

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA, ) No. 06 CR 964  
 )  
 v. ) Judge Ronald Guzman  
 )  
MICHAEL E. KELLY )

**MOTION FOR AN ORDER EXTENDING THE 90-DAY PERIOD FOR A PROPOSED  
PLAN OF ACTION AND AUTHORIZING THE TRANSFER OF THE SPECIAL  
MASTER’S TRUST ACCOUNT FROM AN INTEREST-BEARING BANK ACCOUNT  
TO AN ACCOUNT HOLDING U.S. GOVERNMENT OBLIGATIONS AND FDIC-  
INSURED DEPOSITS**

Douglas A. Doetsch, not individually but solely as the court-appointed Special Master (“Special Master”) in the *United States of America v. Michael E. Kelly*, by and through his attorneys, requests that this court enter an order: (a) extending the initial 90-day period to file the proposed plan of action (the “Plan of Action”) for an additional 60 days to July 13, 2009 and (b) approving the transfer of the funds from the interest-bearing account maintained by Mayer Brown LLP that comprises part of the Restitution Fund<sup>1</sup> (the “Special Master’s Trust Account”) to a more secure mix of Certificates of Deposit (“CDs”) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) and U.S. Government Obligations (“Treasury Notes”). In support of this motion, the Special Master represents as follows:

**Background**

1. On October 9, 2008, the Court issued an order (the “October 9, 2008 Order”) granting the United States’ agreed motion for appointment of a special master, pursuant to 21 U.S.C. § 853(e) and 18 U.S.C. § 3664(d)(6), to assist the Court in preserving and repatriating the Defendant’s assets potentially subject to forfeiture, administering their liquidation, and

<sup>1</sup> The Restitution Fund is the fund into which Assets (defined below) liquidated for the benefit of victims will be deposited pursuant to the February 10, 2009 Order appointing the Special Master.

distributing restitution to the victims of the Defendant's fraud charged in the Information (as defined below). The October 9, 2008 Order also addressed the reasons for the appointment of a special master and, further, requested proposals from candidates to serve as special master.

2. On February 10, 2009, the Court issued an order (the "February 10, 2009 Order") appointing Douglas A. Doetsch as Special Master.

3. The February 10, 2009 Order requires that the Special Master put forth a suggested Plan of Action no later than ninety (90) days after the entry of the February 10, 2009 Order. The ninety (90) day period ends on or about May 11, 2009, and a hearing regarding the Plan of Action is currently scheduled for May 14, 2009, at 2:30 p.m.

4. The February 10, 2009 Order also authorized the Special Master to open and maintain such interest-bearing bank account(s) as the Special Master deems necessary to hold and administer any of the Assets<sup>2</sup> in the Restitution Fund. The Special Master's Trust Account contains approximately \$6,404,600<sup>3</sup>.

### **Relief Requested**

5. By this motion, the Special Master seeks authorization to extend the time allotted to prepare the Plan of Action an additional sixty (60) days to July 10, 2009. In addition, the Special Master requests that the hearing regarding the Plan of Action be rescheduled for the week of July 13, 2009.

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<sup>2</sup> "Assets" means all of the Defendant's property and rights to property, including real property, personal property and intangible property, wherever located and whether held or controlled by the Defendant or any other entity, in which the Defendant has (or had during the scheme to defraud described in the Criminal Information in this case) (the "Information") any direct, indirect or beneficial interest of any kind whatsoever. Assets shall also include any other property or rights to property traceable to the proceeds of the fraudulent scheme charged in the Information. Assets also include, but are not limited to, the property and rights to property listed on Exhibit A of the February 10, 2009 Order.

<sup>3</sup> As of April 1, 2009.

6. Furthermore, the Special Master requests that this Court enter an order approving (i) the transfer of the funds in the Special Master's Trust Account from the current interest-bearing account to a more secure mix of CDs and Treasury Notes, and (ii) the investment of future amounts in the Restitution Fund in CD's and Treasury Notes within the business judgment of the Special Master.

### Discussion

#### **I. The Plan of Action**

7. In crafting the Plan of Action, the Special Master has encountered a variety of unanticipated delays including, but not limited to: the unexpected complexity of the proposed trust agreement; the various compliance and "know your customer" requirements of the Bank of New York as the proposed trustee for the Restitution Fund; the continuing corporate reorganization of the Assets' holding companies the shares of which will be deposited into the Restitution Fund; and delays obtaining necessary information from Grupo Kelly due to peak "spring break" and holiday times impacting work schedules.

8. These delays are beyond the Special Master's control and have slowed his progress. Furthermore, these tasks need to be completed in order for the Special Master's Plan of Action to be accurate and complete. Therefore, a 60-day extension is appropriate.

#### **II. The Interest Bearing Accounts**

9. Due to the deteriorating economy, the Special Master, in his business judgment, believes that it would be advisable to hedge against the risk of bank failure by placing the Special Master's Trust Account funds into a more diversified, lower-risk portfolio consisting of a mix of FDIC-insured CDs and Treasury Notes. While the Special Master has no reason to believe that funds in the Special Master's Trust Account are in jeopardy, the FDIC insures

accounts up to only \$250,000, well below the \$6,404,600 current balance. The United States Attorneys Office, the Defendant's counsel and the Special Master (the "Parties") have agreed that this proposed reallocation of the funds held by the Special Master into CD's and Treasury Notes is the most prudent course of action.

10. UBS Financial Services Inc. ("UBS") has put forth such a reallocation proposal dated April 21, 2009 and attached hereto as Exhibit A (the "Proposal"). The Proposal would spread the funds across a mix of CDs and Treasury Notes to create the maximum yield for the benefit of the victims at relatively low risk. The Special Master, in consultation with UBS, would determine the percentage allocation between CDs and Treasury Notes and select the institutions to provide the CDs, based on market conditions.

11. The shift from bank deposits to a fund containing a mix of small CDs and Treasury Notes will generate less income for the Restitution Fund, but will result in less risk to the principal in the Restitution Fund. In the Proposal, the annual yield on the portfolio is 0.211%. In contrast, the interest rate of the account the Special Master's Trust Account funds are currently held in is 0.7%.

12. The Proposal assumes that approximately \$6,250,000 will be invested right away. Additional funds received from the sale of the Assets will be added as they are transferred to the Special Master. A portion of the Special Master's Trust Account funds of up to \$250,000 would be kept on deposit with UBS Bank USA to achieve daily liquidity for the Special Master's use and obtain the benefits of the \$250,000 FDIC current insurance limit.

13. Under the Proposal, the maturity dates for each investment would be approximately six (6) months or less to give the Special Master a reasonable amount of liquidity,

while still maximizing the yield of the portfolio.

14. The estimated annualized commissions/sales concessions on the portfolio in the Proposal are approximately 12 basis points. This cost assumes the re-investment of the proposed securities into the same or similar investment types upon maturity. However, this estimate is subject to change based on market conditions at the time of reinvestment and the availability of investments that meet the Special Master's criteria.

15. While the February 10, 2009 Order called for the Restitution Fund to be invested in a single interest-bearing account, the Parties believe that any funds placed into the Special Master's Trust Account for the benefit of the victims will be more secure in the long term if invested in the manner proposed in the Proposal.

WHEREFORE, the Special Master respectfully requests that the Court enter an Order granting the relief requested herein and for such other and further relief as is just and equitable.

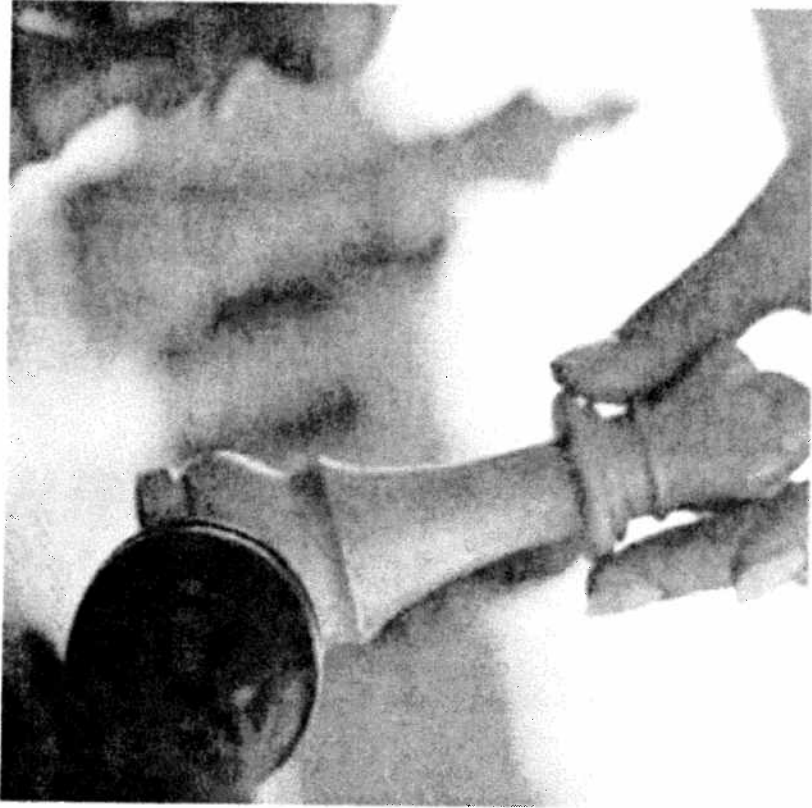
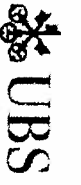
RESPECTFULLY SUBMITTED this **1st day of May, 2009**.

/s/ Douglas A. Doetsch

Douglas A. Doetsch, Special Master

N. Neville Reid (ARDC No. 6195837)  
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**Exhibit A**



Prepared for  
Doug Doetsch

April 21, 2009

Prepared by  
Will Thoms

Fixed Income  
Portfolio Presentation

UBS Financial Services Inc.

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Fixed Income Portfolio Proposal

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## Introduction

Dear Doug Doetsch,

I believe the enclosed information reflects the various issues that we discussed. Please contact me to discuss any of this information in greater detail.

Regards,  
Will Thoms

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April 2009

Fixed Income Portfolio Proposal

# Portfolio

Please review this information carefully with your financial advisor to assure it meets your investment objectives

Quantity (000)	Cusip	Issue	Moody/S&P	Coupon	Maturity	Price **	YTM (s)	YTW	Accrued Interest	Principal	Net Money	% of Portfolio				
<b>CERTIFICATES OF DEPOSIT (CDS)</b>																
245	*TXX11MON	TEXAS CAPITAL BANK NA	-/-	0.400%	05/29/2009	\$100.000	0.400%	-	\$0.00	\$245,000.00	\$245,000.00	3.91%				
245	58403BMX1	MEDALLION BANK	-/-	0.250%	07/28/2009	\$100.000	0.250%	-	\$0.00	\$245,000.00	\$245,000.00	3.91%				
245	*VEGAS6MO	BEAL BANK, NV	-/-	0.400%	10/28/2009	\$100.000	0.400%	-	\$0.00	\$245,000.00	\$245,000.00	3.91%				
245	*ADADAD66	AMERICAN EXPRESS CENTURION BANK	-/-	0.250%	10/29/2009	\$100.000	0.250%	-	\$0.00	\$245,000.00	\$245,000.00	3.91%				
245	*ANEX6NBG	AMERICAN EXPRESS BANK FSB	-/-	0.250%	10/29/2009	\$100.000	0.250%	-	\$0.00	\$245,000.00	\$245,000.00	3.91%				
245	84603MG91	SOVEREIGN BANK	-/-	0.500%	10/29/2009	\$100.000	0.500%	-	\$0.00	\$245,000.00	\$245,000.00	3.91%				
Group Weighted Averages and Totals										\$100.000	0.342%	0.342%	\$0.00	\$1,470,000.00	\$1,470,000.00	23.46%

## U.S. GOVERNMENT OBLIGATIONS (TREASURY BONDS)

250	912795M24	UNITED STATES TREAS BILLS DT 11	Aaa/AAA	0.000%	05/28/2009	\$99.997	0.030%	-	\$0.00	\$249,992.50	\$249,992.50	3.99%
500	912795M57	UNITED STATES TREAS BILLS DT 12	Aaa/AAA	0.000%	06/18/2009	\$99.992	0.051%	0.050% (dis)	\$0.00	\$499,960.42	\$499,960.42	7.98%
250	912795N31	UNITED STATES TREAS BILLS DT 01	Aaa/AAA	0.000%	07/23/2009	\$99.983	0.066%	0.065% (dis)	\$0.00	\$249,958.47	\$249,958.47	3.99%
500	912795N72	UNITED STATES TREAS BILLS DT 02	Aaa/AAA	0.000%	08/20/2009	\$99.978	0.066%	0.065% (dis)	\$0.00	\$499,891.67	\$499,891.67	7.98%

April 2009

Fixed Income Portfolio Proposal

Portfolio

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Quantity (000)	Cusip	Issue	Moody/S&P	Coupon	Maturity	Price **	YTM (s)	YTW	Accrued Interest	Principal	Net Money	% of Portfolio
500	912796P39	UNITED STATES TREAS BILLS DT 03	Aaa/-	0.000%	09/17/2009	\$99.957	0.107%	0.105% (dis)	\$0.00	\$499,784.17	\$499,784.17	7.98%
2800	912795SS1	UNITED STATES TREAS BILLS DT 11	Aaa/AAA	0.000%	11/19/2009	\$99.859	0.244%	0.240% (dis)	\$0.00	\$2,796,061.33	\$2,796,061.33	44.63%
Group Weighted Averages and Totals												
Weighted Averages and Totals ***						\$99.909	0.171%	0.168%	\$0.00	\$4,795,648.56	\$4,795,648.56	76.54%
				0.080%	0.44yr	\$99.931	0.211%	0.209%	\$0.00	\$6,265,648.56	\$6,265,648.56	

(c) Yield to call, (p) Yield to par call, (s) For Perpetual Preferred Stocks YTM is equal to Current Yield  
 \*\* Prices are as of 4/21/2009 9:38:57 AM and are subject to change. UBS Financial Services is not under any obligation to update or keep current this information.  
 \* For mortgages, YTM indicates Corporate Equivalent Yield, \*\*\* The Total Weighted Average Price and Maturity do not include Preferred Stocks

Fixed Income Portfolio Proposal

Portfolio

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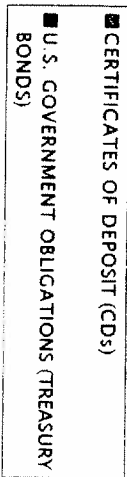
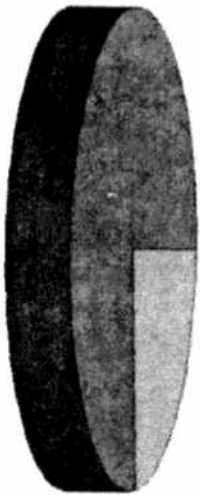
Monthly Coupon Payments	May/09	Jun/09	Jul/09	Aug/09	Sep/09	Oct/09	Nov/09	Dec/09	Jan/10	Feb/10	Mar/10	Apr/10	First Year
TEXAS CAPITAL BANK NA	\$82	-	-	-	-	-	-	-	-	-	-	-	\$82
MEDALLION BANK	-	-	\$153	-	-	-	-	-	-	-	-	-	\$153
BEAL BANK, NV	-	-	-	-	-	\$487	-	-	-	-	-	-	\$487
AMERICAN EXPRESS CENTURION BANK	-	-	-	-	-	\$306	-	-	-	-	-	-	\$306
AMERICAN EXPRESS BANK FSB	-	-	-	-	-	\$306	-	-	-	-	-	-	\$306
SOVEREIGN BANK	-	-	-	-	-	\$613	-	-	-	-	-	-	\$613
UNITED STATES TREAS BILLS DT 11	-	-	-	-	-	-	-	-	-	-	-	-	\$0
UNITED STATES TREAS BILLS DT 12	-	-	-	-	-	-	-	-	-	-	-	-	\$0
UNITED STATES TREAS BILLS DT 01	-	-	-	-	-	-	-	-	-	-	-	-	\$0
UNITED STATES TREAS BILLS DT 02	-	-	-	-	-	-	-	-	-	-	-	-	\$0
UNITED STATES TREAS BILLS DT 03	-	-	-	-	-	-	-	-	-	-	-	-	\$0
UNITED STATES TREAS BILLS DT 11	-	-	-	-	-	-	-	-	-	-	-	-	\$0
<b>Total Monthly Coupon Payments</b>	<b>\$82</b>	<b>\$0</b>	<b>\$153</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,712</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,947</b>

# Portfolio Summary

Please review this information carefully with your financial advisor to assure it meets your investment objectives

First Year Income	\$1,947.16	Preferred Weighted Average Price	\$0.000
Total Principal	\$6,265,648.56	Weighted Average Price (exclude Preferred)	\$99.931
Total Accrued Interest	\$0.00	Weighted Average Current Yield	0.031%
Total Net Money	\$6,265,648.56	Weighted Average Yield to Maturity	0.211%
		Preferred Weighted Average Maturity	0.00yr
		Weighted Average Maturity (exclude Preferred)	0.44yr
		Weighted Average Yield to Worst	0.209%

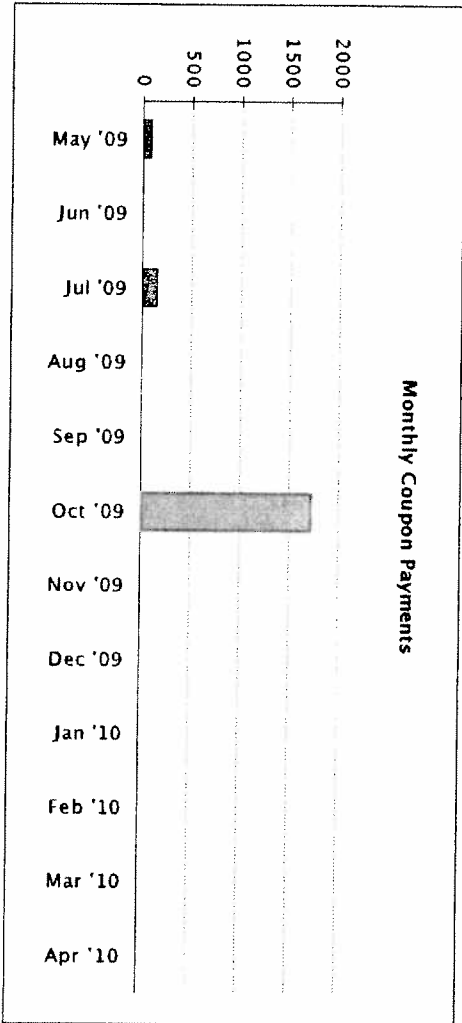
Products	% of Portfolio
Corporate Notes & Bonds	0.00%
Municipals	0.00%
US Government Obligations (Treasury Bonds)	76.54%
Certificates Of Deposit (CDs)	23.46%
Collateralized Mortgage Obligations - CMO	0.00%
Asset Backed Securities	0.00%
Preferred Securities	0.00%
Mortgage Pass-Through Securities	0.00%
Provincials	0.00%
US Federal Agency Notes and Bonds	0.00%



(c) Yield to call, (d) Yield to par call, (s) For Preferred Stocks YTM is equal to Current Yield  
 \*\* Prices are as of 4/21/2009 9:38:57 AM and are subject to change. UBS Financial Services is not under any obligation to update or keep current this information.  
 \* For mortgages, YTM indicates Corporate Equivalent Yield. ... The Total Weighted Average Price and Maturity do not include Preferred Stocks

### Cash Flow Graph (Interest Payment Only)

Please review this information carefully with your financial advisor to assure it meets your investment objectives



Fixed Income Portfolio Proposal

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## Portfolio

Please review this information carefully with your financial advisor to assure it meets your investment objectives

### Portfolio Summary Term Definitions:

- First Year Income: Sum of monthly cash flows over the next 12 months or the first year of this portfolio. This does not include any changes in floating rate coupons
- Total Principal: Total face value of portfolio at inception (ie: number of bonds)
- Total Accrued Interest: Accrued interest, if any, that must be paid at inception of proposed portfolio
- Total Net Money: Total principal plus total accrued interest (see above)
- Average Price: Average price per bond at inception of portfolio
- Annualized Payment Yield: First year returns on the cash flows of the proposed portfolio as calculated by first year income divided by total principal. (see definitions above)
- Average Maturity: The weighted average of maturity/average life of the portfolio
- Average Yield to Worst: As calculated on Page 4, the combined weighted average of all the YTTMs factoring in YTC/YTM for applicable/callable bonds

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April 2009

## Investor Concerns

Fixed income securities are subject to market risk and interest rate risk. If sold in the secondary market prior to maturity, investors may experience a gain or loss depending on interest rates, market conditions and the credit quality of the issuer.

### Floating Rate Securities

A floating rate security's coupon will adjust down, as well as up. To the extent that the benchmark is trending lower, the rate on the security will also adjust lower and may lead to erosion of the market value of the security. Total return may be less than anticipated if future interest rate expectations are not met. As the majority of floating-rate securities are not listed, there is no guarantee made as to an active and liquid secondary market for these securities.

### Inflation Indexed Securities

An investment in securities with principal or interest determined by reference to an inflation index involves factors not associated with an investment in a fixed coupon and principal security; such as, the inflation index may be subject to significant changes, that changes in the index may or may not correlate to changes in interest rates generally or with changes in other indexes, that the resulting interest may be greater or less than that payable on other securities of similar maturities. Historic performance of the index is not necessarily indicative of future performance. Movements in the Index that have occurred in the past are not necessarily indicative of changes that may occur in the future which may be greater or smaller than those that have occurred historically. Investors should not rely on any historical changes or trends in the Index as an indicator of future changes in the Index. There is no guarantee made as to an active and liquid secondary market for these securities.

### Corporate Bonds

- **Call Risk** - Should an issue be called, investors may be faced with an earlier than anticipated reinvestment decision, possibly at lower rates.
- **Interest Rate Risk** - Corporate bonds are subject to market value fluctuations as interest rates rise and fall. If sold prior to maturity, the price received for an issue may be less than the original purchase price.
- **Reinvestment risk** - Since most corporate issues pay interest semiannually, the reinvestment of coupon payments over the life of the bond can have a major impact on the bond's total return.
- **Credit/Event Risk** - Corporate investments are subject to event risk and changes in credit quality. Companies can experience increased competition, takeovers and other economic situations that may have adverse effects on the market value of their securities.
- **Call Provisions** - When evaluating the purchase of a corporate bond, one should be aware of any features that may allow the issuer to call the security. This is particularly important when considering an issue that is trading at a premium to its call price, since the return may be negatively impacted if the issue is redeemed.

### Preferred Stocks

- **Subject to Interest Rate Risk** - Fixed income securities are subject to market value fluctuation given changes in the level of interest rates. For example, if interest rates rise, the value of this security could decline.
- **Credit Quality Fluctuations** - Adverse changes in the credit quality of the issuer may negatively impact the market value of the securities.



Fixed Income Portfolio Proposal

- Call Risk - The securities may be redeemed beginning on their call date, or at any time upon a special event (a change in tax law that adversely affects the Company with regard to the Securities). If called, holders may face a reinvestment decision at possibly lower future rates.

- Liquidity - While NYSE listing does provide some degree of liquidity, there is no guarantee made as to an active and liquid secondary market for this issue.

Additional Risks that may be associated with investing in Preferred Stock :

Trust Preferred Securities: Option to defer interest payment - At any time, the Corporation has the right to defer distribution payments for up to 20 consecutive quarters. If this occurs, holders of the securities will be required to recognize the accreted income for tax purposes ahead of receipt of the cash.

Dividend Received Deduction (DRD) - Is a tax credit for corporate holders on received dividends. DRD allows qualified U.S Corporations (except Sub-Chapter "S" Corporations) to exclude from federal income taxation under current regulations 70% of dividends received from the preferred stocks of other corporations. This credit increases to 80% in the case of any dividend from a 20% owned corporation. DRD does not apply for individuals. In order to qualify, for this deduction, the securities must be held a minimum of 46 days.

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Tax-Advantaged Preferred: Subject to applicable limitations that may vary depending upon a holder's individual circumstances, dividends paid to non-corporate holders in taxable years beginning before January 1, 2009 will constitute "qualified dividend income" that will be taxable at a maximum rate of 15%. Current or future proposed legislation may alter the tax treatment of this security.

**Exhibit B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	No. 06 CR 964
	)	
v.	)	Judge Ronald Guzman
	)	
MICHAEL E. KELLY	)	

**ORDER APPROVING THE EXTENSION OF THE 90 DAY PERIOD FOR A PROPOSED PLAN OF ACTION AND THE TRANSFER OF THE SPECIAL MASTER'S TRUST ACCOUNT FROM AN INTEREST BEARING BANK ACCOUNT TO AN ACCOUNT HOLDING U.S. GOVERNMENT OBLIGATIONS AND FDIC-INSURED DEPOSITS**

Upon the motion, dated \_\_\_\_\_ (the "Motion"),<sup>1</sup> of Douglas A. Doetsch, not individually but solely as the court-appointed Special Master in the United States of America v. Michael E. Kelly, by and through his attorneys, seeking (a) extension of the initial 90-day period for a proposed Plan of Action for an additional 60 days to July 10, 2009 and (b) approving the transfer of the funds from the interest-bearing Special Master's Trust Account to a more secure mix of bank CDs and U.S. Treasury securities fully insured by the FDIC; and a hearing on the Motion having been held on \_\_\_\_\_; and it appearing from the record before the Court (as defined herein) and after due deliberation that sufficient cause exists for the entry of this Order, the Court makes the following findings and enters its Order, all as set forth below:

1. The ninety (90) day reporting period for the Special Master's Plan of Action shall be extended from May 11, 2009, to July 10, 2009. A hearing regarding the Plan of Action will be held on July \_\_, 2009, at \_\_\_\_\_.m.
2. The Special Master is hereby authorized to transfer the Special Master's Trust

<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion.

Account funds from the current interest-bearing account to the mix of CDs and Treasury Notes in accordance with the Proposal put forth by UBS.

3. The Special Master is hereby authorized to retain UBS to manage these accounts and compensate UBS in accordance with the terms set forth in the Proposal.

4. The Special Master is authorized to approve the distribution the funds between CDs and Treasury Notes to create the maximum yield for the benefit of the victims, with the percentage distribution to be determined by the Special Master as he deems appropriate in his business judgment after consultation with UBS.

Dated: Chicago, Illinois  
\_\_\_\_\_, 2009

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The Honorable Ronald A. Guzman  
United States District Judge