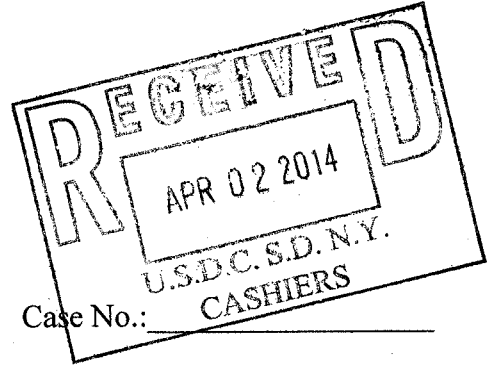


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14 CV 2294



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

COMPLAINT

-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.  
:  
:  
----- X

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiffs Beacon Associates LLC I (“Beacon I”), Beacon Associates LLC II (“Beacon II”), (collectively, “Beacon” or the “Beacon Funds”); Andover Associates, L.P. (“Andover LP”), Andover Associates LLC I (“Andover I”), Andover Associates (QP) LLC (“Andover QP”), Andover Associates LLC II (“Andover II”) (collectively, “Andover” or the “Andover Funds”); (both Beacon and Andover collectively, the “Funds”); by their attorneys Herrick, Feinstein LLP, for their Complaint allege as follows:

1. This is an action for a Declaratory Judgment pursuant to 28 U.S.C. § 2201, and for mandatory enforcement of that Judgment, pursuant to Federal Rule of Civil Procedure 65.

Plaintiffs are investment funds victimized and defrauded by the Ponzi scheme of Bernard L. Madoff (“Madoff”), who seek a judicial ruling as to the proper method to be used to distribute to the Funds’ members (the investors in the funds) tens of millions of dollars recovered and rightfully owed to those members, the ultimate victims of Madoff’s fraud. The Declaratory Judgment will resolve disputes that have arisen and expedite distribution to the victimized investors.

2. Defendant Beacon Associates Management Corp. (“Beacon Management”) is the managing member of the Beacon Fund.

3. Defendant Andover Associates Management Corp. (“Andover Management”) is the managing member of the Andover Funds.

4. Defendants Income Plus Investment Fund (“Income Plus”) and David Fastenberg, Trustee, Long Island Vitreo - Retinal Consultants 401K FBO David Fastenberg (“Fastenberg”), are groups of investors in the Beacon Fund which represent opposing views shared by many investors.

5. Beacon and Andover are subject to the ERISA Plan Asset Rule, 29 U.S.C. § 1002(42), as more than 25 percent of their membership interests are held by benefit plan investors (including ERISA Plans, Individual Retirement Accounts, and non-ERISA Plans).

6. Following disclosure of the Madoff fraud, the Funds’ balances held by Madoff were written down to zero. The Funds also had non-Madoff investments. Management for both Beacon and Andover (“Fund Management”) determined that the remaining non-Madoff invested funds (the “Non-Madoff Assets”) should be liquidated and the remaining assets distributed to the Funds’ investors, subject only to a reserve held for future expenses of the Funds. However, in its effort to effectuate that distribution of assets, disputes arose among groups of investors as to the proper methodology to follow in valuing the capital balances

attributable to individual Fund investors and there were investor objections as to the proper procedure for distribution of the Non-Madoff Assets.

7. In 2009, Fund Management was advised that several alternative methodologies existed and that the application of different methodologies would result in material, and in some cases dramatic, differences in the valuations of members' capital accounts. In light of the dispute, Beacon Management filed a Declaratory Action in the Southern District of New York on August 5, 2009 captioned *Beacon Associates Management Corp. v. Beacon Associates LLC I*, 09 Civ. 6910 (AJP). Ultimately, the Court, specifically Magistrate Judge Andrew J. Peck, issued an opinion and entered an Order on July 27, 2010 (the "Court Order") directing the distribution of the Non-Madoff Assets pursuant to the Valuation Method, which is described in detail below.

8. The Non-Madoff Assets were distributed pursuant to the Court Order to both Beacon and Andover investors. However, since 2010, the Funds have recovered additional categories of funds that should immediately be distributed to members. Specifically, there are four categories of monies that require distribution and/or valuation, and a new dispute has arisen among the investors concerning the proper methodology to value these funds.

9. The Beacon monies that need to be valued and distributed to Beacon investors, and the nature of the disputes, are: (1) Beacon's \$69 million recovery from the Madoff Bankruptcy Trustee ("Bankruptcy Recovery") and future money due to Beacon from the Madoff Trustee based upon an Allowed Madoff Bankruptcy claim of \$159,867,924.62; (2) in connection with the Bankruptcy Recovery, before issuing the Bankruptcy Recovery, the Trustee clawed back \$19.7 million which Beacon paid to the Trustee with assets in the fund held back from the 2010 distribution of the Non-Madoff Assets remaining in the Fund. Therefore there is a dispute over whether \$19.7 million dollars, which is a portion or subset of the \$69 million

Bankruptcy Recovery received to date, is properly considered Non-Madoff Assets subject to the 2010 Court Order, or if it should be distributed under a different methodology as part of the Bankruptcy Recovery; (3) valuation allocation of expenses incurred in the continued wind-down operations of the Funds from 2009 to the present (i.e., whether certain expenses should be allocated against Non-Madoff monies or the Bankruptcy Recovery monies); (2) settlement monies expected to be paid to Beacon from the settlement of three suits pending in Nassau County and New York County captioned *Sacher v. Beacon Associates Management Corp., et al.*, Index No. 424/09 and *The Jordan Group LLC v. Beacon Associates Management Corp., et al.*, Index No. 3757/11 and *McBride v. KPMG International, et al.*, Index No. 650632/2009 (Sup. Ct. N.Y. County), in which a settlement has been agreed to and which is expected to result in a payment to the Fund, once approved by the Court<sup>1</sup>; and (3) any future recoveries by Beacon, due to Madoff losses, from any source.<sup>2</sup>

10. The Andover funds that need to be valued and distributed to Andover investors and the nature of the dispute as to those funds are: (1) Andover's \$424,447.06 recovery from the Madoff Bankruptcy Trustee ("Bankruptcy Recovery") and future money due to Andover from the Madoff Trustee based upon an Allowed Madoff Bankruptcy claim of \$5,032,817.38; (2) allocation of expenses incurred in the continued wind-down operations of the Funds from 2009 to the present as well as future expenses incurred in winding-down the Funds; and (3) any future recoveries by Andover, due to Madoff losses, from any source.

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1. Andover is not impacted by and will not receive funds from the expected settlement of *Sacher v. Beacon Associates Management Corp., et al.*, Index No. 424/09 and *The Jordan Group LLC v. Beacon Associates Management Corp., et al.*, Index No. 3757/11 and *McBride v. KPMG International, et al.*, Index No. 650632/2009 (Sup. Ct. N.Y. County); however, Andover may in the future receive funds due to other pending litigations including, but not limited to, *Hecht v. Andover, et al.*, Index No. 6110/09, New York State Supreme Court, Nassau County.

2. Both Beacon and Andover are eligible for a recovery from a class action settlement in the matter of *Shapiro v. JP Morgan, et al.*, 11-CV-8331(CM), United States District Court, Southern District of New York and there may be other future sources of recovery against Madoff losses that are currently unknown to the Funds.

11. In light of the differing methodologies, Fund Management has questioned its ability to make distributions which would result in disparate treatment of one group of investors versus another, and that in the absence of a full consensus of Fund investors (which is clearly not feasible) or a court order, Fund Management will be subject to potential claims for any injury suffered by investors as a result of any distribution which is later held to be improper.

12. Accordingly, in light of the dispute of the proper valuation method, Fund Management has been constrained from distributing assets to the Funds' investor members. Despite a desire to make distribution as expeditiously as possible to investors, distributions cannot be made due to the valuation methodology and expense allocation disputes. Investors need a prompt resolution of this dispute and as prompt a return of their recovered money as is possible.

13. Declaratory relief is thus required to resolve the justiciable controversy that exists as to the proper valuation methodology, and to ensure that each of Funds' members receive a fair and allocable distribution.

### **PARTIES**

14. Plaintiffs Beacon I and Beacon II are New York limited liability companies with offices at 123 Main Street, Suite 900, White Plains, New York 10601. Beacon Funds are made up of numerous entities and individuals who hold membership interests in them. The determination sought by this action will directly impact the rights of their members. Beacon Funds are in a position to notify each of their members of the pendency of this action and to solicit participation of members so that all competing interests described below can be fully and fairly presented.

15. Plaintiffs Andover LP, Andover I and Andover QP are New York limited liability companies with their offices at 123 Main Street, Suite 900, White Plains, New York 10601.

Andover Funds are each made up of numerous entities and individuals who hold membership interests in them. The determination sought by this action will directly impact the rights of their members. Andover Funds are in a position to notify each of their members of the pendency of this action and to solicit participation of members so that all competing interests described below can be fully and fairly presented.

16. Defendants Fund Management are New York corporations with offices at 123 Main Street, Suite 900, White Plains, New York, 10601. Fund Management are respectively the managing member of Beacon and Andover.

17. Defendant Income Plus Investment Fund is a tax-exempt "Group Trust" within the meaning of Internal Revenue Ruling 81-100 created for the purpose of pooling investment assets of certain qualified pension plans and entities.

18. Defendant David Fastenberg, Trustee, Long Island Vitreo - Retinal Consultants 401K FBO David Fastenberg represents approximately 170 investors in Beacon.

#### **JURISDICTION AND VENUE**

19. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1), insofar as this action arises under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1101, et seq. The relief sought in this action will materially impact the value of the assets of multiple plans subject to ERISA, and will impact the rights of those ERISA plans.

20. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a), because (i) plaintiffs maintain their offices for the conduct of business within the Southern District of New York, (ii) a substantial number of events giving rise to the issues before this Court occurred in this District, and (iii) a substantial number of Beacon and Andover investors reside in this District.

**FACTS**

21. At all times relevant to this case, the Funds' purposes were to invest member capital in "securities and financial instruments of every kind and description," including other investment funds.

22. To become a member of Beacon or Andover Associates (QP) required an initial "Capital Contribution" exceeding \$500,000, unless the Managing Member, in its discretion, determined that a lower amount was acceptable. To become a member of Andover Associates LLC I required an initial "Capital Contribution" exceeding \$250,000, unless the Managing Member, in its discretion, determined that a lower amount was acceptable. Member capital was pooled together in each of Beacon and Andover and invested at the Managing Member's discretion.

23. Since its inception in 1995, Beacon invested approximately seventy (70%) percent of its assets with Bernard L. Madoff Investment Securities LLC ("BLMIS").

24. Since its inception in 1993, Andover invested approximately thirty (30%) percent of its assets with BLMIS.

25. Between 1995 and December 2008, BLMIS issued monthly financial statements reporting substantial gains on Beacon and Andover investments. Beacon and Andover allocated those reported gains to its members in proportion to each member's interest in the Funds and reflected those reported gains in its financial statements.

26. On December 11, 2008, it was discovered that Madoff had been operating a massive "Ponzi" scheme and that virtually all of the money invested with BLMIS was stolen.

27. Following Madoff's arrest, an action was commenced in the United States Bankruptcy Court for the Southern District of New York seeking liquidation of BLMIS.

28. An investigation by the Bankruptcy Court revealed that BLMIS had not purchased or sold any securities since 1996, but rather, used investor funds in furtherance of the Ponzi scheme, and created fictional monthly statements which reflected fictional gains.

29. Beacon made its last investment with BLMIS in July 2008 and Andover made its last investment with BLMIS in November 2002.

30. On December 18, 2008, Fund Management advised Beacon Fund members that, as a result of Madoff-related losses, the Fund was commencing the process of liquidation of the Beacon Fund.

31. On June 3, 2009, Fund Management advised Andover Fund members that, as a result of Madoff-related losses, the Fund was commencing the process of liquidation of the Andover Fund.

32. Management consulted the Funds' accountants, Citrin Cooperman & Company, who advised of several "valuation methodologies" that could be used to determine how Beacon's remaining assets should be distributed to its members.

33. Fund Management also retained Roberts & Holland to review the methodologies for capital account valuation. Following a review of the relevant documents, Roberts & Holland issued a written opinion dated May 27, 2009 in which Roberts & Holland agreed with Fund Management that the most reasonable reading of the Operating Agreement provided for treating the Madoff losses, as occurring when discovered in December 2008, was in conformity with the GAAP Methodology, but that proper valuation was far from certain.

34. In 2009, Beacon Management sought to distribute the Non-Madoff Assets, but there was a dispute among investors and Management as to the proper valuation methodology. The dispute was submitted to the Court for resolution, and on July 27, 2010, Magistrate Judge Andrew J. Peck ordered that the Non-Madoff Assets shall be distributed pursuant to the



Valuation Method.

35. The Valuation Method was described by the Court:

The first such method, referred to as the "Valuation Method," treats the Madoff losses as though they occurred due to "market fluctuations," that is, the Madoff-related losses are reported as having occurred in December 2008 (the date of discovery) and, pursuant to Beacon's Operating Agreement, allocated to each member on a pro-rata basis. Thus, if a member's "capital balance represented 1% of the fund as of December 1, 2008 . . . , that [member] would be allocated 1% of the losses attributable to Madoff."

*Beacon Assocs. Mgmt. Corp. v. Beacon Assocs. LLC I*, 725 F. Supp. 2d 451, 455

(S.D.N.Y. 2010) (citations omitted).

36. An alternative distribution methodology presented to the Court, referred to as the "Restatement Method," was described by the Court:

[T]he "Restatement Method," treats the Madoff losses as having occurred in the same month that each of Beacon's investments in BLMIS were made:

For instance, if the Fund invested \$100,000 into Madoff in May 2005, then [the] restatement method will consider that \$100,000 lost in May 2005, and allocate the \$100,000 loss to each partner's capital account in the ratio which the capital account of such partner bears to the total of the capital accounts of all partners.

Thus, all "profits" made from the Madoff investments would be eliminated and each member's capital account balance recalculated to reflect the historical losses. Using this methodology, each member's capital account balance would become "negative upon full redemption of their capital balances. . . .[and] many [members]' balances [would] become negative with partial redemptions." As this methodology contemplates that certain members withdrew more than they were entitled to, any loss resulting from negative balances would need to be "clawed-back" from the divested members or, alternatively, allocated among Beacon's remaining members.

*Beacon Assocs. Mgmt. Corp. v. Beacon Assocs. LLC I*, 725 F. Supp. 2d 451, 455 (S.D.N.Y.

2010) (citations omitted). The Net Equity method, described below and one of the alternative methods addressed in this Complaint for Declaratory Judgment, was not presented to Judge Peck as an alternative methodology in that prior proceeding.

37. The Funds were also party to a class action against advisor Ivy Asset Management, LLC (“Ivy”) in connection with the Madoff fraud. That action resulted in a global settlement in 2013 (the “Class Action Settlement”). In 2013, Honorable Coleen McMahon, United States District Court Judge for the Southern District of New York, approved settlement in which Ivy agreed to pay \$210 million to settle all claims against it relating to the Beacon Fund, the Andover Fund, as well as two other groups of investors. The proceeds of the class action settlement were distributed directly to investors by a Settlement Administrator, the Garden City Group, according to a net equity method provided for in the Class Action Settlement Agreement.

38. While the Court addressed the method of valuation for distribution of the Non-Madoff Assets in 2010 and the method of valuation for distribution of the Class Action Settlement was also approved by the Court in 2013, the following categories of funds now need to be distributed to complete liquidation of the Funds and return funds to investors as quickly as possible. Indeed, it is now more than five years after the Madoff fraud was revealed and the Funds began to wind down, and investor members are still waiting to recoup some portion of a devastating fraud perpetrated by Madoff. The following categories of funds in both the Beacon and Andover Funds are presently subject to a valuation methodology dispute to be determined by the Court:

**Beacon:**

- (a) A portion of the Beacon Bankruptcy Recovery of \$49,283,342.11 (which is the full \$69 million, less the \$19,766,425.29 which was clawed back by the Trustee and then

- paid back to Beacon as party of the Bankruptcy Recovery) (“Net Bankruptcy Recovery”);
- (b) A portion of the Beacon Bankruptcy Recovery in the amount of \$19,766,425.29 which was clawed back by the Trustee from Non-Madoff Assets and then recovered in the form of the Bankruptcy Recovery (“Clawback Amount”);
  - (c) Future money due to Beacon from the Madoff Trustee based upon an Allowed Madoff Bankruptcy claim of \$159,867,924.62 (which if fully paid would include the Clawback Amount);
  - (d) Beacon settlement funds which are proceeds of a settlement of two shareholder derivative actions pending in Nassau County, New York as well as another action pending in New York County, New York in which a settlement has been agreed upon subject to the approval of the Court (“Nassau Settlement”); and
  - (e) Any future recoveries by Beacon, due to Madoff losses, from any source.

**Andover:**

- (f) Andover’s \$424,447.06 recovery from the Madoff Bankruptcy Trustee (“Bankruptcy Recovery”);
- (g) Future money due to Andover from the Madoff Trustee based upon an Allowed Madoff Bankruptcy claim of \$5,032,817.38;
- (h) Any future recoveries by Andover, due to Madoff losses, from any source.

**Beacon and Andover:**

- (i) Allocation of expenses between Valuation Method distributed money and Net Equity distributed money (or any other method of valuation to be determined by the Court), which is at issue only if there is an ultimate determination that not all monies are to be distributed in accordance with the Valuation Method (“Expenses”);
- (j) Whether the 2010 return to investors of Non-Madoff funds and / or the Class

Action distribution of monies to investors need to be included in the method of valuation selected.

39. With respect to each of these categories, there are two possible methods of calculating the distribution that have been identified to date, and there is a split of opinion, among investors, as to which of those two methods should be utilized. All Funds' investors seem to agree that either (i) the Valuation Method should be used, or (ii) the Net Equity Method should be used, but they do not agree on which should be used for any of the four categories of funds.

40. The Net Equity formula (sometimes called "cash in/cash out") determines each investor's interest in the Funds by calculating how much each investor contributed to Beacon or Andover and subtracting from that the amount withdrawn by the investor (i.e., cash in / cash out). To further amplify, an investor's "Net Equity," for the purpose of the distributions at issue here, has been calculated as the amount of the investor's investment of principal less any withdrawals or distributions received from the Funds, including the distributions made by the Funds in 2010. Any distribution to be made under the Net Equity Method would be calculated by taking the member's Net Equity percentage (calculated by comparing the net equity total investment to the total net equity investment of all Beacon investors) and multiplying it by the total amount of funds available for that distribution to Beacon investors. A determination would need to be made whether to include the distributions made by the Funds in 2010 of non-Madoff funds in this calculation (see par. 38 – Beacon and Andover (ii) above).

41. The Valuation Method treats the Madoff losses as though they occurred due to "market fluctuations," that is, the Madoff-related losses are reported as having occurred in December 2008 (the date of discovery) and, pursuant to Funds' Operating Agreement, allocated to each member on a pro-rata basis. Thus, if an investor's capital balance represented 1% of the

fund as of December 1, 2008, that investor would be allocated 1% of the losses attributable to Madoff and thus the Madoff funds are treated as if it was a real investment.

42. By letter dated August 28, 2013, J.P. Jeanneret Associates, Inc., investment manager for Defendant Income Plus, a fund comprising over 30 Taft-Hartley benefit plans representing thousands of laborers in New York State whose money was pooled and invested in Beacon, objected to use of the Net Equity Valuation Method. Income Plus objected because it (and therefore its investors) would receive over \$600,000 less in an initial distribution under the Net Equity Method and because it believes that the Net Equity Method is simply improper for at least five reasons. First, Income Plus argues that the Beacon Operating Agreement mandates use of the Valuation Method -- not the Net Equity Method. Second, Income Plus argues that the reasoning and decision of Judge Peck in the 2010 Court Order directing use of the Valuation Method in that case is applicable here as well. Third, Income Plus argues that the Net Equity Method is not relevant here because Beacon was not a Ponzi scheme. Fourth, Income Plus has stated that even if there could be support for the Net Equity Method, the use of Net Equity here is not fair because it determines investor's net equity by looking at all withdrawals from Beacon, including the significant distribution made in December 2010. And, fifth, Income Plus argues that it is not clear how Beacon will handle the valuation with respect to investors that may have been involved in merger and acquisition activity during the course of their investment history with Beacon. In light of these factors, Income Plus has notified Beacon that it strongly objects to the use of the Net Equity Method and advocates for use of the Valuation Method.

43. Conversely, by letter dated August 28, 2013, a group of over 160 investors in Beacon and Andover Funds, including defendant David Fastenberg, represented by attorney Max Folkenflick, objected to use of the Valuation Method and advocated for the Net Equity Method. Mr. Folkenflick, on behalf of Fastenberg and other investors (the "Fastenberg

Investors”), argued that the Valuation Method is improper for distribution of assets recovered due to the Madoff fraud, as opposed to the distribution of Non-Madoff Assets in 2010, for four reasons. First, because the Valuation Method computes the Fund New Asset Value, and therefore the percentage of recovery each investor gets, based in substantial part on the fictitious gains reported by Madoff. Thus the Fastenberg Investors believe the Valuation method perpetuates Madoff’s fraud, rewards some investors based on Madoff’s fraudulent computations and penalizes other defrauded investors. As a result, some investors will receive distributions and actually profit because of Madoff’s fraud while other investors would not have yet received repayment of all the money that Madoff stole from them. Second, the money that is being received by Beacon from the Bankruptcy Recovery is not the result of investment activity which is the subject of the Operating Agreement, but instead it is Beacon’s cash in/cash out investment in Madoff, which the Fastenberg Investors argue is essentially the same as investors’ cash in/cash out investment in Beacon, and it would be inequitable for the Funds to receive money based on cash in/cash out, but distribute that money to Fund investors based on a different methodology. The Fastenberg Investors argue that to use the Valuation Method would take money repaid to Beacon as a result of Investor A’s loss and divert that money to Investor B. Third, the Fastenberg Investors point out that a net equity cash in/cash out methodology was approved by the Madoff Trustee, the Bankruptcy Court, the District Court and the Second Circuit as the appropriate method to apply to distribute funds to investors in BLMIS, and that using the fictitious values in the BLMIS monthly statements would base recoveries on numbers Madoff “picked from the sky,” rather than economic reality. And fourth, the Fastenberg Investors point out that the Net Equity Method was the method insisted upon by Governmental Regulators (the New York Attorney General and the Secretary of Labor), and therefore incorporated into the Class Action Settlement Agreement approved by the Court. The Class

Action Settlement was approved as fair and reasonable by Judge McMahon, and effectively approved by each and every member of the Funds who received any distribution from that Settlement. Fourth, The Fastenberg Investors also argue that to use the Valuation Method would be inconsistent with certain compromises reached during the settlement negotiations in favor of Income Plus.

44. In light of these factors, the Fastenberg Investors have notified Beacon that they strongly object to the use of the Valuation Method and advocate for use of the Net Equity Method.

45. As a result of the disagreement among the many investor groups as to the proper methodology to calculate distribution, and the litigation that will ensue if the Funds distribute according to one method over the other without judicial authority to do so, the Funds are handcuffed from making the distributions.

#### **FIRST COUNT**

46. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 45 as if fully set forth herein.

47. The Funds and Fund Management are seeking to make an immediate distribution of significant remaining assets of Beacon and Andover, including the categories of funds identified in Paragraph 38.

48. Fund Management is prevented from making such distribution to Beacon and Andover members because of the uncertainty as to the proper valuation methodology and the dramatically different interest of the Fund members with respect to the methodologies.

49. If Fund Management would select one valuation method over another, without judicial review and determination following an opportunity by every investor to be heard, litigation would surely ensue that would further deplete the assets that should be distributed to

Madoff's victims.

50. Were a future litigation to yield a determination that the method of valuation and distribution was improper, members who received funds in excess of their allocable share would be required to return funds to Beacon and Andover, respectively, to be redistributed. This would result in additional and protracted litigation and it is likely that many overpayments could never be recovered.

51. There exists an actual and justiciable controversy among the parties pertaining to their respective rights and legal relations with respect to the valuation methodology to be followed.

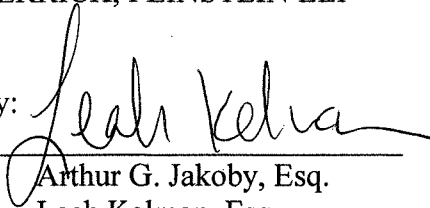
52. As a result, the Court should, after a full and fair review of the facts and the competing interest of Funds' members and affording each and every Beacon and Andover investor an opportunity to be heard, render a declaration that Fund Management should proceed to distribute each category of remaining assets pursuant to either the Valuation Method or the Net Equity Method or some other method to be determined by the Court.

WHEREFORE, Plaintiffs Beacon and Andover demand that, after affording all Beacon and Andover investors an opportunity to be heard, judgment be entered: (1) declaring that either the Valuation Method, the Net Equity method, or some other method determined by the Court, is the proper method to be used to: (a) distribute proceeds recovered from the Beacon and Andover Allowed Madoff Bankruptcy Claims; (b) account for the Beacon Clawback Amount; (c) distribute the Beacon Fund Nassau Settlement award; (d) allocate Expenses for both the Beacon and Andover Funds against Non-Madoff funds and recovered Madoff Funds; (e) distribute any other future recoveries by Beacon or Andover, due to Madoff losses or any other reason, from any source; and (2) awarding such other and further relief as this Court deems just and proper.



Dated: New York, New York  
April 2, 2014

HERRICK, FEINSTEIN LLP

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