

# EXHIBIT A

**Settlement Stipulation – Execution Copy**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BEACON ASSOCIATES LITIGATION	No. 09 Civ. 0777 (LBS)
IN RE J.P. JEANNERET ASSOCIATES, INC.	No. 09 Civ. 3907 (CM)
HILDA L. SOLIS, Secretary of the United States Department of Labor,  Plaintiff,  v.  BEACON ASSOCIATES MANAGEMENT CORP. et al.,  Defendants.	No. 10 Civ. 8000 (LBS) (AJP)
BOARD OF TRUSTEES OF THE BUFFALO LABORERS SECURITY FUND et al.,  Plaintiffs,  v.  J.P. JEANNERET ASSOCIATES, INC. et al.,  Defendants.	No. 09 Civ. 8362 (LBS) (AJP)
BEACON ASSOCIATES MANAGEMENT CORP.  Plaintiff,  v.  BEACON ASSOCIATES LLC I,  Defendant.	No. 09 Civ. 6910 (AJP)

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{2283 / STIP / 00115034.DOC v4}

<p>ERNEST A. HARTMAN et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT L.L.C. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 09 Civ. 8278 (LBS) (AJP)</p>
<p>STEPHEN C. SCHOTT, as TRUSTEE FOR THE STEPHEN C. SCHOTT 1984 TRUST,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 10 Civ. 8077 (LBS)</p>

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>THE PEOPLE OF THE STATE OF NEW YORK By ANDREW M. CUOMO, Attorney General of the State of New York,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT LLC et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Index No. 450489/2010</p>
<p>DONNA M. McBRIDE, individually and derivatively on behalf of Beacon Associates LLC II,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>KPMG INTERNATIONAL et al.,,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 650632/2009E</p>
<p>ALISON ALTMAN, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORPORATION, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Index No. 652238/2010</p>

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

<p>JOEL SACHER and SUSAN SACHER, derivatively on behalf of BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 005424/2009</p>
<p>CHARLES J. HECHT, derivatively on behalf of ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ANDOVER ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 006110/2009</p>

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THE JORDAN GROUP LLC, derivatively on behalf of  
BEACON ASSOCIATES LLC I,

Plaintiff,

v.

BEACON ASSOCIATES MANAGEMENT CORP. et al.,

Defendants,

-and-

BEACON ASSOCIATES LLC I,

Nominal Defendant.

Index No. 003757/2011

CIRCUIT COURT OF THE STATE OF FLORIDA  
FIFTEENTH JUDICIAL CIRCUIT, PALM BEACH COUNTY

<p>HARVEY GLICKER, et al,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>IVY ASSET MANAGEMENT CORP., et al,</p> <p>Defendants.</p>	<p>Court File No. 502010CA029643 XXXX MB AB</p>
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BEFORE THE AMERICAN ARBITRATION ASSOCIATION

<p>JOEL T. GLUCK,</p> <p>Claimant,</p> <p>v.</p> <p>BEACON ASSOCIATES LLC II et al.,</p> <p>Respondents.</p>	<p>AAA No. 19 435 00120 10</p>
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**STIPULATION OF SETTLEMENT**



**THIS STIPULATION OF SETTLEMENT** (“Stipulation”), is made and entered into by the Settling Plaintiffs<sup>1</sup> and the Settling Defendants, by and through their respective attorneys, to resolve and settle all claims and issues between them, relating to the Released Claims, whether based on federal, state or any other law. Specifically, this Stipulation settles multiple private federal and state cases, including: (i) certified class actions and derivative claims pending before the Honorable Leonard B. Sand; (ii) derivative and securities claims pending before the Honorable Colleen McMahon; (iii) derivative claims pending before the Honorable Richard B. Lowe III and the Honorable Stephen A. Bucaria; and (iv) individual actions brought in various federal and state courts and before various arbitral bodies. This Stipulation also settles an action brought by Hilda L. Solis, Secretary of the United States Department of Labor (together with the U.S. Department of Labor, the “Secretary”) before the Honorable Leonard B. Sand, and an action brought by the New York Attorney General (together with the Office of the New York Attorney General, the “NYAG”) in New York State Supreme Court.

**WHEREAS**, the Secretary has brought an action in the United States District Court for the Southern District of New York against Beacon Associates Management Corp. (“BAMC”), Andover Associates Management Corp. (“AAMC”), Joel Danziger, Harris Markhoff, J.P. Jeanneret Associates Inc. (“JPJA”), John Jeanneret, Paul Perry, Ivy Asset Management LLC (“Ivy”), Lawrence Simon and Howard Wohl, alleging violations of the Employee Retirement Income Security Act (“ERISA”);

**WHEREAS**, the NYAG has brought an action in the Supreme Court of New York State in New York County against Ivy, Lawrence Simon and Howard Wohl, alleging violations of New York’s Martin Act and Executive Law §63 (12);

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<sup>1</sup> Unless otherwise stated, all capitalized terms are defined in Section 1 of this Stipulation.

**WHEREAS**, the Private Settling Plaintiffs on behalf of themselves and (as applicable) on behalf of their respective Settlement Class Members and/or derivatively on behalf of the Settling Funds, have brought various actions, claims and demands, each of which has named at least one of the Settling Defendants as a defendant, that arise out of or relate to the transactions and occurrences alleged in their respective actions referred to above;

**WHEREAS**, the Settling Defendants have filed various motions to dismiss the actions brought by the Private Settling Plaintiffs, which have been granted in part and denied in part or remain pending;

**WHEREAS**, the Settling Defendants have filed answers in several of the Settling Actions denying in substantive part the allegations against them;

**WHEREAS**, the Settling Parties agreed to pursue mediation and entered into extensive negotiations that spanned more than six (6) months and included numerous full day sessions;

**WHEREAS**, the Class Action Named Plaintiffs believe that the terms of this Stipulation provide an excellent monetary recovery for the members of the Settlement Classes based on the claims asserted, the evidence developed, and the damages that might be proven against the Settling Defendants;

**WHEREAS**, the Derivative Plaintiffs believe that the terms of this Stipulation provide an excellent monetary recovery for the Settling Funds based on the claims asserted, the evidence developed, and the damages that might be proven against the Settling Defendants;

**WHEREAS**, the Settling Plaintiffs have considered the risks of any litigation, especially in complex litigation such as the Settling Actions, and the difficulties and delays inherent in any such litigation and are mindful of the possible defenses to the claims asserted and believe it is desirable that the Settling Actions and Released Claims be fully and finally compromised, settled and resolved with prejudice and enjoined as set forth herein; and have determined that the terms

of this Stipulation are fair, reasonable and adequate and in the best interest of the Settlement Class Members and the Settling Funds and confer substantial benefits upon the Settlement Class Members and the Settling Funds;

**WHEREAS**, the Settling Defendants neither admit nor deny the material allegations of the complaints filed in the Regulatory Settling Actions;

**WHEREAS**, by entering this Settlement, the Settling Defendants eliminate the risk of further protracted litigation without any finding of liability and prior to the adjudication or determination of any issue of fact;

**WHEREAS**, the Settling Parties stipulate and agree to settle on the terms and conditions hereafter set forth and stipulate and agree that this Stipulation constitutes a full and complete resolution of all of the claims and issues arising between them, relating to the Released Claims, whether based on federal, state or any other law, without trial or adjudication of any issue of fact or law. The Settling Parties agree that neither this Stipulation, nor any of its terms, shall be admissible as evidence in any proceeding (other than a proceeding to enforce the terms of this Stipulation), including without limitation litigation, arbitration or administrative proceedings, for any purpose whatsoever;

**NOW THEREFORE**, in consideration of the mutual covenants recited herein, the adequacy of which is acknowledged, it is consented and agreed, by the Settling Plaintiffs, on behalf of themselves and (as applicable) for the benefit of the Settlement Class Members and the Settling Funds, on the one hand, and the Settling Defendants, on the other hand, that subject to the approval of the Court and the State Derivative Action Courts and the other terms and conditions set forth herein, the Settling Actions shall be settled, compromised and dismissed as to the Settling Defendants, with prejudice, and the Released Claims shall be finally and fully

compromised, settled and dismissed, in the manner and upon the terms and conditions hereafter set forth.

## **1. Definitions**

1.1. As used in this Stipulation, capitalized terms and phrases not otherwise defined have the meanings specified below. In the event of any inconsistency between any definitions set forth below and any definitions set forth in any other document related to the Settlement set forth in this Stipulation, the definitions set forth below shall control.

1.2. “**Andover Funds**” means Andover Associates (QP) LLC and Andover Associates LLC I, individually and collectively, and each other of their predecessors, successors, parents, subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices.

1.3. “**Attorneys’ Fees and Expenses Application(s)**” means an application or applications by Private Plaintiffs’ Counsel for an award of attorneys’ fees and expenses (the fee and expense applications may be submitted either separately or together), plus interest on such attorneys’ fees and expenses as may be awarded by the Court.

1.4. “**Attorneys’ Fees and Expenses Award**” means any award ordered following an application or applications by any or all of Private Plaintiffs’ Counsel for an award of attorneys’ fees, expenses, and/or interest on such attorneys’ fees and expenses.

1.5. “**Attorneys’ Fees and Expenses Award Fund**” means the fund from which any award to any of Private Plaintiffs’ Counsel will be paid.

1.6. “**Authorized Claimant**” means any Claimant entitled to a disbursement from the Net Settlement Fund pursuant to the Plan of Allocation set forth in Exhibit D.

1.7. “**Beacon Defendants**” means AAMC, BAMC, Joel Danziger and Harris Markhoff.

1.8. “**Beacon Funds**” means Beacon Associates LLC I and Beacon Associates LLC II, individually and collectively, and each other of their predecessors, successors, parents, subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices.

1.9. “**Beacon Released Parties**” means the Beacon Defendants and all of their respective predecessors, successors, direct and indirect parents and subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices, and each other of their present or former partners, members, principals, officers, directors, employees, attorneys, insurers, and other Persons acting or purporting to act on behalf of any of the foregoing, and the wives, children, grandchildren and spouses of the individual Beacon Defendants, and any trust or financial vehicles established for their benefit.

1.10. “**BLMIS**” means Bernard L. Madoff Investment Securities LLC, and all of its predecessors, successors, parents, subsidiaries, affiliates, operating units, divisions, committees, local, regional, national, international and executive offices, and each of their present or former partners, members, principals, consultants, officers, directors, employees, agents, representatives, and other Persons acting or purporting to act on behalf of any of the foregoing.

1.11. “**Claimant**” means a Person who seeks a disbursement from the Net Settlement Fund, and who submits a completed Proof of Claim and Release with supporting documents, if any are needed, as specified in the Proof of Claim and Release.

1.12. “**Class Action Named Plaintiffs**” means (i) the Class Representatives that have been certified in *In re Beacon Assocs. Litig.*, No. 09-0777 (S.D.N.Y.) and *Board of Trustees of the Buffalo Laborers Security Fund et al. v. J.P. Jeanneret Associates, Inc. et al.*, No. 09-08362 (S.D.N.Y.); (ii) the Class Representatives that have been proffered in *In re Jeanneret Assocs.*

*Litig.*, No. 09-03907 (S.D.N.Y.), and (iii) the Class Representatives that have been proffered to represent the Classes and Subclasses in connection with this Settlement.

1.13. “**Class Actions**” means the class actions *In re Beacon Assocs. Litig.*, No. 09-0777 (S.D.N.Y.), *In re Jeanneret Assocs. Litig.*, No. 09-03907 (S.D.N.Y.), *Board of Trustees of the Buffalo Laborers Security Fund et al. v. J.P. Jeanneret Associates, Inc. et al.*, No. 09-08362 (S.D.N.Y.) and all actions brought as putative class actions that have been consolidated with any of the foregoing, including without limitation *Plumbers Local 112 Health Fund et al. v. Beacon Associates Management Corp. et al.*, No. 09-03202 (S.D.N.Y.), *Plumbers & Steamfitters Local 267 Pension Fund et al. v. J.P. Jeanneret Associates, Inc. et al.*, No. 09-07584 (S.D.N.Y.) and *Towsley et al. v. Beacon Associates Management Corp. et al.*, No. 09-04453 (S.D.N.Y.).

1.14. “**Co-Lead Settlement Class Counsel**” means Lowey Dannenberg Cohen & Hart, P.C. and Kessler Topaz Meltzer and Check, L.L.P.

1.15. “**Claims Administrator**” means Garden City Group or its successors.

1.16. “**Court**” means the United States District Court for the Southern District of New York.

1.17. “**Defendant Released Parties**” means the Beacon Released Parties, the Ivy Released Parties and the Jeanneret Released Parties.

1.18. “**Derivative Plaintiffs**” means the derivative plaintiffs in *In re Beacon Assocs. Litig.*, No. 09-0777 (S.D.N.Y.), *In re Jeanneret Assocs. Litig.*, No. 09-03907 (S.D.N.Y.), and the State Court Derivative Actions.

1.19. “**Effective Date**” means the first date by which all of the events and conditions specified in ¶ 7.2 of this Stipulation have occurred and been satisfied, respectively.

1.20. “**Escrow Account**” means an interest-bearing escrow account to be maintained by the Escrow Agent at a bank to be mutually agreed upon by Plaintiffs’ Counsel and the Settling

Defendants' counsel. All Escrow Accounts shall be governed by the terms of the Escrow Agreement.

1.21. “**Escrow Agreement**” means that certain Escrow Agreement dated November 8, 2012 between Lowey Dannenberg Cohen & Hart, P.C., Kessler Topaz Meltzer & Check, LLP, Keller Rohrback L.L.P., Lewis, Feinberg, Lee, Renaker & Jackson P.C. and the Garden City Group, Inc., to which each of the Settling Plaintiffs, Private Plaintiffs' Counsel and the Settling Defendants is an express third-party beneficiary (and not merely an incidental third-party beneficiary), attached hereto as Exhibit M.

1.22. “**Escrow Agent**” means Garden City Group or its successor(s) or such other Persons mutually agreed to by Plaintiffs' Counsel and counsel to the Settling Defendants.

1.23. “**Expense Fund**” means the amount, not to exceed two hundred fifty thousand dollars (\$250,000), plus any interest that may accrue thereon, held in a separate Escrow Account for use in the administration of the Settlement of the Settling Actions (including the Settling State Actions in the event that the courts or bodies before which such actions are pending require administration of settlement), including 50% of the fees associated with experts used for the distribution calculation, and distribution of the Net Settlement Fund, and providing the Notice to Class Members. The Expense Fund shall be paid from, and not in addition to, the Gross Settlement Fund.

1.24. “**Fairness Hearing**” means the hearing at or after which the Court will make a final decision pursuant to Rule 23 and Rule 23.1 of the Federal Rules of Civil Procedure as to whether the Settlement of the class and derivative actions contained in this Stipulation is fair, reasonable and adequate and, therefore, should receive final approval from the Court.

1.25. “**Federal Actions**” means the Settling Actions that are before the Court.

1.26. “**Federal Plaintiffs**” means the plaintiffs to the Federal Actions.

1.27. **“Final”** means, with respect to any order or judgment of any court, including, without limitation, the Judgment or the State Derivative Action Orders and Judgments, that such order or judgment represents a final and binding determination of all issues within its scope and is not subject to further review. Without limitation, an order or judgment becomes “Final” when: (a) no appeal from the order or judgment has been filed, and the prescribed time for commencing the appeal has expired, or (b) an appeal from the order or judgment has been filed, and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order or judgment has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus and any other proceedings of like kind. Notwithstanding any other provision hereof, the Judgment and/or the State Derivative Action Orders and Judgments shall be deemed Final at the time set forth herein even if, at that time, (i) the Court has not yet entered orders regarding the Plan of Allocation or the Attorneys’ Fees and Expenses Application(s), (ii) orders regarding the Plan of Allocation or the Attorneys’ Fees and Expenses Application(s) have been entered but have not yet become Final, or (iii) orders regarding the Plan of Allocation or the Attorneys’ Fees and Expenses Application(s) have been entered but are modified following an appeal proceeding. Thus, any appeal pertaining solely to any Plan of Allocation or to any Attorneys’ Fees and Expenses Application(s) shall not in any way delay or preclude the Judgment, the State Derivative Action Orders and Judgments or the Settlement from becoming Final.

1.28. **“Gross Settlement Fund”** means the Settlement Amount, plus any interest that may accrue thereon.



1.29. “**Hartman Plaintiffs**” means the plaintiffs in *Hartman, et al. v. Ivy Asset Management LLC, et al.*, No. 09-cv-8278 (S.D.N.Y.).

1.30. “**Hartman Plans**” means the IBEW Local 139 Pension Fund; the IBEW Local 325 Pension, Annuity, and Joint Trust Funds; the IBEW Local 241 Pension Fund; the IBEW Local 910 Annuity and Pension Funds; the 1199 SEIU Regional Pension Fund; the Service Employees Pension Fund of Upstate New York; the Upstate New York Bakery Drivers and Industry Pension Fund; the Plumbers and Pipefitters Local 112 Pension Fund; the Engineers Joint Welfare Fund; the Rochester Laborers’ Annuity and Pension Funds; and the Empire State Carpenters Annuity, Pension, and Welfare Funds.

1.31. “**Hartman Plaintiffs’ Counsel**” means Keller Rohrback L.L.P. and Lewis, Feinberg, Lee, Renaker & Jackson P.C.

1.32. “**Income Plus Fund**” means the Income Plus Investment Fund and the Master Income-Plus Group Trust established by JPJA, individually and collectively, and each other of their predecessors, successors, trustees, parents, subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices.

1.33. “**Ivy Defendants**” means Ivy, Lawrence Simon, Howard Wohl, Adam Geiger and Fred Sloan.

1.34. “**Ivy Released Parties**” means the Ivy Defendants, The Bank of New York Mellon Corp. and all of their respective predecessors, successors, direct and indirect parents and subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices, and each other of their present or former partners, members, principals, officers, directors, employees, attorneys, insurers, and other Persons acting or purporting to act on behalf of any of the foregoing, and the immediate family members of the individual Ivy Defendants.

1.35. “**Jeanneret Defendants**” means JPJA, John P. Jeanneret and Paul Perry.

1.36. “**Jeanneret Released Parties**” means the Jeanneret Defendants and all of their respective predecessors, successors, direct and indirect parents and subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices, and each other of their present or former partners, members, principals, officers, directors, employees, attorneys, insurers, and other Persons acting or purporting to act on behalf of any of the foregoing, and the immediate family members of the individual Jeanneret Defendants.

1.37. “**Judgment**” means the judgment and order to be entered by the Court approving the Settlement, substantially as attached hereto as Exhibit C.

1.38. “**Madoff**” means Bernard L. Madoff, founder, Chairman, and Chief Executive Officer of BLMIS, and includes BLMIS.

1.39. “**Madoff Trustee**” means Irving Picard, Trustee for the estate of BLMIS.

1.40. “**Madoff Trustee Proceeding**” means *Picard v. Beacon Associates LLC I et al.*, Adv. Pro. No. 10-5336 (BRL) (Bankr. S.D.N.Y.).

1.41. “**Madoff Trustee Proceeding Court**” means the court with jurisdiction over the Madoff Trustee Proceeding.

1.42. “**Madoff Trustee Proceeding Order**” means an order to be entered by the Madoff Trustee Proceeding Court approving the Madoff Trustee Proceeding Settlement Agreement.

1.43. “**Madoff Trustee Proceeding Settlement Agreement**” means that certain Settlement Agreement dated October 12, 2012 between the parties in the Madoff Trustee Proceeding, attached hereto as Exhibit J.

1.44. “**Net Settlement Fund**” means that portion of the Settlement Fund, plus any interest that may accrue thereon, which is to be distributed pursuant to the Plan of Allocation in accordance with Exhibits C and D.

1.45. “**Non-Class Actions**” means *Solis v. Beacon Associates Management Corp.*, 10-CV-8000 (S.D.N.Y.); *Hartman et al. v. Ivy Asset Management LLC et al.*, No. 09-cv-08278 (S.D.N.Y.); *Cuomo vs. Ivy Asset Management L.L.C. et al.*, 450489/2010 (N.Y. Sup. Ct. N.Y. Cnty.); *Beacon Associates Management Corp. v. Beacon Associates LLC I*, No. 09-cv-06910 (S.D.N.Y.); *Hecht v. Andover Associates Management Corp.*, Index No. 6110/2009 (N.Y. Sup. Ct. Nassau Cnty.); *Sacher v. Beacon Associates Management Corp.*, 005424/2009 (N.Y. Sup. Ct. Nassau Cnty.); *Jordan Group LLC v. Beacon Associates Management Corp.*, No. 3757/2011 (N.Y. Sup. Ct. Nassau Cnty.); *McBride v. KPMG, Int’l, et al.*, No. 650632/09 (N.Y. Sup. Ct. N.Y. Cnty.); *Schott v. Ivy Asset Management Corp. et al.*, No. 1:10-cv-08077-LBS-AJP (S.D.N.Y.); *Altman v. Beacon Associates Management Corp.*, Index No. 652238/2010 (N.Y. Sup. Ct. N.Y. Cnty.); *Glicker v. Ivy Asset Management Corp.*, Court File No. 502010CA029643 XXXX MB AB (Fla. Cir. Ct. Palm Beach Cnty.); *Gluck v. Beacon Associates LLC II and Beacon Associates Management Corp.*, AAA No. 19 435 00120 10 (American Arbitration Committee).

1.46. “**Notice(s)**” means the form of notices substantially as attached hereto as Exhibits A-1 and A-2, to be mailed or otherwise provided to, respectively: (a) the Settling Funds and their respective non-managing members or limited partners, ~~as the case may be~~, and all Rule 23(b)(3) Settlement Class Members who can be identified with reasonable effort and (b) to all participants and beneficiaries of the Rule 23(b)(1) Classes who can be identified with reasonable effort. The Notices (and this Stipulation and its Exhibits and all related papers) shall be posted at a website

dedicated to this Settlement, to be maintained by the Claims Administrator, and the websites of Co-Lead Class Counsel.

1.47. “**Person**” or “**Persons**” mean any natural person or any business, legal, or government entity or association.

1.48. “**Plaintiffs’ Counsel**” means all plaintiffs’ counsel of record in the Settling Actions, who agree to be bound by this Stipulation, as reflected in the signature block, *infra*.

1.49. “**Plan of Allocation**” means the plan or formula of allocation of the Net Settlement Fund agreed to by Plaintiffs’ Counsel as set forth in Exhibit D, and subject in whole or in part to any Court approval specified in Exhibit C pursuant to which the Net Settlement Fund shall be distributed to the Settling Plaintiffs and/or to Authorized Claimants following dissemination of the Notice and such further notice concerning the Plan of Allocation as may be directed by the Court.

1.50. “**Post-Fairness Hearing Approval Order**” means the order subsequent to the Fairness Hearing approving the Settlement, substantially as attached hereto as Exhibit B.

1.51. “**Preliminary Approval Order**” means the order, substantially as attached hereto as Exhibit A preliminarily approving the Settlement, including the Plan of Allocation and form of Notices, substantially as attached hereto as Exhibits A-1, A-2 and D.

1.52. “**Private Plaintiffs’ Counsel**” means all plaintiffs’ counsel of record in the Settling Actions who agree to be bound by this Stipulation, as reflected in the signature block, *infra*, other than counsel for the Secretary and the NYAG.

1.53. “**Private Settling Plaintiffs**” means all Settling Plaintiffs other than the Secretary and the NYAG.

1.54. “**Proof of Claim and Release**” means the form to be sent to Settlement Class Members, other Settling Plaintiffs and members of the Settling Funds, upon further order(s) of

the Court, by which Claimants may make claims against the Net Settlement Fund, substantially as attached hereto as Exhibit A-3.

1.55. “**Regulatory Settling Actions**” means *Solis v. Beacon Associates Management Corp.*, 10-CV-8000 (S.D.N.Y.) and *Cuomo vs. Ivy Asset Management L.L.C. et al.*, 450489/2010 (N.Y. Sup. Ct. N.Y. Cnty.).

1.56. “**Released Claims**” means:

(a) any and all of the Settling Plaintiffs’ and Settling Class Members’ claims, cross-claims, counterclaims, actions, causes of action, rights, judgments, debts, set-offs, contracts, promises, allegations, demands, obligations, duties, suits, expenses, assessments, penalties, charges, injuries, losses, costs, damages, liabilities, matters and issues of any kind or nature whatsoever against any Defendant Released Party, whether direct, indirect, derivative, on behalf of a class, in law or in equity, civil or criminal, administrative or judicial, based on state or federal statute or common law or any other source of law, sounding in contract, tort (including negligence of all kinds) or otherwise, known or unknown (including any Unknown Claims, as defined below), claimed or unclaimed, asserted or unasserted, suspected or unsuspected, discovered or undiscovered, accrued or unaccrued, anticipated or unanticipated, fixed or contingent, by reason of or arising out of or in connection with any facts, matters, transactions, decisions, actions, omissions or conduct, actual, alleged or which could have been alleged (1) to the extent that such a claim is based upon the factual allegations of the Complaints in any of the Settling Actions; and/or (2) concerning any investment made directly or indirectly with Madoff (including any purchase, sale, contribution, withdrawal, or decision to hold any direct or indirect investment with Madoff) to the extent that such a claim is based upon

any knowledge, conduct, act or failure to act (including without limitation any statement or omission) of or by any Settling Defendant (together, the “Plaintiffs’ Released Claims”).

(b) any and all claims of the Settling Defendants against any Settling Plaintiff, Settlement Class Member or Plaintiffs’ Counsel relating to (1) the institution or prosecution of the Settling Actions, or (2) any claims against any Settling Plaintiff which were or could have been brought in any of the Settling Actions relating to any investment made directly or indirectly with Madoff, including but not limited to cross-claims, counterclaims, third party claims, and claims for indemnification or contribution, and any and all of the Settling Defendants’ claims, actions and demands of whatsoever nature against the Secretary and the NYAG, and their respective officers, agents, attorneys, employees, and representatives, both in their individual and governmental capacities, including those arising under the Equal Access to Justice Act or any statute, rule or regulation, that relate in any manner to *Cuomo v. Ivy Asset Management L.L.C., et. al.*, Index No. 450489/2010 (Sup. Ct. N.Y. Cnty.), *Solis v. Beacon Associates Management Corp.*, 10-CV-8000 (S.D.N.Y.) or to any other transactions and occurrences regarding Madoff, or any other proceeding or investigation relating to Madoff (together, the “Defendants’ Released Claims”).

(c) any and all claims, cross-claims, counterclaims, actions, causes of action, rights, judgments, debts, set-offs, contracts, promises, allegations, demands, obligations, duties, suits, expenses, assessments, penalties, charges, injuries, losses, costs, damages, liabilities, matters and issues of any kind or nature whatsoever, whether direct, indirect, derivative, on behalf of a class, in law or in equity, civil or criminal, administrative or judicial, based on state or federal statute or common law or any other source of law, sounding in contract, tort (including negligence of all kinds) or otherwise, known or

unknown (including any Unknown Claims, as defined below), claimed or unclaimed, asserted or unasserted, suspected or unsuspected, discovered or undiscovered, accrued or unaccrued, anticipated or unanticipated, fixed or contingent, by reason of or arising out of or in connection with any facts, matters, transactions, decisions, actions, omissions, conduct or things whatsoever, existing on or before the execution date of this Stipulation and the later consequences thereof, of the Beacon Defendants against any Ivy Released Party or Jeanneret Released Party, of the Ivy Defendants against any Beacon Released Party or Jeanneret Released Party, or of the Jeanneret Defendants against any Beacon Released Party or Ivy Released Party (together, the “Co-Defendants’ Released Claims”).

It is understood and agreed that Released Claims are not intended to and specifically do not include: (1) any claims in *JP Jeanneret Associates, Inc. v. Mantello et al.*, 09-cv-1280 (N.D.N.Y.), *J.P. Jeanneret Associates Inc., et al. v. Hartford Fire Insurance Co., et al.*, 10-cv-1450 (N.D.N.Y.), *J.P. Jeanneret Associates Inc., et al. v. Hartford Fire Insurance Co., et al.*, 10-cv-1452 (N.D.N.Y.), *J.P. Jeanneret Associates Inc., et al. v. Hartford Fire Insurance Co., et al.*, 10-cv-1453 (N.D.N.Y) against any Person other than the Defendant Released Parties; (2) the release of any ERISA section 502(a)(1)(B) claim for vested benefits by an plan participant or beneficiary where such claims are unrelated to any matter asserted in the Settling Actions against any Person other than the Defendant Released Parties; (3) any claims of the Secretary for monetary and/or injunctive relief other than the Plaintiffs’ Released Claims specified in ¶ 1.56(a) above; (4) any claims of the NYAG for monetary and/or injunctive relief other than the Plaintiffs’ Released Claims specified in ¶ 1.56(a) above; (5) the claims against Defendant Friedberg, Smith & Co., P.C. in *Sacher v. Beacon Associates Management Corp.*, Index No. 005424/2009 (N.Y. Sup. Ct. Nassau Cnty.) and *Jordan Group LLC v. Beacon Associates Management Corp.*, Index No. 3757/2011 (N.Y. Sup. Ct. Nassau Cnty.); (6) the claims against

Defendant Citrin Cooperman & Co., LLP in *Hecht v. Andover Associates Management Corp.*, Index No. 6110/2009 (N.Y. Sup. Ct. Nassau Cnty.); (7) the claims against defendants in *McBride v. KPMG, Int'l, et al.*, Index No. 650632/09 (N.Y. Sup. Ct. N.Y. Cnty.) other than claims against the Defendant Released Parties; and (8) any claims asserted against defendants Family Management Corporation, Seymour W. Zises, and Andrea L. Tessler in *Newman et al. v. Family Management Corp. et al.*, No. 1:08-cv-11215-LBS (S.D.N.Y.), with all of the preceding exclusions being subject to applicable bar orders as set forth in ¶ 4.2. In addition, nothing herein shall be deemed to release or otherwise bar or impair Settling Parties' claims against any or all of their insurers or any individuals or entities who are not the Settling Plaintiffs or the Defendant Released Parties, or to release any claims asserted by the Settling Plaintiffs or the Settling Funds in *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities LLC*, Adv. Pro. No. 08-01789 (BRL) (the "SIPA Case"). Nothing herein shall diminish the rights, if any, of non-settling defendants in any action to a judgment reduction pursuant to New York General Obligations Law Section 15-108. Finally, nothing herein shall be deemed to release any rights or duties arising out of this Stipulation and Settlement.

1.57. "Settling Actions" means:

- (a) *In re: Beacon Associates Litigation*, Case No. 1:09-cv-00777-LBS (S.D.N.Y.);
- (b) *In re: J.P. Jeanneret Associates, Inc., et al.*, Case No. 1:09-cv-03907-CM (S.D.N.Y.);
- (c) *Board of Trustees of the Buffalo Laborers Security Fund et al. v. J.P. Jeanneret Associates, Inc. et al.*, No. 09-cv-08362 (S.D.N.Y.);
- (d) *Solis v. Beacon Associates Management Corp.*, 10-cv-8000 (S.D.N.Y.);



- (e) *Cuomo vs. Ivy Asset Management L.L.C. et al.*, 450489/2010 (N.Y. Sup. Ct. N.Y. Cnty.);
- (f) *Hartman et al. v. Ivy Asset Management LLC et al.*, No. 09-cv-08278 (S.D.N.Y.);
- (g) *Cacoulidis et al. v. Beacon Associates Management Corp. et al.*, No.09-cv-00777 (S.D.N.Y.);
- (h) *Plumbers Local 112 Health Fund et al. v. Beacon Associates Management Corp. et al.*, No. 09-03202 (S.D.N.Y.);
- (i) *Plumbers & Steamfitters Local 267 Pension Fund et al. v. J.P. Jeanneret Associates, Inc. et al.*, No. 09-07584 (S.D.N.Y.);
- (j) *Towsley et al. v. Beacon Associates Management Corp. et al.*, No. 09-cv-04453 (S.D.N.Y.);
- (k) *Raubvogel et al. v. Beacon Associates LLC I et al.*, No. 1:09-cv-02401 (S.D.N.Y.);
- (l) *Newman et al. v. Family Management Corp. et al.*, No. 1:08-cv-11215-LBS (S.D.N.Y.), but only as to the Beacon Released Parties and the Ivy Released Parties, provided, however, that for purposes of this sub-paragraph, the terms “Beacon Released Parties” and “Ivy Released Parties” specifically exclude Family Management Corporation, Seymour W. Zises and Andrea L. Tessler;
- (m) *Beacon Associates Management Corp. v. Beacon Associates LLC I*, No. 09-cv-06910 (S.D.N.Y.);
- (n) *Hecht v. Andover Associates Management Corp.*, Index No. 6110/2009 (N.Y. Sup. Ct. Nassau Cnty.);

(o) *Sacher v. Beacon Associates Management Corp.*, Index No. 005424/2009 (N.Y. Sup. Ct. Nassau Cnty.);

(p) *Jordan Group LLC v. Beacon Associates Management Corp.*, Index No. 3757/2011 (N.Y. Sup. Ct. Nassau Cnty.);

(q) *McBride v. KPMG, Int'l, et al.*, Index No. 650632/09 (N.Y. Sup. Ct. N.Y. Cnty.);

(r) *Schott v. Ivy Asset Management Corp. et al.*, No. 1:10-cv-08077-LBS-AJP (S.D.N.Y.);

(s) *Altman v. Beacon Associates Management Corp.*, Index No. 652238/2010 (N.Y. Sup. Ct. N.Y. Cnty.);

(t) *Glicker v. Ivy Asset Management Corp.*, Court File No. 502010CA029643 XXXX MB AB (Fla. Cir. Ct. Palm Beach Cnty.); and

(u) *Gluck v. Beacon Associates LLC II and Beacon Associates Management Corp.*, AAA No. 19 435 00120 10 (American Arbitration Committee).

1.58. “**Settlement**” means the settlement to be consummated under this Stipulation of Settlement.

1.59. “**Settlement Amount**” means the total gross principal settlement amount that will be paid by the Settling Defendants.

1.60. “**Settlement Classes**” means the following classes:

**23(b)(1) Classes**: Four Rule 23(b)(1) non-opt-out classes and one Rule 23(b)(1) non-opt-out subclass to whom notice and opportunity to object will be provided.

- **Beacon Participant and Beneficiary Class**: “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested in the Beacon Funds and that had not fully redeemed its interests in the Beacon Funds as of December 11, 2008.”
- **Beacon Jeanneret ERISA Subclass**: “All participants and beneficiaries of any employee benefit plan covered by ERISA who obtained the investment management services of J.P.

Jeanneret Associates, Inc., John P. Jeanneret, or Paul L. Perry, and who invested in the Beacon Funds that had not fully redeemed its interests in the Beacon Funds as of December 11, 2008.”

- **Income Plus Participant and Beneficiary Class:** “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested in the Income Plus Fund and that had not fully redeemed its interests in the Income Plus Fund as of December 11, 2008.”
- **Andover Participant and Beneficiary Class:** “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested in the Andover Funds and that had not fully redeemed its interests in the Andover Funds as of December 11, 2008.”
- **Direct Investor Participant and Beneficiary Class:** “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested directly with Madoff pursuant to a Discretionary Investment Management Agreement with JPJA and that had not fully redeemed its investments with BLMIS as of December 11, 2008.”

**23(b)(3) Classes:** Five Rule 23(b)(3) opt-out classes and one Rule 23(b)(3) opt-out subclass:

- **Beacon Investor Class:** “All investors in the Beacon Funds that had not fully redeemed their interests in the Beacon Funds as of December 11, 2008.”
- **Beacon Jeanneret Investor Subclass:** “All persons and entities who obtained the investment management services of JPJA, John P. Jeanneret, or Paul L. Perry, and who invested in the Beacon Funds that had not fully redeemed their interests in the Beacon Funds as of December 11, 2008.”
- **Income Plus Investor Class:** “All investors in the Income Plus Fund that had not fully redeemed their interests in the Income Plus Fund as of December 11, 2008.”
- **Direct Investor Class:** “All investors who invested directly with Madoff pursuant to a Discretionary Investment Management Agreement with JPJA that had not fully redeemed their investments with BLMIS as of December 11, 2008.”
- **Beacon Fiduciary Class:** “All trustees and named fiduciaries of any employee benefit plan covered by ERISA (acting in their fiduciary capacity on behalf of the plan and for the benefit of all participants and beneficiaries of the plans for which they serve as trustees) that invested in the Beacon Funds and that had not fully redeemed its interests in the Beacon Funds as of December 11, 2008.”
- **Buffalo Laborers Class:** “All trustees and named fiduciaries of any employee benefit plan covered by ERISA (acting in their fiduciary capacity on behalf of the plan and for the benefit of all participants and beneficiaries of the plans for which they serve as trustees) that obtained the investment management services of J.P. Jeanneret Associates Inc. and that invested with Bernard L. Madoff, either directly with Bernard L. Madoff Investment Securities LLC (“BLMIS”) or indirectly through the Income Plus Fund or the Andover Funds, and that had not fully redeemed its interests in BLMIS, the Income Plus

Fund or the Andover Funds as of December 11, 2008.”

Excluded from all Settlement Classes are: (a) the Settling Defendants; (b) the spouses of individual Settling Defendants; (c) executive officers of the corporate Settling Defendants (except that for BAMC and AAMC, the executive officer exclusion does not apply to Robert Danziger and Michael Markhoff or any trusts or financial vehicles established for their benefit); (d) corporate entities that control or are controlled by the corporate Settling Defendants (except where such entity is acting merely and solely as an agent, manager and/or custodian); and (e) the legal representatives, heirs, successors and assigns of any excluded person solely in their capacity as legal representatives, heirs, successors and assigns, as applicable, of an excluded person and not in their individual capacity (collectively, the “Excluded Persons”). Excluded from the Buffalo Laborers Class are the Hartman Plaintiffs.

1.61. “**Settlement Class Member**” means a Person who falls within the definition of any of the Settlement Classes and who does not submit any timely, completed and executed request for exclusion, substantially as required by the Notice or as otherwise initially approved by the Court, thereby opting out of any of the Settlement Classes, or who is not otherwise excluded from any Settlement Class.

1.62. “**Settlement Fund**” means the amount remaining in the Gross Settlement Fund, plus any interest that may accrue thereon, after payment to the U.S. Treasury and the NYAG set forth in ¶¶ 5.2(a) and (b) below, plus any interest that may accrue thereon.

1.63. “**Settling Defendants**” means the Beacon Defendants, the Ivy Defendants and the Jeanneret Defendants.

1.64. “**Settling Funds**” means the Andover Funds, the Beacon Funds and the Income Plus Fund.

1.65. “**Settling Parties**” means, collectively, the Settling Defendants and the Settling Plaintiffs on behalf of themselves and (as applicable) for the benefit of the Settlement Class Members and the Settling Funds.

1.66. “**Settling Plaintiffs**” means the Secretary; the NYAG; the Settling Funds; The Plumbers & Steamfitters Local 267 Pension and Insurance Funds and Trustees (including Gregory Lancette, Bradley Ward, Bryan Allen, David Waby, Dominic Mancini, Donald A. Little, Donald Beckley, James Fredenburg, James Rood, James Rounds, Patrick Bonnell and Peter Lauze); Plumbers Local 112 Health Fund and Trustees (including James Rounds and Lyle Fassett); The Local 73 Retirement Fund and Trustees (Frederick J. Volkomer, Frederick J. Volkomer II, Patrick Carroll, Timothy Donovan and Timothy Rice); The U.A. of Journeymen & Apprentices Local 73 Fund and Trustees (including Daniel Hickey, Eric Saunders, James Donovan, Jason Lozier, L. James Culeton, Marc Stevens, Mark Maniccia, Timothy Donovan, Timothy Rice and Tom Metcalf, Jr.); Local 73 Annuity Fund; Local 73 Health & Welfare Fund; I.B.E.W. Local 43 and Electrical Contractors Welfare Fund and Trustees (including Carl Hibbard, Jr., Dennis J. McDermott, Donald H. Morgan, James Engler, John S. Kogut, Kevin J. Crawford, Marilyn M. Oppedisano and Patrick Costello); Oswego County Laborers’ Local 214 Pension Fund and Trustees (including David Henderson, Jr., Earl N. Hall, Michael Blasczienski, Paul A. Castaldo and William F. Shannon), now known as the Central New York Laborers Pension Fund; Jay Raubvogel; M. Raubvogel Co. Trust; Grand Metro Builders of NY Corp. Defined Benefit Plan and Trustees (including John Cacoulidis and Phyllis Cacoulidis); Board of Trustees of The Buffalo Laborers Security Fund, Welfare Fund and Welfare Staff Fund; Gary Kubik as participant and beneficiary in the Buffalo Laborers Security and Welfare Fund; Ernest A. Hartman and Bruce Condie as Trustees of the IBEW Local 139 Pension Fund, Thomas E. Spicer and Matthew Labosky as Trustees of the IBEW Local 325 Pension, Annuity, and Joint

Trust Funds; Michael Talarski and Bruce Condie as Trustees of the IBEW Local 241 Pension Fund; Elizabeth F. Cassada and James A. Williams as Trustees of the IBEW Local 910 Annuity and Pension Funds; Thomas R. LoStracco as Trustee of the 1199 SEIU Regional Pension Fund; George Kennedy as Trustee of the Service Employees Pension Fund of Upstate New York; Rodney Malarchik and Irving Wood as Trustees of the Upstate New York Bakery Drivers and Industry Pension Fund; James Rounds and Lyle D. Fassett as Trustees of the Plumbers and Pipefitters Local 112 Pension Fund; Rockne Burns as Trustee of the Engineers Joint Welfare Fund; Robert Brown as Trustee of the Rochester Laborers' Annuity and Pension Funds; Michael Capelli and Alan Seidman as Trustees of the Empire State Carpenters Annuity, Pension, and Welfare Funds; David Fastenberg Trustee, Long Island Vitreo-Retinal; Jordan Group, LLC, derivatively on behalf of Beacon Associates LLC I; Charles J. Hecht, derivatively on behalf of Andover Associates LLC I; Donna M. McBride, individually and derivatively on behalf of Beacon Associates LLC II; Joel Sacher and Susan Sacher, derivatively on behalf of Beacon Associates LLC II;; the Stephen C. Schott 1984 Trust; Alison Altman, Amanda Atlas, Howard Gelfer, Harvey Glicker, Joel T. Gluck (IRA), Levy Investment Partners, LP, Jackie Levy, Peter Levy, Ben Macklowe, Hillary Macklowe, Ben Macklowe as Trustee of the Macklowe Gallery Ltd. Profit Sharing Plan, Lloyd Macklowe, Barbara Macklowe, Barbara Macklowe (IRA), Laurence Matlick, Carl Mittler (IRA), Marvin Poster (IRA), Mustang Sportswear, Inc., Ken Siegel, Ken Siegel (IRA), Ken Siegel Defined Benefit Plan, and Gail Zarean.

1.67. **“Settling State Actions”** means *Hecht v. Andover Associates Management Corp.*, Index No. 6110/2009 (N.Y. Sup. Ct. Nassau Cnty.); *Sacher v. Beacon Associates Management Corp.*, Index No. 005424/2009 (N.Y. Sup. Ct. Nassau Cnty.); *Jordan Group LLC v. Beacon Associates Management Corp.*, Index No. 3757/2011 (N.Y. Sup. Ct. Nassau Cnty.); *McBride v. KPMG, Int’l, et al.*, No. 650632/09 (N.Y. Sup. Ct. N.Y. Cnty.); *Altman v. Beacon Associates*

*Management Corp.*, Index No. 652238/2010 (N.Y. Sup. Ct. N.Y. Cnty.); *Glicker v. Ivy Asset Management Corp.*, Court File No. 502010CA029643 XXXX MB AB (Fla. Cir. Ct. Palm Beach Cnty.); *Gluck v. Beacon Associates LLC II and Beacon Associates Management Corp.*, AAA No. 19 435 00120 10 (American Arbitration Association).

1.68. “**State Court Derivative Actions**” means *Hecht v. Andover Associates Management Corp.*, Index No. 6110/2009 (N.Y. Sup. Ct. Nassau Cnty.), *Sacher v. Beacon Associates Management Corp.*, Index No. 005424/2009 (N.Y. Sup. Ct. Nassau Cnty.), *Jordan Group LLC v. Beacon Associates Management Corp.*, Index No. 3757/2011 (N.Y. Sup. Ct. Nassau Cnty.) and *McBride v. KPMG, Int’l, et al.*, Index No. 650632/09 (N.Y. Sup. Ct. N.Y. Cnty.).

1.69. “**State Derivative Action Courts**” means the Supreme Court of the State of New York for New York County and the Supreme Court of the State of New York for Nassau County, together with the applicable clerks that may enter any orders of said courts.

1.70. “**State Derivative Action Orders**” means the orders to be entered by each of the State Derivative Action Courts in each of the State Court Derivative Actions approving the Settlement, substantially as attached hereto as Exhibits K and L.

1.71. “**State Derivative Action Orders and Judgments**” means the State Derivative Action Orders together with the State Derivative Action Judgments.

1.72. “**State Derivative Action Judgments**” means the judgments to be entered by the applicable clerks from the State Derivative Action Orders.

1.73. “**Unknown Claims**” means any claims that any Settling Party or Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release which, if known, might have affected his, her or its decision to release the Released Claims or to object or not to object to the terms of this Stipulation or to opt out or not opt out from the Settlement

Class. With respect to any and all Released Claims, each Settling Party and Settlement Class Member shall be deemed to waive, and shall waive and relinquish to the fullest extent permitted by law, any and all provisions, rights and benefits of California Civil Code Section 1542 and any provisions, rights or benefits conferred by any law of the United States or any state or territory of the United States, or principal of common law, which is similar, comparable or equivalent to California Civil Code Section 1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

The Settling Parties or Settlement Class Members may hereafter discover facts in addition to or different from those that any of them now know or believe to be true with respect to the subject matter of the Released Claims, but each Settling Party shall expressly, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have fully, finally and forever settled and released any and all claims that are the subject of the Released Claims whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, or may hereafter exist, without regard to the subsequent discovery or existence of such additional or different facts. The Settling Parties acknowledge, and the Settlement Class Members shall be deemed to have acknowledged, and by operation of the Judgment shall have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement to which this release is a part.



## 2. The Settlement

### a. The Settlement Payments

2.1. In full and final settlement of any and all of the Settling Actions as to the Settling Defendants, and in full and final satisfaction of any and all of the Released Claims as to the Settling Defendants,<sup>2</sup> the Settling Defendants shall pay a total Settlement Amount of \$216,500,000 (Two Hundred Sixteen Million, Five Hundred Thousand Dollars) in cash, plus \$3,357,694 in additional value, as described below. The Settling Defendants shall pay directly to the Escrow Agent their respective shares of the Settlement Amount, broken down among the Settling Defendants as follows:

- Ivy Defendants: Two hundred ten million dollars (\$210,000,000);
- Jeanneret Defendants: Three million dollars (\$3,000,000);
- Beacon Defendants: Three million five hundred thousand dollars (\$3,500,000) as a return of management fees received by the Beacon Defendants prior to December 11, 2008; and
- In addition, the Beacon Defendants waive any and all claims to receive any management fees, expenses, indemnity, or re-imbursalment of any kind from the Beacon Funds and Andover Funds, including without limitation, any claims for accrued or unpaid management fees owed by the Beacon Funds or Andover Funds, in the current amount of three million three hundred fifty

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<sup>2</sup> For the avoidance of doubt, the Settlement is intended to settle Released Claims amongst the Released Parties. The Settlement, the payment of the Settlement Amount, the settlement of Settling Actions or the release of the Released Claims, are not intended to settle, pay or compensate any of the Settling Plaintiffs or the Settling Funds for claims asserted (a) against the BLMIS estate in the case captioned *Securities Investor Protection Corporation v. Bernard Madoff Investment Securities LLC* and *In re Bernard Madoff Investment Securities LLC*, Debtor, Case No. 08-01789 (BRL), filed in the United States Bankruptcy Court, Southern District of New York, pending before the Honorable Burton R. Lifland, with Irving H. Picard as Trustee, including all substantively consolidated proceedings in those cases and all proceedings in those cases which may be removed to federal district court, in connection with their direct or indirect investments with BLMIS, or (b) against Friedberg, Smith & Co., P.C. and Citrin Cooperman & Co. LLP and any remaining non-settling defendants in the State Court Derivative Actions other than the Defendant Released Parties; or to compromise, settle or release any claims against any party who is not a Defendant Released Party.

seven thousand six hundred ninety four dollars (\$3,357,694). The Beacon Defendants further waive any claims to be reimbursed any legal fees from the Beacon or Andover Funds.

2.2. In consideration for entering into the Settlement, the Settling Defendants shall cause the Settlement Amount to be paid into an interest bearing Escrow Account maintained by the Escrow Agent, subject to Court oversight. Each Settling Defendant shall have the choice of paying its share of the Settlement Amount (i) within five (5) business days of the Court's entry of the Preliminary Approval Order, substantially as attached hereto as Exhibit A, together with an amount equal to the interest that would have accrued on its share of the Settlement Amount from the date of the execution of this Stipulation to the date on which it pays its share of the Settlement Amount, calculated at 0.00% or (ii) within five (5) business days, for the Ivy Defendants, or within thirty (30) calendar days, for the other Settling Defendants, from the execution of this Stipulation.

2.3. An Expense Fund in an amount not to exceed two hundred fifty thousand dollars (\$250,000), plus any interest that may accrue thereon, may be held in a separate interest-bearing Escrow Account with checking privileges for payment of costs reasonably and actually incurred in the administration of the Settlement of the Settling Actions (including the State Court Derivative Actions in the event that the State Derivative Action Courts require administration of settlement), and providing the Notices to members of the Rule 23(b)(3) and 23(b)(1) Classes. Plaintiffs' Counsel shall provide the Settling Defendants' counsel, upon request, appropriate documentation of all such costs incurred. The Expense Fund shall be paid from, and not in addition to, the Gross Settlement Fund.

2.4. No amount may be disbursed from the Gross Settlement Fund prior to the Effective Date, except that (a) the Expense Fund may be funded from the Gross Settlement Fund

and (b) the Taxes and Tax Expenses (as defined in ¶ 2.11, below) may be paid from the Gross Settlement Fund as they become due.

2.5. Each of the Settling Defendants and their respective counsel shall have no responsibility for and no liability whatsoever with respect to the Settlement Amount after it has paid its share of the Settlement Amount as set forth in this Stipulation. In no event shall any Settling Defendant be required to pay any amount except for its respective share of the Settlement Amount as set forth in this Stipulation, nor shall any Settling Defendant have any liability or responsibility for the Settlement Amount after its respective share of the Settlement Amount has been fully paid to the Escrow Agent.

**b. The Handling of the Gross Settlement Fund**

2.6. The Escrow Agent shall invest any funds in excess of \$250,000 in U.S. Treasury Securities, and/or a money market account comprised of U.S. Treasury Securities. The monies for payment of Taxes shall be invested in a similar investment, except that these amounts may be maintained, as designated by Authorized Counsel, in shorter-term investments to make those funds available for transfer. The Escrow Agent shall not bear any risks related to the investment of the Settlement Fund in accordance with the provisions of paragraph 4 of the Escrow Agreement, except for liability, damage or losses arising out of their intentional misconduct or gross neglect as adjudicated by a court of competent jurisdiction.

2.7. The Escrow Agent shall be authorized to execute only transactions that are consistent with the terms of this Stipulation or order(s) of the Court.

2.8. Except as provided in paragraph 6 of the Escrow Agreement, the Settlement Fund shall remain subject to the jurisdiction of the Court until such time as the Settlement Fund shall be distributed, pursuant to this Stipulation.

c. **Taxes**

2.9. The Settling Parties agree to structure the Gross Settlement Fund as being at all times a “qualified settlement fund” under Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder, and no party shall take any position in any filing or before any tax authority that is inconsistent with such treatment. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 2.9, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare properly and timely deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

2.10. For purposes of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2 by, *e.g.*, (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding requirements imposed on disbursements from the Gross Settlement Fund, and (iii) timely and properly filing applicable federal, state and local tax returns necessary or advisable with respect to the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this ¶ 2.10) shall be consistent with this ¶ 2.10 and in all events shall reflect that all Taxes as defined in ¶ 2.11 below (including any estimated Taxes, interest or penalties) on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in ¶ 2.11.

2.11. All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon the Settling Defendants or their counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (collectively, “Taxes”), and (ii) expenses and costs incurred in connection with the operation and implementation of this ¶ 2.11, including, without limitation, expenses of tax attorneys and/or accountants and mailing and disbursement costs and expenses relating to filing (or failing to file) the returns described in this ¶ 2.11 (collectively, “Tax Expenses”), shall be paid out of the Gross Settlement Fund.

2.12. In all events neither the Settling Defendants nor their counsel shall have any liability or responsibility for the Taxes or the Tax Expenses, nor for any taxes payable by any person on account of receipt of any allocation of the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the Settlement Fund, without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants, any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither the Settling Defendants nor their counsel are responsible therefore, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 2.12.

### **3. Federal and State Court Approval**

3.1. After execution of this Stipulation, the Class Action Named Plaintiffs shall submit this Stipulation with its Exhibits to the Court and apply for entry of the Preliminary Approval Order, substantially as attached hereto as Exhibit A:

(a) preliminarily certifying the Settlement Classes pursuant to Federal Rule of Civil Procedure 23(b)(1) and 23(b)(3) exclusively for settlement purposes, including, pursuant to Federal Rule of Civil Procedure 23(c)(1)(C), preliminarily amending any class certification orders that have previously been issued in any of the Settling Actions to certify the Settlement Classes as defined and described in this Stipulation; and preliminarily finding (to the extent not already held in prior class certification decisions), that for settlement purposes that the Class Action Named Plaintiffs fairly and adequately represent the interests of members of the Settlement Classes that they represent;

(b) preliminarily finding for settlement purposes that the Derivative Plaintiffs fairly and adequately represent the interests of members of the Settling Funds similarly situated in enforcing the rights of the Settling Funds;

(c) preliminarily approving the Settlement;

(d) setting a hearing (the "Fairness Hearing"), upon notice to the Settlement Classes, to (i) consider whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Class Members and dismissing upon the Effective Date the Federal Actions and all of the claims asserted by the Federal Plaintiffs and the Settlement Class Members against the Defendant Released Parties without costs and with prejudice; (ii) consider whether the Plan of Allocation is fair and reasonable and should be approved (or to direct the later consideration of the Plan of Allocation); and (iii)

consider the applications, if any, of Private Plaintiffs' Counsel for an award of attorneys' fees and payment of costs and expenses;

(e) setting the method of giving notice of the Settlement to the Settlement Classes;

(f) approving the form of 23(b)(3) Notice attached hereto as Exhibit A-1;

(g) approving the form of 23(b)(1) Notice attached hereto as Exhibit A-2;

(h) approving the Proof of Claim and Release Form attached hereto as Exhibit A-3;

(i) setting a period of time during which members of the Settlement Classes may serve written objections to the Settlement, the Plan of Allocation, or the application for attorneys' fees and expenses;

(j) enjoining the prosecution of any claim that is subject to the release and dismissal contemplated by this Settlement by any Settlement Class Member; and

(k) setting a period of time during which Class Members must file Proofs of Claim in order to participate in the distribution of the Net Settlement Fund.

3.2. Simultaneously, the plaintiffs in the State Derivative Actions shall submit this Stipulation with its Exhibits to the State Derivative Action Courts so that they may at their discretion review and/or modify the form of the 23(b)(3) Notice and, at their discretion, participate telephonically (or otherwise as the State Derivative Action Courts may request) in the Fairness Hearing as contemplated in ¶ 3.4 below.

3.3. After (i) each of the State Derivative Action Courts has in its discretion reviewed and approved the form of Notices, or has informed the Settling Parties that in its discretion it does not intend to review the form of Notices, and (ii) approval of the Preliminary Approval Order as may be modified by the Court and reflecting any modifications to the form of Notices

requested by the State Derivative Action Courts, the Claims Administrator shall cause the 23(b)(1) and 23(b)(3) Notices to be transmitted in the form and manner approved by the Court and, if applicable, the State Derivative Action Courts. The Notices shall include the general terms of the Settlement and the provisions of the Settlement, the Plan of Allocation and the Attorneys' Fees and Expenses Application(s), and shall set forth the procedure by which recipients of the Notices may object to the Settlement, the Plan of Allocation, or the Attorneys' Fees and Expenses Application(s), or request to be excluded from the Settlement Classes. The date and time of the Fairness Hearing shall be added to the Notices before it is mailed or otherwise provided to members of the Settlement Classes and the non-managing members of the Settling Funds. To the extent that members of the Settlement Classes and the non-managing members of the Settling Funds are coextensive, only one such notice per addressee shall be required. Reasonable costs incurred in printing and mailing the Notices shall be payable from the Expense Fund. If the Settlement is terminated for any reason, Settling Plaintiffs and Plaintiffs' Counsel shall have no obligation to reimburse to the Expense Fund or the Gross Settlement Fund the costs of the Notices, or other costs and expenses of the Expense Fund or Gross Settlement Fund charged under this Stipulation, and the Settling Defendants will not be reimbursed that amount if the Effective Date does not occur.

3.4. After the Notices have been mailed, Co-Lead Settlement Class Counsel shall request that the Court hold the Fairness Hearing and finally approve the Settlement, the Plan of Allocation, and the Attorneys' Fees and Expenses Application. The Settling Parties shall jointly request that the Court and each of the State Derivative Action Courts coordinate with one another (i) as to the timing and sequence of the entry of the Preliminary Approval Order and the State Derivative Action Judgments, and (ii) such that the State Derivative Courts may in their discretion participate, whether telephonically or otherwise as the Court and such State Derivative



Courts may agree, in the Court's Fairness Hearing. Approval by the Court or the State Derivative Action Courts of such request is not a material term of this Stipulation or Settlement.

3.5. At the Fairness Hearing, the Settling Parties shall jointly request entry of a Post-Fairness Hearing Approval Order, substantially as attached hereto as Exhibit B, the entry of which is a condition of this Stipulation and Settlement:

(a) approving finally the Settlement as fair, reasonable, and adequate, within the meaning of Federal Rules of Civil Procedure 23 and 23.1 and other applicable law, and directing its consummation pursuant to its terms;

(b) to the extent that they have not already been certified, confirming certification of the Settlement Classes solely for purposes of this Stipulation and the Settlement, including, pursuant to Federal Rule of Civil Procedure 23(c)(1)(C), amending any class certification orders that have previously been issued in any of the Settling Actions to certify the Settlement Classes as defined and described in this Stipulation, and finding that each element for certification of each Settlement Class is met, for these limited purposes;

(c) dismissing upon the Effective Date the Federal Actions and all of the claims asserted by the Federal Plaintiffs or the Settlement Class Members therein as to the Defendant Released Parties without costs and with prejudice;

(d) permanently barring and enjoining upon the Effective Date the institution or prosecution of any action by any Settlement Class Member against the Defendant Released Parties in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere asserting any Released Claim;

(e) permanently barring, enjoining, and finally discharging upon entry of the Judgment all Claims as provided for in ¶ 4.2 of this Stipulation;

(f) reserving jurisdiction over the Federal Actions, including all further proceedings concerning the administration, consummation, and enforcement of this Settlement therein;

(g) reserving jurisdiction of the State Court Derivative Actions to proceed against the defendants thereto other than the Settling Defendants; and

(h) containing such other and further provisions consistent with the terms of this Settlement to which the Parties hereto expressly consent in writing.

3.6. The Settling Parties shall jointly request that the State Derivative Action Courts coordinate the settlement with the federal actions to the extent each court deems necessary and appropriate in order to consummate the overall settlement contemplated by this Stipulation.

3.7. Upon the entry of the Post-Fairness Hearing Approval Order and Final State Derivative Action Orders and Judgments in each of the State Court Derivative Actions, the Settling Parties in the Federal Actions shall jointly request the Court to enter the Judgment in accordance with ¶ 7.1, below.

3.8. The Settling Defendants shall have the option to terminate the Settlement in its entirety in the event that, as set forth in the Supplemental Agreement between the Settling Parties dated November 8, 2012 (the “Supplemental Agreement”), members of the Settlement Classes (i) in excess of the number stated in the Supplemental Agreement, or (ii) whose aggregate net investments (or the net investments of ERISA plans for which they are fiduciaries) directly with Madoff or in the Settling Funds prior to December 11, 2008 were in excess of the amounts listed in the Supplemental Agreement, choose to opt out of or are otherwise excluded from any Settlement Class, except for those who are excluded by this Stipulation. In order to effectuate

the provisions of this ¶ 3.8, the Preliminary Approval Order submitted to the Court shall provide that members of the Settlement Classes wishing to make such an exclusion request shall mail the request in written form by first-class mail, postmarked no later than the date ordered by the Court, to the address designated in the Notice for such exclusions. The request for exclusion shall clearly indicate the name, address and telephone number of the Person seeking exclusion, that the sender requests to be excluded from the Settlement Classes, and must be signed by the Person.<sup>3</sup> Persons requesting exclusion are also directed to state: the full name of the Settling Fund(s) purchased and/or identify information concerning any direct Madoff investment; the number of shares or interests purchased and sold/redeemed and/or the amount of contributions and withdrawals as applicable; the date(s) on which purchases and redemptions and/or contributions and withdrawals, if any, were made; and the number of shares or the dollar value of the interests held as of December 10, 2008 and/or the value of the direct Madoff investment as of December 10, 2008. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. Any Settlement Class Member who is excluded from any of the Settlement Classes shall not be entitled to participate in any distributions from the Net Settlement Fund as described in this Stipulation and Plan of Allocation. Within two (2) business days of receipt by the Claims Administrator of any request for exclusion, copies of the request and all such forms shall be provided to Plaintiffs' Counsel and counsel for the Settling Defendants. The Settling Defendants may exercise the option set forth in this ¶ 3.8 no later than seven (7) days before the date set for the Fairness Hearing. It is a material term of this Stipulation and Settlement that no member of any Settlement Class may opt out of or be otherwise excluded

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<sup>3</sup> The Rule 23(b)(3) Notice shall inform Class Members that there is no right to opt out of the settlement of the derivative claims being settled herewith.

from any Settlement Class later than twenty-one (21) days prior to the date set for the Fairness Hearing.

3.9. Co-Lead Settlement Class Counsel shall have the right to communicate with Class Members in a manner consistent with their ethical and other obligations regarding any decisions to opt out of any Settlement Class. If any member of the Settlement Classes that has opted out withdraws in writing his, her or its request for exclusion from the Settlement Classes and is reaccepted into all Settlement Classes in which he, she or it is a member (a “Re-Opt-In”), Co-Lead Settlement Class Counsel shall so advise the Settling Defendants’ counsel in writing and provide proof of the withdrawal. If, no later than twenty-one (21) days prior to the date of the Fairness Hearing, sufficient members of the Settlement Classes that have opted out have Re-Opted-In such that the members of the Settlement Classes that have chosen to opt out of any Settlement Class and have not subsequently Re-Opted-In is (i) less than or equal to the number stated in the Supplemental Agreement, and (ii) have aggregate net investments (or the net investments of ERISA plans for which they are fiduciaries) directly with Madoff or in the Settling Funds prior to December 11, 2008 less than or equal to the amounts listed in the Supplemental Agreement, Co-Lead Settlement Class Counsel shall so advise the Settling Defendants’ counsel in writing no later than fourteen (14) days prior to the date of the Fairness Hearing, and any notice by the Settling Defendants of termination of the Settlement pursuant to ¶ 3.8 shall automatically and immediately become null and void, provided, however, that the Settling Defendants shall retain the option to terminate the Settlement in its entirety if the conditions specified in ¶ 3.8 are at any point met again.

3.10. Pending the Effective Date or cancellation, failure or termination of the Settlement, no Settling Plaintiff, nor any Settling Fund or Settlement Class Member shall commence, prosecute, pursue or litigate any Released Claim against the Defendant Released

Parties, whether directly, representatively or in any other capacity, and regardless of whether or not any such Settlement Class Member has appeared in the Settling Actions, unless the failure to act in a Settling Action would materially prejudice the position of such Settling Plaintiff, Settling Fund or Settlement Class Member, after reasonable efforts to stay or hold in abeyance the requirement to so act in such Settling Action.

#### **4. Releases**

4.1. Upon the Effective Date:

(a) the Settling Plaintiffs (including all Derivative Plaintiffs in both their individual and derivative capacity) on behalf of themselves, their successors and assigns, and (as applicable) their members, trustees, participants and beneficiaries, fully, finally and completely release all Plaintiffs' Released Claims against the Defendant Released Parties;

(b) the Settlement Class Members, on behalf of themselves, their successors and assigns and (as applicable) their members, trustees, participants and beneficiaries, fully, finally and completely release, and shall be deemed to have fully, finally and completely released, all Plaintiffs' Released Claims against the Defendant Released Parties

(c) the Settling Defendants, on behalf of themselves and their successors and assigns, fully, finally and completely release all Defendants' Released Claims against the Settling Plaintiffs and Settlement Class Members and Plaintiffs' Counsel;<sup>4</sup>

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<sup>4</sup> Ivy represents that the Ivy Investment Committee and the Ivy Strategic Operating Committee, which were named as defendants in *Board of Trustees of the Buffalo Laborers Security Fund et al. v. J.P. Jeanneret Associates, Inc. et al.*, No. 09-08362 (S.D.N.Y.), no longer exist and do not have the capacity to sue.

(d) the Beacon Defendants, on behalf of themselves and their successors and assigns, fully, finally and completely release all Co-Defendants' Released Claims against the Ivy Released Parties and the Jeanneret Released Parties;

(e) the Ivy Defendants, on behalf of themselves and their successors and assigns, fully, finally and completely release all Co-Defendants' Released Claims against the Beacon Released Parties and the Jeanneret Released Parties; and

(f) the Jeanneret Defendants, on behalf of themselves and their successors and assigns, fully, finally and completely release all Co-Defendants' Released Claims against the Beacon Released Parties and the Ivy Released Parties.

Nothing contained herein shall, however, bar any Settling Party from bringing any action or claim to enforce the terms of this Stipulation or the Judgment, or affect any pending litigation arising from common facts against defendants other than the Defendant Released Parties.

4.2. The Final Judgment and the Final State Derivative Action Orders and Judgments shall permanently bar, enjoin and restrain any Person currently or hereafter named as a defendant in any of the Settling Actions over which the Court or the State Derivative Action Courts, respectively, have jurisdiction from commencing, prosecuting or asserting any claim for indemnity or contribution against the Defendant Released Parties (or any other claim against the Defendant Released Parties where the injury consists of actual or threatened liability to the Settling Plaintiffs, or any settlement payment to any Settling Plaintiff), based upon the Released Claims, whether arising under state, federal or foreign law as claims, cross-claims, third-party claims or otherwise. The Final Judgment shall provide that such barred Person shall be entitled to a judgment credit permitted under applicable law. The Final State Derivative Action Orders and Judgments shall provide that such barred Person shall have the claim(s) of the applicable

State Court Derivative Action plaintiffs against such barred Person determined in accordance with Section 15-108(a) of the New York General Obligations Law.

## **5. Distribution of Gross Settlement Fund**

5.1. Upon the Effective Date, the Claims Administrator, subject to supervision and direction of the Court and/or Co-Lead Settlement Class Counsel, shall administer and calculate the claims to be submitted by Authorized Claimants, and shall oversee distribution of the Gross Settlement Fund pursuant to the provisions below.

5.2. Subject to the terms of this Stipulation, the Claims Administrator shall divide the Gross Settlement Fund as follows:

(a) a payment of \$5 million, shall be paid directly to the State of New York in a manner and to an address to be provided by the NYAG upon the occurrence of the Effective Date;

(b) a payment of \$7 million pursuant to ERISA § 502(1), 29 U.S.C. § 1132(1), shall be paid directly to the U.S. Treasury. A check made out to the U.S. Treasury and referencing EBSA Case Nos. 31-031794, 30-102817, and 30-102861 shall be sent upon the occurrence of the Effective Date via overnight courier in accordance with instructions from the Department of Labor. Please contact Soroosh Nikouei at 202-693-8486 for instructions. Settling Defendants waive the notice of assessment and service requirement of 29 C.F.R. § 2570.83.

5.3. The amount remaining in the Gross Settlement Fund after payment to the NYAG and U.S. Treasury set forth in ¶¶ 5.2(a) and (b) above shall constitute the “Settlement Fund.” The Settlement Fund shall then be divided into two separate Escrow Accounts as follows:

(a) the Attorneys’ Fees and Expenses Award Fund, to be awarded following an application or applications made by Private Plaintiffs’ Counsel, consisting of (i) the

percentage of the Settlement Fund which Private Plaintiffs' Counsel ask the Court to award in their Attorneys' Fees and Expenses Application, plus (ii) the unreimbursed expenses which Private Plaintiffs' Counsel ask the Court to award in their Attorneys' Fees and Expenses Application, which amounts shall be reserved for the purpose of funding any Attorneys' Fees and Expenses Award that is ordered by the Court; and

(b) the Net Settlement Fund, constituting the balance of funds in the Gross Settlement Fund after the deductions set forth in ¶ 5.3(a).

5.4. Subject to the terms of this Stipulation and any order(s) of the Court, the Net Settlement Fund shall then be applied as follows:

(a) to pay all costs and expenses not previously paid from the Expense Fund that are reasonably and actually incurred in connection with locating members of the classes and providing notice to them, in connection with administering and distributing the Net Settlement Fund to Authorized Claimants, and in connection with paying escrow fees and costs, if any;

(b) to pay all costs and expenses not previously paid from the Expense Fund, if any, reasonably and actually incurred in soliciting members of the classes and assisting with the filing and processing of the settled claims; and

(c) to pay any Taxes and Tax Expenses not previously paid from the Expense Fund or Gross Settlement Fund.

5.5. Thereafter, and in accordance with the terms of this Stipulation, the Plan of Allocation, and order(s) of the Court, the Claims Administrator shall distribute the Net Settlement Fund to Authorized Claimants, subject to and in accordance with the following:

(a) Each Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim and Release signed under penalty of perjury. The Hartman



Plaintiffs may, as a group, submit a single Proof of Claim, but each Hartman Plaintiff must submit an individual Release signed under penalty of perjury.

(b) Except as otherwise ordered by the Court, all Claimants who fail timely to submit a valid Proof of Claim and Release within such period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any disbursements from the Net Settlement Fund pursuant to this Stipulation and the Settlement as set forth herein, but shall in all other respects be subject to and bound by the provisions of this Stipulation, the releases contained herein, and the Judgment.

(c) The Net Settlement Fund shall be distributed to Authorized Claimants substantially in accordance with the Plan of Allocation approved by the Court upon such further notice as may be required. However, the Claims Administrator shall reserve an appropriate amount to cover any unresolved disputes with any Claimant or taxing authority until such dispute is fully and finally resolved.

(d) No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until the Effective Date of the Settlement as described in ¶ 7.2 of this Stipulation has occurred. The distribution of all or a portion of the Net Settlement Fund is not contingent upon this Court's approval of the Attorney's Fees and Expenses Application, and such event is intentionally excluded from ¶ 7 for this purpose. Should this Court enter final Judgment in accordance with the terms of ¶ 7 of this Stipulation, but, in accordance with Federal Rule of Civil Procedure 54(b), exclude from the Judgment a ruling on the Attorneys' Fees and Expenses Application, the Claims Administrator, in consultation with the Settling Parties, shall (i) compute the maximum amount of the Gross Settlement Fund that would be needed to satisfy the Attorneys' Fees and Expenses Application following a final non-appealable ruling on the Attorneys' Fees

and Expenses Application; (ii) estimate the amount necessary to cover any future expenses which may be incurred in administering and distributing the settlement or payment of taxes, tax expenses or other expenses (the sum of the calculations arrived at under (i) and (ii) shall comprise the “Fee and Expense Holdback”); (iii) on the Effective Date, compute the net settlement amount using the Fee and Expense Holdback instead of the Attorney’s Fee and Expenses Fund; and (iv) distribute in accordance with the Plan of Allocation the balance of the Gross Settlement Amount and the net settlement amount determined by the above method (the “Interim Net Settlement Amount”), and §§ 5.2 and 5.3 of this Stipulation. All Persons who fall within the definition of any Settlement Class and who are not excluded (or having been excluded, Re-Opt-In) from such Settlement Class shall be subject to and bound by the provisions of this Stipulation and the Judgment pertaining to all Released Claims regardless of whether such Persons seek or obtain any disbursement from the Net Settlement Fund.

(e) All Settlement Class Members who timely and validly request to be excluded from any Settlement Class in accordance with the instructions set forth in the 23(b)(3) Notice (and who do not otherwise re-opt-in pursuant to the terms and conditions of § 3.9) shall not be subject to and bound by the provisions of this Stipulation and the Judgment pertaining to the release and discharge of all Released Claims in the Settling Actions or in any other action or proceeding (except that there is no right to opt out of the settlement of the derivative claims). Settlement Class Members who timely and validly request to be excluded from any Settlement Class in accordance with the instructions set forth in the 23(b)(3) Notice (and who do not otherwise re-opt-in) shall be deemed to have waived all direct and indirect interests, if any, in the Net Settlement Fund.

5.6. Recovery from the Net Settlement Fund for any employee benefit plan covered by ERISA, or any named fiduciary, trustee or board of trustees thereof, is conditioned upon submission of a Proof of Claim and Release form submitted by such plan, its named fiduciaries in their capacity as such, and its board of trustees (if a board exists) reflecting that: (1) the plan, its named fiduciaries in their capacity as such, and (if applicable) its board of trustees release the Released Claims on behalf of the plan for the benefit of the participants and beneficiaries of the plan, and (2) its named fiduciaries and (if applicable) its board of trustees of the plan have the authority to release claims on behalf of the plan in connection with losses to the plan and exercise this authority as fiduciaries to the plan.

5.7. The Settling Defendants shall not be entitled to receive any disbursement from the Net Settlement Fund once the Effective Date occurs. Neither the Settling Defendants nor their counsel shall have any responsibility for or liability to any Person with respect to the investment or distribution of the Gross Settlement Fund, the Net Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes, or any losses incurred in connection with any such matters. No Person shall have any claim, directly or indirectly, against any Settling Plaintiff, Settlement Class Member, Plaintiffs' Counsel, the Claims Administrator or the Escrow Agent, based on distributions from the Gross Settlement Fund or the Net Settlement Fund made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation approved by the Court, or further Court orders. No Person shall have any claim, directly or indirectly, against the Settling Defendants or counsel for the Settling Defendants based on distributions made from the Gross Settlement Fund or the Net Settlement Fund.

5.8. If there is any balance remaining in the Net Settlement Fund or the Expense Fund after six (6) months from the date of all distributions of the Net Settlement Fund or the Expense

Fund (whether by reason of tax refunds, un-cashed checks, monies recovered from the prosecution of any Assigned Claim, or otherwise), the Claims Administrator, in consultation with Plaintiffs' Counsel, shall reallocate and distribute such balance among Authorized Claimants substantially in accordance with the Plan of Allocation. If the final remainder amount is so de minimis as to not be conducive to making a supplemental distribution to Authorized Claimants, it may be distributed *cy pres*, subject to the approval of the Court.

5.9. In no event shall settlement proceeds be distributed to any of the Settling Defendants or Excluded Persons, or to any trust or entity in a manner which increases the beneficial interest of the Settling Defendants in such trust or entity.

5.10. It is understood and agreed by the Settling Parties that the Plan of Allocation, including, but not limited to, any adjustments to any Authorized Claimant's claim, is not a part of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation. The Plan of Allocation is not a material or necessary term or condition of this Stipulation, and it is not a condition of this Stipulation that any particular Plan of Allocation be approved. The Settling Defendants did not participate in, agree to or approve the Plan of Allocation and take no position as to its fairness, equity or propriety. Any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel this Stipulation or affect the validity, enforceability or finality of the Court's Judgment approving this Stipulation and the Settlement set forth herein or any other orders entered pursuant to this Stipulation, shall not provide any Person with any rights to terminate the Settlement, shall not impose any obligation on the Settling Defendants to increase the consideration paid in connection with the Settlement, and shall not affect the release of the Released Claims. Any order or proceedings relating to a request for approval of the Plan of Allocation, or any appeal from any order relating thereto or

reversal or modification thereof, shall not operate to terminate the Settlement or this Stipulation or affect or delay the validity, enforceability or finality of the Judgment, the settlement of the Settling Actions or the release of the Released Claims.

5.11. Notwithstanding the foregoing, the Hartman Plaintiffs shall have the option, subject to the terms and conditions set forth in the Hartman Supplemental Agreement between the Settling Parties dated November 13, 2012 (the “Hartman Supplemental Agreement”) to terminate the Settlement in its entirety if the Court approves a Plan of Allocation under which the amount that the Hartman Plaintiffs and the Hartman Plans will receive, in the aggregate, with respect to any claims relating to investments in the Income Plus Fund or directly with Madoff pursuant to a Discretionary Investment Management Agreement with JPJA (the “Hartman Allocated Amount”) is less than thirty-four million eight hundred twenty thousand nine hundred twenty-eight dollars (\$34,820,928) (the “Hartman Agreed Amount”). The Hartman Plaintiffs may exercise this option no later than ten (10) business days after the Court enters an order approving a Plan of Allocation pursuant to which the Hartman Allocated Amount is less than the Hartman Agreed Amount. The Settling Defendants did not participate in, agree to or approve the amount to which the Hartman Plaintiffs are to receive under any Plan of Allocation and take no position as to its fairness, equity or propriety. Should the Court enter an order approving a Plan of Allocation pursuant to which the Hartman Allocated Amount is greater than or equal to the Hartman Agreed Amount, but such allocation is subsequently modified by the Court or on appeal so that the Hartman Allocated Amount is less than the Hartman Agreed Amount, the Hartman Plaintiffs shall have the rights set forth in ¶ 8.1.

5.12. Subject to ¶¶ 1.56 and 4.1 and footnote 2 above, all shareholder derivative claims by the Settling Plaintiffs as against the Defendant Released Parties and all claims that have been or could be asserted by the Settling Funds as against the Defendant Released Parties shall be

deemed to have been settled by means of distributions to Claimants according to the Plan of Allocation.

**6. Private Plaintiffs' Attorneys' Fees and Expenses**

6.1. Private Plaintiffs' Counsel will submit the Attorneys' Fees and Expenses Application to the Court.

6.2. The procedure for, and the allowance or disallowance by the Court of, the Attorneys' Fees and Expenses Application(s) are not part of the Settlement set forth in this Stipulation, and are to be considered by the Court and the State Derivative Action Courts separately from such courts' consideration of the fairness, reasonableness and adequacy of the Settlement. Any award of attorneys' fees and expenses to Plaintiffs' Counsel shall be paid exclusively from the Settlement Fund. In no event shall the Settling Defendants otherwise be obligated to pay for such attorneys' fees and expenses. The disposition of the Attorneys' Fees and Expenses Application(s) is not a material or necessary term or condition to this Stipulation, and it is not a condition of this Stipulation that any particular Attorneys' Fees and Expenses Award be granted. Any disapproval or modification of the Attorneys' Fees and Expenses Application(s) by the Court or the state courts in which the State Derivative Actions are pending shall not operate to terminate or cancel this Stipulation or affect the validity, enforceability or finality of the Court's Judgment approving this Stipulation and the Settlement set forth herein, any of the State Derivative Action Orders and Judgments, or any other orders entered pursuant to this Stipulation, shall not provide any Person with any rights to terminate the Settlement, shall not impose any obligation on the Settling Defendants to increase the consideration paid in connection with the Settlement, and shall not affect the release of the Released Claims. Any order or proceedings relating to the Attorneys' Fees and Expenses Application(s), or any appeal from any Attorneys' Fees and Expenses Award or any other order relating thereto or reversal or

modification thereof, shall not operate to terminate the Settlement or this Stipulation or affect or delay the validity, enforceability or finality of the Judgment, the settlement of the Settling Actions or the release of the Released Claims.

6.3. The Settling Defendants shall take no position on any matters relating to attorneys' fees or expenses sought by Plaintiffs' Counsel and shall have no responsibility for, and no liability whatsoever with respect to, any payments to Plaintiffs' Counsel pursuant to any Attorneys' Fees and Expenses Award that the Court and the courts in which any Settling Action is pending, may make in any Settling Action, provided, however, that nothing contained herein shall prohibit the Settling Defendants from responding to any factual inquiries from the Court or from the State Derivative Action Courts.

6.4. Nothing herein shall bar the NYAG from objecting to the quantum of counsel fees and expenses proposed to be paid to all or any of Plaintiffs' Counsel, to urge the Court to reduce such counsel fees and expenses, and to appeal from any decision of the Court approving an award of counsel fees and expenses. Plaintiffs' Counsel agrees they will not object to the NYAG's standing to do so.

## **7. Effective Date of the Settlement**

7.1. The Settling Parties shall jointly request that the Court enter the Judgment upon the occurrence of the following events and that Judgment not be entered until all of the following events have occurred:

(a) the Settling Defendants shall have timely transferred or caused to be timely transferred the Settlement Amount (plus any interest that may accrue thereon prior to transfer of the Settlement Amount to the Escrow Agent pursuant to the terms and conditions of ¶ 2.2) to the Escrow Agent in accordance with the terms of this Stipulation;

(b) each Settling Fund has delivered to the Settling Defendants a duly executed release, substantially as attached hereto as Exhibits F–H, respectively;

(c) each Hartman Plaintiff has delivered to the Settling Defendants a duly executed release, substantially as attached hereto as Exhibit I;

(d) the Madoff Trustee Proceeding Court enters the Madoff Trustee Proceeding Order approving the Madoff Trustee Proceeding Settlement Agreement;

(e) the Court has approved the Settlement as described herein, following notice to the Settlement Classes and a hearing, as prescribed by Federal Rules of Civil Procedure 23 and 23.1, and has entered the Post-Fairness Hearing Approval Order;

(f) the Court has entered an order approving a Plan of Allocation, and (i) the Hartman Allocated Amount is greater than or equal to the Hartman Agreed Amount, (ii) the Hartman Plaintiffs have waived an option to terminate the Settlement as set forth in ¶ 5.11, or (iii) the time period in which the Hartman Plaintiffs could exercise an option to terminate the Settlement as set forth in ¶ 5.11 has lapsed, and the Hartman Plaintiffs have not exercised such option; and

(g) each of the State Derivative Action Courts has entered a State Derivative Action Order and Judgment, substantially as attached hereto as Exhibits K and L, in each of the State Court Derivative Actions. The State Derivative Action Courts need not enter the State Derivative Action Judgments until after the events in ¶ 7.1(a)–(f) have occurred.

It is a material term of this Stipulation and Settlement that the Court not enter the Judgment unless and until the occurrence of the events referenced in ¶ 7.1(a)–(g).

7.2. The Effective Date of the Settlement shall be conditioned on the occurrence of (i) all of the events referenced in ¶ 7.1(a)–(g), above; (ii) the Court’s entry of the Judgment substantially as attached hereto as Exhibit C to this Stipulation following the occurrence of the



all of the events referenced in ¶¶ 7.1(a)–(g), above; (iii) the Madoff Trustee Proceeding Order becoming Final; (iv) each of the State Derivative Action Orders and Judgments becoming Final; and (v) the Judgment becoming Final.

7.3. In the event that the Court does not enter Judgment as contemplated in ¶¶ 7.1 above within twenty (20) days following entry of the State Derivative Action Judgments, the plaintiffs in the State Court Derivative Actions may seek to vacate the State Court Derivative Action Orders and Judgments and the defendants in the state Court Derivative Actions will not oppose such motions. The form of State Court Derivative Action Orders attached as Exhibits K and L will reflect the foregoing and provide that, in the event that the State Court Derivative Action Orders and Judgments are vacated, the Settling Parties will be deemed to have reverted *nunc pro tunc* to their respective status as of the date and time immediately before the execution of this Stipulation and they shall proceed in all respects as if this Stipulation and any executed releases had not been executed and the State Derivative Action Orders and Judgments had not been entered.

7.4. All releases executed in accordance with this Stipulation shall be held in escrow by the receiving party until the Effective Date, at which time the releases shall become effective.

7.5. Within two (2) business days of the occurrence of the Effective Date, each of the Settling Plaintiffs will dismiss all actions relating to the Released Claims (to the extent not already dismissed by the Final Judgment or the Final State Derivative Action Orders and Judgments) to which it is a plaintiff, including without limitation all of the Settling Actions, as to the Defendant Released Parties with prejudice. Notwithstanding the foregoing, and solely with respect to the NYAG, on or before the Effective Date, the NYAG shall deliver to Counsel for the Ivy Defendants an executed Stipulation of Discontinuance of *Cuomo vs. Ivy Asset Management L.L.C. et al.*, 450489/2010 (N.Y. Sup. Ct. N.Y. Cnty.) (in the form annexed hereto as Exhibit N),

which the Ivy Defendants' Counsel shall hold in escrow until the NYAG has notified the Ivy Defendants' counsel that the payment of \$5 million to the State of New York pursuant to ¶ 5.2(a) has been received, which notification shall be made by the NYAG immediately upon receipt, upon which the Ivy Defendants' Counsel may file the Stipulation of Discontinuance of *Cuomo vs. Ivy Asset Management L.L.C. et al.*, 450489/2010 (N.Y. Sup. Ct. N.Y. Cnty.) with the Clerk of the Court. Other than the payment to the NYAG pursuant to ¶ 5.2(a) above and the payment to the U.S. Treasury pursuant to ¶ 5.2(b) above, no distributions shall be made to any Plaintiffs from the Escrow Account until after all dismissals contemplated by this paragraph have been filed.

7.6. Upon the occurrence of the Effective Date, any and all remaining interest or right of the Settling Defendants in or to amounts contributed to the Gross Settlement Fund shall be absolutely and forever extinguished.

## **8. Effect of Disapproval, Cancellation or Termination of Stipulation**

8.1. Subject to ¶ 7.3 above, if (i) the Court does not enter the Judgment substantially as attached hereto as Exhibit C to this Stipulation, or if the Court enters Judgment and appellate or other review is sought and on such review Judgment is modified, or (ii) any State Derivative Action Court does not enter a State Derivative Action Order and Judgment substantially as attached hereto as Exhibits K and L to this Stipulation, or if any State Derivative Action Court enters a State Derivative Action Order and Judgment and appellate or other review is sought and on such review the entry of such State Derivative Action Order and Judgment is modified, or (iii) the Madoff Trustee Proceeding Court does not enter the Madoff Trustee Proceeding Order approving the Madoff Trustee Proceeding Settlement Agreement, or if the Madoff Trustee Proceeding Court enters such Madoff Trustee Proceeding Order and appellate or other review is sought and on such review the entry of such Madoff Trustee Proceeding Order is modified, then

the Settling Parties shall proceed with the settlement under the terms of the Judgment and the State Derivative Action Orders and Judgments as they may be modified by the Court, the State Derivative Action Courts or another court on appellate review, unless any Settling Party who is adversely affected thereby, in its sole discretion within fourteen (14) days from the date of the mailing of such ruling to such Settling Parties, provides written notice (including notice via email) to all other Settling Parties hereto of their objection to so proceeding. In the event of such objection, or if the Judgment or any State Derivative Action Order and Judgment is vacated or reversed, the Settling Parties shall negotiate in good faith in order to effectuate the purpose of this Stipulation on substantially the same terms as are contained in this Stipulation (including by resolving any such objection and/or curing any defect that led to such vacatur or reversal, as applicable), provided, however, that no Settling Party shall have any obligation to agree to any revised settlement under any terms other than substantially in the form provided and agreed to herein, except as to any court ordered modification of the Plan of Allocation or to the Attorneys' Fees and Expenses Award, which are not material or necessary terms to this Stipulation.

Nonetheless, subject to the terms and conditions of the Hartman Supplemental Agreement, the Hartman Plaintiffs shall have no obligation to agree to any court order or judgment pursuant to which the Hartman Allocated Amount is reduced so as to be less than the Hartman Agreed Amount. If, after such good-faith negotiations, the Settling Parties are unable to effectuate the purpose of this Stipulation on substantially the same terms as are contained in this Stipulation (including by resolving any such objection and/or curing any defect that led to such vacatur or reversal, as applicable), this Stipulation shall be canceled and terminated upon written notice by any Settling Party to all other Settling Parties hereto. If any Settling Party hereto engages in a material breach of the terms hereof, any other Settling Party, provided that it is in substantial compliance with the terms of this Stipulation, may terminate this agreement on notice to the

breaching party or sue for enforcement. In the event that the Effective Date does not occur in accordance with the terms of this Stipulation, then the Preliminary Approval Order, the Post-Fairness Hearing Approval Order and the Judgment shall each be rendered null and void to the extent provided by and in accordance with this Stipulation and shall be vacated and, in such event, all orders entered, including those certifying the Settlement Classes for settlement purposes only, and any releases or stipulations of discontinuance delivered in connection herewith shall be null and void to the extent provided by and in accordance with this Stipulation.

8.2. If any of the events referenced in ¶ 7.1(a)–(d), have not occurred as of the date on which the Fairness Hearing is held, then this Stipulation shall be canceled and terminated, unless all Settling Parties who are adversely affected thereby, in their sole discretion within thirty (30) days from the date on which the Fairness Hearing is held provide written notice to all other Settling Parties hereto of their intent to proceed with the Settlement.

8.3. In the event this Stipulation is terminated or canceled or fails to become effective for any reason, and/or the Effective Date does not occur, then within fourteen (14) business days after Counsel for any Settling Plaintiff gives written notice to counsel for all Settling Defendants, or counsel for any Settling Defendant gives written notice to Counsel for all Settling Plaintiffs, (i) the balance of the Expense Fund and the Gross Settlement Fund, less any funds paid therefrom or otherwise incurred but not yet paid pursuant to ¶ 2.3 of this Stipulation, (ii) any cash deposited by the Settling Defendants, or any of them, into the Escrow Accounts pursuant to ¶ 2.1 of this Stipulation, and (iii) any funds received by Plaintiffs' Counsel pursuant to Sections 5 and 6 of this Stipulation, in all cases including accrued interest, shall be refunded to the respective depositing Person, in proportion to their original contributions. In such event, the Settling Parties shall be deemed to have reverted *nunc pro tunc* to their respective status as of the date and time immediately before the execution of this Stipulation and they shall proceed in all

respects as if this Stipulation and related orders and any executed releases and stipulations of discontinuance had not been executed and without prejudice in any way from the negotiation, fact or terms of this Settlement, and any such executed releases or stipulations of discontinuance shall be null and void and of no legal force and effect, and shall be returned to the executing party.

## **9. Public Statements**

9.1. The Settling Defendants agree not to take any action or to make or permit to be made any public statement stating or implying that the Complaints in the Settling Actions or this Stipulation of Settlement are without factual or legal basis. Nothing in this paragraph affects the Settling Defendants' testimonial obligations or right to take legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Secretary or NYAG is not a party.

## **10. Madoff Trustee Proceeding**

10.1. As a key element of this Stipulation, the Settling Parties agree that they will not assert a claim in or right to any monies that the Madoff Trustee obtains or obtained from any source whatsoever as payment in satisfaction, via settlement or otherwise, of the claims asserted by the Madoff Trustee in those certain adversary proceedings commenced on or before October 12, 2012 in the U.S. Bankruptcy Court for the Southern District of New York against any Settling Party, Settlement Class Member, any investor in the Beacon, Andover or Income Plus Funds, or any person or entity that received investment management and/or consulting services from JPJA (together, the "Adversary Proceedings"), including without limitation the "Settlement Payment" as defined in the Madoff Trustee Proceeding Settlement Agreement (provided however that the foregoing will not affect any party's rights as to its, his or her allowed BLMIS claims, if any, including any entitlement to distributions thereon). The Settling Parties further

acknowledge and agree that they will not take any action to object to, oppose, or contest, or appeal any approval of, the Madoff Trustee Proceeding Settlement Agreement or any other settlements of one or more of the Adversary Proceedings. As set forth in Section 4(h) of the Madoff Trustee Proceeding Settlement Agreement, to the extent that any party to the Federal Actions is not a party to this Stipulation or opts out of this provision, the provisions of Sections 4(d), 4(e) and 4(g) of the Madoff Trustee Proceeding Settlement Agreement shall be inapplicable to such party. Notwithstanding the foregoing, nothing herein shall limit or waive any rights that any Settling Party may have under the Madoff Trustee Proceeding Settlement Agreement.

10.2. The Settling Plaintiffs agree they will not file any objection to any claim made in the case captioned *Securities Investor Protection Corporation v. Bernard Madoff Investment Securities LLC* and *In re Bernard Madoff Investment Securities LLC*, Debtor, Case No. 08-01789 (BRL), filed in the United States Bankruptcy Court, Southern District of New York, made by the Settling Defendants, the wives, children, grandchildren and spouses of any individual Settling Defendant, and any trusts or financial vehicles established for any of their benefit.

## **11. Miscellaneous Provisions**

11.1. The Settling Parties: (a) acknowledge that it is their intent to consummate the Settlement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of this Stipulation.

11.2. This Stipulation is a binding contract and all parties hereto are bound to perform hereunder. The Settling Parties waive any challenge any of them may have to the enforceability of this Stipulation.

11.3. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto, including any corporation or other entity into or with which any party merges, consolidates or reorganizes.

11.4. This Stipulation is not binding on, or enforceable by, any governmental agency other than the United States Department of Labor and the Office of the New York Attorney General, except to the extent provided by law.

11.5. The Settling Defendants' obligations and responsibilities arising from, concerning, or in respect of the Settlement described herein, including but not limited to, those respecting the Gross Settlement Fund, shall be those of the Settling Defendants exclusively, without any right of recourse of any kind against any other Person other than their insurers or each other.

11.6. Each Settling Defendant warrants, solely on its, his or her own behalf, that the payment of the Settlement Amount to the Escrow Agent will not render it, him or her insolvent.

11.7. The Settling Parties agree that the Gross Settlement Fund and the other terms of the Settlement as described herein were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel; the Settling Parties will not assert any claim or make any statement to the Court to the contrary.

11.8. Neither this Stipulation, nor the Settlement, nor any of the negotiations, documents, proceedings and acts performed in connection therewith, nor any of the proceedings in the Settling Actions relating to the Stipulation or Settlement, nor the Judgment or the State Derivative Action Orders and Judgments: (i) is or may be deemed to be or may be used as an admission or evidence of the truth of any of the allegations in the Settling Actions or of the validity of any Released Claim or of any wrongdoing or liability of any kind of the Defendant Released Parties; or (ii) is or may be deemed to be or may be used as an admission or evidence

of any liability, fault, or omission of the Settling Defendants in any civil, criminal or administrative proceeding in any court, arbitration proceeding, administrative agency or other forum or tribunal in which the Settling Defendants are or become parties, other than in such proceedings as may be necessary to consummate or enforce this Stipulation, the Settlement, the Judgment or the State Derivative Action Orders and Judgments. Notwithstanding the foregoing, the Settling Defendants and/or the Defendant Released Parties may file this Stipulation, the Judgment and/or the State Derivative Action Orders and Judgments in any action that may be brought against them with respect to any Released Claims in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction, or any theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

11.9. Unless otherwise stated herein, all of the Exhibits to this Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

11.10. No provision of this Stipulation may be amended, modified or waived unless any amendment, modification or waiver is in writing and signed by or on behalf of all Settling Parties or their respective successors-in-interest.

11.11. This Stipulation, its Exhibits, the Supplemental Agreement and the Hartman Supplemental Agreement constitute the entire agreement among the Settling Plaintiffs and the Settlement Class Members, on the one hand, and the Settling Defendants, on the other hand, and no representations, warranties, or inducements have been made to the Settling Parties or the Settlement Class Members concerning this Stipulation, its Exhibits, the Supplemental Agreement, or the Hartman Supplemental Agreement, other than the representations, warranties and covenants contained, referenced and memorialized in such documents.



11.12. Counsel for all Settling Parties have participated in the preparation of this Stipulation. This Stipulation was subject to revision and modification by all Settling Parties and has been accepted and approved as to its final form by counsel for each of the Settling Parties. Accordingly, any uncertainty or ambiguity that may exist in this Stipulation shall not be interpreted against any Settling Party as a result of the manner of the preparation of this Stipulation.

11.13. The Settling Defendants will not assert in any statement to the Court that the Settling Actions were not filed in good faith and/or are not being settled voluntarily after consultation with competent legal counsel. The Judgment will contain a statement that during the course of the Actions, the Settling Parties and their respective counsel acted in good faith and complied with the requirements of Federal Rule of Civil Procedure 11.

11.14. Plaintiffs' Counsel and Settling Plaintiffs represent and warrant that Plaintiffs' Counsel, on behalf of the Settling Plaintiffs, the Settling Funds and the Settlement Classes, are expressly authorized by their respective plaintiffs to take all appropriate actions required or permitted to be taken by or on behalf of the Settlement Classes, the Settling Funds and the Settling Plaintiffs pursuant to this Stipulation to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to this Stipulation on behalf of the Settlement Classes, the Settling Funds and/or Settling Plaintiffs that they deem appropriate.

11.15. Plaintiffs' Counsel and Settling Plaintiffs each represent and warrant that none of the claims or causes of action referred to in the complaint(s) filed by or on their behalf has been assigned, encumbered or in any manner transferred in whole or in part.

11.16. Each counsel or other Person executing this Stipulation or any of its Exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so, and

that they have fully disclosed any conflicts of interest relating to their representation for purposes of executing this Stipulation.

11.17. This Stipulation may be executed by facsimile or email and in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Stipulation shall exchange among themselves signed counterparts and a complete set of executed counterparts shall be filed with the Court. The signatures to this Stipulation may be evidenced by facsimile or “scanned” copies reflecting the signatures hereto, and any such facsimile or “scanned” copy shall be sufficient to evidence the signature just as if it were an original signature.

11.18. Notices required or permitted by this Stipulation shall be submitted by overnight mail, electronic mail, or in person as follows:

Notices to Settling Plaintiffs or Plaintiffs’ Counsel:

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Notices to Hartman Counsel:

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With a copy by e-mail to the distribution list attached as Exhibit E.

Notices to Settling Defendants and Counsel for Settling Defendants:

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With a copy by e-mail to the distribution list attached as Exhibit E.

11.19. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Stipulation, and each of the Settling Parties in the Federal Actions irrevocably submits to the jurisdiction of the Court with respect to any proceeding before the Court contemplated by the terms of this Stipulation or with respect to enforcement of the terms of this Stipulation, except as to the enforcement by the NYAG as to any payments called for in the Stipulation.

11.20. This Stipulation, the Exhibits hereto, the Supplemental Agreement and the Hartman Supplemental Agreement, shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of New York, and the rights and obligations of the parties to this Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice of law principles.

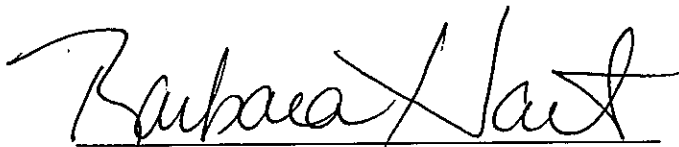
11.21. The Parties hereby consent to the entry of an Order (in the form annexed hereto as Exhibit R) providing for the modification of the Opinion and Order of United States Magistrate Judge Andrew J. Peck, dated July 27, 2010 ("the July 27, 2010 Order"), which modification shall permit distribution to Beacon Managing Members, Joel Danziger and Harris Markhoff, or any

affiliated entity, any funds that were withheld from Danziger and Markhoff or any affiliated entities pursuant to the terms of the July 27, 2010 Order.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, dated as of November ~~8~~<sup>13</sup>, 2012.

**For and on Behalf of Plaintiffs**

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**TIMOTHY D. HAUSER**  
*Associate Solicitor of Labor  
Plan Benefits Security Division*

**RISA D. SANDLER**  
*Counsel for Fiduciary Litigation*

---

By: **ROBERT L. FURST**  
*Senior Trial Attorney*

affiliated entity, any funds that were withheld from Danziger and Markhoff or any affiliated entities pursuant to the terms of the July 27, 2010 Order.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, dated as of November <sup>13</sup>~~8~~, 2012.

**For and on Behalf of Plaintiffs**

**LOWEY DANNENBERG COHEN & HART, P.C.**

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*Counsel for Fiduciary Litigation*

---

By: **ROBERT L. FURST**  
*Senior Trial Attorney*

affiliated entity, any funds that were withheld from Danziger and Markhoff or any affiliated entities pursuant to the terms of the July 27, 2010 Order.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed,  
by their duly authorized attorneys, dated as of November <sup>13</sup>~~8~~, 2012.

**For and on Behalf of Plaintiffs**

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*ERISA Class Counsel for Buffalo Laborers' Class  
Income Plus Participant and Beneficiary Class,  
Andover Participant and Beneficiary Class, and  
Direct Participant and Beneficiary Class.*

**LEWIS, FEINBERG, LEE, RENAHER &  
JACKSON, P.C.**

**KELLER ROHRBACK LLP**

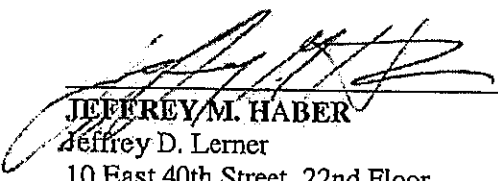
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Income Plus Participant and Beneficiary Class,  
Andover Participant and Beneficiary Class, and  
Direct Participant and Beneficiary Class.*

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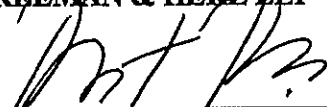
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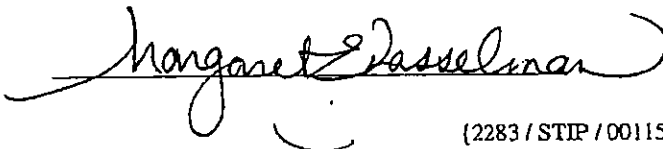
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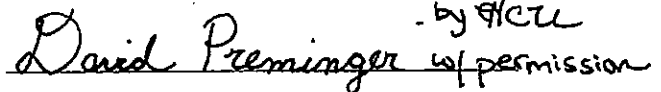
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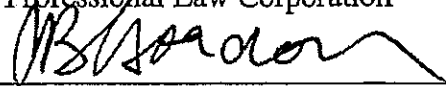
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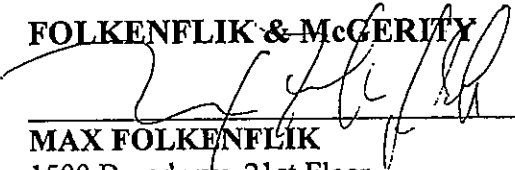
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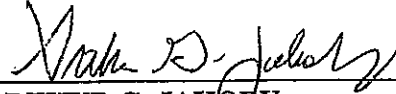
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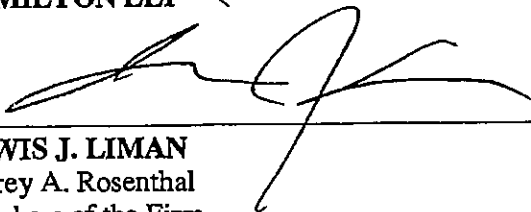
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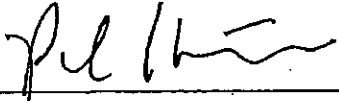
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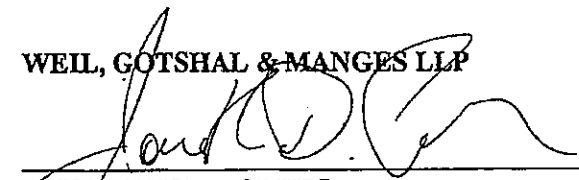
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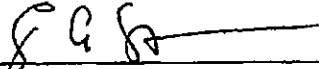
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**Exhibits to the Stipulation of Settlement**

Exhibit A	Preliminary Approval Order
Exhibit A-1	Notice to Rule 23(b)(3) Settlement Class Members
Exhibit A-2	Notice to Rule 23(b)(1) Settlement Class Members
Exhibit A-3	Proof of Claim and Release
Exhibit B	Post-Fairness Hearing Approval Order
Exhibit C	Final Judgment and Order
Exhibit D	Plan of Allocation
Exhibit E	E-mail Distribution List
Exhibit F	Release and Stipulation of Dismissal from the Beacon Funds
Exhibit G	Release and Stipulation of Dismissal from the Andover Funds
Exhibit H	Release and Stipulation of Dismissal from the Income Plus Fund
Exhibit I	Release and Stipulation of Dismissal from the Hartman Plaintiffs
Exhibit J	Settlement Agreement Between the Parties to the Madoff Trustee Proceeding
Exhibit K	Nassau County State Derivative Action Order
Exhibit L	New York County State Derivative Action Order
Exhibit M	Escrow Agreement
Exhibit N	Stipulation of Discontinuance of <i>Cuomo vs. Ivy Asset Management L.L.C. et al.</i> , 450489/2010 (N.Y. Sup. Ct. N.Y. Cnty.)
Exhibit O	Order re Plan of Allocation
Exhibit P	Order re Attorneys' Fees
Exhibit Q	Order re Expenses
Exhibit R	Order re Consent to Release of Funds

# EXHIBIT A

**[Proposed] Preliminary Approval Order – Submission Copy**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BEACON ASSOCIATES LITIGATION	No. 09 Civ. 0777 (LBS)
IN RE J.P. JEANNERET ASSOCIATES, INC.	No. 09 Civ. 3907 (CM)
HILDA L. SOLIS, Secretary of the United States Department of Labor,  Plaintiff,  v.  BEACON ASSOCIATES MANAGEMENT CORP. et al.,  Defendants.	No. 10 Civ. 8000 (LBS) (AJP)
BOARD OF TRUSTEES OF THE BUFFALO LABORERS SECURITY FUND et al.,  Plaintiffs,  v.  J.P. JEANNERET ASSOCIATES, INC. et al.,  Defendants.	No. 09 Civ. 8362 (LBS) (AJP)
BEACON ASSOCIATES MANAGEMENT CORP.  Plaintiff,  v.  BEACON ASSOCIATES LLC I,  Defendant.	No. 09 Civ. 6910 (AJP)

<p>ERNEST A. HARTMAN et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT L.L.C. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 09 Civ. 8278 (LBS) (AJP)</p>
<p>STEPHEN C. SCHOTT, as TRUSTEE FOR THE STEPHEN C. SCHOTT 1984 TRUST,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 10 Civ. 8077 (LBS)</p>

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>DONNA M. McBRIDE, individually and derivatively on behalf of Beacon Associates LLC II,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>KPMG INTERNATIONAL et al.,,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 650632/2009E</p>
<p>ALISON ALTMAN, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORPORATION, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Index No. 652238/2010</p>



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

<p>JOEL SACHER and SUSAN SACHER, derivatively on behalf of BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 005424/2009</p>
<p>CHARLES J. HECHT, derivatively on behalf of ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ANDOVER ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 006110/2009</p>

THE JORDAN GROUP LLC, derivatively on behalf of  
BEACON ASSOCIATES LLC I,

Plaintiff,

v.

BEACON ASSOCIATES MANAGEMENT CORP. et al.,

Defendants,

-and-

BEACON ASSOCIATES LLC I,

Nominal Defendant.

Index No. 003757/2011

CIRCUIT COURT OF THE STATE OF FLORIDA  
FIFTEENTH JUDICIAL CIRCUIT, PALM BEACH COUNTY

<p>HARVEY GLICKER, et al,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>IVY ASSET MANAGEMENT CORP., et al,</p> <p style="text-align: center;">Defendants.</p>	<p>Court File No. 502010CA029643 XXXX MB AB</p>
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BEFORE THE AMERICAN ARBITRATION ASSOCIATION

<p>JOEL T. GLUCK,</p> <p>Claimant,</p> <p>v.</p> <p>BEACON ASSOCIATES LLC II et al.,</p> <p>Respondents.</p>	<p>AAA No. 19 435 00120 10</p>
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**[PROPOSED] PRELIMINARY APPROVAL ORDER PROVIDING FOR  
NOTICE AND HEARING IN CONNECTION WITH PROPOSED SETTLEMENT**

WHEREAS:

The United States Department of Labor, the Office of the New York Attorney General, the Andover Funds, the Beacon Funds and the Income Plus Funds, the Plumbers & Steamfitters Local 267 Pension and Insurance Funds and Trustees (including Gregory Lancette, Bradley Ward, Bryan Allen, David Waby, Dominic Mancini, Donald A. Little, Donald Beckley, James Fredenburg, James Rood, James Rounds, Patrick Bonnell and Peter Lauze); Plumbers Local 112 Health Fund and Trustees (including James Rounds and Lyle Fassett); The Local 73 Retirement Fund and Trustees (Frederick J. Volkomer, Frederick J. Volkomer II, Patrick Carroll, Timothy Donovan and Timothy Rice); The U.A. of Journeymen & Apprentices Local 73 Fund and Trustees (including Daniel Hickey, Eric Saunders, James Donovan, Jason Lozier, L. James Culeton, Marc Stevens, Mark Maniccia, Timothy Donovan, Timothy Rice and Tom Metcalf, Jr.); Local 73 Annuity Fund; Local 73 Health & Welfare Fund; I.B.E.W. Local 43 and Electrical Contractors Welfare Fund and Trustees (including Carl Hibbard, Jr., Dennis J. McDermott, Donald H. Morgan, James Engler, John S. Kogut, Kevin J. Crawford, Marilyn M. Oppedisano and Patrick Costello); Oswego County Laborers' Local 214 Pension Fund and Trustees (including David Henderson, Jr., Earl N. Hall, Michael Blasczienski, Paul A. Castaldo and William F. Shannon); Jay Raubvogel; M. Raubvogel Co. Trust; Grand Metro Builders of NY Corp. Defined Benefit Plan and Trustees (including John Cacoulidis and Phyllis Cacoulidis); Board of Trustees of The Buffalo Laborers Security Fund, Welfare Fund and Welfare Staff Fund; Gary Kubik as participant and beneficiary in the Buffalo Laborers Security and Welfare Fund; Ernest A. Hartman and Bruce Condie as Trustees of the IBEW Local 139 Pension Fund, Thomas E. Spicer and Matthew Labosky as Trustees of the IBEW Local 325 Pension, Annuity, and Joint Trust Funds; Michael Talarski and Bruce Condie as Trustees of the IBEW Local 241 Pension Fund; Elizabeth F. Cassada and James A. Williams as Trustees of the IBEW Local 910

Annuity and Pension Funds; Thomas R. LoStracco as Trustee of the 1199 SEIU Regional Pension Fund; George Kennedy as Trustee of the Service Employees Pension Fund of Upstate New York; Rodney Malarchik and Irving Wood as Trustees of the Upstate New York Bakery Drivers and Industry Pension Fund; James Rounds and Lyle D. Fassett as Trustees of the Plumbers and Pipefitters Local 112 Pension Fund; Rockne Burns as Trustee of the Engineers Joint Welfare Fund; Robert Brown as Trustee of the Rochester Laborers' Annuity and Pension Funds; Michael Capelli and Alan Seidman as Trustees of the Empire State Carpenters Annuity, Pension, and Welfare Funds; David Fastenberg Trustee, Long Island Vitreo-Retinal; Jordan Group, LLC, derivatively on behalf of Beacon Associates LLC I; Charles J. Hecht, derivatively on behalf of Andover Associates LLC I; Donna M. McBride, individually and derivatively on behalf of Beacon Associates LLC II; Joel Sacher and Susan Sacher, derivatively on behalf of Beacon Associates LLC II; the Stephen C. Schott 1984 Trust; Alison Altman, Amanda Atlas, Howard Gelfer, Harvey Glicker, Joel T. Gluck (IRA), Levy Investment Partners, LP, Jackie Levy, Peter Levy, Ben Macklowe, Hillary Macklowe, Ben Macklowe as Trustee of the Macklowe Gallery Ltd. Profit Sharing Plan, Lloyd Macklowe, Barbara Macklowe, Barbara Macklowe (IRA), Laurence Matlick, Carl Mittler (IRA), Marvin Poster (IRA), Mustang Sportswear, Inc., Ken Siegel, Ken Siegel (IRA), Ken Siegel Defined Benefit Plan, and Gail Zarean (collectively the "Settling Plaintiffs"); Beacon Associates Management Corp. ("BAMC"), Andover Associates Management Corp. ("AAMC"), Joel Danziger and Harris Markhoff (the "Beacon Defendants"); J.P. Jeanneret Associates, Inc. ("JPJA"), John Jeanneret and Paul Perry (the "Jeanneret Defendants"); and Ivy Asset Management LLC ("Ivy"), Lawrence Simon, Howard Wohl, Fred Sloan and Adam Geiger (the "Ivy Defendants") (collectively the "Settling Defendants"), have entered into a settlement of the claims asserted in the above-

captioned Settling Actions, the terms of which (the “Settlement”) are set forth in a Stipulation of Settlement, dated as of November 8, 2012 (the “Stipulation”);

The Class Action Named Plaintiffs have moved, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order preliminarily approving the Settlement in accordance with the Stipulation and providing notice to the Classes and members of the Settling Funds; and

The Court having read and considered the Stipulation, the proposed forms of notice to the Settlement Classes and the proposed form of the Proof of Claim and Release, the proposed form Post-Fairness Hearing Approval Order and proposed form of Final Order and Judgment, and other exhibits annexed thereto and finding that substantial and sufficient grounds exist for entering this Order;

NOW, THEREFORE, IT IS HEREBY ORDERED, this \_\_\_ day of \_\_\_\_\_, 2012 that:

1. The Court preliminarily finds the proposed Settlement set forth in the Stipulation to be fair, reasonable and adequate, subject to further consideration at the Fairness Hearing described below.

2. Unless otherwise defined herein, all capitalized terms used herein have the meanings set forth and defined in the Stipulation.

3. With respect to *In re Beacon Associates Litigation*, No. 09-cv-00777-LBS (“*In re Beacon*”), Plaintiffs’ motion to certify the Beacon Investor Class, the Beacon Jeanneret Investor Subclass, the Beacon ERISA Class and the Beacon Jeanneret ERISA Subclass was granted on March 14, 2012 (as amended). *In re Beacon*, Dkt. No 432 (the “March 14 Order”). With respect to *Board of Trustees of the Buffalo Laborers Security Fund et al., v. J.P. Jeanneret Assoc. Inc.*, No. 09-cv-08362 (“*Buffalo Laborers*”), Plaintiffs’ motion to certify the Buffalo Laborers’ Class was granted on May 3, 2012. *Buffalo Laborers*, Dkt. No. 102 (the “May 3 Order”). By Order of

the Court dated March 19, 2012, the Plaintiffs in *Hartman v. Ivy Asset Management*, No. 09-8278 (hereinafter, “Hartman Plaintiffs”), were excluded from the *Buffalo Laborers* class.

4. Pursuant to Rule 23(a), (b)(3) and (c)(1)(C) of the Federal Rules of Civil Procedure, and solely for the purposes of the Stipulation and Settlement, the Court hereby alters and amends the March 14 Order in *In re Beacon* and the definitions of the Beacon Investor Class and the Beacon Jeanneret Investor Subclass certified therein to be amended as follows:

- **Beacon Investor Class:** “All investors in the Beacon Funds that had not fully redeemed their interests in the Beacon Funds as of December 11, 2008.”
- **Beacon Jeanneret Investor Subclass:** “All persons and entities who obtained the investment management services of J.P. Jeanneret Associates, Inc., John P. Jeanneret, or Paul L. Perry, and who invested in the Beacon Funds that had not fully redeemed their interests in the Beacon Funds as of December 11, 2008.”

5. Pursuant to Rule 23(a), (b)(3) and (c)(1)(C) of the Federal Rules of Civil Procedure, and solely for the purposes of the Stipulation and Settlement, the Court hereby alters and amends the May 3 Order and the definition of the Buffalo Laborers Class in *Buffalo Laborers* and certified therein to be amended as follows:

- **Buffalo Laborers Class:** “All trustees and named fiduciaries of any employee benefit plan covered by ERISA (acting in their fiduciary capacity on behalf of the plan and for the benefit of all participants and beneficiaries of the plans for which they serve as trustees) that obtained the investment management services of J.P. Jeanneret Associates, Inc. and that invested with Bernard L. Madoff, either directly with Bernard L. Madoff Investment Securities LLC (“BLMIS”) or indirectly through the Income Plus Fund or the Andover Funds, and that had not fully redeemed its interests in BLMIS, the Income Plus Fund or the Andover Funds as of December 11, 2008.”

6. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and solely for the purposes of the Stipulation and Settlement, the Court hereby certifies the following Settlement Class in *In re Beacon*:

- **Beacon Fiduciary Class:** “All trustees and named fiduciaries of any employee benefit plan covered by ERISA (acting in their fiduciary capacity on behalf of the plan and for the benefit of all participants and beneficiaries of the plans for which



they serve as trustees) that invested in the Beacon Funds and that had not fully redeemed its interests in the Beacon Funds as of December 11, 2008.”

and the following Settlement Classes in *In re J.P. Jeanneret Associates, Inc.*, No. 09-cv-03907

(“*In re Jeanneret*”):

- **Income Plus Investor Class**: “All investors in the Income Plus Fund that had not fully redeemed their interests in the Income Plus Fund as of December 11, 2008.”
- **Direct Investor Class**: “All investors who invested directly with Madoff pursuant to a Discretionary Investment Management Agreement with JPJA that had not fully redeemed their investments with BLMIS as of December 11, 2008.”

For the purposes of this Settlement, the Court finds that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied as to each of the Beacon Investor Class, the Beacon Jeanneret Investor Subclass, the Buffalo Laborers Class, the Beacon Fiduciary Class, the Income Plus Investor Class and the Direct Investor Class (collectively, the “Rule 23(b)(3) Classes”) in that: (a) the members of each of the Rule 23(b)(3) Classes are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to each of the Rule 23(b)(3) Classes; (c) Plaintiffs’ claims are typical of the claims of the Rule 23 (b)(3) Classes that they seek to represent; (d) Plaintiffs have fairly and adequately represented and will continue to fairly and adequately represent the interests of the Rule 23(b)(3) Classes; (e) the questions of law or fact common to the members of the Rule 23(b)(3) Classes predominate over any questions affecting only individual members of the Rule 23(b)(3) Classes; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

7. Pursuant to Rule 23(a), (b)(1) and (c)(1)(C) of the Federal Rules of Civil Procedure, and solely for the purposes of the Stipulation and Settlement, the Court hereby alters and amends the March 14 Order and the definitions of the Beacon ERISA Class and the Beacon Jeanneret ERISA Subclass in *In re Beacon* and certifies them as follows:

- **Beacon Participant and Beneficiary Class**<sup>1</sup> “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested in the Beacon Funds and that had not fully redeemed its interests in the Beacon Funds as of December 11, 2008.”
- **Beacon Jeanneret ERISA Subclass**: “All participants and beneficiaries of any employee benefit plan covered by ERISA who obtained the investment management services of JPJA, John P. Jeanneret, or Paul L. Perry, and who invested in Beacon I or Beacon II that had not fully redeemed its interests in the Beacon Funds as of December 11, 2008.”

8. Pursuant to Rule 23(a) and (b)(1) of the Federal Rules of Civil Procedure, and solely for the purposes of the Stipulation and Settlement, the Court hereby certifies the following Settlement Classes in *Buffalo Laborers*:

- **Income Plus Participant and Beneficiary Class**: “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested in the Income Plus Fund and that had not fully redeemed its interests in the Income Plus Fund as of December 11, 2008.”
- **Andover Participant and Beneficiary Class**: “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested in the Andover Funds and that had not fully redeemed its interests in the Andover Funds as of December 11, 2008.”
- **Direct Investor Participant and Beneficiary Class**: “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested directly with Madoff pursuant to a Discretionary Investment Management Agreement with JPJA and that had not fully redeemed its investments with BLMIS as of December 11, 2008.”

For the purposes of this Settlement, the Court finds that the prerequisites for a class action under Rule 23(a) and (b)(1) of the Federal Rules of Civil Procedure have been satisfied as to each of the Beacon Participant and Beneficiary Class, the Beacon Jeanneret ERISA Subclass, the Income Plus Participant and Beneficiary Class, the Andover Participant and Beneficiary Class and the Direct Investor Participant and Beneficiary Class (collectively, the “Rule 23(b)(1) Classes”) in that: (a) the members of each of the Rule 23(b)(1) Classes are so numerous that joinder of all

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<sup>1</sup> Formerly known as the Beacon ERISA Class.

members thereof is impracticable; (b) there are questions of law and fact common to each of the Rule 23(b)(1) Classes; (c) Plaintiffs' claims are typical of the claims of the Rule 23(b)(1) Classes that they seek to represent; (d) Plaintiffs have fairly and adequately represented and will continue to fairly and adequately represent the interests of the Rule 23(b)(1) Classes; and (e) prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications or adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

9. Excluded from all Settlement Classes are: (a) the Settling Defendants; (b) the spouses of individual Settling Defendants; (c) executive officers of the corporate Settling Defendants (except that for BAMC and AAMC, the executive officer exclusion does not apply to Robert Danziger and Michael Markhoff, or any trusts or financial vehicles established for their benefit); (d) corporate entities that control or are controlled by the corporate Settling Defendants (except where such entity is acting merely and solely as an agent, manager and/or custodian); and (e) the legal representatives, heirs, successors and assigns of any excluded person solely in their capacity as legal representatives, heirs, successors and assigns, as applicable, of an excluded person and not in their individual capacity (collectively, the "Excluded Persons").

Excluded from the Buffalo Laborers Class are the Hartman Plaintiffs.

10. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court reaffirms the Class Representatives and Class Counsel already certified, and to the extent not yet certified for the purposes of this Settlement only, the Court certifies the following Class Representatives and Class Counsel, respectively:

<b>CLASS</b>	<b>CLASS REPRESENTATIVES</b>	<b>CLASS COUNSEL</b>
Beacon Investor Class and	Plumbers & Steamfitters Local 267 Pension Fund; Plumbers &	

<p>Beacon Jeanneret Investor Subclass</p>	<p>Steamfitters Local 267 Insurance Fund; Plumbers Local 112 Health Fund; Local 73 Retirement Fund</p> <p>John and Phyllis Cacoulidis, as Trustees of Grand Metro Builders of N.Y. Corp. Defined Benefit Plan</p> <p>Jay Raubvogel</p>	<p>Lowey Dannenberg Cohen &amp; Hart, P.C.</p> <p>Wolf Haldenstein Adler Freeman &amp; Herz LLP</p> <p>Bernstein Liebhard LLP</p>
<p>Income Plus Investor Class</p>	<p>Local 73 Retirement Fund; Local 73 Annuity Fund</p>	<p>Lowey Dannenberg Cohen &amp; Hart, P.C.</p>
<p>Direct Investor Class</p>	<p>Plumbers &amp; Steamfitters Local 267 Pension Fund; Plumbers &amp; Steamfitters Local 267 Insurance Fund; Local 73 Health &amp; Welfare Fund</p>	<p>Lowey Dannenberg Cohen &amp; Hart, P.C.</p>
<p>Beacon Fiduciary Class and Beacon Jeanneret ERISA Subclass</p>	<p>Gregory Lancette as Trustee of Plumbers &amp; Steamfitters Local 267 Pension and Insurance Funds; James Rounds as Trustee of Plumbers Local 112 Health Fund; Patrick Carroll as Trustee of Local 73 Retirement Fund</p> <p>William Shannon as Trustee of Laborers Local 214 Pension Fund, now known as, Central New York Laborers Pension Fund; Donald Morgan as Trustee of IBEW Local 43 &amp; Health and Welfare Fund</p>	<p>Lowey Dannenberg Cohen &amp; Hart, P.C.</p> <p>Cohen Milstein Sellers &amp; Toll PLLC</p>
<p>Buffalo Laborers Class</p>	<p>Board of Trustees of the Buffalo Laborers Security Fund, Welfare Fund, and the Welfare Staff Fund</p>	<p>Kessler Topaz Meltzer &amp; Check LLP</p>
<p>Beacon Participant and Beneficiary Class</p>	<p>Gregory Lancette as Trustee and Participant of Plumbers &amp; Steamfitters Local 267 Pension and Insurance Funds; James Rounds as Trustee and Participant of Plumbers Local 112 Health Fund; Patrick Carroll as Trustee and Participant of Local 73 Retirement Fund</p>	<p>Lowey Dannenberg Cohen &amp; Hart, P.C.;</p>

	William Shannon as Trustee and Participant of Laborers Local 214 Pension Fund, now known as, Central New York Laborers Pension Fund; Donald Morgan as Trustee and Participant of IBEW Local 43 & Health and Welfare Fund	Cohen Milstein Sellers & Toll PLLC
Income Plus Participant and Beneficiary Class	Gary Kubik as Participant and Beneficiary of the Buffalo Laborers Security Fund	Kessler Topaz Meltzer & Check LLP
Andover Participant and Beneficiary Class	Gary Kubik as Participant and Beneficiary of the Buffalo Laborers Welfare Fund	Kessler Topaz Meltzer & Check LLP
Direct Investor Participant and Beneficiary Class	Gary Kubik as Participant and Beneficiary of the Buffalo Laborers Welfare Fund	Kessler Topaz Meltzer & Check LLP

11. Pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, and for the purposes of this Settlement only, the Court preliminarily finds that the provisions of Rule 23.1 have been satisfied and the derivative claims asserted in the *In re Jeanneret* Action have been properly maintained according to the provisions of the Rule.

12. Pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, and for the purposes of this Settlement only, the Court preliminarily finds that Derivative Plaintiffs Local 73 Retirement and Local 73 Annuity have standing to prosecute and settle the derivative claims asserted in the *In re Jeanneret Action*.

13. A fairness hearing pursuant to Rule 23(e) and Rule 23.1(c) of the Federal Rules of Civil Procedure is hereby scheduled to be held before the Honorable \_\_\_\_\_, United States District Judge, at the United States District Court, Southern District of New York, Daniel Patrick

Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312 on \_\_\_\_\_, 2013, at \_\_\_\_\_ a.m./p.m. (the “Fairness Hearing”) for the following purposes:

- (a) to determine whether the proposed Settlement of the Class and Derivative actions on the terms and conditions provided in the Stipulation is fair, reasonable and adequate, and should be approved by the Court;
- (b) to determine whether the Judgment as provided under the Stipulation should be entered, dismissing the Complaints in the Federal Actions with prejudice;
- (c) to determine whether, for settlement purposes only, the Settlement Classes should be certified, the Class Action Named Plaintiffs should be appointed as class representatives for their respective Settlement Classes, and Co-Lead Settlement Class Counsel should be appointed as class counsel for their respective Settlement Classes;
- (d) to determine whether the proposed plan for distributing the proceeds of the Net Settlement Fund is fair and reasonable and should be approved by the Court;
- (e) to consider the Attorneys’ Fees and Expenses Application(s); and
- (f) to rule upon such other matters as the Court may deem appropriate.

14. The New York State courts in which certain of the actions subject to the Settlement are pending have been apprised of the Fairness Hearing and been afforded the opportunity to participate therein to the extent such courts may deem necessary to conclude the Settlement with respect to the actions pending in such courts.

15. Upon Preliminary Approval, the Settling Defendants will timely transfer their respective shares of the Settlement Amount to the Escrow Agent in accordance with ¶ 2.2 of the Stipulation.

16. Entry of the Judgment will be contingent on final approval by the Court of the Settlement, as well as the occurrence of all the events set forth in ¶ 7.1 of the Stipulation.

17. The Court reserves the right to approve the Settlement or to state that approval requires modification with or without further notice of any kind. The Court may also adjourn the Fairness Hearing or modify any of the dates herein without further notice to Members of the Settlement Classes.

18. The Court approves the form, substance and requirements of the:

(a) Notice of Preliminary Approval of Settlement of Class and Derivative Actions and Notice of Certification of Settlement Classes (the “Rule 23(b)(3) Notice”), in substantially the form annexed hereto as Exhibit A-1; and

(b) Notice of Preliminary Approval of Settlement of Class Actions and Notice of Certification of Settlement Classes (the “Rule 23(b)(1) Notice”), in substantially the form annexed hereto as Exhibit A-2.

19. The Court approves the appointment of Garden City Group as the Claims Administrator to supervise and administer the notice procedure as well as the disbursement of the Net Settlement Fund.

20. To the extent that the New York State courts in which certain of the actions subject to the Settlement are pending have made any modifications to the Notices, such modifications were presented to Magistrate Judge Peck for review. No later than 20 days after entry of this Order by the Court (the “Notice Date”), the Claims Administrator shall cause: (i) the Rule 23(b)(3) Notice, as such notice may have been modified by the State Derivative Action Courts, to be mailed by USPS Priority Mail, postage prepaid to the members of the Rule 23(b)(3) Classes and Subclass, as identified in ¶¶ 4-6, *supra*; (ii) the Rule 23(b)(1) Notice to be mailed by first class mail, postage prepaid to participants and beneficiaries comprising the Rule 23(b)(1) Classes and Subclass, as identified in ¶¶ 7-8, *supra*; and (iii) the Rule 23(b)(3) Notice, as such notice may have been modified by the State Derivative Action Courts, to be mailed by certified

first class mail, postage prepaid, to investors in the Beacon Funds, the Income Plus Fund and Andover Associates LLC I that had not fully redeemed their interests as of December 11, 2008, in their capacities as the ultimate beneficiaries of the shareholder derivative claims asserted in this court and the State Derivative Action Courts. To the extent that such persons and members of the Settlement Classes are coextensive, only one such notice per addressee shall be required.

21. The Claims Administrator and Co-Lead Settlement Class Counsel shall post the Rule 23(b)(3) Notice to investors in the Funds, the Rule 23(b)(1) Notice, and the Plan of Allocation on their respective websites. Co-Lead Settlement Class Counsel shall, at or before the Fairness Hearing, file with the Court proof of mailing and posting of these documents.

22. On or about \_\_\_\_\_, Private Plaintiffs' Counsel shall host a conference call during which class members or their counsel may ask questions of Private Plaintiffs' Counsel and their financial experts about any aspect of the Settlement.

23. The form and content of the notice program described herein, and the method set forth herein of notifying the Settlement Classes and members of the Settling Funds of the Settlement and its terms and conditions, (a) meet the requirements of Rule 23 and Rule 23.1 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, the Rules of this Court, due process, and any other applicable law, (b) constitute the best notice practicable under the circumstances, (c) are reasonably calculated, under the circumstances, to describe the terms and effect of the Stipulation and to apprise Settlement Class Members of their right to object to the proposed Settlement or, where applicable, to exclude themselves from the Settlement Classes, and (d) constitute due and sufficient notice to all Persons entitled to receive such notice.



24. Any Rule 23(b)(3) Settlement Class Member who wishes to participate in the distributions of the Net Settlement Fund must sign and return a completed Proof of Claim and Release form in accordance with the instructions contained therein and in the Notice. All Proofs of Claim and Releases must be submitted by first-class mail, postmarked on or before \_\_\_\_\_ or such other date as may be set by the Court. If a Settlement Class Member chooses to return his, her, or its Proof of Claim and Release in a manner other than by first-class mail (including electronic submission), then the Proof of Claim and Release must actually be received by the Notice and Claims Administrator by \_\_\_\_\_, or such other date as may be set by the Court. Unless otherwise ordered by the Court, any Settlement Class Member who does not sign and return a valid Proof of Claim and Release within the time prescribed shall forever be barred from sharing in the distribution of the Net Settlement Fund, but shall nonetheless be bound by the Judgment and releases therein.

25. Settlement Class Members shall be subject to and bound by the Settlement and the provisions of the Stipulation, the releases contained therein, the Judgment with respect to all Released Claims, and all orders, determinations and judgments in the Settling Actions, whether favorable or unfavorable, even if such Persons have pending, or subsequently initiate, litigation, arbitration, or any other action against any or all of the Defendant Released Parties relating to the Released Claims, and regardless of whether or not such Persons seek or obtain by any means, including without limitation by submitting a Proof of Claim and Release or any similar document, any distribution from the Net Settlement Fund, unless such Persons request exclusion from the Settlement Classes, in a timely and proper manner, as hereinafter provided (and do not otherwise re-opt-in pursuant to the terms and conditions of ¶ 3.9 of the Stipulation), or are otherwise excluded by the Court more than twenty-one (21) days prior to the date of the Fairness Hearing. Any Settlement Class Member wishing to make such an exclusion request shall mail

the request in written form by first-class mail, postmarked no later than \_\_\_\_\_, to the address designated in the Notice for such exclusions. The request for exclusion shall clearly indicate the name, address and telephone number of the Person seeking exclusion, that the sender requests to be excluded from the Settlement Classes, and must be signed by the Person. Persons requesting exclusion are also directed to state: the full name of the Settling Fund(s) purchased and/or identify information concerning any direct Madoff investment; the number of shares or interests purchased and sold/redeemed and/or the amount of contributions and withdrawals as applicable; the date(s) on which purchases and redemptions and/or contributions and withdrawals, if any, were made; and the number of shares or the dollar value of the interests held as of \_\_\_\_\_, 2008 and/or the value of the direct Madoff investment as of \_\_\_\_\_, 2008. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. Any Settlement Class Member who is excluded from any of the Settlement Classes shall not be entitled to participate in any distributions from the Net Settlement Fund as described in the Stipulation and Plan of Allocation. Within two (2) business days of receipt by the Claims Administrator of any request for exclusion, copies of all such forms shall be provided to Plaintiffs' Counsel and counsel for the Settling Defendants.

26. Any Member of the Settlement Classes who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, the Plan of Allocation, or the Attorneys' Fees and Expenses Application(s) in the Class or Derivative actions, may file a written objection by \_\_\_\_\_. An objector must file with the Court a written statement of his, her, or its objection(s), including the following information: (i) a heading referring to the Settling Actions; (ii) objector's name, address, telephone number, email address, and the contact information for any attorney retained by objector in connection with the objection; (iii) documentation showing

the dates, purchases, contributions, sales and redemptions of interests and/or shares in the Settling Funds or direct investments with Madoff; (iv) a detailed statement identifying which relief the objection is directed to (i.e., the Settlement, the Plan of Allocation or the Attorneys' Fees and Expenses Application(s)), and the factual and legal basis for each objection, and the relief requested; (v) a statement of whether the objector intends to appear, either in person or through counsel, at the Fairness Hearing. Any objector need not go to the Fairness hearing to have a written objection considered by the Court. However, if an objector files and serves a timely, written objection in accordance with the instructions above, that objector may appear at the Fairness Hearing. The objector must mail the objection(s) and any supporting papers/documentation to:

<b>COURT</b>	<b>COUNSEL FOR SETTLEMENT CLASS MEMBERS AND DEFENDANTS</b>	
<b>Clerk of the Court</b> Clerk of the Court United States District Court Southern District of New York 500 Pearl Street New York, NY 10007-1312	<b>PLAINTIFFS' CLASS AND DERIVATIVE COUNSEL</b> <b>LOWEY DANNENBERG COHEN &amp; HART, P.C.</b> Barbara J. Hart Thomas M. Skelton One North Broadway White Plains, NY 10601-2310 Telephone: 914-997-0500 Facsimile: 914-997-0035 bhart@lowey.com tskelton@lowey.com  <b>www.lowey.com</b>  <i>Lead Class Counsel for the Beacon Classes and Lead Securities Counsel for the Direct and Income Plus Classes</i>  <b>KESSLER TOPAZ MELTZER &amp; CHECK LLP</b> Peter H. LeVan, Jr.	<b>DEFENDANTS' COUNSEL</b> <b>CLEARY GOTTlieb STEEN &amp; HAMILTON LLP</b> Lewis J. Liman Jeffrey A. Rosenthal One Liberty Plaza New York, New York 10006 Telephone: (212) 225-2000 Facsimile: (212) 225-3999 lliman@cgsh.com jrosenthal@cgsh.com  <i>Attorneys for the Ivy Defendants</i>  <b>ROSENFELD &amp; KAPLAN, L.L.P.</b> Tab K. Rosenfeld 535 Fifth Avenue, Suite 1006 New York, New York 10017 Telephone: (212) 682-1400 tab@rosenfeldlaw.com

	<p>280 King of Prussia Road  Radnor, PA 19087  Telephone: 610-667-7706  Facsimile: 610-667-7056  jmeltzer@ktmc.com  plevan@ktmc.com</p> <p><b>www.ktmc.com</b></p> <p><i>ERISA Class Counsel for the Buffalo Laborers' Class, Income Plus Participant and Beneficiary Class, Andover Participant and Beneficiary Class, and Direct Participant and Beneficiary Class.</i></p> <p><b>WOLF HALDENSTEIN ADLER  FREEMAN &amp; HERZ LLP</b>  Charles J. Hecht  270 Madison Avenue  New York, NY 10016  Telephone: (212) 545-4600  Facsimile: (212) 545-4653  hecht@whafh.com  tepper@whafh.com</p> <p><i>Plaintiffs' Counsel for Beacon Associates  LLC I, Beacon Associates LLC II and Andover Associates LLC I Shareholder Derivative Suits Pending in Nassau County, New York</i></p> <p><b>COTCHETT, PITRE &amp;  McCARTHY, LLP</b>  Imtiaz Siddiqui  One Liberty Plaza, 23rd Floor  New York, NY 10006  Telephone: (212) 682-3198  Facsimile: (646) 219-6678  isiddiqui@cpmlegal.com</p> <p><i>Plaintiffs' Counsel for Beacon Associates  LLC II Shareholder Derivative Suit Pending in New York County, New</i></p>	<p><i>Attorneys for Beacon Defendants</i></p> <p><b>HISCOCK &amp; BARCLAY, LLP</b>  Brian E. Whiteley  One International Place- 26th Floor  Boston, Massachusetts 02110  Telephone: (617) 274-2900  Facsimile: (617) 722-6003  bwhiteley@hblaw.com</p> <p><i>Attorneys for Jeanneret Defendants</i></p>
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	<i>York</i>	
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27. Any Person who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness or adequacy of the Settlement, the Judgment, the release of the Released Claims against the Defendant Released Parties, the Plan of Allocation, and/or the Attorneys' Fees and Expenses Application(s), unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given.

28. Any objector who files and serves a timely, written objection in accordance with the instructions above, may appear at the Fairness Hearing either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must serve a notice of intention to appear, setting forth, among other things, the name, mailing address, telephone number, and e-mail address of the objector. If applicable, the notice of intention to appear should include the name, mailing address, telephone number, and e-mail address of the objector's attorney, and the state bar(s) to which the counsel is admitted. Any arguments in support of an objection must contain any and all legal authority upon which the objector will rely. Any objector, or counsel retained by an objector in connection with an objection shall identify all objections he, she or it has filed to class action settlements from January 1, 2008 to present, and identify the results of each objection, including any Court opinions ruling on the objections. The objector and if applicable, the objector's counsel, shall also identify if he, she or it has ever been sanctioned by a Court in connection with filing an

objection. An objector must file and serve their written objections on counsel for the Settlement Class Members and counsel for the Settling Defendants at the addresses set out above.

Moreover, objectors who intend to present evidence at the Fairness Hearing must include in their written objections the identity of any witnesses they may call to testify together with a brief summary of each witnesses' expected testimony and exhibits they intend to introduce into evidence at the Fairness Hearing. Any objector must make himself, herself or its representative available for deposition upon ten days written notice. The deposition must be taken within 40 miles of the objector's residence, unless a different location is agreed to. Finally, the objector must serve counsel identified above and file the notice of intention to appear with the Court no later than thirty (30) days before the Fairness Hearing. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to speak at the Fairness Hearing, except for good cause shown.

29. Settlement Class Members do not need to appear at the Fairness Hearing or take any other action to indicate their approval of the Settlement, the Plan of Allocation, or the Attorneys' Fees and Expenses Application(s).

30. All papers in support of the Settlement, the Plan of Allocation and the Attorneys' Fees and Expenses Application(s) in the Class and Derivative actions, shall be served and filed with the Court on or before twenty one (21) calendar days after entry of the Preliminary Approval Order. All objections or papers in opposition to the Settlement, the Plan of Allocation and/or the Attorneys' Fees and Expenses Application(s) shall be served and filed with the Court on or before forty (40) calendar days after the papers in support are filed. Reply papers in further support of the Settlement, the Plan of Allocation and the Attorneys' Fees and Expenses Application(s) and/or in response to objections shall be served and filed no later than twenty (20)

calendar days after objections or papers in opposition are served. Service of all papers shall be made by overnight mail, hand delivery, or email.

31. No Person who is not a Settling Plaintiff, Settlement Class Member, employee benefit plan of which Settlement Class Members are fiduciaries, participants or beneficiaries, or Plaintiffs' Counsel (or an outside vendor retained to provide services in connection with the Settlement) or the U.S. Department of Labor or the NYAG shall have any right to any portion of, or to any distribution of, the recovery provided by the Settlement, unless otherwise ordered by the Court.

32. All funds held in escrow shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Stipulation and/or further order of the Court.

33. In the event this Stipulation is terminated or canceled or fails to become effective for any reason, and/or the Effective Date does not occur, then within fourteen (14) business days after Counsel for any Settling Plaintiff gives written notice to Counsel for the Settling Defendants, or Counsel for any Settling Defendant gives written notice to Counsel for Settling Plaintiffs, (i) the balance of the Expense Fund and the Gross Settlement Fund, less any funds paid therefrom pursuant to ¶ 2.3 of the Stipulation, (ii) any cash deposited by the Settling Defendants, or any of them, into the Escrow Accounts pursuant to ¶ 2.1 of the Stipulation, and (iii) any funds received by Plaintiffs' Counsel pursuant to Sections 5 and 6 of the Stipulation, in all cases including accrued interest, shall be refunded to the respective depositing Person, in proportion to their original contributions.

34. No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until all actions, events and occurrences required by ¶ 7 of the Stipulation have occurred. The distribution of all or a portion of the Net Settlement Fund is not contingent upon

this Court's approval of the Attorney's Fees and Expenses Application, and such event is intentionally excluded from ¶ 7 for this purpose. Should this Court enter final Judgment in accordance with the terms of ¶ 7 of the Stipulation, but, in accordance with Federal Rule of Civil Procedure 54(b), exclude from the Judgment a ruling on the Attorneys' Fees and Expenses Application, the Claims Administrator, in consultation with the Settling Parties, shall (i) compute the maximum amount of the Gross Settlement Fund that would be needed to satisfy the Attorneys' Fees and Expenses Application following a final non-appealable ruling on the Attorneys' Fees and Expenses Application; (ii) estimate the amount necessary to cover any future expenses which may be incurred in administering and distributing the settlement or payment of taxes, tax expenses or other expenses (the sum of the calculations arrived at under (i) and (ii) shall comprise the "Fee and Expense Holdback"); (iii) on the Effective Date, compute the net settlement amount using the Fee and Expense Holdback instead of the Attorney's Fee and Expenses Fund; and (iv) distribute in accordance with the Plan of Allocation the balance of the Gross Settlement Amount and the net settlement amount determined by the above method (the "Interim Net Settlement Amount"), and ¶¶ 5.2 and 5.3 of the Stipulation.

35. The Plan of Allocation is not a part of the Settlement or Stipulation, and will be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement. Other than as set forth in ¶ 5.11 of the Stipulation, the Plan of Allocation is not a material or necessary term or condition of the Stipulation, and it is not a condition of the Stipulation that any particular Plan of Allocation be approved. The Settling Defendants did not participate in, agree to, or approve the Plan of Allocation, and take no position as to its fairness, equity, or propriety. Other than as set forth in ¶ 5.11 of the Stipulation, any decision by the Court relating to the Plan of Allocation, shall not operate to terminate or cancel the Stipulation or affect the validity, enforceability or finality of the Judgment approving



the Stipulation and the Settlement or any other orders entered pursuant to the Stipulation, shall not provide any Person with any rights to terminate the Settlement, shall not impose any obligation on the Settling Defendants to increase the consideration paid in connection with the Settlement, and shall not affect the release of the Released Claims. Other than as set forth in ¶ 5.11 of the Stipulation, any order or proceedings relating to a request for approval of the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate the Settlement or the Stipulation or affect or delay the validity, enforceability or finality of the Judgment, the settlement of the Settling Actions or the release of the Released Claims.

36. The procedure for, and the allowance or disallowance by the Court of, the Attorneys' Fees and Expenses Application(s) are not part of the Settlement or Stipulation and will be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement. The disposition of the Attorneys' Fees and Expenses Application(s) is not a material or necessary term or condition to this Stipulation, and it is not a condition of this Stipulation that any particular Attorneys' Fees and Expenses Award be granted. Any disapproval or modification of the Attorneys' Fees and Expenses Application(s) by the Court shall not operate to terminate or cancel the Stipulation or affect the validity, enforceability or finality of the Court's Judgment approving the Stipulation and the Settlement or any other orders entered pursuant to the Stipulation, shall not provide any Person with any rights to terminate the Settlement, shall not impose any obligation on the Settling Defendants to increase the consideration paid in connection with the Settlement, and shall not affect the release of the Released Claims. Any order or proceedings relating to the Attorneys' Fees and Expenses Application(s), or any appeal from any Attorneys' Fees and Expenses Award or any other order relating thereto or reversal or modification thereof, shall not operate to terminate the Settlement

or the Stipulation or affect or delay the validity, enforceability or finality of the Judgment, the settlement of the Settling Actions or the release of the Released Claims.

37. Neither the Defendant Released Parties nor their counsel shall have any responsibility for any Plan of Allocation or any Attorneys' Fees and Expenses Application(s).

38. Neither the Defendant Released Parties nor their counsel shall have any responsibility for, interest in or liability whatsoever to any Person, (including without limitation to any Settling Plaintiff, Settling Fund, Settlement Class Member or Plaintiffs' Counsel), with respect to the Gross or Net Settlement Fund (except to the extent that the Settling Defendants shall retain their respective interests in the Settlement Amount in the event that the Effective Date does not occur as provided in the Stipulation), the Escrow Account, the Escrow Agent, any investment or distribution of the Gross or Net Settlement Fund, the proposed or actual Plan of Allocation, the determination, administration or calculation of claims, final awards and supervision and distribution of the Gross or Net Settlement Fund as set forth in the Stipulation or any application for attorneys' fees and reimbursement of expenses, the payment or withholding of taxes or any losses incurred in connection with any such matters, and no Person, including without limitation the Settling Plaintiffs, Settling Funds, Settlement Class Members and Plaintiffs' Counsel, shall have any claims against the Defendant Released Parties or their counsel in connection therewith. Each of the Settling Defendants and their respective counsel shall have no responsibility for and no liability whatsoever with respect to the Settlement Amount after it has paid its share of the Settlement Amount as set forth in the Stipulation. In no event shall any Settling Defendant be required to pay any amount except for its respective share of the Settlement Amount (including any interest that may be payable thereon prior to the time it is paid to the Escrow Agent pursuant to the terms and conditions of ¶ 2.2 of the Stipulation) as set forth in the Stipulation, nor shall any Settling Defendant have any liability or responsibility for the

Settlement Amount after its respective share of the Settlement Amount has been fully paid to the Escrow Agent.

39. If any specified condition to the Settlement set forth in the Stipulation is not satisfied, including the provisions of ¶¶ 5.11 and 7.1 of the Stipulation, Settling Plaintiffs or Settling Defendants may elect to terminate the Settlement as provided in the Stipulation. In any such event, the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation, and this Preliminary Approval Order, shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any Person against the Settling Parties, each Settling Party shall be restored to his, her or its respective litigation position as it existed prior to the execution of the Stipulation, and the certifications of the Settlement Classes pursuant to ¶ \_\_\_ of this Preliminary Approval Order and any releases provided in connection with the Settlement shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any Person against the Settling Parties.

40. Neither the Stipulation, nor the Settlement, nor any of the negotiations, documents, proceedings and acts performed in connection therewith, nor any of the proceedings in the Settling Actions relating to the Stipulation or the Settlement: (i) is or may be deemed to be or may be used as an admission or evidence of the truth of any of the allegations in the Settling Actions or of the validity of any Released Claim or of any wrongdoing or liability of any kind of the Defendant Released Parties; or (ii) is or may be deemed to be or may be used as an admission or evidence of any liability, fault, or omission of the Defendant Released Parties in any civil, criminal or administrative proceeding in any court, arbitration proceeding, administrative agency or other forum or tribunal in which the Defendant Released Parties are or become parties.

41. All proceedings in the Federal Actions are stayed until further order of the Court, except as may be necessary to implement the Settlement or comply with the terms of the Stipulation and this Order. The Court retains exclusive jurisdiction over the Federal Actions to consider all further matters arising out of or connected with the Settlement.

42. Pending the Effective Date or cancellation, failure or termination of the Settlement, no Settlement Class Member shall commence, prosecute, pursue or litigate any Released Claim against the Defendant Released Parties, whether directly, representatively or in any other capacity, and regardless of whether or not any such Settlement Class Member has appeared in the Settling Actions, unless the failure to act in a Settling Action would materially prejudice the position of such Settlement Class Member, after reasonable efforts to stay or hold in abeyance the requirement to so act in such Settling Action.

43. Without further order of the Court or notice to the Settlement Class, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of this Preliminary Approval Order or the Stipulation.

44. The Court shall retain continuing jurisdiction over the Settlement, as well as the administration thereof and proceedings arising out of or related to the Stipulation and/or the Settlement, except as to the enforcement by the NYAG as to any payments called for in the Stipulation.

Dated: \_\_\_\_\_, 2012

\_\_\_\_\_  
Honorable [INSERT]

UNITED STATES DISTRICT JUDGE

# EXHIBIT A-1

**B3 Notice – Submission Copy**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BEACON ASSOCIATES LITIGATION  This Document Relates to: CLASS ACTIONS	No. 09 Civ. 0777 (LBS)
IN RE J.P. JEANNERET ASSOCIATES, INC., <i>et al.</i>  This Document Relates to: ALL ACTIONS	Case No. 09 Civ. 3907 (CM)
BOARD OF TRUSTEES OF THE BUFFALO LABORERS SECURITY FUND, WELFARE FUND AND WELFARE STAFF FUND, in their capacity as fiduciaries of the respective funds, individually and on behalf of all others similarly situated,  Plaintiffs,  v.  J.P. JEANNERET ASSOCIATES, INC. et al.,  Defendants.	No. 09 Civ. 8362 (LBS) (AJP)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>DONNA M. McBRIDE, individually and derivatively on behalf of Beacon Associates LLC II, Plaintiff, v. KPMG INTERNATIONAL et al.,, Defendants, -and- BEACON ASSOCIATES LLC II, Nominal Defendant.</p>	<p>Index No. 650632/2009E</p>
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**B3 Notice – Submission Copy**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

<p>JOEL SACHER and SUSAN SACHER, derivatively on behalf of BEACON ASSOCIATES LLC II, Plaintiffs, v. BEACON ASSOCIATES MANAGEMENT CORP. et al., Defendants, -and- BEACON ASSOCIATES LLC II, Nominal Defendant.</p>	<p>Index No. 005424/2009</p>
<p>CHARLES J. HECHT, derivatively on behalf of ANDOVER ASSOCIATES LLC I, Plaintiff, v. ANDOVER ASSOCIATES MANAGEMENT CORP. et al., Defendants, -and- ANDOVER ASSOCIATES LLC I, Nominal Defendant.</p>	<p>Index No. 006110/2009</p>
<p>THE JORDAN GROUP LLC, derivatively on behalf of BEACON ASSOCIATES LLC I, Plaintiff, v. BEACON ASSOCIATES MANAGEMENT CORP. et al., Defendants, -and- BEACON ASSOCIATES LLC I, Nominal Defendant.</p>	<p>Index No. 003757/2011</p>



**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT OF CLASS AND DERIVATIVE ACTIONS AND NOTICE OF CERTIFICATION OF SETTLEMENT CLASSES**

TO:<sup>1</sup>

**CLASS MEMBERS**

- **Beacon Investor Class:** “All investors in the Beacon Funds<sup>2</sup> that had not fully redeemed their interests in the Beacon Funds as of December 11, 2008.”
- **Beacon Jeanneret Investor Subclass:** “All persons and entities who obtained the investment management services of J.P. Jeanneret Associates, Inc. (“JPJA”), John P. Jeanneret or Paul L. Perry, and who invested in the Beacon Funds , and had not fully redeemed their interests in the Beacon Funds as of December 11, 2008.”
- **Beacon Fiduciary Class:** “All trustees and named fiduciaries of any employee benefit plan covered by ERISA (acting in their fiduciary capacity on behalf of the plan and for the benefit of all participants and beneficiaries of the plans for which they serve as trustees) that invested in the Beacon Funds, and that had not fully redeemed its interests in the Beacon Funds as of December 11, 2008.”
- **Buffalo Laborers Class:** “All trustees and named fiduciaries of any employee benefit plan covered by ERISA (acting in their fiduciary capacity on behalf of the plan and for the benefit of all participants and beneficiaries of the plans for which they serve as trustees) that obtained the investment management services of JPJA and that invested with Bernard L. Madoff, either directly with Bernard L. Madoff Investment Securities LLC (“BLMIS”) or indirectly through the Income Plus Fund<sup>3</sup> or the Andover Funds<sup>4</sup>, and that had not fully redeemed its interests in BLMIS, the Income Plus Fund or the Andover Funds as of December 11, 2008.”
- **Income Plus Investor Class:** “All investors in the Income Plus Fund that had not fully redeemed their interests in the Income Plus Fund as of December 11, 2008.”
- **Direct Investor Class:** “All investors who invested directly with Madoff pursuant to a Discretionary Investment Management Agreement with JPJA, and that had not fully redeemed their investments with BLMIS as of December 11, 2008.”<sup>5</sup>

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<sup>1</sup> The categories of individuals and entities to whom this Notice is addressed overlap (e.g. Beacon Investor Class identified under “Class Members” and Beacon Investors identified under “Investor Members of Derivative Fund Plaintiffs”). The purpose of this Notice is to provide information to investors whose rights may be impacted by this Settlement and therefore the recipients of the Notice are identified in various ways. It is expected that each impacted investor will receive one Notice and one Proof of Claim Form even if that investor is in multiple categories of recipients.

<sup>2</sup> The “Beacon Funds” are Beacon Associates LLC I and Beacon Associates LLC II, individually and collectively and each other of their predecessors, successors, parents, subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices.

<sup>3</sup> The “Income Plus Fund” means the Income Plus Investment Fund and the Master Income-Plus Group Trust established by JPJA, individually and collectively, and each other of their predecessors, successors, trustees, parents, subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices.

<sup>4</sup> The “Andover Funds” means Andover Associates (QP) LLC and Andover Associates LLC I, individually and collectively, and each other of their predecessors, successors, parents, subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices. The Beacon Funds, Income Plus Fund and Andover Funds are referred to as the “Settling Funds”.

<sup>5</sup> The six listed Classes, along with several other classes in the consolidated cases, are collectively referred to as the “Settlement Class.” Investors in Andover Associates LLC I who did not redeem their interests in that fund as of December

Continued on following page

## **INVESTOR MEMBERS OF DERIVATIVE FUND PLAINTIFFS**

- **Beacon Investors:** Investors in the Beacon Funds that had not fully redeemed their interests as of December 11, 2008.
- **Income Plus Investors:** Investors in the Income Plus Fund that had not fully redeemed their interests as of December 11, 2008.
- **Andover Investors:** Investors in Andover Associates LLC I that had not fully redeemed their interests as of December 11, 2008.

**PLEASE READ THIS NOTICE CAREFULLY.**

**A FEDERAL COURT AUTHORIZED THIS NOTICE.  
IT ALSO WAS REVIEWED AND/OR APPROVED BY STATE COURT JUSTICES.  
THIS IS NOT A SOLICITATION. YOU HAVE NOT BEEN SUED.**

### **COVER PAGE SUMMARIZING IMPORTANT INFORMATION REQUIRED BY THE PRIVATE SECURITIES LITIGATION REFORM ACT**

The purpose of this Notice is to provide you with information on a proposed settlement (the “Settlement”) of lawsuits brought by the Settling Plaintiffs (as defined below), including the United States Secretary of Labor (“Secretary”) and the New York Attorney General (“NYAG”), against the Settling Defendants (again, as defined below) involving the *In re Beacon*, *In re Jeanneret* and *Buffalo Laborers* class actions as well as shareholder derivative suits on behalf of certain of the Settling Funds (referred to as the “Actions”). The United States District Court for the Southern District of New York (the “Court”) has preliminarily approved the Settlement, and has scheduled a fairness hearing at which the Court will consider the Settling Plaintiffs’ motion for final approval of the Settlement and for class certification, motion for approval of a proposed plan of allocation, and motion for an award of attorneys’ fees and costs. That hearing, before the Honorable [Leonard B. Sand/Colleen McMahon], has been scheduled for \_\_\_\_\_, 2012, at \_\_\_ a.m./p.m. in Courtroom \_\_\_, of the District Court, 500 Pearl Street, New York, New York. The Settlement will provide for payments to the Settlement Class Members who file a Proof of Claim, through a plan of allocation. You are receiving this Notice because Plaintiffs’ Class Counsel believes you are a Settlement Class Member.

The terms of the Settlement are contained in a Stipulation of Settlement (the “Stipulation”) and are summarized below. The Stipulation and all applicable documents are available for inspection at the offices of Plaintiffs’ Class Counsel (contact information below) during regular business hours. You or your counsel also can call the Claims Administrator toll-free at 1-877-308-2283; send an e-mail to \_\_\_\_\_

Continued from previous page

11, 2008 are deemed to be Settlement Class Members for purposes of this Notice and for calculating their distributions from the proceeds of this Settlement, even though the case brought on their behalf was a shareholder derivative suit and not as a class action. “Settlement Class Member” means a person who falls within the definition of the Settlement Class. Excluded from the Settlement Class are: the Settling Defendants, spouses of the individual Settling Defendants, executive officers of the corporate Settling Defendants; corporate entities that control or are controlled by the corporate Settling Defendants and the legal representatives, heirs, successors and assigns of any excluded person in that role and not in their individual capacity (“Excluded Persons”). The Plaintiffs in *Hartman v. Ivy Asset Mgmt.*, No. 09-8278 (S.D.N.Y.), are excluded from the Buffalo Laborers Class. Also excluded from the Settlement Class are persons/entities who exclude themselves from the Settlement by timely following the instructions set forth below in Question 15.

BeaconJeanneretMadoffSettlement@gcginco.com or visit the website at www.gcginco.com (enter “Beacon Jeanneret Madoff Litigation” in case search), where you will find the documents available for review and download and information about the Settlement.

Settlement Class Members and their counsel also are invited to dial into a teleconference at 1-800-\_\_\_\_\_ at 1:00 p.m. EST on \_\_\_\_\_, 2012. On that call, Plaintiffs’ Class Counsel and their financial experts will address any questions Settlement Class Members may have about the Settlement and/or the Plan of Allocation.

In addition, this Notice describes (a) the Actions and their allegations, (b) the allocation and distribution of the proceeds of the Settlement, and (c) the \_\_\_\_\_ Fairness Hearing, at which the Court will consider, among other matters, (i) whether the Settlement should be finally approved, (ii) whether the Plan of Allocation should be approved, and (iii) Plaintiffs’ Counsels’ Motion for Attorneys’ Fees and Expenses.

**This Notice describes important rights that you may have and what steps you must take if you wish to participate in the Settlement or wish to be excluded from the Settlement Class. Your legal rights may be affected whether or not you act.**

**Statement of Settlement Classes’ Recovery:** The “Settlement Amount” consists of (a) a cash settlement fund of \$216,500,000 (Two Hundred Sixteen Million Five Hundred Thousand Dollars), and (b) additional value of \$3,357,694 (Three Million Three Hundred Fifty Seven Thousand Six Hundred Ninety Four Dollars) based on waived claims to management fees by the Beacon Defendants (together, with interest, the “Gross Settlement Fund”), for a total settlement valued at **\$219,857,694 (Two Hundred Nineteen Million Eight Hundred Fifty Seven Thousand Six Hundred Ninety Four Dollars)**, plus interest that may accrue thereon. The recovery is explained in greater detail below.

The amount that will be distributed to Class Members, known as the “Net Settlement Fund” is that portion of the Settlement Amount, plus any interest that may accrue thereon, remaining after payment of \$7,000,000 (Seven Million Dollars) to the U.S. Department of Labor, \$5,000,000 (Five Million Dollars) to the New York Attorney General (for settlement of the government cases), attorneys’ fees and expenses (subject to Court approval), notice and administration expenses, taxes and tax expenses, and any other expenses approved by the Court. Assuming that all of the Settlement Class Members participate in the settlement, Private Plaintiffs’ Counsel has estimated that the average recovery will be approximately 70.6% of net dollars invested in a direct BLMIS account or the Settling Funds (assuming the Court approves the governmental payments and amounts being requested in attorneys’ fees and expenses). For purposes of these calculations, SIPC advances pursuant to 15 U.S.C. § 78fff-3(a) (providing for advance payments of up to \$500,000 per investor) are deducted from investors’ losses.<sup>6</sup> A Settlement Class Member’s actual recovery will be determined by the Plan of Allocation of the Net Settlement Fund, described below and in the attached Exhibit A, and will depend upon on a number factors. Please see pages 7–10 and Questions 5 and 10 for a more detailed statement and explanation of all considerations concerning the Settlement Classes’ potential recoveries from the Settlement, and definitions of the various groups of Class Members.

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<sup>6</sup> The estimated average recovery for each group of investors is as follows: Beacon (69.7%), Income Plus (74.1%), Andover (181.8%) and Direct Investors (68.7%). This estimate does not include any claims that Settlement Class Members might have for recovery from the Madoff Trustee or the BLMIS estate, whether directly or through a Settling Fund.

**Statement of Average Amount of Damages:** The Settling Parties disagree whether Defendants are liable and do not agree on the amount of damages per net dollar invested (or per Settling Fund interest) that could be recovered if the Settling Plaintiffs were to prevail on each claim asserted against the Settling Defendants. The issues on which the Settling Parties disagree include: (a) whether the Plaintiffs could establish violations of the federal securities laws, New York statutes and common law by any or all of the Settling Defendants; (b) whether the Settling Defendants violated the Employee Retirement Income Security Act of 1974 (“ERISA”); and (c) the appropriate economic methodology for determining the amounts by which Settlement Class Members were damaged.

**Statement of Attorneys’ Fees and Expenses Sought:** Private Plaintiffs’ Counsel intend to seek an award of attorneys’ fees in an amount not greater than 20% of the Gross Settlement Fund, after the Fund is reduced by \$16,000,000,<sup>7</sup> plus interest earned at the same rate as the Settlement Fund. Certain of Private Plaintiffs’ Counsel will also apply for reimbursement of out-of-pocket costs and expenses incurred in prosecuting the claims of up to \$2,000,000, plus the fees of accounting, and financial experts and consultants for notice, administration and allocation of the Net Settlement Fund, in the estimated total amount of \$250,000, plus interest earned at the same rate as the Settlement Fund.

In this type of litigation, it is customary for plaintiffs’ counsel to be awarded a percentage of the common fund recovery as their attorneys’ fees.

Plaintiffs Class Counsel estimate that the requested attorneys’ fees and expenses, if approved by the Court, will represent approximately 12% of net dollars invested in a direct BLMIS account or through the Settling Funds. This calculation is being provided solely to comply with the requirements of the Private Securities Litigation Reform Act of 1995 (“PSLRA”). Class Counsel notes that the traditional measure for expressing fees and expenses in a class action notice is as a percentage of recovery, as set forth above.

**Identification of Attorneys:** Lead Plaintiffs and the Classes are represented by the Court appointed Co-Lead Counsel: Barbara Hart of Lowey Dannenberg Cohen & Hart, P.C., One North Broadway, White Plains, New York, 10601, (914) 997-0500 and Peter H. LeVan, Jr. of Kessler Topaz Meltzer & Check LLP, 280 King of Prussia Road, Radnor, PA 19087, (610) 667-7706. For a list of additional Private Plaintiffs’ Counsel and Defendants’ Counsel, and all contact information for them, see Question 18 below.

**Reasons for Settlement:** There has been no final resolution by a court of the cases in favor of either the Settling Plaintiffs or the Settling Defendants. Instead, they agreed to the Settlement. The Settling Plaintiffs, the Secretary, the NYAG and Plaintiffs’ Class Counsel -- who, among them, have extensive experience litigating complex class-action, shareholder, ERISA and derivative litigations -- agreed to the Settlement after considering, among other things: (a) the substantial cash benefits to Settlement Class Members and/or current members of the Settling Funds; (b) the Settling Defendants’ likely positions, expressed during the pendency of the litigation, concerning the various liability, causation and damages issues; (c) the desirability of consummating the Settlement in order to provide relief to Settlement Class Members and Members of the Settling Funds at this juncture of the Actions and without further delay; and (d) the Plaintiffs’ Class Counsels’ belief that the Settlement is fair, reasonable and adequate and in the best interests of all Settlement Class Members.

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<sup>7</sup> See Question 21 and footnote 2 for an explanation of this deduction.

<b>ACTIONS YOU CAN TAKE IN THIS SETTLEMENT, AND THE DEADLINES FOR THEM:</b>	
<b>OBTAIN MORE INFORMATION</b>	To permit you to better understand the Settlement, the process by which it was achieved and the Plan of Allocation, you and/or your counsel are invited to dial into a teleconference at 1-800-_____ at 1:00 p.m. on _____, 2012. In it, Private Plaintiffs' Counsel will summarize the Settlement and its process, and answer questions from Class Members.  You can also visit the Claims Administrator's website at <a href="http://www.gcginc.com">www.gcginc.com</a> (enter "Beacon Jeanneret Madoff Litigation" in case search), to obtain additional information about the proposed settlement.
<b>SUBMIT A PROOF OF CLAIM FORM</b>	DEADLINE: _____ (must be postmarked (if mailed) or received (if sent by any other means) no later than this date.) This is the <b>only</b> way to get a payment from the Net Settlement Fund.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS</b>	DEADLINE: _____ (must be postmarked (if mailed) or received (if sent by any other means) no later than this date.) This is the <b>only</b> option that allows you to ever be part of any other lawsuit against the Settling Defendants (defined below) concerning the Released Claims (also defined below).
<b>OBJECT</b>	DEADLINE: _____ (must be postmarked (if mailed) or received (if sent by any other means) no later than this date).  Write to the Court about why you do not like the Settlement. You may not object if you have excluded yourself from the Settlement.
<b>GO TO THE FINAL FAIRNESS HEARING</b>	The Hearing is on _____  Plaintiffs' Counsel must file the motions for final approval of the Settlement, approval of the Plan of Allocation and an award of Attorneys' Fees and Expenses on or before _____.  The deadline to ask to speak in Court about the Settlement is _____.
<b>DO NOTHING</b>	Receive <b>no</b> payment from the Net Settlement Fund. Give up your rights, except as explained below.

These rights and options – **and the deadlines to exercise them** – are explained in this Notice. The Courts in charge of overseeing the Settlement still have to decide whether to approve it. Payments under the Settlement will be made to Settlement Class Members if the Courts approve the Settlement and those approvals are upheld if any appeals are filed. Please be patient.

[END OF COVER PAGE]

## WHAT THIS NOTICE CONTAINS

### SUMMARY OF THE SETTLEMENT

#### ANSWERS TO QUESTIONS ON THE ACTIONS:

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2. Why Do Certain Actions Also Include Derivative Claims?
3. Why Did I Receive This Notice Package?
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5. How Did the Parties Reach The Settlement?

#### **WHO IS IN THE SETTLEMENT .....**

6. How Do I Know If I Am Part Of The Settlement?
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#### **THE SETTLEMENT BENEFITS – WHAT YOU RECEIVE .....**

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10. How Much Will My Payment Be?
11. How Do I File A Claim?
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#### **EXCLUDING YOURSELF FROM THE SETTLEMENT .....**

15. How Do I Exclude Myself From The Settlement?
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17. If I Exclude Myself, Can I Receive Money From The Settlement?

#### **OBJECTING TO THE SETTLEMENT .....**

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#### **THE LAWYERS REPRESENTING YOU .....**

20. Do I Have A Lawyer In The Case?
21. How Will The Lawyers Be Paid?

#### **THE COURT’S SETTLEMENT FAIRNESS HEARING .....**

- 22. When And Where Will The Court Decide Whether To Approve The Settlement?
- 23. Do I Have To Come To The Fairness Hearing?
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**IF YOU DO NOTHING .....**

- 25. What Happens If I Do Nothing At All?

**GETTING MORE INFORMATION .....**

- 26. How Do I Get More Information?

**SUMMARY OF THE SETTLEMENT**

The Settling Plaintiffs,<sup>8</sup> on behalf of themselves, the classes they represent and/or the Settling Funds, have entered into a proposed Settlement with the Settling Defendants<sup>9</sup> that, if approved by the Court, will resolve the Actions and various other lawsuits in their entirety. The “Settlement Amount” consists of (a) a cash settlement fund of \$216,500,000 (Two Hundred Sixteen Million Five Hundred Thousand Dollars), and (b) additional value of \$3,357,694 (Three Million Three Hundred Fifty Seven Thousand

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<sup>8</sup> The “Settling Plaintiffs” means the Secretary; the NYAG; the Settling Funds; The Plumbers & Steamfitters Local 267 Pension and Insurance Funds and Trustees (including Gregory Lancette, Bradley Ward, Bryan Allen, David Waby, Dominic Mancini, Donald A. Little, Donald Beckley, James Fredenburg, James Rood, James Rounds, Patrick Bonnell and Peter Lauze); Plumbers Local 112 Health Fund and Trustees (including James Rounds and Lyle Fassett); The Local 73 Retirement Fund and Trustees (Frederick J. Volkomer, Frederick J. Volkomer II, Patrick Carroll, Timothy Donovan and Timothy Rice); The U.A. of Journeymen & Apprentices Local 73 Fund and Trustees (including Daniel Hickey, Eric Saunders, James Donovan, Jason Lozier, L. James Culeton, Marc Stevens, Mark Maniccia, Timothy Donovan, Timothy Rice and Tom Metcalf, Jr.); Local 73 Annuity Fund; Local 73 Health & Welfare Fund; I.B.E.W. Local 43 and Electrical Contractors Welfare Fund and Trustees (including Carl Hibbard, Jr., Dennis J. McDermott, Donald H. Morgan, James Engler, John S. Kogut, Kevin J. Crawford, Marilyn M. Oppedisano and Patrick Costello); Oswego County Laborers’ Local 214 Pension Fund and Trustees (including David Henderson, Jr., Earl N. Hall, Michael Blasczienski, Paul A. Castaldo and William F. Shannon); Jay Raubvogel; M. Raubvogel Co. Trust; Grand Metro Builders of NY Corp. Defined Benefit Plan and Trustees (including John Cacoulidis and Phyllis Cacoulidis); Board of Trustees of The Buffalo Laborers Security Fund, Welfare Fund and Welfare Staff Fund; Gary Kubik as participant and beneficiary in the Buffalo Laborers Security and Welfare Fund; Ernest A. Hartman and Bruce Condie as Trustees of the IBEW Local 139 Pension Fund, Thomas E. Spicer and Matthew Labosky as Trustees of the IBEW Local 325 Pension, Annuity, and Joint Trust Funds; Michael Talarski and Bruce Condie as Trustees of the IBEW Local 241 Pension Fund; Elizabeth F. Cassada and James A. Williams as Trustees of the IBEW Local 910 Annuity and Pension Funds; Thomas R. LoStracco as Trustee of the 1199 SEIU Regional Pension Fund; George Kennedy as Trustee of the Service Employees Pension Fund of Upstate New York; Rodney Malarchik and Irving Wood as Trustees of the Upstate New York Bakery Drivers and Industry Pension Fund; James Rounds and Lyle D. Fassett as Trustees of the Plumbers and Pipefitters Local 112 Pension Fund; Rockne Burns as Trustee of the Engineers Joint Welfare Fund; Robert Brown as Trustee of the Rochester Laborers’ Annuity and Pension Funds; Michael Capelli and Alan Seidman as Trustees of the Empire State Carpenters Annuity, Pension, and Welfare Funds; David Fastenberg Trustee, Long Island Vitreo-Retinal; Jordan Group, LLC, derivatively on behalf of Beacon Associates LLC I; Charles J. Hecht, derivatively on behalf of Andover Associates LLC I; Donna M. McBride, individually and derivatively on behalf of Beacon Associates LLC II; Joel Sacher and Susan Sacher, derivatively on behalf of Beacon Associates LLC II; the Stephen C. Schott 1984 Trust; Alison Altman, Amanda Atlas, Howard Gelfer, Harvey Glicker, Joel T. Gluck (IRA), Levy Investment Partners, LP, Jackie Levy, Peter Levy, Ben Macklowe, Hillary Macklowe, Ben Macklowe as Trustee of the Macklowe Gallery Ltd. Profit Sharing Plan, Lloyd Macklowe, Barbara Macklowe, Barbara Macklowe (IRA), Laurence Matlick, Carl Mittler (IRA), Marvin Poster (IRA), Mustang Sportswear, Inc., Ken Siegel, Ken Siegel (IRA), Ken Siegel Defined Benefit Plan, and Gail Zarean.

<sup>9</sup> The “Settling Defendants” means Ivy Asset Management LLC (“Ivy”), Lawrence Simon, Howard Wohl, Adam Geiger and Fred Sloan (collectively, the “Ivy Defendants”); JPJA, John Jeanneret and Paul Perry (collectively, the “Jeanneret Defendants”); and Beacon Associates Management Corp. (“BAMC”), Andover Associates Management Corp. (“AAMC”), Joel Danziger and Harris Markhoff (collectively, the “Beacon Defendants”).

Six Hundred Ninety Four Dollars) based on waived claims to management fees by the Beacon Defendants (together, with interest, the “Gross Settlement Fund”). This fund is being established for the benefit of all class members in all the cases to resolve all claims of the Settling Plaintiffs.

The Gross Settlement Fund is broken down among the Defendants as follows:

- Ivy Defendants: \$210,000,000 (Two Hundred Ten Million Dollars).
- Jeanneret Defendants: \$3,000,000 (Three Million Dollars).
- Beacon Defendants: \$6,857,694 (Six Million Eight Hundred Fifty Seven Thousand Six Hundred Ninety Four Dollars), made up of the following:
  - \$3,500,000 (Three Million Five Hundred Thousand Dollars) in cash as a return of management fees received by the Beacon Defendants prior to December 11, 2008.
  - In addition, the Beacon Defendants waive their claims to receive any management fees, expenses, indemnity, or reimbursement of any kind from the Beacon Funds and Andover Funds, in the current amount of \$3,357,694 (Three Million Three Hundred Fifty Seven Thousand Six Hundred Ninety Four Dollars). The Beacon management fees are \$2,842,270 and the Andover management fees are \$515,424. In accordance with the Plan of Allocation, these amounts will be distributed directly to Beacon and Andover investors by the Beacon and Andover Funds, respectively. The Beacon Defendants also are waiving any claims to be reimbursed for any legal fees from the Beacon or Andover Funds.<sup>10</sup>

The “Net Settlement Fund” is that portion of the Gross Settlement Fund remaining, plus any interest that may accrue thereon, after payment of \$7,000,000 (Seven Million Dollars) to the U.S. Department of Labor, \$5,000,000 (Five Million Dollars) to the New York Attorney General,<sup>11</sup> attorneys’ fees and expenses (subject to Court approval), notice and administration expenses, and taxes and tax expenses.

The Net Settlement recoveries received from Ivy will be allocated to all investors covered by this Settlement. The Net Settlement Fund payments received from the Jeanneret Defendants will be allocated to all investors that obtained investment-related services from JPJA. The Net Settlement Fund payments received from the Beacon Defendants will be allocated to all investors in the Beacon Funds and Andover Funds.

Following many informal negotiations and multi-day mediation sessions with all private and governmental parties and two neutral mediators, held on February 28-29, April 19 and July 17, 2012, and continuing negotiations on the terms of the Stipulation through \_\_\_\_\_, the global settlement reflected in this notice was achieved. In addition, on May 30, 2012, the Settling Plaintiffs, the Secretary and the NYAG engaged in a lengthy mediation to resolve the allocation of the Net Settlement Fund as

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<sup>10</sup> Litigation efforts forestalled the payment of conservatively hundreds of thousands of dollars in legal fees to counsel for Defendants Markhoff and Danziger, which is an additional benefit to Beacon and Andover Class Members, but on which benefit Plaintiffs’ Counsel are not seeking legal fees.

<sup>11</sup> See Question 4 for information on the litigations filed by the Secretary and the NYAG.



among the classes for each of the Beacon, Income Plus and Andover Funds, and the Direct Investors,<sup>12</sup> and agreed on the following allocations:

Percentage of Net Settlement Fund <sup>13</sup>	
Beacon	58.87%
Income Plus	15.08%
Andover	1.17%
Direct Investors	23.27%
Investors Receiving Only Opportunity Cost Payments	1.61%
Total	100.00%

A Settlement Class Member's actual recovery will be determined by the Plan of Allocation of the Net Settlement Fund, attached as Exhibit A, and will depend on a number factors. These factors include, among other things, the amounts and timing of each investment.

The Proof of Claim form accompanying this Notice includes your individual net investment information, as well as all Securities Investment Protection Corporation recoveries to date (if any). The Proof of Claim form also includes an **estimate** of your distribution for your investments, if any, in the Beacon, Income Plus and Andover Funds or in direct investments with Madoff. In class actions, quite often some number of the people who are entitled to submit claims do not do so and participation rates can vary widely; they usually are less than 100%. In this case, we anticipate a 100% claims submission rate because the parties who may be able to submit claims are a relatively discrete and discernible group. If some people do not submit claims, your recovery could be more than the estimate.

The Net Settlement Fund will be allocated as follows among the investors in the Beacon Funds (58.87%), Income-Plus Fund (15.08%), Andover Funds (1.17%), Direct Investors, (23.27%), and Investors Receiving Only Opportunity Cost Payments (1.61%). A Settlement Class Member's actual recovery will be determined by the Plan of Allocation of the Net Settlement Fund, described below and in the attached Exhibit A, and will depend upon on a number factors. It is estimated that each Settlement Class Member will receive a substantial percentage of his/her/its net investments (*i.e.*, the amount by which the investor's investments in a Settling Fund or to a Direct Investment Account exceeded redemptions) after deduction of attorneys' fees and expenses (subject to Court approval). Due to the facts that (a) portions of the Settling Funds were invested in non-Madoff investment vehicles, and (b) the contributions and withdrawals into and out of BLMIS did not correlate dollar for dollar to contributions and withdrawals by investors into and out of the Settling Funds, the calculation of losses differs when considering all investors as a group as distinct from an investor by investor calculation.

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<sup>12</sup> "Direct Investors" means persons or entities that obtained investment-related services from JPJA and invested directly with Madoff.

<sup>13</sup> The Income Plus Fund made certain investments in Beacon. As set forth in the Plan of Allocation, the portion of the Beacon allocation held by Income Plus is claimed by Income Plus and becomes part of the total Income Plus recovery on a *pro rata* basis within the Fund.

Plaintiffs' Class Counsel's estimate of the amounts to be distributed to Class Members are set forth above -- approximately 70.6% of net dollars invested in a direct BLMIS account or the Settling Funds. For purposes of these calculations, SIPC advances pursuant to 15 U.S.C. § 78fff-3(a) (providing for advance payments of up to \$500,000 per investor) are deducted from investors' losses. These figures assume the Court approves the governmental payments and amounts being requested in attorneys' fees and expenses. The estimated settlement allocation as a percentage of net dollars invested for each group of investors is as follows: Beacon (69.7 %); Income Plus (74.1 %); Andover (181.8 %); and Direct Investors (68.7%) Investors Receiving Only Opportunity Cost Payments received back the entirety of their Net Investments before the Madoff Ponzi Scheme was disclosed, and therefore the estimated settlement allocation as a percentage of net dollars invested cannot be calculated (as the denominator is zero).

The settlement allocation as a percentage of net dollars invested varies between the Beacon, Andover and Income Plus Funds due to the specific contributions and withdrawals into and out of those Funds. The Direct Investors received SIPC payments of up to \$500,000 per investor (\$8.4 million total), as compared to the SIPC recoveries by the Settling Funds of \$500,000 per Fund. Also, the Direct Investors lost 100% of their investments that were in accounts with Madoff, while the Settling Funds were partially exposed to Madoff on the date of the disclosure of the fraud, as follows: Beacon – 74% exposed to Madoff as of December 2008; Income Plus – 33.6% exposed to Madoff as of December 2008; and Andover – 20.6% exposed to Madoff as of December 2008. The investors in the Settling Funds have received and continue to receive distributions from the Funds of non-Madoff-related assets. The Andover Fund is substantially smaller than the Beacon and Income Plus Funds, and was exposed to Madoff in a smaller percentage as of December 2008. The amount of the Settlement allocated to Andover investors is slightly more than 1% of the Net Settlement Fund, and the Andover investors' recovery as a percentage of net loss is higher than the recoveries of the other investor groups because the SIPC recovery represent a higher percentage of dollars lost than for those other investors, and because the non-Madoff distributions to Andover investors represent a higher percentage relative to dollars lost than for investors in the other Funds.

In addition, investors are expected to receive substantial distributions from Irving Picard, Trustee for the BLMIS estate (the "Madoff Trustee"). As of June 1, 2012, the Madoff Trustee has reported that he has recovered or entered into agreements to recover more than \$9.1 billion, representing approximately 53% of the approximately \$17.3 billion in principal estimated to have been lost in the Madoff Ponzi scheme by BLMIS customers who filed claims. **This Settlement in no way diminishes any claims that Settlement Class Members might have for recovery from the Madoff Trustee or the BLMIS estate, whether directly or through a Settling Fund.**

## BASIC INFORMATION

### **1. What Is A Class Action?**

A class action is a lawsuit in which one or more persons sue on behalf of other persons who have similar claims. The members of this group are called the class. A class action may also include, as is the case here, subclasses, which are other groups whose members have asserted different and/or overlapping claims; they also may assert similar claims against different and/or overlapping defendants. The settlement of a class action determines the rights of the members of the classes and subclasses, except for those who choose to exclude themselves from the Settlement Class (*see* Question 15, below). For this reason, the Settlement must be approved by the Court. Those Settlement Class Members who do not exclude themselves from the Settlement may submit a claim (*see* Question 11, below) and, if they

do, may receive payment of money. They may also object to the terms of the Settlement and still remain in the Settlement Class and receive payment of money (*see* Question 18, below).

The Settlement Class is comprised of the classes, subclasses and persons identified on page \_\_, above.

## **2. Why Do Certain Actions Allege Shareholder Derivative Claims?**

Certain of the Actions allege shareholder derivative claims, either alone or in conjunction with class claims. In a derivative action, one or more people and/or entities who are shareholders in a corporation, or as here, purchasers of interests in or shares of an investment fund, sue on behalf of the fund, alleging that the fund was injured, and seek recovery on behalf of the fund. These are claims that belong to the respective funds and once released (as they will be by this Settlement), they cannot be maintained by the funds or anyone purporting to act on their behalf. The derivative claims are being settled as part of this global Settlement.

This Notice is being sent to all of the non-managing members of the Beacon Funds and Andover Associates LLC I on behalf of which derivative claims have been asserted. The Net Settlement Fund will be distributed to each of these investors in their capacities as members of their respective Settlement Class through the Court notwithstanding that there are derivative claims asserted in state courts. The shareholder derivative claims will continue to proceed in state courts against the auditors of the Settling Funds, who are not included in this Settlement. Any recovery from the auditors in this continued litigation is not a part of this Settlement. The distribution of any recovery from the auditors in this continued litigation will be handled as part of the liquidation of the Beacon Funds and Andover Associates LLC I, and the resolution of the remaining derivative claims against the auditors of the Settling Funds will be subject to the supervision of the New York State courts in which the derivative suits are pending.

## **3. Why Did I Receive This Notice Package?**

By Order dated \_\_\_\_\_, 2012, the Honorable [Leonard B. Sand/Colleen McMahon] of the United States District Court for the Southern District of New York directed that Notice of the proposed Settlement be distributed to the Settlement Class set forth above. The New York State courts in which certain derivative claims covered by this Settlement are pending have reviewed this Notice and/or approved the distribution of this Notice to the non-managing members of the Settling Funds. The Court will be asked to approve the Settlement of those claims as part of the approval process.

The Court and the New York State courts authorized this Notice to be sent to you because you or someone in your family have been identified as a Settlement Class Member. You may elect to exclude yourself from the Settlement Class. *See* Question 15.

If you are a Settlement Class Member, you have a right to know about the proposed Settlement of the Actions, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, an administrator will distribute the payments that the Settlement permits, in accordance with the Plan of Allocation. The timing of any distributions depends on many factors, including whether appeals are filed and resolved, and, therefore, is unknown at this time.

This package explains the Actions, the Settlement, your legal rights and the benefits available under the Settlement.

## **4. What Are The Actions About?**

#### **4.1 In re Beacon**

On January 27, 2009, investors in the Beacon Funds filed the first of several actions against all or some of the Settling Defendants, alleging claims under the federal securities laws, and certain state common law and statutory claims. Each of the Settling Defendants has been named as a defendant in one or more of the Actions. The cases brought claims based on the investments made by Settling Plaintiffs and Settlement Class Members in Beacon Funds, which were then invested with BLMIS. The Madoff Ponzi scheme and bankruptcy caused a loss in the investors' assets. The Complaints demanded that the Defendants be required to pay to all investors the amounts of their losses and other recoveries.

Plaintiffs filed two Amended Complaints and Judge Sand granted in part and denied in part the Defendants' motions to dismiss the case. Certain direct and all derivative common law claims were dismissed. Those claims are preserved for appeal in the *In re Beacon* litigation.

On September 15, 2011, Plaintiffs moved for class certification, asking the Court to allow the case to proceed for all class members together. After the various parties filed opposition and reply papers, and after oral argument, Judge Sand granted the motion for class certification, which is currently on a petition to appeal before the appellate court.

#### **4.2 In re Jeanneret**

On April 17, 2009, investors who received services from JPJA filed the first of several cases that alleged claims under the federal securities laws, the Investor Advisers Act, ERISA, and certain state claims. Several cases were consolidated by order of Judge McMahon.

Plaintiffs filed two Amended Complaints and Judge McMahon granted in part and denied in part the Defendants' motions to dismiss the case. Common law claims and federal claims were dismissed and are preserved for appeal. Plaintiffs then filed a Third Amended Complaint, and the Court ordered that the previous rulings on motions to dismiss would be applicable to the corresponding claims in the Third Amended Complaint.

On January 4, 2011, Judge McMahon entered an Order severing the ERISA claims, originally filed in *Board of Trustees of the Buffalo Laborers Security Plan et al. v. J.P. Jeanneret Associates, Inc.*, No. 09-cv-08362 and in the *Hartman, et al., v. Ivy Asset Management L.L.C., et al.*, No. 09 Civ. 8278 action, from the other claims in the *In re Jeanneret Associates, Inc. et al.* consolidated action, and transferred those claims to Judge Sand for coordination with the *In re Beacon Associates Litigation* consolidated action.

Plaintiffs moved for class certification on September 15, 2011. Defendants filed opposition papers and Plaintiffs filed reply papers. At the time of the Settlement was reached, Plaintiffs' motion had not yet been decided.

#### **4.3 Buffalo Laborers Action**

The Board of Trustees of the Buffalo Laborers Security Fund, Welfare Fund and Welfare Staff Fund filed a Complaint against certain of the Ivy Defendants and the Jeanneret Defendants in October 2009 in the United States District Court of the Southern District of New York, asserting ERISA claims on behalf of ERISA-covered plans that suffered losses in connection with investments made directly with Madoff pursuant to a Discretionary Investment Management Agreements with JPJA, or indirectly through investments in the Income Plus Fund or the Andover Funds. The Complaint demanded that the named

Ivy Defendants and Jeanneret Defendants be required to restore to the Plans all losses that the Plans suffered as a result of their Madoff investments, and to disgorge all profits that the Defendants realized from their alleged fiduciary breaches.

Plaintiffs filed Amended Complaints and Judge McMahon granted in part and denied in part the named Ivy Defendants' motion to dismiss. Certain claims were dismissed and are preserved for appeal. Judge McMahon subsequently transferred the *Buffalo Laborers* action to Judge Sand for coordinated discovery with *In re Beacon* and the other coordinated cases that asserted similar claims against all or some of the Settling Defendants. The named Ivy Defendants also moved before Judge Sand for reconsideration of Judge McMahon's decision, which Judge Sand granted in part and denied in part.

On September 15, 2011, the Board of Trustees moved for class certification, asking the Court to allow the case to proceed for all class members together. After the parties filed opposition and reply papers, and after oral argument, Judge Sand granted the motion for class certification, which is currently on a petition to appeal before the appellate court. By Order of the Court dated March 19, 2012, the Plaintiffs in *Hartman v. Ivy Asset Management*, another litigation asserting the same claims, were excluded from the *Buffalo Laborers* class.

In connection with this Settlement, the named Ivy Defendants and the Jeanneret Defendants have stipulated to the addition of Gary Kubik, a participant and beneficiary in the Buffalo Laborers Security and Welfare Funds, as a named plaintiff and class representative in the *Buffalo Laborers* action.

#### **4.4 State Derivative Claims**

##### **4.4.1 Sacher v. Beacon Associates Management Corp.**

Plaintiffs commenced this action in the Supreme Court of the State of New York, Nassau County, asserting that they are and at all relevant times were members of Beacon Associates LLC II ("Beacon II"), and asserting the following claims: (i) breach of contract (two causes of action), negligence and aiding and abetting breach of fiduciary duty against Ivy Asset Management LLC; (ii) breach of contract, gross negligence and breach of fiduciary duty against Beacon Associates Management Corp.; (iii) aiding and abetting breach of fiduciary duty against Joel Danziger and Harris Markhoff, and (iv) professional negligence against Friedberg, Smith & Co., P.C., the auditors for the Beacon Funds.

The Court ruled on motions to dismiss, holding that Plaintiffs had standing under New York law to assert these claims derivatively on behalf of Beacon II and that they had adequately pled each claim except for the breach of contract claim against Ivy. That Order is currently on appeal. Later, the Court granted renewal of Defendants' motions to dismiss, and upon renewal, dismissed Plaintiffs' first and second causes of action against Ivy for breach of contract and Plaintiffs' fourth cause of action against Ivy for negligence. That Order is also on appeal.

##### **4.4.2 Hecht v. Andover Associates Management Corp.**

Plaintiff in this case asserts that he is and at all relevant times was a member of the New York limited liability company Andover Associates LLC I ("Andover"), and brought the following claims: (i) breach of contract, negligence and aiding and abetting breach of fiduciary duty against Ivy; (ii) breach of contract, gross negligence and breach of fiduciary duty against Andover Associates Management Corp.; (iii) aiding and abetting breach of fiduciary duty against Mr. Danziger and Mr. Markhoff; and (iv) professional negligence against Citrin, Cooperman & Co., LLP, the auditors for the Andover Funds.

The Court ruled on motions to dismiss, holding that Plaintiff had standing under New York law to assert these claims derivatively on behalf of Andover and that he had adequately pled each claim except for the breach of contract claim against Ivy. That Order is currently on appeal.

**4.4.3. *Jordan Group LLC v. Beacon Associates Management Corp.***

Plaintiff in this case asserts that it is and at all relevant times was a member of the New York limited liability company Beacon I, and brought the following claims: (i) breach of contract (two causes of action), negligence and aiding and abetting breach of fiduciary duty against Ivy; (ii) breach of contract, gross negligence and breach of fiduciary duty against BAMC; (iii) aiding and abetting breach of fiduciary duty against Mr. Danziger and Mr. Markhoff; and (iv) professional negligence against Friedberg, Smith & Co., P.C., the auditor for the Beacon Funds.

Because of the similarity of the claims asserted in *Jordan* to those previously asserted in *Sacher* and *Hecht*, the parties stipulated that the time for Defendants in *Jordan* to answer or otherwise move with respect to the complaint would be tolled pending a decision by the appellate court on the pending appeals in *Sacher* and *Hecht*.

**4.4.4 *McBride v. KPMG, International***

Plaintiff in this case, a member of the limited liability company Beacon II, asserted claims on her own behalf and derivatively on behalf of Beacon II. The McBride complaint alleged the following derivative claims: (i) professional negligence against Ivy; (ii) fraud, breach of fiduciary duty, and professional negligence against BAMC; and (iii) breach of fiduciary duty and aiding and abetting fraud against Mr. Danziger and Mr. Markhoff. Plaintiff also alleged various claims against other defendants that are not part of this settlement. The Settling Defendants moved to dismiss the claims against them, which motion is currently pending before the court.

\* \* \* \*

With the approval of the federal Court and the New York State Courts, the litigation and settlement of the *In re Beacon*, *In re Jeanneret* and *Buffalo Laborers* class actions and the four state law derivative cases are being coordinated together with one another and with the settlement of numerous other federal and state actions, including the actions brought on behalf of the United States Secretary of Labor and the Attorney General of New York described below. These actions assert similar claims against all or some of the Settling Defendants. Counsel to the plaintiffs of each of the actions fully participated in the mediation with the Settling Defendants.

**4.5 *United States Secretary of Labor: Solis v. Beacon Associates Management Corp.***

In October 2010, the Secretary filed *Solis v. Beacon Associates Management Corp. et al.*. This action was brought against Ivy, Lawrence Simon (Ivy's former Chief Executive Officer), Howard Wohl (Ivy's former Chief Investment Officer) and the Beacon and Jeanneret Defendants, alleging that those Defendants violated ERISA with respect to approximately 100 ERISA plans that were invested with Madoff. The Secretary asked that the Defendants be required to restore to the plans all losses that they suffered as a result of their Madoff investments, and to disgorge (or return) all profits that the Defendants realized from their alleged fiduciary breaches. The plans' Madoff investments were (1) direct investments in brokerage accounts with BLMIS; (2) investments in the Income Plus Fund; and (3) investments in the Beacon and Andover Funds. The Secretary also asked the Court to permanently

enjoin the Defendants from acting as fiduciaries or service providers with respect to any ERISA-covered plans.

#### **4.6 New York Attorney General: *Cuomo v. Ivy Asset Management L.L.C.***

The Office of the New York Attorney General filed suit in May 2010 in an action styled *Cuomo v. Ivy Asset Management L.L.C. et al.*, against Ivy, Mr. Simon and Mr. Wohl, for allegedly misleading clients about investments tied to Madoff. The lawsuit charged Ivy, Mr. Simon and Mr. Wohl with violating New York's Martin Act for alleged fraudulent conduct in connection with the sale of securities; allegedly violating Executive Law §63(12) for persistent fraud in the conduct of business and for persistent illegality; and allegedly breaching fiduciary duties in connection with the advice they gave to their clients. The Attorney General's lawsuit sought payment of restitution, and damages from Ivy, Mr. Simon and Mr. Wohl, as well as the disgorgement of all fees that Ivy received. The lawsuit also sought to bar Messrs. Simon and Wohl from acting as investment advisors.

\* \* \* \*

All claims in all of these cases against the Settling Defendants, including those dismissed and preserved for appeal, will be settled and released as part of this Settlement.

#### **5. How Did the Parties Reach The Settlement?**

There has been no final resolution by a court of the cases in favor of either the Settling Plaintiffs or the Settling Defendants. Instead, they agreed to the Settlement. The Settling Parties disagree about liability issues and do not agree on the amount of damages per net dollar invested (or per Settling Fund interest) that could be recovered if the Settling Plaintiffs were to prevail on each claim asserted against the Settling Defendants.

Plaintiffs' Class Counsel believes that the Settlement confers substantial immediate and future benefits upon Settlement Class Members. Based on their evaluation, Plaintiffs' Class Counsel have concluded that the Settlement is in the best interests of the Settlement Class Members.

The Plaintiffs and Defendants have been litigating the Actions vigorously for nearly four years. The Parties' discovery efforts began in earnest shortly after the Court sustained the viability of various claims asserted by Plaintiffs. Over the course of discovery, the Parties exchanged numerous discovery requests; produced and reviewed more than 12,000,000 pages of documents produced by the Ivy Defendants, over 900,000 pages of documents produced by the Beacon Defendants, over 400,000 pages of documents produced by the Jeanneret Defendants, and over 215,000 pages documents produced by third parties pursuant to subpoenas. Between approximately June 2011 and January 2012, various plaintiffs produced over two million pages of documents with corresponding privilege logs. The Defendants also took the depositions of eight witnesses for class certification purposes.

Throughout the course of these actions, the Parties appeared before the federal and state courts on numerous occasions. In *In re Beacon* and *Buffalo Laborers*, Judge Sand held hearings on Defendants' motions to dismiss, Defendants' motion to reconsider the decision on their motions to dismiss, and Class Plaintiffs' Motions for Class Certification. In *In re Jeanneret*, Judge McMahon held a lengthy hearing on Defendants' motions to dismiss. In the coordinated proceedings, Magistrate Judge Andrew Peck presided over and resolved numerous discovery disputes that arose in connection with the parties' discovery efforts, document productions and deposition schedules, holding status conferences approximately once a month. The Parties also retained and engaged the services of former Magistrate

Judge John Hughes to help resolve additional discovery and scheduling disputes. At the time of the settlement, Lead Counsel had noticed and were preparing for the depositions of over 20 former Ivy, JPJA and BAMC employees, and third parties. Class Plaintiffs were and continue to be committed to the Actions and have pursued them vigorously in the face of strong and dedicated opposition.

The settlement negotiations in the Actions were lengthy and at arm's-length. Defendants' position from the beginning was that any settlement must resolve not just the Actions, but all claims related to them, which entailed substantial coordination. Defendants further required that any settlement must also resolve portions of the SIPC trustee proceedings filed in the United States Bankruptcy Court, Southern District of New York, pending before Judge Lifland, captioned *Securities Investor Protection Corporation v. Bernard Madoff Investment Securities LLC* and *In re Bernard Madoff Investment Securities LLC, Debtor* (the "Madoff Trustee Proceedings").

After litigating the cases aggressively for several years, the Parties began settlement negotiations in earnest in February 2012. After exchanging mediation statements, the Parties to the Class Actions, Non-Class Actions, the Regulator Actions and Madoff Trustee Proceeding participated in a formal, two day mediation session on February 28-29, 2012 before JAMS mediators David Geronemus and Michael D. Young. The initial mediation sessions did not resolve the matters, but substantial progress was made. The Parties and mediators Geronemus and Young remained in contact and participated in innumerable conference calls. The Parties met again for another mediation session on April 19, 2012. Negotiations lasted throughout the night and, in the early morning hours of April 20, 2012, the Parties reached an agreement in principle to settle all claims in the Class Actions and Non-Class Actions. Over the course of the next several months, the Parties continued to negotiate additional terms of the Settlement, and to prepare a Plan of Allocation. After the agreement on total settlement amount was reached by the Parties, they began a second negotiation between counsel for differently-situated class members in order to start a process by which a Plan of Allocation could be agreed upon. Negotiation of the Plan of Allocation included an additional full day of mediation involving the New York Attorney General, the Secretary of Labor, and Private Plaintiffs' Counsel in the Class Actions and Non-Class actions on May 30, 2012. All parties then participated in an additional day of mediation (on July 17, 2012) to attempt to resolve additional terms of the agreement, such as the scope of the releases. On \_\_\_\_\_, 2012, following ongoing additional communications and negotiations with mediators Geronemus and Young, the Parties fully executed the Stipulation.

## **WHO IS IN THE SETTLEMENT**

### **6. How Do I Know If I Am Part Of The Settlement?**

On April 14, 2012, the Court certified the Beacon Investor Class and Jeanneret Investor Subclass, as amended by its order dated \_\_\_\_\_, 2012 for settlement purposes. On May 3, 2012, the Court certified the Buffalo Laborers Class, as amended by its order dated \_\_\_\_\_, 2012 for settlement purposes. By Order dated \_\_\_\_\_, 2012, the Court certified the Jeanneret classes (the Direct Class and the Income Plus Class) for settlement purposes. All of these orders are discussed in Question 4.

You have been identified as a Settlement Class Member and will remain one unless you elect to exclude yourself from the Settlement Class. *See* Question 15.

Investors in Beacon I, Beacon II, Income Plus or Andover Associates LLC I who did not redeem their interests in these funds as of December 11, 2008 are considered Settlement Class Members, as are Direct Investors who had not redeemed their investments with BLMIS as of December 11, 2008.



**7. Are There Exceptions To Being Included?**

Yes. All Excluded Persons, as defined in Footnote 5, pgs. 1–2, are excluded from the Settlement Class. In addition, if you timely request exclusion in accordance with the requirements set forth in Question 15, you will be excluded from the Settlement Class.

**8. Still Unsure About Whether You Are A Settlement Class Member?**

If you are still not sure whether you are a Settlement Class Member, you may ask for free help. You may contact the Claims Administrator for more information by calling 1-877-308-2283 or writing to [BeaconJeanneretMadoffSettlement@gcginco.com](mailto:BeaconJeanneretMadoffSettlement@gcginco.com) or the address listed above. Or you can fill out and return the Proof of Claim and Release form described in Question 11 to see if you qualify.

**THE SETTLEMENT BENEFITS – WHAT YOU RECEIVE**

**9. What Does The Settlement Provide?**

The Gross Settlement Fund is defined above, with the contributions that will be made by each set of Defendants. The Settlement Fund is being established for the benefit of the Settlement Class to resolve all class, direct and derivative claims of the Settling Plaintiffs. If the Settlement is approved, Releases of all claims, including Unknown Claims, will be provided among all Settling Parties.

**HOW YOU RECEIVE PAYMENT – SUBMITTING A CLAIM FORM**

**10. How Much Will My Payment Be?**

The Settlement Fund, after deduction of the attorneys’ fees and expenses approved by the Court, litigation expenses, administrative expenses and taxes, will be distributed to the Settlement Class Members using the Plan of Allocation approved by the Court. This is attached as Exhibit A, and it provides more details and information. Your share of the Net Settlement Fund will depend on many things, including, among others: (a) the amount you invested (and redeemed) in interests in or shares of the Settling Funds or directly with Madoff, (b) the specific investment vehicle through which you suffered Madoff-related investment losses (*i.e.* via direct investment with BLMIS or via a Settling Fund that was partially invested with BLMIS), (c) when you made your investments, (d) what distributions, if any, you have received from your Settling Fund or from the Madoff Trustee following the disclosure of the Madoff fraud; (e) the impact of the Madoff Bankruptcy Trustee’s clawback action against the Beacon Fund and the Andover Fund seeking return of all withdrawals from BLMIS by those funds during the six years prior to revelation of the fraud; and (f) distributions made to Investors by the Beacon, Income Plus and Andover Funds following disclosure of the Madoff fraud. The enclosed Proof of Claim Form contains information concerning your net investments in each of the investment vehicles (Beacon, Income Plus, Andover and Direct Investments) and an **estimate** of your likely share of the Settlement allocable to each investment vehicle. *See also* “Statement of Settlement Classes’ Recovery” on page 3 and Question 11.

Once all the claims are calculated, Plaintiffs’ Class Counsel, without further notice to Settlement Class Members, will apply to the Court for an order directing that the Net Settlement Fund be distributed in accordance with the Plan of Allocation approved by the Court. Plaintiffs’ Class Counsel will also ask the Court to approve payment from the Net Settlement Fund of the Claims Administrator’s fees and expenses incurred in connection with administering the Settlement that have not already been reimbursed.

The Settling Defendants do not have any responsibility or liability with respect to claims administration or the management, investment or distribution of the Gross Settlement Fund or the Net Settlement Fund. The Settling Defendants did not participate in, agree to or approve the Plan of Allocation and take no position as to its fairness, equity or propriety. The distribution of the Net Settlement Fund is a matter separate and apart from the proposed Settlement, and any decision by the Court concerning the distribution will not affect the validity or finality of the proposed Settlement if it is approved by the Court.<sup>13</sup> Without further notice to you, the distribution of the Net Settlement Fund may be modified in connection with, among other things, a ruling by the Court, or an objection filed by a Settlement Class Member, which could affect the finality of the Settlement.

#### **11. How Do I File A Claim?**

Any Settlement Class Member who wishes to participate in the Settlement must sign and return a completed Proof of Claim Form in accordance with the instructions set forth in this Notice. All Proofs of Claim must be submitted so that it is postmarked (if mailed) or received (if sent by any other means) by \_\_\_\_\_, 2012.

To qualify for payment, you must sign and return the enclosed Proof of Claim form, which has already been completed based on information known to the Settling Parties. It should include your net investments into and out of Beacon, Andover, Income Plus and Direct Madoff accounts. If you agree with the totals listed on the Proof of Claim form, you need only sign the form and return it to be eligible to participate in the Settlement. Should you disagree with any of the totals, you should, on a separate piece of paper, correct the transactions and provide supporting documentation for any additional transactions. The Proof of Claim form must be signed and postmarked (if mailed) or received (if sent by any other means) by \_\_\_\_\_.

Your Claim Form must be addressed as follows:

Beacon Jeanneret Madoff Settlement  
c/o Garden City Group  
P.O. Box 9895  
Dublin, Ohio 43017-5795

If you submit the form by a method other than postal mail, send it to:

Beacon Jeanneret Madoff Settlement  
c/o Garden City Group  
5151 Blazer Parkway, Ste A  
Dublin, OH 43017

or

BeaconJeanneretMadoffSettlement@gcginc.com

**IF YOU DO NOT PROPERLY FILE A PROOF OF CLAIM AND RELEASE FORM, YOU WILL NOT RECEIVE ANY PAYMENT PURSUANT TO THE SETTLEMENT BUT YOU WILL BE**

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<sup>13</sup> A Court-ordered reduction in the amount to be paid to certain plaintiffs who filed individual lawsuits could affect the finality of the Settlement. In addition, the Settling Defendants have the right to terminate the Settlement if members of the Settlement Class submit valid requests for exclusion in an amount that exceeds an amount agreed to by Settling Plaintiffs and Settling Defendants.

BOUND BY THE RELEASES AND THE FINAL JUDGMENT OF THE COURT DISMISSING  
THESE ACTIONS, UNLESS YOU PROPERLY EXCLUDE YOURSELF FROM THE SETTLEMENT  
CLASS.

A Proof of Claim will be deemed to have been submitted when posted, if received with a postmark indicated on the envelope, and if mailed by first-class mail and addressed in accordance with the instructions. In all other cases, the Proof of Claim will be deemed to have been submitted when actually received by the Claims Administrator.

Copies of the blank Proof of Claim Form can be obtained at [www.gcginc.com](http://www.gcginc.com) (enter “Beacon Jeanneret Madoff Litigation” in case search) but you are encouraged to use the Proof of Claim you have received with this Notice, because it has been completed with information concerning your individual net investments.

**12. How Will My Claim Be Processed?**

To qualify for a payment, you must be an eligible Settlement Class Member and you must submit a Proof of Claim. Each Proof of Claim form will be reviewed by the Claims Administrator, who will determine whether to approve the claim, in whole or in part, and the extent (if any) it will be paid, in accordance with the Stipulation and Plan of Allocation.

**13. What If My Claim Is Denied?**

If your Proof of Claim Form is deficient, the Claims Administrator will contact you to allow you to remedy any curable deficiencies within a specified time frame. The Claims Administrator will also notify you in writing if your Proof of Claim Form has been rejected, in whole or in part, and will give you the reasons for the rejection.

If your claim is rejected, in whole or in part, and you choose to contest the rejection, you must, within thirty (30) days after the date of mailing of the notice of rejection from the Administrator, serve a notice and statement of reasons indicating your grounds for contesting the rejection along with any supporting documentation. The Claims Administrator will provide a copy of your statement and supporting materials to counsel for the Settling Parties.

If your claim remains in dispute and cannot be resolved, Plaintiffs’ Class Counsel will present it for review to the Court. There will be no discovery of any type permitted in connection with such a request, and the scope of the Court’s review will be limited to a determination of whether the Proof of Claim was in compliance with the requirements of the Stipulation. You, and every claimant, expressly waives trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to these determinations.

**14. What Am I Giving Up By Staying In The Class?**

If you are a Settlement Class Member, and you do not exclude yourself from the Settlement Class, you will remain in the Settlement Class, which means that if the Court approves the proposed Settlement, you (on behalf of yourself, your heirs, executors, administrators, successors and assigns and any persons you represent) will be forever prohibited from bringing a lawsuit against the Settling Defendants and certain of their related entities (defined in the Stipulation as “Defendant Released Parties”) based on allegations relating to the Released Claims, including any Unknown Claims (all of which are defined in the Stipulation). Among other things, you will not be able to sue the Settling Defendants or Defendant Released Parties for any claims concerning any Madoff investments (whether or not those investments

are the ones that are the subject of these Actions) to the extent that the claim is based on any allegations of wrongdoing by the Settling Defendants.<sup>14</sup>

### **EXCLUDING YOURSELF FROM THE CLASS ACTION SETTLEMENT**

If you do not want a payment from the Settlement, but you want to keep the right to sue or continue to sue the Settling Defendants on your own about claims being released in this Settlement, then you must take steps to exclude yourself from the Settlement. This is referred to as “opting out” of the Settlement Class.

#### **15. How Do I Exclude Myself From The Settlement?**

Please note that excluding yourself is not the same as doing nothing in response to this Notice. Each Settlement Class Member will be bound by all determinations and judgments in the Actions concerning the Settlement, whether favorable or unfavorable, including the Releases, unless the Class Member files a written request for exclusion from the Settlement Class. It must be postmarked (if mailed) or received (if sent by any other means) by \_\_\_\_\_, 2012, addressed to:

Beacon Jeanneret Madoff Settlement  
c/o Garden City Group  
P.O. Box 9895  
Dublin, Ohio 43017-5795

\_\_\_\_\_ if sent by any method other than postal mail

Beacon Jeanneret Madoff Settlement  
c/o Garden City Group  
5151 Blazer Parkway, Ste A  
Dublin, OH 43017

or

BeaconJeanneretMadoffSettlement@gcginc.com

No Settlement Class Member may opt out of the Settlement Class after that date. Your Request for Exclusion must clearly indicate your name, address and telephone number that you request to be excluded from the Settlement Class, and you must sign it. Persons requesting exclusion are also required to state: the full name of the Settling Fund(s) purchased and/or information concerning any Direct Investment in Madoff; the number of shares or interests purchased and sold/redeemed and/or the amount of contributions and withdrawals as applicable; the date(s) on which purchases and redemptions and/or contributions and withdrawals, if any, were made; and the number of shares or the dollar value of the interests held as of December 10, 2008 and/or the value of the direct Madoff investment as of December 10, 2008. Your Request for Exclusion will not be effective unless it provides this required information and is made by the deadline stated above, or it is otherwise accepted by the Court. The Settling Defendants have the right to terminate the Settlement if valid requests for exclusion are received from Class Members in an amount that exceeds the amount agreed to by Settling Plaintiffs and Settling Defendants.

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<sup>14</sup> "The complete definitions of the claims that will be released, and against what parties, are set forth in the enclosed Proof of Claim; when you sign and file it, and ultimately participate in the Settlement, you are agreeing to that release. The definitions also are set forth in the Stipulation at Paragraphs 1.9, 1.17, 1.34, 1.36, 1.56 and 1.73. As noted above, it is available at the dedicated website and from Plaintiffs' Class Counsel. You can contact them with any questions you have on this.

If you are excluded from the Settlement Class, you will not get any payment from the Settlement Fund, and you cannot object to the Settlement. You will not be legally bound by anything that happens in the Actions, except that, because there is no right to exclude yourself from the settlement of the derivative claims, final judgment entered by the Court will operate to preclude you from commencing or continuing to maintain any derivative Released Claims that were, could have been or could be asserted by or on behalf of the Settling Funds (the “Released Fund Claims”). You also may be able to sue (or continue to sue) the Settling Defendants or Released Parties in the future, although not with respect to any of the Released Fund Claims.

**16. If I Do Not Exclude Myself From The Settlement Of The Actions, Can I Sue The Settling Defendants For The Same Thing Later?**

No. Unless you exclude yourself, you give up any right to sue the Settling Defendants or the Released Parties for the Released Claims. If you have a pending lawsuit relating to the Released Claims against any Settling Defendant or Released Party, speak to your lawyer in that case immediately. You must exclude yourself from this Settlement to continue your own lawsuit. Remember, the exclusion deadline is \_\_\_\_\_, 2012.

**17. If I Exclude Myself, Can I Receive A Payment From This Settlement?**

No. If you opt out of the Settlement, you are excluding yourself from participating in the Net Settlement Fund.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the Settlement or some part of it.

**18. How Do I Tell The Court That I Do Not Like The Settlement?**

If you are a Settlement Class Member, you have the right to object to any aspect of the proposed Settlement, including the relief provided to the Settlement Class Members, the Plan of Allocation and the Motion for Attorneys’ Fees and Expenses. You may appear personally or through counsel at the Fairness Hearing to object to the approval of the Settlement.

**Any objection to the settlement of the derivative claims pending in New York State Courts that are covered by this Settlement must be made before the federal Court in the same manner as any other objection to this Settlement.**

To be valid and considered by the Court, any objections by you must be submitted in writing, must be filed with the Clerk of the Court and served by mail and/or email and/or any other method on Defendants’ Counsel and Plaintiffs’ Class Counsel so that it is postmarked (if mailed) or received (if sent by any other means) by \_\_\_\_\_, 2012, and must include the following information: (1) a heading referring to the Action(s); (2) your name, address, telephone number, email address, and (if you hire an attorney in connection with the objection) the contact information for your attorney; (3) documentation showing the dates, purchases, contributions, sales and redemptions of interests and/or shares in the Settling Funds or of direct investments with Madoff; (4) a detailed statement of each objection you are making and the factual and legal basis for each objection, and the relief that you are requesting; and (5) a statement of whether you intend to appear, either in person or through counsel, at the Fairness Hearing. You do not need to hire an attorney or go to the Fairness Hearing to have your written objection considered by the Court. However, if you file and serve a timely, written objection in accordance with the instructions above, you may appear at the Fairness Hearing either in person or through counsel

retained at your expense. If you or your attorney intends to appear at the Fairness Hearing, you must file a notice of intention to appear on or before \_\_\_\_\_, 2012, and serve it on the lawyers listed below so that it is received by that date. It must set forth, among other things, your name, address, telephone number, and e-mail address. If you intend to appear through counsel, the notice must identify counsel's name, address, phone number, email address, and the state bar(s) to which the counsel is admitted. You must supply any Points and Authorities in support of your objections, which must contain any legal authority upon which you will rely, and you must provide a list of and copies of all exhibits that you may seek to use at the Fairness Hearing. If you are going to request that the Court allow you to call witnesses at the Fairness Hearing, you must provide a list of any such witnesses together with a brief summary of each witness' expected testimony. All of this information and these lists must be received by \_\_\_\_\_, at least thirty (30) days prior to the Fairness Hearing. The failure to provide the list of witnesses will bar them from testifying at the hearing. However, submitting this list does not guarantee that the witnesses will be allowed to testify. The ability of any witness to testify is subject to any objections that may be raised by any party to the Actions and other cases and subject to the normal rules and discretion of the Court. Any objector who does not timely file and serve a notice of intention to appear in accordance with these instructions will not be permitted to appear at the Fairness Hearing, except for good cause shown.

**Any counsel retained by you in connection with an objection must identify all objections they have filed to class action settlements from January 1, 2008 to present, and identify the results of each objection, including any Court opinions ruling on the objections. Objectors and their counsel must also identify if they have ever been sanctioned by a Court in connection with filing an objection in another class action.**

**If you file an objection, you must make yourself available for deposition upon ten days' written notice. The deposition must be taken within 40 miles of your residence, unless you agree to a different location.**

Any objection to the Settlement and notice of intention to appear at the Fairness Hearing must be served by first class mail, or email, or otherwise delivered on *each of* the following counsel and filed with the Court so that it is postmarked (if mailed) or received (if sent by any other means) by \_\_\_\_\_, 2012:

COURT	COUNSEL FOR SETTLEMENT CLASS MEMBERS AND DEFENDANTS	
<b>Clerk of the Court</b> United States District Court Southern District of New York 500 Pearl Street New York, NY 10007-1312	<b>PLAINTIFFS' CLASS AND DERIVATIVE COUNSEL</b>  <b>LOWEY DANNENBERG COHEN &amp; HART, P.C.</b> Barbara J. Hart Thomas M. Skelton One North Broadway White Plains, NY 10601-2310 Telephone: 914-997-0500 Facsimile: 914-997-0035 bhart@lowey.com tskelton@lowey.com  <b>www.lowey.com</b>  <i>Lead Class Counsel for the Beacon Classes and Lead Securities Counsel</i>	<b>DEFENDANTS' COUNSEL</b>  <b>CLEARY GOTTLIEB STEEN &amp; HAMILTON LLP</b> Lewis J. Liman Jeffrey A. Rosenthal One Liberty Plaza New York, New York 10006 Telephone: (212) 225-2000 Facsimile: (212) 225-3999 lliman@cgsh.com jrosenthal@cgsh.com  <i>Attorneys for the Ivy Defendants</i>  <b>ROSENFELD &amp; KAPLAN, L.L.P.</b> Tab K. Rosenfeld

	<p><i>for the Direct and Income Plus Classes</i></p> <p><b>KESSLER TOPAZ MELTZER &amp; CHECK LLP</b>  Peter H. LeVan, Jr.  Peter A. Muhic  Tyler S. Graden  280 King of Prussia Road  Radnor, PA 19087  Telephone: 610-667-7706  Facsimile: 610-667-7056  jmeltzer@ktmc.com  plevan@ktmc.com</p> <p><b>www.ktmc.com</b></p> <p><i>ERISA Class Counsel for Buffalo Laborers' Class and the Income Plus, Andover and Direct Investor Participant and Beneficiary Classes</i></p> <p><b>WOLF HALDENSTEIN ADLER FREEMAN &amp; HERZ LLP</b>  Charles J. Hecht  270 Madison Avenue  New York, NY 10016  Telephone: (212) 545-4600  Facsimile: (212) 545-4653  hecht@whafh.com  tepper@whafh.com</p> <p><i>Plaintiffs' Counsel for Beacon Associate LLC I, Beacon Associates LLC II and Andover Associates LLC I Shareholder Derivative Suits Pending in Nassau County, New York</i></p> <p><b>COTCHETT, PITRE &amp; McCARTHY LLP</b>  Imtiaz Siddiqui  One Liberty Plaza, 23rd Floor  New York, NY 10006  Telephone: (212) 682-3198  Facsimile: (646) 219-6678  isiddiqui@cpmlegal.com</p> <p><i>Plaintiffs' Counsel for Beacon Associate LLC II Shareholder Derivative Suit Pending in New York County, New York</i></p>	<p>535 Fifth Avenue, Suite 1006  New York, New York 10017  Telephone: (212) 682-1400  tab@rosenfeldlaw.com</p> <p><i>Attorneys for Beacon Defendants</i></p> <p><b>HISCOCK &amp; BARCLAY, LLP</b>  Brian E. Whiteley  One International Place- 26th Floor  Boston, Massachusetts 02110  Telephone: (617) 274-2900  Facsimile: (617) 722-6003  bwhiteley@hblaw.com</p> <p><i>Attorneys for Jeanneret Defendants</i></p>
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**19. What Is The Difference Between Objecting And Excluding Myself?**

Objecting means telling the Court that you do not like something about the Settlement, the Plan of Allocation, or the Motion for Attorneys' Fees and Expenses, and/or you do not want the Court to approve the Settlement. You can object to the Settlement *only if* you stay in the Settlement Class. Excluding yourself ("opting out") is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because the Actions no longer affect you.

## **THE LAWYERS REPRESENTING YOU**

### **20. Do I Have A Lawyer In This Case?**

The Court appointed the Plaintiffs' Class Counsel, listed above in Question 18, to represent you and the other Settlement Class Members.

You will not be individually charged for the services of these lawyers. Attorneys' fees and expenses for the Class and Derivative attorneys will be paid out of the Gross Settlement Fund as described below. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **21. How Will The Lawyers Be Paid?**

Private Plaintiffs' Counsel (including Class and Derivative Counsel, Counsel involved in the other consolidated cases, and Counsel in individual, direct-action cases) will jointly apply to the Court for an award of Attorneys' Fees and Expenses. This application will be filed by the counsel for the Private Plaintiffs, not counsel for the Secretary or NYAG. The application will seek, for fees, an amount not greater than 20% of the Settlement Fund, after it is reduced by \$16,000,000<sup>15</sup> plus interest earned at the same rate as the Settlement Fund.

The law firms that are seeking to participate in any attorneys' fees to be awarded by the Court have been working collaboratively with each other to prosecute the Actions and to negotiate the Settlement. Certain of the firms had at the outset of the various Actions negotiated retainer agreements with their clients providing for larger attorneys' fees (as a percentage of any recovery) than the amount that will be requested in the Attorneys' Fees and Expense Motion. Moreover, the collective lodestar (number of hours billed times billing rate) of these law firms exceeds the amount of fees sought.

Private Plaintiffs' Counsel will also apply for reimbursement of out-of-pocket costs and expenses incurred in prosecuting the claims of up to \$2,000,000, plus the fees of accounting and financial experts and consultants for notice, administration and allocation of the Net Settlement Fund, in the estimated total amount of \$250,000, plus interest earned at the same rate as the Settlement Fund. The expenses incurred by certain Counsel who represent investors that filed separate actions will be borne by those clients and will not be reimbursed out of the Settlement Fund, except that they will share in the \$250,000 fund for administration expenses. If there is an appeal of the Attorneys' Fees and Expenses Award, interest earned during the pendency of that appeal will also be paid to Private Plaintiffs' Counsel.

Private Plaintiffs' Counsel estimate that the requested attorneys' fees and expenses, if approved by the Court, will represent approximately 12% of net dollars invested in a direct BLMIS account or through the Settling Funds. This calculation is being provided solely to comply with the requirements of the

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<sup>15</sup> This is the \$7,000,000 to be paid to the U.S. Department of Labor, the \$5,000,000 to be paid to the NYAG, and \$4,000,000 that will be paid to or for the benefit of Settlement Class Members but on which Private Plaintiffs' Counsel have agreed they will not seek a fee.



PSLRA. Private Plaintiffs' Counsel notes that the traditional measure for expressing fees and expenses in a class action notice is as a percentage of recovery, as set forth above. Settlement Class Members are **not** personally liable for any attorneys' fees or expenses.

The attorneys' fees and expenses requested will be the only payments to Private Plaintiffs' Counsel for their efforts in prosecuting and settling these cases and for their risk in undertaking this representation on a wholly-contingent basis and advancing the money necessary to pursue the Actions. To date, Private Plaintiffs' Counsel have not been paid for their services, including their efforts on behalf of the Settling Plaintiffs and/or Settlement Class Members, or for their substantial litigation expenses. The fees requested will compensate Private Plaintiffs' Counsel for their work in achieving the Settlement and Private Plaintiffs' Counsel believe that the fees requested are within the range of fees awarded to counsel under similar circumstances in other cases of this type. The Court has discretion, however, to award less than the amount requested by Private Plaintiffs' Counsel.

### **THE COURT'S SETTLEMENT FAIRNESS HEARING**

#### **22. When And Where Will The Court Decide Whether To Approve the Settlement?**

As noted above, the Court will hold a Fairness Hearing at \_\_\_\_, a.m./p.m., on \_\_\_\_\_, 2013, at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY 10007-1312, Courtroom \_\_. The New York State courts in which the derivative suits are pending will have the opportunity to participate in the hearing and/or may, at their discretion, schedule their own separate hearings. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable and adequate and should be approved, and will also consider the proposed Plan of Allocation and the Motion for Attorneys' Fees and Expenses. The Court will take into consideration any written objections filed in accordance with the instructions set forth at Question 18. At or after the hearing, the Court will decide whether to approve the Settlement and will decide how much to award to Private Plaintiffs' Counsel in attorneys' fees and expenses. We do not know how long these decisions will take.

The Fairness Hearing may be adjourned from time to time without further written notice to the Settlement Class Members. If you intend to attend the Fairness Hearing, you should confirm the date and time with Plaintiffs' Class Counsel.

#### **23. Do I Have To Come To The Fairness Hearing?**

No. Plaintiffs' Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you serve and file an objection, you do not have to come to Court to talk about it. As long as you serve and file your written objection and otherwise comply with the requirements for submitting one (*see* Question 18) so that it is postmarked or received on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required. If you do hire your own lawyer, he or she must file and serve a Notice of Appearance in the manner described in the answer to Question 18.

As noted, the date or time of the Fairness Hearing can be changed; please check with Plaintiffs' Class Counsel before coming to the courthouse to confirm the schedule.

Settlement Class Members do not need to appear at the Fairness Hearing or take any other action to indicate their approval of the matters being considered at the hearing.

#### **24. May I Speak At The Fairness Hearing?**

You may speak at the Fairness Hearing if you are a Settlement Class Member and you filed an objection to the Settlement, the Plan of Allocation, and/or Private Plaintiffs' Counsel's Motion for Attorneys' Fees and Expenses, and a notice of intention to appear, in the manner and the time period described in the answer to Question 18, above. If you plan to have an attorney speak on your behalf at the Fairness Hearing, your attorney must, no later than \_\_\_\_\_, 2012, file a Notice of Appearance with the Clerk of the Court and deliver a copy to Plaintiffs' Class Counsel and Counsel for the Settling Defendants at the addresses listed in the answer to Question 18, above.

If you or your attorney plan to attend the Fairness Hearing and present evidence at the Hearing, your written objections (prepared and submitted in accordance with the answer to Question 18, above) must identify any witness you or your attorney may seek to call to testify, and must identify any documents or other exhibits you or your attorney may seek to introduce into evidence.

### **IF YOU DO NOTHING**

#### **25. What Happens If I Do Nothing At All?**

If you do nothing and you are a Settlement Class Member, and the Settlement is approved, you will receive no money from the Settlement, but nonetheless will be bound by its terms. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Settling Defendants or the Defendant Released Parties about the Released Claims. You will be deemed to have released all Released Claims against the Settling Defendants and any of the Defendant Released Parties.

### **GETTING MORE INFORMATION**

#### **26. How Do I Get More Information?**

This Notice only summarizes the proposed Settlement. More details are in the Stipulation. You can obtain a copy of the Stipulation by contacting Plaintiffs' Class Counsel listed in Question 20, above, or by visiting [www.lowey.com](http://www.lowey.com). You or your counsel also can call the Claims Administrator toll-free at 1-877-308-2283; send an email to [BeaconJeanneretMadoffSettlement@gcginc.com](mailto:BeaconJeanneretMadoffSettlement@gcginc.com); or visit the Claims Administrator's website at [www.gcginc.com](http://www.gcginc.com) (enter "Beacon Jeanneret Madoff Litigation" in case search), where you will find the Stipulation, documents relating to the Settlement and other relevant information. You also may write to:

Beacon Jeanneret Madoff Settlement  
c/o Garden City Group  
Claims Administrator  
P.O. Box 9895  
Dublin, Ohio 43017-5795

As noted, to permit you to better understand the Settlement, the process by which it was achieved and the Plan of Allocation, you and your counsel are invited to dial into a teleconference at 1-800-\_\_\_\_\_ at 1:00 p.m. EST on \_\_\_\_\_, 2012. In it, Plaintiffs' Class Counsel will summarize the Settlement and its process, and answer questions from Class Members.

For even more detailed information concerning the matters involved in the Actions and the other litigations, reference is made to the pleadings, to the Orders entered by the Court and the New York State Courts, and the other papers filed in all the consolidated and related cases, most of which may be inspected at the Office of the Clerk of the United States District Court for the Southern District of New

York, during regular business hours. Subscribers to PACER, a fee-based service, also can view the papers filed publicly in the Federal Court cases through the Court's on-line Case Management/Electronic Case Files System at <https://ecf.nysd.uscourts.gov>. Additional information may be found in the case files with the Clerks of the Courts of the related cases.

**PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE**

# EXHIBIT A-2

**B1 Notice – Submission Copy**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BEACON ASSOCIATES LITIGATION  This Document Relates to: CLASS ACTIONS  IN RE J.P. JEANNERET ASSOCIATES, INC., <i>et al.</i>  This Document Relates to: ALL ACTIONS	No. 09 Civ. 0777 (LBS)  Case No. 09 Civ. 3907 (CM)
BOARD OF TRUSTEES OF THE BUFFALO LABORERS SECURITY FUND, WELFARE FUND AND WELFARE STAFF FUND, in their capacity as fiduciaries of the respective funds, individually and on behalf of all others similarly situated,  Plaintiffs,  v.  J.P. JEANNERET ASSOCIATES, INC., JOHN P. JEANNERET, PAUL L. PERRY and IVY ASSET MANAGEMENT CORPORATION,  Defendants.	No. 09 Civ. 8362 (LBS) (AJP)

**NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT OF CLASS ACTIONS AND  
NOTICE OF CERTIFICATION OF SETTLEMENT CLASSES**

**Notice to:**

- **Beacon Participant and Beneficiary Class:** “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested in the Beacon Funds and that had not fully redeemed its interests in the Beacon Funds<sup>1</sup> as of December 11, 2008.”
- **Beacon Jeanneret ERISA Subclass:** “All participants and beneficiaries of any employee benefit plan covered by ERISA that obtained the investment management services of J.P. Jeanneret Associates, Inc. (“JPJA”), John P. Jeanneret or Paul L. Perry, and that invested in the Beacon Funds that had not fully redeemed its interests in the Beacon Funds as of December 11,

<sup>1</sup> The “Beacon Funds” are Beacon Associates LLC I and Beacon Associates LLC II, individually and collectively and each other of their predecessors, successors, parents, subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices.

2008.”

- **Income Plus Participant and Beneficiary Class:** “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested in the Income Plus Fund<sup>2</sup> and that had not fully redeemed its interests in the Income Plus Fund as of December 11, 2008.”
- **Andover Participant and Beneficiary Class:** “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested in the Andover Funds and that had not fully redeemed its interests in the Andover Funds<sup>3</sup> as of December 11, 2008.”
- **Direct Investor Participant and Beneficiary Class:** “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested directly with Madoff pursuant to a Discretionary Investment Management Agreement with JPJA (“the Direct Investors”) and that had not fully redeemed its investments with Bernard L. Madoff Investment Securities LLC (“BLMIS”) as of December 11, 2008.”<sup>4</sup>

If you fall within one of these class definitions, you are a “Settlement Class Member”. There is some overlap among classes.

**PLEASE READ THIS NOTICE CAREFULLY.  
A FEDERAL COURT AUTHORIZED THIS NOTICE.  
THIS IS NOT A SOLICITATION. YOU HAVE NOT BEEN SUED.**

The purpose of this Notice is to provide you with information on a proposed settlement (the “Settlement”) of lawsuits brought by the Settling Plaintiffs (as defined below), including the United States Secretary of Labor (“Secretary”) and the New York Attorney General (“NYAG”), against the Settling Defendants (again, as defined below) involving the *In re Beacon* and *Buffalo Laborers* class actions (referred to as the “Actions”). The United States District Court for the Southern District of New York (the “Court”) has preliminarily approved the Settlement, and has scheduled a fairness hearing at which the Court will consider the Settling Plaintiffs’ motion for final approval of the Settlement and for class certification, motion for approval of a proposed plan of allocation, and motion

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<sup>2</sup> The “Income Plus Fund” means the Income Plus Investment Fund and the Master Income-Plus Group Trust established by JPJA, individually and collectively, and each other of their predecessors, successors, trustees, parents, subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices.

<sup>3</sup> The “Andover Funds” means Andover Associates (QP) LLC and Andover Associates LLC I, individually and collectively, and each other of their predecessors, successors, parents, subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices. The Beacon Funds, Income Plus Fund and Andover Funds are referred to as the “Settling Funds.”

<sup>4</sup> The five listed Classes, along with several other classes in the consolidated cases, are collectively referred to as the “Settlement Class.” The ERISA-covered plans that invested monies in the Settling Funds are referred to as “Settlement Class Members’ Plans”; the ERISA-covered plan in which you are a participant or beneficiary is “your Plan.” Excluded from the Settlement Class are the Settling Defendants, spouses of the individual Settling Defendants, executive officers of the corporate Settling Defendants, corporate entities that control or are controlled by the corporate Settling Defendants and the legal representatives, heirs, successors and assigns of any excluded person in that role and not in their individual capacity (“Excluded Persons”).

for an award of attorneys' fees and costs. That hearing, before the Honorable [Leonard B. Sand/Colleen McMahon], has been scheduled for \_\_\_\_\_, 2013, at \_\_\_ a.m./p.m. in Courtroom \_\_\_\_, of the District Court, 500 Pearl Street, New York, New York. The Settlement will provide for payments to Settlement Class Members' Plans that file a proof of claim, and certain individuals or entities that also invested directly with BMLIS, through a plan of allocation. You are receiving this Notice because Plaintiffs' Class Counsel believe you are a participant or beneficiary of such an employee benefit plan.

The terms of the Settlement are contained in a Stipulation of Settlement (the "Stipulation") and are summarized below. The Stipulation and all applicable documents are available for inspection at the offices of Plaintiffs' Class Counsel<sup>5</sup> during regular business hours. You or your counsel also can call the Claims Administrator toll-free at 1 (877) 308-2283; send an e-mail to BeaconJeanneretMadoffSettlement@gcginc.com or visit the website at www.gcginc.com (enter "Beacon Jeanneret Madoff Litigation" in case search), where you will find the documents available for review and download and information about the Settlement. In addition, you may call the Fund Office for your Plan regarding any questions you may have.

Settlement Class Members and their counsel also are invited to dial into a teleconference at 1-800-\_\_\_\_\_ at 1:00 p.m. EST on \_\_\_\_\_, 2012. On that call, Plaintiffs' Class Counsel and their financial experts will address any questions Settlement Class Members may have about the Settlement and/or the Plan of Allocation.

In addition, this Notice describes (a) the Actions and their allegations, (b) the allocation and distribution of the proceeds of the Settlement, and (c) the \_\_\_\_\_ Fairness Hearing, at which the Court will consider, among other matters, (i) whether the Settlement should be finally approved, (ii) whether the Plan of Allocation should be approved, and (iii) Plaintiffs' Counsels' Motion for Attorneys' Fees and Expenses.

**ACTIONS YOU MAY TAKE IN THE SETTLEMENT**

<b>OBTAIN MORE INFORMATION</b>	<p>To permit you to better understand the Settlement, the process by which it was achieved and the Plan of Allocation, you and/or your counsel are invited to dial into a teleconference at 1-800-_____ at 1:00 p.m. on _____, 2012. In it, Plaintiffs' Counsel will summarize the Settlement and its process, and answer questions from Class Members.</p> <p>You can also visit the Claims Administrator's website at www.gcginc.com (enter "Beacon Jeanneret Madoff Litigation" in case search) to obtain additional information about the proposed settlement.</p>
<b>NO ACTION ON YOUR PART IS NECESSARY</b>	<p>If the Settlement is approved by the Court and your Plan is a member of the Settlement Class, you do not need to do anything to participate in the Settlement. Your Plan has received a proof of claim to be filed for it and you to participate in the Settlement.</p>

<sup>5</sup> Plaintiffs' Class Counsel, along with contact information, are identified in full in the chart appearing in Question 9.

<b>OBJECT</b>	DEADLINE: _____ (must be postmarked (if mailed) or received (if sent by any other means) no later than this date.) Write to the Court about why you do not like the Settlement.
<b>GO TO THE FAIRNESS HEARING</b>	FAIRNESS HEARING DATE: _____  Plaintiffs' Counsel must file the motions for final approval of the Settlement, approval of the Plan of Allocation and an award of Attorneys' Fees and Expenses on or before _____. The deadline to ask to speak in Court about the Settlement is _____.

**WHAT THIS NOTICE CONTAINS**

- SUMMARY OF THE SETTLEMENT** .....
- BASIC INFORMATION** .....
- 1. Why did I receive this notice package? .....
- 2. What is a class action? .....
- 3. What are the Actions about? .....
- 4. Why is there a Settlement? .....
- 5. Can I exclude myself from the Settlement? .....
- 6. What is my interest in the Settlement? .....
- THE LAWYERS REPRESENTING YOU** .....
- 7. Do I have a lawyer in the case? .....
- 8. How will the lawyers be paid? .....
- OBJECTING TO THE SETTLEMENT**
- 9. How do I tell the Court if I don't like the Settlement? .....
- THE COURT'S FAIRNESS HEARING** .....
- 10. When and where will the Court decide whether to approve the Settlement? .....
- 11. Do I have to come to the Hearing? .....
- 12. May I speak at the Fairness Hearing? .....
- IF YOU DO NOTHING** .....
- 13. What happens if I do nothing at all? .....
- GETTING MORE INFORMATION** .....
- 14. How do I get more information? .....



## SUMMARY OF THE SETTLEMENT

The Settling Plaintiffs,<sup>6</sup> on behalf of themselves and the classes they represent and the Settling Funds, have entered into a proposed Settlement with the Settling Defendants<sup>7</sup> that, if approved by the Court, will resolve the Actions and various other lawsuits in their entirety. The “Settlement Amount” consists of (a) a cash settlement fund of \$216,500,000 (Two Hundred Sixteen Million Five Hundred Thousand Dollars), and (b) additional value of \$3,357,694 (Three Million Three Hundred Fifty Seven Thousand Six Hundred Ninety Four Dollars) based on waived claims to management fees by the Beacon Defendants (together, with interest, the “Gross Settlement Fund”). This fund is being established for the benefit of all class members in all the cases to resolve all claims of the Settling Plaintiffs.

The Settlement Amount of \$219,857,694 (Two Hundred Nineteen Million Eight Hundred Fifty Seven Thousand Six Hundred Ninety Four Dollars) is broken down among the Defendants as follows:

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<sup>6</sup> The “Settling Plaintiffs” means the Secretary; the NYAG; the Settling Funds; The Plumbers & Steamfitters Local 267 Pension and Insurance Funds and Trustees (including Gregory Lancette, Bradley Ward, Bryan Allen, David Waby, Dominic Mancini, Donald A. Little, Donald Beckley, James Fredenburg, James Rood, James Rounds, Patrick Bonnell and Peter Lauze); Plumbers Local 112 Health Fund and Trustees (including James Rounds and Lyle Fassett); The Local 73 Retirement Fund and Trustees (Frederick J. Volkomer, Frederick J. Volkomer II, Patrick Carroll, Timothy Donovan and Timothy Rice); The U.A. of Journeymen & Apprentices Local 73 Fund and Trustees (including Daniel Hickey, Eric Saunders, James Donovan, Jason Lozier, L. James Culeton, Marc Stevens, Mark Maniccia, Timothy Donovan, Timothy Rice and Tom Metcalf, Jr.); Local 73 Annuity Fund; Local 73 Health & Welfare Fund; I.B.E.W. Local 43 and Electrical Contractors Welfare Fund and Trustees (including Carl Hibbard, Jr., Dennis J. McDermott, Donald H. Morgan, James Engler, John S. Kogut, Kevin J. Crawford, Marilyn M. Oppedisano and Patrick Costello); Oswego County Laborers’ Local 214 Pension Fund and Trustees (including David Henderson, Jr., Earl N. Hall, Michael Blasczienski, Paul A. Castaldo and William F. Shannon); Jay Raubvogel; M. Raubvogel Co. Trust; Grand Metro Builders of NY Corp. Defined Benefit Plan and Trustees (including John Cacoulidis and Phyllis Cacoulidis); Board of Trustees of The Buffalo Laborers Security Fund, Welfare Fund and Welfare Staff Fund; Gary Kubik as participant and beneficiary in the Buffalo Laborers Security and Welfare Fund; Ernest A. Hartman and Bruce Condie as Trustees of the IBEW Local 139 Pension Fund, Thomas E. Spicer and Matthew Labosky as Trustees of the IBEW Local 325 Pension, Annuity, and Joint Trust Funds; Michael Talarski and Bruce Condie as Trustees of the IBEW Local 241 Pension Fund; Elizabeth F. Cassada and James A. Williams as Trustees of the IBEW Local 910 Annuity and Pension Funds; Thomas R. LoStracco as Trustee of the 1199 SEIU Regional Pension Fund; George Kennedy as Trustee of the Service Employees Pension Fund of Upstate New York; Rodney Malarchik and Irving Wood as Trustees of the Upstate New York Bakery Drivers and Industry Pension Fund; James Rounds and Lyle D. Fassett as Trustees of the Plumbers and Pipefitters Local 112 Pension Fund; Rockne Burns as Trustee of the Engineers Joint Welfare Fund; Robert Brown as Trustee of the Rochester Laborers’ Annuity and Pension Funds; Michael Capelli and Alan Seidman as Trustees of the Empire State Carpenters Annuity, Pension, and Welfare Funds; David Fastenberg Trustee, Long Island Vitreo-Retinal; Jordan Group, LLC, derivatively on behalf of Beacon Associates LLC I; Charles J. Hecht, derivatively on behalf of Andover Associates LLC I; Donna M. McBride, individually and derivatively on behalf of Beacon Associates LLC II; Joel Sacher and Susan Sacher, derivatively on behalf of Beacon Associates LLC II; the Stephen C. Schott 1984 Trust; Alison Altman, Amanda Atlas, Howard Gelfer, Harvey Glicker, Joel T. Gluck (IRA), Levy Investment Partners, LP, Jackie Levy, Peter Levy, Ben Macklowe, Hillary Macklowe, Ben Macklowe as Trustee of the Macklowe Gallery Ltd. Profit Sharing Plan, Lloyd Macklowe, Barbara Macklowe, Barbara Macklowe (IRA), Laurence Matlick, Carl Mittler (IRA), Marvin Poster (IRA), Mustang Sportswear, Inc., Ken Siegel, Ken Siegel (IRA), Ken Siegel Defined Benefit Plan and Gail Zarean.

<sup>7</sup> The “Settling Defendants” means Ivy Asset Management LLC (“Ivy”), Lawrence Simon, Howard Wohl, Adam Geiger and Fred Sloan (collectively, the “Ivy Defendants”); JPJA, John Jeanneret and Paul Perry (collectively, the “Jeanneret Defendants”); and Beacon Associates Management Corp. (“BAMC”), Andover Associates Management Corp. (“AAMC”), Joel Danziger and Harris Markhoff (collectively, the “Beacon Defendants”).

- Ivy Defendants: \$210,000,000 (Two Hundred Ten Million Dollars).
- Jeanneret Defendants: \$3,000,000 (Three Million Dollars).
- Beacon Defendants: \$6,857,694 (Six Million Eight Hundred Fifty Seven Thousand Six Hundred Ninety Four Dollars), comprised of the following:
  - \$3,500,000 (Three Million Five Hundred Thousand Dollars) in cash as a return of management fees received by the Beacon Defendants prior to December 11, 2008.
  - In addition, the Beacon Defendants waive their claims to receive any management fees, expenses, indemnity, or reimbursement of any kind from the Beacon Funds and Andover Funds, in the current amount of \$3,357,694 (Three Million Three Hundred Fifty Seven Thousand Six Hundred Ninety Four Dollars). The Beacon management fees are \$2,842,270 and the Andover management fees are \$515,424. In accordance with the Plan of Allocation, these amounts will be distributed directly to Beacon and Andover investors by the Beacon and Andover Funds, respectively. The Beacon Defendants also are waiving any claims to be reimbursed for any legal fees from the Beacon or Andover Funds.<sup>8</sup>

The “Net Settlement Fund” is that portion of the Gross Settlement Fund remaining, plus any interest that may accrue thereon, after payment of \$7,000,000 (Seven Million Dollars) to the U.S. Department of Labor, \$5,000,000 (Five Million Dollars) to the New York Attorney General,<sup>9</sup> attorneys’ fees and expenses (subject to Court approval), notice and administration expenses, and taxes and tax expenses.

The Net Settlement Fund payments received from Ivy will be allocated to investors covered by this Settlement (including ERISA Plans and other investors). The Net Settlement Fund payments received from the Jeanneret Defendants will be allocated to all investors that obtained investment-related services from JPJA. The Net Settlement Fund payments received from the Beacon Defendants will be allocated to all investors in the Beacon Funds and Andover Funds. As investors in the Settling Funds and/or with BLMIS, your Plans may be entitled to participate in the Settlement and obtain a *pro rata* share of this recovery together with the other ERISA-covered and other investors.

Following many informal negotiations and multi-day mediation sessions with all private and governmental parties and two neutral mediators, held on February 28-29, April 19 and July 17, 2012, and continuing negotiations on the terms of the Stipulation through \_\_\_\_\_, the global settlement reflected in this notice was achieved. In addition, on May 30, 2012, the Settling Plaintiffs, the Secretary and the NYAG engaged in a lengthy mediation to resolve the allocation of the Net

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<sup>8</sup> Litigation efforts forestalled the payment of conservatively hundreds of thousands of dollars in legal fees to counsel for Defendants Markhoff and Danziger, which is an additional benefit to Beacon and Andover Class Members, but on which benefit Plaintiffs’ Counsel are not seeking legal fees.

<sup>9</sup> See Question 3 for information on the litigations filed by the Secretary and the NYAG.

Settlement Fund as among the classes for each of the Beacon, Income Plus and Andover Funds and the Direct Investors, and agreed on the following allocations:

	<b>Percentage of Net Settlement Fund<sup>10</sup></b>
Beacon Associates	58.87%
Income Plus	15.08%
Andover	1.17%
Direct Investors	23.27%
Investors Receiving Only Opportunity Cost Payments	1.61%
Total	100.00%

Each of the Settlement Class Members' Plans' actual recovery for each will be determined by the Plan of Allocation of the Net Settlement Fund, attached as Exhibit A, and will depend on a number factors. These factors include, among other things, the amounts and timing of each investment.

### **BASIC INFORMATION**

#### **1. Why Did I Receive This Notice Package?**

By Order dated \_\_\_\_\_, 2012, the Honorable [Leonard B. Sand/Colleen McMahon] of the United States District Court for the Southern District of New York directed that Notice of the proposed Settlement be distributed to the Settlement Class. You or someone in your family have been identified as a Settlement Class Member. If you are a Settlement Class Member, you have a right to know about the proposed Settlement of the Actions, and about all of your options, before the Court decides whether to approve the Settlement. If your Plan files a proof of claim, and the Court approves the Settlement, and after any objections and appeals are resolved, your Plan's share of the Net Settlement Fund will be distributed to your Plan.

This package explains the Actions, the Settlement, your legal rights and the benefits available under the Settlement.

#### **2. What Is A Class Action?**

A class action is a lawsuit in which one or more persons sue on behalf of other persons who have similar claims. The members of this group are called the class. A class action may also include, as is

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<sup>10</sup> The Income Plus Fund made certain investments in Beacon. The portion of the Beacon allocation held by Income Plus is claimed by Income Plus and becomes part of the total Income Plus recovery on a *pro rata* basis within the Fund.

the case here, subclasses, which are other groups whose members have asserted different and/or overlapping claims; they also may assert similar claims against different and/or overlapping defendants. The settlement of a class action determines the rights of the members of the classes and subclasses. For this reason, the Settlement must be approved by the Court.

### **3. What Are The Actions About?**

#### **3.1 In re Beacon**

The Plaintiffs (the trustees of several ERISA-covered employee benefit plans and other plaintiffs) brought this action against the Ivy, Beacon and Jeanneret Defendants for allegedly breaching duties to Beacon Fund investors, including your Plan, in connection with the Beacon Funds' investments with Bernard Madoff. The Madoff Ponzi scheme and bankruptcy caused a loss in your Plan's assets. The Complaint demanded that the Defendants be required to restore to investors all losses suffered as a result of their Madoff investments, and to disgorge all profits that the Defendants realized from their alleged breaches.

The first of these cases was filed on January 27, 2009, and several cases were consolidated by the Court. Plaintiffs filed two Amended Complaints and Judge Sand granted in part and denied in part the Defendants' motions to dismiss. The dismissed claims are preserved for appeal.

On September 15, 2011, Plaintiffs moved for class certification, asking the Court to allow the case to proceed for all class members together. After the various parties filed opposition and reply papers, and after oral argument, Judge Sand granted the motion for class certification, which is currently on a petition to appeal before the appellate court.

#### **3.2 Buffalo Laborers Action**

The Board of Trustees of the Buffalo Laborers Security Fund, Welfare Fund and Welfare Staff Fund filed a Complaint against certain of the Ivy Defendants and the Jeanneret Defendants in October 2009 in the United States District Court of the Southern District of New York, asserting ERISA claims on behalf of ERISA-covered plans that suffered losses in connection with investments made directly with Madoff pursuant to Discretionary Investment Management Agreements with JPJA, or indirectly through investments in the Income Plus Fund or the Andover Funds. The Complaint demanded that the named Ivy Defendants and Jeanneret Defendants be required to restore to the Plans all losses that the Plans suffered as a result of their Madoff investments, and to disgorge all profits that the Defendants realized from their alleged fiduciary breaches.

The Plaintiff filed Amended Complaints and Judge McMahon granted in part and denied in part the named Ivy Defendants' motion to dismiss. The dismissed claims are preserved for appeal. Judge McMahon subsequently transferred the Buffalo Laborers' action to Judge Sand for coordinated discovery with *In re Beacon* and the other coordinated cases that asserted similar claims against all or some of the Settling Defendants. The named Ivy Defendants also moved before Judge Sand for reconsideration of Judge McMahon's decision, which Judge Sand granted in part and denied in part.

On September 15, 2011, the Board of Trustees moved for class certification, asking the Court to allow the case to proceed for all class members together. After the parties filed opposition and reply papers,

and after oral argument, Judge Sand granted the motion for class certification; this decision is currently on a petition to appeal before the appellate court. By Order of the Court dated March 19, 2012, the Plaintiffs in *Hartman v. Ivy Asset Management*, another litigation asserting the same claims, were excluded from the *Buffalo Laborers* class.

In connection with this Settlement, the named Ivy Defendants and the Jeanneret Defendants have stipulated to the addition of Gary Kubik, a participant and beneficiary in the Buffalo Laborers Security and Welfare Funds, as a named plaintiff and class representative in the *Buffalo Laborers* action.

\* \* \* \*

These cases, and all cases in the Settlement, have been coordinated for discovery and other purposes with other federal and state court cases, including those of the Secretary and the NYAG.

### **3.3 United States Secretary of Labor: *Solis v. Beacon Associates Management Corp.***

In October 2010, the Secretary filed *Solis v. Beacon Associates Management Corp. et al.*. This action was brought against Ivy, Lawrence Simon (Ivy's former Chief Executive Officer), Howard Wohl (Ivy's former Chief Investment Officer) and the Beacon and Jeanneret Defendants, alleging that those Defendants violated ERISA with respect to approximately 100 ERISA plans that were invested with Madoff. The Secretary asked that the Defendants be required to restore to the plans all losses that they suffered as a result of their Madoff investments, and to disgorge (or return) all profits that the Defendants realized from their alleged fiduciary breaches. The plans' Madoff investments were (1) direct investments in brokerage accounts with BLMIS; (2) investments in the Income Plus Fund; and (3) investments in the Beacon and Andover Funds. The Secretary also asked the Court to permanently enjoin the Defendants from acting as fiduciaries or service providers with respect to any ERISA-covered plans.

### **3.4 New York Attorney General: *Cuomo v. Ivy Asset Management L.L.C.***

The Office of the New York Attorney General filed suit in May 2010 in an action styled *Cuomo v. Ivy Asset Management L.L.C. et al.*, against Ivy, Mr. Simon and Mr. Wohl, for allegedly misleading clients about investments tied to Madoff. The lawsuit charged Ivy, Mr. Simon and Mr. Wohl with violating New York's Martin Act for alleged fraudulent conduct in connection with the sale of securities; allegedly violating Executive Law § 63(12) for persistent fraud in the conduct of business and for persistent illegality; and allegedly breaching fiduciary duties in connection with the advice they gave to their clients. The Attorney General's lawsuit sought payment of restitution, and damages from Ivy, Mr. Simon and Mr. Wohl, as well as the disgorgement of all fees that Ivy received. The lawsuit also sought to bar Messrs. Simon and Wohl from acting as investment advisors. The Attorney General did not assert ERISA claims.

\* \* \* \*

All claims in all of these cases against the Settling Defendants, including those dismissed and preserved for appeal, will be settled and released as part of this Settlement.

**4. Why Is There A Settlement?**

Settling Plaintiffs, the Secretary, the NYAG and Plaintiffs' Class Counsel -- who, among them, have extensive experience litigating complex cases -- agreed to the Settlement after considering, among other things: (a) the substantial immediate and future cash benefits to Settlement Class Members and/or current members of the Settling Funds; (b) the Settling Defendants' likely positions, expressed during the pendency of the litigation, concerning the various liability, causation and damages issues; (c) the desirability of consummating the Settlement in order to provide relief to Settlement Class Members and Members of the Settling Funds at this juncture of the Actions and without further delay; and (d) the Plaintiffs' Class Counsels' belief that the Settlement is fair, reasonable and adequate and in the best interests of all Settlement Class Members.

There has been no final resolution in the cases by a court in favor of either the Settling Plaintiffs or the Settling Defendants. Instead, they agreed to the Settlement. The Settling Parties disagree about liability issues and do not agree on the amount of damages per net dollar invested (or per Settling Fund interest) that could be recovered if the Settling Plaintiffs were to prevail on each claim asserted against the Settling Defendants.

**5. Can I Exclude Myself from the Settlement?**

You do not have the option to exclude yourself from the Settlement. The Classes described above were certified under Federal Rule of Civil Procedure 23(b)(1) as non-“opt-out” classes because of the way ERISA operates. The Court held that claims brought by participants or beneficiaries under ERISA for breaches of fiduciary duties must be brought for an ERISA-covered plan as an entity (and thus all plan members), and any judgment or resolution of such claims necessarily applies to all of them. Thus, individual lawsuits cannot be pursued. It therefore is not possible for participants or beneficiaries to exclude themselves from the benefits of the Settlement. As a Settlement Class Member, you will be bound by the Court's decisions about the Settlement, and any judgments or orders that are entered in the Actions for all claims that were asserted in the Actions or otherwise included in the release under the Settlement. Although you cannot opt-out of the Settlement, you can object to the Settlement or any aspect of it, and/or ask the Court not to approve it. See Answer to Question No. 9, below.

**6. What Is My Interest in the Settlement?**

As noted, if your Plan participates in the Settlement and it is approved, your Plan will receive its share of the settlement monies. Your Plan's share of the Net Settlement Fund will go directly to your Plan, not directly to you or the other participants or beneficiaries. Your entitlement to benefits from your Plan might not change as a result of the Settlement if, for example, your Plan is a defined benefit plan or health and welfare plan. You can contact your Plan to find out specifics about how the Settlement will affect your individual benefits, if at all.

The Settling Defendants do not have any responsibility or liability with respect to claims administration or the management, investment or distribution of the Gross Settlement Fund or the Net Settlement Fund. The Settling Defendants did not participate in, agree to or approve the Plan of Allocation and take no position as to its fairness, equity or propriety. The distribution of the Net Settlement Fund is a matter separate and apart from the proposed Settlement, and any decision by the

Court concerning the distribution will not affect the validity or finality of the proposed Settlement if it is approved by the Court.<sup>11</sup> Without further notice to you, the distribution of the Net Settlement Fund may be modified in connection with, among other things, a ruling by the Court, or an objection filed by a Settlement Class Member, which could affect the validity of the Settlement.

If the Court approves the proposed Settlement, you (on behalf of yourself, your heirs, executors, administrators, successors and assigns and any persons you represent) will be forever prohibited from bringing a lawsuit against the Settling Defendants and certain of their related entities (defined in the Stipulation as “Defendant Released Parties”) based on allegations relating to the “Released Claims”, including any “Unknown Claims” (all of which are defined in the Stipulation). Among other things, you will not be able to sue the Settling Defendants or Defendant Released Parties for any claims concerning any Madoff investments (whether or not those investments are the ones that are the subject of these Actions) to the extent that the claim is based on any allegations of wrongdoing by the Settling Defendants.<sup>12</sup>

## **THE LAWYERS REPRESENTING YOU**

### **7. Do I Have A Lawyer In This Case?**

The Court appointed the Plaintiffs’ Class Counsel, listed below in Question 8, to represent you and the other Settlement Class Members.

You will not be individually charged for the services of these lawyers. Attorneys’ fees and expenses for the attorneys will be paid out of the Gross Settlement Fund as described below. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **8. How Will The Lawyers Be Paid?**

Plaintiffs’ Counsel (including Counsel involved in the other consolidated cases, and Counsel in individual, direct-action cases) will jointly apply to the Court for an award of Attorneys’ Fees and Expenses. This application will be filed by the counsel for the private Plaintiffs, not counsel for the Secretary or NYAG (and therefore are referred to as “Private Plaintiffs’ Counsel”). The application will seek, for fees, an amount not greater than 20% of the Gross Settlement Fund, after it is reduced by \$16,000,000,<sup>13</sup> plus interest earned at the same rate as the Settlement Fund.

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<sup>11</sup> A Court-ordered reduction in the amount to be paid to certain plaintiffs who filed individual lawsuits could affect the finality of the Settlement. In addition, the Settling Defendants have the right to terminate the Settlement if members of the Securities Classes (but not the ERISA Classes) submit valid requests for exclusion in an amount that exceeds the amount agreed to by Settling Plaintiffs and Settling Defendants.

<sup>12</sup> The complete definitions of the claims that will be released, and against what parties, are set forth in the Stipulation at Paragraphs 1.9, 1.17, 1.34, 1.36, 1.56 and 1.73. As noted above, it is available at the dedicated website and from Plaintiffs’ Class Counsel. You can contact them with any questions you have on this.

<sup>13</sup> This is the \$7,000,000 to be paid to the U.S. Department of Labor, the \$5,000,000 to be paid to the NYAG, and \$4,000,000 that will be paid to or for the benefit of Settlement Class Members but on which Plaintiffs’ Counsel have agreed they will not seek a fee.

The law firms that are seeking to participate in any attorneys' fees to be awarded by the Court have been working collaboratively with each other and the Secretary to prosecute the Actions and to negotiate the Settlement. Certain of the firms had at the outset of the various Actions negotiated retainer agreements with their clients providing for larger attorneys' fees (as a percentage of any recovery) than the amount that will be requested in the Attorneys' Fees and Expense Motion. Moreover, the collective lodestar (number of hours billed times billing rate) of these law firms exceeds the amount of fees sought.

Plaintiffs' Class Counsel will also apply for reimbursement of out-of-pocket costs and expenses incurred in prosecuting the claims of up to \$2,000,000, plus the fees of accounting and financial experts and consultants for notice, administration and allocation of the Net Settlement Fund in the estimated total amount of \$250,000, plus interest earned at the same rate as the Settlement Fund. The expenses incurred by certain Counsel who represent investors that filed separate actions will be borne by those clients and will not be reimbursed out of the Settlement Fund, except that they will share in the \$250,000 fund for administrative expenses. If there is an appeal of the Attorneys' Fees and Expenses Award, interest earned during the pendency of that appeal will also be paid to Counsel.

Settlement Class Members are **not** personally liable for any attorneys' fees or expenses.

The attorneys' fees and expenses requested will be the only payments to Private Plaintiffs' Counsel for their efforts in prosecuting and settling these cases and for their risk in undertaking this representation on a wholly-contingent basis and advancing the money necessary to pursue the Actions. To date, Private Plaintiffs' Counsel have not been paid for their services, including their efforts on behalf of the Settling Plaintiffs and/or Settlement Class Members, or for their substantial litigation expenses. The fees requested will compensate Private Plaintiffs' Counsel for their work in the litigation and their contribution to achieving the Settlement and Private Plaintiffs' Counsel believe that the fees requested are within the range of fees awarded to counsel under similar circumstances in other cases of this type. The Court has discretion, however, to award less than the amount requested by Private Plaintiffs' Counsel.

## **OBJECTING TO THE SETTLEMENT**

### **9. How Do I Tell The Court That I Do Not Like The Settlement?**

If you are a beneficiary or participant of one of the Settlement Class Members' Plans, you have the right to object to any aspect of the proposed Settlement, including the relief provided to the Settlement Class Members and their Plans, the Plan of Allocation and the Motion for Attorneys' Fees and Expenses. You may appear personally or through counsel at the Fairness Hearing to object to the approval of the Settlement.

To be valid and considered by the Court, any objections must be submitted in writing, must be filed with the Clerk of the Court and served by mail and/or email and/or any other method on Defendants' Counsel and Plaintiffs' Class Counsel so that it is postmarked (if mailed) or received (if sent by any other means) by \_\_\_\_\_, 2012, and must include the following information: (1) a heading referring to the Actions; (2) your name, address, telephone number, email address, and (if you hire an attorney in connection with the objection) the contact information for your attorney; (3) a detailed statement of each objection you are making and the factual and legal basis for each objection, and the relief that you



are requesting; and (4) a statement of whether you intend to appear, either in person or through counsel, at the Fairness Hearing. You do not need to hire an attorney or go to the Fairness Hearing to have your written objection considered by the Court. However, if you file and serve a timely, written objection in accordance with the instructions above, you may appear at the Fairness Hearing either in person or through counsel retained at your expense. If you or your attorney intends to appear at the Fairness Hearing, you must file a notice of intention to appear on or before \_\_\_\_\_, 2012, and serve it on the lawyers listed below so that it is received by that date. It must set forth, among other things, your name, address, telephone number, and e-mail address. If you intend to appear through counsel, the notice must identify counsel's name, address, phone number, email address, and the state bar(s) to which the counsel is admitted. You must supply any Points and Authorities in support of your objections, which must contain any legal authority upon which you will rely, and you must provide a list of and copies of all exhibits that you may seek to use at the Fairness Hearing. If you are going to request that the Court allow you to call witnesses at the Fairness Hearing, you must provide a list of any such witnesses together with a brief summary of each witness' expected testimony. All of this information and these lists must be received by \_\_\_\_\_, at least thirty (30) days prior to the Fairness Hearing. The failure to provide the list of witnesses will bar them from testifying at the hearing. However, submitting this list does not guarantee that the witnesses will be allowed to testify. The ability of any witness to testify is subject to any objections that may be raised by any party to the Actions and other cases and subject to the normal rules and discretion of the Court. Any objector who does not timely file and serve a notice of intention to appear in accordance with these instructions will not be permitted to appear at the Fairness Hearing, except for good cause shown.

**Any counsel retained by you in connection with an objection must identify all objections they have filed to class action settlements from January 1, 2008 to present, and identify the results of each objection, including any Court opinions ruling on the objections. Objectors and their counsel must also identify if they have ever been sanctioned by a Court in connection with filing an objection in another class action.**

**If you file an objection, you must make yourself available for deposition upon ten days' written notice. The deposition must be taken within 40 miles of your residence, unless you agree to a different location.**

Any objection to the Settlement and notice of intention to appear at the Fairness Hearing must be served by first class mail, or email, or otherwise delivered on *each of* the following counsel and filed with the Court so that it is postmarked (if mailed) or received (if sent by any other means) by \_\_\_\_\_, 2012:

COURT	COUNSEL FOR SETTLEMENT CLASS MEMBERS AND DEFENDANTS	
	PLAINTIFFS' CLASS COUNSEL	DEFENDANTS' COUNSEL
<b>Clerk of the Court</b> United States District Court Southern District of New York 500 Pearl Street New York, NY 10007-	<b>LOWEY DANNENBERG COHEN &amp; HART, P.C.</b> Barbara J. Hart Thomas M. Skelton One North Broadway	<b>CLEARY GOTTlieb STEEN &amp; HAMILTON LLP</b> Lewis J. Liman Jeffrey A. Rosenthal One Liberty Plaza

<p>1312</p>	<p>White Plains, NY 10601-2310  Telephone: 914-997-0500  Facsimile: 914-997-0035  bhart@lowey.com  tskelton@lowey.com</p> <p><b>www.lowey.com</b></p> <p><i>Lead Class Counsel for the Beacon Classes and Lead Securities Counsel for the Direct and Income Plus Classes</i></p> <p><b>COHEN MILSTEIN SELLERS &amp; TOLL PLLC</b>  Lisa M. Mezzetti  Michelle C. Yau  1100 New York Avenue, NW,  Suite 500 West  Washington, DC 20005  Telephone: 202-408-4600  Facsimile: 202-408-4699  lmezzetti@cohenmilstein.com  myau@cohenmilstein.com</p> <p><b>www.cohenmilstein.com</b></p> <p><i>ERISA Class Counsel for the Beacon ERISA Class</i></p> <p><b>KESSLER TOPAZ MELTZER &amp; CHECK LLP</b>  Peter H. LeVan, Jr.  Peter A. Muhic  Tyler S. Graden  280 King of Prussia Road  Radnor, PA 19087  Telephone: 610-667-7706  Facsimile: 610-667-7056  Jmeltzer@ktmc.com  plevan@ktmc.com</p> <p><b>www.ktmc.com</b></p> <p><i>ERISA Class Counsel for the</i></p>	<p>New York, New York 10006  Telephone: (212) 225-2000  Facsimile: (212) 225-3999  lliman@cgsh.com  jrosenthal@cgsh.com</p> <p><i>Attorneys for the Ivy Defendants</i></p> <p><b>ROSENFELD &amp; KAPLAN, L.L.P.</b>  Tab K. Rosenfeld  535 Fifth Avenue, Suite 1006  New York, New York 10017  Telephone: (212) 682-1400  tab@rosenfeldlaw.com</p> <p><i>Attorneys for Beacon Defendants</i></p> <p><b>HISCOCK &amp; BARCLAY, LLP</b>  Brian E. Whiteley  One International Place- 26th Floor  Boston, Massachusetts 02110  Telephone: (617) 274-2900  Facsimile: (617) 722-6003  bwhiteley@hblaw.com</p> <p><i>Attorneys for Jeanneret Defendants</i></p>
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	<i>Buffalo Laborers Class and the Income Plus, Andover and Direct Investor Participant and Beneficiary Classes</i>	
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**THE COURT’S FAIRNESS HEARING**

**10. When And Where Will The Court Decide Whether To Approve the Settlement?**

As noted above, the Court will hold the Fairness Hearing at \_\_\_\_, a.m./p.m., on \_\_\_\_, 2013, at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY 10007-1312, Courtroom \_\_. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate and should be approved, and will also consider the proposed Plan of Allocation, and the Motion for Attorneys’ Fees and Expenses. The Court will take into consideration any written objections filed in accordance with the instructions set forth at Question 8. At or after the hearing, the Court will decide whether to approve the Settlement and also will decide how much to award to Plaintiffs’ Counsel in attorneys’ fees and expenses. We do not know how long these decisions will take.

The Fairness Hearing may be adjourned from time to time without further written notice to the Settlement Class Members. If you intend to attend the Fairness Hearing, you should confirm the date and time with Plaintiffs’ Class Counsel.

**11. Do I Have To Come To The Fairness Hearing?**

No. Plaintiffs’ Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you serve and file an objection, you do not have to come to Court to talk about it. As long as you serve and file your written objection and otherwise comply with the requirements for submitting one (*see* Question 8) so that it is postmarked or received on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required. If you do hire your own lawyer, he or she must file and serve a Notice of Appearance in the manner described in the answer to Question 8.

As noted, the date or time of the Fairness Hearing can be changed; please check with Plaintiffs’ Class Counsel before coming to the courthouse to confirm the schedule.

Settlement Class Members do not need to appear at the Fairness Hearing or take any other action to indicate their approval of the matters being considered at the hearing.

**12. May I Speak At The Fairness Hearing?**

You may speak at the Fairness Hearing if you are a Settlement Class Member and you filed an objection to the Settlement, the Plan of Allocation, and/or Private Plaintiffs’ Counsels’ Motion for Attorneys’ Fees and Expenses, and a notice of intention to appear, in the manner and the time period described in the answer to Question 8, above. If you plan to have an attorney speak on your behalf at the Fairness Hearing, your attorney must, no later than \_\_\_\_\_, 2012, file a Notice of Appearance

with the Clerk of the Court and deliver a copy to Plaintiffs' Class Counsel and Counsel for the Settling Defendants at the addresses listed in the answer to Question 8, above.

If you or your attorney plan to attend the Fairness Hearing and present evidence at the Hearing, your written objections (prepared and submitted in accordance with the answer to Question 8, above) must identify any witness you or your attorney may seek to call to testify, and must identify any documents or other exhibits you or your attorney may seek to introduce into evidence.

### **IF YOU DO NOTHING**

#### **13. What Happens If I Do Nothing At All?**

If you do nothing and you are a Settlement Class Member through your Plan, you will participate in the Settlement through your Plan, if your Plan files a valid Proof of Claim, which is approved as described above. If the Settlement is approved, you will be bound by its terms. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Settling Defendants or the Defendant Released Parties about the Released Claims. You will be deemed to have released all Released Claims against the Settling Defendants and any of the Defendant Released Parties.

### **GETTING MORE INFORMATION**

#### **14. How Do I Get More Information?**

This Notice only summarizes the proposed Settlement. More details are in the Stipulation. You can obtain a copy of the Stipulation by contacting Plaintiffs' Class Counsel listed in Question \_\_\_ or by visiting [www.lowey.com](http://www.lowey.com). You or your counsel also can call the Claims Administrator toll-free at 1-877-308-2283; send an email to [BeaconJeanneretMadoffSettlement@gcginc.com](mailto:BeaconJeanneretMadoffSettlement@gcginc.com); or visit the Claims Administrator's website at [www.gcginc.com](http://www.gcginc.com) (enter "Beacon Jeanneret Madoff Litigation" in case search), where you will find the Stipulation, documents relating to the Settlement and other relevant information. You also may write to:

Beacon Jeanneret Madoff Settlement  
c/o Garden City Group  
P.O. Box 9895  
Dublin, Ohio 43017-5795

As noted, to permit you to better understand the Settlement, the process by which it was achieved and the Plan of Allocation, you and your counsel are invited to dial into a teleconference at 1-800-\_\_\_\_\_ at 1:00 p.m. EST on \_\_\_\_\_, 2012. In it, Plaintiffs' Class Counsel will summarize the Settlement and its process, and answer questions from Class Members.

For even more detailed information concerning the matters involved in the Actions and the other litigations, reference is made to the pleadings, to the Orders entered by the Court, and the other papers filed in all the consolidated cases, most of which may be inspected at the Office of the Clerk of the United States District Court for the Southern District of New York during regular business hours. Subscribers to PACER, a fee-based service, also can view the papers filed publicly in the cases through the Court's on-line Case Management/Electronic Case Files System at <https://ecf.nysd.uscourts.gov>.

**PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE**

# EXHIBIT A-3

**Proof of Claim and Release (Class) – Submission Copy**

If mailed, must be  
Postmarked  
No Later Than  
\_\_\_\_\_, 2012.  
If sent any other way, must  
be Received No Later Than  
\_\_\_\_\_, 2012

In re Beacon Jeanneret Madoff Litigation  
c/o Garden City Group  
Claims Administrator  
PO Box 9895  
Dublin, Ohio 43017-5795  
(877) 308-2283

Email address:  
BeaconJeanneretMadoffSettlement@gcginc.com

**CLAIMANT  
IDENTIFICATION:**

Claim Number:

Control Number:

**PROOF OF CLAIM AND RELEASE**

YOU MUST COMPLETE THIS CLAIM FORM BY \_\_\_\_\_, 2012 TO BE ELIGIBLE  
TO SHARE IN THE SETTLEMENT.

**SECTION A - CLAIMANT INFORMATION**

Claimant Full Name(s) (as you would like the name(s) to appear on the check, if eligible for payment):

Account Number: (not required)

Name of the Person you would like the Claims Administrator to Contact Regarding This Claim (if different from the Claimant Name(s) listed above):

**Claimant or Representative Contact Information:**

The Claims Administrator will use this information for all communications relevant to this Claim (including the check, if eligible for payment). If this information changes, you MUST notify the Claims Administrator in writing at the address above.

Street Address:

City:

Daytime Telephone Number:

State and Zip Code:

Evening Telephone Number:

Country:

Last 4 digits of SSN/TIN:

E-mail Address:

PRINT ONLY: (Email address is not required, but if you provide it, you authorize the claims Administrator to use it to contact you with information relevant to this Claim.)

To qualify for payment, you must sign and return this Proof of Claim and Release form, which has already been completed based on information known to the Settling Plaintiffs. Please confirm that the following information, shown below matches your records:

Section B: the total net investments (deposits less withdrawals) into or out of the Beacon, Andover, and Income-Plus Funds and any Direct Madoff accounts.

If you agree with the information shown in Section B, you need only sign the Release and Certification, Section E, and return it to be eligible to participate in the Settlement.

For investors in the Settling Funds, you do not need to confirm your pro rata share of any SIPC Recoveries. For Direct Investors, please confirm that you received the SIPC advance reflected in Section C.

You do not need to confirm the information in Section D, which shows your estimated recovery based on the information set forth in the Proof of Claim.

Should you disagree with any of the totals, you should, on a separate piece of paper, list all deposits and withdrawals and provide supporting documentation for any claimed discrepancies.

The Proof of Claim and Release form must be signed and postmarked (if mailed) no later than \_\_\_\_\_. If the Proof of Claim and Release form is sent by any other means than mail, it must be received no later than \_\_\_\_\_.

If you are eligible to submit a claim because you are the lawful successor or assignee of an Authorized Claimant, please attach documentation of your right to submit this claim.

**If you have any question about how to complete this Proof of Claim and Release form, please contact the Claims Administrator toll free at 1-877-308-2283, or via email [BeaconJeanneretMadoffSettlement@gcginc.com](mailto:BeaconJeanneretMadoffSettlement@gcginc.com).**

**SECTION B – NET INVESTMENTS IN OR OUT OF SETTLING FUNDS AND/OR  
DIRECT MADOFF INVESTMENTS FOR THE SETTLEMENT CLASS**

**NET INVESTMENTS IN SETTLING FUNDS AND DIRECT MADOFF INVESTMENTS:** Reflected below are your total deposits, total withdrawals and the resulting net investments (total deposits less total withdrawals) in the particular investment vehicle *i.e.* the Beacon, Income Plus or Andover Funds, or Bernard L. Madoff Investment Securities, Inc. (“BLMIS”) for Direct Investors in BLMIS as of the date of this form. These are the numbers reflected in the records of the Settling Funds and BLMIS.<sup>1</sup> These numbers reflect actual cash deposits and actual cash withdrawals (the “cash in/cash out net investments”). They are not the same as the amounts of net equity reflected on monthly or annual statements by the Settling Funds or BLMIS. Those statements reflected fictitious “profits” recorded by Madoff as part of his scheme. If the Net Investment is a negative number, you have withdrawn more than you deposited into your account.

SIPC payments are reflected in Section C.

If you believe the total deposits or total withdrawals are incorrectly stated, please provide an explanation with supporting documentation to the Claims Administrator by \_\_\_\_\_. If you indicate that you believe the numbers shown below or on the accompanying schedule are incorrect, please provide e-mail and telephone contact information and you will be contacted to address your concerns.

Contact Information:

Investment Vehicle	Total Deposits as of 12/11/08	Total Withdrawals	Net Investment = Total Deposits less Total Withdrawals
Beacon Associates (including Beacon Associates LLC I and II)			
Income Plus Investment Fund			
Andover Associates (including Andover Associates (QP) LLC, Andover Associates LP I, Andover Associates LLC I and Andover Associates LLC)			

<sup>1</sup> To the extent that money remains in the Beacon and Andover Funds, it will be distributed to investors in those Funds separately, except for \$3,357,694 that is part of the Settlement.

Direct Madoff Investment			
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**SECTION C – SIPC RECOVERIES**

For Direct Investors, the following reflects the SIPC payment made to you by the Madoff Trustee. For investors in Settling Funds, the following reflects your *pro rata* share of any SIPC recoveries by any Settling Fund. The Settling Funds each received or will receive a single SIPC advance of \$500,000 which has been allocated to all investors in the Settling Fund on a *pro rata* basis. Thus if you invested in Beacon, Income Plus or Andover, you will not have received any payment directly from SIPC because any such payment would be made directly to the Fund. You have been allocated your *pro rata* share of the SIPC recovery – based upon your net investment in the Settling Funds on a cash-in cash-out basis. Note: only SIPC advances pursuant to 15 U.S.C. § 78fff-3(a) (providing for advance payments of up to \$500,000 per investor) are reflected below. Other SIPC recoveries need not be included, such as amounts distributed in connection with the August 22, 2012 Order of the United States Bankruptcy Court for the Southern District of New York granting the Trustee’s Motion For An Order Approving Second Allocation Of Property To The Fund Of Customer Property And Authorizing Second Interim Distribution To Customers.

	DATE	AMOUNT
<b>BEACON</b>		
<b>INCOME PLUS</b>		
<b>ANDOVER</b>		
<b>DIRECT</b>		

**SECTION D – YOUR ESTIMATED RECOVERY**

The following reflects the current estimate of your *pro rata* distribution from the Net Settlement Fund from each Settling Fund or Direct Account, based on the information in Sections B and C shown above. Accordingly, you do not need to confirm this information.

	ESTIMATED DISTRIBUTION
<b>BEACON</b>	
<b>INCOME PLUS</b>	
<b>ANDOVER</b>	



<b>DIRECT</b>	
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This estimate is subject to change and is based on several assumptions, including whether the Court approves the payments to the New York Attorney General and the Secretary of Labor, approves the requested fees and expenses, and approves the Plan of Allocation of the Settlement amount among the class members and whether all eligible investors file claims seeking a share of the settlement amount.

**SECTION E – RELEASE AND CERTIFICATION (FOR SIGNATURE)**

[To include in proofs of claim and releases sent to ERISA claimants: “We” refers to [PLAN NAME] (the “Plan”); the named fiduciary/ies of the Plan, in his/her/its/their capacity as named fiduciary/ies of the Plan; and the Board of Trustees of the Plan (if a board exists), each of which makes each of the following releases, certifications, representations and warranties.

Each of the named fiduciary/ies and (if applicable) the trustees of the Plan hereby warrant and represent that he/she/it/they are fiduciaries with respect to the Plan and is (are) authorized to enter and do(es) enter into this Release and Certification on his/her/its/their own behalf and on behalf of the Plan for the benefit of the participants and beneficiaries of the Plan.]

- I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever settle, release, and discharge with prejudice the Plaintiff Released Claims as to each and all Defendant Released Parties. This release shall be of no force or effect unless and until the Court approves the Settlement and it becomes effective on the Effective Date.

“Defendant Released Parties” means the Settling Defendants, and all of their respective predecessors, successors, direct and indirect parents and subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices, and each other of their present or former partners, members, principals, officers, directors, employees, attorneys, insurers, and other Persons acting or purporting to act on behalf of any of the foregoing, and the immediate family members of the individual Settling Defendants. “Settling Defendants” means Andover Associates Management Corp., Beacon Associates Management Corp., J.P. Jeanneret Associates, Inc., Ivy Asset Management LLC, Joel Danziger, Harris Markhoff, John P. Jeanneret, Paul Perry, Lawrence Simon, Howard Wohl, Adam Geiger and Fred Sloan. “Person” means any natural person or any business, legal, or governmental entity or association.

“Plaintiff Released Claims” means any and all claims, cross-claims, counterclaims, actions, causes of action, rights, judgments, debts, set-offs, contracts, promises, allegations, demands, obligations, duties, suits, expenses, assessments, penalties, charges, injuries, losses, costs, damages, liabilities, matters and issues of any kind or nature whatsoever against any Defendant Released Party, whether direct, indirect, derivative, on behalf of a class, in law or in equity, civil or criminal, administrative or judicial, based on state or federal statute or common law or any other source of law, sounding in contract, tort (including negligence of all kinds) or otherwise, known or unknown (including any Unknown Claims, as defined below), claimed or unclaimed, asserted or unasserted, suspected or unsuspected, discovered or undiscovered, accrued or unaccrued, anticipated or unanticipated, fixed or contingent, by reason of or arising out of or in connection with any facts, matters, transactions, decisions, actions, omissions or conduct, actual, alleged or which could have been alleged (1) to the extent that such a claim is based upon the factual allegations of the Complaints in any of the Settling Actions; and/or (2) concerning any investment made directly or indirectly with Bernard Madoff or Bernard L. Madoff Investment Securities LLC (“Madoff”) (including any purchase, sale, contribution, withdrawal, or decision to hold any direct or indirect investment with Madoff) to the extent that such a claim is based upon any knowledge, conduct, act or failure to act (including without limitation any statement or omission) of or by any Settling Defendant. “Settling Action” means *In re: Beacon Associates Litigation*, Case No. 1:09-cv-00777-LBS (S.D.N.Y.); *In re: J.P. Jeanneret Associates, Inc., et al.*, Case No. 1:09-cv-03907-CM (S.D.N.Y.); *Board of Trustees of the Buffalo Laborers Security Fund et al. v. J.P. Jeanneret Associates, Inc. et al.*, No. 09-cv-08362 (S.D.N.Y.); *Solis v. Beacon Associates Management Corp.*, 10-CV-8000 (S.D.N.Y.); *Cuomo vs. Ivy Asset Management L.L.C. et al.*, 450489/2010 (N.Y. Sup. Ct. N.Y. Cnty.); *Hartman et al. v. Ivy Asset Management LLC et al.*, No. 09-cv-08278 (S.D.N.Y.); *Cacoulidis et al. v. Beacon Associates Management Corp. et al.*, No. 09-cv-00777 (S.D.N.Y.); *Plumbers Local 112 Health Fund et al. v. Beacon Associates Management Corp. et al.*, No. 09-03202 (S.D.N.Y.); *Plumbers & Steamfitters Local 267 Pension Fund et al. v. J.P. Jeanneret Associates, Inc. et al.*, No. 09-07584 (S.D.N.Y.); *Towsley et al. v. Beacon Associates Management Corp. et al.*, No. 09-04453 (S.D.N.Y.); *Raubvogel et al. v. Beacon Associates LLC I et al.*, No. 1:09-cv-02401 (S.D.N.Y.); *Newman et al. v. Family Management Corp. et al.*, No. 1:08-cv-11215-LBS (S.D.N.Y.), specifically excluding any claims asserted against defendants Family Management Corporation, Seymour W. Zises, and Andrea L. Tessler; *Beacon Associates Management Corp. v. Beacon Associates LLC I*, No. 09-cv-06910 (S.D.N.Y.); *Hecht v. Andover Associates Management Corp.*, Index No. 6110/2009 (N.Y. Sup. Ct. Nassau Cnty.); *Sacher v. Beacon Associates Management Corp.*, Index No. 005424/2009 (N.Y. Sup. Ct. Nassau Cnty.); *Jordan Group LLC v. Beacon Associates Management Corp.*, Index No. 3757/2011 (N.Y. Sup. Ct. Nassau Cnty.); *McBride v. KPMG, Int’l, et al.*, Index No. 650632/09 (N.Y. Sup. Ct. N.Y. Cnty.); *Schott v. Ivy Asset Management Corp. et al.*, No. 1:10-cv-08077-LBS-AJP (S.D.N.Y.); *Altman v.*

*Beacon Associates Management Corp.*, Index No. 652238/2010 (N.Y. Sup. Ct. N.Y. Cnty.); *Glicker v. Ivy Asset Management Corp.*, Court File No. 502010CA029643 XXXX MB AB (Fla. Cir. Ct. Palm Beach Cnty.); and *Gluck v. Beacon Associates LLC II and Beacon Associates Management Corp.*, AAA No. 19 435 00120 10 (American Arbitration Association). Plaintiff Released Claims specifically do not include any claims asserted in *JP Jeanneret Associates, Inc. v. Mantello et al.*, 09 Civ. 1280 (N.D.N.Y.), *J.P. Jeanneret Associates Inc., et al. v. Hartford Fire Insurance Co., et al.*, 10 Civ. 1450 (N.D.N.Y.), *J.P. Jeanneret Associates Inc., et al. v. Hartford Fire Insurance Co., et al.*, 10 Civ. 1452 (N.D.N.Y.), and *J.P. Jeanneret Associates Inc., et al. v. Hartford Fire Insurance Co., et al.*, 10 Civ. 1453 (N.D.N.Y) against any Person other than the Defendant Released Parties and any claims asserted against defendants Family Management Corporation, Seymour W. Zises, and Andrea L. Tessler in *Newman et al. v. Family Management Corp. et al.*, No. 1:08-cv-11215-LBS (S.D.N.Y.).

For the avoidance of doubt, the Settlement is intended to settle Released Claims amongst the Released Parties. The Settlement, the payment of the Settlement amount, the settlement of Settling Actions or the release of the Released Claims, are not intended to settle, pay or compensate any of the Settling Plaintiffs or the Settling Funds for claims asserted (a) against the BLMIS estate in the case captioned *Securities Investor Protection Corporation v. Bernard Madoff Investment Securities LLC and In re Bernard Madoff Investment Securities LLC, Debtor*, Case No. 08-01789 (BRL), filed in the United States Bankruptcy Court, Southern District of New York, pending before the Honorable Burton R. Lifland, with Irving H. Picard as Trustee, including all substantively consolidated proceedings in those cases and all proceedings in those cases which may be removed to federal district court, in connection with their direct or indirect investments with BLMIS, or (b) against Friedberg, Smith & Co., P.C. and Citrin Cooperman & Co. LLP and any remaining non-settling defendants in *Sacher v. Beacon Associates Management Corp. et al.*, No. 005424/2009 (N.Y. Sup. Ct. Nassau Cnty.), *Hecht v. Andover Associates Management Corp. et al.*, No. 006110/2009 (N.Y. Sup. Ct. Nassau Cnty.), *Jordan Group LLC v. Beacon Associates Management Corp. et al.*, No. 003757/2011 (N.Y. Sup. Ct. Nassau Cnty.) or *McBride v. KPMG Int'l et al.*, No. 650632/2009 (N.Y. Sup. Ct. N.Y. Cnty.) other than the Defendant Released Parties; or to compromise, settle or release any claims against any party who is not a Defendant Released Party.

“Unknown Claims” means any claims that I (we) do not know or suspect to exist in my (our) favor at the time of the release which, if known, might have affected my (our) decision to release the Plaintiff Released Claims or to object or not to object to the terms of this Stipulation or to opt out or not opt out from the Settlement Class. With respect to any and all Plaintiff Released Claims, I (we) shall be deemed to waive, and shall waive and relinquish to the fullest extent permitted by law, any and all provisions, rights and benefits of California Civil Code Section 1542 and any provisions, rights or benefits conferred by any law of the United States or any state or territory of the United States, or principal of common law, which is similar, comparable or equivalent to California Civil Code Section 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

I (We) may hereafter discover facts in addition to or different from those that I (we) now know or believe to be true with respect to the subject matter of the Plaintiff Released Claims, but I (we) shall be deemed to have fully, finally and forever settled and released any and all claims that are the subject of the Plaintiff Released Claims whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, or may hereafter exist, without regard to the subsequent discovery or existence of such additional or different facts. I (We) acknowledge that the foregoing waiver was separately bargained for and a key element of the settlement to which this release is a part.

2. I (We) hereby acknowledge that I (we) will not be entitled to receive recovery in any other action against any of the Defendant Released Parties based on or arising out of the Plaintiff Released Claims.
3. I (We) hereby warrant and represent that I am a (we are) Settlement Class Member(s) as defined in the Notices, that I am (we are) not one of the “Defendant Released Parties” as defined above, and that I (we) believe I am (we are) eligible to receive a distribution from the Net Settlement Fund under the terms and conditions of the Plan of Allocation, as set forth in the Notice.
4. I (We) hereby warrant and represent that I (we) have reviewed the information about my (our) net investments into the Settling Funds or in Direct Madoff investments and SIPC recoveries as set forth herein, and I (we) believe those numbers to be accurate to the best of my (our) knowledge, information and belief and agree to furnish such additional information with respect to this Proof of Claim and Release as the Claims Administrator or the Court may require.
5. I (WE) UNDERSTAND AND INTEND THAT THE SIGNATURE BELOW REGARDING CERTAIN INFORMATION FOR THE INTERNAL REVENUE SERVICE CONCERNING BACKUP WITHHOLDING ALSO SERVES AS THE SIGNATURE VERIFYING THE INFORMATION AND REPRESENTATIONS IN THIS PROOF OF CLAIM AND RELEASE FORM.

- 6. I (We) hereby warrant and represent that I am (we are) the original investor or a lawful assignee or legal successor to the original investor, and that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any portion of my claim or any matter released pursuant to this release or any other part or portion thereof.
- 7. I (We) have not filed or authorized the filing of a Request for Exclusion from the Settlement Class and certify that, to the best of my (our) knowledge, no Request for Exclusion from the Settlement Class has been filed on my (our) behalf with respect to my (our) transactions in the Settling Funds or directly with Madoff.
- 8. I (We) have read and understand the contents of the Notice(s) and the Proof of Claim and Release.
- 9. I (We) submit to the jurisdiction of the United States District Court for the Southern District of New York for purposes of investigation and discovery under the Federal Rules of Civil Procedure with respect to this Proof of Claim and Release and acknowledge that I (we) will be bound and subject to the terms of any judgment that may be entered in the litigation.
- 10. I (We) represent and warrant that the person or persons signing this Release and Certification are duly authorized to enter into this Release and Certification on my (our) behalf and that no further consent or approval is required from or by any other person or entity in order for me (us) to enter into the provisions, representations and warranties of this Release and Certification.
- 11. I (We) declare under penalty of perjury under the laws of the United States of America that the foregoing information and any documents supplied by the undersigned are true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_.

(Month/Year) (City) (State/Country)

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Print Name of Claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Joint Claimant, if any

\_\_\_\_\_  
Print Name of Joint Claimant

\_\_\_\_\_  
Date

*If Claimant is other than an individual, or is not the person completing this form, the following also must be provided:*

\_\_\_\_\_  
Signature of Person Completing Form

\_\_\_\_\_  
Print Name of Person Completing Form

\_\_\_\_\_  
Date

\_\_\_\_\_  
Capacity of Person Signing (Executor, President, Trustee, etc.)

[Acknowledgement by Notary Public]

*For ERISA Proofs of Claim*

\_\_\_\_\_  
For the [NAME OF PLAN] ("Plan")

Name of Signatory:

Capacity of Signatory:

Date:

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For the Named Fiduciaries of the Plan

Name of Signatory:

Capacity of Signatory:

Date:

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For the Board of Trustees of the Plan

Name of Signatory:

Capacity of Signatory:

Date:

<b>SECTION E – REMINDER CHECKLIST</b>
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1. Please sign the Release and Certification, Section E, of the Proof of Claim and Release form.
2. If this claim is made on behalf of joint claimants, then all such claimants must sign. If this claim is made on behalf of an ERISA plan, then the plan, its named fiduciary/ies and its board of trustees (if a board exists) must all sign.
3. Please remember to attach supporting documents if you believe there are any inaccuracies in the information concerning your net investments into the Settling Funds or in direct Madoff investments and (if you are a Direct Investor, your SIPC recoveries).
4. **DO NOT SEND ORIGINALS OF ANY SUPPORTING DOCUMENTS.** These items cannot be returned to you by the Claims Administrator.
5. Keep a copy of your Proof of Claim and Release form and all documentation submitted for your records.
6. The Claims Administrator will acknowledge receipt of your Proof of Claim and Release by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgment postcard. If you do not receive an acknowledgment postcard within 60 days, please call the Claims Administrator toll free at 1-877-308-2283.
7. If you move, please send the Claims Administrator your new address.
8. **Do not use highlighter on the Proof of Claim and Release form or supporting documentation.**

**IF THIS PROOF OF CLAIM AND RELEASE IS SUBMITTED BY  
MAIL, IT MUST BE POSTMARKED NO LATER THAN  
\_\_\_\_\_, 2012 AND MUST BE MAILED TO:**

**Beacon Jeanneret Madoff Settlement  
c/o Garden City Group  
Claims Administrator  
P.O. Box 9895  
Dublin, Ohio 43017-5795**

**IF THIS PROOF OF CLAIM AND RELEASE IS SUBMITTED BY  
ANY OTHER MEANS THAN POSTAL MAIL, IT MUST BE  
RECEIVED NO LATER THAN \_\_\_\_\_, 2012:**

**Beacon Jeanneret Madoff Settlement  
c/o Garden City Group  
5151 Blazer Parkway, Ste. A  
Dublin, OH 43017  
or**

**BeaconJeanneretMadoffSettlement@gcinc.com**

# EXHIBIT B

[Proposed] Post-Fairness Hearing Approval Order – Submission Copy

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BEACON ASSOCIATES LITIGATION	No. 09 Civ. 0777 (LBS)
IN RE J.P. JEANNERET ASSOCIATES, INC.	No. 09 Civ. 3907 (CM)
HILDA L. SOLIS, Secretary of the United States Department of Labor,  Plaintiff,  v.  BEACON ASSOCIATES MANAGEMENT CORP. et al.,  Defendants.	No. 10 Civ. 8000 (LBS) (AJP)
BOARD OF TRUSTEES OF THE BUFFALO LABORERS SECURITY FUND et al.,  Plaintiffs,  v.  J.P. JEANNERET ASSOCIATES, INC. et al.,  Defendants.	No. 09 Civ. 8362 (LBS) (AJP)
BEACON ASSOCIATES MANAGEMENT CORP.  Plaintiff,  v.  BEACON ASSOCIATES LLC I,  Defendant.	No. 09 Civ. 6910 (AJP)



<p>ERNEST A. HARTMAN et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT L.L.C. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 09 Civ. 8278 (LBS) (AJP)</p>
<p>STEPHEN C. SCHOTT, as TRUSTEE FOR THE STEPHEN C. SCHOTT 1984 TRUST,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 10 Civ. 8077 (LBS)</p>

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>DONNA M. McBRIDE, individually and derivatively on behalf of Beacon Associates LLC II,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>KPMG INTERNATIONAL et al.,,</p> <p style="text-align: right;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: right;">Nominal Defendant.</p>	<p>Index No. 650632/2009E</p>
<p>ALISON ALTMAN, et al.,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORPORATION, et al.,</p> <p style="text-align: right;">Defendants.</p>	<p>Index No. 652238/2010</p>

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

<p>JOEL SACHER and SUSAN SACHER, derivatively on behalf of BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 005424/2009</p>
<p>CHARLES J. HECHT, derivatively on behalf of ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ANDOVER ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 006110/2009</p>

THE JORDAN GROUP LLC, derivatively on behalf of  
BEACON ASSOCIATES LLC I,

Plaintiff,

v.

BEACON ASSOCIATES MANAGEMENT CORP. et al.,

Defendants,

-and-

BEACON ASSOCIATES LLC I,

Nominal Defendant.

Index No. 003757/2011

CIRCUIT COURT OF THE STATE OF FLORIDA  
FIFTEENTH JUDICIAL CIRCUIT, PALM BEACH COUNTY

<p>HARVEY GLICKER, et al,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>IVY ASSET MANAGEMENT CORP., et al,</p> <p>Defendants.</p>	<p>Court File No. 502010CA029643 XXXX MB AB</p>
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BEFORE THE AMERICAN ARBITRATION ASSOCIATION

<p>JOEL T. GLUCK,</p> <p>Claimant,</p> <p>v.</p> <p>BEACON ASSOCIATES LLC II et al.,</p> <p>Respondents.</p>	<p>AAA No. 19 435 00120 10</p>
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**[PROPOSED] POST-FAIRNESS HEARING  
APPROVAL ORDER**

This matter came before the Court for a hearing, which was held on \_\_\_\_\_, 2013, pursuant to the Order of this Court entered on \_\_\_\_\_ (the “Preliminary Approval Order”), on the Motion of Plaintiffs’ Class Counsel for: (i) final approval of the proposed settlement (the “Settlement”) of the above-captioned consolidated actions (collectively, the “Actions”); (ii) certification of the Settlement Classes, with the proposed class representatives as representatives of their respective Classes and Plaintiffs’ Co-Lead Settlement Class Counsel as lead class counsel for the respective actions in which they currently serve as Lead Counsel and additional Plaintiffs’ Counsel as counsel in the respective positions for the Classes to which they were appointed by the Court and in which they currently serve in the Actions; (iii) determination that the provisions of Rule 23.1 of the Federal Rules of Civil Procedure, were satisfied, and that the derivative claims were properly maintained as asserted in *In re J.P. Jeanneret Associates, Inc.*, No. 09-cv-03907 (“*In re Jeanneret*”); (iv) determination that the form, method and content of notice satisfied due process, the Federal Rules of Civil Procedure, and the Private Securities Litigation Reform Act of 1995.

The moving parties further seek the Court’s determination as to whether the terms of the Settlement are fair, reasonable and adequate, and should be approved by the Court, whether Judgment should be entered dismissing the Federal Actions with prejudice, and whether the release of the Released Claims in the Federal Actions as against the Released Parties in the Federal Actions, as set forth in the Stipulation of Settlement dated November 8, 2012 (the “Stipulation”), should be ordered.

The Court has received and reviewed the affidavits and declarations attesting to the mailing of the Notices in accordance with the Preliminary Approval Order. In addition, a dedicated website was used for further availability of the Notice to the Classes. Due and adequate

notice having been given to the Settlement Classes as required by the Preliminary Approval Order, and the Court having considered all papers filed and proceedings in the Actions, in particular all papers and filings made on the Motion for Approval of the Settlement, and otherwise being fully informed of the matters herein, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of the Federal Actions, including the terms and conditions of the Stipulation and all exhibits thereto, and over the Secretary, the Private Settling Plaintiffs, the Settlement Class Members, and the Settling Defendants.

2. Unless otherwise defined herein, all capitalized terms used herein have the meanings set forth and defined in the Stipulation.

3. With respect to *In re Beacon Associates Litigation*, No. 09-cv-00777-LBS (“*In re Beacon*”), Plaintiffs’ motion to certify the Beacon Investor Class, the Beacon Jeanneret Investor Subclass, the Beacon ERISA Class and the Beacon Jeanneret ERISA Subclass was granted on March 14, 2012 (as amended). *In re Beacon*, Dkt. No 432 (the “March 14 Order”). With respect to *Board of Trustees of the Buffalo Laborers Security Fund et al., v. J.P. Jeanneret Assoc. Inc.*, No. 09-cv-08362 (“*Buffalo Laborers*”), Plaintiffs’ motion to certify the Buffalo Laborers’ Class was granted on May 3, 2012. *Buffalo Laborers*, Dkt. No. 102 (the “May 3 Order”). By Order of the Court dated March 19, 2012, the Plaintiffs in *Hartman v. Ivy Asset Management*, No. 09-8278 (hereinafter, “Hartman Plaintiffs”), were excluded from the *Buffalo Laborers* class.

4. Pursuant to Rule 23(a), (b)(3) and (c)(1)(C) of the Federal Rules of Civil Procedure, and solely for the purposes of the Stipulation and Settlement, the Court has as part of its Preliminary Approval Order altered and amended the March 14 Order in *In re Beacon* and the



definitions of the Beacon Investor Class and the Beacon Jeanneret Investor Subclass certified in *In re Beacon* and certified them as follows:

- **Beacon Investor Class**: “All investors in the Beacon Funds that had not fully redeemed their interests in the Beacon Funds as of December 11, 2008.”
- **Beacon Jeanneret Investor Subclass**: “All persons and entities who obtained the investment management services of JPJA, John P. Jeanneret, or Paul L. Perry, and who invested in the Beacon Funds that had not fully redeemed their interests in the Beacon Funds as of December 11, 2008.”

5. Pursuant to Rule 23(a), (b)(3) and (c)(1)(C) of the Federal Rules of Civil Procedure, and solely for the purposes of the Stipulation and Settlement, the Court has as part of its Preliminary Approval Order altered and amended the May 3 Order and the definition of the Buffalo Laborers Class certified in *Buffalo Laborers* and certified it as follows:

- **Buffalo Laborers Class**: “All trustees and named fiduciaries of any employee benefit plan covered by ERISA (acting in their fiduciary capacity on behalf of the plan and for the benefit of all participants and beneficiaries of the plans for which they serve as trustees) that obtained the investment management services of J.P. Jeanneret Associates Inc. and that invested with Bernard L. Madoff, either directly with Bernard L. Madoff Investment Securities LLC (“BLMIS”), or indirectly through the Income Plus Fund or the Andover Funds, and that had not fully redeemed its interests in BLMIS, the Income Plus Fund or the Andover Funds as of December 11, 2008.”

6. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and solely for the purposes of the Stipulation and Settlement, the Court has as part of its Preliminary Approval Order certified the following Settlement Class in *In re Beacon*:

- **Beacon Fiduciary Class**: “All trustees and named fiduciaries of any employee benefit plan covered by ERISA (acting in their fiduciary capacity on behalf of the plan and for the benefit of all participants and beneficiaries of the plans for which they serve as trustees) that invested in the Beacon Funds and that had not fully redeemed its interests in the Beacon Funds as of December 11, 2008;”

and certified the following Settlement Classes in *In re Jeanneret*:

- **Income Plus Investor Class**: “All investors in the Income Plus Fund that had not fully redeemed their interests in the Income Plus Fund as of December 11, 2008.”

- **Direct Investor Class:** “All investors who invested directly with Madoff pursuant to a Discretionary Investment Management Agreement with JPJA that had not fully redeemed their investments with BLMIS as of December 11, 2008.”

For the purposes of this Settlement, the Court has also found as part of its Preliminary Approval Order that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied as to each of the Beacon Investor Class, the Beacon Jeanneret Investor Subclass, the Buffalo Laborers Class, the Beacon Fiduciary Class, the Income Plus Investor Class and the Direct Investor Class (collectively, the “Rule 23(b)(3) Classes”) in that: (a) the members of each of the Rule 23(b)(3) Classes are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to each of the Rule 23(b)(3) Classes; (c) Plaintiffs’ claims are typical of the claims of the Rule 23(b)(3) Classes that they seek to represent; (d) Plaintiffs have fairly and adequately represented and will continue to fairly and adequately represent the interests of the Rule 23(b)(3) Classes; (e) the questions of law or fact common to the members of the Rule 23(b)(3) Classes predominate over any questions affecting only individual members of the Rule 23(b)(3) Classes; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

7. Pursuant to Rule 23(a), (b)(1) and (c)(1)(C) of the Federal Rules of Civil Procedure, and solely for the purposes of the Stipulation and Settlement, the Court has as part of its Preliminary Approval Order altered and amended the March 14 Order and the definitions of the Beacon ERISA Class and the Beacon Jeanneret ERISA Subclass certified in *In re Beacon* and certified them as follows:

- **Beacon Participant and Beneficiary Class:**<sup>1</sup> “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested in the Beacon Funds and that had not fully redeemed its interests in the Beacon Funds as of December 11, 2008.”

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<sup>1</sup> Formerly known as the Beacon ERISA Class.

- **Beacon Jeanneret ERISA Subclass:** “All participants and beneficiaries of any employee benefit plan covered by ERISA who obtained the investment management services of JPJA, John P. Jeanneret, or Paul L. Perry, and who invested in Beacon I or Beacon II that had not fully redeemed its interests in the Beacon Funds as of December 11, 2008.”

8. Pursuant to Rule 23(a) and (b)(1) of the Federal Rules of Civil Procedure, and solely for the purposes of the Stipulation and Settlement, the Court has as part of its Preliminary Approval Order certified the following Settlement Classes in *Buffalo Laborers*:

- **Income Plus Participant and Beneficiary Class:** “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested in the Income Plus Fund and that had not fully redeemed its interests in the Income Plus Fund as of December 11, 2008.”
- **Andover Participant and Beneficiary Class:** “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested in the Andover Funds and that had not fully redeemed its interests in the Andover Funds as of December 11, 2008.”
- **Direct Investor Participant and Beneficiary Class:** “All participants and beneficiaries of any employee benefit plan covered by ERISA that invested directly with Madoff pursuant to a Discretionary Investment Management Agreement with JPJA and that had not fully redeemed its investments with BLMIS as of December 11, 2008.”

For the purposes of this Settlement, the Court has also found as part of its Preliminary Approval Order that the prerequisites for a class action under Rule 23(a) and (b)(1) of the Federal Rules of Civil Procedure have been satisfied as to each of the Beacon Participant and Beneficiary Class, the Beacon Jeanneret ERISA Subclass, the Income Plus Participant and Beneficiary Class, the Andover Participant and Beneficiary Class and the Direct Investor Participant and Beneficiary Class (collectively, the “Rule 23(b)(1) Classes”) in that: (a) the members of each of the Rule 23(b)(1) Classes are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to each of the Rule 23(b)(1) Classes; (c) Plaintiffs’ claims are typical of the claims of the Rule 23(b)(1) Classes that they seek to represent; (d) Plaintiffs have fairly and adequately represented and will continue to fairly and adequately represent the interests

of the Rule 23(b)(1) Classes; and (e) prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications or adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

9. As part of its Preliminary Approval Order pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of this Settlement only, the Court certified the following Class Representatives and Class Counsel, respectively:

<b>CLASS</b>	<b>CLASS REPRESENTATIVES</b>	<b>CLASS COUNSEL</b>
Beacon Investor Class and Beacon Jeanneret Investor Subclass	Plumbers & Steamfitters Local 267 Pension Fund; Plumbers & Steamfitters Local 267 Insurance Fund; Plumbers Local 112 Health Fund; Local 73 Retirement Fund  John and Phyllis Cacoulidis, as Trustees of Grand Metro Builders of N.Y. Corp. Defined Benefit Plan  Jay Raubvogel	Lowey Dannenberg Cohen & Hart, P.C.  Wolf Haldenstein Adler Freeman & Herz LLP  Bernstein Liebhard LLP
Income Plus Investor Class	Local 73 Retirement Fund; Local 73 Annuity Fund	Lowey Dannenberg Cohen & Hart, P.C.
Direct Investor Class	Plumbers & Steamfitters Local 267 Pension Fund; Plumbers & Steamfitters Local 267 Insurance Fund; Local 73 Health & Welfare Fund	Lowey Dannenberg Cohen & Hart, P.C.
Beacon Fiduciary Class and Beacon Jeanneret ERISA Subclass	Gregory Lancette as Trustee of Plumbers & Steamfitters Local 267 Pension and Insurance Funds; James Rounds as Trustee of Plumbers Local 112 Health Fund; Patrick Carroll as Trustee of Local 73 Retirement Fund	Lowey Dannenberg Cohen & Hart, P.C.

	William Shannon as Trustee of Laborers Local 214 Pension Fund, now known as, Central New York Laborers Pension Fund; Donald Morgan as Trustee of IBEW Local 43 & Health and Welfare Fund	Cohen Milstein Sellers & Toll PLLC
Buffalo Laborers Class	Board of Trustees of the Buffalo Laborers Security Fund, Welfare Fund, and the Welfare Staff Fund	Kessler Topaz Meltzer & Check LLP
Beacon Participant and Beneficiary Class	Gregory Lancette as Trustee and Participant of Plumbers & Steamfitters Local 267 Pension and Insurance Funds; James Rounds as Trustee and Participant of Plumbers Local 112 Health Fund; Patrick Carroll as Trustee and Participant of Local 73 Retirement Fund  William Shannon as Trustee and Participant of Laborers Local 214 Pension Fund, now known as, Central New York Laborers Pension Fund; Donald Morgan as Trustee and Participant of IBEW Local 43 & Health and Welfare Fund	Lowey Dannenberg Cohen & Hart, P.C.;  Cohen Milstein Sellers & Toll PLLC
Income Plus Participant and Beneficiary Class	Gary Kubik as Participant and Beneficiary of the Buffalo Laborers Security Fund	Kessler Topaz Meltzer & Check LLP
Andover Participant and Beneficiary Class	Gary Kubik as Participant and Beneficiary of the Buffalo Laborers Welfare Fund	Kessler Topaz Meltzer & Check LLP
Direct Investor Participant and Beneficiary Class	Gary Kubik as Participant and Beneficiary of the Buffalo Laborers Welfare Fund	Kessler Topaz Meltzer & Check LLP

10. Excluded from all Settlement Classes are: (a) the Settling Defendants; (b) the spouses of individual Settling Defendants; (c) executive officers of the corporate Settling Defendants (except that for BAMC and AAMC, the executive officer exclusion does not apply to Robert Danziger and Michael Markhoff or any trusts or financial vehicles established for their benefit); (d) corporate entities that control or are controlled by the corporate Settling Defendants (except where such entity is acting merely and solely as an agent, manager and/or custodian); and (e) the legal representatives, heirs, successors and assigns of any excluded person solely in their capacity as legal representatives, heirs, successors and assigns, as applicable, of an excluded person and not in their individual capacity (collectively, the “Excluded Persons”). Excluded from the Buffalo Laborers Class are the Hartman Plaintiffs.

11. Also excluded from the Settlement Classes are those Persons who timely and validly requested exclusion from any of the Settlement Classes in accordance with the requirements set forth in the Notice, listed on Exhibit \_\_\_\_ attached hereto.

12. Pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, and for the purposes of this Settlement only, the Court finds that the provisions of Rule 23.1 of the Federal Rules of Civil Procedure have been satisfied and the derivative claims asserted in the *In re Jeanneret* Action have been properly maintained according to the provisions of that Rule.

13. Pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, and for the purposes of this Settlement only, the Court finds that Local 73 Retirement and Local 73 Annuity have standing to prosecute and settle the derivative claims asserted in the *In re Jeanneret* Action.

14. The Court finds that the distribution of the Notice, and the notice methodology, were all implemented in accordance with the terms of the Stipulation, and the Preliminary Approval Order and:

(a) constituted the best practicable notice to Settlement Class Members under the circumstances of the Actions;

(b) were reasonably calculated, under the circumstances, to apprise Settlement Class Members of: (i) the proposed Settlement of the Actions; (ii) their right, where applicable, to exclude themselves from the Settlement Classes; (iii) their right to object to any aspect of the proposed Settlement (including the Plan of Allocation and the Attorneys' Fees and Expenses Application(s)); (iv) their right to appear at the Fairness Hearing, either personally or through counsel at their expense, if they are not excluded from the Settlement Classes; and (v) the binding effect of the proceedings, rulings, orders, and judgments in the Actions, whether favorable or unfavorable, on all persons who are not excluded from the Settlement Classes;

(c) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and

(d) fully satisfied all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c) and (d) and Rule 23.1), the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, the Rules of the Court, and any other applicable law.

15. The Court finds that a full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the \_\_\_\_\_, 2013 Hearing.

16. The Court finds and declares, in accordance with the Declaratory Judgment Act (28 U.S.C. §§ 2201-2202), that: (i) the notice and hearing regarding the Settlement was fair, adequate,

reasonable, and consistent with the Court's prior Preliminary Approval Order; and (ii) the Settlement is fair, adequate and reasonable.

17. The Court has considered the Objections, if any, made by various objectors and, to the extent not withdrawn, finds the objectors to lack standing, and/or finds the objections to be deficient and/or to otherwise be without merit and hereby determines that they are overruled.

18. Pursuant to Rule 23 and Rule 23.1 of the Federal Rules of Civil Procedure, this Court finds that the terms and provisions of the Stipulation were entered into by the Settling Parties at arm's length, without collusion, and in good faith, and are fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Settling Parties, the Settling Funds and the Settlement Class Members in the Federal Actions. The Settling Parties in the Federal Actions and their counsel are hereby directed to implement and consummate the Settlement in accordance with its terms and conditions.

19. The Court finds that all parties to the Federal Actions and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

20. Upon the occurrence of all the events set forth in ¶ 7.1 of the Stipulation, the Court shall enter a Judgment in the form annexed hereto as Exhibit A.

21. If any specified condition to the Settlement set forth in the Stipulation is not satisfied, including the provisions of ¶¶ 5.11 and 7.1 of the Stipulation, Settling Plaintiffs or Settling Defendants may elect to terminate the Settlement as provided in the Stipulation. In any such event, the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation, this Post-Fairness Hearing Order and all releases delivered in connection herewith shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and



may not be introduced as evidence or used in any actions or proceedings by any Person against the Settling Parties, each Settling Party shall be restored to his, her or its respective litigation position as it existed prior to the execution of the Stipulation, and the certifications of the Settlement Classes pursuant to this Post-Fairness Hearing Approval Order and any releases provided in connection with the Settlement shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any Person against the Settling Parties.

22. Without further order of the Court or notice to the Settlement Class, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

23. The Court shall retain continuing jurisdiction over the Settlement, as well as the administration thereof and proceedings arising out of or related to the Stipulation and/or the Settlement, except as to the enforcement by the NYAG as to any payments called for in the Stipulation.

Dated: \_\_\_\_\_, 2013

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Honorable [INSERT]

UNITED STATES DISTRICT JUDGE

# EXHIBIT C

[Proposed] Final Judgment and Order – Submission Copy

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BEACON ASSOCIATES LITIGATION	No. 09 Civ. 0777 (LBS)
IN RE J.P. JEANNERET ASSOCIATES, INC.	No. 09 Civ. 3907 (CM)
HILDA L. SOLIS, Secretary of the United States Department of Labor,  Plaintiff,  v.  BEACON ASSOCIATES MANAGEMENT CORP. et al.,  Defendants.	No. 10 Civ. 8000 (LBS) (AJP)
BOARD OF TRUSTEES OF THE BUFFALO LABORERS SECURITY FUND et al.,  Plaintiffs,  v.  J.P. JEANNERET ASSOCIATES, INC. et al.,  Defendants.	No. 09 Civ. 8362 (LBS) (AJP)
BEACON ASSOCIATES MANAGEMENT CORP.  Plaintiff,  v.  BEACON ASSOCIATES LLC I,  Defendant.	No. 09 Civ. 6910 (AJP)

(Caption continued on next page)

<p>ERNEST A. HARTMAN et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT L.L.C. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 09 Civ. 8278 (LBS) (AJP)</p>
<p>STEPHEN C. SCHOTT, as TRUSTEE FOR THE STEPHEN C. SCHOTT 1984 TRUST,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 10 Civ. 8077 (LBS)</p>

(Caption continued on next page)

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>DONNA M. McBRIDE, individually and derivatively on behalf of Beacon Associates LLC II,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>KPMG INTERNATIONAL et al.,,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 650632/2009E</p>
<p>ALISON ALTMAN, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORPORATION, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Index No. 652238/2010</p>

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

<p>JOEL SACHER and SUSAN SACHER, derivatively on behalf of BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 005424/2009</p>
<p>CHARLES J. HECHT, derivatively on behalf of ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ANDOVER ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 006110/2009</p>

THE JORDAN GROUP LLC, derivatively on behalf of  
BEACON ASSOCIATES LLC I,

Plaintiff,

v.

BEACON ASSOCIATES MANAGEMENT CORP. et al.,

Defendants,

-and-

BEACON ASSOCIATES LLC I,

Nominal Defendant.

Index No. 003757/2011

CIRCUIT COURT OF THE STATE OF FLORIDA  
FIFTEENTH JUDICIAL CIRCUIT, PALM BEACH COUNTY

<p>HARVEY GLICKER, et al,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>IVY ASSET MANAGEMENT CORP., et al,</p> <p>Defendants.</p>	<p>Court File No. 502010CA029643 XXXX MB AB</p>
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BEFORE THE AMERICAN ARBITRATION ASSOCIATION

<p>JOEL T. GLUCK,</p> <p>Claimant,</p> <p>v.</p> <p>BEACON ASSOCIATES LLC II et al.,</p> <p>Respondents.</p>	<p>AAA No. 19 435 00120 10</p>
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**[PROPOSED] FINAL JUDGMENT AND ORDER OF  
DISMISSAL WITH PREJUDICE REGARDING  
SETTLEMENT AND RULES 23 AND 23.1**

This matter came before the Court for a hearing, which was held on \_\_\_\_\_, 2013, pursuant to the Order of this Court entered on \_\_\_\_\_ (the “Preliminary Approval Order”), on the Motion of Plaintiffs’ Class Counsel for: (i) final approval of the proposed settlement (the “Settlement”) of the above-captioned consolidated actions (collectively, the “Actions”); (ii) certification of the Settlement Classes, with the proposed class representatives as representatives of their respective Classes, Plaintiffs’ Co-Lead Settlement Class Counsel as lead class counsel for the respective actions in which they currently serve as Lead Counsel and additional Plaintiffs’ Counsel as counsel in the respective positions for the Classes to which they were appointed by the Court and/or in which they currently serve in the Actions; (iii) determination that the provisions of Rule 23.1 of the Federal Rules of Civil Procedure, were satisfied, and that the derivative claims were properly maintained in *In re J.P. Jeanneret Associates, Inc.*, No. 09-cv-03907; (iv) determination that the form, method and content of notice satisfied due process, the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995.

On \_\_\_\_\_, 2013, the Court entered an Order (the “Post-Fairness Hearing Approval Order”) holding that the terms of the Settlement are fair, reasonable and adequate and that Judgment should be entered dismissing the Federal Actions with prejudice, and releasing the Released Claims as against the Released Parties as set forth in the Stipulation of Settlement dated \_\_\_\_\_, 2012 (the “Stipulation”), once all of the events set forth in ¶ 7.1 of the Stipulation have occurred.

Due and adequate notice having been given to the Settlement Classes as required by the Preliminary Approval Order, and the Court having considered all papers filed and proceedings in the Actions, in particular all papers and filings made on the Motion for Approval of the Settlement; the Court having entered a Post-Fairness Hearing Approval Order on \_\_\_\_\_, 2013;

all events set forth in ¶ 7.1 of the Stipulation having occurred; and the Court otherwise being fully informed of the matters herein, and good cause appearing therefor, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of the Federal Actions, including the terms and conditions of the Stipulation and all exhibits thereto, and over all Settling Parties to the Federal Actions and all Settlement Class Members.

2. Unless otherwise defined herein, all capitalized terms used herein have the meanings set forth and defined in the Stipulation.

3. The Court incorporates by reference and reaffirms ¶¶ 1-19 of its Post-Fairness Hearing Approval Order in their entirety.

4. Upon the Effective Date, each of the Federal Actions shall be dismissed with prejudice as to the Settling Defendants.

5. In addition to the releases provided in the Stipulation amongst the Settling Parties, as of the Effective Date, each and all Settlement Class Members (who have not been excluded from the Settlement Classes, or having been excluded, having re-opted-in), on behalf of themselves, their successors and assigns, shall be deemed to have fully, finally, and completely released all Plaintiff Released Claims against the Defendant Released Parties. As of the Effective Date, each and all Settlement Class Members shall be permanently barred and enjoined from instituting, commencing, prosecuting or continuing to maintain, whether directly, indirectly, derivatively, in a representative capacity or in any other capacity, in the Settling Actions or any other action or proceeding, including in any federal or state court, or in any other court, arbitration proceeding, administrative proceeding or other tribunal or forum in the United States or elsewhere, any Plaintiff Released Claim against any of the Defendant Released Parties,

regardless of whether any such Settlement Class Member ever seeks or obtains any distribution from the Net Settlement Fund by any means, including, without limitation, by submitting a Proof of Claim and Release. Nothing contained herein shall, however, bar the Settling Plaintiffs from bringing any action or claim to enforce the terms of the Stipulation or this Judgment.

6. All Persons whose names appear on Exhibit \_\_ hereto are hereby excluded from the Settlement Class, are not bound by this Judgment and may not make any claim with respect to or receive any benefit from the Settlement. Such Excluded Persons shall be permanently barred and enjoined from instituting, commencing, prosecuting or continuing to maintain whether directly, indirectly, derivatively, in a representative capacity or in any other capacity, in the Settling Actions or any other action or proceeding, including in any federal or state court, or in any other court, arbitration proceeding, administrative proceeding or other tribunal or forum in the United States or elsewhere, any Released Claims on behalf of those entities or individuals who are bound by this Judgment, including without limitation, any Released Claims that were asserted by or on behalf of the Settling Funds in the Actions or any other action or proceeding.

7. Neither this Judgment, nor the Stipulation, nor the Settlement, nor any of the negotiations, documents, proceedings and acts performed in connection therewith, nor any of the proceedings in the Settling Actions relating to the Stipulation or the Settlement, nor the State Derivative Action Orders and Judgments: (i) is or may be deemed to be or may be used as an admission or evidence of the truth of any of the allegations in the Settling Actions or of the validity of any Released Claim or of any wrongdoing or liability of any kind of the Defendant Released Parties; or (ii) is or may be deemed to be or may be used as an admission or evidence of any liability, fault, or omission of the Defendant Released Parties in any civil, criminal or administrative proceeding in any court, arbitration proceeding, administrative agency or other

forum or tribunal in which the Defendant Released Parties are or become parties, other than in such proceedings as may be necessary to consummate or enforce the Stipulation, the Settlement, the Judgment or the State Derivative Action Orders and Judgments.

8. The Stipulation and the terms of the Settlement may be offered or received in any action or proceeding: (i) arising under the Stipulation or arising out of this Judgment, (ii) where the releases provided pursuant to the Stipulation may serve as a bar to recovery, (iii) to determine the availability, scope, or extent of insurance coverage for the sums expended for the Settlement and defense of the Actions; or (iv) to determine the availability of indemnification, contribution, or advancement of fees and expenses, and the rights or obligations of the Settling Defendants.

9. JP Morgan shall continue to act as the depository institution holding the Settlement Fund in an Account invested in the manner provided in the Stipulation. Accounting-related functions for this Account, including, but not limited to the filing of tax returns and such services as may be required from time to time for the administration of the Funds through the Claims Administrator, will be provided by Garden City Group.

10. The Released Parties may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. Except as to the enforcement by the NYAG as to any payments called for in the Stipulation, exclusive jurisdiction is hereby retained over all remaining matters relating to (i) the administration, interpretation, effectuation or enforcement of the Stipulation and this Judgment,

(ii) the Plan of Allocation, (iii) disbursement of the Net Settlement Fund, (iv) any application for fees and expenses incurred in connection with administering and disbursing the Settlement proceeds to the Settlement Class Members, (v) if any part of it remains undecided, the Attorneys' Fees and Expenses Application, and (vi) all matters relating to the Federal Actions and the Settlement of all Settling Actions.

12. The Escrow Agent is directed to comply with its obligations in accordance with the terms of the Stipulation and the Escrow Agreement.

13. Without further order of the Court or notice to the Settlement Class, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

14. In the event that the Effective Date does not occur in accordance with the terms of the Stipulation, then the Preliminary Approval Order, the Post-Fairness Hearing Approval Order and this Judgment shall each be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered, including those certifying the Settlement Classes for settlement purposes only, and any releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

15. The provisions of this Judgment constitute a full and complete adjudication of the matters considered and adjudged herein.

16. The Court shall retain continuing jurisdiction over the Settlement, as well as the administration thereof and all proceedings arising out of or related to the Stipulation and/or the Settlement, except as to the enforcement by the NYAG as to any payments called for in the Stipulation.

17. Other than as set forth in ¶ 5.11 of the Stipulation, any order or proceeding relating to the Plan of Allocation or modification thereof shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of this Judgment and the Settlement of the Actions as set forth herein.

18. Any order or proceeding relating to the Attorneys' Fees and Expenses Application(s), or any appeal from any Attorneys' Fees and Expenses Awards or any other order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of this Judgment and the Settlement of the Actions as set forth herein.

19. There is no just reason for delay in the entry of this Judgment and Order and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SIGNED this \_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Honorable [INSERT]  
UNITED STATES DISTRICT JUDGE

# EXHIBIT D



## Submission Copy

### EXHIBIT D: PLAN OF ALLOCATION

1. This Plan of Allocation has been developed through vigorous, arm's-length negotiations by and among counsel for the Private Settling Plaintiffs,<sup>1</sup> the United States Secretary of Labor and the New York Attorney General, with the assistance of a neutral mediator and expert forensic accountants who worked to confirm and cross-check the accuracy of various data sets and calculations. The Secretary of Labor and the New York Attorney General were represented at all times throughout the negotiations that led to this Plan of Allocation. In addition, Counsel for Settling Plaintiffs or Settlement Class Members representing the entire spectrum of loss or damage theories were present at all times, and class representatives or other Settlement Class Members were present for many of the calls and discussions on the Plan of Allocation.
2. This Plan of Allocation represents Plaintiffs' Counsel's considered and informed good faith efforts to allocate the Net Settlement Fund in an equitable and efficient manner, taking into account the varying claims, legal arguments, and the Madoff-related investment losses and concerns of differently-situated groups of Settling Plaintiffs, Settlement Class Members and the ERISA-governed employee benefit plans ("ERISA Plans") of which some Settling Plaintiffs and Settlement Class Members are trustees, participants, or beneficiaries (hereafter "Investor"), including:
  - a. The specific investment vehicle through which the Investor suffered Madoff-related investment losses (*i.e.* via direct investment with BLMIS or via a feeder fund (or sub-feeder) fund that was partially invested with BLMIS);
  - b. When each Investor invested;

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<sup>1</sup> All capitalized terms in this Plan of Allocation have the same meaning as in the Stipulation of Settlement.

- c. The amount of recoveries pursuant to claims filed pursuant to the Securities Investor Protection Act (“SIPA”), if any, which the Investor received either directly or as a *pro rata* portion of the recoveries of a feeder fund;
  - d. The impact of the Madoff Bankruptcy Trustee’s clawback action against the Beacon Fund and the Andover Fund seeking return of all withdrawals from BLMIS by those funds during the six years prior to revelation of the fraud; and
  - e. Distributions made to Investors by the Beacon, Income Plus and Andover Funds following disclosure of the Madoff fraud.
3. Following many informal negotiations and multi-day formal mediation sessions with all private and governmental parties and two mediators, held on February 28-29, April 19, 2012, and July 17, 2012 (and continuous negotiations through the date of execution of the Stipulation to finalize the terms of the agreement), the global settlement reflected in the Stipulation was achieved. On May 30, 2012, counsel for the Private Settling Plaintiffs, certain of the Private Settling Plaintiffs, and counsel for the Secretary of Labor and the NYAG engaged in a lengthy mediation to resolve the allocation of the Net Settlement Fund between the Beacon, Income Plus and Andover Funds, and the Direct Investors. Several subsequent refinements to the Plan of Allocation were negotiated over the ensuing months. As a result of all of the negotiations and informed by the input of the forensic accountants, the Private Settling Plaintiffs, the Secretary of Labor, and the NYAG resolved that:

- a. The Net Settlement Fund will be allocated to Authorized Claimants as follows: (a) all Authorized Claimants will benefit from the proceeds of the Ivy Defendants’ settlement payment; (b) only Authorized Claimants who entered into Discretionary Investment Management Agreements with JPJA will benefit from the Jeanneret Defendants’ settlement payment; and (c) only Beacon and Andover Authorized Claimants will benefit from the Beacon settlement payment.
- b. Subject to paragraph 3(a), the Net Settlement Fund will first be allocated according to the *pro rata* share of total Madoff-related investment losses incurred by each of (i) the Beacon Funds, (ii) the Income Plus Fund, (iii) the Andover Funds (collectively, the “feeder funds”), and (iv) the Investors who had accounts directly with BLMIS pursuant to a Discretionary Investment Management Agreement with Defendant JPJA (“Direct Investors”). This first step is designed to account for the fact that the feeder funds and Direct Investors are the Investors that gave money to

BLMIS. Investors in the feeder funds owned undifferentiated shares of the feeder funds and did not have direct accounts with BLMIS by virtue of their investments in a feeder fund.

- c. Second, each feeder fund's pro rata share of the Net Settlement Fund will be divided among the Authorized Claimants in that feeder fund.
  - d. With respect to Settlement Class Members who received more in distributions and withdrawals than they invested with Beacon, Income Plus, Andover, or directly with Madoff, but who nevertheless could potentially claim lost-opportunity damages ("Investors Receiving Only Opportunity Cost Payments"), this Plan of Allocation will allocate approximately 1.2% of the Gross Settlement Amount or \$2,650,000 (Two million six hundred fifty thousand dollars) to such Investors on a *pro rata* basis. The amount of their potentially cognizable lost opportunity cost damages is calculated using the same time value of money utilized in this Plan of Allocation for all Investors (IRC § 6621 interest rate for corporate underpayments).
4. More specifically, the first and second steps identified in Items a and b above will proceed as follows<sup>2</sup>:

a. **STEP #1: ALLOCATION OF LOSSES AT THE FEEDER FUND AND DIRECT INVESTOR LEVEL**

- i. The *pro rata* share of total Madoff-related investment losses incurred at the feeder fund and Direct Investor level has been determined by:

1. Calculating the losses of the feeder funds and Direct Investors from investments with BLMIS, in the following manner:

- a. The first \$84.6 million of the Net Settlement Fund (representing 40% of the total net principal given to BLMIS) was allocated based on each feeder fund's or Direct Authorized Claimant's pro-rata share of the net principal that was invested directly with Madoff without applying any measure for the time value of money;

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<sup>2</sup> Data used to determine the contributions and withdrawals from BLMIS or the feeder funds consist of records obtained in discovery, as well as account statements held by the feeder funds and account statements from various Settlement Class Members including Direct Investors. Data was also culled from the Hartman Plaintiffs' records. Plaintiffs' Counsel and the forensic accounting experts have thoroughly and repeatedly examined and reconciled the records to ensure their accuracy and to ensure the experts used the most up-to-date and thoroughly verified information.

- b. In order to provide a measure of lost opportunity costs, the remaining amount in the Net Settlement Fund (approximately \$77.59 million), was allocated based on each feeder fund's or Direct Investor's pro-rata share of the losses by applying the IRC § 6621 interest rate for corporate underpayments on each contribution and withdrawal made by the feeder funds and the Direct Investors into or out of BLMIS from May 1997 to December 2008.
2. The Bankruptcy Trustee asserted a clawback claim in which he asserted that \$28.31 million should be paid by the Beacon and Andover Funds to the Bankruptcy Trustee for the benefit of all Madoff-defrauded investors. This Plan of Allocation adds \$10.06 million to Beacon's net capital investment and \$1.26 million to Andover's net capital investment in BLMIS to partially offset the impact to Beacon and Andover Investors of the clawback amounts of \$25.15 million and \$3.16 million respectively, sought by the Trustee;<sup>3</sup>
  3. Subtracting the advance payments each feeder fund or Direct Authorized Claimant has received or will receive pursuant to 15 U.S.C. § 78fff-3(a). (*i.e.*, providing for advance payments of up to \$500,000 per investor).
    - ii. The resulting amounts for each of the feeder funds and Direct Investors has been divided by the total of those amounts (the total losses) to determine the relative percentage shares that each feeder fund and Direct Authorized Claimant represents of the total losses;
    - iii. Applying this methodology, the allocation of the Net Settlement Fund among feeder funds and Direct Investors is as follows:

**Percentage of Net  
Settlement Fund<sup>4</sup>**

Beacon	58.87%
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<sup>3</sup> Following extensive negotiations between counsel for the Beacon Funds and counsel for the Trustee, the Trustee's clawback claims were settled in a Stipulation executed on or about October 12, 2012, as amended.

<sup>4</sup> The Income Plus Fund made certain investments in Beacon. The portion of the Beacon allocation held by Income Plus is claimed by Income Plus and becomes part of the total Income-Plus recovery of its Investors on a pro rata basis within the Fund.

Income Plus	15.08%
Andover	1.17%
Direct Investors	23.27%
Investors Receiving Only	
Opportunity Cost Payments	1.61%
Total	100.00%

b. **STEP #2: ALLOCATION OF LOSSES TO INVESTORS IN THE FEEDER FUNDS (OTHER THAN INVESTORS RECEIVING ONLY OPPORTUNITY COST PAYMENTS).**

i. No portion of the Net Settlement Fund will be paid to the feeder funds. Payment will be made directly to the Authorized Claimants in each feeder fund in proportion to his, her, or its share of ownership of the feeder fund. Therefore, each feeder fund's share as calculated above will be divided among its Authorized Claimants as follows.

1. Calculating the amount of net capital given to the feeder fund by each Authorized Claimant in the feeder fund through the date of the settlement, including the *Hartman* Plaintiffs (whose individual claims for damages arising out of Income Plus and Direct investments are being settled contemporaneously with all class claims) but not the other Investors excluded from the Classes pursuant to ¶1.60 of the Stipulation;
2. If the Authorized Claimant's net capital is positive (*i.e.*, not an Investor Receiving Only Opportunity Cost Payments), the net capital value is divided by total net capital for all Authorized Claimants within that feeder fund to determine each Authorized Claimant's percentage share of such feeder fund's losses;
3. Multiplying each Authorized Claimant's percentage by that feeder fund's share of the Net Settlement Fund as determined in Item 4(a)(iii) above.

c. **Investors Receiving Only Opportunity Cost Payments:** If the Authorized Claimant's net capital is negative, that means that the Authorized Claimant withdrew more money than it deposited with Madoff or with the feeder funds. For

these Investors Receiving Only Opportunity Cost Payments, allocation of the approximately 1.2 % of the Gross Settlement Amount (\$2,650,000 (Two million six hundred fifty thousand dollars)) will proceed as follows:

- i. For the three Direct Investors, the potentially cognizable lost opportunity damages is calculated by adding interest at the IRC rate from May 1997 to the present to all net capital invested with Madoff. It is then assumed for purposes of this calculation that each Direct Investor pays the full amount of the clawback claim asserted by Bankruptcy Trustee.
- ii. For each Investor in Beacon, Income Plus and Andover, interest at the IRC rate is applied from May 1997 to the present to all net capital invested in the feeder fund. Finally the percent each feeder fund was invested in Madoff is applied to determine the potentially cognizable lost opportunity damages for each Investor.
- iii. To determine the percentage share of the \$2,650,000 for each Investor Receiving Only Opportunity Cost Payments, the Investor's potentially cognizable lost opportunity damages is divided by total potentially cognizable lost opportunity damages for all Investors Recovering Only Lost Opportunity Cost Payments.

5. The Net Settlement Fund available for allocation to the Settling Plaintiffs and Settlement Class Members shall be as follows:

Gross Settlement Fund <sup>5</sup>	\$219,857,694
Less Payment to New York Attorney General	(\$5,000,000)
Less Payment to U.S. Treasury pursuant to ERISA § 502(1), 29 U.S.C. § 1132(1)	(\$7,000,000)
Less Attorneys' Fees <sup>6</sup>	(\$40,771,539)

<sup>5</sup> This includes \$216,500,000 in cash and \$3,357,694 in waived management fees in the Beacon and Andover funds (\$2,820,270 for Beacon and \$515,424 for Andover), with the latter amounts to be distributed to Beacon and Andover Investors directly from the Beacon and Andover Funds. Litigation efforts forestalled the payment of conservatively hundreds of thousands of dollars in legal fees to counsel for Defendants Markhoff and Danziger, which is an additional benefit to Beacon and Andover Class Members, but on which benefit Plaintiffs' Counsel are not seeking legal fees.

<sup>6</sup> Subject to Court approval, this represents the total amount of attorneys' fees being requested collectively by all Private Plaintiffs' counsel in the coordinated actions, including Counsel in the

Less Expense Fund <sup>7</sup>	(\$250,000)
<b>Sub-Total Net Settlement Fund</b>	<b>\$166,836,155</b>
Less Amount Allocated to <i>Hartman</i> Plaintiffs <sup>8</sup>	(\$34,820,928)
Less Litigation Expenses <sup>9</sup>	(\$2,000,000)
<b>Amount of Net Settlement Fund Allocated to Settling Plaintiffs and Settlement Class Members<sup>10</sup> other than <i>Hartman</i> Plaintiffs</b>	<b>\$130,015,227</b>

6. The *Hartman* Plaintiffs' non-Beacon and non-Andover recovery is separately set forth in Item 5 above for the following reasons:<sup>11</sup>

- a. The *Hartman* Plaintiffs brought direct, non-class actions to recover their Madoff-related Income Plus and Direct investment losses. These actions are among the Settled Actions, and the *Hartman* Plaintiffs have agreed to be bound by the Plan of Allocation set forth herein concerning those claims. Therefore, Counsel for the Settling Plaintiffs agree that via their participation in developing the Plan of Allocation and their verification of all contribution, withdrawal, and SIPC information, such direct action plaintiffs have adequately proven their rights to the

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Class and Derivative actions, and all Counsel in all of the other actions being settled in conjunction with the Class and Derivative actions.

<sup>7</sup> This fund (which is part of the Gross Settlement Fund) is being set up for payment of settlement-related expenses, such as fees and expenses of the Claims Administrator and forensic accountants retained with respect to the Plan of Allocation.

<sup>8</sup> The Plan of Allocation pursuant to which the amounts allocated to all Plaintiffs were calculated is subject to Court Approval. The "Amount Allocated to *Hartman* Plaintiffs" listed here is based on the allocation calculations performed by Lynda Borucki of the Brattle Group and neither expands nor contracts the rights and responsibilities set forth in the *Hartman* Supplemental Agreement.

<sup>9</sup> This is an estimate of litigation expenses incurred by Settling Plaintiffs other than the *Hartman* Plaintiffs, and includes any settlement-related expenses not paid out of the Expense Fund.

<sup>10</sup> This includes Beacon, Andover, Income Plus, and Direct investors (including Investors Receiving Only Opportunity Cost payments).

<sup>11</sup> Some of the *Hartman* Plaintiffs separately invested in Beacon and/or Andover and are Settlement Class Members with respect to those investments. The Amount Allocated to *Hartman* Plaintiffs identified in Item 5 does not affect any *Hartman* Plaintiff's right to recover an additional amount as a Settlement Class Member with respect to such Beacon and/or Andover investments.

shares of the Net Settlement Fund for those claims determined by this Plan of Allocation.

- b. The *Hartman* Plaintiffs will receive their shares as determined by this Plan of Allocation in a single payment of the total of their Direct and Income Plus recoveries, to be allocated among them by their counsel in accordance with the contract the *Hartman* Plaintiffs signed with one another prior to bringing suit in 2009.

The out-of-pocket expenses of counsel for the *Hartman* Plaintiffs shall not be included in the Litigation Expenses to be requested as part of any application for reimbursement of expenses. Rather, the out-of-pocket expenses of counsel for the *Hartman* plaintiffs will be paid by the *Hartman* plaintiffs in accordance with their retainer agreement and out of the amount guaranteed to them by the Plan of Allocation set forth above (the Amount Allocated to *Hartman* Plaintiffs). The Amount Allocated to *Hartman* Plaintiffs will not be charged a pro rata portion of the Litigation Expenses incurred by other counsel for the Settling Plaintiffs. However, the *Hartman* Plaintiffs will share proportionately with the class and with the other Settling Plaintiffs the cost of settlement administration and plan of allocation expenses set forth in ¶ 1.23 of the Stipulation (hereinafter, "Settlement and Administration Expenses") netted against their recovery as provided for in the "Expense Fund" in Item 5 above. If the Settlement and Administration Expenses exceed the \$250,000 Expense Fund, the excess will be recovered first through the \$2,000,000 in Litigation Expenses reserved in Item 5 above. In the event that Litigation Expenses and the excess of Settlement and Administration Expenses over \$250,000 exceeds the \$2,000,000 reserved for Litigation Expenses, then the *Hartman* Plaintiffs will share pro rata in the Settlement and Administration Expenses that exceed \$250,000. However, in no event will the Amount Allocated to *Hartman* Plaintiffs be charged with the Litigation Expenses incurred by other counsel for the Settling Plaintiffs. Co-Lead Settlement Class Counsel will provide to *Hartman* Plaintiffs' Counsel an accounting of the Settlement and Administration Expenses incurred as reasonably requested by *Hartman* Plaintiffs' Counsel.



# EXHIBIT E

Exhibit E – E-mail Distribution List

ajakoby@herrick.com  
basar@whafh.com  
bhart@lowey.com  
bwhiteley@hblaw.com  
cmarcotte@hblaw.com  
craig.stewart@aporter.com  
crowell.anna.o@dol.gov  
djensen@parkjensen.com  
dpreminger@KellerRohrback.com  
Furst.Robert@dol.gov  
Haber@bernlieb.com  
hecht@whafh.com  
hunrein@KellerRohrback.com  
isiddiqui@cpmlegal.com  
jharris@stillmanfriedman.com  
jonathan.polkes@weil.com  
jrosenthal@cgsh.com  
kpierce@rossbizlaw.com  
law@anthonygordon.com  
lliman@cgsh.com  
LMezzetti@cohenmilstein.com  
lsarko@kellerrohrback.com  
max@fmlaw.net  
MHasselman@lewisfeinberg.com  
myau@cohenmilstein.com  
nfineman@cpmlegal.com  
paul.dutka@weil.com  
plevan@ktmc.com  
pshechtman@zuckerman.com  
roger.waldman@ag.ny.gov  
sandler.risa@dol.gov  
schoe@cgsh.com  
Shmuel.Kadosh@ag.ny.gov  
tab@rosenfeldlaw.com  
tepper@whafh.com  
tgraden@ktmc.com  
TSkelton@lowey.com

# EXHIBIT F

Exhibit F

**Release and Stipulation of Dismissal by  
Beacon Associates LLC I and Beacon Associates LLC II**

1. Reference is made to the Stipulation of Settlement dated November 13, 2012 filed in the proceeding captioned *In re Beacon Associates Litigation*, No. 09 Civ. 777 (S.D.N.Y.) (the “**Stipulation**”). The terms used herein shall have the same meanings as in the Stipulation.
2. Upon the occurrence of the Effective Date, as defined in the Stipulation, in consideration for the Stipulation and the terms and conditions therein, Beacon Associates LLC I and Beacon Associates LLC II (collectively, the “**Funds**”), on behalf of themselves and their successors and assigns, hereby fully, finally and forever settle, release, waive and discharge each and all of the Defendant Released Parties of and from the Released Claims.
3. Within two (2) business days of the occurrence of the Effective Date, as defined in the Stipulation, the Funds shall voluntarily dismiss their cross-claims in the action captioned *In re Beacon Associates Litigation*, No. 09 Civ. 777 (S.D.N.Y.), on the merits and with prejudice.
4. The Funds hereby warrant and represent that they have not assigned, encumbered, transferred or purported to assign, encumber or transfer, whether voluntarily or involuntarily, any matter released pursuant to this Release and Stipulation of Dismissal or any other part or portion thereof.
5. This Release and Stipulation of Dismissal shall be of no force or effect unless and until the occurrence of the Effective Date, as defined in the Stipulation.

# EXHIBIT G

Exhibit G

**Release and Stipulation of Dismissal by  
Andover Associates (QP) LLC and Andover Associates LLC I**

1. Reference is made to the Stipulation of Settlement dated November 13, 2012, filed in the proceeding captioned *In re Beacon Associates Litigation*, No. 09 Civ. 777 (S.D.N.Y.) (the “**Stipulation**”). The terms used herein shall have the same meanings as in the Stipulation.
2. Upon the occurrence of the Effective Date, as defined in the Stipulation, in consideration for the Stipulation and the terms and conditions therein, Andover Associates (QP) LLC and Andover Associates LLC I (collectively, the “**Funds**”), on behalf of themselves and their successors and assigns, hereby fully, finally and forever settle, release, waive and discharge each and all of the Defendant Released Parties of and from the Released Claims.
3. The Funds hereby warrant and represent that they have not assigned, encumbered, transferred or purported to assign, encumber or transfer, whether voluntarily or involuntarily, any matter released pursuant to this Release and Stipulation of Dismissal or any other part or portion thereof.
4. This Release and Stipulation of Dismissal shall be of no force or effect unless and until the occurrence of the Effective Date, as defined in the Stipulation.

# EXHIBIT H

Exhibit H

**Release and Stipulation of Dismissal by the  
Income Plus Investment Fund and the Master Income-Plus Group Trust**

1. Reference is made to the Stipulation of Settlement dated November 13, 2012, filed in the proceeding captioned *In re Beacon Associates Litigation*, No. 09 Civ. 777 (S.D.N.Y.) (the “**Stipulation**”). The terms used herein shall have the same meanings as in the Stipulation.
2. Upon the occurrence of the Effective Date, as defined in the Stipulation, in consideration for the Stipulation and the terms and conditions therein, the Income Plus Investment Fund and the Master Income-Plus Group Trust (the “**Fund**”), on behalf of itself and its successors and assigns, hereby fully, finally and forever settles, releases, waives and discharges each and all of the Defendant Released Parties of and from the Released Claims.
3. The Fund hereby warrants and represents that it has not assigned, encumbered, transferred or purported to assign, encumber or transfer, whether voluntarily or involuntarily, any matter released pursuant to this Release and Stipulation of Dismissal or any other part or portion thereof.
4. This Release and Stipulation of Dismissal shall be of no force or effect unless and until the occurrence of the Effective Date, as defined in the Stipulation.



# EXHIBIT I

Exhibit I

**Release and Stipulation of Dismissal by Plaintiffs in  
Hartman, et al. v. Ivy Asset Management, LLC, et al., No. 09 Civ. 8278 (S.D.N.Y.)**

1. Reference is made to the Stipulation of Settlement dated November 13, 2012, in the proceeding captioned *In re Beacon Associates Litigation*, No. 09 Civ. 777 (S.D.N.Y.) (the “**Stipulation**”). The terms used herein shall have the same meanings as in the Stipulation.
2. Upon the occurrence of the Effective Date, as defined in the Stipulation, in consideration for the Stipulation and the terms and conditions therein, the Plan (as herein defined) and the Trustees (as herein defined), on behalf of themselves and their successors and assigns, hereby fully, finally and forever settle, release, waive and discharge each and all of the Defendant Released Parties of and from the Released Claims.
3. Within two (2) business days of the occurrence of the Effective Date, as defined in the Stipulation, the Trustees shall voluntarily dismiss their claims in the action captioned *Hartman v. Ivy Asset Management LLC*, No. 09 Civ. 8278 (S.D.N.Y.), on the merits and with prejudice.
4. The Trustees hereby represent and warrant that they are fiduciaries with respect to the Plan and are authorized to enter into this Release and Stipulation on their own behalves, and that the Board of Trustees of the Plan of which they are members is authorized to enter into this Release and Stipulation on behalf of the Plan, for the benefit of the participants and beneficiaries of the Plan.
5. The Plan and Trustees hereby warrant and represent that they have not assigned, encumbered, transferred or purported to assign, encumber or transfer, whether voluntarily or involuntarily, any matter released pursuant to this Release and Stipulation of Dismissal or any other part or portion thereof.
6. This Release and Stipulation of Dismissal shall be of no force or effect unless and until the occurrence of the Effective Date, as defined in the Stipulation, and shall be held in escrow by the attorneys for the Hartman Plaintiffs until such time.

“**Plan**” means the \_\_\_\_\_ Fund.

“**Trustees**” means \_\_\_\_\_  
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\_\_\_\_\_  
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# EXHIBIT J

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”), is made and entered into as of October 12, 2012 by and among IRVING H. PICARD (the “Trustee”), in his capacity as the Trustee for the liquidation proceedings under the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa, *et seq.* as amended (“SIPA”), of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the substantively consolidated Chapter 7 case of Bernard L. Madoff (“Madoff”) pending before the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), on the one hand, and the parties listed on Exhibit A hereto (together, the “Settling Defendants”), on the other hand. Each of the Settling Defendants and the Trustee shall be referred to herein from time to time as a “Party”, and collectively, as “Parties”.<sup>1</sup>

## BACKGROUND

I. The Trustee makes and/or has made the following allegations A through U below:

A. BLMIS and its predecessor were registered broker-dealers with the United States Securities and Exchange Commission (the “Commission”) and members of the Securities Investor Protection Corporation (“SIPC”).

B. On December 11, 2008 (the “Filing Date”), the Commission filed a complaint in the United States District Court for the Southern District of New York (the “District Court”) against BLMIS and Bernard L. Madoff. On December 12, 2008, the District Court entered an order which, among other things, appointed Lee S. Richards, Esq. as receiver (the “Receiver”) for the assets of BLMIS (No. 08-CV-10791(LSS)).

C. On December 15, 2008, pursuant to section 5(a)(4)(A) of SIPA, the Commission consented to a combination of its own action with the application of SIPC. Thereafter, SIPC filed an application in the District Court under section 5(a)(3) of SIPA alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA. On December 15, 2008, the District Court granted the SIPC application and entered an order under SIPA, which, in pertinent part, appointed the Trustee to liquidate the business of BLMIS under section 5(b)(3) of SIPA, discharged the Receiver, and removed the case to the Bankruptcy Court under section 5(b)(4) of SIPA, where it is currently pending as Case No. 08-01789 (BRL) (the “SIPA Proceeding”). The Trustee is duly qualified to serve and act on behalf of both the estate of BLMIS and the estate of Madoff pursuant to the substantive consolidation order of the Bankruptcy Court entered on June 9, 2009.

D. Pursuant to section 78fff-1(a) of SIPA, Trustee has the general powers of a bankruptcy trustee in a case under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), as well as the powers granted pursuant to SIPA. Chapters

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<sup>1</sup> Note that Oakwood Associates and Oakwood Associates Management (together, the “Oakwood Entities”) have been included as “Settling Defendants” for purposes of this Agreement. However, because these entities are dissolved as of the date hereof, they are not executing the Agreement.

1, 3, 5 and subchapters I and II of Chapter 7 of the Bankruptcy Code apply to this SIPA proceeding to the extent consistent with SIPA.

E. Under SIPA, the Trustee is charged with the responsibility to marshal and liquidate the assets of BLMIS for distribution to BLMIS customers and others in accordance with SIPA in satisfaction of allowed claims, including through the recovery of avoidable transfers such as preference payments and fraudulent transfers made by BLMIS.

### **The Beacon/Andover Defendants**

F. Beacon I was a customer of BLMIS and maintained BLMIS customer account number 1B0118. Between the opening of the account and the Filing Date, on an overall basis, Beacon I deposited in its BLMIS customer account One Hundred Thirty-Eight Million Three Hundred Twenty-Four Thousand Seven Hundred Forty-Two Dollars (\$138,324,742.00) in excess of the amount of withdrawals that Beacon Associates made during the life of the account (the "Beacon Net Loss"). Beacon I withdrew Twenty-Five Million One Hundred Fifty Thousand Dollars (\$25,150,000.00) from BLMIS via its BLMIS customer account (the "Beacon Withdrawals"). Twenty Million Dollars (\$20,000,000.00) of these transfers to Beacon I occurred during the period less than six years before the Filing Date.

G. Beacon I filed a customer claim in the SIPA Proceeding (assigned claim number 8318)(the "Beacon SIPA Claim") alleging that Beacon I is entitled to an allowance of a customer claim in the SIPA Proceeding in an amount reflected on Beacon I's BLMIS account statement for the period ending November 30, 2008. Based on the Second Circuit Court of Appeals decision affirming the Trustee's Cash-In Cash-Out calculation of Net Equity under SIPA in the SIPA Proceedings (for which the United States Supreme Court has denied certiorari)(the "Net Equity Decision"), it is the Trustee's determination that the proper amount of Beacon I's claim is equal to the Beacon Net Loss (subject to certain agreed adjustments, as described herein).

H. Andover Associates was a customer of BLMIS and maintained BLMIS customer account number 1A0061 (as successor to Andover I, which owned the account until 2004). Between the opening of the account and the Filing Date, on an overall basis, Andover Associates or Andover I, as applicable, deposited in its BLMIS customer account Two Million Five Hundred Seventy-Six Thousand Dollars and 00/100 (\$2,576,000.00) in excess of the amount of withdrawals that Andover Associates made during the life of the account (the "Andover Net Loss"). Andover Associates or Andover I, as applicable, withdrew Three Million One Hundred Sixty Thousand Dollars (\$3,160,000.00) from BLMIS via its BLMIS customer account (the "Andover Withdrawals"). Five Hundred Thousand Dollars (\$500,000.00) of the transfers to Andover Associates or Andover I, as applicable, occurred during the period less than six years before the Filing Date.

I. Andover Associates filed a customer claim in the SIPA Proceeding (assigned claim number 8317)(the "Andover SIPA Claim") alleging that Andover Associates is entitled to an allowance of a customer claim in the SIPA Proceeding in an amount reflected on Andover Associates' BLMIS account statement for the period ending November 30, 2008. Based on the Net Equity Decision, it is the Trustee's determination that the proper amount of Andover Associates'

claim is equal to the Andover Net Loss (subject to certain agreed adjustments, as described herein).

J. The Beacon/Andover Fund Defendants are or were managed, owned and/or controlled by BAMC or AAMC (as applicable), Danziger and Markhoff, all of whom received fees and/or other benefits in connection with such services, including with respect to the Beacon/Andover Fund Defendants' BLMIS investments.

### **The JPJ Management Defendants**

K. Jeanneret Associates provided investment management and/or consulting services to institutional and individual clients, a number of which invested, directly or indirectly, in whole or in part, with BLMIS (the "JPJ Madoff Clients").

L. Three (3) of the JPJ Madoff Clients (each of which entities received consulting, advisory, or other services from Jeanneret Associates) were recipients of fictitious profits from BLMIS within the six years prior to the Filing Date (together, the "JPJ Initial Transferees") totaling in the aggregate \$36,853,699 (collectively, the "JPJ Transfers"), broken down as follows: (i) Engineers Joint Pension Fund (Account # 1E0112) received \$27,000,000 of fictitious profits; (ii) Engineers Joint Supplemental Unemployment Benefit Fund (Account # 1E0113) received \$2,200,000 of fictitious profits; and (iii) Buffalo Laborers' Pension Fund (Account # 1B0107) received \$7,653,699 of fictitious profits (the Accounts noted in (i)-(iii) together, the "JPJ Initial Transferee Accounts"). Of these amounts, \$8,353,699 was withdrawn within two years of the Filing Date.

M. These transfers to the JPJ Initial Transferees are the subject of separate adversary proceedings commenced by the Trustee—Adv. Pro. Nos. 10-05210 (BRL), 10-05199 (BRL), and 10-05238 (BRL), respectively (collectively, the "JPJ Funds Adversary Proceedings")—seeking *inter alia* to avoid and recover such fictitious profits. The JPJ Funds Adversary Proceedings are separate and distinct from this Adversary Proceeding (as defined below) and claims resolved by this Settlement Agreement, are in no way impaired by virtue of this Settlement Agreement, and are continuing.

N. The JPJ Management Defendants provided investment and other services to the JPJ Initial Transferees, for which the JPJ Management Defendants received fees and/or other benefits, including with respect to the JPJ Initial Transferees' BLMIS investments.

### **The Ivy Defendants**

O. The Ivy Proprietary Funds were Ivy investment funds and customers of BLMIS during the 1990s.<sup>2</sup> Between the opening of their respective accounts and the Filing Date, on an aggregate basis, the Ivy Proprietary Funds withdrew from their BLMIS customer accounts Forty-Eight Million Three Hundred Ninety-Two Thousand Eight Hundred Ninety-One Dollars

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<sup>2</sup> Specifically, the account numbers assigned to the Ivy Proprietary Funds were as follows: Birchwood - 1B0019; Enhanced Income - 1E0140; Regency - 1R0024; Oakwood - 1O0001; Rosewood - 1R0038; and Rosewood Offshore - 1FR067. None of these parties filed a claim against the BLMIS estate.

(\$48,392,891.00) during the life of their accounts, comprised of both fictitious profits and return of principal (the “Ivy Pre-2002 Withdrawals”), all of which occurred in 2001 or earlier, and thus prior to the six-year period leading up to the Filing Date.

P. Based on information available to the Trustee, an additional Nine Hundred Forty-Four Thousand Three Hundred Seventy-One Dollars (\$944,371.00) was transferred from BLMIS to Ivy Asset Management in 1999 (the “1999 Transfer”). Per the Ivy Defendants, such transfer was made in association with the BLMIS customer account of AAM Multi-Advisor Fund I (Account # 1-FR004-3-0), which information has not been confirmed by the Trustee.

Q. The Ivy Proprietary Funds are (or were, if dissolved) managed, owned and/or controlled by the Proprietary Fund Management Defendants, Simon and/or Wohl, all of whom received fees and other benefits in connection with such services.

R. The Ivy Management Defendants provided investment and other services to the Beacon/Andover Defendants and JPJ Management Defendants, for which the Ivy Management Defendants received fees and/or other benefits, including with respect to such the Beacon/Andover Defendants’ and JPJ Management Defendants’ BLMIS investments.

### **The Trustee’s Adversary Proceeding**

S. On or about December 8, 2010, the Trustee commenced an adversary proceeding against the Settling Defendants in the Bankruptcy Court under the caption *Picard v. Beacon Associates LLC I, et al.*, Adv. Pro. No. 10-05356 (the “Adversary Proceeding”). In the Adversary Proceeding, the Trustee asserts a number of claims against the Settling Defendants, including claims that the Settling Defendants are liable to the BLMIS estate under 11 U.S.C. §§ 544, 548, 548(a)(1)(B), 550(a) and 551, SIPA § 78fff(2)(c)(3), and the New York Debtor and Creditor Law §§ 273, 274, 275, 276, 276(a), 278 and 279 and New York Civil Practice Law and Rules §§ 203(g) and 213(8) for up to \$114,500,961.00 in avoidable transfers from BLMIS during the history of their relationship with BLMIS (“Full History Fraudulent Transfers”), as follows:

- i. Beacon Withdrawals - \$25,150,000.00
- ii. Andover Withdrawals - \$3,160,000.00
- iii. JPJ Transfers being sought via the JPJ Funds Adversary Proceedings – up to \$36,853,699.00 (to the extent of any subsequent transfers to the Settling Defendants)
- iv. Ivy Pre-2002 Withdrawals plus the 1999 Transfer - \$49,337,262.00

T. The Trustee alleges in the Adversary Proceeding that each of the Settling Defendants acted in bad faith and each is therefore liable to the BLMIS estate for the entire amount of the Full History Fraudulent Transfers, based on, where applicable, (i) direct receipt from BLMIS of the Beacon Withdrawals, Andover Withdrawals and/or Ivy Pre-2002 Withdrawals, and/or the 1999 Transfer, (ii) indirect receipt of any portion of the transfers noted in (i), or of the Six Year JPJ Net Gain, as subsequent transferees of the other Settling Defendants or the JPJ Initial Transferees, and/or (iii) as parties for whose benefit the above transfers were

made. The Adversary Proceeding also seeks to equitably subordinate the Beacon SIPA Claim and the Andover SIPA Claim.

U. All claims of the Trustee under 11 U.S.C. §§ 544, 548, 548(a)(1)(B), 550(a) and 551, the New York Debtor and Creditor Law §§ 273, 274, 275, 276, 276(a), 278 and 279 and New York Civil Practice Law and Rules §§ 203(g) and 213(8) shall be referred to herein as the “Avoiding Power Claims.”

The Settling Defendants do not admit or concede the accuracy of any of the foregoing assertions A through U made by the Trustee

II. The Parties assert as follows:

A. While the Trustee believes that his claims are meritorious, he also recognizes that there is in any adversary proceeding litigation risk, risk of collection, and delay in payment associated with Avoiding Power Claims, the Beacon SIPA Claim, and Andover SIPA Claim.

B. The Settling Defendants deny the allegations in the Adversary Proceedings and deny liability to the BLMIS estate in connection with the Adversary Proceeding and the claims asserted therein; however, without admitting any of the allegations or admitting liability, the Settling Defendants recognize that there is litigation cost and risk associated with the Avoiding Power Claims, Beacon SIPA Claim, and Andover SIPA Claim and have decided to settle with the Trustee prior to engaging in expensive and time-consuming litigation in the action brought against them by the Trustee.

C. Based on the foregoing, the Trustee and the Settling Defendants are entering into this Agreement to fully resolve all matters between the Trustee, on the one hand, and the Settling Defendants, on the other, to the extent set forth herein.

### **Mediation and Other Litigation**

D. The Settling Defendants are also parties or interested parties in certain other actions related to the Madoff fraud, including actions currently pending in the United States District Court for the Southern District of New York (the “SDNY”) and consolidated before the Honorable Leonard B. Sand, U.S.D.J., the Honorable Colleen McMahon, U.S.D.J., and the Honorable Andrew J. Peck, U.S.M.J., as *In re Beacon Associates Litigation*, Case No. 09-00777, *In re J.P. Jeanneret Associates, Inc.*, Case No. 09-03907, *Board of Trustees of the Buffalo Laborers Security Fund v. J.P. Jeanneret Associates, Inc.*, Case No. 09-08362, *Hartman v. Ivy Asset Management LLC*, Case No. 09-08278, and *Solis v. Beacon Associates Management Corp.*, Case No. 10-08000 (collectively, the “District Court Actions”), which litigation may involve some of the same facts and witnesses as are relevant to the Adversary Proceeding.

E. On February 23, 2012, the Bankruptcy Court entered a Stipulation and Order permitting the Settling Defendants (other than the Oakwood Entities) and the Trustee to explore the possibility of simplifying, resolving or compromising matters and issues in the Adversary Proceeding, including through mediation conducted in coordination with a separate mediation between the Settling Defendants and the other parties to the District



Court Actions. Since that time, the parties to the Adversary Proceeding have exchanged certain discovery pursuant to such Order, and the parties to both litigations have actively engaged in multiple formal and informal mediation sessions.

F. This Agreement represents the culmination of such efforts.

**NOW THEREFORE**, in consideration of the foregoing, of the mutual covenants, promises and undertakings set forth herein, and for good and valuable consideration, the mutual receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### TERMS

1. No Admission of Liability. This Agreement memorializes a settlement of disputed claims, and is not in any way to be construed as an admission of liability or of any issue of fact or law by any Party. Neither this Agreement, nor any statement made or action taken in connection with the negotiation of this Agreement, shall be offered or received in evidence of the truth of any of the allegations in the Adversary Proceeding, the validity of any Released Claim, as defined below, or of any wrongdoing, liability, fault or omission of the Settling Defendants in any legal or administrative proceeding. Notwithstanding the foregoing, nothing shall prevent the Parties from offering this Agreement as may be necessary (a) to obtain approval of and/or to enforce any of the terms of this Agreement or (b) to seek damages or injunctive relief in connection therewith.

2. Effective Date.

(a) This Agreement is subject to approval by the Bankruptcy Court. If the Bankruptcy Court does not approve this Agreement, this Agreement shall be null and void, unless otherwise agreed in writing by the Parties.

(b) The terms and conditions of this Agreement shall become effective and enforceable on the date that the Bankruptcy Court order approving this Agreement becomes a Final Order, as defined below (the "Effective Date"). "Final Order" shall mean an order of the Bankruptcy Court which is not subject to any stay of its effectiveness and (i) as to which the time to appeal or petition for certiorari has expired and as to which no timely appeal or petition for certiorari shall then be pending; or (ii) if a timely appeal or writ of certiorari thereof has been sought, the order shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied or reargument or rehearing on remand shall have been denied or resulted in no modification of such order, and the time to take any further appeal or petition for certiorari shall have expired.

(c) If this Agreement does not become effective and the Effective Date does not occur, then (1) the Agreement shall be deemed null and void; (2) the Parties shall not be deemed to have waived any of their respective rights or to have settled any controversy between them that existed before the execution of the Agreement; (3) the Parties shall be restored *nunc pro tunc* to the respective legal positions that they were in immediately before the execution of the Agreement; (4) neither this Agreement nor any exhibit (or document or instrument, if any) delivered hereunder shall be (i) with prejudice to any person or Party hereto, (ii) deemed to be or construed as an admission by any Party of any act, matter, proposition, or merit or lack of merit

of any claim or defense, or (iii) used in any manner or for any purpose in any subsequent proceeding in this action, or in any other action in any court or in any other proceeding; and (5) all negotiations, proceedings, and statements made in connection with the negotiation of this Agreement (i) shall be without prejudice to any person or party herein, (ii) shall not be deemed as or construed to be an admission by any Party herein of any act, matter, proposition, or merit or lack of merit of any claim or defense, and (iii) shall not be offered in evidence in this or any other action or proceeding, except in connection with this Agreement or the enforcement thereof.

3. Payment to Trustee. The Trustee shall be paid the sum of Twenty-Four Million Dollars (\$24,000,000.00) (the "Settlement Payment") as follows. At Closing (as defined below):

(a) Beacon I shall pay \$19,766,425.29 by wire transfer of immediately available funds to the account specified on Schedule 1 attached hereto;

(b) Andover Associates shall absolutely, unconditionally, and irrevocably convey, assign, endorse, and transfer to the Trustee: (1) the \$500,000 advance from SIPC in respect of the Andover SIPA Claim, as allowed pursuant to Section 4(a) below and which advance is contemplated by Section 5(a) below, plus (2) \$1,733,574.71 that Andover Associates is entitled to receive from the distributions from the fund of customer property based on the allowed Andover SIPA Claim, as further described in Section 5(b) below; and

(c) Ivy shall pay \$2,000,000 by wire transfer of immediately available funds to the account specified on Schedule 1 attached hereto (the "Ivy Settlement Contribution"), which contribution shall be utilized by the Trustee to partially fund the Beacon Settlement Payment and Andover Settlement Payment, each as defined below.

(d) For the purposes of this Agreement, the "Beacon Settlement Payment" shall be \$21,543,182.62 and the "Andover Settlement Payment" shall be \$2,456,817.38.

4. Settlement of the Beacon SIPA Claim and the Andover SIPA Claim.

(a) Upon the occurrence of Closing, as a part of resolving the Adversary Proceeding and notwithstanding the Trustee's claims in the Adversary Proceeding as to Section 502(d) and equitable subordination, the Beacon SIPA Claim and the Andover SIPA Claim shall each be deemed allowed pursuant to section 502 of the Bankruptcy Code and 15 U.S.C. §7811(11), equal in priority to other allowed customer claims against the BLMIS estate, and not subject to setoff, subordination, reclassification, recalculation, reduction, or counterclaims, in each case except for any Universal Claim Adjustments (defined in (c) below), in the amounts of, respectively (together, the "Allowed Claims"):

i. Beacon SIPA Claim: One Hundred Fifty-Nine Million Eight Hundred Sixty-Seven Thousand Nine Hundred Twenty-Four Dollars and 62/100 (\$159,867,924.62), calculated as the Beacon Net Loss (\$138,324,742.00) increased by the Beacon Settlement Payment (\$21,543,182.62).

ii. Andover SIPA Claim: Five Million Thirty-Two Thousand Eight Hundred Seventeen Dollars and 38/100 (\$5,032,817.38), calculated as the Andover Net

Loss (\$2,576,000.00) increased by the Andover Settlement Payment (\$2,456,817.38).

(b) The Bankruptcy Court's order approving this Agreement shall provide for the conclusive allowance of the Beacon SIPA Claim and Andover SIPA Claim in the amounts set forth above, without setoff, subordination, reclassification, recalculation, reduction, counterclaims, avoidance, disallowance, recharacterization, or recoupment by the Trustee or the BLMIS Estate (in each case except for any Universal Claim Adjustments, defined in (c) below, and any Trustee Setoff Right, as defined and set forth in section 12(c) below), including, without limitation, any setoff, reduction or counterclaims for payments or transfers received or to be received by the Beacon/Andover Fund Defendants, or by the investors in or members of the Beacon/Andover Fund Defendants, from any other party as reimbursement of losses related to the Madoff fraud (including but not limited to any payments or transfers received or to be received from settlements in the District Court Actions).

(c) For purposes of this Section 4, "Universal Claim Adjustments" means any and all adjustments or revisions made by the Trustee to the amount, character or other treatment of BLMIS allowed claims as a whole, which adjustments or revisions are applied to the Allowed Claims in a manner consistent with such universal treatment.

(d) As further consideration for the Settlement Payment to be made pursuant to this Agreement, and as a key element of this Agreement, the Trustee agrees that he will not assert a claim in or right to any monies that (i) the Beacon/Andover Fund Defendants or their investors (in their capacity as Beacon/Andover Fund Defendant investors), (ii) the Income Plus Investment Fund, a Jeanneret Associates-managed entity (the "Income Plus Fund") or its investors (in their capacity as Income Plus Fund investors), or (iii) those certain persons or entities listed on Exhibit B hereto that invested directly with BLMIS and for which Jeanneret Associates provided advisory or other services (collectively, the "Direct Investors"), in each case obtain or obtained from any third party source whatsoever as reimbursement or recovery for losses due to Madoff, (including to recover as subsequent transfers amounts transferred by any of the Beacon/Andover Fund Defendants or the Income Plus Fund to their respective investors), *to the extent* the Trustee's assertions are in satisfaction of the claims contemplated by this Adversary Proceeding. In addition, the Trustee agrees that he will not in any way increase the amounts currently being sought in any of the JPJ Funds Adversary Proceedings as a result of any monies that the JPJ Initial Transferees obtain or obtained from any third party source whatsoever as reimbursement or recovery for losses due to Madoff, to the extent the Trustee's assertions are in satisfaction of the claims contemplated by this Adversary Proceeding.

(e) The Trustee acknowledges that the payment of the Beacon Settlement Payment, the Andover Settlement Payment, and the Ivy Settlement Contribution encompasses settlement of any and all claims that the Trustee brought against any and all of the Defendants in the Adversary Proceeding (subject to the terms of this Agreement), and that he will not object to any of the Beacon/Andover Fund Defendants, the Income Plus Fund, the Direct Investors, and/or the JPJ Initial Transferees receiving any other funds from any of the other Settling Defendants or from Citrin Cooperman & Co., LLP or Friedberg, Smith & Co., P.C.. Any such amount paid to any of the foregoing (or their respective investors) will not affect the Allowed Claims, the allowed claim of the Income Plus Fund (related to BLMIS customer claim number 004638,

previously filed by the Income Plus Fund in the SIPA Proceeding) (the “Income Plus Claim”), or the allowed claims, if any, of the Direct Investors (related to the BLMIS customer claim numbers associated with the BLMIS customer accounts set forth in Exhibit B, previously filed by the respective Direct Investors in the SIPA Proceeding) (together with the Income Plus Claim, the “JPJ-Based Claims”), and shall not subject the Allowed Claims or the JPJ-Based Claims to any reduction, disallowance, re-characterization, offset, counterclaim, subordination, avoidance, disallowance, recharacterization, or recoupment by the Trustee or the BLMIS Estate. Such contribution or payment by the other Settling Defendant(s) or any other person or entity shall not result in such person or entity’s entitlement to any portion of the Allowed Claims or JPJ-Based Claims or any distribution on account thereof.

(f) For the avoidance of doubt, (i) nothing herein shall constitute or effect an allowance of any claims against the BLMIS estate by any Direct Investors or JPJ Initial Transferees that have previously been disallowed, and (ii) nothing herein shall be deemed to adversely affect the Trustee’s right to seek payment or recovery from any and all available assets of the JPJ Initial Transferees in connection with the JPJ Funds Adversary Proceedings, without regard to the source of such assets, including if such assets come from any of the sources set forth in subsection (d) above. In the event of any conflict between this subsection (f) and any other provision of this Section 4 or Section 8 below, this subsection (f) shall control.

(g) Nothing herein shall be deemed to adversely affect Beacon I’s, Andover Associates’, the Income Plus Fund’s or the Direct Investors’ entitlement, if any, to receive a recovery from any Remission Fund (defined below) available to satisfy allowed claims of BLMIS customers proportionate to the allowed amounts of the Allowed Claims or the JPJ-Based Claims, as applicable, and based on whatever methodology is ultimately applied for determining rights to and extent of distributions on account of the Remission Fund. “Remission Fund” means any forfeiture fund (which, for the avoidance of doubt, does not include the BLMIS customer fund or funds for general creditors in the BLMIS estate, if any) established or to be established pursuant to 28 C.F.R. Part 9 or otherwise, including without limitation: (i) in connection with a settlement in *United States of America v. \$7,206,157,717 On Deposit at JPMorgan Chase, N.A. in the Account Numbers Set Forth on Schedule A*, No. 10-CV-9398 (S.D.N.Y.) (TPG) and (ii) any other restitution, remission or mitigation processes or funds administered or disbursed by any entity, governmental or otherwise (including the U.S. Department of Justice), or by Irving H. Picard, on behalf of any such entity.

(h) Notwithstanding any provision of this Section 4 to the contrary, each of the acknowledgements and agreements of the Trustee as to any parties other than the Settling Defendants, as set forth in subsections (d), (e), and (g) above, is subject to the following or substantively comparable language being included in any settlement agreement that is approved or so ordered with respect to the District Court Actions: “As a key element of this Agreement, the Parties agree that they will not assert a claim in or right to any monies that the BLMIS Trustee (as defined below) obtains or obtained from any source whatsoever as payment in satisfaction, via settlement or otherwise, of the claims asserted by the Trustee in those certain adversary proceedings commenced on or before October 12, 2012 in the U.S. Bankruptcy Court for the Southern District of New York (the ‘Bankruptcy Court’) against any Settling Party, Settlement Class Member, any investor in the Beacon/Andover Funds or Income Plus, or any person or entity that received investment management and/or consulting services from Jeanneret

Associates (together, the 'Adversary Proceedings'), including without limitation the 'Settlement Payment' as defined in that certain Settlement Agreement dated October 12, 2012 between the BLMIS Trustee and the Settling Defendants (as defined therein) as filed in the Beacon Adversary Proceeding (the 'Beacon Settlement') (provided however that the foregoing will not affect a Party's rights as to its or his allowed BLMIS claims, if any, including any entitlement to distributions thereon). The Parties further acknowledge and agree that they will not take any action to object to, oppose, or contest, or appeal any approval of, the Beacon Settlement or any other settlements of one or more of the Adversary Proceedings"; provided however that if any party in the District Court Actions is not a party to such settlement agreement, or opts out of being subject to the above provision, the provisions of subsections (d), (e), and (g) of this Section 4 shall be inapplicable to such party without any further action by any of the Parties.

5. Payment of Allowed Claims at Closing. At the Closing, a portion of the Allowed Claims shall be paid to Beacon I and Andover Associates, as follows:

(a) SIPA Advances. Subject to the assignment by Andover Associates to the Trustee pursuant to Section 3(b) above, Beacon I and Andover Associates shall each receive from the Trustee the sum of Five Hundred Thousand Dollars (\$500,000.00) as an advance from SIPA under Section 9 of SIPA.

(b) Amounts Distributed by Trustee. Subject to the last sentence of this subsection, Beacon I and Andover Associates shall also receive from the Trustee, respectively, Sixty One Million Two Thousand Four Hundred and Two Dollars and 68/100 (\$61,002,402.68) and One Million Nine Hundred Twenty Thousand Four Hundred and Twenty-Two Dollars and 46/100 (\$1,920,422.46), which amounts represent the *pro rata* distribution on the Allowed Claims that would have been made to Beacon I and Andover Associates pursuant to, collectively, (i) that certain *Order Approving the Trustee's Initial Allocation of Property to the Fund of Customer Property and Authorizing An Interim Distribution to Customers* dated July 12, 2011 as entered in the SIPA Proceeding (ECF No. 4217) and (ii) that certain *Order Approving a Second Allocation of Property to the Fund of Customer Property and Authorizing Second Interim Distribution to Customers* dated August 22, 2012 as entered in the SIPA Proceeding (ECF No. 4997), in each case had Beacon I's and Andover Associates' claims been allowed at such time and in such amounts as contemplated by this Agreement. With respect to Andover Associates, payment of the \$1,920,422.46 shall be made as follows: (i) \$303,976.92 to Andover Associates at Closing and (ii) \$1,616,445.54 to the Trustee at Closing, in accordance with the assignment by Andover Associates pursuant to Section 3(b). The remaining \$117,129.17 of the \$1,733,574.71 owed to the Trustee pursuant to Section 3(b) shall be paid to the Trustee out of the first amounts that would otherwise be paid to Andover Associates on the Andover SIPA Claim, upon the Trustee's distribution(s) of additional allocation(s) of property anytime following execution of this Agreement (the "Trustee Additional Payment").

(c) Any Additional Amounts Distributed Prior to Closing. Subject to the Trustee Additional Payment, Beacon I and Andover Associates shall also receive from the Trustee any *pro rata* distribution on the Allowed Claims that would have been made on or prior to Closing pursuant to any new Motion or other filing by the Trustee, if any, for additional interim distributions to BLMIS customers, had Beacon I's and Andover Associate's claims been allowed at such time and in such amounts as contemplated by this Agreement.

6. Agreement by the Management Defendants. As part of this Agreement, the Beacon/Andover Management Defendants, the JPJ Management Defendants, and the Ivy Management Defendants agree that neither they nor any of their affiliates or principals shall receive any management, administration or other compensation, fees, performance bonuses, profits, expenses, or any other payments or distributions out of any amounts distributed to the Beacon/Andover Fund Defendants by the BLMIS estate (either at Closing or anytime thereafter), except that such Defendants, affiliates or principals may receive, solely in their capacity as investors in the Beacon/Andover Fund Defendants, their *pro rata* share of any such distributions from the BLMIS estate which are used by the Beacon/Andover Fund Defendants to pay their investors. In addition, the JPJ Management Defendants agree that neither they nor any of their affiliates or principals shall receive any management, administration or other compensation, fees, performance bonuses, profits, expenses, or any other payments or distributions out of any amounts distributed to the Income Plus Fund by the BLMIS estate (either at Closing or anytime thereafter), except that the JPJ Management Defendants, affiliates or principals may receive, solely in their capacity as investors in the Income Plus Fund, their *pro rata* share of any such distributions from the BLMIS estate which are used by the Income Plus Fund to pay their investors. Sandra Simon hereby waives any entitlement to and shall not receive any distribution otherwise due to her in connection with her account with Beacon I. Joan K. Danziger hereby waives any entitlement to and shall not receive any distribution otherwise due to her in connection with her account at Andover QP.

7. Effect of Settlement Payment. Other than as set forth herein, it is expressly understood between the Parties that the Settlement Payment shall not, and is not intended to, release, waive, prejudice, or limit the Trustee's rights and ability to pursue any actions or claims, including, but not limited to, recovery actions under Section 544, 547, 548 and 550 of the Bankruptcy Code, available to him against (i) any party not released by Section 8 of this Agreement, including without limitation those Defendants named in the JPJ Funds Adversary Proceedings, or (ii) any party released by Section 8 of this Agreement, to the extent such action or claim is outside the scope of the releases contemplated herein.

8. Releases.

(a) In consideration for the covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, except with respect to the obligations, rights, and considerations arising under this Agreement, upon the occurrence of the Closing, the Trustee, on behalf of the Madoff estate and the BLMIS estate, shall fully, finally, irrevocably, and unconditionally release, remise and forever discharge, and shall be deemed to have fully, finally, irrevocably and unconditionally released, remised and forever discharged the Settling Defendants (including Sandra Simon and Joan K. Danziger) and the Oakwood Entities, in each case from any and all claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, costs or disbursements) known or unknown (including Unknown

Claims, as defined below), suspected or unsuspected, that are, have been, could have been, or might in the future be, asserted by the Trustee based on, arising out of, or relating in any way to (i) BLMIS, (ii) the Madoff estate, or (iii) the Adversary Proceeding, Settling Defendants' BLMIS accounts as described herein, the Allowed Claims, the Full History Fraudulent Transfers, the JPJ Initial Transferee Accounts, the JPJ-Based Claims, the Income Plus Fund, or the Direct Investors (together, the "Adversary-Related Claims", and collectively with (i) and (ii), the "Trustee's Released Claims Against the Settling Defendants").

(b) In consideration for the covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, except with respect to the obligations, rights, and considerations arising under this Agreement, upon the occurrence of the Closing, the Trustee, on behalf of the Madoff estate and the BLMIS estate, shall further fully, finally, irrevocably, and unconditionally release, remise and forever discharge, and shall be deemed to have fully, finally, irrevocably and unconditionally released, remised and forever discharged the Settling Defendants and the Oakwood Entities, their respective past or present predecessors, successors, direct and indirect parents and subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices, and (in the case of the individual Settling Defendants) their wives, children, grandchildren, and spouses thereof, and any trusts or financial vehicles established for any of their benefit, and each of their directors, officers, employees, partners, members, principals, agents, representatives, accountants, administrators, liquidators, and attorneys (in such capacity) (collectively, the "Defendant Released Parties"), in each case from any and all claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, costs or disbursements) known or unknown (including Unknown Claims, as defined below), suspected or unsuspected, that are, have been, could have been, or might in the future be, asserted by the Trustee based on, arising out of, or relating in any way to (i) the Adversary-Related Claims, (ii) any transfer of any assets, directly or indirectly, from BLMIS to any Settling Defendant, or (iii) if such claim relies on any allegation that any transfer of any assets, directly or indirectly, from BLMIS was conveyed to, received by or for the benefit of any Settling Defendant (collectively, the "Trustee's Released Claims Against the Defendant Released Parties," and together with the Trustee's Released Claims Against the Settling Defendants, the "Trustee's Released Claims"). Notwithstanding any provision in this section 8 to the contrary, the "Trustee's Released Claims" specifically *exclude* any and all liability of the JPJ Initial Transferees, as defendants in the JPJ Funds Adversary Proceedings (and the other defendants thereto), and such JPJ Initial Transferees and such other defendants are in no way released from the claims asserted in such proceedings by virtue of this Agreement (and such claims against the JPJ Initial Transferees and such other defendants in the JPJ Funds Adversary Proceedings are not affected by this release and are expressly preserved by the Trustee) (although for clarity, as set forth above, the Defendant Released Parties are released from claims related to the JPJ Initial Transferees and such other defendants or the JPJ Initial Transfers).

(c) In consideration for the covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, except with respect to the obligations, rights, and considerations arising under this Agreement and except with respect to their rights to distributions on the Allowed Claims (to the extent provided herein), upon the occurrence of the Closing, the Settling Defendants (including Sandra Simon and Joan K. Danziger) shall fully, finally, irrevocably, and unconditionally release, remise and forever discharge, and shall be deemed to have fully, finally, irrevocably and unconditionally released, remised and forever discharged, on behalf of each of them and their executors, administrators, heirs and assigns and successors: (i) the Trustee, (ii) all of the Trustee's representatives, attorneys, employees, professionals, agents and consultants (in their capacity on behalf of the Trustee) and (iii) BLMIS and its consolidated estate, in each case from any and all claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, costs or disbursements) known or unknown (including Unknown Claims, as defined below), suspected or unsuspected, that are, have been, could have been, or might in the future be, asserted by the Settling Defendants, based on, arising out of, or relating in any way to (1) BLMIS, (2) the Madoff Estate, or (3) the Adversary-Related Claims (collectively, the "Defendants' Released Claims", and together with the Trustee's Released Claims, the "Released Claims"). Notwithstanding any provision in this Section 8 to the contrary, for the sake of clarity, "Defendants' Released Claims" specifically *exclude* any and all remedies available to Ivy as set forth in that certain Confidentiality Agreement between the Trustee and The Bank of New York Mellon Corporation dated July 14, 2009, and the July 31, 2009 email agreement making such agreement applicable to Ivy.

(d) "Unknown Claims" shall mean any Released Claim(s), as defined herein, that a Party does not know or suspect to exist in his, her or its favor at the time of giving the release in this Agreement that if known by him, her or it, might have affected his, her or its settlement and release in this Agreement. With respect to any and all Released Claims (as defined above), the Parties shall expressly waive or be deemed to have waived, the provisions, rights and benefits of California Civil Code section 1542 (to the extent it applies herein), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each Party expressly waives, and shall be deemed to have waived, any and all provisions, rights and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to California Civil Code section 1542. Each Party may hereafter discover facts in addition to or different from those that he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but each Party shall expressly have and



shall be deemed to have fully, finally and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence or such different or additional facts. The Parties acknowledge and shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

(e) The foregoing releases shall become effective upon the occurrence of the Closing without any further action by any of the Parties.

(f) Notwithstanding the foregoing releases, if the Trustee has fully satisfied all valid net equity claims of customers and obligations to SIPC as subrogee and otherwise in accordance with SIPA, and thereafter has sufficient funds to make a distribution to general unsecured creditors, the Settling Defendants shall be entitled to participate in any such distribution as general unsecured creditors of BLMIS and/or the Madoff Estate. The amount of any such claim will be determined by the Trustee according to the equities of the case pursuant to section 502(j) of the Bankruptcy Code.

9. Assignment by Settling Defendants. Each of Beacon I and Andover Associates does hereby absolutely, unconditionally and irrevocably assign, transfer and set over to the Trustee and SIPC, as subrogee to the extent of its cash advances, pursuant to Section 9 of SIPA, for the satisfaction of the Allowed Claims, any and all rights, including causes of action or claims, that they now may have against BLMIS arising out of or relating to any fraudulent or illegal activity with respect to the BLMIS accounts which gave rise to the Allowed Claims. Further, each of the Settling Defendants represents and warrants that it has not previously compromised, liened, or assigned any claim, cause of action or other right against BLMIS, its principals or agents or any third party arising out of or related to any fraudulent or illegal activity giving rise to the Allowed Claims.

10. Closing. The closing (“Closing”) shall take place on a business day agreed by the Parties no later than five (5) business days after the Effective Date. At the Closing, (i) Beacon I, Andover Associates, and either Ivy or an Ivy Proprietary Fund shall make the Beacon Settlement Payment, Andover Settlement Payment (subject to Section 5(b)), and Ivy Settlement Contribution, respectively, as set forth in Section 3 above, (ii) the Allowed Claims shall be deemed allowed in full, as set forth in Section 4 above, (iii) the Trustee shall pay Beacon I and Andover Associates their SIPA Advances and any *pro rata* distributions, in each case as contemplated by Section 5 above; and (iv) the releases contained in Section 8 shall become effective without any further action by any of the Parties.

11. Dismissal of Adversary Proceeding and Related Matters. Within five (5) business days after the Closing:

(a) The Trustee shall submit to the Bankruptcy Court a stipulation, motion, or notice requesting or advising of the dismissal of the Adversary Proceeding, with prejudice, as against all Settling Defendants, with each Party bearing its own costs, attorneys’ fees, and expenses, and

with the Bankruptcy Court retaining jurisdiction to enforce this Settlement Agreement, and Settling Defendants waiving any right to argue in any forum that reference for such enforcement should be withdrawn from the Bankruptcy Court.

(b) The Settling Defendants shall withdraw any and all Motions to Withdraw the Reference previously filed in the SDNY with respect to the Adversary Proceeding, and except as set forth below, will not pursue any other litigation involving the Trustee arising out of or relating to BLMIS, including the “section 546(e) appeal” to the Second Circuit or any consolidated briefing before Judge Rakoff in the SDNY where such litigations involve the Adversary Proceeding. The Settling Defendants agree not to pursue or join any other litigation, or to advise or cooperate with any other defendant involved in any litigation involving the Trustee or SIPC arising out of or relating to BLMIS, Madoff, their liquidation proceeding and the BLMIS estate, including filing any motion, memorandum, or other court document, except with respect to (i) any rights or obligations arising under this Agreement, (ii) Beacon I and Andover Associates, in their capacity solely as holders of the Allowed Claims, or (iii) any litigation now existing (other than the Adversary Proceeding) or in the future commenced against the Settling Defendants in connection with the Madoff fraud. For the sake of clarity, nothing herein shall affect the ability of counsel for the Settling Defendants to represent any party in any litigation involving the Trustee.

12. General Representations and Warranties; Survival.

(a) Each Party hereby represents and warrants that, as of the date hereof, and subject to the approval of the Bankruptcy Court as set forth in Section 2 above, (i) such Party has the full power, authority and legal right and capacity to execute and deliver this Agreement and to perform its or his obligations hereunder; (ii) such Party has taken all necessary action to authorize the execution, delivery and performance of its or his respective obligations under this Settlement Agreement, (iii) this Agreement has been duly executed and delivered by such Party and constitutes the valid and binding agreement of such Party, enforceable against such Party in accordance with its terms; (iv) in executing this Agreement, such Party has done so with the full knowledge of any and all rights that it or he may have with respect to the controversies herein compromised, and that it or he has received or has had the opportunity to obtain independent legal advice from its or his attorneys with regard to the facts relating to said controversies and with respect to the rights arising out of said facts; and (v) no other person or entity, other than those specifically identified herein, has any interest in the matters that such Party releases herein, and such Party has not assigned or transferred or purported to assign or transfer to any such third person or party all or any portion of the matters that it or he releases herein.

(b) Each Settling Defendant that is not a natural person further represents and warrants to the other Parties that, as of the date hereof (i) it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation, and (ii) the execution and delivery of this Agreement and the performance by such Settling Defendant of its obligations hereunder have been duly and validly authorized by all necessary action on the part of such Settling Defendant.

(c) Each Settling Defendant represents, acknowledges and agrees that (i) any compromise (including without limitation compromises as to the Beacon SIPA Claim, the

Andover SIPA Claim, and the Income Plus Claim) or payment (including without limitation the Beacon Settlement Payment, the Andover Settlement Payment, and the Ivy Settlement Contribution) made pursuant to this Agreement is intended to constitute a contemporaneous exchange for new value given to the Settling Defendants pursuant to Bankruptcy Code section 547(c)(1), and is in fact a substantially contemporaneous exchange that is not intended to hinder, delay or defraud any entity to which the Settling Defendants are or may become indebted to on or after the date hereof, within the meaning of the Bankruptcy Code section 548(a)(1) and (ii) in reliance on this settlement, including without limitation the Settlement Payment contemplated by Section 3, the Trustee is contemporaneously providing the benefits to the Settling Defendants set forth in this Agreement, including without limitation the allowance of the Beacon SIPA Claim and Andover SIPA Claim and related limitations as to setoff, reduction, and other treatment of those claims as contemplated by Section 4. Notwithstanding the foregoing (i) and (ii), if an action is commenced by, or a judgment is entered in favor of, Beacon I and/or Andover Associates avoiding any such compromise or payment, the Settling Defendants agree that the Trustee has a complete right of setoff for, and shall have the right to setoff the amount sought to be avoided or the amount of such judgment, as applicable, including interest thereon, against any distributions to which Beacon I and Andover Associates, as applicable, would otherwise be entitled on their respective Allowed Claims by virtue of this Agreement (the “Trustee Setoff Right”).

(d) Each of the Settling Defendants represents to the Trustee that (i) as of, and after the transactions contemplated by, the Closing, it or he shall be solvent within the meaning of Bankruptcy Code section 547(b)(3) and 548(a)(1)(B)(ii)(I) and able to pay its or his debts when due and (ii) the payments and other transactions contemplated by the Closing shall not render any such Settling Defendant insolvent.

(e) Each of the Settling Defendants represents to the Trustee that if, within 91 days of the Closing, a Settling Defendant commences, or a third party commences against a Settling Defendant, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief from creditors, such Settling Defendant shall not argue or otherwise take the position in any such case, proceeding, or other action that: (i) Settling Defendant’s obligations under this Agreement may be avoided under the Bankruptcy Code section 547, (ii) Settling Defendant was insolvent at the time of entry into, or became insolvent as a result of payments made under, this Agreement, (iii) the mutual promises, covenants and obligations under this Agreement do not constitute a contemporaneous exchange for new value given to such Settling Defendant, (iv) the Trustee does not have a right to, or may not exercise, the Trustee Setoff Right, or (v) that the exercise of the Trustee Setoff Right is subject to the automatic stay pursuant to Bankruptcy Code section 362.

(f) The JPJ Management Defendants represent and acknowledge to the Trustee that: (i) contemporaneous herewith, Jeanneret and Perry are each providing to the Trustee an affidavit as to the financial condition of each of the JPJ Management Defendants (the “JPJA Affidavits”), which affidavits the Trustee is relying on (including with respect to the Trustee’s consideration of the JPJ Management Defendants’ ability to pay) in entering into this Agreement with said Defendants; (ii) the Income Plus Fund is in the process of being wound down and all its assets are being or will be distributed in accordance with such wind-down; (iii) Jeanneret, as the holder of 100% of the shares of Jeanneret Associates, represents that, upon dissolution of the Income

Plus Fund and distribution of all its assets, Jeanneret Associates will be dissolved; and (iv) in addition to the amounts paid or to be paid by the JPJ Management Defendants' insurer, Jeanneret and Perry, through Jeanneret Associates, have contributed or will contribute in excess of \$500,000 in the aggregate with respect to the defense and anticipated settlement of the District Court Actions.

(g) The Settling Defendants acknowledge that they previously provided to the Trustee a draft of that certain Stipulation of Settlement currently being negotiated in the District Court Actions (the "Existing Draft"), and in connection therewith, the Settling Defendants represent to the Trustee that (i) the Existing Draft is, as of the date hereof, the most recent version negotiated by the parties thereto and (ii) the terms of the Stipulation of Settlement will not materially change from those of the Existing Draft, as relates to the Trustee, the adversary proceedings brought by the Trustee on behalf of the BLMIS estate, or the defendants named therein. In reliance on such representations, the Trustee acknowledges and agrees that he will not take any action to object to or oppose the settlement of the District Court Actions and the actions listed on Exhibit C hereto (to the extent the actions on Exhibit C are encompassed by, and a part of, the settlement in the District Court Actions), provided that (i) no party to any of the District Court Actions or actions listed on Exhibit C has taken any action to object to or oppose the settlement contemplated by this Agreement or the Trustee's Motion to be filed in connection therewith and that (ii) the terms of such settlement do not contradict the terms of this Agreement.

(h) Each of the Settling Defendants hereby represents and warrants as to itself or himself that, to its or his knowledge, such Settling Defendant is not (and, in the case of Ivy, Ivy and the Oakwood Entities are not) immediate, mediate or subsequent transferees of any funds or property originating from Madoff or BLMIS (and with respect solely to the Ivy Defendants, limited to the period since October 1, 2000), other than those contemplated by the Adversary Proceeding and other than transfers, if any, received by it (or, for Ivy, them) from (i) the Beacon/Andover Funds, (ii) the Income Plus Fund, (iii) the Ivy Proprietary Funds, (iv) the Direct Investors, (v) the JPJ Initial Transferees, and (vi) any other Jeanneret-managed BLMIS customers (together, the "Relevant BLMIS Customers"), in connection with the Relevant BLMIS Customers' investments in BLMIS. Each Settling Defendant represents that it is not aware of any potential claims against such Settling Defendants (and, in the case of Ivy, the Oakwood Entities) by Madoff or BLMIS, other than the Full History Fraudulent Transfers addressed in the Adversary Proceeding. The Settling Defendants are aware of and acknowledge that the Trustee is relying on the representations set forth in this subsection (h) in agreeing to provide the Trustee's Released Claims as set forth in Section 8 above. For the sake of clarity, nothing herein shall be construed as an admission or an agreement that any transfer from any Relevant BLMIS Customers to any Settling Defendant was an immediate, mediate or subsequent transfer of any funds or property originating from Madoff or BLMIS

(i) The Trustee agrees that, as of and after the Closing, those certain documents (the "Mediation Documents") previously produced by Ivy in connection with mediation and settlement discussions pursuant to that certain Stipulation and Order between the Trustee and the Settling Defendants entered by the Bankruptcy Court on February 23, 2012 (as subsequently amended), and the related Side Letter agreement (and exhibits thereto) dated February 15, 2012 shall be maintained by the Trustee in a segregated "settlement only" database, which documents will not be reviewed by the Trustee's attorneys or other professionals, except to the extent the

Trustee is required to respond to a demand to compel production of the documents. In the event a request is made by any third party for the production of the Mediation Documents, the Trustee agrees to (i) object in full to such request on the basis that the documents were produced in connection with settlement, (ii) refuse to produce the Mediation Documents absent a court order expressly requiring him to do so, and (iii) oppose any motion seeking such a court order on the basis that the Trustee is contractually obligated not to produce the documents absent a court order.

(j) Each of the representations and warranties set forth in this Section 12 shall survive in perpetuity.

13. Announcements. The Parties agree that no press release, press statement, or other public statement as to this settlement shall be made until after the filing of the Trustee's motion pursuant to Bankruptcy Rule 9019 seeking approval of this Agreement with the Bankruptcy Court. All Parties agree not to make any disparaging statement with respect to each other, this settlement, or any settlement in the District Court Actions or make any statement inconsistent with this Agreement or the representations, terms or conditions contained herein.

14. Further Assurances. Each Party shall execute and deliver any document or instrument reasonably requested by any other Party after the date of this Agreement to effectuate the intent of this Agreement.

15. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties pertaining to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, representations and understandings of the Parties concerning the subject matter hereof. The Parties each hereby acknowledge that, in executing this Agreement, they have not relied on any representation, warranty, promise, statement, covenant or agreement, express or implied, direct or indirect, except for the JPJ Affidavit and as otherwise expressly set forth herein. Notwithstanding the foregoing, any agreements between the Parties relating to the designation and treatment of confidential documents, including without limitation the Confidentiality Agreement between the Trustee and The Bank of New York Mellon Corporation dated July 14, 2009, and the July 31, 2009 email agreement making such agreement applicable to Ivy, shall survive and are not waived or terminated by this Agreement

16. Amendment; Waiver. This Agreement may not be terminated, amended or modified in any way except by written instrument signed by all Parties. In light of the seriousness and solemnity of this agreement, the Parties waive any right to later assert that this agreement has been modified orally or informally. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

17. Assignment. This Agreement may not be assigned by any Party without the prior written consent of the other Parties; however, this Agreement does not prohibit Beacon I and Andover Associates from assigning their respective Allowed Claims pursuant to an order of the Bankruptcy Court, dated November 10, 2010, subject to the limitations and procedures set forth therein.

18. Successors. This Agreement shall be binding upon and inure to the benefit of each Party and its respective successors and permitted assigns.

19. Negotiated Agreement. This Agreement has been fully negotiated by the Parties. Each Party acknowledges and agrees that this Agreement has been drafted jointly, and the rule that ambiguities in an agreement or contract may be construed against the drafter shall not apply in the construction or interpretation of this Agreement.

20. Severability. In the event that any term or provision of this Agreement or any application thereof, other than the Releases contained in Section 8 or the Settlement Payment contemplated by Section 3, which are indispensable terms to this Agreement, is deemed to be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby. If any such term or provision (other than the Releases or Settlement Payment) is declared invalid or unenforceable, a lawful provision as closely as possible approximating the stricken one shall be substituted in its stead.

21. Counterparts; Electronic Copy of Signatures. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same document. Each Party may evidence its execution of this Agreement by delivery to the other Party of scanned or faxed copies of its signature, with the same effect as the delivery of an original signature.

22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to the principle of conflicts of law thereof), the Bankruptcy Code and SIPA. Each Party hereby waives on behalf of itself and its successors and assigns any and all right to argue that the choice of New York law provision is or has become unreasonable in any legal proceeding.

23. JURISDICTION; WAIVER OF JURY TRIAL.

(a) THE PARTIES AGREE THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT. IN THE EVENT THE BLMIS PROCEEDING IS CLOSED BY A FINAL DECREE AND NOT REOPENED, THE PARTIES AGREE THAT ANY DISPUTE ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR THE SUPREME COURT OF THE STATE OF NEW YORK IN NEW YORK COUNTY. THE PARTIES HERETO CONSENT TO THE JURISDICTION OF THE BANKRUPTCY COURT AND SUCH OTHER COURTS PURSUANT TO THIS SECTION 23(A). THE PARTIES HERETO CONSENT TO THE AUTHORITY OF THE BANKRUPTCY COURT TO HEAR AND DETERMINE AND ENTER FINAL JUDGMENT ON ANY AND ALL ISSUES ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. FOR THE AVOIDANCE OF AMBIGUITY, IN THE EVENT THAT CLOSING DOES NOT OCCUR, NOTHING HEREIN SHALL PREVENT THE SETTLING DEFENDANTS FROM CONTINUING TO SEEK WITHDRAWAL OF THE REFERENCE TO THE BANKRUPTCY

COURT AS TO ISSUES RELATED TO THE ADVERSARY PROCEEDING, OR THE TRUSTEE FROM OPPOSING SUCH ACTIONS.

(b) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

24. Expenses. Each Party shall bear its respective expenses relating to or arising out of this Agreement, including, but not limited to, fees for attorneys, accountants and other advisors.

25. Notices. All notices, requests, demands, consents and communications necessary or required under this Agreement shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, by overnight mail with confirmation, by facsimile (receipt confirmed) or by electronic means (receipt confirmed), to:

If to the Trustee:

Irving H. Picard  
Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
F: (212) 589-4201  
E: [ipicard@bakerlaw.com](mailto:ipicard@bakerlaw.com)

With a copy to:

Howard L. Simon, Esq.  
Kim M. Longo, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
F: 212-262-1215  
E: [hsimon@windelsmarx.com](mailto:hsimon@windelsmarx.com)  
E: [klongo@windelsmarx.com](mailto:klongo@windelsmarx.com)

If to the Beacon/Andover Fund Defendants:

Arthur Jakoby, Esq.  
Herrick, Feinstein, LLP  
2 Park Avenue  
New York, New York 10016  
F: (212) 592-1500  
E: [ajakoby@herrick.com](mailto:ajakoby@herrick.com)

If to the Beacon/Andover Management Defendants:

Tab K. Rosenfeld, Esq.  
Rosenfeld & Kaplan, LLP  
535 Fifth Avenue, Suite 1006  
New York, New York 10017  
F: (212) 682-1100  
E: [tab@rosenfeldlaw.com](mailto:tab@rosenfeldlaw.com)

If to the Ivy Defendants:

Lewis J. Liman, Esq.  
Jeffrey A. Rosenthal, Esq.  
Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
F: (212) 225-3999  
E: [lliman@cgsh.com](mailto:lliman@cgsh.com)  
E: [jrosenthal@cgsh.com](mailto:jrosenthal@cgsh.com)

If to the JPJ Management Defendants:

Brian E. Whiteley, Esq.  
Hiscock & Barclay, LLP  
One International Place, 26th Floor  
Boston, MA 02110  
F: (617) 722-6003  
E: [bwhiteley@hblaw.com](mailto:bwhiteley@hblaw.com)

All such notices, requests, demands, consents and other communications shall be deemed to have been duly given or sent two (2) days following the date on which mailed, or on the date on which delivered by courier or by hand or by facsimile or electronic transmission (receipt confirmed), as the case may be, and addressed as aforesaid.

26. No Third Party Beneficiaries. Except as expressly provided in Section 8, the Parties do not intend to confer any benefit by or under this Agreement upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

27. Captions and Rules of Construction. The captions in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of this Agreement or the scope or content of any of its provisions. Any reference in this Agreement to a section is to a section of this Agreement. "Including" is not intended to be a limiting term.

**[The next page is the signature page]**



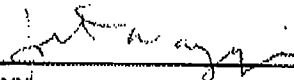
**IN WITNESS WHEREOF**, each Party has caused this Agreement to be duly executed and delivered as of the date set forth above.

**Irving H. Picard, the Trustee for the liquidation proceedings of Bernard L. Madoff Investment Securities LLC and the substantively consolidated bankruptcy case of Bernard L. Madoff**

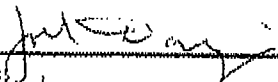
  
\_\_\_\_\_  
Irving H. Picard

[TRUSTEE SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

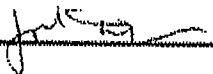
**BEACON ASSOCIATES LLC I**

  
Name: \_\_\_\_\_  
Title: PRES. Beacon Assoc. mgmt corp.

**BEACON ASSOCIATES LLC II**

  
Name: \_\_\_\_\_  
Title: Pres. Beacon Assoc. mgmt corp.

**BEACON ASSOCIATES LLC**

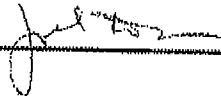
  
Name: \_\_\_\_\_  
Title: Pres. Beacon Assoc. mgmt corp.

**BEACON ASSOCIATES MANAGEMENT CORPORATION**

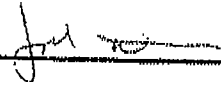
  
Name: \_\_\_\_\_  
Title: PRES

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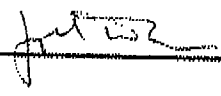
**ANDOVER ASSOCIATES, L.P.**

  
Name: \_\_\_\_\_  
Title: *Pres Andover Assoc. Mgmt. Corp.*

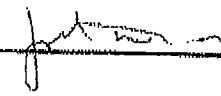
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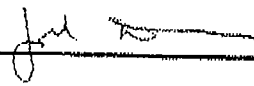
**ANDOVER ASSOCIATES (QP) LLC**

  
Name: \_\_\_\_\_  
Title: *Pres Andover Assoc. Mgmt. Corp.*

**ANDOVER ASSOCIATES LLC II**

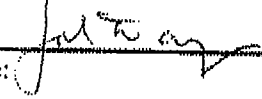
  
Name: \_\_\_\_\_  
Title: *Pres Andover Assoc. Mgmt. Corp.*

**ANDOVER ASSOCIATES MANAGEMENT CORPORATION**

  
Name: \_\_\_\_\_  
Title: *Pres.*

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CONT'D]

**JOEL DANZIGER**

Name:   
Title:

**HARRIS MARKHOFF**

Name: \_\_\_\_\_  
Title:

**J.P. JEANNERET ASSOCIATES, INC.**

Name: \_\_\_\_\_  
Title:

**JOHN JEANNERET**

Name: \_\_\_\_\_  
Title:

**PAUL PERRY**

Name: \_\_\_\_\_  
Title:

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**JOEL DANZIGER**

\_\_\_\_\_  
Name:  
Title:

**HARRIS MARKHOFF**



\_\_\_\_\_  
Name:  
Title:

**J.P. JEANNERET ASSOCIATES, INC.**

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Name:  
Title:

**JOHN JEANNERET**

\_\_\_\_\_  
Name:  
Title:

**PAUL PERRY**

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Name:  
Title:

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JOEL DANZIGER

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Name:  
Title:

HARRIS MARKHOFF

\_\_\_\_\_  
Name:  
Title:

J.P. JEANNERET ASSOCIATES, INC.

*John P. Jeanneret*  
\_\_\_\_\_  
Name: *John P. Jeanneret*  
Title: *President*

JOHN JEANNERET

*John P. Jeanneret*  
\_\_\_\_\_  
Name: *John Jeanneret*  
Title: *Individually*

PAUL PERRY

*Paul Perry*  
\_\_\_\_\_  
Name: *Paul Perry*  
Title:

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**IVY ASSET MANAGEMENT LLC**



Name: Douglas W. Squasoni  
Title: Chief Restructuring Officer and Chief  
Investment Officer

**LAWRENCE SIMON**

Name:  
Title:

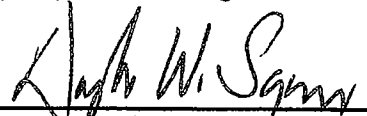
**HOWARD WOHL**

Name:  
Title:

**IVY BIRCHWOOD ASSOCIATES, L.P.**

By: Birchwood Associates Management, LLC  
its general partner

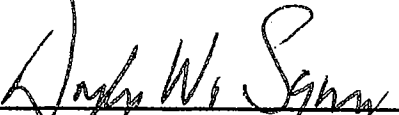
By: Ivy Asset Management LLC, its manager



Name: Douglas W. Squasoni  
Title: Chief Restructuring Officer and Chief  
Investment Officer

**IVY ENHANCED INCOME FUND**

By: Ivy Asset Management LLC, its investment  
manager



Name: Douglas W. Squasoni  
Title: Chief Restructuring Officer and Chief  
Investment Officer

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PAGE 02

**IVY ASSET MANAGEMENT LLC**

\_\_\_\_\_  
Name:  
Title:

**LAWRENCE SIMON**

*Lawrence Simon*  
\_\_\_\_\_  
Name:  
Title:

**HOWARD WOHL**

\_\_\_\_\_  
Name:  
Title:

**IVY BIRCHWOOD ASSOCIATES, L.P.**

\_\_\_\_\_  
Name:  
Title:

**IVY ENHANCED INCOME FUND**

\_\_\_\_\_  
Name:  
Title:

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**IVY ASSET MANAGEMENT LLC**

\_\_\_\_\_  
Name:  
Title:

**LAWRENCE SIMON**

\_\_\_\_\_  
Name:  
Title:

**HOWARD WOHL**

  
\_\_\_\_\_  
Name:  
Title:

**IVY BIRCHWOOD ASSOCIATES, L.P.**

\_\_\_\_\_  
Name:  
Title:

**IVY ENHANCED INCOME FUND**

\_\_\_\_\_  
Name:  
Title:

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**IVY REGENCY FUND, L.P.**

By: Regency Asset Management, LLC  
its general partner

By: Ivy Asset Management LLC, its manager



Name: Douglas W. Squasoni  
Title: Chief Restructuring Officer and Chief  
Investment Officer

**IVY ROSEWOOD ASSOCIATES, L.P.**

By: Rosewood Associates Management, LLC  
its general partner

By: Ivy Asset Management LLC, its manager



Name: Douglas W. Squasoni  
Title: Chief Restructuring Officer and Chief  
Investment Officer

**IVY ROSEWOOD OFFSHORE FUND, LTD.**

By: Cardinal Investments Limited, as director

Name:

Title:

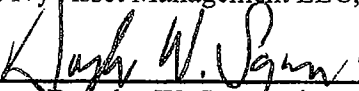
By: Bluejay Investments Ltd., as director

Name:

Title:

**BIRCHWOOD ASSOCIATES  
MANAGEMENT, LLC**

By: Ivy Asset Management LLC, its manager



Name: Douglas W. Squasoni  
Title: Chief Restructuring Officer and Chief  
Investment Officer

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CONT'D]

**IVY REGENCY FUND, L.P.**

By: Regency Asset Management, LLC  
its general partner

By: Ivy Asset Management LLC, its manager

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Name: Douglas W. Squasoni  
Title: Chief Restructuring Officer and Chief  
Investment Officer

**IVY ROSEWOOD ASSOCIATES, L.P.**

By: Rosewood Associates Management, LLC  
its general partner

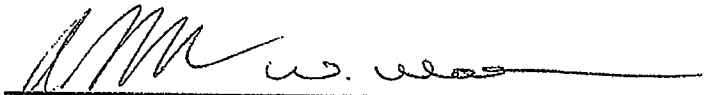
By: Ivy Asset Management LLC, its manager

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Name: Douglas W. Squasoni  
Title: Chief Restructuring Officer and Chief  
Investment Officer

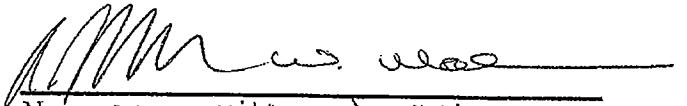
**IVY ROSEWOOD OFFSHORE FUND, LTD.**

By: Cardinal Investments Limited, as director



Name: ALAN MILGATE / WILLIAM WALMSLEY  
Title: AUTHORIZED SIGNATORIES

By: Bluejay Investments Ltd., as director



Name: ALAN MILGATE / WILLIAM WALMSLEY  
Title: AUTHORIZED SIGNATORIES

**BIRCHWOOD ASSOCIATES  
MANAGEMENT, LLC**

By: Ivy Asset Management LLC, its manager

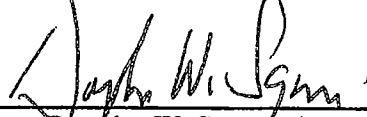
---

Name: Douglas W. Squasoni  
Title: Chief Restructuring Officer and Chief  
Investment Officer

[SETTLING DEFENDANT SIGNATURE PAGE TO SETTLEMENT AGREEMENT,  
CONT'D]

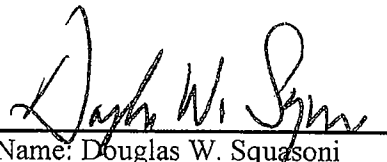
**ROSEWOOD ASSOCIATES MANAGEMENT, LLC**

By: Ivy Asset Management LLC, its manager



\_\_\_\_\_  
Name: Douglas W. Squasoni  
Title: Chief Restructuring Officer and Chief Investment Officer

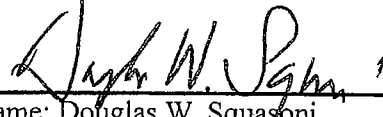
**IVY INTERNATIONAL, LLC**



\_\_\_\_\_  
Name: Douglas W. Squasoni  
Title: Sole Manager

**REGENCY ASSET MANAGEMENT, LLC**

By: Ivy Asset Management LLC, its manager



\_\_\_\_\_  
Name: Douglas W. Squasoni  
Title: Chief Restructuring Officer and Chief Investment Officer

Accepted and Agreed as to Sections 6 and 8 and Exhibit A herein:

\_\_\_\_\_  
**SANDRA SIMON**

\_\_\_\_\_  
**JOAN K. DANZIGER**

[SETTLING DEFENDANT SIGNATURE PAGE TO SETTLEMENT AGREEMENT, CONT'D]

10/12/2012 11:17 5169214950

THE UPS STORE

PAGE 03

**ROSEWOOD ASSOCIATES MANAGEMENT,  
LLC**

\_\_\_\_\_  
Name:  
Title:

**IVY INTERNATIONAL, LLC**

\_\_\_\_\_  
Name:  
Title:

**REGENCY ASSET MANAGEMENT, LLC**

\_\_\_\_\_  
Name:  
Title:

Accepted and Agreed as to Sections 6 and 8 and  
Exhibit A herein:

*Sandra Simon*

\_\_\_\_\_  
**SANDRA SIMON**

\_\_\_\_\_  
**JOAN K. DANZIGER**

[SETTLING DEFENDANT SIGNATURE PAGE TO SETTLEMENT AGREEMENT,  
CONT'D]

**ROSEWOOD ASSOCIATES MANAGEMENT,  
LLC**

\_\_\_\_\_  
Name:  
Title:

**IVY INTERNATIONAL, LLC**

\_\_\_\_\_  
Name:  
Title:

**REGENCY ASSET MANAGEMENT, LLC**

\_\_\_\_\_  
Name:  
Title:

Accepted and Agreed as to Sections 6 and 8 and  
Exhibit A herein:

\_\_\_\_\_  
**SANDRA SIMON**

  
\_\_\_\_\_  
**JOAN K. DANZIGER**

[SETTLING DEFENDANT SIGNATURE PAGE TO SETTLEMENT AGREEMENT,  
CONT'D]

**Exhibit A**

**Settling Defendants**

**The Beacon/Andover Defendants**

- BEACON ASSOCIATES LLC I (“Beacon I”);
- BEACON ASSOCIATES LLC II (“Beacon II”);
- BEACON ASSOCIATES LLC (“Beacon Associates”, and together with Beacon I and Beacon II, the “Beacon Fund Defendants”);
- ANDOVER ASSOCIATES, L.P. (“Andover Associates”);
- ANDOVER ASSOCIATES LLC I, f/k/a Andover Associates, L.P. I and f/k/a Andover Associates, L.P. (“Andover I”);
- ANDOVER ASSOCIATES (QP) LLC (“Andover QP”);
- ANDOVER ASSOCIATES LLC II (“Andover II”, and together with Andover Associates, Andover I, and Andover QP, the “Andover Fund Defendants”)(the Beacon Fund Defendants and the Andover Fund Defendants are referred to collectively herein as the “Beacon/Andover Fund Defendants”);
- JOEL DANZIGER, individual (“Danziger”);
- HARRIS MARKHOFF, individual (“Markoff”);
- BEACON ASSOCIATES MANAGEMENT CORPORATION (“BAMC”);
- ANDOVER ASSOCIATES MANAGEMENT CORPORATION (“AAMC”, and together with Danziger, Markhoff, and BAMC, the “Beacon/Andover Management Defendants”)(the Beacon/Andover Fund Defendants and the Beacon/Andover Management Defendants are collectively referred to herein as the “Beacon/Andover Defendants”);

**The JPJ Management Defendants**

- J.P. JEANNERET ASSOCIATES, INC. (“Jeanneret Associates”);
- JOHN JEANNERET, individual (“Jeanneret”);
- PAUL PERRY, individual (“Perry”), and together with Jeanneret Associates and Jeanneret, the “JPJ Management Defendants”);

**The Ivy Defendants**

- IVY ASSET MANAGEMENT LLC (“Ivy”);
- LAWRENCE SIMON, individual (“Simon”);
- HOWARD WOHL, individual (“Wohl”, and together with Ivy and Simon, the “Ivy Management Defendants”);
- IVY BIRCHWOOD ASSOCIATES, L.P. (“Birchwood”);
- IVY ENHANCED INCOME FUND (“Enhanced Income”);
- IVY REGENCY FUND, L.P. (“Regency”);
- OAKWOOD ASSOCIATES (“Oakwood”);
- IVY ROSEWOOD ASSOCIATES, L.P. (“Rosewood”);
- IVY ROSEWOOD OFFSHORE FUND, LTD. (“Rosewood Offshore”, and together with Birchwood, Oakwood, Rosewood, and Enhanced Income, the “Ivy Proprietary Fund Defendants”);
- BIRCHWOOD ASSOCIATES MANAGEMENT, LLC (“Birchwood Management”);
- OAKWOOD ASSOCIATES MANAGEMENT, LLC (“Oakwood Management”);
- ROSEWOOD ASSOCIATES MANAGEMENT, LLC (“Rosewood Management”);



- IVY INTERNATIONAL, LLC (“Ivy International”); and
- REGENCY ASSET MANAGEMENT, LLC (“Regency Management”, and together with Birchwood Management, Oakwood Management, Rosewood Management, and Ivy International, the “Proprietary Fund Management Defendants”)(the Ivy Management Defendants, Ivy Proprietary Fund Defendants, and Proprietary Fund Management Defendants are collectively referred to herein as the “Ivy Defendants”).

**“Settling Defendants” solely for purposes of Section 8 herein:**

- SANDRA SIMON
- JOAN K. DANZIGER

**Exhibit B**

**Direct Investors**

<b>Investor</b>	<b>BLMIS Account Number</b>
Buffalo Laborers Welfare Fund	1B0199
Empire State Carpenters Annuity Fund ( <i>f/k/a Onondaga Carpenters Local 12 Retirement Fund and the Upstate New York Carpenters Annuity Fund</i> )	1C1224
Empire State Carpenters Pension Fund ( <i>f/k/a Onondaga Carpenters Local 12 Pension Fund and the Upstate New York Carpenters Pension Fund</i> )	1C0003
Empire State Carpenters Welfare Fund ( <i>f/k/a Onondaga County Carpenters Local 12 Health Fund and the Upstate New York Carpenters Health Fund</i> )	1C0011
Engineers Joint Welfare Fund	1E0114
IBEW Local Union 43 and Electrical Contractors Pension Fund	1I0002
IBEW 325 Annuity Fund	1I0007
IBEW 325 Joint Trust Fund	1I0006
IBEW Local 1249 Pension Fund	1I0001
IBEW Local 1249 Insurance Fund	1I0003
IBEW Local 1249 Union	1I0008
Patricia J. DeStefano	1D0024
Plumbers & Steamfitters Local 73 Health & Welfare Fund	1L0127
Plumbers & Steamfitters Local 267 Insurance Fund	1P0057
Plumbers & Steamfitters Local 267 Pension Fund	1P0055
Plumbers Local 112 Pension Fund	1P0060
Roofers Local 195 Pension Fund	1R0032

**Exhibit C**

**Other Settling Actions**

*Cuomo vs. Ivy Asset Management L.L.C. et al.*, 450489/2010 (N.Y. Sup. Ct. N.Y. Cnty.);

*Newman et al. v. Family Management Corp. et al.*, No. 1:08-cv-11215-LBS (S.D.N.Y.);

*Hecht v. Andover Associates Management Corp.*, Index No. 6110/2009 (N.Y. Sup. Ct. Nassau Cnty.);

*Sacher v. Beacon Associates Management Corp.*, Index No. 005424/2009 (N.Y. Sup. Ct. Nassau Cnty.);

*Jordan Group LLC v. Beacon Associates Management Corp.*, Index No. 3757/2011 (N.Y. Sup. Ct. Nassau Cnty.);

*McBride v. KPMG, Int'l, et al.*, Index No. 650632/09 (N.Y. Sup. Ct. N.Y. Cnty.);

*Altman v. Beacon Associates Management Corp.*, Index No. 652238/2010 (N.Y. Sup. Ct. N.Y. Cnty.);

*Glicker v. Ivy Asset Management Corp.*, Court File No. 502010CA029643 XXXX MB AB (Fla. Cir. Ct. Palm Beach Cnty.);

*Schott v. Ivy Asset Management Corp. et al.*, No. 1:10-cv-08077-LBS-AJP (S.D.N.Y.);

*Beacon Associates Management Corp. v. Beacon Associates LLC I*, No. 09-cv-06910 (S.D.N.Y.); and

*Gluck v. Beacon Associates LLC II and Beacon Associates Management Corp.*, AAA No. 19 435 00120 10 (American Arbitration Association).

Schedule 1


WIRING INSTRUCTIONS

Citi Private Bank  
666 5th Ave., 5th Floor  
New York, New York 10103

ABA No.: 021000089

Swift Code: CITIUS33

Account Name: Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff  
Investment Securities LLC

Account No.: 

# EXHIBIT K

**Submission Copy**

[PROPOSED] SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

Present:

**HON. STEPHEN A. BUCARIA**

Justice

----- X

JOEL SACHER and SUSAN SACHER, derivatively on :  
behalf of BEACON ASSOCIATES LLC II, :  
 : TRIAL/IAS Part 1  
 : NASSAU COUNTY  
 :  
Plaintiff, :  
 :  
- against - :  
 :  
BEACON ASSOCIATES MANAGEMENT CORP., IVY :  
ASSET MANAGEMENT CORP., IVY ASSET : 005424/2009  
MANAGEMENT LLC, FRIEDBERG, SMITH & CO., : 006110/2009  
P.C., JOEL DANZIGER and HARRIS MARKHOFF, : 003757/2011  
 :  
Defendants, :  
 :  
- and - :  
 :  
BEACON ASSOCIATES LLC II, :  
 :  
Nominal Defendant. :  
 :  
----- X

CHARLES J. HECHT, derivatively on behalf of :  
ANDOVER ASSOCIATES LLC I, :  
 :  
Plaintiff, :  
 :  
- against - :  
 :  
ANDOVER ASSOCIATES MANAGEMENT CORP., :  
IVY ASSET MANAGEMENT CORP., :  
IVY ASSET MANAGEMENT LLC, :  
CITRIN COOPERMAN & CO., LLP, :  
JOEL DANZIGER and HARRIS MARKHOFF, :  
 :  
 :

Defendants,	:
- and -	:
ANDOVER ASSOCIATES LLC I,	:
Nominal Defendant.	:
-----X	
JORDAN GROUP LLC, derivatively	:
on behalf of BEACON ASSOCIATES LLC I,	:
Plaintiff,	:
- against -	:
BEACON ASSOCIATES MANAGEMENT CORP., IVY	:
ASSET MANAGEMENT CORP., IVY ASSET	:
MANAGEMENT LLC, FRIEDBERG, SMITH & CO.	:
P.C., JOEL DANZIGER and HARRIS MARKHOFF,	:
Defendants,	:
- and -	:
BEACON ASSOCIATES LLC I,	:
Nominal Defendant.	:
-----X	

The Court has considered the following papers in connection with this Order:

Motion For Approval Of Derivative Settlement.....X  
Affirmation In Support.....X

Before the Court is a motion by plaintiffs Joel and Susan Sacher, Charles J. Hecht and Jordan Group LLC (together “Plaintiffs”) for final approval of a settlement of the above-captioned derivative actions with respect to their claims against Beacon Associates Management Corp., Andover Associates Management Corp., Joel Danziger, Harris Markhoff and Ivy Asset Management LLC (successor to Ivy Asset Management Corp.) (together, the “Settling Defendants”).

The proposed settlement (of all of the related litigation, both private and governmental) is being overseen and has already been preliminarily approved by the United States District Court for the Southern District of New York (the “Federal Court”), and is now being presented for approval in this Court. As part of the settlement process which has been overseen by the Federal Court, the Federal Court has approved widely-disseminated notices as sufficient to satisfy due process. This Court is being asked to approve the settlement, as a prerequisite to entry of final judgment in this Court, following which final judgment will be entered in the Federal Court, and all coordinated actions which are being settled as part of this Settlement will be dismissed with prejudice as to the Settling Defendants.

The proposed settlement does not affect the claims Plaintiffs have asserted against defendants Freidberg, Smith & Co., P.C. and Citrin Cooperman & Co., LLP (together, the “Non-Settling Defendants”). Because the proposed settlement would dispose of claims against the Settling Defendants asserted derivatively on behalf of nominal defendants Beacon Associates LLC I, Beacon Associates LLC II and Andover Associates LLC I, the Court’s approval of the proposed settlement is required for it to become effective. See N.Y. Bus. Corp. Law § 626(d). For the reasons stated herein, upon due consideration by the Court, Plaintiffs’ motion for final approval of the proposed settlement is **granted**.

Sacher v. Beacon Associates Management Corp. et al., Index No. 5424/2009, was commenced in this Court on March 23, 2009. In that case, plaintiffs Joel and Susan Sacher assert that they are and at all relevant times were members of the New York limited liability company Beacon Associates LLC II (“Beacon II”), and assert the following claims:

- Breach of Contract (two causes of action), Negligence and Aiding and Abetting Breach of Fiduciary Duty against Ivy Asset Management LLC
- Breach of Contract, Gross Negligence and Breach of Fiduciary Duty against Beacon Associates Management Corp.
- Aiding and Abetting Breach of Fiduciary Duty against Joel Danziger and Harris Markhoff
- Professional Negligence against Friedberg, Smith & Co., P.C.



By an Order dated April 26, 2010 disposing of motions to dismiss the operative complaint in this case, the Court held that plaintiffs' Joel and Susan Sacher had standing under New York law to assert these claims derivatively on behalf of Beacon II and that they had adequately pled each claim except for those claims which were for breach of contract against Ivy Asset Management LLC. That Order is currently on appeal before the Appellate Division, Second Department. On August 11, 2011, the Court granted renewal of defendants' motions to dismiss, and upon renewal, dismissed Plaintiffs' first and second causes of action against Ivy Asset Management for breach of contract and Plaintiffs' fourth cause of action against Ivy Asset Management for negligence. That Order is also currently on appeal before the Appellate Division, Second Department.

Hecht v. Andover Associates Management Corp. et al., Index No. 6110/2009, was commenced in this Court on April 1, 2009. In that case, plaintiff Charles J. Hecht asserts that he is and at all relevant times was a member of the New York limited liability company Andover Associates LLC I ("Andover"), and asserts the following claims:

- Breach of Contract, Negligence and Aiding and Abetting Breach of Fiduciary Duty against Ivy Asset Management LLC
- Breach of Contract, Gross Negligence and Breach of Fiduciary Duty against Andover Associates Management Corp.
- Aiding and Abetting Breach of Fiduciary Duty against Joel Danziger and Harris Markhoff
- Professional Negligence against Citrin, Cooperman & Co., LLP.

By an Order dated March 12, 2010 disposing of motions to dismiss the operative complaint in this case, the Court held that plaintiff Charles J. Hecht had standing under New York law to assert these claims derivatively on behalf of Andover and that he had adequately pled each claim except for that claim which was for breach of contract against Ivy Asset Management LLC. That Order is currently on appeal before the Appellate Division, Second Department.

Jordan Group LLC v. Beacon Associates Management Corp. et al., Index No. 3757/2011, was commenced in this Court on March 11, 2011. In that case, plaintiff Jordan Group LLC asserts that it is and at all relevant times was a member of the New York limited liability company Beacon Associates LLC I ("Beacon I"), and asserts the following claims:

- Breach of Contract (two causes of action), Negligence and Aiding and Abetting Breach of Fiduciary Duty against Ivy Asset Management LLC
- Breach of Contract, Gross Negligence and Breach of Fiduciary Duty against Beacon Associates Management Corp.
- Aiding and Abetting Breach of Fiduciary Duty against Joel Danziger and Harris Markhoff

-Professional Negligence against Friedberg, Smith & Co., P.C.

Because of the similarity of the claims asserted in Jordan to those previously asserted in Sacher and Hecht, on May 6, 2011, the parties stipulated that the time for defendants in Jordan to answer or otherwise move with respect to the complaint is tolled pending a decision by the Appellate Division, Second Department with respect to the pending appeals in Sacher and Hecht.

The Court has now been presented with a proposed settlement that is being overseen by the Federal Court, and following approval of the settlement by the Federal Court and this Court, would dispose of all of the claims asserted against the Settling Defendants in these actions and actions filed in various courts which have been coordinated with these actions, as well as any other claims that could be asserted by Beacon I, Beacon II or Andover against the Settling Defendants and all of their respective predecessors, successors, direct and indirect parents and subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices, and each other of their present or former partners, members, principals, officers, directors, employees, attorneys, insurers, and other persons or entities acting or purporting to act on behalf of any of the foregoing (the "Defendant Released Parties") arising out of the same or similar facts or transactions as are at issue in these actions. Approval of the settlement by this Court would result in dismissal with prejudice of the claims asserted against the Settling Defendants in these actions. The Settlement will also result in the entry of a final judgment in these and all other related actions, as to the Settling Defendants. In settlement of the coordinated cases, including the class and derivative cases filed in Federal Court, the cases filed by the United States Secretary of Labor and the New York Attorney General, these derivative cases and the other cases being settled herewith, the Settling Defendants have agreed to the payment of a sum of money (the "Settlement Amount") and such other relief as is reflected in a Stipulation of Settlement (\_\_\_\_ Affirmation Ex. A) (the "Stipulation of Settlement").

Since March 2011, by stipulation of the parties and Order of the undersigned, disclosures in Hecht, Sacher and Jordan has been coordinated with discovery in related actions pending before the Honorable Leonard B. Sand and the Honorable Colleen McMahon of the Federal Court *sub nom. In re Beacon Associates Litigation*, No. 09 Civ. 0777 (LBS) (AJP) and *In re J.P. Jeanneret Associates Inc., Litigation*, No. 09 Civ. 3907 (CM)(AJP) (together, the "Federal Actions"). Having undertaken due and proper consideration of the proposed settlement, this Court is called upon to evaluate the fairness and reasonableness of the proposed settlement as a condition of approval (Benedict v. Whitman Breed Abbott & Morgan, 77 A.D. 3d 870, 872 [2d Dep't 2010] ("The court must determine whether a proposed settlement of a shareholder derivative claim is fair and reasonable to the corporation and its shareholders, then 'either approve or disapprove the settlement.'") (quoting Klurfeld v. Equity Enters., 79 A.D.2d 124, 126 [2d Dep't 1981])). Consistent with N.Y. Bus. Corp. Law § 626, the Court determines as follows, solely with respect to proposed settlement, and without prejudice to the Settling Defendants' rights to challenge any of the foregoing determinations should settlement not be consummated:

(1) Plaintiffs a) Jordan Group LLC, b) Joel Sacher and Susan Sacher, and c) Charles J. Hecht have standing to assert claims derivatively on behalf of Beacon I, Beacon II and Andover, respectively, and pre-suit demand upon the respective managing members of Beacon I and Beacon II and the general partner of Andover is excused in each of the above-captioned cases for substantially the reasons set forth in this Court's decision of March 12, 2010 in Hecht and April 26, 2010 in Sacher.

(2) The proposed settlement has been agreed to by Beacon I, Beacon II and Andover, and their respective counsel, who are signatories to the Stipulation of Settlement.

(3) The Settlement Amount of \$219,857,694, allocated among the Settling Defendants as provided in the Stipulation of Settlement, is fair and reasonable consideration for the compromise of all of the claims asserted in the Federal Actions (as previously determined by the Federal Court) and the claims asserted herein against the Settling Defendants. The Court agrees with the Federal Court that the Settlement Amount reflects a good faith compromise in light of the risks and uncertainties for all parties associated with trial of all of the claims asserted in these actions and the Federal Actions.

(4) The parties have established that the proposed settlement was negotiated at arms'-length and in good faith by parties with adverse interests and that the terms and conditions of the settlement, as set forth in the Stipulation of Settlement and attendant papers, is fair and equitable to all parties, including Beacon I, Beacon II, Andover and their respective non-managing members and/or limited partners.

(5) As part of the settlement process which has been overseen by the Federal Court, the Federal Court has approved widely-disseminated notices as sufficient to satisfy due process. The Court finds that the notice of the proposed settlement as approved by the Federal Court and effectuated by the claims administrator retained to administer the Settlement satisfies the requirements of New York law and due process.

(6) Any plan for the allocation or distribution of the Settlement Amount among the various settling parties, as well as any application for the approval of attorneys' fees or expenses to be paid from the Settlement Amount, are not material to the Court's consideration of the fairness and reasonableness of the proposed settlement. Accordingly, the Court's approval of the proposed settlement is not contingent upon the approval of any plan of allocation or application for attorneys' fees and expenses which may be made in the Federal Actions. Notwithstanding the foregoing, the Court notes that the plan of allocation among Beacon I, Beacon II and Andover was the result of extensive arm's length negotiation among the parties, including Plaintiffs, Beacon I, Beacon II and Andover.

(7) Where a shareholder derivative suit is successful or results in a recovery or in anything being received by plaintiffs as the result of the settlement thereof, the Court has the power to award plaintiffs their reasonable expenses including reasonable attorney's fees. See N.Y. Bus. Corp. Law § 626(e). The expenses incurred and paid in Hecht, Sacher and Jordan through April 19, 2012 are included as part of the settlement of the Federal Actions. The Federal Court is overseeing the application for attorneys' fees and expenses being submitted by all Plaintiffs' Counsel in the coordinated actions, including Plaintiffs' Counsel in these actions, Wolf Haldenstein Adler Freeman & Herz LLP, which includes the attorneys' fees and expenses of Deutsch & Lipner, Plaintiffs' co-counsel in Jordan. This Court approves such amount as the Federal Court determines to be appropriate after consideration of the joint fee application in the Federal Actions.

(8) The proposed settlement, as approved by the Federal Court and as approved by this Court in this Order, shall not affect the claims asserted against the Non-Settling Defendants

in any respect. However, to the extent that the Non-Settling Defendants shall at any time be found jointly liable with the Defendant Released Parties on any claim arising from the facts or transactions at issue in these actions or the Federal Actions, the respective liabilities of the Non-Settling Defendants with respect to such claim shall be reduced to the extent of the Settlement Amount or the Defendant Released Parties' equitable share of damages, whichever is greater. See N.Y. Gen. Oblig. L. § 15-108. The Non-Settling Defendants, and any other person or entity later named as a defendant, are hereby permanently barred, enjoined and restrained from commencing, prosecuting or asserting any claim for indemnity or contribution against the Defendant Released Parties (or any other claim against the Defendant Released Parties where the injury consists of actual or threatened liability to the Plaintiffs, or any settlement payment to any Plaintiff) arising out of the same or similar facts or transactions as are at issue in these actions or in the Federal Actions, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-party claims or otherwise, whether or not asserted in this action, and whether asserted in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency or other forum in the United States or elsewhere. In no event shall Plaintiffs, Beacon I, Beacon II or Andover be entitled to claim against the Defendant Released Parties by, through, or on account of any claim against the Non-Settling Defendants.

(9) The Court has considered any objections that have been made before it with respect to the proposed settlement and finds them to be without merit.

For the foregoing reasons, Plaintiffs' motion for approval of the proposed settlement is hereby **granted**. Regardless of whether or not the court in the Federal Actions also approves any attendant plan of allocation or application for attorneys' fees, and without further order by this Court, the claims asserted against the Settling Defendants in the above-captioned actions shall be **dismissed** with prejudice upon the entry of judgment in the Federal Action and on the terms set forth herein, and the parties are directed, at the time provided for in the ¶ 7.1 of the Stipulation of Settlement, to settle a judgment reflecting this Order. Should the Stipulation of Settlement be terminated by its terms for any reason before the occurrence of the Effective Date, as defined in the Stipulation of Settlement, or if the Federal Court should not have entered judgment within 20 days following entry of a judgment reflecting this Order as contemplated in ¶ 7.3 of the Stipulation of Settlement, this Order and any judgment thereto may be vacated upon motion of any party. In the event that this Order and any judgment thereto is vacated, the parties hereto will be deemed to have reverted nunc pro tunc to their respective status as of the date and time immediately before the execution of the Stipulation of Settlement and they shall proceed in all respects as if the Stipulation of Settlement and any executed releases had not been executed and this Order and judgment thereto had not been entered.

So ordered.

Dated: \_\_\_\_\_

\_\_\_\_\_  
J.S.C.

# EXHIBIT L

**Proposed [Short Form] Order – Submission Copy**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X

DONNA M. McBRIDE, individually an derivatively on :  
behalf of Beacon Associates LLC II, :

Plaintiff, :

- against - : Index No. 650632/09

KPMG INTERNATIONAL, et al., : Hon. Richard B. Lowe III  
Defendants, : Commercial Division,  
IAS Part 56

- and - :

BEACON ASSOCIATES LLC II, :

Nominal Defendant. :

----- X

PROPOSED [SHORT FORM] ORDER

The Court has considered the following papers in connection with this Order:

Motion For Approval Of Derivative Settlement.....X  
Affirmation In Support.....X

Before the Court is a motion by plaintiff Donna M. McBride (“Plaintiff”) for final approval of a settlement of the above-captioned derivative action with respect to her claims against Beacon Associates Management Corp. (“Beacon”), Joel Danziger (“Danziger”), Harris Markhoff (“Markhoff”) and Ivy Asset Management LLC (successor to Ivy Asset Management Corp.) (“Ivy”) (together, the “Settling Defendants”), and The Bank of New York Mellon (“BNY Mellon”) (together with the Settling Defendants, the “Released Defendants”).

The proposed settlement (of all of the related litigation, both private and governmental) is being overseen and has already been preliminarily approved by the United States District Court for the Southern District of New York (the “Federal Court”), and is now being presented for approval in this Court. As part of the settlement process which has been overseen by the Federal Court, the Federal Court has approved widely-disseminated notices as sufficient to satisfy due process. This Court is being asked to approve the settlement, as a prerequisite to entry of final judgment in this Court, following which final judgment will be entered in the Federal Court, and all coordinated actions which are being settled as part of this Settlement will be dismissed with prejudice as to the Released Defendants.

The proposed settlement does not affect the viable claims Plaintiff has asserted against defendants Friedberg, Smith & Co., P.C., KPMG International, KPMG UK, JP Morgan Chase and Co., Paul Konigsberg, and Frank DiPascali (together, the “Non-Settling Defendants”). Because the proposed settlement would dispose of claims against the Settling Defendants asserted derivatively on behalf of nominal defendants Beacon Associates LLC II (“Beacon II”), the Court’s approval of the proposed settlement is required for it to become effective. See N.Y. Bus. Corp. Law § 626(d). For the reasons stated herein, upon due consideration by the Court, Plaintiff’s motion for final approval of the proposed settlement is **granted**.

McBride v. KPMG International, et al., Index No. 650632/2009, was commenced in this Court on October 22, 2009. Plaintiff Donna M. McBride asserts that she is and at all relevant times was a member of the New York limited liability company Beacon II, and asserts the following derivative claims:

- Fraud, Breach of Fiduciary Duty and Professional Negligence against Beacon
- Aiding and Abetting Beacon’s Fraud and Aiding and Abetting Beacon’s Breach of Fiduciary Duty against Danziger and Markhoff
- Professional Negligence against Ivy
- Aiding and Abetting Beacon’s Fraud and Aiding and Abetting Beacon’s Breach of Fiduciary Duty against BNY Mellon

-Aiding and Abetting Beacon's Fraud, Aiding and Abetting Beacon's Breach of Fiduciary Duty and Professional Negligence against Friedberg, Smith & Co., P.C.

-Aiding and Abetting Beacon's Fraud and Aiding and Abetting Beacon's Breach of Fiduciary Duty against JP Morgan, KMPG International, KPMG UK, Paul Konigsberg, Frank DiPascali, Andrew Madoff, Mark Madoff, Peter Madoff and Annette Bongiorno<sup>1</sup>

Additionally, McBride asserts the following direct claims:

-Fraud in the Inducement, Negligent Misrepresentation, Conversion and Unjust Enrichment against Beacon

-Fraud in the Inducement, Conversion and Unjust Enrichment against Danzinger and Markhoff

-Aiding and Abetting Beacon's Fraud in the Inducement, Fraud in the Inducement, Conversion and Unjust Enrichment against Ivy

-Aiding and Abetting Beacon's Fraud in the Inducement, Conversion and Unjust Enrichment against BNY Mellon

-Aiding and Abetting Beacon's Fraud in the Inducement, Negligent Misrepresentation, Conversion and Unjust Enrichment against Friedberg, Smith & Co., P.C.

-Aiding and Abetting Beacon's Fraud in the Inducement, Conversion and Unjust Enrichment against JP Morgan, KMPG International, KPMG UK, Paul Konigsberg, Frank DiPascali, Andrew Madoff, Mark Madoff, Peter Madoff, and Annette Bongiorno

Defendants moved to dismiss the above-mentioned complaint in December 2010. Defendants' motions were fully briefed by the end of January 2011. The motions to dismiss are currently pending before this Court. On August 15, 2012, Settling Defendants' motions to dismiss were marked off calendar, pursuant to stipulation and Orders of this Court.

The Court has now been presented with a proposed settlement that is being overseen by the Federal Court, and following approval of the settlement by the Federal Court and this Court, would dispose of all of the claims asserted against the Released Defendants in this action and actions filed in various Courts which have been coordinated with McBride, as well as any other claims that could be asserted by Beacon II against the Released Defendants and all of their respective predecessors, successors, direct and indirect parents and subsidiaries, segments, divisions, affiliates, operating units, committees, local, regional, national, international and executive offices, and each other of their present or former partners, members, principals, officers, directors, employees, attorneys, insurers, and other persons or entities acting or

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<sup>1</sup> Plaintiff is no longer pursuing claims against Andrew Madoff, Mark Madoff, Peter Madoff and Annette Bongiorno.



purporting to act on behalf of any of the foregoing (the “Defendant Released Parties”) arising out of the same or similar facts or transactions as are at issue in this action. Approval of the settlement by this Court would result in dismissal with prejudice of the claims asserted against the Released Defendants in this action. The Settlement will also result in the entry of a final judgment in this action and all other related actions, as to the Released Defendants. In settlement of the coordinated cases, including the class and derivative cases filed in Federal Court, the cases filed by the United States Secretary of Labor and the New York Attorney General, this derivative action and the other cases being settled herewith, the Settling Defendants have agreed to the payment of a sum of money (the “Settlement Amount”) and such other relief as is reflected in a Stipulation of Settlement (\_\_\_\_ Affirmation Ex. A) (the “Stipulation of Settlement”).

Since October 2010, by stipulation of the parties, disclosure in McBride relating to common defendants has been coordinated with discovery in related actions pending before the Honorable Leonard B. Sand and the Honorable Colleen McMahon of the Federal Court *sub nom.* In re Beacon Associates Litigation, No. 09 Civ. 0777 (LBS) (AJP) and In re J.P. Jeanneret Associates Inc., Litigation, No. 09 Civ. 3907 (CM)(AJP) (together, the “Federal Actions”). Having undertaken due and proper consideration of the proposed settlement, this Court is called upon to evaluate the fairness and reasonableness of the proposed settlement as a condition of approval (Benedict v. Whitman Breed Abbott & Morgan, 77 A.D. 3d 870, 872 [2d Dep’t 2010] (“The court must determine whether a proposed settlement of a shareholder derivative claim is fair and reasonable to the corporation and its shareholders, then ‘either approve or disapprove the settlement.’”)) (quoting Klurfeld v. Equity Enters., 79 A.D.2d 124, 126 [2d Dep’t 1981])). Consistent with N.Y. Bus. Corp. Law § 626, the Court determines as follows, solely with respect to proposed settlement, and without prejudice to the Released Defendants’ rights to challenge any of the foregoing determinations should settlement not be consummated:

(1) Plaintiff Donna McBride has standing to assert claims derivatively on behalf of Beacon II and a pre-suit demand upon the managing member of Beacon II is excused.

(2) The proposed settlement has been agreed to by Beacon II and its counsel, who is a signatory to the Stipulation of Settlement.

(3) The Settlement Amount of \$219,857,694, allocated among the Settling Defendants as provided in the Stipulation of Settlement, is fair and reasonable consideration for the compromise of all of the claims asserted in the Federal Actions (as previously determined by the Federal Court) and the claims asserted herein against the Released Defendants. The Court agrees with the Federal Court that the Settlement Amount reflects a good faith compromise in light of the risks and uncertainties for all parties associated with trial of all of the claims asserted in McBride and the Federal Actions.

(4) The parties have established that the proposed settlement was negotiated at arm’s-length and in good faith by parties with adverse interests and that the terms and conditions of the settlement, as set forth in the Stipulation of Settlement and attendant papers, is fair and equitable to all parties, including Beacon II and its non-managing members.

(5) As part of the settlement process which has been overseen by the Federal Court, the Federal Court has approved widely-disseminated notices as sufficient to satisfy due process. The Court finds that the notice of the proposed settlement as approved by the Federal Court and

effectuated by the claims administrator retained to administer the Settlement satisfies the requirements of New York law and due process.

(6) Any plan for the allocation or distribution of the Settlement Amount among the various settling parties, as well as any application for the approval of attorneys' fees or expenses to be paid from the Settlement Amount, are not material to the Court's consideration of the fairness and reasonableness of the proposed settlement. Accordingly, the Court's approval of the proposed settlement is not contingent upon the approval of any plan of allocation or application for attorneys' fees and expenses which may be made in the Federal Actions. Notwithstanding the foregoing, the Court notes that the plan of allocation among Beacon II was the result of extensive arm's length negotiation among the parties, including Plaintiff and Beacon II.

(7) Where a shareholder derivative suit is successful or results in a recovery or in anything being received by a plaintiff as the result of the settlement thereof, the Court has the power to award plaintiff his or her reasonable expenses, including reasonable attorneys' fees. See N.Y. Bus. Corp. Law § 626(e). The expenses incurred and paid in McBride through \_\_\_\_\_, 2012 are included as part of the settlement of the Federal Actions. The Federal Court is overseeing the application for attorneys' fees and expenses being submitted by all Plaintiffs' Counsel in the coordinated actions, including Plaintiff's Counsel in this action, Cotchett, Pitre & McCarthy, LLP. This Court approves such amount as the Federal Court determines to be appropriate after consideration of the joint fee application in the Federal Actions.

(8) The proposed settlement, as approved by the Federal Court and as approved by this Court in this Order, shall not affect the claims asserted against the Non-Settling Defendants in any respect. However, to the extent that the Non-Settling Defendants shall at any time be found jointly liable with the Defendant Released Parties on any claim arising from the facts or transactions at issue in McBride or the Federal Actions, the respective liabilities of the Non-Settling Defendants with respect to such claim shall be reduced to the extent of the Settlement Amount or the Defendant Released Parties' equitable share of damages, whichever is greater. See N.Y. Gen. Oblig. L. § 15-108. The Non-Settling Defendants, and any other person or entity later named as a defendant, are hereby permanently barred, enjoined and restrained from commencing, prosecuting or asserting any claim for indemnity or contribution against the Defendant Released Parties (or any other claim against the Defendant Released Parties where the injury consists of actual or threatened liability to the Plaintiff, or any settlement payment to any Plaintiff) arising out of the same or similar facts or transactions as are at issue in McBride or in the Federal Actions, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-party claims or otherwise, whether or not asserted in this action, and whether asserted in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency or other forum in the United States or elsewhere. In no event shall Plaintiff or Beacon II be entitled to claim against the Defendant Released Parties by, through, or on account of any claim against the Non-Settling Defendants.

(9) The Court has considered any objections that have been made before it with respect to the proposed settlement and finds them to be without merit.

For the foregoing reasons, Plaintiff's motion for approval of the proposed settlement is hereby **granted**. Regardless of whether or not the court in the Federal Actions also approves any

attendant plan of allocation or application for attorneys' fees, and without further order by this Court, the claims asserted against the Released Defendants in the above-captioned action shall be **dismissed** with prejudice upon the entry of judgment in the Federal Action and on the terms set forth herein, and the parties are directed, at the time provided for in the ¶ 7.1 of the Stipulation of Settlement, to settle a judgment reflecting this Order. Should the Stipulation of Settlement be terminated by its terms for any reason before the occurrence of the Effective Date, as defined in the Stipulation of Settlement, or if the Federal Court should not have entered judgment within 20 days following entry of a judgment reflecting this Order as contemplated in ¶ 7.3 of the Stipulation of Settlement, this Order and any judgment thereto may be vacated upon motion of any party. In the event that this Order and any judgment thereto is vacated, the parties hereto will be deemed to have reverted nunc pro tunc to their respective status as of the date and time immediately before the execution of the Stipulation of Settlement and they shall proceed in all respects as if the Stipulation of Settlement and any executed releases had not been executed and this Order and judgment thereto had not been entered.

So ordered.

Dated: \_\_\_\_\_

\_\_\_\_\_  
J.S.C.

# EXHIBIT M

## **ESCROW AGREEMENT**

This Escrow Agreement (hereafter “Escrow Agreement”) is entered into this 8th day of November, 2012 in connection with the Settlement of (a) class actions, direct actions and derivative claims pending in the United States District Court for the Southern District of New York; (b) an action brought by Eric T. Schneiderman, the New York Attorney General in New York State Court; (c) an action brought by Hilda L. Solis, Secretary of the United States Department of Labor in the Southern District of New York; and (d) derivative and individual actions brought in federal and state courts, and before the American Arbitration Association. Attached hereto as Exhibit A is the Stipulation of Settlement, with Exhibits, dated November 13, 2012 (the Stipulation and Exhibits are collectively referred to herein as “Stipulation”). Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Stipulation.

### **Agreement**

1. Appointment of Escrow Agent. Upon the terms and conditions provided in this Escrow Agreement, the Stipulation and any other exhibits or schedules annexed hereto and made a part hereof, Garden City Group shall serve as the Escrow Agent for the Escrow Account (as defined below).

2. Escrow Account. In connection with the Settlement contemplated by the Stipulation, the Escrow Agent shall maintain an interest-bearing escrow account titled “Beacon/Income Plus/Andover/Direct Madoff Settlement Escrow Account” (the “Escrow Account”) at JP Morgan Chase Bank NA (the “Depository Bank”). The Escrow Agent shall not cause any transaction in the Escrow Account to occur without first receiving either (a) written instructions signed by one designated person from all of the following firms: Lowey Dannenberg Cohen & Hart, P.C. (“Lowey”), Keller Rohrback LLP (“Keller”) and, prior to the Effective Date,

Cleary Gottlieb Steen & Hamilton LLP (“CGSH”) (collectively, “Authorized Counsel”); or (b) an order of the Court entered after due notice and an opportunity to be heard provided to Authorized Counsel; or (c) solely with respect to the payment to the NYAG, upon (i) the Effective Date and (ii) notice by the NYAG that he has delivered to the Ivy Defendants’ Counsel to be held in escrow, a Stipulation of Discontinuance substantially in the form annexed as Exhibit N to the Stipulation signed by a duly authorized representative of the NYAG; or (d) with respect to the payment to the U.S. Treasury, following the Effective Date, instructions from the Department of Labor as provided in ¶8(c) below. Lowey designates Barbara J. Hart; Keller designates Lynn Sarko; and CGSH designates Lewis J. Liman and Jeffrey A. Rosenthal, as persons authorized to sign written instructions for transactions in the Escrow Account. Authorized Counsel shall provide copies of such designations to the Depository Bank. Disbursement instructions are subject to supervision, direction and approval of the Court to the extent set forth in the Stipulation. Following the occurrence of the Effective Date, as set forth in the Stipulation, CGSH shall no longer be an Authorized Counsel, and need not provide any written instructions with respect to any transactions in the Escrow Account and shall not be requested to approve the same.

3. Deposits Into The Escrow Account. The Ivy Defendants will cause \$210,000,000 (Two Hundred Ten Million Dollars), plus any interest that has accrued thereon pursuant to the Stipulation, to be deposited into the Escrow Account pursuant to wire instructions provided in accordance with the Stipulation. The Jeanneret Defendants will cause \$3,000,000 (Three Million Dollars), plus any interest that has accrued thereon pursuant to the Stipulation, to be deposited into the Escrow Account pursuant to wire instructions provided in accordance with the Stipulation. The Beacon Defendants will cause \$3,500,000 (Three Million Five Hundred Thousand Dollars), plus

any interest that has accrued thereon pursuant to the Stipulation,<sup>1</sup> to be deposited into the Escrow Account pursuant to wire instructions provided in accordance with the Stipulation. The Settlement Fund consists of the total funds deposited in the Escrow Account, plus any interest that has accrued thereon pursuant to the Stipulation, less funds allotted to the Expense Fund and interest earned on it, less the payments to the U.S. Treasury and the New York Attorney General (as set forth below). The Settlement Fund shall be held and invested on the terms and subject to the limitations set forth herein, and shall be released by the Escrow Agent only in accordance with the terms and conditions set forth herein, in the Stipulation and/or in orders of the Court approving the disbursement of the Settlement Fund.

4. Investment of Settlement Fund. The Escrow Agent shall invest any funds in excess of \$250,000 in U.S. Treasury Securities, and/or a money market account comprised of U.S. Treasury Securities. The monies for payment of Taxes shall be invested in a similar investment, except that these amounts may be maintained, as designated by Authorized Counsel, in shorter-term investments to make those funds available for transfer.

5. Investment of Expense Fund. The Escrow Agent shall invest any funds up to \$250,000 in a United States Federal Deposit Insurance Corporation (“FDIC”) insured money market account. However, the Expense Fund in an amount not to exceed two hundred fifty thousand dollars (\$250,000), plus any interest that may accrue thereon, may be held in a separate interest bearing Escrow Account with checking privileges for use in the administration of the Settlement of the Settling Actions (including the Settling State Cases in the event that the state courts in which such actions are pending require administration of settlement), including utilization

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<sup>1</sup> The remaining portion of the Settlement Amount, *i.e.*, the \$3,357,694 (Three Million Three Hundred Fifty Seven Thousand Six Hundred Ninety Four Dollars) in management fees waived by the Beacon Defendants will be distributed directly to investors in the Beacon and Andover Funds in accordance with the Stipulation.

of experts for the Plan of Allocation and distribution of the Net Settlement Fund and providing the Notice and Summary Notice to Class Members, each as set forth in the Stipulation and subject to the terms and conditions thereof. The Expense Fund shall be paid from, and not in addition to, the Gross Settlement Fund.

6. Escrow Funds Subject to Jurisdiction of the Court. Except as provided in paragraph 8(b) below, the Settlement Fund shall remain subject to the jurisdiction of the Court until such time as the Settlement Fund shall be distributed, pursuant to the Stipulation and on further order(s) of the Court.

7. Tax Treatment. Pursuant to paragraphs 2.9 to 2.12 of the Stipulation, the Settlement Fund is intended to be a “qualified settlement fund” within the meaning of Treas. Reg. Section 1.468B-1 for all taxable years of the Settlement Fund, beginning with the date it is created. The parties agree to take no action inconsistent with the treatment of the Escrow Account in such a manner. In addition, the Escrow Agent, and, as required, the parties shall jointly and timely make such elections as are necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg. Section 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas.



Reg. Sections 1.468B-2(k) and 1.468B-2(l)), and make all required tax payments, including deposits of estimated tax payments in accordance with Treas. Reg. Section 1.6302-1. Such returns (as well as the election described in the preceding paragraph) shall be consistent with this paragraph and in all events shall reflect that all Taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in paragraphs 2.11, 2.12, 5.4(c) and 5.5(d) of the Stipulation.

8. Withdrawals from the Escrow Account. In the absence of an order of the Court to the contrary, entered after due notice and an opportunity to be heard provided to Authorized Counsel and counsel for the Settling Defendants, funds may be withdrawn from the Escrow Account only for the following purposes, and only under the circumstances described in this paragraph:

(a) It is intended that the following will be paid from the Escrow Account, from time to time, upon receipt of proper written instructions in accordance with paragraph 2 of this Escrow Agreement: (i) all Taxes and Tax Expenses (as defined in paragraph 2.9 to 2.12 of the Stipulation); and (ii) the Plan of Allocation, Notice and Proof of Claim costs described in paragraphs 1.22 and 2.3 of the Stipulation.

(b) In accordance with the Stipulation and with paragraph 2 of this Escrow Agreement, upon (i) the occurrence of the Effective Date and (ii) receipt of notice from the NYAG that he has delivered to Ivy Defendants Counsel to be held in escrow a Stipulation of Discontinuance of *Cuomo vs. Ivy Asset Management L.L.C. et al.*, 450489/2010 (N.Y. Sup. Ct. N.Y. Cnty.) (in the form annexed to the Stipulation as Exhibit N), duly signed by an authorized representative of the NYAG, with notice provided to all other parties entitled to notice pursuant to paragraph 13 of this Escrow Agreement that the Stipulation of Discontinuance has been delivered,

the Escrow Agent shall cause to be paid from the Escrow Account \$5 million directly to the State of New York (pursuant to payment instructions to be provided by the NYAG), without the need for further Court orders, or approvals or signatures from Plaintiffs' Counsel.

(c) After the occurrence of the Effective Date, \$7 million shall be paid directly to the U.S. Treasury, in accordance with instructions to be provided by the Department of Labor.

(d) Upon receipt of proper written instructions in accordance with paragraph 2 of this Escrow Agreement, after entry of the Attorneys' Fee and Expense Award(s), and after the Effective Date, the Escrow Agent shall cause to be paid from the Escrow Account directly to each attorney or firm of attorneys the respective amount awarded in fees and expenses by the Court, or as agreed to among Private Plaintiffs' Counsel consistent with all orders of the Court, plus interest that has accrued thereon, in accordance with all applicable terms of the Stipulation and Judgment.

(e) Upon receipt of proper written instructions in accordance with paragraph 2 of this Escrow Agreement, and after the Effective Date, the Escrow Agent shall transfer funds from the Net Settlement Fund in the Depository Bank to the bank designated by the Claims Administrator as the Disbursement Bank, as needed, to distribute to Authorized Claimants in accordance with the Stipulation.

9. Termination of Settlement. Notwithstanding any other provision of this Escrow Agreement, in the event that the Effective Date of the Settlement (as defined in the Stipulation) does not occur or the Settlement otherwise is not consummated for any reason, then, without the necessity of any court order, upon receipt of written notice from Authorized Counsel, which notice shall include appropriate distribution and wire/transfer delivery instructions, or, in the absence of such written notice, upon Order of the Court, entered after due notice and an opportunity to be heard provided to Authorized Counsel and counsel for the Settling Defendants, the Escrow Agent

shall return to each the Settling Defendants all amounts previously paid by such the Settling Defendants, together with any interest earned thereon, less any Taxes and Tax Expenses paid or payable with respect to such income, and less any Plan of Allocation expert or Claims Administrator costs actually incurred and paid or owing that the Stipulation authorizes to be paid from the Expense Fund, as set forth in the Stipulation and subject to the terms and conditions thereof.

10. Duties, Liabilities and Rights of Escrow Agent. This Escrow Agreement (including Exhibit A hereto) sets forth all of the obligations of the Escrow Agent, and no additional obligations shall be implied from the terms of this Escrow Agreement or any other agreement, instrument or document.

(a) The Escrow Agent shall not bear any risks related to the investment of the Settlement Fund that is in accordance with the provisions of paragraph 4 of this Escrow Agreement, except for liability, damage or losses arising out of their intentional misconduct or gross neglect as adjudicated by a court of competent jurisdiction.

(b) Upon transfer or distribution of all of the funds in the Escrow Account to the Disbursement Bank pursuant to the terms of this Escrow Agreement and any orders of the Court, the Escrow Agent shall be relieved of any and all further obligations and released from any and all liability under this Escrow Agreement, except as otherwise specifically set forth herein.

11. Assignment by Escrow Agent. The Escrow Agent's rights, duties and obligations hereunder may not be assigned except upon written consent of all Authorized Counsel, which consent shall be in their sole discretion and may be withheld for any reason or no reason.

12. Resignation of Escrow Agent. The Escrow Agent may in its sole discretion resign and terminate its position hereunder at any time following 120 days prior written notice to the

parties to the Escrow Agreement herein, provided, however, that such resignation and termination shall not become effective until after the appointment of a successor Escrow Agent. On the effective date of such resignation, the Escrow Agent shall deliver this Escrow Agreement together with any and all related instruments or documents and all funds in the Escrow Account to the successor Escrow Agent (who shall be subject to approval by Authorized Counsel, whose approval shall not be unreasonably withheld), subject to this Escrow Agreement.

13. Notices. Notice under the Escrow Agreement shall be provided to each of the parties indicated below in writing and delivered by hand-delivery, facsimile, electronic mail or overnight courier service:

<b>ESCROW AGENT</b>	<b>COUNSEL FOR SETTling PARTIES</b>	
Lisa Buckser-Schulz The Garden City Group, Inc. 1985 Marcus Avenue Lake Success, NY 11042 Telephone (631) 470- 1820 Facsimile (631) 486- 1586 Lisa.Buckser- Schulz@gcginc.com	<b>Notices to Settling Plaintiffs or            Plaintiffs' Counsel</b>	<b>Notices to Settling            Defendants and Settling            Defendants' Counsel</b>
	Barbara J. Hart Thomas M. Skelton Lowey Dannenberg Cohen & Hart, P.C. One North Broadway White Plains, NY 10601-2310 Telephone: 914-997-0500 Facsimile: 914-997-0035 bhart@lowey.com tskelton@lowey.com	Lewis J. Liman Jeffrey A. Rosenthal Cleary Gottlieb Steen & Hamilton LLP One Liberty Plaza New York, New York 10006 Telephone: (212) 225-2000 Facsimile: (212) 225-3999 lliman@cgsh.com jrosenthal@cgsh.com
	Peter H. LeVan, Jr. Kessler Topaz Meltzer & Check, LL 280 King of Prussia Road Radnor, PA 19087 Telephone: (610) 667-7706 Facsimile: (610) 667-7056 plevan@ktmc.com	Tab K. Rosenfeld Rosenfeld & Kaplan, L.L.P. 535 Fifth Avenue, Suite 1006 New York, New York 10017 Telephone: (212) 682-1400 tab@rosenfelddlaw.com
Robert Furst Senior Trial Attorney Risa D. Sandler Counsel for Fiduciary Litigation Office of the Solicitor/U.S.	Brian E. Whiteley Hiscock & Barclay, LLP One International Place- 26th Floor Boston, Massachusetts 02110 Telephone: (617) 274-2900	

	<p>Department of Labor  P.O. Box 1914  Washington, D.C. 20013  Telephone: (202) 693-5626  Facsimile: (202) 693-5610  Furst.Robert@dol.gov  Sandler.Risa@dol.gov</p> <p>Roger L. Waldman  Senior Enforcement Counsel  Office of the Attorney General of  the State of New York  120 Broadway, 23rd Floor  New York, New York 10271  Telephone: (212) 416-8198  Roger.Waldman@ag.ny.gov</p> <p>David S. Preminger  Keller Rohrback L.L.P.  770 Broadway, 2nd Floor  New York, NY 10003  Telephone: (646) 495-6198  Facsimile: (646) 495-6197  dpreminger@kellerrohrback.com</p> <p>Margo Hasselman  Lewis, Feinberg, Lee, Renaker &amp;  Jackson P.C.  476 9th St.  Oakland, CA 94607  Telephone: (510) 839-6824  Facsimile: (510) 839-7839  Mhasselmann@lewisfeinberg.com</p> <p>Charles J. Hecht  Wolf Haldenstein Adler Freeman  &amp; Herz, LLP  270 Madison Avenue  New York, NY 10016  Telephone: (212) 545-4682  Facsimile: (212) 683-1794  hecht@whafh.com</p> <p>Imtiaz Siddiqui  Cotchett, Pitre &amp; McCarthy  One Liberty Plaza, 23<sup>rd</sup> Floor</p>	<p>Facsimile: (617) 722-6003  bwhiteley@hblaw.com</p>
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	New York, NY 10006 Telephone: (212) 201-6820 Facsimile: (646) 219-06678 isiddiqui@cpmlegal.com	
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14. Entire Agreement. This Escrow Agreement (including Exhibit A hereto) constitutes the entire agreement and understanding of the parties hereto. Any modification of this Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto. To the extent this Escrow Agreement conflicts in any way with the Stipulation or the Exhibits, the provisions of the Stipulation and its Exhibits shall govern.

15. Termination of Escrow Account. The Escrow Account will terminate after all funds deposited in it, together with all interest earned thereon, are disbursed in accordance with the provisions of the Stipulation and this Escrow Agreement.

16. Third-Party Beneficiaries. Each of the Settling Plaintiffs, Private Plaintiffs' Counsel, and the Settling Defendants (each, a "Third Party Beneficiary") is an express third-party beneficiary (and not merely an incidental third-party beneficiary) of this Escrow Agreement and the obligations of the parties hereto under this Escrow Agreement and, as such, is entitled to enforce this Escrow Agreement against any party hereto on his, her, or its own behalf and otherwise shall be afforded all remedies available hereunder or otherwise afforded by law against the parties hereto to redress any damage or loss incurred by the Third Party Beneficiary including, but not limited to, fees (including professional fees), costs and expenses incurred by the Third Party Beneficiary that are related to, or result from any breach by such party of its obligations under this Escrow Agreement.

17. Miscellaneous Provisions.

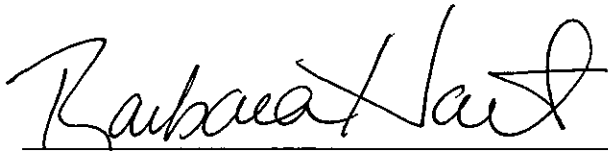
(a) Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Escrow Agreement.

(b) Further Cooperation. The parties hereto agree to do such further acts and things and to execute and deliver such other documents as the Escrow Agent may request from time to time in connection with the administration, maintenance, enforcement or adjudication of this Escrow Agreement in order (a) to give the Escrow Agent confirmation and assurance of the Escrow Agent's rights, powers, privileges, remedies and interests under this Agreement and applicable law, (b) to better enable the Escrow Agent to exercise any such right, power, privilege or remedy, or (c) to otherwise effectuate the purpose and the terms and provisions of this Escrow Agreement, each in such form and substance as may be acceptable to the Escrow Agent.

(c) Non-Waiver. The failure of any of the parties hereto to enforce any provision hereof on any occasion shall not be deemed to be a waiver of any preceding or succeeding breach of such provision or any other provision.

(d) Choice of Law. This Escrow Agreement shall be governed by and interpreted according to the law of the State of New York without regard to its conflicts of law principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.



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Barbara Hart  
Thomas Skelton  
LOWEY DANNENBERG COHEN & HART, P.C.  
White Plains Plaza  
One North Broadway  
White Plains, New York 10601

*Lead Counsel in In re Beacon and Lead  
Securities and Derivative Counsel in In re  
Jeanneret*

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Lisa Buckser-Schulz  
The Garden City Group, Inc.  
1985 Marcus Avenue  
Lake Success, New York 11042

*Escrow Agent*

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Peter H. LeVan, Jr.  
Kessler Topaz Meltzer & Check, LLP  
280 King of Prussia Road  
Radnor, PA 19087

Lead ERISA Counsel in *Buffalo Laborers Action*

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New York, New York 10003

Lynn Lincoln Sarko  
Keller Rohrback L.L.P.  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101

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Margo Hasselman  
Lewis, Feinberg, Lee, Renaker & Jackson P.C.  
476 9<sup>th</sup> St.  
Oakland, CA 94607

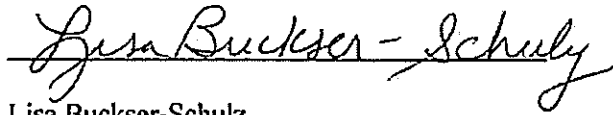
**DATED: November 8, 2012**



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Barbara Hart  
Thomas Skelton  
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White Plains Plaza  
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*Lead Counsel in In re Beacon and Lead  
Securities and Derivative Counsel in In re  
Jeanneret*



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*Escrow Agent*

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Margo Hasselman  
Lewis, Feinberg, Lee, Renaker & Jackson P.C.  
476 9<sup>th</sup> St.  
Oakland, CA 94607

**DATED: November 8, 2012**

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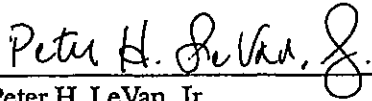
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*Lead Counsel in In re Beacon and Lead  
Securities and Derivative Counsel in In re  
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*Escrow Agent*



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DATED: 11/8, 2012

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Oakland, CA 94607

DATED: 11/8, 2012

# EXHIBIT N

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK BY ANDREW M. CUOMO, Attorney General of the State of New York,  Plaintiff,  v.  IVY ASSET MANAGEMENT LLC et al.,  Defendants.	Index No. 450489/2010
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**STIPULATION OF DISCONTINUANCE**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys of record for all the parties that this action be, and the same hereby is discontinued with prejudice and without costs to either party.

<b>CLEARY GOTTLIEB STEEN &amp; HAMILTON LLP</b>  <hr/> <b>LEWIS J. LIMAN</b> Jeffrey A. Rosenthal One Liberty Plaza New York, New York 10006 Telephone: (212) 225-2000 lliman@cgsh.com jrosenthal@cgsh.com  <i>Attorneys for the Ivy Defendants</i>	<b>ERIC T. SCHNEIDERMAN</b> Attorney General of the State of New York  <hr/> <b>ROGER L WALDMAN</b> <i>Senior Enforcement Counsel</i> 120 Broadway, 23rd Floor New York, New York 10271 Telephone: (212) 416-8208 roger.waldman@ag.ny.gov  <i>Attorney for Plaintiff</i>
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# EXHIBIT O

**Order re: Plan of Allocation – Submission Copy**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BEACON ASSOCIATES LITIGATION	No. 09 Civ. 0777 (LBS)
IN RE J.P. JEANNERET ASSOCIATES, INC.	No. 09 Civ. 3907 (CM)
HILDA L. SOLIS, Secretary of the United States Department of Labor,  Plaintiff,  v.  BEACON ASSOCIATES MANAGEMENT CORP. et al.,  Defendants.	No. 10 Civ. 8000 (LBS) (AJP)
BOARD OF TRUSTEES OF THE BUFFALO LABORERS SECURITY FUND et al.,  Plaintiffs,  v.  J.P. JEANNERET ASSOCIATES, INC. et al.,  Defendants.	No. 09 Civ. 8362 (LBS) (AJP)

BEACON ASSOCIATES MANAGEMENT CORP.

No. 09 Civ. 6910 (AJP)

Plaintiff,

v.

BEACON ASSOCIATES LLC I,

Defendant.

<p>ERNEST A. HARTMAN et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT L.L.C. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 09 Civ. 8278 (LBS) (AJP)</p>
<p>STEPHEN C. SCHOTT, as TRUSTEE FOR THE STEPHEN C. SCHOTT 1984 TRUST,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 10 Civ. 8077 (LBS)</p>



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>DONNA M. McBRIDE, individually and derivatively on behalf of Beacon Associates LLC II,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>KPMG INTERNATIONAL et al.,,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 650632/2009E</p>
<p>ALISON ALTMAN, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORPORATION, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Index No. 652238/2010</p>

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

<p>JOEL SACHER and SUSAN SACHER, derivatively on behalf of BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 005424/2009</p>
<p>CHARLES J. HECHT, derivatively on behalf of ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ANDOVER ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 006110/2009</p>

THE JORDAN GROUP LLC, derivatively on behalf of  
BEACON ASSOCIATES LLC I,

Plaintiff,

v.

BEACON ASSOCIATES MANAGEMENT CORP. et al.,

Defendants,

-and-

BEACON ASSOCIATES LLC I,

Nominal Defendant.

Index No. 003757/2011

CIRCUIT COURT OF THE STATE OF FLORIDA  
FIFTEENTH JUDICIAL CIRCUIT, PALM BEACH COUNTY

<p>HARVEY GLICKER, et al,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>IVY ASSET MANAGEMENT CORP., et al,</p> <p>Defendants.</p>	<p>Court File No. 502010CA029643 XXXX MB AB</p>
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(Caption continued on next page)

{2283 / ORD / 00112712.RTF v5}



The Court, having considered all matters submitted to it at the Fairness Hearing and otherwise,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Unless otherwise defined herein, all capitalized terms used herein have the meanings as set forth and defined in the Stipulation of Settlement dated as of \_\_\_\_\_, 2012 (the “Stipulation”).
2. The Court has jurisdiction over the Plan of Allocation and all matters relating thereto, including jurisdiction over all Settling Parties in the Federal Actions and Settlement Class Members.
3. Due, adequate and the best practicable notice of the terms of the Plan of Allocation was directed to all persons who were reasonably identifiable as Settlement Class Members, advising them of their right to object thereto.
4. The Court approves the Plan of Allocation as fair, reasonable and appropriate as to all Settlement Class Members.
5. The Court also finds and declares, in accordance with the Declaratory Judgment Act (28 U.S.C. §§ 2201-2202), that: (i) the Notice and hearing regarding the Plan of Allocation were fair, adequate, reasonable, and consistent with this Court’s prior Preliminary Approval Order; (ii) the Plan of Allocation is fair, adequate and reasonable; and (iii) Plaintiffs’ Counsel may implement the Plan of Allocation according to its terms and in the interests of fairness and equity, including allocation of any and all remaining assets in the Net Settlement Fund, subject to the Court’s continuing authority to supervise the same.
6. [The Court has considered the objections, if any, made by various objectors and, to

the extent not withdrawn, finds the objectors to lack standing, and/or finds the objections to be deficient and otherwise without merit and hereby determines that they are overruled. If the Court issues an order sustaining any objection to the Plan of Allocation, delete preceding sentence and insert alternate language here]

7. In the event that the Stipulation is terminated or the Effective Date does not occur in accordance with the terms of this Stipulation, this Order shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any Person against the Settling Parties.

8. The Court has, and retains and reserves, jurisdiction over all matters relating to the Plan of Allocation, and this Order, and for any other necessary purpose.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2013

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Honorable [INSERT]  
UNITED STATES DISTRICT JUDGE

# EXHIBIT P



**Order re: Attorneys' Fees – Submission Copy**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BEACON ASSOCIATES LITIGATION	No. 09 Civ. 0777 (LBS)
IN RE J.P. JEANNERET ASSOCIATES, INC.	No. 09 Civ. 3907 (CM)
HILDA L. SOLIS, Secretary of the United States Department of Labor,  Plaintiff,  v.  BEACON ASSOCIATES MANAGEMENT CORP. et al.,  Defendants.	No. 10 Civ. 8000 (LBS) (AJP)
BOARD OF TRUSTEES OF THE BUFFALO LABORERS SECURITY FUND et al.,  Plaintiffs,  v.  J.P. JEANNERET ASSOCIATES, INC. et al.,  Defendants.	No. 09 Civ. 8362 (LBS) (AJP)
BEACON ASSOCIATES MANAGEMENT CORP.  Plaintiff,  v.  BEACON ASSOCIATES LLC I,  Defendant.	No. 09 Civ. 6910 (AJP)

(Caption continued on next page)

{2283 / ORD / 00114482.DOCX v4}

<p>ERNEST A. HARTMAN et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT L.L.C. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 09 Civ. 8278 (LBS) (AJP)</p>
<p>STEPHEN C. SCHOTT, as TRUSTEE FOR THE STEPHEN C. SCHOTT 1984 TRUST,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 10 Civ. 8077 (LBS)</p>

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{2283 / ORD / 00114482.DOCX v3}

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>DONNA M. McBRIDE, individually and derivatively on behalf of Beacon Associates LLC II,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>KPMG INTERNATIONAL et al.,,</p> <p style="text-align: right;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: right;">Nominal Defendant.</p>	<p>Index No. 650632/2009E</p>
<p>ALISON ALTMAN, et al.,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORPORATION, et al.,</p> <p style="text-align: right;">Defendants.</p>	<p>Index No. 652238/2010</p>

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{2283 / ORD / 00114482.DOCX v3}

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

<p>JOEL SACHER and SUSAN SACHER, derivatively on behalf of BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 005424/2009</p>
<p>CHARLES J. HECHT, derivatively on behalf of ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ANDOVER ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 006110/2009</p>

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{2283 / ORD / 00114482.DOCX v3}

<p>THE JORDAN GROUP LLC, derivatively on behalf of BEACON ASSOCIATES LLC I,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC I,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 003757/2011</p>
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CIRCUIT COURT OF THE STATE OF FLORIDA  
FIFTEENTH JUDICIAL CIRCUIT, PALM BEACH COUNTY

<p>HARVEY GLICKER, et al,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>IVY ASSET MANAGEMENT CORP., et al,</p> <p style="text-align: center;">Defendants.</p>	<p>Court File No. 502010CA029643 XXXX MB AB</p>
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BEFORE THE AMERICAN ARBITRATION ASSOCIATION

JOEL T. GLUCK,  <p style="text-align: center;">Claimant,</p> <p style="text-align: center;">v.</p> BEACON ASSOCIATES LLC II et al.,  <p style="text-align: center;">Respondents.</p>	AAA No. 19 435 00120 10
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**[PROPOSED] ORDER AND FINAL JUDGMENT GRANTING  
PRIVATE PLAINTIFFS' COUNSELS' MOTION FOR AWARD OF  
ATTORNEYS' FEES**

This matter came before the Court for a hearing which was held on \_\_\_\_\_, 2012 (the "Fairness Hearing"), pursuant to the Order of this Court entered on \_\_\_\_\_, on the Motion of Private Plaintiffs' Counsel for an award of attorneys' fees.

The Preliminary Approval Order preliminarily certified the Settlement Classes, preliminarily approved the proposed Settlement, directed individual notice be provided to the Settlement Class Members and provided Settlement Class Members with an opportunity to object to, *inter alia*, the Motion for Award of Attorneys' Fees, and to be heard concerning such objections.

Notice has been provided to Settlement Class Members in accordance with the Preliminary Approval Order, as evidenced by the Affidavit of \_\_\_\_\_ Concerning Notice By Mailing.

The Notice disseminated to Settlement Class Members disclosed the maximum attorneys' fees Private Plaintiffs' Counsel would seek.

Pursuant to the Preliminary Approval Order and as set forth in the Notice, any objections to the Motion for Award of Attorneys' Fees were to be filed and served by \_\_\_\_\_, 2012.

The Court having considered all matters submitted to it at the Fairness Hearing and otherwise,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Unless otherwise defined herein, all capitalized terms used herein have the meanings as set forth and defined in the Stipulation of Settlement dated as of \_\_\_\_\_, 2012 (the "Stipulation").

2. This Court has jurisdiction over the subject matter of the Motion and all matters relating thereto, including jurisdiction over all Settling Parties in the Federal Actions and Settlement Class Members.

3. Due, adequate and the best practicable notice of the maximum attorneys' fees Private Plaintiffs' Counsel would request was directed to all persons who were reasonably identifiable as Settlement Class Members, advising them of their right to object thereto.

4. Private Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of \_\_\_\_\_, plus interest at the same rate as earned by the Gross Settlement Fund, which shall be paid out of the Gross Settlement Fund. The award of attorneys' fees shall be allocated among the applicable law firms in accordance with the agreement of counsel.

5. In making this award of attorneys' fees, the Court has considered and found that:

a. Private Plaintiffs' Counsel have conducted the litigation of the non-governmental Settling Actions and contributed to achievement of the Settlement with skill, perseverance and diligent advocacy; and that



b. Private Plaintiffs' Counsel have worked cooperatively with the New York Attorney General, the U.S. Secretary of Labor and with Defendants' Counsel in connection with the Settlement; and that

c. the Settling Actions involve numerous complex factual and legal issues and were actively litigated for nearly four years and, in the absence of a settlement, would have involved lengthy proceedings with uncertain resolution of the numerous complex factual and legal issues; and that

d. had Private Plaintiffs' Counsel and the governmental regulators not achieved the Settlement applicable to their clients and the Classes, a risk would remain that Settling Plaintiffs and the Settlement Classes may have recovered less or nothing from Settling Defendants; and that

e. Private Plaintiffs' Counsel have submitted documentation to the Court reflecting that they have devoted collectively over \_\_\_\_\_ hours, with a lodestar value of \$ \_\_\_\_\_ in connection with these matters; and that

f. the amount of attorneys' fees awarded is fair, reasonable, appropriate and consistent with the awards in similar cases, and represents a reasonable percentage of the Gross Settlement Fund, in view of the applicable legal principles and the particular facts and circumstances of the Settling Actions.

6. The Court is entering, or has entered a separate final Judgment regarding the Stipulation, which approves the Settlement and concludes further litigation on the merits of the claims addressed therein, barring a reversal on appeal.

7. The Court also finds and declares, in accordance with the Declaratory Judgment Act (28 U.S.C. §§ 2201-2202), that: (i) the Notice and hearing regarding Private Plaintiffs'

Counsels' Motion for Award of Attorneys' Fees was fair, adequate, reasonable and consistent with this Court's \_\_\_\_\_ Order; and (ii) the attorneys' fees are fair, adequate and reasonable.

8. [The Court has considered the objections, if any, made by various objectors and, to the extent not withdrawn, finds the objectors to lack standing, and/or finds the objections to be deficient and otherwise without merit and hereby determines that they are overruled. If the Court makes a fee award that is less than the amount requested by Private Plaintiffs' counsel, delete preceding sentence and insert alternate language here]

9. In the event that the Stipulation is terminated or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any Person against the Settling Parties.

10. The Court has, and retains and reserves, exclusive jurisdiction over all matters relating to the Motion for Attorneys' Fees and this Order.

SIGNED: This \_\_\_ day of \_\_\_\_\_ 2012

\_\_\_\_\_  
Honorable [INSERT]  
UNITED STATES DISTRICT JUDGE

# EXHIBIT Q

**Order re: Expenses – Submission Copy**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BEACON ASSOCIATES LITIGATION	No. 09 Civ. 0777 (LBS)
IN RE J.P. JEANNERET ASSOCIATES, INC.	No. 09 Civ. 3907 (CM)
HILDA L. SOLIS, Secretary of the United States Department of Labor,  Plaintiff,  v.  BEACON ASSOCIATES MANAGEMENT CORP. et al.,  Defendants.	No. 10 Civ. 8000 (LBS) (AJP)
BOARD OF TRUSTEES OF THE BUFFALO LABORERS SECURITY FUND et al.,  Plaintiffs,  v.  J.P. JEANNERET ASSOCIATES, INC. et al.,  Defendants.	No. 09 Civ. 8362 (LBS) (AJP)
BEACON ASSOCIATES MANAGEMENT CORP.  Plaintiff,  v.  BEACON ASSOCIATES LLC I,  Defendant.	No. 09 Civ. 6910 (AJP)
ERNEST A. HARTMAN et al.,  Plaintiffs,	No. 09 Civ. 8278 (LBS) (AJP)

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{2283 / ORD / 00114483.DOCX v3}

<p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT L.L.C. et al.,</p> <p style="text-align: center;">Defendants.</p>	
<p>STEPHEN C. SCHOTT, as TRUSTEE FOR THE STEPHEN C. SCHOTT 1984 TRUST,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>IVY ASSET MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 10 Civ. 8077 (LBS)</p>

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{2283 / ORD / 00114483.DOCX v3}}

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>DONNA M. McBRIDE, individually and derivatively on behalf of Beacon Associates LLC II,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>KPMG INTERNATIONAL et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 650632/2009E</p>
<p>ALISON ALTMAN, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORPORATION, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Index No. 652238/2010</p>

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

<p>JOEL SACHER and SUSAN SACHER, derivatively on behalf of BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>BEACON ASSOCIATES LLC II,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 005424/2009</p>
<p>CHARLES J. HECHT, derivatively on behalf of ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ANDOVER ASSOCIATES MANAGEMENT CORP. et al.,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">-and-</p> <p>ANDOVER ASSOCIATES LLC I,</p> <p style="text-align: center;">Nominal Defendant.</p>	<p>Index No. 006110/2009</p>

THE JORDAN GROUP LLC, derivatively on behalf of  
BEACON ASSOCIATES LLC I,

Plaintiff,

v.

BEACON ASSOCIATES MANAGEMENT CORP. et al.,

Defendants,

-and-

BEACON ASSOCIATES LLC I,

Nominal Defendant.

Index No. 003757/2011



CIRCUIT COURT OF THE STATE OF FLORIDA  
FIFTEENTH JUDICIAL CIRCUIT, PALM BEACH COUNTY

<p>HARVEY GLICKER, et al,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>IVY ASSET MANAGEMENT CORP., et al,</p> <p>Defendants.</p>	<p>Court File No. 502010CA029643 XXXX MB AB</p>
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BEFORE THE AMERICAN ARBITRATION ASSOCIATION

<p>JOEL T. GLUCK,</p> <p style="text-align: center;">Claimant,</p> <p style="text-align: center;">v.</p> <p>BEACON ASSOCIATES LLC II et al.,</p> <p style="text-align: center;">Respondents.</p>	<p>AAA No. 19 435 00120 10</p>
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**[PROPOSED] ORDER AND FINAL JUDGMENT GRANTING  
PLAINTIFFS' CLASS COUNSELS' MOTION FOR  
REIMBURSEMENT OF EXPENSES**

This matter came before the Court for a hearing which was held on \_\_\_\_\_, 2012 (the "Fairness Hearing"), pursuant to the Order of this Court entered on \_\_\_\_\_, on the Motion of Lowey Dannenberg Cohen & Hart, P.C., Kessler Topaz Meltzer & Check LLP, Cohen Milstein Sellers & Toll PLLC, Wolf Haldenstein Adler Freeman & Herz LLP, Bernstein Liebhard LLP, Cotchett, Pitre & McCarthy, LLP and Gordon & Gordon ("Moving Counsel"), for reimbursement of their costs and expenses incurred as a result of the representation of the Settlement Class Members.

The Preliminary Approval Order preliminarily certified the Settlement Classes, preliminarily approved the proposed Settlement, directed individual notice be provided to the Settlement Class Members, and provided Settlement Class Members with an opportunity to object to, *inter alia*, the Motion for Reimbursement of Expenses, and to be heard concerning such objections.

Notice has been provided to Settlement Class Members in accordance with the Preliminary Approval Order, as evidenced by the Affidavit of \_\_\_\_\_ Concerning Notice By Mailing.

The Notice disseminated to Settlement Class Members disclosed the maximum amount of expenses that would be requested by Moving Counsel, including up to \$2.25 million in expenses incurred in connection with the litigation and settlement administration.

Pursuant to the Preliminary Approval Order and as set forth in the Notice, any objections to the Motion for Reimbursement of Expenses were to be filed and served by \_\_\_\_\_, 2012.

The Court, having considered all matters submitted to it at the Fairness Hearing and otherwise,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Unless otherwise defined herein, all capitalized terms used herein have the meanings as set forth and defined in the Stipulation of Settlement dated as of \_\_\_\_\_, 2012 (the "Stipulation").
2. This Court has jurisdiction over the subject matter of the Motion for Reimbursement of Expenses and all matters relating thereto, including jurisdiction over all Settling Parties in the Federal Actions and Settlement Class Members.
3. Due, adequate and the best practicable notice of the maximum expenses on which Moving Counsel would request reimbursement was directed to all persons who were reasonably identifiable as Settlement Class Members, advising them of their right to object thereto.

4. Moving Counsel are hereby awarded reimbursement of \$ \_\_\_\_\_ in total out-of-pocket costs and expenses that were reasonably and necessarily incurred in prosecuting the Settling Actions and obtaining the Settlement, plus interest at the same rate as earned by the Gross Settlement Fund, which shall be paid out of the Gross Settlement Fund. The award of expenses shall be allocated among Moving Counsel in accordance with the expenses they incurred, and include the expenses incurred in connection with the Plan of Allocation and settlement administration.

5. In making this award of expenses, the Court has considered and found that the amount of expenses to be reimbursed is fair, reasonable and appropriate and consistent with the awards in similar cases.

6. The Court is entering, or has entered a separate final Judgment regarding the Stipulation, which approves the Settlement and concludes further litigation on the merits of the claims addressed therein, barring a reversal on appeal.

7. The Court also finds and declares, in accordance with the Declaratory Judgment Act (28 U.S.C. §§ 2201-2202), that: (i) the Notice and hearing regarding Moving Counsel's Motion for Reimbursement of Expenses was fair, adequate, reasonable, and consistent with this Court's prior Preliminary Approval Order, and (ii) the expense reimbursement is fair, adequate and reasonable.

8. [The Court has considered the objections, if any, made by various objectors and, to the extent not withdrawn, finds the objectors to lack standing, and/or finds the objections to be deficient and otherwise without merit and hereby determines that they are overruled. If the Court makes an expense award that is less than the amount requested by Private Plaintiffs' counsel, delete preceding sentence and insert alternate language here]

9. In the event that the Stipulation is terminated or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any Person against the Settling Parties.

10. The Court has, and retains and reserves, jurisdiction over all matters relating to the Motion for Reimbursement of Expenses, this Order, and for any other necessary purpose.

SIGNED: This \_\_\_\_ day of \_\_\_\_\_, 2012

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Honorable [INSERT]  
UNITED STATES DISTRICT JUDGE

# EXHIBIT R

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
JAMES ROUNDS, LYLE D. FASSETT, PATRICK  
CARROLL, TIMOTHY RICE, GREG LANCETTE,  
BRAD WARD, BRYAN ALLEN, Trustees and  
Fiduciaries for Plumbers Local 112 Health Fund,  
Local 73 Retirement Fund and U.A. of Journeymen  
& Apprentices Local 73 Fund, Plumbers &  
Steamfitters Local 267 Pension Fund, Plumbers and  
Steamfitters Local 267 Insurance Fund, on behalf of  
themselves and all others similarly situated,

No.: 09 Civ. 6910 (LBS)

Intervenor-Plaintiffs,

-and-

DAVID FASTENBERG, Trustee, Long Island  
Vitreo-Retinal Consultants 401K FBO David  
Fastenberg, *et al.*,

Intervenor-Plaintiffs,

-v-

BEACON ASSOCIATES MANAGEMENT CORP.,

Plaintiff,  
Intervenor-Defendant,  
Cross-Claim Defendant,  
Counterclaim Defendant,

-v-

BEACON ASSOCIATES LLC I,

Defendant,  
Intervenor-Defendant,  
Counterclaim Plaintiff.

## **STIPULATION AND ORDER**

**WHEREAS** the Opinion and Order dated July 27, 2010 of the Hon. Andrew J. Peck in the matter entitled Beacon Associates Management Corp. v. Beacon Associates LLC 1, 09 Civ. 6910, provided that Beacon Associates Management Corp. was to “refrain from distributing any monies to either Managing Member, Joel Danziger or Harris Markhoff, until further Court order,” and

**WHEREAS**, the parties to the above captioned action have all participated, along with others, in mediation and negotiations concerning settlement of all claims in this action; and

**WHEREAS**, the parties have reached a Stipulation of Settlement, subject to Court approval, which addresses, among other things, the resolution of claims asserted against Joel Danziger or Harris Markhoff;

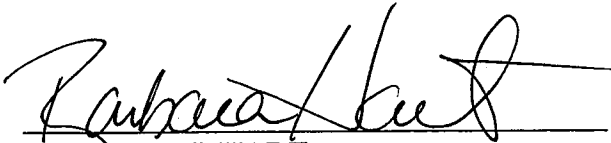
**IT IS HEREBY STIPULATED AND AGREED** by and between the parties hereto:

1. Upon the Effective Date of the Settlement (as that term is defined in the Stipulation and Settlement), Beacon Associates Management Corp. shall distribute to Joel Danziger and Harris Markhoff, or to any affiliated entity, all funds otherwise due to them which had been held in escrow pursuant to the July 27, 2010 Order of the Court.
2. If the Stipulation and Settlement are not approved by the Court or if it shall for other reasons be terminated, or if the Effective Date does not occur, this Stipulation shall also be terminated and shall have no further effect.



3. This Stipulation may be executed in counterparts, and a signed counterpart of this Stipulation delivered by facsimile or e-mail shall be acceptable and have the same force and effect as an original.

**LOWEY DANNENBERG COHEN & HART, P.C.**



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*Attorneys for Intervenor Plaintiffs James Rounds, et al.*

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*Attorneys for Fastenberg Intervenors*

**DEUTSCH & LIPNER**

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Garden City, NY 11530  
(516) 294-8899

*Attorneys for Intervenor Plaintiff Jordan Group LLC*

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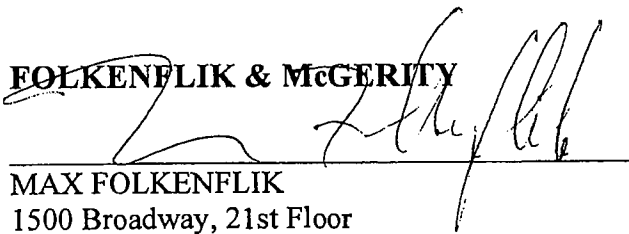
**LOWEY DANNENBERG COHEN & HART, P.C.**

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*Attorneys for Plaintiff, Intervenor-Defendant,  
Cross-Claim Defendant and Counterclaim  
Defendant Beacon Associates Management Corp.*

Dated: November <sup>13</sup>~~8~~, 2012

**SO ORDERED:**

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Andrew J. Peck  
United States Magistrate Judge

**HERRICK, FEINSTEIN LLP**

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*Attorneys for Plaintiff, Intervenor-Defendant,  
Cross-Claim Defendant and Counterclaim  
Defendant Beacon Associates Management Corp.*

Dated: November <sup>13</sup> 8, 2012

**SO ORDERED:**

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Andrew J. Peck  
United States Magistrate Judge