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Objection Deadline:
November 21, 2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
SECURITIES AND EXCHANGE COMMISSION, :
 :
 Plaintiff, :
 :
 - against- :
 :
 ADELPHIA COMMUNICATIONS CORP., et al., :
 :
 Defendants. :
 :
----- X

02 Civ. 5776 (PKC)

**NOTICE OF MOTION FOR ORDER AUTHORIZING DISTRIBUTION
OF FUNDS HELD IN COURT REGISTRY TO VICTIMS OF ADELPHIA
FRAUD IN ACCORDANCE WITH PROCEDURES ADOPTED BY U.S.
DEPARTMENT OF JUSTICE WITH RESPECT TO ADELPHIA VICTIM FUND**

PLEASE TAKE NOTICE that upon the declaration of Alistaire Bambach submitted herewith, and all prior proceedings in this case, the plaintiff, Securities and Exchange Commission, will move this Court, at a date and time to be determined by the Court, before the Honorable P. Kevin Castel, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, for an order (“Order”) authorizing the distribution of funds held in the Court’s registry to victims of the Adelphia fraud in accordance with procedures adopted by the U.S. Department of Justice with respect to the Adelphia Victim Fund.

PLEASE TAKE FURTHER NOTICE that all papers to be submitted in opposition to this motion shall be filed with the Court and served upon the Commission no later than November 21, 2008.

PLEASE TAKE FURTHER NOTICE that if any papers are submitted in opposition to this motion, the Court may set a hearing on the motion at a date to be determined.

PLEASE TAKE FURTHER NOTICE that if no papers are submitted in opposition to this motion, the Court may grant the motion and sign the Order without any further notice or hearing.

Dated: New York, New York
October 30, 2008

Respectfully submitted,



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
: **SECURITIES AND EXCHANGE COMMISSION,** :
: **Plaintiff,** :
: **- against-** : **02 Civ. 5776 (PKC)** :
: **ADELPHIA COMMUNICATIONS CORP., et al.,** :
: **Defendants.** :
: :
: :
----- X

**DECLARATION OF ALISTAIRE BAMBACH IN SUPPORT OF MOTION FOR
ORDER AUTHORIZING DISTRIBUTION OF FUNDS HELD
IN COURT REGISTRY TO VICTIMS OF ADELPHIA FRAUD IN
ACCORDANCE WITH PROCEDURES ADOPTED BY U.S.
DEPARTMENT OF JUSTICE WITH RESPECT TO ADELPHIA VICTIM FUND**

ALISTAIRE BAMBACH declares under penalty of perjury as follows:

1. I am an Assistant Regional Director in the New York Regional Office of the Securities and Exchange Commission (“SEC”), and Bankruptcy Counsel to the SEC’s Division of Enforcement. I submit this declaration in support of the SEC’s motion (“Motion”) for an order authorizing the distribution of funds held in the Court’s registry to victims of the Adelphia fraud in accordance with procedures adopted by the U.S. Department of Justice (“DOJ”) with respect to the Adelphia Victim Fund. This declaration is based in part on personal knowledge, and is also based on the docket in this case, knowledge of other SEC staff, and information

provided to me and other SEC staff by the Office of the United States Attorney for the Southern District of New York (“USAO”) and the staff of Richard C. Breeden & Co., the claims agent in this case. Richard C. Breeden, the chairman of Richard C. Breeden & Co., is also the special master for the Adelphia Victim Fund being administered by the DOJ.

BACKGROUND

The Civil and Criminal Actions

2. On July 18, 2002, the SEC filed this civil injunctive action against Adelphia Communications Corporation (“Adelphia”), John, Timothy, Michael, and James Rigas (the “Rigas SEC Defendants”) and others alleging a widespread, multifaceted financial fraud at Adelphia (“*SEC v. Adelphia*”). The SEC’s complaint alleged various securities fraud charges against Adelphia and its senior officers. On the same day that the SEC filed *SEC v. Adelphia*, the USAO filed a criminal complaint alleging substantially similar conduct as that alleged in the SEC’s complaint. *United States of America v. John J. Rigas, et al.*, 02 CR 1236 (LBS).

3. In July 2004, the jury in *U.S. v Rigas* found John and Timothy Rigas guilty of conspiracy, bank fraud, and securities fraud. On November 23, 2005, Michael Rigas pleaded guilty to one count of making a false entry on the books and records of Adelphia.

The Adelphia Victim Fund

4. In April 2005, the SEC, the USAO, Adelphia and the Rigas SEC Defendants reached a global settlement of all outstanding issues (the “Global Settlement”). Pursuant to the Global Settlement, the SEC agreed not to seek disgorgement or a penalty from Adelphia based upon Adelphia’s agreement with the USAO to pay \$715 million in cash and equity into the Adelphia Victim Fund for distribution to victims of Adelphia’s fraud. The SEC also agreed not to seek disgorgement or a penalty from the Rigas SEC Defendants based upon the Rigas SEC Defendants’ (and other Rigas family members’) agreement with the USAO to forfeit voluntarily

to the USAO certain real property valued at over \$1 billion.¹ The USAO agreed that the forfeited property would be used to establish the Adelphia Victim Fund in order to provide partial compensation to victims of the fraud. The Adelphia Victim Fund will be administered in accordance with DOJ procedures which are more fully described beginning at paragraph 20 below.

5. The Global Settlement was approved by the U.S. District Court overseeing the criminal action and the U.S. Bankruptcy Court for the Southern District of New York. *See U.S. v. Rigas*, 371 F.Supp.2d 474 (S.D.N.Y.), *pet. denied*, 409 F.3d 555 (2d Cir. 2005); *In re Adelphia Communications Corp.*, 327 B.R. 143 (Bankr. S.D.N.Y. 2005). On May 31, 2005, this Court approved the final judgments against Adelphia and the Rigas SEC Defendants.

The SEC Fund

6. On April 26, 2005, the SEC filed a settled civil enforcement action against Deloitte & Touche LLP (“Deloitte”) for violating Section 10A of the Securities Exchange Act of 1934, in connection with its audit of Adelphia’s financial statements. *SEC v. Deloitte & Touche LLP*, No. 05-Civ.-4119 (PKC) (S.D.N.Y.) (the “Deloitte Action”). Without admitting or denying the allegations in the SEC’s complaint, Deloitte agreed to pay a \$25 million civil money penalty and disgorgement of \$1.00 into the CRIS account established in the Deloitte Action.

7. In a related administrative proceeding before the SEC, the SEC censured Deloitte for improper professional conduct under Rule 102(e) of the SEC’s Rules of Practice in connection with Deloitte’s audit of Adelphia’s financial statements. Without admitting or denying the allegations, Deloitte agreed to pay an additional \$25 million into the CRIS account established in the Deloitte Action. *Deloitte & Touche LLP*, 85 SEC Docket 1111, 1123-25 (Apr. 26, 2005).

¹ The SEC did obtain injunctive relief against Adelphia and the Rigas SEC Defendants.

8. On June 22, 2006, the SEC filed a settled civil enforcement action against Scientific-Atlanta, Inc. (“Scientific-Atlanta”) for aiding and abetting certain of Adelphia’s violations of the reporting, books and records, and internal controls provisions of the federal securities laws. *SEC v. Scientific-Atlanta, Inc.*, No. 06-Civ.-4823 (PKC) (S.D.N.Y.) (the “Scientific-Atlanta Action”). Without admitting or denying the allegations in the SEC’s complaint, Scientific-Atlanta agreed to pay disgorgement of \$20 million into the CRIS account established in the Scientific-Atlanta Action.

9. On May 8, 2007, the SEC entered an administrative order directing Motorola, Inc. to pay \$25 million in disgorgement and prejudgment interest to the Clerk of the Court for deposit into the CRIS account established in *SEC v. Adelphia* for its role in causing certain of Adelphia’s violations of the reporting and books and records provisions of the federal securities laws. *In re Motorola, Inc.*, 2007 SEC Lexis 955 (May 8, 2007). Without admitting or denying the allegations, Motorola agreed to make the payment. On May 10, 2007, the Court entered an order authorizing the Clerk of the Court to accept Motorola’s payment into the CRIS account established in *SEC v. Adelphia*. The Motorola payment was the first payment made into the CRIS account established in *SEC v. Adelphia*.

10. In addition, by order entered May 29, 2007, the Court directed the transfer of all funds held in the CRIS accounts in the Deloitte and Scientific-Atlanta Actions into the CRIS account established in *SEC v. Adelphia*. In total, the CRIS account in *SEC v. Adelphia* now holds \$95 million plus accrued interest (the “SEC Fund”).

The SEC Staff Worked With The USAO To Formulate The Distribution Scheme That Governs The Adelphia Victim Fund

11. The SEC staff and the USAO have been in constant communication and have cooperated with each other on the Adelphia matter from its inception. Once the Global Settlement was approved, the SEC staff and the USAO staff began to discuss how best to distribute the Adelphia Victim Fund and the SEC Fund to victims of Adelphia's fraud. The SEC staff and the USAO staff met frequently with each other and with Richard Breeden and/or his staff to discuss the Adelphia Victim Fund. The plan ultimately adopted by the DOJ incorporates the views of the SEC staff.

Public Announcements Regarding the Adelphia Victim Fund Reflect the SEC's and the DOJ's Intent to Combine the Funds for Distribution to Victims

12. On September 13, 2006, the USAO issued a press release announcing the appointment of Richard Breeden as the special master to identify and notify potential victims, verify and process petitions, and recommend a pro rata distribution of the Adelphia Victim Fund. The release also stated that the SEC intended to distribute the SEC Fund to the same class of victims covered by the Adelphia Victim Fund distribution, and that the SEC would be seeking to retain Breeden & Co. as claims agent in its civil enforcement actions in the interests of efficiency, practicality, and cost. A copy of the press release is attached hereto as Exhibit "A."

13. By orders dated September 28, 2006 and October 5, 2006, the court appointed Richard C. Breeden & Co. ("Breeden & Co.") as claims agent in the Scientific Atlanta and Deloitte Actions. In or about June 2007, the funds held in those cases were transferred to the CRIS account in this case, and, on March 10, 2008, Breeden & Co. was appointed as claims agent in this case.

14. As set forth in the applications seeking Breeden & Co.'s appointment in this case and in the Scientific-Atlanta and Deloitte Actions, and consistent with the SEC staff's and the

DOJ staff's understanding that Breeden & Co. would be working on a distribution plan that would apply to both funds, Breeden & Co.'s fees for services on behalf of the Adelpia Victim Fund will be paid solely out of the Adelpia Victim Fund. The SEC Fund will only be charged in the event that Breeden & Co. is required to perform services that are needed for administration of the SEC Fund that are not also needed for administration of the Adelpia Victim Fund.

15. On February 23, 2007, the USAO issued a press release disclosing that the Government had received \$530 million in cash and Time Warner Cable stock from Adelpia as "a result of its criminal forfeiture action in the prosecution of [the Rigases], a non-prosecution agreement with Adelpia Communications Corporation ("Adelpia"), and a joint settlement of civil fraud claims brought by the United States Securities and Exchange Commission." The release further states that the monies forfeited "will be distributed to the victims of the fraud pursuant to the Attorney General's discretionary authority to restore forfeited property to victims," and that an "additional \$70 million collected by the SEC in related civil actions will also be distributed to the fraud victims." The press release contained a contact name and number for myself at the SEC and also concluded by naming the attorneys at the USAO who "are in charge of coordinating the administration of the Victim Fund with Mr. Breeden, the Department of Justice, and the SEC." A copy of the press release is attached hereto as Exhibit "B."

16. Recently, on June 19, June 26, and July 3, 2008, the DOJ published notice of the Adelpia Victim Fund in the national edition of the Wall Street Journal. The notice advised victims that they may petition the Attorney General to be compensated for their financial losses from the Adelpia fraud. The notice also stated that the "Securities and Exchange Commission will also be seeking authority from the United States District Court overseeing its civil enforcement actions arising out of the Adelpia fraud to combine the funds it has recovered in

those actions with the funds forfeited by the Department of Justice (DOJ) for distribution to the victims.” A copy of the publication notice is attached hereto as Exhibit “C.”

17. The above quoted language is virtually identical to the language used in the DOJ’s April 24, 2008 press release announcing that victims of the Adelphia fraud may petition for compensation from the Adelphia Victim Fund. A copy of the press release is attached hereto as Exhibit “D.”

18. The Adelphia Victim Fund also maintains a public website at www.adelphiafund.com. The website contains a series of frequently asked questions (“FAQs”), including question 15 which asks: “Does the SEC also have a fund for victims of the Adelphia fraud?” The answer to this question on the website is the following:

The Securities and Exchange Commission has obtained additional funds in civil enforcement actions it brought in connection with the Adelphia securities fraud, *SEC v. Adelphia Communications Corp. et al.*, 02 CV 5776 (PKC) (USDC SDNY). Those funds are subject to the jurisdiction of the Federal District Court presiding over the SEC’s enforcement actions. The SEC intends to seek permission from the Federal District Court to distribute those funds to victims of the fraud. To be considered for a distribution from the SEC fund, you do not need to do anything at this time other than petition DOJ for a distribution as set forth in this letter and the accompanying documents. Further notice will be made by the SEC if any other or additional steps will be required to be considered for a distribution from the SEC fund.

A copy of the frequently asked questions on the Adelphia Victim Fund website is attached hereto as Exhibit “E.”

19. As set forth above, the public statements made by the SEC and the DOJ have consistently indicated that the SEC Fund would be combined with the Adelphia Victim Fund for purposes of distributions to victims.

Procedures Governing the Adelphia Victim Fund

20. Administration and distribution of the Adelphia Victim Fund is governed by the regulations contained in Part 9 of Article 28 of the Code of Federal Regulations, 28 C.F.R. §§

9.1-9.9. The regulations spell out who is a qualified victim and under what circumstances a victim can recover. Copies of the regulations are made available to the public on the Adelphia Victim Fund website and are attached hereto as Exhibit "F."

21. The Adelphia Victim Fund contemplates compensating, on a pro-rata basis, victims of Adelphia's fraud that held eligible Adelphia securities as of the close of markets on March 26, 2002, the last trading day before Adelphia revealed that it could be liable for \$2.3 billion in co-borrowing debt with various Rigas Family members. A list of the eligible securities is set forth in FAQ number 5, attached hereto as Exhibit "E."²

22. When calculating the amount of a victim's loss that is compensable, the Adelphia Victim Fund will take into account other payments made to the victim on account of his or her loss from other sources, such as payment on a claim in Adelphia's bankruptcy case or pursuant to a class action settlement. The Adelphia Victim Fund will also take into account any recoveries obtained through hedging transactions to minimize losses on the Adelphia eligible securities.

23. In accordance with the terms of the Global Settlement, petitioners of the Adelphia Victim Fund must also release certain members of the Rigas family (except for John and Timothy Rigas), and Peter L. Venetis from liability relating to the Adelphia fraud and must also mark as satisfied claims against third parties who may seek indemnification from members of the Rigas family and Venetis.

24. The federal regulations governing the Adelphia Victim Fund also specify in 28 CFR § 9.4 (j) and (k) a process for reconsidering the denial of a petition. For a petition to be

² As set forth in FAQ number 6, in order for holders of convertible subordinated notes to obtain a recovery, they must provide documentation in the form of a release or declaratory judgment that they will be able to retain any distribution they receive from the Adelphia Victim Fund and will not be required to turn over their distribution to senior noteholders.

reconsidered, the petitioner must (i) provide information or evidence material to the denial that was not previously provided or (ii) present a basis clearly demonstrating that the denial was erroneous. All requests for reconsideration will be decided by someone other than the ruling official who denied the petition.

25. To date, the Special Master has distributed over 105,500 petition forms and has received over 12,000 petitions claiming total loss well in excess of the combined balances in the Adelpia Victim Fund and the SEC Fund. Petitions were originally due July 16, 2008. On or about September 23, 2008, the petition bar date was extended until September 30, 2008. The Special Master has been notifying petitioners of any deficiency in their petitions on an ongoing basis. The Special Master estimates that distributions will be ready to be made sometime in the first half of 2009.

Distributing the SEC Fund in this Manner is Fair and Reasonable

26. Combining the SEC Fund with the Adelpia Victim Fund and distributing the SEC Fund in accordance with the Adelpia Victim Fund's procedures is the most efficient, fair, and reasonable method for distributing the SEC Fund to victims of Adelpia's fraud. This procedure will ensure that all victims are treated consistently without the possibility of double-dipping between the two funds. It will also reduce substantially and possibly eliminate entirely the SEC Fund's administrative costs associated with proposing a separate, stand alone distribution plan including the costs associated with identifying victims, devising claim forms, mailings, publishing notices, communicating with claimants, and evaluating and objecting to claims. Finally, it will conserve judicial resources by taking advantage of the DOJ's administrative process already set in place for the Adelpia Victim Fund.

RELIEF REQUESTED

27. The SEC requests that, at such time as the Adelpia Victim Fund is ready for distribution to eligible claimants, the Court authorize the transfer of the SEC Fund to an account designated by Breeden & Co. to be distributed in accordance with the procedures governing the Adelpia Victim Fund. The SEC Staff and the USAO contemplate that the SEC Fund will be held by Breeden & Co. in a bank account at a leading financial institution separate from the Adelpia Victim Fund and that the SEC Fund will be governed by the terms of the Adelpia Victim Fund and will be distributed on a pro-rata basis in accordance with the procedures governing the Adelpia Victim Fund including the procedures governing reconsideration of denials of claims. The actual funds must remain separate because the forfeited property that comprises the Adelpia Victim Fund is on deposit in the DOJ Asset Forfeiture Fund and federal law would not permit the transfer of the SEC Fund into that fund.

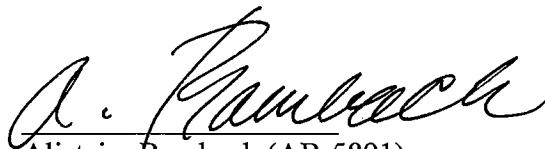
28. Once the SEC Fund is transferred to Breeden & Co. for distribution, Breeden & Co. will be authorized to cut checks from the fund for distribution to eligible claimants in accordance with the Adelpia Victim Fund procedure. Breeden & Co. and the SEC will be required, however, to seek Court approval to pay any taxes due on the interest income generated by the SEC Fund and to pay any fees to or to reimburse any expenses of Breeden & Co. and/or Damasco Associates LLP, the tax administrator for the SEC Fund appointed by the Court.

29. At the conclusion of the distribution of the SEC Fund to victims of the Adelpia fraud, Breeden & Co. will provide a summary accounting of the SEC Fund describing the disposition of the proceeds of the fund. In the event any monies remain in the SEC Fund that cannot be distributed to victims, the SEC will file a motion seeking authority to deposit those funds with the United States Treasury.

NOTICE

30. In addition to serving this Motion on counsel to the defendants in this action, the SEC staff will cause this Motion to be posted on the SEC's public website (www.sec.gov, posted under Litigation Releases) and on the website administered by the Adelpia Victim Fund (www.adelphiafund.com) at least ten business days prior to the objection date.

Dated: New York, New York
October 30, 2008



Alistaire Bambach (AB-5891)
Assistant Regional Director
Securities and Exchange Commission
New York Regional Office
3 World Financial Center
New York, NY 10281
(212) 336-1100

EXHIBIT A



*United States Attorney
Southern District of New York*

FOR IMMEDIATE RELEASE
SEPTEMBER 13, 2006

CONTACT: U.S. ATTORNEY'S OFFICE
HEATHER TASKER, LAUREN McDONOUGH
PUBLIC INFORMATION OFFICE
(212) 637-2600

**RICHARD C. BREEDEN RETAINED AS SPECIAL MASTER
FOR ADELPHIA FRAUD/FORFEITURE ACTION**

MICHAEL J. GARCIA, the United States Attorney for the Southern District of New York, announced that Richard C. Breeden, Chairman of Richard C. Breeden & Co., has been retained to serve as Special Master on behalf of the Department of Justice to administer the process of compensating the victims of the Adelphia Communications Corporation fraud with funds forfeited in the prosecution of Adelphia founder John J. Rigas and Timothy J. Rigas.

In July 2004, John J. Rigas and Timothy J. Rigas were convicted in the United States District Court for the Southern District of New York. In December 2004, the government filed motions to forfeit the assets of both John and Timothy Rigas. In April 2005, the forfeiture proceedings were resolved with the signing of two agreements which, between cash, stock, and real estate, will result in the criminal forfeiture of over \$720 million, to be used to compensate securityholders who lost money as a result of the accounting fraud schemes and looting of Adelphia.

The settlement agreement between the United States and the family of John J. Rigas (the "Rigas Family") required the Rigas Family to forfeit to the United States in excess of 95 percent of all the Rigas Family's assets, including privately-owned cable systems, all Adelphia securities owned by the Rigas Family and its affiliated entities, and numerous parcels of real estate. Evidence presented in court at the criminal trial of John J. Rigas and Timothy J. Rigas demonstrated that the forfeited property, including the privately-owned cable systems, were purchased and/or upgraded with funds wrongfully taken from Adelphia. The second agreement, a non-prosecution agreement between the government and Adelphia, resolved potential corporate criminal charges against Adelphia and its subsidiaries, and provided that Adelphia would contribute \$715 million in cash and stock for victim compensation.

Together, the two agreements provided for the forfeiture to the United States of over 82 separate assets. Since the execution of the agreements, the government has provided notice of the forfeitures and resolved a number of third-party claims to the forfeited assets, as required by federal law. In March and July, 2006, the cable systems and certain properties associated with them were forfeited to the government and immediately transferred to designated subsidiaries of Adelphia, in accordance with the non-prosecution agreement between the government and Adelphia. Forfeiture proceedings have also been concluded as to two luxury condominium units owned by John J. Rigas and Timothy J. Rigas in Beaver Creek, Colorado. In August 2006, the United States Marshals Service sold Timothy J. Rigas's property in Beaver Creek for \$5 million.

The over \$720 million to be forfeited will be distributed to the victims of the fraud pursuant to the Attorney General's discretionary authority to restore forfeited property to victims through the petition for remission or mitigation process set forth in Title 28, Part 9, of the Code of Federal Regulations. In addition, the SEC, in its parallel civil enforcement actions, has to date collected approximately \$70 million. The SEC intends to distribute these funds to the same class of victims.

Due to the large number of potential victims, the United States Attorney's Office decided to retain a Special Master to identify and notify potential victims, verify and process petitions, and recommend a pro rata distribution to the Attorney General, as authorized by federal regulations. The United States Attorney's Office and the SEC determined that it would be practical, efficient, and cost effective to have the same firm function as the Special Master in the criminal proceedings and as the claims agent in the SEC case, and, accordingly, the United States Attorney's Office and the SEC staff participated in a joint selection process. After considering a number of qualified candidates, the U.S. Attorney's Office and the SEC concurred that Richard Breeden was the most qualified and cost-effective choice for both positions. The SEC is in the process of seeking court approval of the appointment of Richard C. Breeden & Co. as claims agent in its parallel civil enforcement actions.

Mr. Breeden served as Chairman of the SEC from 1989 to 1993. His firm, Richard C. Breeden & Co., has been involved in (among other things) the administration and distribution of securities fraud claims since 1996. Breeden & Co. has its own claims verification and processing unit, operating out of Syracuse, New York, which is staffed by employees trained

specifically in analyzing, verifying, and processing stock and bond records and claims submitted by potential victims, and in assisting victims who call one of the firm's hotlines.

From 2002 to early 2006, Mr. Breeden served as Corporate Monitor in the WorldCom matter. He was also appointed by United States District Judge Jed S. Rakoff as Distribution Agent for WorldCom fraud victims, to handle distribution of the \$750 million fund in that case. Mr. Breeden's staff processed over 500,000 claims covering approximately 8,000,000 transactions in the WorldCom matter.

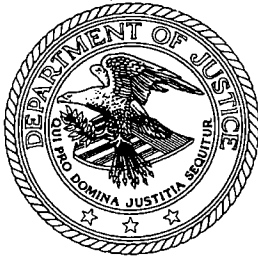
Potential victims and other interested persons may obtain further information by calling 1-866-446-4884, or by logging onto the website www.AdelphiaFund.com, which will be available soon. Both the hotline and the website have been established by Mr. Breeden exclusively for the Adelphia case.

Assistant United States Attorney BARBARA A. WARD is in charge of the criminal forfeiture proceedings. Assistant United States Attorneys WARD, SHARON COHEN LEVIN, and WILLIAM F. JOHNSON are in charge of coordinating the administration of the Victim Fund with Mr. Breeden, the Department of Justice, and the SEC.

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EXHIBIT B



*United States Attorney
Southern District of New York*

**FOR IMMEDIATE RELEASE
FEBRUARY 23, 2007**

**CONTACT: U.S. ATTORNEY'S OFFICE
YUSILL SCRIBNER
REBEKAH CARMICHAEL
PUBLIC INFORMATION OFFICE
(212) 637-2600**

**SEC
ALISTAIRE BAMBACH
ASSISTANT REGIONAL DIRECTOR
DIVISION OF ENFORCEMENT
(212) 336-0027**

**GOVERNMENT RECEIVES OVER \$530 MILLION FOR VICTIMS
IN ADELPHIA FRAUD/FORFEITURE ACTION**

MICHAEL J. GARCIA, the United States Attorney for the Southern District of New York, announced that the Government has received over \$530 million in cash and Time Warner Cable stock as a result of its criminal forfeiture action in the prosecution of Adelphia Communications Corporation founder JOHN J. RIGAS and his son, TIMOTHY J. RIGAS, a non-prosecution agreement with Adelphia Communications Corporation ("ADELPHIA"), and a joint settlement of civil fraud claims brought by the United States Securities and Exchange Commission ("SEC"). The funds will be used to compensate the victims of the ADELPHIA fraud.

The RIGAS prosecution arose from one of the largest corporate frauds in American history. In July 2004, JOHN J. RIGAS and TIMOTHY J. RIGAS were convicted of securities fraud and other offenses following a jury trial. As established by the evidence at trial:

From the late 1990s through 2002, JOHN and TIMOTHY RIGAS misappropriated billions of dollars from ADELPHIA -- then the nation's sixth-largest cable television company -- for the benefit of themselves and other members of the RIGAS family. Certain cable companies that were privately owned by JOHN RIGAS, TIMOTHY RIGAS, and other members of the RIGAS family -- but managed by ADELPHIA -- were purchased and/or upgraded with funds wrongfully taken from ADELPHIA. These "Rigas Managed Entities" ("RMEs") were so highly leveraged that they did not generate enough cash to pay their own operating expenses and interest charges, and were thus effectively subsidized by cash advances

from ADELPHIA. In March of 2002, ADELPHIA disclosed that it was liable for more than \$2 billion in borrowings attributed to certain RMEs that were not reflected in ADELPHIA's prior SEC filings and financial reports. ADELPHIA filed for bankruptcy protection on June 25, 2002.

In April of 2005, the criminal forfeiture proceedings against JOHN and TIMOTHY RIGAS were resolved with the signing of an agreement between the U.S. Attorney's Office for the Southern District of New York (the "Office") and JOHN RIGAS, his son MICHAEL RIGAS (who pleaded guilty to making a false entry in the books and records of ADELPHIA) and various uncharged members of the RIGAS family. The agreement provided for the forfeiture to the United States of fourteen RMEs, securities, and RIGAS family real estate. A non-prosecution agreement between the Office and ADELPHIA, announced the same day, resolved potential corporate criminal charges against ADELPHIA and its subsidiaries. As part of the non-prosecution agreement, the Office agreed to convey to ADELPHIA the RMEs and certain other assets forfeited to the Government by the RIGASES, in exchange for \$715 million to be used to compensate ADELPHIA securityholders who lost money as a result of the fraud. ADELPHIA and the RIGASES also resolved civil fraud charges as part of a joint settlement with the SEC.

On July 31, 2006, ADELPHIA sold substantially all of its assets, including the RMEs and associated properties, to Time Warner NY Cable LLC and Comcast Corporation for over \$17 billion. Pursuant to the terms of the non-prosecution agreement, on January 9, 2007, ADELPHIA paid approximately \$200 million in cash to the Government. Today, ADELPHIA transferred to the Government over 9.5 million shares of common stock of Time Warner Cable ("TWC"). Under the plan of reorganization in the ADELPHIA bankruptcy proceeding, which became effective on February 13, 2007, the shares transferred to the Government are valued at over \$332 million. In approximately sixty days, ADELPHIA will make a second distribution of TWC stock, bringing the total value of the stock transferred to the Government to approximately \$400 million. An additional \$115 million will be provided as "an interest in a litigation trust to be funded by recoveries obtained by Adelphia or its designee in certain adversary proceedings in bankruptcy and other claims," according to the non-prosecution agreement.

The over \$700 million to be forfeited will be distributed to the victims of the fraud pursuant to the Attorney General's discretionary authority to restore forfeited property to victims through the petition for remission or mitigation process set forth in Title 28, Part 9, of the Code of Federal Regulations. An additional \$70 million collected by the SEC in

related civil actions will also be distributed to the fraud victims. Due to the large number of potential victims, a Special Master, RICHARD C. BREEDEN, Chairman of Richard C. Breeden & Co. and former Chairman of the SEC, will identify and notify potential victims, verify and process petitions, and recommend a pro rata distribution to the Attorney General.

Potential victims and other interested persons may obtain further information by calling 1-866-446-4884, or by logging onto the website www.AdelphiaFund.com. Both the hotline and the website have been established exclusively for the ADELPHIA case.

Assistant United States Attorney BARBARA A. WARD is in charge of the criminal forfeiture proceedings. Assistant United States Attorneys WARD, SHARON COHEN LEVIN, and WILLIAM F. JOHNSON are in charge of coordinating the administration of the Victim Fund with Mr. BREEDEN, the Department of Justice, and the SEC.

07-45.

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EXHIBIT C

**NOTICE TO VICTIMS OF THE
ADELPHIA COMMUNICATIONS CORPORATION SECURITIES FRAUD
UNITED STATES v. JOHN RIGAS AND TIMOTHY RIGAS
S1 02 Cr. 1236 (LBS)**

Notice is hereby given that victims of the Adelphia Communications Corporation securities fraud may petition the Attorney General to recover a portion of their financial losses incurred as a direct result of the fraud.

On July 8, 2004, John Rigas and Timothy Rigas were convicted in Manhattan federal court of conspiracy to commit securities fraud and other offenses in connection with their management and control of Adelphia.

The investigation and prosecution of the Adelphia fraud resulted in criminal forfeiture to the United States of more than \$700 million. That money will be distributed to the victims of the fraud pursuant to the Attorney General's discretionary authority to restore forfeited property to victims.

The Securities and Exchange Commission will also be seeking authority from the United States District Court overseeing its civil enforcement actions arising out of the Adelphia fraud to combine the funds it has recovered in those actions with the funds forfeited by the Department of Justice (DOJ) for distribution to the victims.

The process of notifying victims, processing petitions, verifying losses and recommending a distribution of available funds to the Attorney General is being managed on behalf of DOJ by the Adelphia Victim Fund ("AVF"). The decision as to which victims receive funds and in what amounts is within the discretion of the Attorney General.

Potential victims and other interested persons may obtain petition forms, preparation and filing instructions, a copy of the applicable DOJ regulations, and other information by calling the AVF hotline at 1-866-446-4884 or by logging onto the AVF website, www.AdelphiaFund.com, where the petition packet is available in a downloadable form.

Please contact the AVF and complete your Petition Form no later than July 16, 2008.

This proceeding is independent of the Adelphia Class Action.

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York

ADELPHIA VICTIM FUND
Toll Free: (866) 446-4884
www.adelphiafund.com



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*United States Attorney
Southern District of New York*

FOR IMMEDIATE RELEASE
APRIL 24, 2008

CONTACT: U.S. ATTORNEY'S OFFICE
YUSILL SCRIBNER
REBEKAH CARMICHAEL
PUBLIC INFORMATION OFFICE
(212) 637-2600

**U.S. ATTORNEY ANNOUNCES THAT VICTIMS OF ADELPHIA FRAUD
MAY PETITION FOR COMPENSATION FROM FORFEITED FUNDS**

MICHAEL J. GARCIA, the United States Attorney for the Southern District of New York, announced today that victims of the Adelphia Communications Corporation ("Adelphia") securities fraud may petition the Attorney General to recover a portion of their financial losses incurred as a direct result of the fraud.

On July 8, 2004, JOHN RIGAS and TIMOTHY RIGAS were convicted in Manhattan federal court of conspiracy to commit securities fraud and other offenses in connection with their management and control of Adelphia. JOHN and TIMOTHY RIGAS are serving prison sentences¹.

The investigation and prosecution of the Adelphia fraud resulted in criminal forfeiture to the United States of over \$700 million. That money will be distributed to the victims of the fraud pursuant to the Attorney General's discretionary authority to restore forfeited property to victims in accordance with Department of Justice regulations.²

¹ They were originally sentenced to fifteen and twenty years in prison, respectively. They will be re-sentenced on May 7, 2008 by the Honorable LEONARD B. SAND, United States District Judge for the Southern District of New York.

² The Securities and Exchange Commission will also be seeking authority from the United States District Court -- which is overseeing its civil enforcement actions arising out of the Adelphia fraud -- to combine the funds it has recovered in those actions with the forfeited funds to be distributed to the victims.

The process of notifying a large number of potential victims, processing petitions, verifying losses and recommending a distribution of available funds to the Attorney General is being managed on behalf of the Department of Justice by the Adelpia Victim Fund ("AVF"). The AVF is operated by a Special Master appointed by the Department of Justice for this purpose, RICHARD C. BREEDEN, Chairman of Richard C. Breeden & Co. and former Chairman of the Securities and Exchange Commission ("SEC").

The United States Attorney's Office and the AVF have developed a user-friendly petition form expressly tailored to the Adelpia case. Potential victims and other interested persons may obtain petition forms, preparation and filing instructions, and other information by calling the Special Master's hotline at 1-866-446-4884 or by logging onto the AVF's website, www.AdelpiaFund.com. Petitions must be submitted by July 16, 2008 to qualify for a distribution from the Adelpia Victim Fund. The AVF will also process and verify the petitions, and recommend a pro rata distribution to the Attorney General. The decision as to which victims receive funds and in what amounts is within the discretion of the Department of Justice.

Assistant United States Attorneys BARBARA A. WARD, SHARON COHEN LEVIN, and WILLIAM F. JOHNSON are in charge of the case.

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###

EXHIBIT E

Adelphia Victim Fund

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Adelphia Victim Fund("AVF") Frequently Asked Questions

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1. Why did I receive a petition packet in the mail?

The AVF has attempted to notify by mail all holders of Adelphia Eligible Securities on March 26, 2002 packet in the mail, records we have reviewed indicate you may have held Adelphia Eligible Securities

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2. What is the deadline for filing a petition?

Petition Forms must be received by the AVF on or before September 30, 2008. The original deadline extended to September 30, 2008.

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3. Am I eligible to submit a petition?

If you owned Adelphia Eligible Securities, as defined below, as of the close of markets on March 2 submit a petition for recovery of losses you incurred as a result of the Adelphia fraud.

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4. Is anyone barred from participating in the AVF?

- a. any person who knowingly contributed to, participated in, benefited from or acted in a willfully blind Securities Fraud;
- b. any person or entity identified as a member of the Rigas Family in the United States Attorney for the ("USAO")-Rigas Agreement, including the entities listed in Appendix "A" to this Petition Form;
- c. any person identified by the USAO or the SEC as having any responsibility for the Adelphia Securities Fraud;
- d. any person who was an officer or director of Adelphia at any time during the Fraud Period;
- e. any family member or close associate of any of the foregoing persons;
- f. any defendant in any class action lawsuit based upon the Adelphia Securities Fraud, provided that such person is not barred from asserting a petition for its own account, and is not barred from asserting a petition in a representative capacity;
- g. any person who assigned his/her rights to obtain a recovery in connection with his/her Eligible Securities Fraud;
- h. any person who asserts a right to obtain a recovery from the AVF as assignee of another person.

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5. What are "Adelphia Eligible Securities"?

| Common Stock | | | | |
|--------------------------|----------------------|----------------------|--------------|----------------------|
| | | | CUSIP | Security Code |
| Adelphia Common Stock | | | 006848105 | S01 |
| Preferred Stock | | | | |
| | Dividend | | CUSIP | Security Code |
| Series B Preferred Stock | 13.00% | | 006848303 | P01 |
| Series D Preferred Stock | 5.50% | | 006848402 | P02 |
| Series E Preferred Stock | 7.50% | | 006848501 | P03 |
| Series F Preferred Stock | 7.50% | | 006848600 | P04 |
| Debt Securities | | | | |
| | Interest Rate | Maturity Date | CUSIP | Security Code |
| Adelphia Senior Note | 9.875% | 3/1/2005 | 006848AF2 | D01 |
| Adelphia Senior Note | 9.500% | 2/15/2004 | 006848AK1 | D02 |
| Adelphia Senior Note | 9.875% | 3/1/2007 | 006848AP0 | D03 |
| Adelphia Senior Note | 10.500% | 7/15/2004 | 006848AR6 | D04 |
| Adelphia Senior Note | 9.250% | 10/1/2002 | 006848AS4 | D05 |
| Adelphia Senior Note | 8.375% | 2/1/2008 | 006848AU9 | D06 |
| Adelphia Senior Note | 8.125% | 7/15/2003 | 006848AW5 | D07 |
| Adelphia Senior Note | 8.375% | 2/1/2008 | 006848AT2 | D08 |
| Adelphia Senior Note | 7.500% | 1/15/2004 | 006848AZ8 | D09 |
| Adelphia Senior Note | 7.750% | 1/15/2009 | 006848BC8 | D10 |
| Adelphia Senior Note | 7.875% | 5/1/2009 | 006848BD6 | D11 |
| Adelphia Senior Note | 9.375% | 11/15/2009 | 006848BE4 | D12 |
| Adelphia Senior Note | 10.875% | 10/1/2010 | 006848BF1 | D13 |
| Adelphia Senior Note | 10.250% | 6/15/2011 | 006848BJ3 | D14 |
| Adelphia Senior Note | 10.250% | 11/1/2006 | 006848BK0 | D15 |

| | | | | |
|-------------------------------|--------|-----------|-----------|-----|
| Convertible Subordinated Note | 3.250% | 5/1/2021 | 006848BH7 | C01 |
| Convertible Subordinated Note | 6.000% | 2/15/2006 | 006848BG9 | C02 |

Fill out page 5 of the petition form for EACH security – if you held more than Adelphia security, you should make copies of the worksheet on page 5 BEFI

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6. Convertible Subordinated Notes. What restrictions apply to Convertible Subordinated Notes?

In order to be eligible for a distribution from the AVF, you will be required to provide documentation showing that you are the Official that you will be entitled to retain any distribution you receive and will not be obligated to pay to holders of Senior Notes. Such documentation would include releases from the trustees of each series of Subordinated Notes and unappealable declaratory judgment from a court of competent jurisdiction declaring that holders of Subordinated Notes are entitled to retain any distribution they might receive from AVF and will not be obligated to pay to holders of Senior Notes.

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7. How do I file a petition?

Complete a Petition form and submit it with the required supporting documentation. Please make sure you obtain a Certification and Release before mailing the Petition form, and then send it to the AVF at the address listed on page 18.

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8. What if I cannot provide supporting documentation, such as account statements or trade confirmations?

Many people don't keep their brokerage statements from years ago. If you don't have brokerage account statements showing your purchases and sales of Adelphia securities, or establishing that you held them on March 26, 2002 for common stock and preferred stock or February 13, 2007 for debt securities, please contact your broker to request that copies of the statements be sent to you. The statements must show your Broker's Name, the Petitioner's name, and your broker account number (may not be hand-written). If your broker is unable to provide statements, you may request that your broker on brokerage firm letterhead confirming the information in your petition, and provide contact information for your broker (including e-mail address and phone number) so that we can contact the broker and verify the information.

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9. Why do I need to list brokerage accounts where I held Eligible Securities?

The brokerage account information you provide in the Petition form is required for Petition verification. You are necessary to list all brokerage accounts in which you at any time held eligible securities—list only those accounts in which you held eligible securities on **March 26, 2002** (or **February 13, 2007** for debt securities). We request you to list all for any IRA/401k accounts to prevent checks being made out to incorrect or closed broker accounts.

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10. What additional information is necessary for deceased petitioners?

Executors, Trustees and Administrators should file a Petition in the name of the beneficial owner and provide their title on the signature page. Please include a certified copy of the death certificate (do not include a copy if you are the rightful beneficiary or authorized representative of the estate or trust).

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11. How should I file for my multiple accounts?

Co-Beneficial Owners / Joint Claimants: If securities were held jointly in two or more names, all name account holders should file one Petition Form and both parties should sign the certification and release. All accounts which held the eligible securities must match exactly the petitioner name(s) on the petition form. You may not combine accounts owned by different persons (including jointly held accounts) on the same petition. If securities were held in one name (e.g. Fred Jones) and some in joint names (e.g. Fred and Susan Jones), you should file separate petitions for each name.

separate Petition Form for each account. **You should download a new petition form for each different account. You need additional forms you may request them from AVF.**

Custodial Accounts: Uniform Gifts to Minors Act ("UGMA") Custodians should identify themselves as Custodian for Frank Jones UGMA. A claimant whose securities were held in a custodial account under his/her own name, if he/she is now of age. In this event, the former custodian does not have to sign the petition. The claimant must provide the minor's taxpayer identification number in the Petitioner Information section.

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12. Reimbursements / Hedging Securities / Other Claims

You need to complete section IV on pages 6-7 if you sold any puts, calls, options or other hedging securities of the close of markets on March 26, 2002.

If you received a recovery in the Adelphia bankruptcy plan or other recovery of any or all of the losses on Adelphia Eligible Securities, you need to complete section V on page 7 of the petition form.

If you filed a claim in the Adelphia class action settlement being administered by Valley Forge Administrator, you need to complete section VI on page 8 of the Petition Form.

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13. What if I have numerous transactions for Adelphia?

If you have over 50 transactions in Eligible Securities or over 50 Petitions to file please contact AVF to discuss alternative filing methods.

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14. Is this a class action settlement?

No. There are two separate funds for defrauded Adelphia investors: (1) the U.S. Department of Justice Victim Fund, and (2) the class action settlement being administered by Valley Forge Administrator. You can file a Petition with AVF even if you have previously filed a claim in the class action case; however, you must file a separate Petition including documentation to AVF – i.e., a claim filed with Valley Forge will not be eligible for consideration by the AVF.

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15. Does the SEC also have a fund for victims of the Adelphia fraud?

The Securities and Exchange Commission has obtained additional funds in civil enforcement actions with the Adelphia securities fraud, *SEC v. Adelphia Communications Corp. et al., 02 CV 5776 (PKC)*. These funds are subject to the jurisdiction of the Federal District Court presiding over the SEC's enforcement actions. To seek permission from the Federal District Court to distribute those funds to victims of the fraud. To receive distribution from the SEC fund, you do not need to do anything at this time other than petition DOJ for consideration in this letter and the accompanying documents. Further notice will be made by the SEC if any other claims are required to be considered for a distribution from the SEC fund.

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16. If I file a petition, do I give up any rights?

You will be required to provide two releases. Petitioners will release the Rigas Family for liability that resulted from the Adelphia Securities Fraud. Petitioners will also release all parties involved in the administration and distribution of the AVF.

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17. Will I receive a recovery from the AVF, and in what amount?

It is not possible to determine at this time whether you will receive a payment from the AVF, or if so, the amount. First, the AVF is comprised of funds that were obtained as a result of criminal forfeiture proceedings in the Southern District of New York in connection with the investigation and prosecution of the Adelphia securities fraud. Under federal law, the Attorney General may use forfeited property to provide relief to those who suffered a financial loss as a direct result of the crime that gave rise to the forfeiture. This relief is provided under federal regulations, set forth in Part 9 of Article 28 of the Code of Federal Regulations [HYPERLINK].

out who is a qualified victim, and under what circumstances such a victim can recover. The decision on funds and in what amounts is within the sole discretion of the U.S. Department of Justice. There are no guarantees that each victim will receive reimbursement or that each victim will receive a full recovery. Moreover, we will not know the total value of eligible claims submitted to the AVF until all of the Petitions have been reviewed and ruled upon by the Department of Justice.

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18. If I need help in preparing my petition or have other questions, who can I contact?

You can contact AVF for assistance or information in any of the following ways:

a. Call our toll-free number (866) 446-4884 (Monday-Friday, 8:30AM – 5:00PM ET) or

b. Visit our website at www.adelphiafund.com or

c. Write to: Adelphia Victim Fund

P.O. Box 6977

Syracuse, NY 13217-6977

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19. Can I fax or e-mail my Proof of Petition Form?

No, you may not fax or e-mail your completed Petition Form.

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20. Can I overnight my Petition Form?

We prefer that you send all mail to the P.O. Box address. If you wish to file by overnight mail the street address is:

Adelphia Victim Fund

5000 Brittonfield Pkwy-Ste 900

East Syracuse, NY 13057

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21. Do I need to compute my monetary loss?

No. AVF will do that for you.

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22. When will I receive notification about my filed petition?

AVF will send a postcard confirming receipt of your Petition within 30 days after receipt. If you do not receive a postcard within 35 days of mailing your Petition Form, please call us at (866) 446-4884. Please note that a petition is not deemed filed until you receive a confirmation postcard. This postcard only confirms receipt; it does not confirm that the petition is complete or approved. You will receive correspondence regarding the status of your Petition after it has been reviewed.

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within 10 days from receipt of the letter denying the petition. Such request shall be addressed to the Director of the FBI for referral to the FBI Legal Counsel Division and shall be based on evidence recently developed or not previously considered. Only one request for reconsideration of a denial of a petition shall be considered. For further information regarding petitions see 28 CFR part 9.

PART 9—REGULATIONS GOVERNING THE REMISSION OR MITIGATION OF CIVIL AND CRIMINAL FORFEITURES

Sec.

- 9.1 Authority, purpose, and scope.
- 9.2 Definitions.
- 9.3 Petitions in administrative forfeiture cases.
- 9.4 Petitions in judicial forfeiture cases.
- 9.5 Criteria governing administrative and judicial remission and mitigation.
- 9.6 Special rules for specific petitioners.
- 9.7 Terms and conditions of remission and mitigation.
- 9.8 Provisions applicable to victims.
- 9.9 Miscellaneous provisions.

AUTHORITY: 28 U.S.C. 509, 510, 515-518, 524; 8 U.S.C. 1324; 15 U.S.C. 1177; 17 U.S.C. 509; 18 U.S.C. 512, 981, 982, 1467, 1955, 1963, 2253, 2254, 2513; 19 U.S.C. 1613, 1618; 21 U.S.C. 853, 881; 22 U.S.C. 401.

SOURCE: Order No. 2064-96, 62 FR 316, Jan. 3, 1997, unless otherwise noted.

§9.1 Authority, purpose, and scope.

(a) *Purpose.* This part sets forth the procedures for agency officials to follow when considering remission or mitigation of administrative forfeitures under the jurisdiction of the agency, and civil judicial and criminal judicial forfeitures under the jurisdiction of the Criminal Division. The purpose of the regulations in this part is to provide a basis for ameliorating the effects of forfeiture through the partial or total remission of forfeiture for individuals who have an interest in the forfeited property but who did not participate in, or have knowledge of, the conduct that resulted in the property being subject to forfeiture and, where required, took all reasonable steps under the circumstances to ensure that such property would not be used, acquired, or disposed of contrary to law.

Additionally, the regulations provide for partial or total mitigation of the forfeiture and imposition of alternative conditions in appropriate circumstances.

(b) *Authority to grant remission and mitigation.* (1) Remission and mitigation functions in administrative forfeitures are performed by the agency seizing the property. Within the Federal Bureau of Investigation, authority to grant remission and mitigation is delegated to the Forfeiture Counsel, who is the Unit Chief, Legal Forfeiture Unit, Office of the General Counsel; within the Drug Enforcement Administration, authority to grant remission and mitigation is delegated to the Forfeiture Counsel, Office of Chief Counsel; and within the Immigration and Naturalization Service, authority to grant remission and mitigation is delegated to the INS Regional Directors.

(2) Remission and mitigation functions in judicial cases are performed by the Criminal Division of the Department of Justice. Within the Criminal Division, authority to grant remission and mitigation is delegated to the Chief, Asset Forfeiture and Money Laundering Section, Criminal Division.

(3) The powers and responsibilities delegated by these regulations in this part may be redelegated to attorneys or managers working under the supervision of the designated officials.

(c) The time periods and internal requirements established in this part are designed to guide the orderly administration of the remission and mitigation process and are not intended to create rights or entitlements in favor of individuals seeking remission or mitigation. The regulations will apply to all decisions on petitions for remission or mitigation made on or after February 3, 1997. The regulations will apply to decisions on requests for reconsideration of a denial of a petition under §§9.3(j) and 9.4(k) only if the initial decision on the petition was made under the provisions of this part effective on February 3, 1997.

(d) This part governs any petition for remission filed with the Attorney General and supersedes any Department of Justice regulation governing petitions for remission, to the extent such regulation is inconsistent with this part. In

particular, this part supersedes the provisions of 21 CFR 1316.79 and 1316.80, which contain remission and mitigation procedures for property seized for narcotics violations. The provisions of 8 CFR 274.13 through 274.19 and 28 CFR 8.10, which concern non-drug related forfeitures, are also superseded by this part where those regulations relate to remission and mitigation.

§9.2 Definitions.

As used in this part:

(a) The term *administrative forfeiture* means the process by which property may be forfeited by an investigative agency rather than through judicial proceedings.

(b) The term *appraised value* means the estimated market value of an asset at the time and place of seizure if such or similar property was freely offered for sale between a willing seller and a willing buyer.

(c) The term *Assets Forfeiture Fund* means the Department of Justice Assets Forfeiture Fund or Department of the Treasury Asset Forfeiture Fund, depending upon the identity of the seizing agency.

(d) The term *Attorney General* means the Attorney General of the United States or his or her designee.

(e) The term *beneficial owner* means a person with actual use of, as well as an interest in, the property subject to forfeiture.

(f) The terms *Chief, Asset Forfeiture and Money Laundering Section*, and *Chief*, refer to the Chief of the Asset Forfeiture and Money Laundering Section, Criminal Division, United States Department of Justice.

(g) The term *general creditor* means one whose claim or debt is not secured by a specific right to obtain satisfaction against the particular property subject to forfeiture.

(h) The term *judgment creditor* means one who has obtained a judgment against the debtor but has not yet received full satisfaction of the judgment.

(i) The term *judicial forfeiture* means either a civil or a criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

(j) The term *lienholder* means a creditor whose claim or debt is secured by a specific right to obtain satisfaction against the particular property subject to forfeiture. A lien creditor qualifies as a lienholder if the lien:

(1) Was established by operation of law or contract;

(2) Was created as a result of an exchange of money, goods, or services; and

(3) Is perfected against the specific property forfeited for which remission or mitigation is sought (e.g., a real estate mortgage; a mechanic's lien).

(k) The term *net equity* means the amount of a lienholder's monetary interest in property subject to forfeiture. Net equity shall be computed by determining the amount of unpaid principal and unpaid interest at the time of seizure, and by adding to that sum unpaid interest calculated from the date of seizure through the last full month prior to the date of the decision on the petition. Where a rate of interest is set forth in a security agreement, the rate of interest to be used in this computation will be the annual percentage rate so specified in the security agreement that is the basis of the lienholder's interest. In this computation, however, there shall be no allowances for attorneys' fees, accelerated or enhanced interest charges, amounts set by contract as damages, unearned extended warranty fees, insurance, service contract charges incurred after the date of seizure, allowances for dealer's reserve, or any other similar charges.

(l) The term *owner* means the person in whom primary title is vested or whose interest is manifested by the actual and beneficial use of the property, even though the title is vested in another. A victim of an offense, as defined in paragraph (v) of this section, may also be an owner if he or she has a present legally cognizable ownership interest in the property forfeited. A nominal owner of property will not be treated as its true owner if he or she is not its beneficial owner.

(m) The term *person* means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

(n) The term *petition* means a petition for remission or mitigation of forfeiture under the regulations in this part. This definition includes a petition for restoration of the proceeds of sale of forfeited property and a petition for the value of forfeited property placed into official use.

(o) The term *petitioner* means the person applying for remission, mitigation, restoration of the proceeds of sale, or for the appraised value of forfeited property, under the regulations in this part. A petitioner may be an owner as defined in §9.2(l), a lienholder as defined in §9.2(j), or a victim as defined in §9.2(v), subject to the limitations of §9.8.

(p) The term *property* means real or personal property of any kind capable of being owned or possessed.

(q) The term *record* means a series of arrests for related crimes, unless the arrestee was acquitted or the charges were dismissed for lack of evidence; a conviction for a related crime or completion of sentence within ten years of the acquisition of the property subject to forfeiture; or two convictions for a related crime at any time in the past.

(r) The term *related crime* as used in §9.2(q) and §9.6(e) means any crime similar in nature to that which gives rise to the seizure of property for forfeiture. For example, where property is seized for a violation of the federal laws relating to drugs, a related crime would be any offense involving a violation of the federal laws relating to drugs or the laws of any state or political subdivision thereof relating to drugs.

(s) The term *related offense* as used in §9.8 means:

(1) Any predicate offense charged in a Federal Racketeer Influenced and Corrupt Organizations Act (RICO) count for which forfeiture was ordered; or

(2) An offense committed as part of the same scheme or design, or pursuant to the same conspiracy, as was involved in the offense for which forfeiture was ordered.

(t) The term *Ruling Official* means any official to whom decision making authority has been delegated pursuant to §9.1(b).

(u) The term *seizing agency* means the federal agency that seized the property

or adopted the seizure of another agency for federal forfeiture.

(v) The term *victim* means a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture. A drug user is not considered a victim of a drug trafficking offense under this definition. A victim does not include one who acquires a right to sue the perpetrator of the criminal offense for any loss by assignment, subrogation inheritance, or otherwise from the actual victim, unless that person has acquired an actual ownership interest in the forfeited property.

(w) The term *violation* means the person whose use or acquisition of the property in violation of the law subjected such property to seizure for forfeiture.

§9.3 Petitions in administrative forfeiture cases.

(a) *Notice of seizure.* The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within thirty (30) days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until the forfeited property is placed into official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore the proceeds from the sale of forfeited property. A notice of seizure shall include the title of the seizing agency, the Ruling Official, the mailing and street address of the official to whom petitions should be sent, and an asset identifier number.

(b) *Persons who may file.* A petition for remission or mitigation must be filed by a petitioner as defined in §9.2(o) or as prescribed in §§9.9(g) and (h).

(c) *Contents of petition.* (1) All petitions must include the following information in clear and concise terms:

(i) The name, address, and social security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;

(ii) The name of the seizing agency, the asset identifier number, and the date and place of seizure;

(iii) A complete description of the property, including make, model, and serial numbers, if any; and

(iv) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, deeds, mortgages, or other documentary evidence.

(2) Any factual recitation or documentation of any type in a petition must be supported by a sworn affidavit.

(d) *Releases.* In addition to the contents of the petition for remission or mitigation set forth in paragraph (c) of this section, upon request, the petitioner shall also furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing interest in such property.

(e) *Filing petition with agency.* (1) A petition for remission or mitigation subject to administrative forfeiture shall be addressed to the appropriate federal agency as follows:

(i) Drug Enforcement Administration, Office of Chief Counsel, Street Address: 700 Army Navy Drive, Arlington, VA 22202

Mailing Address: P.O. Box 28356, Washington, D.C. 20038.

(ii) Federal Bureau of Investigation, Special Agent in Charge, Field Office that seized the property.

(iii) Immigration and Naturalization Service District Director, Chief Patrol Agent, or Regional Asset Forfeiture Office at location with jurisdiction over the forfeiture proceeding.

(2) The petition is to be sent to the official address provided in the notice of seizure and shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set out in §9.9(g). The Chief of the Asset Forfeiture and Money Laundering Section is delegated authority to amend the address of the official to whom petitions may be sent from time to time, as necessary, by publishing notice of the change of address in the FEDERAL REGISTER. Failure to publish

a notice of change of address in the FEDERAL REGISTER shall not alter the authority of the Ruling Official to determine petitions for remission or mitigation nor the obligation of a petitioner to file a petition at the address provided in the notice of seizure. Failure to publish a notice of change of address in the FEDERAL REGISTER shall not be grounds for expanding the time for filing a petition for remission or mitigation under the regulations in this part.

(f) *Agency investigation.* Upon receipt of a petition, the seizing agency shall investigate the merits of the petition and prepare a written report containing the results of that investigation. This report shall be submitted to the Ruling Official for review and consideration.

(g) *Ruling.* Upon receipt of the petition and the agency report, the Ruling Official for the seizing agency shall review the petition and the report, and shall rule on the merits of the petition. No hearing shall be held.

(h) *Petitions granted.* If the Ruling Official grants a remission or mitigation of the forfeiture, a copy of the decision shall be mailed to the petitioner or, if represented by an attorney, to the petitioner's attorney. A copy shall also be sent to the United States Marshals Service or other property custodian. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein.

(i) *Petitions denied.* If the Ruling Official denies a petition, a copy of the decision shall be mailed to the petitioner or, if represented by an attorney, to the petitioner's attorney of record. A copy of the decision shall also be sent to the United States Marshals Service or other property custodian. The decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Ruling Official in accordance with paragraph (j) of this section.

(j) *Request for reconsideration.* (1) A request for reconsideration of the denial of the petition shall be considered if:

(i) It is postmarked or received by the office of the Ruling Official within ten (10) days from the receipt of the notice of denial of the petition by the petitioner; and

(ii) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous.

(2) In no event shall a request for reconsideration be decided by the same Ruling Official who ruled on the original petition.

(3) Only one request for reconsideration of a denial of a petition shall be considered.

(k) *Restoration of proceeds from sale.*

(1) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

(i) Did not know of the seizure prior to the entry of a declaration of forfeiture; and

(ii) Could not reasonably have known of the seizure prior to the entry of a declaration of forfeiture.

(2) Such a petition shall be submitted pursuant to paragraphs (b) through (e) of this section within ninety (90) days of the date the property is sold or otherwise disposed of.

§9.4 Petitions in judicial forfeiture cases.

(a) *Notice of seizure.* The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within thirty (30) days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until such time as the forfeited property is placed in official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore property. A notice of

seizure shall include the title of the Ruling Official and the mailing and street address of the official to whom petitions should be sent, the name of the agency seizing the property, an asset identifier number, and the district court docket number.

(b) *Persons who may file.* A petition for remission or mitigation must be filed by a petitioner as defined in §9.2(o) or as prescribed in §§9.9 (g) and (h).

(c) *Contents of petition.* (1) All petitions must include the following information in clear and concise terms:

(i) The name, address, and social security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;

(ii) The name of the seizing agency, the asset identifier number, and the date and place of seizure;

(iii) The district court docket number;

(iv) A complete description of the property, including the address or legal description of real property, and make, model, and serial numbers of personal property, if any; and

(v) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, mortgages, deeds, or other documentary evidence.

(2) Any factual recitation or documentation of any type in a petition must be supported by a sworn affidavit.

(d) *Releases.* In addition to the content of the petition for remission or mitigation set forth in paragraph (c) of this section, the petitioner, upon request, also shall furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing the interest in such property.

(e) *Filing petition with Department of Justice.* A petition for remission or mitigation of a judicial forfeiture shall be addressed to the Attorney General; shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set forth in §9.9(g); and shall be submitted to the

United States Attorney for the district in which the judicial forfeiture proceedings are brought. A petitioner also shall submit a copy of the petition to the seizing agency in the judicial district in which the seizure occurred as specified in the notice of seizure, except in Drug Enforcement Administration cases, where the copy shall be submitted to Drug Enforcement Administration Headquarters, Office of Chief Counsel, P.O. Box 28356, Washington, D.C. 20038, or 700 Army Navy Drive, Arlington, VA 22202.

(f) *Agency investigation and recommendation; United States Attorney's recommendation.* Upon receipt of a petition, the United States Attorney shall direct the seizing agency to investigate the merits of the petition based on the information provided by the petitioner and the totality of the agency's investigation of the underlying basis for forfeiture. The agency shall submit to the United States Attorney a report of its investigation and its recommendation on whether the petition should be granted or denied. Upon receipt of the agency's report and recommendation, the United States Attorney shall forward to the Chief, Asset Forfeiture and Money Laundering Section, the petition, the seizing agency's report and recommendation, and the United States Attorney's recommendation on whether the petition should be granted or denied.

(g) *Ruling.* The Chief shall rule on the petition. No hearing shall be held. The Chief shall not rule on any petition in any case in which similar petition has been administratively denied by the seizing agency prior to the referral of the case to the United States Attorney for the institution of forfeiture proceedings.

(h) *Petitions under Internal Revenue Service liquor laws.* The Chief shall accept and consider petitions submitted in judicial forfeiture proceedings under the Internal Revenue Service liquor laws only prior to the time a decree of forfeiture is entered. Thereafter, district courts have exclusive jurisdiction.

(i) *Petitions granted.* If the Chief grants a remission or mitigates the forfeiture, the Chief shall mail a copy of the decision to the petitioner or, if rep-

resented by an attorney, to the petitioner's attorney, the appropriate United States Attorney, the United States Marshals Service or other property custodian, and the appropriate seizing agency. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein. The Chief shall advise the petitioner or the petitioner's attorney to consult with the United States Attorney as to such terms and conditions. The United States Attorney shall confer with the seizing agency regarding the release and shall coordinate disposition of the property with that office and the United States Marshals Service or other property custodian.

(j) *Petitions denied.* If the Chief denies a petition, a copy of that decision shall be mailed to the petitioner, or if represented by an attorney, to the petitioner's attorney of record, to the appropriate United States Attorney, the United States Marshals Service or other property custodian, and to the appropriate seizing agency. The decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Chief at the address provided in the decision, in accordance with paragraph (k) of this section.

(k) *Request for reconsideration.* (1) A request for reconsideration of the denial shall be considered if:

(i) It is postmarked or received by the Asset Forfeiture and Money Laundering Section at the address contained in the decision denying the petition within ten (10) days from the receipt of the notice of denial of the petition by the petitioner; and

(ii) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous. A copy of the request must be received by the appropriate United States Attorney within ten (10) days of the receipt of the denial by the petitioner.

(2) In no event shall a request for reconsideration be decided by the Ruling Official who ruled on the original petition.

(3) Only one request for reconsideration of a denial of a petition shall be considered.

(4) Upon receipt of the request for reconsideration of the denial of a petition, disposition of the property will be delayed pending notice of the decision at the request of the Chief. If the United States Attorney does not receive a copy of the request for reconsideration within the prescribed period, the deposition of the property may proceed.

(1) *Restoration of proceeds from sale.* (1) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

(i) Did not know of the seizure prior to the entry of a final order of forfeiture; and

(ii) Could not reasonably have known of the seizure prior to the entry of a final order of forfeiture.

(2) Such a petition must be submitted pursuant to paragraphs (b) through (e) of this section within ninety (90) days of the date the property was sold or otherwise disposed of.

§9.5 Criteria governing administrative and judicial remission and mitigation.

(a) *Remission.* (1) The Ruling Official shall not grant remission of a forfeiture unless the petitioner establishes that:

(i) The petitioner has a valid, good faith, and legally cognizable interest in the seized property as owner or lienholder as defined in this part; and

(ii) The petitioner is innocent within the meaning of the innocent owner provisions of the applicable civil forfeiture statute, is a bona fide purchaser for value without cause to believe that the property was subject to forfeiture at the time of the purchase, or is one who held a legally cognizable interest in the seized property at the time of the

violation underlying the forfeiture superior to that of the defendant within the meaning of the applicable criminal forfeiture statute, and is thereby entitled to recover his or her interest in the forfeited property by statute. (If the applicable civil forfeiture statute contains no innocent owner defense, the innocent owner provisions applicable to 21 U.S.C. 881(a)(4) shall apply.) Unless otherwise provided by statute, in the case of petitioners who acquired their interest in the property after the time of the violation underlying the forfeiture, the question of whether the petitioner had knowledge of the violation shall be determined as of the point in time when the interest in the property was acquired.

(2) The knowledge and responsibilities of petitioner's representative, agent, or employee in paragraph (a)(1)(ii) of this section are imputed to the petitioner where the representative, agent, or employee was acting in the course of his or her employment and in furtherance of the petitioner's business.

(3) The petitioner has the burden of establishing the basis for granting a petition for remission or mitigation of forfeited property, a restoration of proceeds of sale or appraised value of forfeited property, or a reconsideration of a denial of such a petition. Failure to provide information or documents and to submit to interviews, as requested, may result in a denial of the petition.

(4) The Ruling Official shall presume a valid forfeiture and shall not consider whether the evidence is sufficient to support the forfeiture.

(5) Willful, materially-false statements or information, made or furnished by the petitioner in support of a petition for remission or mitigation of forfeited property, the restoration of proceeds or appraised value of forfeited property, or the reconsideration of a denial of any such petition, shall be grounds for denial of such petition and possible prosecution for the filing of false statements.

(b) *Mitigation.* (1) The Ruling Official may grant mitigation to a party not involved in the commission of the offense underlying forfeiture:

(i) Where the petitioner has not met the minimum conditions for remission,

but the Ruling Official finds that some relief should be granted to avoid extreme hardship, and that return of the property combined with imposition of monetary and/or other conditions of mitigation in lieu of a complete forfeiture will promote the interest of justice and will not diminish the deterrent effect of the law. Extenuating circumstances justifying such a finding include those circumstances that reduce the responsibility of the petitioner for knowledge of the illegal activity, knowledge of the criminal record of a user of the property, or failure to take reasonable steps to prevent the illegal use or acquisition by another for some reason, such as a reasonable fear of reprisal; or

(ii) Where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the Ruling Official, complete relief is not warranted.

(2) The Ruling Officials may in his or her discretion grant mitigation to a party involved in the commission of the offense underlying the forfeiture where certain mitigating factors exist, including, but not limited to: the lack of a prior record or evidence of similar criminal conduct; if the violation does not include drug distribution, manufacturing, or importation, the fact that the violator has taken steps, such as drug treatment, to prevent further criminal conduct; the fact that the violation was minimal and was not part of a larger criminal scheme; the fact that the violator has cooperated with federal, state, or local investigations relating to the criminal conduct underlying the forfeiture; or the fact that complete forfeiture of an asset is not necessary to achieve the legitimate purposes of forfeiture.

(3) Mitigation may take the form of a monetary condition or the imposition of other conditions relating to the continued use of the property, and the return of the property, in addition to the imposition of any other costs that would be chargeable as a condition to remission. This monetary condition is considered as an item of cost payable by the petitioner, and shall be deposited into the Assets Forfeiture Fund as an amount realized from forfeiture in accordance with the applicable statute.

If the petitioner fails to accept the Ruling Official's mitigation decision or any of its conditions, or fails to pay the monetary amount within twenty (20) days of the receipt of the decision, the property shall be sold, and the monetary amount imposed and other costs chargeable as a condition to mitigation shall be subtracted from the proceeds of the sale before transmitting the remainder to the petitioner.

§9.6 Special rules for specific petitioners.

(a) *General creditors.* A general creditor may not be granted remission or mitigation of forfeiture unless he or she otherwise qualifies as petitioner under this part.

(b) *Rival claimants.* If the beneficial owner of the forfeited property and the owner of a security interest in the same property each files a petition, and if both petitions are found to be meritorious, the claims of the beneficial owner shall take precedence.

(c) *Voluntary bailments.* A petitioner who allows another to use his or her property without cost, and who is not in the business of lending money secured by property or of leasing or renting property for profit, shall be granted remission or mitigation of forfeiture in accordance with the provisions of §9.5.

(d) *Lessors.* A person engaged in the business of leasing or renting real or personal property on a long-term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless the lessor can demonstrate compliance with all the requirements of §9.5.

(e) *Straw owners.* A petition by any person who has acquired a property interest recognizable under this part, and who knew or had reason to believe that the interest was conveyed by the previous owner for the purpose of circumventing seizure, forfeiture, or the regulations in this part, shall be denied. A petition by a person who purchases or owns property for another who has a record for related crimes as defined in §9.2(r), or a petition by a lienholder who knows or has reason to believe that the purchaser or owner of record is not the real purchaser or owner,

shall be denied unless both the purchaser of record and the real purchaser or owner meet the requirements of § 9.5.

(f) *Judgment creditors.* (1) A judgment creditor will be recognized as a lienholder if:

(i) The judgment was duly recorded before the seizure of the property for forfeiture;

(ii) Under applicable state or other local law, the judgment constitutes a valid lien on the property that attached to it before the seizure of the property for forfeiture; and

(iii) The petitioner had no knowledge of the commission of any act or acts giving rise to the forfeiture at the time the judgment became a lien on the forfeited property.

(2) A judgment creditor will not be recognized as a lienholder if the property in question is not property of which the judgment debtor is entitled to claim ownership under applicable state or other local law (e.g., stolen property). A judgment creditor is entitled under this part to no more than the amount of the judgment, exclusive of any interest, costs, or other fees including attorney's fees associated with the action that led to the judgment or its collection.

(3) A judgment creditor's lien must be registered in the district where the property is located if the judgment was obtained outside the district.

§ 9.7 Terms and conditions of remission and mitigation.

(a) *Owners.* (1) An owner's interest in property that has been forfeited is represented by the property itself or by a monetary interest equivalent to that interest at the time of seizure. Whether the property or a monetary equivalent will be remitted to an owner shall be determined at the discretion of the Ruling Official.

(2) If a civil judicial forfeiture action against the property is pending, release of the property must await an appropriate court order.

(3) Where the government sells or disposes of the property prior to the grant of the remission, the owner shall receive the proceeds of that sale, less any costs incurred by the government in the sale. The Ruling Official, at his or her discretion, may waive the deduc-

tion of costs and expenses incident to the forfeiture.

(4) Where the owner does not comply with the conditions imposed upon release of the property by the Ruling Official, the property shall be sold. Following the sale, the proceeds shall be used to pay all costs of the forfeiture and disposition of the property, in addition to any monetary conditions imposed. The remaining balance shall be paid to the owner.

(b) *Lienholders.* (1) When the forfeited property is to be retained for official use or transferred to a state or local law enforcement agency or foreign government pursuant to law, and remission or mitigation has been granted to a lienholder, the recipient of the property shall assure that:

(i) In the case of remission, the lien is satisfied as determined through the petition process; or

(ii) In the case of mitigation, an amount equal to the net equity, less any monetary conditions imposed, is paid to the lienholder prior to the release of the property to the recipient agency of foreign government.

(2) When the forfeited property is not retained for official use or transferred to another agency or foreign government pursuant to law, the lienholder shall be notified by the Ruling Official of the right to select either of the following alternatives:

(i) *Return of property.* The lienholder may obtain possession of the property after paying the United States, through the Ruling Official, the costs and expenses incident to the forfeiture, the amount, if any, by which the appraised value of the property exceeds the lienholder's net equity in the property, and any amount specified in the Ruling Official's decision as a condition to remit the property. The Ruling Official, at his or her discretion, may waive costs and expenses incident to the forfeiture. The Ruling Official shall forward a copy of the decision, a memorandum of disposition, and the original releases to the United States Marshals Service or other property custodian who shall thereafter release the property to the lienholder; or

(ii) *Sale of property and payment to lienholder.* Subject to the provisions of § 9.9(a), upon sale of the property, the

lienholder may receive the payment of a monetary amount up to the sum of the lienholder's net equity, less the expenses and costs incident to the forfeiture and sale of the property, and any other monetary conditions imposed. The Ruling Official, at his or her discretion, may waive costs and expenses incident to the forfeiture.

(3) If the lienholder does not notify the Ruling Official of the selection of one of the two options set forth in paragraph (b)(2) of this section within twenty (20) days of the receipt of notification, the Ruling Official shall direct the United States Marshal or other property custodian to sell the property and pay the lienholder an amount up to the net equity, less the costs and expenses incurred incident to the forfeiture and sale, and any monetary conditions imposed. In the event a lienholder subsequently receives a payment of any kind on the debt owed for which he or she received payment as a result of the granting of remission or mitigation, the lienholder shall reimburse the Assets Forfeiture Fund to the extent of the payment received.

(4) Where the lienholder does not comply with the conditions imposed upon the release of the property, the property shall be sold after forfeiture. From the proceeds of the sale, all costs incident to the forfeiture and sale shall first be deducted, and the balance up to the net equity, less any monetary conditions, shall be paid to the lienholder.

§9.8 Provisions applicable to victims.

The provisions of this section apply to victims of an offense underlying the forfeiture of property, or of a related offense, who do not have a present ownership interest in the forfeited property (or, in the case of multiple victims of an offense, who do not have a present ownership interest in the forfeited property that is clearly superior to that of other petitioner victims). The provisions of this section apply only with respect to property forfeited pursuant to statutes that explicitly authorize restoration or remission of forfeited property to victims. Victims who have a superior present legally cognizable ownership interest in forfeited property may file petitions, as other owners, subject to the regulations set

forth in §9.7(a). The claims of such owner victims, like those of any other owners, shall have priority over the claims of any non-owner victims whose claims are recognized pursuant to this section.

(a) *Qualification to file.* A victim, as defined in §9.2(v), of an offense that was the underlying basis for the criminal, civil, or administrative forfeiture of specific property, or a victim of a related offense, may be granted remission of the forfeiture of that property, if in addition to complying with the other applicable provisions of §9.8, the victim satisfactorily demonstrates that:

(1) A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that was the underlying basis for the forfeiture, and that the loss is supported by documentary evidence including invoices and receipts;

(2) The pecuniary loss is the direct result of the illegal acts and is not the result of otherwise lawful acts that were committed in the course of a criminal offense;

(3) The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards the commission of the offense, or related offense, that was the underlying basis of the forfeiture;

(4) The victim has not in fact been compensated for the wrongful loss of the property by the perpetrator or others; and

(5) The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of the property.

(b) *Pecuniary loss.* The amount of the pecuniary loss suffered by a victim for which remission may be granted is limited to the fair market value of the property of which the victim was deprived as of the date of the occurrence of the loss. No allowance shall be made for interest foregone or for collateral expenses incurred to recover lost property or to seek other recompense.

(c) *Torts.* A tort associated with illegal activity that formed the basis for the forfeiture shall not be a basis for remission, unless it constitutes the illegal activity itself, nor shall remission be granted for physical injuries to

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a petitioner or for damage to a petitioner's property.

(d) *Denial of petition.* In the exercise of his or her discretion, the Ruling Official may decline to grant remission where:

(1) There is substantial difficulty in calculating the pecuniary loss incurred by the victim or victims;

(2) The amount of the remission, if granted, would be small compared with the amount of expenses incurred by the government in determining whether to grant remission; or

(3) The total number of victims is large and the monetary amount of the remission so small as to make its granting impractical.

(e) *Pro rata basis.* In granting remission to multiple victims pursuant to this section, the Ruling Official should generally grant remission on a pro rata basis to recognized victims when petitions cannot be granted in full due to the limited value of the forfeited property. However, the Ruling Official may consider, among others, the following factors in establishing appropriate priorities in individual cases:

(1) The specificity and reliability of the evidence establishing a loss;

(2) The fact that a particular victim is suffering an extreme financial hardship;

(3) The fact that a particular victim has cooperated with the government in the investigation related to the forfeiture or to a related persecution or civil action; and

(4) In the case of petitions filed by multiple victims of related offenses, the fact that a particular victim is a victim of the offense underlying the forfeiture.

(f) *Reimbursement.* Any petitioner granted remission pursuant to this part shall reimburse the Assets Forfeiture Fund for the amount received to the extent the individual later receives compensation for the loss of the property from any other source. The petitioner shall surrender the reimbursement upon payment from any secondary source.

(g) *Claims of financial institution regulatory agencies.* In cases involving property forfeitable under 18 U.S.C. 981(a)(1)(C) or (a)(1)(D), the Ruling Official may decline to grant a petition

filed by a petitioner in whole or in part due to the lack of sufficient forfeitable funds to satisfy both the petition and claims of the financial institution regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7). Generally, claims of financial institution regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7) shall take priority over claims of victims.

§9.9 Miscellaneous provisions.

(a) *Priority of payment.* Except where otherwise provided in this part, costs incurred by the United States Marshals Service and other agencies participating in the forfeiture that were incident to the forfeiture, sale, or other disposition of the property shall be deducted from the amount available for remission or mitigation. Such costs include, but are not limited to, court costs; storage costs, brokerage and other sales-related costs, the amount of any liens and associated costs paid by the government on the property, costs incurred in paying the ordinary and necessary expenses of a business seized for forfeiture, awards for information as authorized by statute, expenses of trustees or other assistants pursuant to paragraph (c) of this section, investigative or prosecutive costs specially incurred incident to the particular forfeiture, and costs incurred incident to the processing of the petition(s) for remission or mitigation. The remaining balance shall be available for remission or mitigation. The Ruling Official shall direct the distribution of the remaining balance in the following order or priority, except that the Ruling Official may exercise discretion in determining the priority between petitioners belonging to classes described in paragraphs (a)(3) and (4) of this section in exceptional circumstances:

(1) Owners;

(2) Lienholders;

(3) Federal financial institution regulatory agencies (pursuant to paragraph (e) of this section), not constituting owners or lienholders; and

(4) Victims not constituting owners or lienholders (pursuant to §9.8).

(b) *Sale or disposition of property prior to ruling.* If forfeited property has been sold or otherwise disposed of prior to a

ruling, the Ruling Official may grant relief in the form of a monetary amount. The amount realized by the sale of the property is presumed to be the value of the property. Monetary relief shall not be greater than the appraised value of the property at the time of seizure and shall not exceed the amount realized from the sale or other disposition. The proceeds of the sale shall be distributed as follows:

(1) Payment of the government's expenses incurred incident to the forfeiture and sale, including court costs and storage charges, if any;

(2) Payment to the petitioner of an amount up to his or her interest in the property;

(3) Payment to the Assets Forfeiture Fund of all other costs and expenses incident to the forfeiture;

(4) In the case of victims, payment of any amount up to the amount of his or her loss; and

(5) Payment of the balance remaining, if any, to the Assets Forfeiture Fund.

(c) *Trustees and other assistants.* In the exercise of his or her discretion, the Ruling Official, with the approval of the Asset Forfeiture and Money Laundering Section, may use the services of a trustee, other government official, or appointed contractors to notify potential petitioners, process petitions, and make recommendations to the Ruling Official on the distribution of property to petitioners. The expense for such assistance shall be paid out of the forfeited funds.

(d) *Other agencies of the United States.* Where another agency of the United States is entitled to remission or mitigation of forfeited assets because of an interest that is recognizable under this part or is eligible for such transfer pursuant to 18 U.S.C. 981(e)(6), such agency shall request the transfer in writing, in addition to complying with any applicable provisions of §§9.3 through 9.5. The decision to make such transfer shall be made in writing by the Ruling Official.

(e) *Financial institution regulatory agencies.* A Ruling Official may direct the transfer of property under 18 U.S.C. 981(e) to certain federal financial institution regulatory agencies or an entity acting in their behalf, upon receipt of a

written request, in lieu of ruling on a petition for remission or mitigation.

(f) *Transfers to foreign governments.* A Ruling Official may decline to grant remission to any petitioner other than an owner or lienholder so that forfeited assets may be transferred to a foreign government pursuant to 18 U.S.C. 981(i)(1), 19 U.S.C. 1616a(c)(2), or 21 U.S.C. 881(e)(1)(E).

(g) *Filing by attorneys.* (1) A petition for remission or mitigation may be filed by a petitioner or by his or her attorney or legal guardian. If an attorney files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner stating that:

(i) The attorney has the authority to represent the petitioner in this proceeding;

(ii) The petitioner has fully reviewed the petition; and

(iii) The petition is truthful and accurate in every respect.

(2) Verbal notification of representation is not acceptable. Responses and notification of rulings shall not be sent to an attorney claiming to represent a petitioner unless a written notice of representation is filed. No extensions of time shall be granted due to delays in submission of the notice of representation.

(h) *Consolidated petitions.* At the discretion of the Ruling Official in individual cases, a petition may be filed by one petitioner on behalf of other petitioners, provided the petitions are based on similar underlying facts, and the petitioner who files the petition has written authority to do so on behalf of the other petitioners. This authority must be either expressed in documents giving the petitioner the authority to file petitions for remission, or reasonably implied from documents giving the petitioner express authority to file claims or lawsuits related to the course of conduct in question on behalf of these petitioners. An insurer or an administrator of an employee benefit plan, for example, which itself has standing to file a petition as a "victim" within the meaning of §9.2(v), may also file a petition on behalf of its insured or plan beneficiaries for any claims they may have based on co-payments made to the perpetrator

of the offense underlying the forfeiture or the perpetrator of a "related offense" within the meaning of §9.2(s), if the authority to file claims or lawsuits is contained in the document or documents establishing the plan. Where such a petition is filed, any amounts granted as a remission must be transferred to the other petitioners, not the party filing the petition; although, in his or her discretion, the Ruling Official may use the actual petitioner as an intermediary for transferring the amounts authorized as a remission to the other petitioners.

PART 10—REGISTRATION OF CERTAIN ORGANIZATIONS CARRYING ON ACTIVITIES WITHIN THE UNITED STATES

REGISTRATION STATEMENT

- Sec.
 10.1 Form of registration statement.
 10.2 Language of registration statement.
 10.3 Effect of acceptance of registration statement.
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- 10.8 Information to be kept current.
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INSPECTION OF REGISTRATION STATEMENT

- 10.10 Public inspection.

AUTHORITY: Pub. L. 772, 80th Cong.; 18 U.S.C. 2386.

CROSS REFERENCES: For regulations under the Foreign Agents Registration Act, see part 5 of this chapter.

For Organization Statement, Internal Security Section, see subpart K of part 0 of this chapter.

SOURCE: 6 FR 369, Jan. 15, 1941, unless otherwise noted.

REGISTRATION STATEMENT

§ 10.1 Form of registration statement.

Every organization required to submit a registration statement¹ to the

¹ Filed as a part of the original document. Copies may be obtained from the Department of Justice.

Attorney General for filing in compliance with the terms of section 2 of the act approved October 17, 1940, entitled, "An act to require the registration of certain organizations carrying on activities within the United States, and for other purposes" (Pub. L. 772, 80th Cong.; 18 U.S.C. 2386), and the rules and regulations issued pursuant thereto, shall submit such statement on such forms as are prescribed by the Attorney General. Every statement required to be filed with the Attorney General shall be subscribed under oath by all of the officers of the organization registering.

§ 10.2 Language of registration statement.

Registration statements must be in English if possible. If in a foreign language they must be accompanied by an English translation certified under oath by the translator, before a notary public or other person authorized by law to administer oaths for general purposes as a true and adequate translation. The statements, with the exception of signature, must be typewritten if practicable but will be accepted if written legibly in ink.

§ 10.3 Effect of acceptance of registration statement.

Acceptance by the Attorney General of a registration statement submitted for filing shall not necessarily signify a full compliance with the said act on the part of the registrant, and such acceptance shall not preclude the Attorney General from seeking such additional information as he deems necessary under the requirements of the said act, and shall not preclude prosecution as provided for in the said act for a false statement of a material fact, or the willful omission of a material fact required to be stated therein, or necessary to make the statements made not misleading.

§ 10.4 Date of filing.

The date on which a registration statement properly executed is accepted by the Attorney General for filing shall be considered the date of the filing of such registration statement pursuant to the said act. All statements