

1 JOHN M. McCOY III, Cal. Bar No. 166244
 Email: mccoymj@sec.gov
 2 GREGORY C. GLYNN, Cal. Bar No. 39999
 Email: glynnng@sec.gov
 3 FINOLA H. MANVELIAN, Cal. Bar No. 180681
 Email: manvelianf@sec.gov
 4 MARSHALL S. SPRUNG, Cal. Bar No. 188253
 Email: sprungm@sec.gov
 5 CATHERINE W. BRILLIANT, Cal. Bar No. 229992
 Email: brilliantc@sec.gov

6 Attorneys for Plaintiff
 7 Securities and Exchange Commission
 Rosalind R. Tyson, Regional Director
 8 Andrew G. Petillon, Associate Regional Director
 5670 Wilshire Boulevard, 11th Floor
 9 Los Angeles, California 90036
 Telephone: (323) 965-3998
 10 Facsimile: (323) 965-3908

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 12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**
 14 **WESTERN DIVISION**

15 SECURITIES AND EXCHANGE
 16 COMMISSION,

17 Plaintiff,

18 vs.

19 DIVERSIFIED LENDING GROUP, INC.;
 APPLIED EQUITIES, INC.; and BRUCE
 20 FRIEDMAN;

21 Defendants,

22 and

23 TINA M. PLACOURAKIS,

24 Relief Defendant.

Case No. CV 09-01533 R (SSx)

**PLAINTIFF SECURITIES AND
 EXCHANGE COMMISSION'S
 STATEMENT RE RECEIVER'S
 SECOND REQUEST FOR
 APPROVAL OF PROCEDURES
 FOR FUTURE FEE
 APPLICATIONS**

Date: May 3, 2010
 Time: 10:00 a.m.
 Place: Courtroom 8

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1 **I. INTRODUCTION**

2 Plaintiff Securities and Exchange Commission (“Commission”) submits this
3 statement regarding the Receiver’s Second Request For Approval Of Procedures For
4 Future Fee Applications (“Second Request”).

5 As reflected in the Receiver’s recent filing, the Receiver and his
6 professionals have expended great effort – and to great effect – for the estate over
7 the preceding months, and the Commission believes the fees and expenses detailed
8 in the Second Request are in line with what comparably qualified professionals
9 would charge the types of professional services rendered. Accordingly, the
10 Commission does not oppose the Receiver’s application.

11 **II. DISCUSSION**

12 The court appointing the receiver has full power to fix the compensation of
13 such receiver and the compensation of the receiver’s attorney or attorneys.
14 *Drilling & Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934). Many
15 factors enter into that calculus. *See, e.g. United States v. Code Products Corp.*,
16 362 F.2d 669, 673 (3d Cir. 1966) (primary considerations in fixing receiver’s
17 compensation are the fair value of his time, labor and skill measured by
18 conservative business standards; the degree of activity, integrity and dispatch with
19 which work is conducted; and the result obtained, the last being a “critical factor”);
20 *In re Imperial ‘400’ National, Inc.*, 432 F.2d 232, 237 (3d Cir. 1970) (court should
21 consider economy of administration, the burden the estate may safely be able to
22 bear, the amount of time required to perform the necessary services, and the overall
23 value of those services to the estate).

24 The court has considerable discretion in fashioning a fee award that is
25 appropriate under the circumstances, *Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir.
26 1994), and that will reasonably, but not excessively, compensate the professionals
27 for their efforts. *In re Continental Ill. Sec. Litig.*, 962 F.2d 566, 572-73 (7th Cir.
28 1992). Interim fee allowances are appropriate where both the magnitude and the

1 protracted nature of a case impose economic hardships on professionals rendering
2 services to the estate. *Matter of Interstate Stores, Inc.*, 477 F. Supp. 14, 16
3 (S.D.N.Y. 1977). In fixing the amount of fees to be paid to the Receiver and his
4 attorneys, an important consideration is the extent of the assets available to pay any
5 such fees, and the extent to which the investors and creditors have benefited (or
6 not) as a result of the Receiver's endeavors. *Specialty Products Co. v. Universal*
7 *Indus. Corp.*, 21 F. Supp. 92, 94 (M.D. Pa. 1937). *See also S.E.C. v. W. L. Moody*
8 *& Co.*, 374 F. Supp. 465, 480-81 (S.D. Tex. 1974) (size of the estate and its ability
9 to afford the expenses and fees is a consideration). Even though a receiver may not
10 have increased, or prevented a decrease in, the value of the collateral, if a receiver
11 reasonably and diligently discharges his duties, he is entitled to fair compensation
12 for his efforts. *SEC v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992); *Donovan v.*
13 *Robbins*, 588 F. Supp. 1268, 1273 (N.D. Ill. 1984).

14 As previously noted, the circumstances of this case, including the magnitude
15 of the fraud and the absence of reliable accounting or other business records, made
16 the task of the Receiver and his professionals in this case unusually challenging.
17 The Receiver and his team have embraced that challenge, imposing order on the
18 disastrous systems and records (to the extent they even existed) of the receivership
19 estate. They have aggressively pursued those who received substantial fraudulent or
20 arguably fraudulent transfers of receivership entities, resulting in several instances
21 in significant settlements. They continue to pursue other significant assets that may
22 be recoverable by the estate, and have designed and proposed efficient, prudent
23 approaches – such as the recent contingency fee proposal – for pursuing such
24 potential claims with the goal of maximizing the ultimate *net* recovery for the
25 estate.

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1 It also should be noted that the continuing efforts of defendant Bruce
2 Friedman to muddy the waters and mislead defrauded investors have complicated
3 the Receiver's efforts and thereby made the process more time-consuming and
4 expensive.

5 **III. CONCLUSION**

6 In light of the foregoing, the Commission believes the Receiver's Second
7 Request and respectfully urges that it be approved by the Court.

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10 DATED: April 13, 2010

Respectfully submitted,

11 /s/ John M. McCoy III
12 John M. McCoy III
13 Attorney for Plaintiff
14 Securities and Exchange Commission
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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648

Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On April 13, 2010, I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S STATEMENT RE RECEIVER'S SECOND REQUEST FOR APPROVAL OF PROCEDURES FOR FUTURE FEE APPLICATIONS** on all the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

FEDERAL EXPRESS: By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

(Federal) I declare under penalty of perjury that I am a member of the bar of this Court and that the foregoing is true and correct.

Date: April 13, 2010

/s/ John M. McCoy III
John M. McCoy III

1 **SEC v. DIVERSIFIED LENDING GROUP, INC., et al.**
2 **United States District Court – Central District of California**
3 **Case No. CV 09-01533 R (JTLx)**
4 **(LA-3591)**

5 **SERVICE LIST**

6 **Richard E. Drooyan, Esq. (also served by electronic mail)**
7 **Munger Tolles & Olson LLP**
8 **355 S. Grand Avenue, 35th Floor**
9 **Los Angeles, CA 90071-1560**
10 **Email: richard.drooyan@mto.com**

11 **David A. Gill, Esq. (also served by electronic mail)**
12 **Danning, Gill, Diamond & Kollitz, LLP**
13 **2029 Century Park East, 3rd Floor**
14 **Los Angeles, CA 90067-2904**
15 **Email: dag@dgdk.com**
16 ***Court-Appointed Permanent Receiver for Diversified Lending***
17 ***Group, Inc. and Applied Equities, Inc.***

18 **George E. Schulman, Esq. (also served by electronic mail)**
19 **Danning, Gill, Diamond & Kollitz, LLP**
20 **2029 Century Park East, 3rd Floor**
21 **Los Angeles, CA 90067-2904**
22 **Email: gschulman@dgdk.com**
23 ***Attorney for Court-Appointed Permanent Receiver David A. Gill***