

1 DAVID A. GILL (State Bar No. 032145)
2 2029 Century Park East, Third Floor
3 Los Angeles, California 90067-2904
4 Telephone: (310) 277-0077
5 Facsimile: (310) 277-5735

6 Receiver

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

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12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 DIVERSIFIED LENDING GROUP,
17 INC.; APPLIED EQUITIES, INC.; AND
18 BRUCE FRIEDMAN,

19 Defendants,

20 and

21 TINA M. PLACOURAKIS,

22 Relief Defendant.

Case No. CV 09-01533-R (SSx)

RECEIVER'S EX PARTE
APPLICATION TO APPROVE
INVESTMENT OF ESTATE FUNDS;
DECLARATIONS OF DAVID A.
GILL AND PATRICIA W. MORRIS

[No hearing requested]

23 **PLEASE TAKE NOTICE THAT** David A. Gill, the Permanent Receiver
24 (the "Receiver") of Diversified Lending Group, Inc. ("DLG"), and Applied Equities,
25 Inc., and their subsidiaries and affiliates, will and do hereby move the Court for an
26 order granting *Receiver's Ex Parte Motion to Approve Investment of Estate Funds*
27 (the "Application").

28 ///

///

1 This Application requests an order:

2 1. authorizing me as Receiver to invest such estate funds as exceed the
3 amounts insured by the Federal Deposit Insurance Corporation (“FDIC”) in United
4 States Treasury Bills; and

5 2. confirming that the form and manner of notice of the Application
6 provided by the Receiver is appropriate.

7 3. A copy of the Proposed Order is attached to the Declaration of David A.
8 Gill as Exhibit “C.”

9 As Receiver, I seek permission to invest funds in excess of the amount insured
10 by the FDIC, in United States Treasury Bills, which I believe to be the investment
11 most consistent with my obligations as Receiver. I have investigated into alternate
12 investments and cannot find any investment which is insured by the FDIC or other
13 governmental institution. However, I am satisfied that the proposed investment in
14 Treasury Bills is backed by the full faith and credit of the United States and that this
15 is sufficient under the circumstances. The investment is at nominal interest, i.e., at
16 the discount rates detailed in the Declaration of David A. Gill filed herewith.

17 The Application is made on the grounds that as Receiver, I have, after
18 investigation, determined in my business judgment that the investment is prudent,
19 consistent with my duties and the receivership practice in this court and the courts of
20 the State of California. The Application is based upon this Notice, the Application,
21 the Memorandum of Points and Authorities, the Declarations of David A. Gill and
22 Patricia W. Morris, and upon such other evidentiary matters as may be considered by
23 the Court.

24 **PLEASE TAKE FURTHER NOTICE** that pursuant to the prior order of this
25 Court entered May 4, 2009 (the “Omnibus Order”), this notice and Application were
26 published on the receivership website and served upon the approved Limited Service
27 List on June 18, 2010, as reflected in the Declaration of Patricia W. Morris. No
28 opposition has been received.

1 **PLEASE TAKE FURTHER NOTICE** that pursuant to the Omnibus Order
2 this Notice and Application will be served upon the approved Limited Service List.

3
4 Dated: June ~~24~~, 2010



DAVID A. GILL,
Receiver, Applicant

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

As Receiver, I have more than \$6,000,000 on hand as of June 18, 2010. All funds in my possession are insured and held at interest. The program under which all funds deposited in participating banks were insured by the Federal Deposit Insurance Corporation (“FDIC”) without limits has ended and I am not entitled to insurance on more than a relatively small amount of the funds in my possession, which I believe would be \$250,000 per account. Thus, I would need to open many accounts in many branches to place all funds in FDIC insured accounts. I would not likely receive higher interest and the administrative costs would be significant. I herein recommend that I be permitted to deposit funds in excess of that insured by the FDIC in United States Treasury Bills.

II.

RELEVANT FACTS

I have collected substantial moneys through sales, settlements, litigation and renegotiation of certain non liquid investments. Initially I deposited funds with the Bank of America under the FDIC Transaction Guaranty Account Program (“TAG”), a program whereby, in addition to the standard FDIC insurance of \$250,000 per account, all moneys in excess of \$250,000 were insured by the FDIC. The Bank of America did not pay interest on such funds, but I participated because of the FDIC insurance feature. The Bank of America ceased to participate in the TAG program and thereafter I was able to negotiate a better deal with City National Bank (“CNB”) which provided for insurance under the TAG program, and also paid nominal interest. However, on May 28, 2010, I received a letter from CNB, Exhibit “A” to my Declaration filed herewith, advising that its participation in the TAG program was ending on June 30, 2010. In checking, I found no other banks otherwise suitable

1 still participating in the TAG program, and find myself with over \$6.0 million, of
2 which only \$500,000, in two accounts (one at the Bank of America and one at City
3 National Bank), will be insured by the FDIC as of July 1, 2010.

4 **III**

5 **APPLICABLE LAW**

6 A receiver must exercise reasonable care in depositing funds in his or her
7 custody in banks and can be liable if depository banks fail. *U.S. ex rel. Willoughby v.*
8 *Howard*, 302 U.S. 445 (1938) (trustee in bankruptcy). F.R. Civ. P. 66 in relevant
9 part, states: that [T]he practices in administering an estate by a receiver or a similar
10 court-appointed officer must accord with the historical practice in federal courts or
11 with a local rule. Local Rule 66-8 of this Court provides that except as otherwise
12 ordered by the court; the Receiver must administer the estate as nearly as possible in
13 according with the practice in the administration of estates in bankruptcy.¹ 28 U.S.C.
14 § 959 provides that a receiver shall manage the receivership estate in accordance
15 with State law. This practice is to seek insurance or the equivalent. Under California
16 law a receiver may not deposit receivership funds in bank without court order, since
17 a deposit is considered a loan payable on demand, and receivership funds may be lent
18 only as provided by statutes. *Miller v. Fidelity & Deposit Co. of Maryland*, 3 Cal.
19 App. 2d 580, 584-585 (App. 2 Dist. 1935). I know of no requirement prohibiting the
20 deposit of funds if no interest is provided, or, indeed, requiring insurance, but in my
21 experience of over 45 years as a state court receiver, I know that it is a custom of
22 receivers to seek to obtain both insurance and interest consistent with prudence and
23 security.

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27 ¹ This is a blind alley, however, because bankruptcy funds are protected by a
28 program not available to receivers.

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IV

APPLICATION MAY BE FILED ON AN EX PARTE BASIS

Pursuant to the procedure established by this Court in its Order of May 4, 2009, I am as Receiver applying for the approval of this Application on an ex parte basis in order to maximize efficiency for both the Court and the receivership estate. Accordingly, this Application may properly be brought before the Court on an *ex parte* basis.

V.

CONCLUSION

Based upon the foregoing, the Receiver respectfully requests approval of this Application, the Agreement, and all other appropriate relief.

Dated: June 21, 2010



DAVID A. GILL, RECEIVER
Applicant

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DECLARATION OF DAVID A. GILL

I, David A. Gill, declare as follows:

1. I am the Permanent Receiver appointed by this Court for Diversified Lending Group, Inc., and Applied Equities, Inc., pursuant to the Order of Preliminary Injunction and Orders: (1) Continuing Asset Freeze, (2) Appointing a Permanent Receiver, (3) Prohibiting the Destruction of Documents, (4) Granting Expedited Discovery, and (5) Requiring Accountings, signed and entered by this Court on March 10, 2009.

2. This declaration is made in support of the *Receiver's Ex Parte Motion to Approve Investment of Estate Funds* (the "Application").

3. Unless stated otherwise, I have personal knowledge of the facts in this declaration and in the Application to which it is attached, if called as a witness, I could competently testify to these facts.

4. I am the duly appointed and qualified Receiver herein. I have collected substantial moneys through sales, settlements, litigation and renegotiation of certain non-liquid investments. Initially I deposited funds with the Bank of America under the FDIC Transaction Guaranty Account Program ("TAG") a program whereby in addition to the standard FDIC insurance of \$250,000, all moneys in excess of \$250,000 would be insured albeit that the Bank of American did not pay interest on such funds. The Bank of America ceased to participate in the TAG program and thereafter I was able to negotiate a better deal with City National Bank ("CNB") which provided for insurance under the TAG program, and also paid interest. On May 28, 2010 I received a letter from CNB, Exhibit "A" hereto, advising that its participation in the TAG program was ending on June 30, 2910. In checking I found no other banks otherwise suitable still participating in the TAG program, and find myself with over \$6.0 million, of which only \$500,000, in two accounts, will be insured as of July 1, 2010.

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5. I believe that where possible, I must deposit funds in insured accounts, preferably at interest, and only pursuant to court order. Generally, a receiver must exercise reasonable care in depositing funds in his or her custody in banks. I am required to act in the same manner as would be the case under California law. I should attempt to obtain insurance or where, as here, there is no available insurance to cover all of the estate 's funds, such substitute as is approved by the court. I should seek to obtain interest, but it is secondary to the need to secure the moneys of the estate.

6. After an investigation of available suitable bank accounts and other investments, I have narrowed them down to those set forth in an electronic communication from City National Bank to me, a copy of which is attached hereto as Exhibit "B." Of those, I have selected the purchase of United States Treasury Bills, which are backed by the full faith and credit of the U.S. Treasury. They offer sufficient liquidity for my purposes. They pay interest (are purchased at discounts) not disproportionate to that paid by other banking institutions without insurance. The current rates are set forth in Exhibit "B." These rates are equivalent to interest of less than 1% but I know of no other suitable investments returning even 2%. Of course I will monitor the situation and will seek permission to change if suitable opportunities arise.

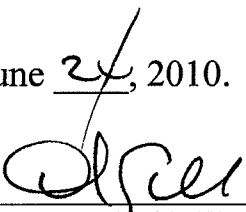
7. I believe that the proposed investment is in the best interest of the estate and I recommend that the court authorize me to so invest pending further order of Court.

8. A copy of the proposed order is attached hereto as Exhibit "C."

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Los Angeles, California, on June 24, 2010.



DAVID A. GILL

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DECLARATION OF PATRICIA W. MORRIS

I, Patricia Morris, declare and state as follows:

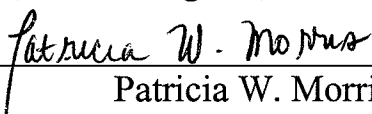
1. I am employed by the law firm of Danning, Gill, Diamond & Kollitz, LLP ("Danning-Gill"). I am over the age of 18 years and am not a party to the within action. I am a paraprofessional for David A. Gill, Permanent Receiver appointed by this Court for Diversified Lending Group, Inc., and Applied Equities, Inc., pursuant to the Order of Preliminary Injunction and Orders: (1) Continuing Asset Freeze, (2) Appointing a Permanent Receiver, (3) Prohibiting the Destruction of Documents, (4) Granting Expedited Discovery, and (5) Requiring Accountings, signed and entered by this Court on March 10, 2009.

2. This declaration is made in support of the *Receiver's Ex Parte Motion to Approve Investment of Estate Funds* (the "Application"). I have personal knowledge of the facts in this declaration and, if called as a witness, I could competently testify to these facts.

3. On June 18, 2010, I caused the Notice and Application, including all exhibits attached thereto, to be published on the receivership website at www.diversifiedreceivership.com and provided by e-mail to all parties requiring notice in the Limited Service List pursuant to the Notice Procedures as set forth in an order of this Court dated May 4, 2009. The parties requiring notice in the Limited Service List have been advised that any opposition to the Application must be filed with the Court no later than twenty-four hours after receipt of the Application. No opposition has been received.

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

Executed on this 24 th day of June, 2010, at Los Angeles, California.



Patricia W. Morris

EXHIBIT "A"



Vincent Hruska | Senior Vice President
Manager Product Management

May 25, 2010

David A Gill Receiver In The M
Securities & Exchange Commission
Diversified Lending Group, Inc.
2029 Century Park East, 3rd Floor
Los Angeles, CA 90067-2904

RECEIVED
MAY 28 2010
DAVID A. GILL
DIAMOND & KOLLITZ LLP

Re: Your Protection Plus Account

Dear Valued Client:

We want to make you aware of some upcoming changes regarding FDIC insurance coverage and your Protection Plus Account.

Effective July 1, 2010 City National Bank will no longer be participating in the Federal Deposit Insurance Corporation's (FDIC) Transaction Account Guarantee (TAG) program. As you know, this program provided supplemental coverage for balances held in certain deposit transaction accounts, including the Protection Plus Account.

Your deposits will remain FDIC-insured up to the standard maximum deposit insurance amount, currently \$250,000 per depositor and ownership category through December 31, 2013.

Because we created the Protection Plus Account specifically for the TAG program, we will discontinue Protection Plus Accounts effective July 1, 2010. Unless you make other arrangements, your account will be converted on that date to our Interest Checking Plus Account. This account has a rate of interest that is comparable to the Protection Plus Account, but it also has a lower monthly fee and balance requirement.

Enclosed is a copy of the Personal Fee Schedule that contains more information about Interest Checking Plus. Please review and retain it for future reference. If you have any questions, about this account or would like to discuss other options, please contact your relationship manager.

At City National, we remain committed to safe and sound relationship banking. Thank you for choosing our company for your financial needs. We look forward to serving you well into the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Vince Hruska". The signature is fluid and cursive.

Vince Hruska

EXHIBIT "B"

David,

Thank you for your request to provide you with information on investment possibilities that may be acceptable to replace our bank's TAG facilities which will expire on 6/30. Here are some suggestions, subject to availability or change in price:

United States Treasury Bills – These instruments are backed by the full faith and credit of the U.S. Treasury to pay principal and interest when due. They normally possess liquidity to the investor after the initial purchase. Offering prices will fluctuate during the day. Currently, with market conditions unsettled in Europe and the domestic stock market, the very short dated Treasuries are at or near zero percent. Here are current rates for three, six and twelve months:

- 9/9/10 @ 0.00% discount rate
- 12/9/10 @ .07% discount rate
- 6/2/11 @ .21% discount rate

United States Treasury Notes – These instruments are backed by the full faith and credit of the U.S. Treasury to pay principal and interest when due. They normally possess liquidity to the investor after the initial purchase. New issue redemption dates start at two years. Offering prices will fluctuate during the day. Here's an offering on the current two year:

- .75% due 5/31/12 @ .67% yield to maturity, \$100.140

Federal Home Loan Bank Discount Notes – This is a government sponsored enterprise. They are entitled to unlimited borrowing capacity from the U.S. Treasury. They normally possess liquidity to the investor after the initial purchase. Offering prices will fluctuate during the day. Here are examples to two, three, and six month redemptions:

- 8/23/10 @ .04% discount rate
- 9/22/10 @ .06% discount rate
- 12/10/10 @ .12% discount rate

Federal Home Loan Bank Callable bonds -- This is a government sponsored enterprise. It possesses unlimited borrowing capacity from the U.S. Treasury. They are longer term redemptions from the discount notes. Liquidity will normally be available after the initial purchase. However, due to their longer redemption dates, they will bear greater market risk in the event of sale prior to maturity. Here's an example of some new issues in the two year range:

- Federal Home Loan Bank 1.05% due 9/28/12, one-time call 6/28/11, priced @ \$100.00 to yield 1.05%
- Federal Home Loan Bank 1.32% due 3/28/13, one-time call 6/28/11, priced @ \$100.00 to yield 1.32%

Certificates of Deposit Account Registry Service (CDARS) One Way Sell – This program, sponsored by Promontory Interfinancial Network, LLC, provides FDIC insurance in excess of \$250,000 for investors who want to purchase a certificate of deposit. The sponsor achieves this through placement of investor funds within FDIC insured limits into numerous financial institutions. Penalties apply for early redemptions. Offering yields are set weekly. Redemptions and rates are available as follows;

- 4 weeks -- .15%, FDIC insured up to \$105 million
- 13 weeks -- .15%, FDIC insured up to \$35 million
- 26 weeks -- .15%, FDIC insured up to \$18 million
- 52 weeks -- .38%, FDIC insured up to \$17 million
- 2 years -- .72%, FDIC insured up to \$5 million

Please see the attached new account documentation to enable you to open and account and proceed with an investment. I also enclosed a CEDARS application, should this instrument be of interest to you. Please let me know if you have an indication of interest, or if you need additional assistance.

Howard Brandes S.V.P.
City National Securities, Inc.

Howard Brandes S.V.P.
City National Securities, Inc.
400 No. Roxbury Dr., 7th Floor
Beverly Hills, CA 90210
310/888-6419 – phone
310/888-6388 – fax

EXHIBIT "C"

1 DAVID A. GILL (State Bar No. 032145)
2029 Century Park East, Third Floor
2 Los Angeles, California 90067-2904
Telephone: (310) 277-0077
3 Facsimile: (310) 277-5735

4 Receiver

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

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12 SECURITIES AND EXCHANGE
COMMISSION,

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Plaintiff,

vs.

DIVERSIFIED LENDING GROUP,
INC.; APPLIED EQUITIES, INC.; AND
BRUCE FRIEDMAN,

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Defendants,

and

TINA M. PLACOURAKIS,

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Relief Defendant.

Case No. CV 09-01533-R-SS

**[PROPOSED] ORDER
APPROVING INVESTMENT OF
ESTATE FUNDS**

[No hearing requested]

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There came before this Court the *Receiver's Ex Parte Application To Approve Investment Of Estate Funds; Declarations Of David A. Gill And Patricia W. Morris* (the "Application"), filed by David A. Gill, the Receiver (the "Receiver") in the above-captioned case. The Application having been considered by the Court and, good cause appearing,

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IT IS HEREBY ORDERED that:

1. The Application is GRANTED in its entirety.

2. The Receiver is authorized to invest funds of the receivership estate in excess of that insured by the Federal Deposit Insurance Corporation in United States Treasury Bills and to cash in or renew the same from time to time as in his discretion appears necessary and appropriate.

3. The Receiver is hereby authorized to execute all documents and otherwise take all actions the Receiver deems necessary and appropriate to effectuate the order.

4. The form and manner of notice of the Application provided by the Receiver is appropriate.

Dated: June __, 2010

MANUEL L. REAL
United States District Judge

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PROOF OF SERVICE

I, Patricia Morris, declare:

I am employed by the law firm of **DANNING, GILL, DIAMOND & KOLLITZ, LLP**, in the County of Los Angeles, State of California. I am employed in the office of a member of the bar of this court at whose direction the service was made. I am over the age of 18 years and am not a party to the within action. My business address is 2029 Century Park East, Third Floor, Los Angeles, California 90067-2904.

On June 24, 2010, I served the following document(s): **RECEIVER'S EX PARTE APPLICATION TO APPROVE INVESTMENT OF ESTATE FUNDS; DECLARATIONS OF DAVID A. GILL AND PATRICIA W. MORRIS** on the interested parties addressed as follows:

SEE ATTACHED SERVICE LIST

(By Mail) I placed the document for collection and deposit in the mail. I am familiar with this firm's practice for the collection and processing of correspondence for mailing. Under that practice, the document would be placed in a sealed envelope and deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at 2029 Century Park East, Third Floor, Los Angeles, California 90067-2904, in the ordinary course of business. The documents served were placed in sealed envelopes and placed for collection and mailing following ordinary business practices.

(By Electronic Transmission) I transmitted a PDF version of this document by electronic mail to the party(s) identified on the attached service list using the e-mail address(es) indicated.

I declare under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct.

Executed on June 24, 2010, at Los Angeles, California.

Patricia W. Morris
(Type or print name)

Patricia W. Morris
(Signature)

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SERVICE LIST

Attorneys for Plaintiff U.S. Securities Exchange Commission (By Email)

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US Securities & Exchange Commission Office of Enforcement
5670 Wilshire Boulevard 11th Floor
Los Angeles , CA 90036
mccoyj@sec.gov

**Counsel for Defendants Diversified Lending Group, Inc.,
Applied Equities, Inc., and Bruce Friedman**

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Los Angeles, CA 90017
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