UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Defendants.

Index No. 14-cv-2294

DEFENDANT FASTENBERG'S MEMORANDUM OF LAW ON COMPUTATION OF NET EQUITY

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DEFENDANT FASTENBERG'S MEMORANDUM OF LAW ON COMPUTATION OF NET EQUITY

Defendant David Fastenberg[1] ("Fastenberg"), by his attorneys, Folkenflik & McGerity LLP, submits this Memorandum of Law with respect to issues that have arisen concerning the application of the Court's prior orders to the computation of the Net Equity of certain investors.

[1]Defendant David Fastenberg, appears as Trustee of the Long Island Vitreo-Retinal Consultants 401k FBO David Fastenberg. Mr. Fastenberg's counsel also represents approximately 170 other investors in the Plaintiff Beacon Funds.

PRELIMINARY STATEMENT

As the Court is well aware, Plaintiffs the Beacon Funds[2] have been ordered to distribute currently remaining and later received cash assets to the Beacon Funds' investors pursuant to what has been referred to as the Net Equity Method, until all investors are made whole (i.e., have received back all of their principal invested in the Beacon Funds). In essence, the Net Equity Method seeks to compute the total amount that an investor contributed to the Beacon Funds, and to deduct from that amount the total amount the investor has withdrawn or has been paid as a result of the Ivy Class Action settlement. The purpose of that exercise is to remove from the investor's capital account any false Madoff profits, and because Madoff profits were the predominant profits in the accounts, and disentangling which "profits" were "Madoff profits" is difficult and impractical, at this initial stage all "profits" are eliminated.

That computation, sometimes called "cash in/cash out", is relatively simple in most cases. However, in a few instances, because of transactions between related accounts, or because accounts were closed and then re-opened, or for other similar reasons, there is a question of how to treat such accounts: 1) should the two accounts be merged for accounting purposes and treated as if they were one; 2) should they be treated as entirely separate accounts with the cost basis in the first accounted entirely to the second account; or 3) should the cost basis of the first account be allocated proportionately between the two accounts.

There are 19 accounts which the Beacon Funds have identified as being sufficiently related to raise that issue. The most consequential of those related accounts belong to the AIJED family of investment funds (collectively "AIJED"), and serve to illustrate the problem. AIJED International Ltd. ("AIJED II"), a fund invested in the Beacon Funds, was founded in

[2] The Plaintiffs Beacon Associates LLC I, Beacon Associates LLC II, Andover Associates L.P., Andover Associates LLC I, and Andover Associates LLC (QP), are hereinafter referred to collectively as "Beacon Funds" or "Funds".

2005, with the entirety of its capital coming from AIJED Associates LLC ("AIJED I"), including approximately [redacted] million coming from AIJED I's account at Beacon, and the entirety of that amount being invested in AIJED International's new account at Beacon. At that time, AIJED I had a cash in balance of $6.4 million, but a Net Asset Value, including Madoff fictitious profits, of [redacted] million. Thereafter AIJED I continued withdrawing funds, but AIJED II did not.

If that [redacted] million is treated as first a withdrawal of the cash invested first, then AIJED I will have withdrawn all of its cash basis and have no Net Equity left. However, AIJED I continued to withdraw funds from the Beacon Funds and it is currently a "net winner", having withdrawn approximately [redacted] million chiefly comprised of Madoff fictitious profits.

On the other hand, if the money contributed to AIJED II is all treated as cash deposited, AIJED II is a "net loser" in the amount of approximately [redacted] million. The AIJED family of funds, having made collectively a "profit" chiefly from Madoff of over [redacted] million before the current distribution, will receive [redacted] million in the current distribution, raising the AIJED funds' collective "profits" to approximately [redacted] million, while other investors in the Beacon Funds have still not received their full cash investment back. Defendant Fastenberg believes that is inequitable, and should be avoided.

One solution would be to treat the two AIJED accounts as one for the purposes of determining the Net Equity Balance. Under that approach, the combined AIJED account would be a net winner in the amount of approximately [redacted] million and receive no distribution at this time. An alternative, and more moderate approach, would be to allocate the "cash in" or "basis" at the time of the transfer between the new AIJED II account, and the then existing AIJED I account. Using that approach, both AIJED I and AIJED II would be net winners (approximately [redacted] million and [redacted] respectively). In either case, the AIJED Funds would not receive any distribution until after all other investors have received the return of all of their principal invested, which Defendant Fastenberg believes is the fair and equitable result.

It must be emphasized, that Defendant Fastenberg ***is not*** seeking to have any prior distribution "clawed back" from AIJED or any other investor. Further, since it is virtually certain that there will be money received by the Beacon Funds after all customers have received all of their principal invested, and because those "profits" will be distributed on the basis of the Valuation Method, the AIJED Funds will be expected to get distributions in the future.

Counsel for Defendant Fastenberg also represents a group of investors who are facing holdbacks arising from their investments in a fund called First Frontier, L.P. ("First Frontier"), which invested in the Beacon Funds. The First Frontier investors had their First Frontier investment "rolled into" direct individual investments in the Beacon Funds. Counsel Also represents Karin Stoller, originally an investor with First Frontier, who also "cashed out" her investment in Beacon in April 2004, then reinvested approximately half of that investment in Beacon in October 2004. These investors request that they be treated the same as all other investors who are similarly situated, and agree to the allocation of basis approach.

STATEMENT OF FACTS

On April 2, 2014, counsel for the Beacon Funds commenced an action in the United States District Court for the Southern District of New York, *Beacon Associates LLC I v. Beacon Associates Management Corp.*, No. 14-cv-2294, by filing a Complaint for Declaratory Judgment (the "Complaint"), seeking to have the Court order the proper method of distribution, either Net Equity or Valuation.

Following notice to all Beacon Fund Investors and briefing on the issues by all interested parties, including Defendant Fastenberg and Income Plus Investment Fund, the Court held a hearing on October 7, 2014. A copy of the transcript of that hearing is annexed to the Declaration of Max Folkenflik ("Folkenflik Dec.") as Exhibit A. At the hearing the Court ruled that until investors received a return of all of their principal invested, all of the "Madoff" recoveries, including the amounts from the Madoff Trustee and "the various court actions in Nassau, etc., that we referred to, should be distributed based on the cash in, cash out method, also referred to as the net investment method." Folkenflik Decl. Ex A, 44:15-18.

The Court also held that "[t]he amounts already received by the Beacon fund participants through the class action settlement…should be included within that as money recovered by those who did recover." *Id*. at 44:18-22. The amounts to be distributed after all investors have received return of all of their principal invested will be distributed by the Valuation Method. The rulings were incorporated into an Order dated October 31, 2014, a copy of which is annexed to the Folkenflik Declaration as Exhibit B, which defined the cash in/cash out method as the "Net Equity Method" and defined the point at which all investors received return of all of their principal invested as the "Net Equity Break Even Point." Folkenflik Dec. Ex. B at 3-4.

THE "HOLDBACK" DISPUTES

The Background of the Dispute

In making the calculations necessary for determining if each investor has reached or exceeded the Net Equity Break-Even Point, it came to the attention of the Beacon Funds that certain investor capital accounts had been credited with capital transferred from other accounts at the Beacon Funds, valued at the "statement value" at the time of the transfer. The statement value included profits earned as of the date of the transfer. For the purpose of the calculation ordered by the Court, the Beacon Funds questioned whether such transfers should be valued in a way that credits the capital account of those investors with profits, or instead should be calculated so that the Net Equity of each investor account reflects only cash deposits minus cash withdrawals.

The Beacon Funds made calculations to adjust those accounts which received such transfers and determined that 19 accounts which had been classified as Net Equity losers would be Net Equity winners if those adjustments were made. A copy of those calculations is annexed to the Folkenflik Dec. as Exhibit C. By letter dated January 23, 2015, the Beacon Funds notified the Court of the issue and proposed to hold back from Court-ordered distribution in January the amounts due to those affected funds under the unadjusted computation which would be eliminated if the adjustments were approved. The Beacon Funds sought to have the parties to this action, the affected parties, and any other investor who wished to be heard, file briefs addressing the issue after which the Court would rule. The Court agreed to that procedure by memo endorsement of Beacon counsel's letter. See Docket No. 59.

The Investors Subject to Holdbacks

The 19 accounts subject to holdbacks have had distributions totaling $4,297,559 held back from distribution, although $261,051 is being held back for unrelated reasons and will be distributed after the proper recipient is clearly identified.[3] To put that number into context, the Beacon Funds compute that approximately $19 million will be required to be distributed to bring all investors up to Net Equity Break Even Point. The approximately $4 million held back is over 20% of that amount. The holdbacks at issue fall into three broad

[3] That amount is held back from the accounts of Ian Moss and Beverly Fienberg, who were previously married, and are now divorced, because there are unresolved questions about who should receive the distributions and in what amount.

categories: the AIJED related accounts, the accounts of investors who originally invested in the Beacon Funds through a feeder fund called First Frontier, and several accounts which were identified as related by the Brattle Group, experts hired for the class action settlement, but not previously treated as related by the Beacon Funds.

The AIJED Accounts

The AIJED account issues relate primarily to two related entities, AIJED Associates LLC ("AIJED I") and AIJED International Ltd. ("AIJED II") (collectively "AIJED"). According to an analysis performed by the Beacon Funds, prior to any adjustment, AIJED I had a ***negative net equity*** of approximately [redacted] million, while AIJED II had a positive net equity of [redacted] million[4]. Collectively, AIJED I and AIJED II were approximately $3 million ahead. See Folkenflik Dec. Ex. E. Unless the amount due to AIJED II is adjusted, AIJED II will receive a distribution of in excess of [redacted] million, see Folkenflik Dec. Ex. F, and the AIJED accounts will be over [redacted] million ahead, while other investors will still have more than $19 million of their principal cash invested not yet repaid.

AIJED I was a fund of funds investment fund which invested in the Beacon Funds starting in 1997. It also invested in other investment funds. AIJED II was started in July 2005 as an off shore investment vehicle, investing primarily, but not exclusively, with the same investment managers and using substantially the same investment strategies as did AIJED I, with some adjustments to take into account the potential tax advantages of investment through an off shore vehicle. AIJED II was marketed to the investors in AIJED I and, according to an analysis of the two AIJED accounts prepared by the AIJED Funds, one hundred per cent (100%) of the

[4] Prior to the 2010 distributions and the Class Action Settlement, AIJED II had $10 million of Net Equity in the Beacon Funds. A $5 million payment from the Class Action Settlement, and distributions of non-Madoff recoveries in 2010 and 2013, together with a credit for the settlement of Beacon Funds Management Fee amount, reduced that amount to the $4.7 million amount.

capital invested in AIJED II, approximately [redacted] million, came from AIJED I. See Folkenflik Dec. Ex. E. Over [redacted] million was transferred from the Beacon account for AIJED I to a new account established at Beacon for AIJED II. The balance came from, and was invested with, other investment funds. In 2006 [redacted] was withdrawn from the AIJED I account at Beacon, and the identical amount was invested in the AIJED II account at Beacon. In 2007, a total of approximately [redacted] million was withdrawn from the AIJED I and AIJED II accounts at Beacon. In 2008, $5 million was invested in the AIJED II account at Beacon. *Id.* If the two accounts are considered to be merged, then collectively the AIJED accounts have a combined ***negative net equity*** of [redacted]. See Folkenflik Dec. Ex. D.

At the time of the opening of AIJED II, AIJED I had "profits" of approximately [redacted] million. In making its initial computations of the Net Equity balances, the Beacon Funds treated the transfer of [redacted] million from AIJED I to AIJED II as if AIJED had withdrawn its cash basis, and not its profits, first. However, the Beacon Funds have also computed the effect on Net Equity if the "profits" were allocated between the two accounts based upon the relative net asset value, the amount shown on the account statements including profits, of the two accounts. A copy of that analysis is annexed to the Folkenflik Declaration as Exhibit D. Prior to the transfer, AIJED I showed a net asset value of approximately [redacted] million, and the approximately [redacted] million transferred to AIJED II was 34.10 percent of that amount. If that number is used, then AIJED II received only [redacted] million in Net Equity as a result of the transfer, not [redacted] million, and AIJED II kept the rest. Re-computing the Net Equity using those numbers leaves both AIJED I and AIJED II with ***negative net equity*** ([redacted] and [redacted] respectively). See Folkenflik Dec. Ex. E.

The First Frontier Investors

According to an analysis by the Beacon Funds, a copy of which is annexed to the Folkenflik Declaration as Exhibit G, the First Frontier investors at issue account for [redacted] of the holdbacks. Those investors initially invested in the Beacon Funds only indirectly, through an investment in First Frontier, which, in turn, invested their money into the Beacon Funds. Each of those investors was a client of Family Management Corporation, an investment advisory business. See Folkenflik Dec. Ex. G. The investments were first made on or about April 1, 2002. Prior to April 2004, Family Management arranged with the Beacon Funds to take its First Frontier clients as direct investors in the Beacon Funds. The money from these investors was withdrawn from First Frontier and invested in individual accounts for the investors at the Beacon Funds. The Beacon Funds initially computed the Net Equity of these investors using the full amount of the investment, which included the "profits" made at First Frontier. The Funds have now computed the amount of the "profits" and held back that amount for distribution. See Folkenflik Dec. Ex. F.

Karin Stoller

Karin Stoller was a First Frontier Investor who also closed and later re-opened an account at the Beacon Funds. According to an analysis prepared by the Beacon Funds, at the time of the opening of her direct account in April 2002, she deposited funds which included "profit" earned at First Frontier. A copy of the Beacon Funds' analysis is annexed to the Folkenflik Declaration as Exhibit H. Ms. Stoller subsequently added additional funds and then withdrew the full amount of her account which "profits." Then seven months later in October 2004, opened a new account at Beacon with less than one have of the amount she had withdrawn. Counsel for Defendant Fastenberg has prepared an analysis showing proportionate allocation of cash basis for Stoller's account as the Beacon Funds did for the AIJED accounts. A copy of that analysis is annexed to the Folkenflik Declaration as Exhibit I. Approximately 43% of the cash basis in the closed account would be transferred to the new Stoller account, thereby reducing the carried over Net Equity. As a result, Stoller's holdback would be reduced by the amount shown on Exhibit I, and that additional amount would be distributed to her.

The Brattle Group Adjustments

During the negotiation of the details of the Class Action Settlement and the Class Action distribution, the Brattle Group worked with the Beacon Funds to seek to identify accounts which were closed and later opened by the same or substantially the same party for the purpose of adjusting the Net Equity balance for the second account, to reflect profits earned in the first account. They identified five accounts, including Stoller, which fell into that category. The Beacon Funds had not previously adjusted its books to reflect the same accounting treatment, but since prior distributions of "non-Madoff money" were made using the valuation method, there was no real need to dive deeply into the facts at those time.

ARGUMENT

POINT I

EQUITY DEMANDS THAT THE NET EQUITY OF THE "HOLD BACK" INVESTORS BE ADJUSTED

Defendant Fastenberg believes all, or a significant portion, of the holdbacks calculated by the Beacon Funds provides a more accurate and equitable computation of the Net Equity of the affected investors than calculations which ignore the distortion caused by related accounts being treated separately. pSeparate treatment would provide these investors with a windfall of profits, chiefly Madoff fictitious profits, at the expense of other investors who have not yet received return of their investment principal. The Court has more than ample equitable authority to make the requested adjustments.

The relief being sought from this Court is all equitable in nature. *See*, *DiTolla v. Doral Dental IPA of New York*, 469 F.3d 271, 276 (2d Cir. 2006)(injunctive and declaratory relief are equitable in nature). In cases brought seeking equitable relief, as Judge Cardozo noted nearly a century ago in *Beatty v. Guggenheim Exploration Co.*, 225 N.Y. 380, 389 (1919), "[t]he equity of the transaction must shape the measure of relief." "Under common law principles it is well established that equitable discretion may sometimes be exercised to avoid harm to the public interest or unconscionability to a party that would be the consequence of the unflinching application of legal principles." *Fin. One Pub. Co. v. Lehman Bros. Special Fin., Inc.*, 414 F.3d 325, 344 (2d Cir. 2005) (footnote omitted), *citing*, *Kaminsky v. Kahn*, 23 A.D.2d 231, 259 N.Y.S.2d 716, 723 (App. Div. 1st Dep't 1965) (noting that court has equitable power to adapt relief to "exigencies of the case").

"The power of equity is as broad as equity and justice require . . . ." *London v. Joslovitz*, 279 A.D. 280, 110 N.Y.S.2d 58, 59-60 (App. Div. 3d Dep't 1952) (per curiam). A Court sitting in equity has equitable power "to devise whatever remedy it believes in its discretion is necessary to make injured parties whole." *Grand Union Co. v. Cord Meyer Dev. Co.*, 761 F.2d 141, 147 (2d Cir. 1985) (applying New York law) (internal quotations marks and ellipsis omitted) (emphasis supplied).

This Court previously determined that equity demanded the use of the Net Investment Method of distribution "to make injured parties whole" by returning to investors what they have lost. It mirrors precisely what the SIPC Trustee has done in computing the amounts payable to the Beacon Funds based on the Beacon Funds' net investments in BLMIS.

The Court is now faced with a refinement of that decision, to address those few instances where the same investor, or closely related investors may receive a windfall because of transfers of funds from one account to another related account.

Counsel for Defendant Fastenberg represents the First Frontier Investors, who include Defendant Fastenberg, and they agree that the adjustment of eliminating the profits earned in their First Frontier account as part of the Net Equity computation is fair, so long as all of the other similarly situated investors are treated similarly, and no investors are allowed to inequitably take advantage of profiting from distributions, and keeping profits previously taken, before all investors reach the Net Equity Break Even Point.

That result can be accomplished in a variety of ways, either by merging both of the related accounts for the purpose of the Net Equity calculation, or, and we believe it to be the better approach, to allocate the "profits" earned before the transfer between the transferor account and the transferee account pro rata based on the relative valuation at the time of the transfer. In the case of the First Frontier accounts and other accounts where 100% of the first account was given to a second account, the calculation is simple: 100% of the "profits" would be deducted from the transferred amount credited to the new account.

In the case of the AIJED accounts, the pro rata allocation is different and a more moderate approach than simply treating the two accounts as one. Because AIJED II received 34% of the net asset value of AIJED I, it would therefore receive 34% of the "profits" earned by AIJED I as of the time of the transfer, and AIJED I would keep 66% of those "profits." That approach seems to be particularly equitable with regard to those two accounts. It addresses the inequity of the AIJED accounts having received massive withdrawals of profits in the past, while still giving AIJED II only a very small negative Net Equity which will presumably vanish with the next distribution. Both AIJED I and AIJED II will receive future distributions based on the value of their accounts under the Valuation Method.

Counsel for Defendant Fastenberg also represents Karin Stoller, who was a First Frontier Investor, and also closed and then re-opened an account at Beacon with only 43% of the withdrawn equity. Ms. Stoller did withdraw "profits," but in fairness since only 43% of the equity was re-deposited, then only 43% of the "profits" should be allocated to that re-deposit. It might be argued that still has her having withdrawn some "profits," but that argument misses the mark for two reasons. First, a number of other investors withdrew "profits," including AIJED, but because there is no effort to claw back that money from those investors, Stoller would be penalized, and treated differently, if the entire amount of her profits were attributed to the partial re-investment. Second, after Net Equity Break Even Point, Stoller will be receiving distributions based on her re-deposited amount, and not on the full amount of the account which was withdrawn. To fail to proportionally allocate the "profits" would be to give her the full detriment of her of the cash earned in her prior account without giving her the full benefit of that account for the coming Valuation Method distributions.

Paying early investors fictitious profits with the money invested by later investors is the defining feature of a Ponzi scheme. *See, In re Bernard L. Madoff Investment Securities, LLC*, 654 F.3d 229, 232 (2d Cir. 2011) ("*Madoff II*"). The fact that equity requires use of the Net Investment Method for distribution of Madoff funds is confirmed by the decisions in the Madoff SIPC proceedings themselves. Concededly, those cases arose in other contexts, but the equities they recognize are directly applicable to the matter before this Court. In *In re Bernard L. Madoff Investment Securities LLC*, 424 B.R. 122 (2010)("*Madoff I*"), Bankruptcy Judge Lifland upheld the Trustee's determination to apply the Net Investment Method to the distribution of funds recovered by the BLMIS Estate.

As Judge Lifland explained: "A fund of 'customer property' consists of assets garnered by the SIPA [Securities Investor Protection Act] trustee on account of customers. These assets are not ascribable to individual customers, but rather are distributed pro rata to the extent of a customer's Net Equity. See SIPA § 78lll(4) (defining 'customer property')." *Madoff I* at 125. "Net Equity" is a term used in the SIPA statute, and the dispute in that case was over how to determine what the "net equity" was. As Judge Lifland explained: "The Trustee defines Net Equity as the amount of cash deposited by the customer into his BLMIS customer account less any amounts already withdrawn by him (the 'Net Investment Method'). *Id*. *See also*, *Stafford v. Giddens (In re New Times Secs. Servs.)*, 463 F.3d 125, 130 (2d Cir. 2006) ("*New Times II*") (which held that "treating the fictitious paper profits as within the ambit of the customers' 'legitimate expectations' would lead to [] absurdity . . . ."), the bankruptcy court agreed with the Trustee and held that the claimants' Net Equity in the BLMIS Estate could only be determined by the Net Investment Method.

In affirming the bankruptcy court's approval of the Net Investment Method, and rejection of the Valuation Method, then Second Circuit Chief Judge Jacobs cited the "powerful reasons for the Trustee's rejection of the Last Statement Method for calculating 'net equity.'" The Second Circuit held:

> Here, the profits recorded over time on the customer statements were after-the-fact constructs that were based on stock movements that had already taken place, were rigged to reflect a steady and upward trajectory in good times and bad, and were arbitrarily and unequally distributed among customers. These facts provide powerful reasons for the Trustee's rejection of the Last Statement Method for calculating "net equity." In addition, if the Trustee had permitted the objecting claimants to recover based on their final account statements, this would have "affect[ed] the limited amount available for

> distribution from the customer property fund." *In re Bernard L. Madoff*, 424 B.R. at 133. The inequitable consequence of such a scheme would be that those who had already withdrawn cash deriving from imaginary profits in excess of their initial investment would derive additional benefit at the expense of those customers who had not withdrawn funds before the fraud was exposed.

Madoff II, 654 F.3d 229, 238.

In this instance, the Court is presented with the question of the equities of applying the Net Investment Method to cases where there has been inter-account transfers between related accounts. The same "powerful reasons" exist here for rejecting the full allocation of the cash basis to the amount transfers and for adopting the pro rata allocation of relative cash basis at the time of the transfer. The same "inequitable consequences" would occur if this Court allowed some investors to profit, in the case of AIJED I accounts to receive millions of dollars of windfall profits, while the other related AIJED account receives millions more in this distribution and most investors have not yet received their investment back.

Equity does not enforce fiction over reality, nor does it allow some investors to profit from fraud at the expense of other investors. What equity demands in this case, as every court and every regulator who has reviewed the equities in this case has held, that the recoveries from Madoff assets and on account of Madoff loses must be distributed in a way that reflects equitable realities, and not arbitrary fictions.

CONCLUSION

In *Beacon I*, this Court noted the counterveiling equities presented there, including the fact that applying the Net Investment Method in that case would "strip investors of legitimate gains from Beacon's significant non-Madoff investments," *Beacon I* 725 F. Supp. 2d at 464, and the potential for expense, litigation and delay if the Net Investment Method was adopted. *Id.* n.22. As a result the Court was "unpersuaded that equity demand[ed]" that the Valuation Method set forth in the Operating Agreement should not be followed. *Id.* at 464. But in the Distribution Order, the Court recognized that until all investors receive back their principal investment, no investor should be receiving further profits. Here, the simple question is whether equity allows this Court to order that some investors can effectively evade the spirit of the Distribution Order because they had engaged in inter-account transfers with related accounts which have the effect of distorting the cash in/cash out computation. Defendant Fastenberg respectfully submits that such a result would be inequitable and would perpetuate a windfall for some investors at the expense of others who have not yet received the return of their investments.

For that reason, Defendant Fastenberg respectfully requests that the hold back calculations calculated by the Beacon Funds be applied, except to the extent that adjustments are necessitated with respect to inter-account transfers by the pro rata allocation of cash basis on the date of the transfer.

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March 13, 2015

Respectfully submitted,

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