor and transferee accounts remain separate and their balances are computed separately.” *Id.* at 55-56. In this case, AIJED’s account – the “transferee account” –

must be credited with the amount of the “net equity in the transferor account” at the time of the transfer. It is undisputed that Associates – the “transferor account” had [REDACTED] net equity at the time of the transfer, and AIJED’s account should be credited with that amount in connection with the 2005 transaction.

Helpfully, *Madoff III* provided several illustrations of how various transfers should be handled using the Inter Account Method. The first example eliminates any room for doubt that AIJED should be credited with \$ [REDACTED] connection with Associates’ 2005 nominal transfer of \$ [REDACTED]

1. Assume customer A’s statement indicated a balance of \$5 million, but the customer’s actual net investment was only \$2 million (the remaining \$3 million consisting of fictitious profits). If customer A attempted to transfer the entire \$5 million to customer B, customer B receives credit for only \$2 million – the net investment in customer A’s account leaving customer A’s account with a \$0 balance.

*Id.* at 48. Here, Associates is analogous to “customer A,” and AIJED is analogous to “customer B.” Therefore the full amount of the Net Equity in Associates’ account at the time of transfer must be credited to AIJED’s account.

The second illustration in *Madoff III* further demonstrates that the Inter Account Method eschews artificial “ratios” like the one proposed by Fastenberg, and instead creates a bright line, easy to administer rule that credits the full amount of Net Equity to the transferee account:

2. Assume, instead, that the same customer A transferred \$1 million to customer B. Since customer A had an account balance of \$2 million computed under the Net Investment Method – enough to cover the entire transfer – customer B received credit for the full \$1 million, and customer A still had an account with \$1 million.

*Id.*

As in the first illustration, customer A's stated net asset value is \$5 million at the time of the transfer, but customer A seeks to transfer just \$1 million. Under Fastenberg's "ratio reallocation" approach, customer B would have been given Net Equity credit for only \$400,000, because the amount of the transfer – \$1 million – was 20% of customer A's net asset value of \$5 million (*i.e.*, 20% of \$2 million Net Equity equals \$400,000). *Compare* Fastenberg Br. at 12. But Mr. Picard and *Madoff III* did not adopt a ratio reallocation approach like Fastenberg urges, determining instead that the transferor account must be credited with the full amount of the transfer up to the Net Equity. Hence, just as customer B was entitled to credit for the full \$1 million, AIJED should be credited for the full amount of the [REDACTED] of Net Equity in Associates account at the time of the transfer.<sup>10</sup>

The Inter Account Method also must be applied to transfers among arguably "related" investors. For instance, Brian Ross initially invested in BLMIS through an account owned by his father. *Madoff III*, 522 B.R. at 60. Eventually, Ross opened an individual account, funding his initial investment with a transfer from his father's account. *Id.* At the time of the transfer, however, the account Ross shared with his father had no net equity in BLMIS – it had taken out more money from BLMIS than it had put in. *Id.* at 60-61. Applying the Inter Account Method, the Trustee credited Ross with the amount of Net Equity in his father's account at the time of the transfer – which happened to be zero. *Id.* Here, Associates is analogous to the father and Ross to AIJED, but Associates had more than \$6.4 million at the time of the transfer, and AIJED's account must therefore be credited in that amount.

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<sup>10</sup> Fastenberg submits a number of "Beacon" spreadsheets purporting to calculate the effect on investors' Net Equity under Fastenberg's unprecedented "ratio reallocation" approach. *See* Folkenflik Decl. Ex. F, *Id.* at Ex. I. Significantly, every one of the spreadsheets relied upon by Fastenberg were created in the past few weeks in connection with this dispute, after the exchange of discovery between AIJED and the Challenging Investors, and at the direction of Mr. Folkenflik. In every Net Equity spreadsheet prepared by Beacon outside the context of this litigation, Beacon always calculated AIJED's Net Equity separately from Associates', and always credited the full amount of the 2005 investment to AIJED's account.

Many of the other Holdback Investor's Net Equity should also be increased based on *Madoff III*, including Mr. Folkenflik's clients. Those investors maintained accounts with a Beacon feeder fund called [REDACTED] in the early 2000s. On April 1, 2002, they each opened new accounts directly with Beacon, transferring the full amount of their respective [REDACTED] accounts to their Beacon accounts.

The aggregate amount transferred by [REDACTED] April 1, 2002 was approximately [REDACTED], but Mr. Folkenflik proposed a small reduction – to [REDACTED] – in that aggregate amount because the departing investors collectively had made only [REDACTED] in net contributions to [REDACTED]. *See, e.g.*, Hurley Decl. Ex. G (attaching chart with handwritten notes of Mr. Folkenflik's client purporting to identify the net contributions each Holdback investor made to [REDACTED]). At the time of the April 1, 2002 transfers, however, [REDACTED] had some \$ [REDACTED] in Net Equity – more than enough to cover the [REDACTED] in aggregate transfers made by [REDACTED] to individual Beacon accounts – and transferor accounts of the Holdback investors should be credited with the full amount of their transfers. In total, the 18 other Holdback Investors will share an additional approximately [REDACTED] in basis.

**III. [REDACTED] SHOULD HAVE HER NET EQUITY  
CALCULATED LIKE ANY OTHER BEACON INVESTOR**

[REDACTED] account presents an easy case: a single investor who made contributions to and withdrawals from multiple Beacon accounts. Specifically, [REDACTED] opened a [REDACTED] account in 2001, transferred the balance of her [REDACTED] account to an individual Beacon account on April 1, 2002, withdrew the balance of the first account in May 2004, and opened a new individual Beacon account in October, 2004. In total, [REDACTED] contributed [REDACTED] to her three accounts, and received payments from Beacon totaling \$6 [REDACTED] leaving her with Net Equity of [REDACTED].



Records of Stoller's deposits and withdrawals are reproduced below:

First Frontier	06/29/2001	Deposit	██████████
First Frontier	10/31/2001	Deposit	\$ ██████████
First Frontier	04/01/2002	Txr Out	(\$ ██████████)
1 <sup>st</sup> Indiv. Beacon	04/01/2002	Txr In	\$ ██████████
1 <sup>st</sup> Indiv. Beacon	06/03/2002	Deposit	\$ ██████████
1 <sup>st</sup> Indiv. Beacon	04/01/2004	W/draw	(\$ ██████████)
1 <sup>st</sup> Indiv. Beacon	05/24/2004	W/draw	(\$ ██████████)
2 <sup>nd</sup> Indiv. Beacon	10/01/2004	Deposit	\$ ██████████
2010 Distribution			(\$ ██████████)
2013 Non-Madoff Distribution			(\$ ██████████)
Management Fee Portion			(\$ ██████████)
District Court Settlement			(\$ ██████████)
January (2015) Distribution			(\$ ██████████)
Total Net Equity			\$ ██████████

Folkenflik Decl. Ex. H.

Based on the plain language of the Order, independent analyses of Beacon and the Brattle Group, and the Challenging Investors themselves, deposits and withdrawals to all three of ██████████ accounts must be netted against one another. Nevertheless, Mr. Folkenflik argues that ██████████ should be entitled to more than \$ ██████████ in Net Equity, though he does not identify precisely the amount of to which he claims Stoller is entitled, or explain with any coherence why he thinks an additional amount is warranted. No matter, the Order provides all the clarity necessary concerning this account, and mandates that ██████████ be credited with the net amount of her contributions less her withdrawals across all accounts, no more and no less.

### CONCLUSION

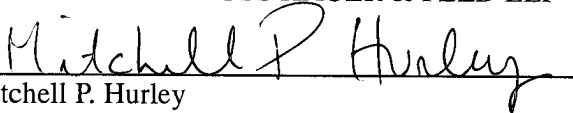
For the foregoing reasons, AIJED respectfully requests that the Court overrule the Challenging Investors' objections, declare that AIJED has substantial Net Equity, and order

Beacon to distribute to AIJED approximately [REDACTED] from the funds that Beacon held back pending resolution of this dispute.

DATED: New York, New York

March 23, 2015

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