

September 13, 2004

**VIA FEDERAL EXPRESS**

The Honorable Lewis A. Kaplan  
United States District Court Judge  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street, Room 310 (c/o Mail Room)  
New York, NY 10007-1312

Re: *Securities and Exchange Commission v. Beacon Hill Asset Management LLC, et al.*  
Case No. 02 Civ. 8855 (LAK) (the "SEC Action")

Dear Judge Kaplan:

This letter is my Fourth Report as Receiver for Safe Harbor Fund, L.P. ("Safe Harbor") and will summarize for the Court the various developments in the conduct of the Safe Harbor Receivership and the Cayman Islands Joint Official Liquidation of Beacon Hill Master, Ltd. ("Master Fund") since my Third Report to the Court dated June 14, 2004.<sup>1</sup>

**INVESTOR COMMUNICATIONS**

Both KPMG Cayman Islands and Stenger & Stenger, P.C. receive frequent telephone calls and correspondences from Bristol Fund, Ltd. ("Bristol") and Safe Harbor investors. In an effort to coordinate responses to frequently asked questions, provide background information on the case, and provide regularly requested documents to the investors, the Joint Official Liquidators ("JOLs") have established a Master Fund website that is available to the public. The Master Fund website is updated periodically and is available at [BeaconHillMaster.com](http://BeaconHillMaster.com).<sup>2</sup>

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<sup>1</sup> This Report has been prepared for the period of June 15, 2004 to September 13, 2004 in accordance with Section II of the *Order Appointing Receiver for Safe Harbor Fund L.P. on Consent* (the "Appointment Order"), which directs the Receiver to report to the Court, the parties, the Commission and Safe Harbor investors within ninety (90) days of his appointment the financial condition of Safe Harbor.

<sup>2</sup> Additionally, the following "URLs" have been reserved for use by the JOLs and will revert the user to the main [BeaconHillMaster.com](http://BeaconHillMaster.com) website: [BeaconHillMaster.net](http://BeaconHillMaster.net), [BeaconHillMaster.org](http://BeaconHillMaster.org), [BeaconHillMasterFund.com](http://BeaconHillMasterFund.com), [BeaconHillMasterFund.net](http://BeaconHillMasterFund.net), [BeaconHillMasterFund.org](http://BeaconHillMasterFund.org), [BeaconMaster.com](http://BeaconMaster.com), [BeaconMaster.net](http://BeaconMaster.net), [BeaconMaster.org](http://BeaconMaster.org),

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In accordance with Section III of the *Stipulation and Order Granting Preliminary Injunction and Other Relief* entered by this Court on November 13, 2002, the JOLs have been distributing the monthly estimated valuation reports to all investors on the 16<sup>th</sup> of each month. These monthly estimated valuation reports are also filed with this Court.

I continue to update and maintain an independant Safe Harbor Receivership Website at [SafeHarborFund-Receivership.com](http://SafeHarborFund-Receivership.com)<sup>3</sup>. The Safe Harbor Receivership website posts copies of all reports and correspondences sent to investors, the Safe Harbor Receivership Investor Response Form and other various forms, responses to Frequently Asked Questions, and contact information for my office. A copy of this report will be posted on the Safe Harbor website.

### **FORMATION OF BEACON HILL MASTER, LTD. ("MASTER FUND") INFORMAL LIQUIDATION COMMITTEE**

As reported in my Third Report, the Grand Court of the Cayman Islands issued a Practice Direction in December 2003 requiring that a liquidation committee be appointed in all solvent liquidations. The function of a liquidation committee is to advise the official liquidators of the views of the investors and to review the professional fee applications of the official liquidators and their retained professionals.

All Bristol, Milestone Plus Partners, L.P. ("Milestone") and Safe Harbor investors were permitted to cast votes for representatives on the Master Fund informal liquidation committee ("Liquidation Committee"). As a result of the balloting for the Liquidation Committee, Safe Harbor investors Ontario/Safe Harbor Liquidating Trust, Gibraltar Fund I, L.P., and Bank One Opportunity Fund, L.P., as well as Bristol investors Deutsche Bank, Meespierson Nominees (Guernsey) Limited N809, Banco Nazionale del Lavoro Spa, Field Nominees Account #1329745, and Magnum Special Situations Fund were elected to the Liquidation Committee. The Liquidation Committee members' contact information has been distributed to all Safe Harbor and Bristol investors.

On July 1, 2004, the JOLs held the first meeting of the Liquidation Committee New York. All Liquidation Committee members attended this first committee meeting to discuss various topics including the review and approval of the JOLs' professional fees and those of their retained professionals, retention of counsel on behalf of Master Fund, pursuing litigation against

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[BeaconMasterFund.com](http://BeaconMasterFund.com), [BeaconMasterFund.net](http://BeaconMasterFund.net), [BeaconMasterFund.org](http://BeaconMasterFund.org), [MasterFund.org](http://MasterFund.org), [BHMaster.net](http://BHMaster.net), [BHMater.org](http://BHMater.org), [BHMaterFund.com](http://BHMaterFund.com), [BHMaterFund.net](http://BHMaterFund.net), [BHMaterFund.org](http://BHMaterFund.org).

<sup>3</sup> The following additional "URLs" have also been reserved for use by the receivership and liquidation: [BeaconHillAssetManagement.net](http://BeaconHillAssetManagement.net), [BeaconHillAssetManagement.com](http://BeaconHillAssetManagement.com), [SafeHarborFund-Receivership.net](http://SafeHarborFund-Receivership.net), and [SafeHarborFund-Receivership.com](http://SafeHarborFund-Receivership.com).

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various targets, valuation of the Master Fund's assets and recalculation of net asset values, retention of counsel on behalf of the Liquidation Committee, potential distribution methodologies, and methods to achieve a prompt distribution of Master Fund's assets to investors.

Since the first Liquidation Committee meeting, the Liquidation Committee members have agreed to convene via telephone conference each month to review the professional fees of the JOLs and their retained professionals and discuss other issues pertaining to the Master Fund. Accordingly, the Liquidation Committee members have participated in a telephone conference with the JOLs on August 19, 2004 in which they approved the fees and expenses presented by the JOLs and made recommendations regarding the retention of counsel on behalf of the fund. The Liquidation Committee's next telephone conference is scheduled for September 27, 2004.

#### **TRANSFER OF MASTER FUND ASSETS**

As of my last report to the Court, the Master Fund's assets were held at Bear Stearns. In early 2004, the JOLs circulated Requests For Proposals ("RFPs") to several financial institutions seeking the highest reasonable rate of return for the Master Fund in safe and secure investments that are liquid. After carefully reviewing each response to the RFPs, the JOLs concluded that it would be in the best interest of the Master Fund, taking into consideration principal preservation, liquidity and return, to accept the proposal submitted by Fifth Third Bank. The JOLs submitted a *Motion to Transfer Beacon Hill Master, Ltd.'s Assets on June 24, 2004*. This Court endorsed the Transfer Motion on August 5, 2004. Subsequently, Master Fund's Assets were transferred to Fifth Third Bank on August 10, 2004.<sup>4</sup> Currently, the funds are earning interest at the rate of 1.67%.

#### **RELATIONSHIP WITH ATC TRUST SERVICES (CAYMAN), LTD. ("ATC")**

As reported in my previous reports to the Court, ATC was effectively terminated as administrator of Bristol, Milestone and Master Fund on July 16, 2003 and as administrator of Safe Harbor on March 16, 2004. Although the Administration Agreement between Safe Harbor and ATC provides that all books, records and other documents received or prepared by ATC on behalf of Safe Harbor are the exclusive property of Safe Harbor, ATC has refused to transfer Safe Harbor's books and records to me, as Receiver, as ATC believes it has a lien, under Cayman Islands law, against the Safe Harbor books and records for all past due administration fees. While I disagree with ATC's position and, in fact, believe that Safe Harbor may have overpaid administration fees to ATC due to the over valuation of the net assets of the Master

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<sup>4</sup> Bear Stearns has not yet transferred the CBOs held by Master Fund to Fifth Third Bank as Bear Stearns is in the process of delivering these assets to Fifth Third Bank.

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Fund, in the interest of obtaining the books and records of Safe Harbor promptly, I negotiated the terms of a *Joint Motion for Transfer of Safe Harbor Books and Records from ATC Fund Services, Ltd. to the Receiver* ("Joint Motion"). The Joint Motion was filed on August 24, 2004 and endorsed by the Court on September 7, 2004. The Joint Motion provides that Safe Harbor will pay ATC the sum of \$33,274.81 as payment in full of all administration fees ATC claims are owed in return for the immediate transfer of all Safe Harbor's books and records to my office. The payment to ATC under this proposed agreement is without prejudice of my ability to pursue ATC for overpayments of fees or other matters.

Since the Court's endorsement of the Joint Motion, I have requested the wire transfer of \$33,274.81 be made to ATC from the Master Fund's account at Fifth Third Bank. Once this transfer has been completed, all Safe Harbor books and records maintained by ATC will be forwarded to my office.

#### **TAX ISSUES**

Although it is a Cayman Islands entity and otherwise not required to file a tax return in the United States, Master Fund filed an election to have the Master Fund treated as a partnership for federal income tax purposes upon its inception. Therefore, for tax year 2002, the Master Fund should have filed a partnership tax return and issued a K-1 to the feeder funds. The K-1 from the Master Fund is necessary to enable feeder fund, Safe Harbor, to prepare K-1s for its limited partners. The Master Fund is unable to prepare K-1s because income and loss are derived from an appropriate calculation of Net Asset Value ("NAV"), the calculation of which the Court is aware is at the heart of this litigation. Without K-1s from the Master Fund, Safe Harbor is also unable to issue K-1s to its partners. The Master Fund has retained KPMG Cayman Islands to advise it on U.S. tax issues. KPMG Cayman Islands is currently researching the method for which the Master Fund may issue K-1s to the feeder funds.

In my Third Report to this Court, I reported that I would be filing incomplete tax returns for Safe Harbor for the tax years of 2002 and 2003 at the urging of my tax advisors, Plante & Moran LLP. Since that time, however, after further consultation with Plante & Moran and KPMG Cayman Islands, I have decided not to file incomplete tax returns. This decision was made because Safe Harbor's general partner, Safe Harbor Asset Management, LLC and its principals, declined to execute the incomplete returns and based on further advise from my advisors. Instead, I have been advised to wait to file the Safe Harbor tax returns for 2002 and 2003 until the recalculation of an accurate NAVs for the Master Fund has been completed, at which point the Master Fund will be able to issue an accurate K-1 to Safe Harbor. During the interim, Plante & Moran has filed a second request for extension to file taxes with the IRS, which extends the tax due date for 2003 until October 15, 2004.

### EXPERT VALUATION

The expert retained by Master Fund, Gifford Fong Associates ("GFA"), issued the *Beacon Hill Master, Ltd. Securities Valuation Report* ("Valuation Report") on July 7, 2004 reporting on historical valuation for Master fund and the feeder funds. The Valuation Report was served on all counsel of record as the expert report of relief defendant Master Fund on July 8, 2004. The Valuation Report is also available to investors upon request.

### RETENTION OF COUNSEL FOR MASTER FUND

In an effort to maximize the funds available for distribution to investors, the Receiver and the JOLs of the Master Fund sought the advise of the Liquidation Committee regarding the Master Fund's retention of counsel to potentially pursue litigation against third parties. When meeting on July 1, 2004, the Liquidation Committee recommended that the JOLs retain litigation counsel to protect the interests of the fund. The JOLs and the Liquidation Committee interviewed several qualified candidates for counsel. After the interview process, the Liquidation Committee recommended, and the JOLs have retained, the law firm of Brown Rudnick Berlack & Israels, LLP ("BRBI") to represent the Master Fund in litigation it is contemplating.

As the Court is aware, BRBI currently represents 36 investors in their claims against several defendants, including Ernst & Young. The JOLs and the Liquidation Committee believe that the knowledge already acquired by BRBI in such litigation will be beneficial to the Master Fund in its litigation and may enhance recovery for both Master Fund and the individual investor plaintiffs. Additionally, Master Fund and the investor plaintiffs will share legal fees incurred by BRBI which should result in significant cost savings to both sets of litigants. BRBI's time and expenses will be allocated equitably between Master Fund and the investor plaintiffs.

### INVESTOR LITIGATION

On June 24, 2004, the investor Plaintiffs in the case of Alteram SA, et al. v. Beacon Hill Asset Management, LLC, et al. ("Alteram Action") refiled its First Amended Complaint against BHAM, BHAM's principals, ATC, Amsterdam Trust Corp B.V., Asset Alliance Corp., Milestone Global Advisors, L.P., Safe Harbor Asset Management LLC, Ernst & Young, LLP, and Ernst & Young Cayman Islands in this Court.<sup>5</sup>

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<sup>5</sup> A claim filed by Banc One Opportunity Fund LP and Banc One Capital Corporation on October 3, 2003 is also pending.

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One claim investors may have, and which was raised in the Alteram Action, is for securities fraud. The JOLs have been advised that individual investor securities fraud claims under Section 10b of the Securities Exchange Act of 1934 and Rule 10b-5 may be time barred if not commenced on or before October 4, 2004. Accordingly, the JOLs sent notice to investors on September 9, 2004 advising them of this possibility and recommending each investor analyze their particular circumstances as soon as possible to preserve their claims. A copy of the September 9, 2004 notice is enclosed as **Attachment A**.

### **SAFE HARBOR'S ASSETS AND LIABILITIES**

Based upon the information I have received to date, Safe Harbor owns or has an ownership interest in the following assets:

- A. The funds held by Master Fund at its account at Fifth Third Bank with an approximate balance of US\$322,827,305 as of July 31, 2004. Based upon the Master Fund's unadjusted NAVs as of July 31, 2004 (for which I have not determined reliability), Safe Harbor owns 18.1% of the NAV of the Master Fund (123,158 of its outstanding shares), with an estimated value of \$58,192,495.
- B. Approximately US\$298,000 in funds that represent deferred quarterly incentive fees due to BHAM during 2002 that were paid into a suspense account pursuant to individual agreements concluded by certain investors in Safe Harbor during the course of 2002 pending a final calculation of incentive fees at year end. These funds are currently held in a bank sub-account with First Caribbean International, Cayman Islands in the name of "ATC Fund Admin: Bristol # 2." I am currently negotiating the transfer of these funds from such account to a Safe Harbor account with the Liquidator of Bristol.
- C. An account at Bear Stearns with minimal value.
- D. Minimal cash (\$200.00) in Safe Harbor's account at Wachovia Bank NA.

The only liability of Safe Harbor of which I am currently aware is a pending payment of US\$33,274.81 to ATC to be made out of the assets of Master Fund. This payment was approved by this Court on September 7, 2004.

### **MASTER FUND'S ASSETS AND LIABILITIES**

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The Master Fund's assets total \$323,191,318 as of September 1, 2004. This total consists of \$321,941,184 in cash at Fifth Third Bank and \$1,250,134<sup>6</sup> invested in Beacon Hill CBOs. As of July 31, 2004, the Master Fund had total liabilities of \$1,319,898. These total liabilities consist of accrued expenses for unpaid professional fees.

### **REVIEWING STRATEGIES TO HASTEN DISTRIBUTION**

The penultimate question posed by investors is when a partial distribution of Master Fund's assets will be made to investors. As reported in my earlier reports to the Court, before a distribution can be made to investors, several issues must be addressed including the identification of all investors who will be eligible to participate in a distribution, the total value of investor claims, and the basis upon which each investor will be paid. As Receiver for Safe Harbor, I have gathered investor information through Investor Response Forms and Mr. Bullmore, as Liquidator of Bristol, has gathered this information for Bristol investors from the share registers of the company. Neither the JOLs nor I, as Safe Harbor Receiver, have petitioned the Court to sanction a claims bar date and or approve a detailed claims procedure. The JOLs are currently exploring distribution methodologies with the Liquidation Committee.

Additionally, before a distribution can be made, the JOLs must address indemnification claims made by ATC which has notified the Funds that it may have an indemnity claim of up to \$1 billion for any liability and attorneys' fees incurred as a result of actions brought by investors and by BHAM which, with its principals, have claimed indemnity from the Funds based upon the Investment Management Agreement for legal costs incurred in defending proceedings brought against them by third parties. The JOLs and I, as Safe Harbor Receiver, strongly believe that the funds have no liability to ATC or BHAM. In an effort to make an expedient distribution to investors, the JOLs are investigating the best way to dispense with any indemnification claims made by ATC and BHAM so that this potential roadblock to an investor distribution is finally resolved.

\* \* \*

I hope this Report has been informative. My next quarterly report shall be filed as of December 12, 2004. In the interim, I would be happy to discuss any aspect of this Report with the Court, the Commission, counsel for the parties, or investors.

Very truly yours,

**STENGER & STENGER, P.C.**

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<sup>6</sup> This value provided by Ellington, the investment manager.

**STENGER & STENGER, P.C.**

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/S/

Phillip S. Stenger, Receiver (PS-9969)

Attachments:

Attachment A: September 9, 2004 Notice to Investors

cc: To the following parties via Federal Express  
Kevin O'Rourke, SEC  
David Kagan-Kans, SEC  
Theo Bullmore, KPMG

cc: To the following parties via U.S. Mail:  
Simpson, Thacher & Bartlett c/o Tom Bell  
Skadden Arps Slate Meagher & Flom LLP c/o Seth Schwartz  
Gibbons Del Deo Dolan Griffinger & Vecchione c/o Lawrence Lustberg  
United States Attorney's Office c/o Amy Winkleman  
Kevin H. Marino, P.C. c/o Kevin Marino  
Miller & Wrubel c/o Joel Miller  
Brown Rudnick Berlack Israels, LLP c/o Scott Berman  
Schindler Cohen & Hochman, LLP c/o Jonathan Hochman  
Janvey Gordon Herlands Randolph Roxenberg & Cox, LLP c/o Richard Janvey  
Kornstein, Veisz, Wexler & Pollard, LLP c/o Daniel J. Kornstein  
All Safe Harbor investors of record