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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE: BEACON ASSOCIATES LITIGATION  
This Document Relates To: 09 Civ. 777 (LBS) (AJP)  
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Master File No.:  
09 Civ. 0777 (LBS) (AJP)

**STIPULATION AND [PROPOSED] ORDER  
DISMISSING CLAIMS AGAINST PAUL MYNERS**

WHEREAS, on June 21, 2010 Plaintiffs filed a Second Amended Class Action and Derivative Complaint (the "SAC") in this case;

WHEREAS, the SAC named as defendants thirteen individuals who Plaintiffs allege are current or former corporate directors of The Bank of New York Mellon Corporation (the "BNY Mellon Directors"), including defendant Paul Myners;

WHEREAS, with the exception of Mr. Myners, each of the BNY Mellon Directors moved to dismiss the claims asserted against them on August 20, 2010;

WHEREAS, Mr. Myners has represented that he is not a resident of the United States or of the State of New York and is not subject to the personal jurisdiction of this Court;

WHEREAS, on November 16, 2010 Plaintiffs filed a Certificate indicating that they served Mr. Myners with a copy of the summons and complaint in this case in London, England on September 30, 2010, pursuant to Article 5 of the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, resulting in the deemed date of service of October 4, 2010 under English court rules;

WHEREAS, Mr. Myners expresses no view at this time as to, but reserves all rights regarding, the adequacy of service;

WHEREAS, on October 5, 2010, the Court granted the BNY Mellon Directors' motion to dismiss, and dismissed each of the claims asserted against them, see In re Beacon

Associates Litigation, No. 09 Civ. 777 (LBS), 2010 WL 3895582, at \*32 (S.D.N.Y. Oct. 5, 2010) (the "October 5 Decision");

WHEREAS, the parties have conferred and believe that additional motion practice with respect to Mr. Myners at this time would not be an efficient use of judicial or party resources; and

WHEREAS, the parties wish to preserve all appellate rights and jurisdictional defenses as if Mr. Myners had joined in the BNY Mellon Directors' August 20, 2010 motion to dismiss and timely asserted all such defenses;

NOW, THEREFORE, it is hereby stipulated and agreed, subject to the approval of the Court, that:

1. The October 5 Decision shall apply to the claims asserted against Mr. Myners as if he had joined in the BNY Mellon Directors' August 20, 2010 motion to dismiss, and all claims against him in the SAC are accordingly dismissed. The dismissal shall have the same effect as the October 5 Decision dismissing the claims asserted against the other BNY Mellon Directors.
2. In the event that any dismissed claim against Mr. Myners shall be reinstated by an appellate court, Mr. Myners shall not be deemed to have waived his defenses under Fed. R. Civ. P. 12(b)(2) or 12(b)(4) for lack of personal jurisdiction and/or insufficiency of service of process, and such defenses shall be preserved as if they had been asserted timely.
3. This Stipulation and [Proposed] Order is without prejudice to any appellate rights any party would otherwise have with respect to their claims against Mr. Myners or any rights or defenses that Mr. Myners would otherwise be permitted to assert, except as explicitly provided herein.
4. This Stipulation and [Proposed] Order may be signed in any number of

counterparts and a facsimile or electronic signature shall be effective as an original signature.

Dated: New York, New York  
February 18, 2011


LOWEY DANNENBERG COHEN &  
HART, P.C.

By:   
Barbara Hart (BH-3231)  
Thomas M. Skelton (TS-7908)

One North Broadway  
White Plains Plaza, 5th Floor  
White Plains, NY 10601  
(914) 997-0500  
bhart@lowey.com  
tskelton@lowey.com

*Attorneys for the Lead Plaintiffs*

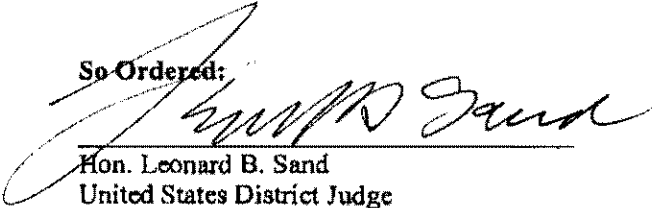
CLEARY GOTTLIB STEEN &  
HAMILTON LLP

By:   
Lewis J. Liman  
Jeffrey A. Rosenthal  
Members of the Firm

One Liberty Plaza  
New York, NY 10006  
(212) 225-2000  
(212) 225-3999 (facsimile)  
lliman@cgsh.com  
jrosenthal@cgsh.com

*Attorneys for Paul Myners*

So Ordered:

  
Hon. Leonard B. Sand  
United States District Judge

2/22/2011

