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11  
 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  
 THIRD REQUEST FOR  
 APPROVAL OF PROFESSIONAL  
 FEES AND EXPENSES**

Date: June 7, 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 Third Request For Approval Of Professional  
4 Fees and Expenses (“Third 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 Third Request are in line with what comparably qualified professionals  
9 would charge the types of professional services rendered. Accordingly, the  
10 Commission supports the Receiver’s application.

11 **II. DISCUSSION**

12 **A. The Applicable Law**

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

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

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

#### 15 **B. The Work Of The Receiver And His Professionals In This Case**

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

1 It was partly in recognition of that complexity that the Commission  
2 recommended this particular receiver to the Court for this action. In some cases  
3 where the Commission recommends appointment of a receiver, there is little for  
4 the receiver to do aside from terminating a lease, selling off some furniture,  
5 liquidating bank and brokerage accounts, and recommending a distribution plan (in  
6 those cases where there are even sufficient funds to make a distribution practical).  
7 It was clear from the outset that this case would require more, which the receiver  
8 has delivered. As reflected in the receiver's reports as well as the Commission's  
9 complaint, defendant Bruce Friedman dissipated investor assets in a bewilderingly  
10 far-ranging and duplicitous fashion, requiring a substantial amount of "detective  
11 work" on the receiver's part simply to figure out where much of the money had  
12 gone, much less what steps might be taken to recover it. And as the Court is  
13 aware, the receiver has encountered various forms of resistance at every step –  
14 requiring the filing of adversary actions, motions to compel, and the like.

15 The Commission monitors the activities of the receiver and consults with the  
16 receiver when it is appropriate to do so. And the Commission's counsel notes that  
17 the Commission has not hesitated to challenge receivers' fee requests in other  
18 cases when they appear unreasonable. The receiver works for the benefit of the  
19 estate and is paid from estate assets, so it is fair – indeed critical – to ensure that  
20 the estate is receiving fair value its dollars. It is equally critical to remember,  
21 however, that receivers do play a vital role that is of tremendous benefit to  
22 defrauded investors. That important work is often complex and challenging. If  
23 receiver and the other professionals they retain cannot expect fair and reasonable  
24 compensation for their efforts, it simply will not be possible to recruit  
25 sophisticated, talented professionals to do the work.

26 Here, the fee request – while significant – appears eminently reasonable  
27 considering the quantity and quality of work performed, and the actual results  
28 accruing to the benefit of the estate. An illustrative example is set forth at page 3,

1 lines 20-28 of the Third Request. Absent the hard work of the receiver and his  
2 team, millions of dollars in secret transfers and other potential claims would have  
3 gone undetected. The Court recently approved the retention of contingency  
4 counsel to pursue a number of those claims. The Commission believes this is an  
5 eminently reasonable approach to pursuing potential sources of recover for the  
6 defrauded investors. But it bears remembering that absent the receiver's forensic  
7 accounting and analysis, and the extensive formal discovery necessary to obtain  
8 missing information, there would have been no way to determine what potential  
9 claims even exist, much less how they might be pursued.

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

14 **III. CONCLUSION**

15 In light of the foregoing, the Commission believes the Receiver's Third  
16 Request is appropriate and respectfully urges that it be approved by the Court.

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19 DATED: May 11, 2010

Respectfully submitted,

20  
21 /s/ John M. McCoy III  
22 John M. McCoy III  
23 Attorney for Plaintiff  
24 Securities and Exchange Commission  
25  
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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 May 11, 2010, I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S STATEMENT RE RECEIVER'S THIRD REQUEST FOR APPROVAL OF PROFESSIONAL FEES AND EXPENSES** 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.

**UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS 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.

**E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

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

I declare under penalty of perjury that the foregoing is true and correct.

Date: May 11, 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**

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16                   ***Court-Appointed Permanent Receiver for Diversified Lending***  
17                   ***Group, Inc. and Applied Equities, Inc.***

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