

SEC V. BEACON HILL ASSET MANAGEMENT, LLC, et al

U.S. SECURITIES AND EXCHANGE COMMISSION

Litigation Release No. 18950 / October 28, 2004

SEC V. BEACON HILL ASSET MANAGEMENT, LLC, JOHN D. BARRY, THOMAS P. DANIELS, JOHN M. IRWIN, AND MARK P. MISZKIEWICZ, DEFENDANTS, AND BEACON HILL MASTER, LTD., BRISTOL FUND, LTD., SAFE HARBOR FUND, L.P., SAFE HARBOR ASSET MANAGEMENT, LLC, MILESTONE PLUS PARTNERS, L.P., MILESTONE GLOBAL ADVISORS, L.P., NANCY DANIELS, MARIE IRWIN, ELLEN LYNCH, AND JENNIFER TINDELL, RELIEF DEFENDANTS, CIVIL ACTION NO. 02 CV 8855 (LAK) (S.D.N.Y.)

BEACON HILL AND FOUR PRINCIPALS AGREE TO FRAUD INJUNCTIONS AND INDUSTRY BARS AND TO PAY OVER \$4.4 MILLION TO SETTLE SEC ACTION

The Securities and Exchange Commission announced today that it has settled its pending fraud litigation against Beacon Hill Asset Management, LLC ("Beacon Hill"), and its four principals, John D. Barry, Thomas P. Daniels ("Daniels"), John M. Irwin ("Irwin"), and Mark P. Miskiewicz (collectively, the "Defendants"). Under the terms of the final judgment signed today by U.S. District Court Judge Lewis A. Kaplan, the Defendants are permanently enjoined from violating various antifraud provisions of the federal securities laws and ordered to pay more than \$2.4 million in disgorgement and prejudgment interest, and \$2 million in penalties. Further, the four principals have consented to be barred in a separate administrative proceeding from associating with any investment adviser. The Commission expects the disgorgement, prejudgment interest and penalties from the Defendants to be distributed to victims of the fraud pursuant to the Fair Fund provision of the Sarbanes-Oxley Act of 2002.

The alleged misconduct. The Commission's amended complaint, filed on June 15, 2004, alleged the following:

The four principals of Beacon Hill together implemented a fraudulent scheme that resulted in investors losing more than \$300 million. From at least the beginning of 2002 through October 2002, Beacon Hill misrepresented and manipulated its valuation procedures for Beacon Hill Master, Ltd. (the "Master Fund"), the core hedge fund that held and traded securities in Beacon Hill's three feeder hedge funds. As the value of these hedge funds decreased over the summer of 2002, Beacon Hill increasingly inflated the prices of the securities in the Master Fund to maintain the appearance of positive returns. At the same time, contrary to what it was telling investors, Beacon Hill made an increasing and ultimately unsuccessful bet on interest rates rising in an attempt to cover its hidden losses.

In addition, Beacon Hill entered into a series of trades between the Master Fund and certain other accounts it managed for two institutional clients (the "managed accounts") at prices that defrauded the Master Fund and allowed the managed accounts, whose performances had also declined, to reap substantial profits. Beacon Hill was able to hide the losses resulting from these fraudulent trades by inflating the value of the securities in the Master Fund to an even greater extent.

Finally, in September 2002, as the Defendants' scheme started to unravel, three of the four principals - Barry, Daniels and Irwin - liquidated an account in which they were the only investors by selling the securities in their account to the Master Fund without disclosure to investors. In early October 2002, when Beacon Hill's prime broker challenged the valuation of the Master Fund and Beacon Hill was forced to admit it had sustained losses, the principals misrepresented the magnitude of the actual losses in an attempt to save Beacon Hill's operations and make the losses appear to be the result of market conditions. On October 17, 2002, Beacon Hill announced much larger investor losses, admitting that, as of September 30, the Net Asset Values of its hedge funds had declined 54% from previously reported August 31, 2002 levels, and further acknowledging that it had mis-priced securities in the funds prior to August.

The District Court's final judgment. The final judgment signed by the Court today permanently enjoins the Defendants from violations of anti-fraud provisions of the federal securities laws (Section 17(a)(1), (2) and (3) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934

and Rule 10b-5 thereunder, and Sections 206(1), (2) and (3) of the Investment Advisers Act of 1940 ("Advisers Act"). The Defendants have consented to the entry of that judgment without admitting or denying the allegations of the amended complaint. Beacon Hill will pay a \$600,000 civil penalty and \$1 in disgorgement; Barry will pay a \$500,000 civil penalty and \$653,275 in disgorgement and pre-judgment interest; Daniels will pay a \$500,000 civil penalty and \$1,053,945 in disgorgement and pre-judgment interest; Irwin will pay a \$200,000 civil penalty and \$554,227 in disgorgement and pre-judgment interest; and Miskiewicz will pay a \$200,000 civil penalty and \$219,792 in disgorgement and pre-judgment interest. Each Defendant is jointly liable for the full disgorgement and pre-judgment interest in the event that the other Defendants do not pay their respective shares of these liabilities.

The administrative settlement. Finally, Barry, Daniels, Irwin and Miskiewicz have agreed to administrative proceedings under Section 203(f) of the Advisers Act, pursuant to which, based on the entry of the injunctions described above, Barry, Daniels and Irwin would be permanently barred from association with any investment adviser, and Miskiewicz would be barred from association with any investment adviser, with the right to reapply after four years.

In connection with the settlement with the Defendants, and with the consent of the Commission, the District Court dismissed from the civil action Relief Defendants Jennifer Tindell, Nancy Daniels, Marie Irwin and Ellen Lynch.

For further information, see Litigation Release Nos. 17831 (November 7, 2002) and 18745A (June 16, 2004).