

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re HARMONIC INC. SECURITIES LITIGATION ) Master File No. C-00-2287-PJH(EMC)  
\_\_\_\_\_) )  
This Document Relates To: ) CLASS ACTION  
 ) )  
ALL ACTIONS. ) )  
\_\_\_\_\_) )

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

TO: ALL PERSONS WHO ON OR BEFORE JUNE 26, 2000, (1) WERE SHAREHOLDERS OF C-CUBE AND EXCHANGED SHARES OF C-CUBE FOR HARMONIC SHARES THAT WERE ISSUED PURSUANT TO THE FORM S-4 REGISTRATION STATEMENT AND JOINT PROXY STATEMENT/PROSPECTUS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON MARCH 23, 2000, OR (2) PURCHASED OR OTHERWISE ACQUIRED HARMONIC SHARES THAT ARE TRACEABLE TO SHARES ISSUED PURSUANT TO THE FORM S-4. EXCLUDED FROM THE CLASS ARE THE DEFENDANTS, MEMBERS OF THE IMMEDIATE FAMILIES OF THE INDIVIDUAL DEFENDANTS, ANY ENTITY IN WHICH ANY DEFENDANT HAS A CONTROLLING INTEREST, AND THE LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS, OR ASSIGNS OF ANY DEFENDANT. ALSO EXCLUDED ARE THOSE PERSONS WHO TIMELY AND VALIDLY REQUEST EXCLUSION FROM THE CLASS PURSUANT TO THIS SETTLEMENT NOTICE

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THIS FUND, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM POSTMARKED ON OR BEFORE NOVEMBER 20, 2008.

This Notice has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Northern District of California, San Francisco Division (the "Court"). The purpose of this Settlement Notice is to inform you of the pendency and proposed settlement of this class action litigation and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the settlement. This Settlement Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the litigation or the merits of the claims or defenses asserted. This Settlement Notice describes the rights you may have in connection with the settlement and what steps you may take in relation to the settlement and this class action litigation.

The proposed settlement creates a fund in the amount of \$15,000,000 in cash (the "Gross Settlement Fund") and will include interest that accrues on the fund prior to distribution. Your recovery from this fund will depend on a number of variables, including the number of shares of Harmonic common stock you acquired prior to June 26, 2000 that was issued pursuant to or traceable to shares issued pursuant to the Form S-4 Registration Statement and Joint Proxy Statement/Prospectus filed with the Securities and Exchange Commission on March 23, 2000. Based on the information currently available to Representative Plaintiffs and the analysis performed by their damage consultants, it is estimated that if Class Members submit claims for 100% of the shares eligible for a distribution under the Plan of Allocation (described below), the estimated average distribution per share will be approximately \$0.57 before deduction of Court-approved fees and expenses. Historically, however, actual claim rates are less than 100%, which results in higher distributions per share.

Representative Plaintiffs and Defendants do not agree on the average amount of damages per share that would be recoverable if the Representative Plaintiffs were to have prevailed on each claim alleged. The issues on which the parties disagree include: (1) the appropriate economic model for determining the amount by which the price of shares of Harmonic common stock was allegedly artificially inflated (if at all) during the relevant period; (2) the amount by which the price of Harmonic common stock was allegedly artificially inflated (if at all) during the relevant period; (3) the effect of various market forces influencing the trading price of Harmonic common stock at various times during the relevant period; (4) the extent to which external factors, such as general market and industry conditions, influenced the trading price of Harmonic common stock at various times during the relevant period; (5) the extent to which the various matters that Representative Plaintiffs alleged were materially false or misleading influenced (if at all) the trading price of Harmonic common stock at various times during the relevant period; (6) the extent to which the various allegedly adverse material facts that Representative Plaintiffs alleged were omitted influenced (if at all) the trading price of Harmonic common stock at various times during the relevant period; and (7) whether the statements made or facts allegedly omitted were material, false, misleading or otherwise actionable under the securities laws.

The Representative Plaintiffs believe that the proposed settlement is a good recovery and is in the best interests of the Class. Because of the risks associated with continuing to litigate and proceeding to trial, there was a danger that the Class would not have prevailed on any of their claims, in which case the Class would receive nothing. Also, the amount of damages recoverable by the Class was and is challenged by Defendants. Recoverable damages in this case are limited to losses caused by conduct actionable under applicable law and, had the Action gone to trial, Defendants would have asserted that any losses of Class Members were caused by non-actionable market, industry or general economic factors. Defendants would also assert that throughout the relevant period the uncertainties and risks associated with the purchase of Harmonic common stock were fully and adequately disclosed.

Plaintiffs' counsel have not received any payment for their services in conducting this litigation on behalf of the Representative Plaintiffs and the members of the Class, nor have they been paid for their expenses. If the settlement is approved by the Court, counsel for the plaintiffs will apply to the Court for attorney fees of 27% of the Settlement Fund and litigation related expenses not to exceed \$500,000 to be paid from the Settlement Fund. If the amounts requested are approved by the Court, the average cost per share will be \$0.18.

For further information regarding this settlement you may contact a representative of class counsel: Rick Nelson, Coughlin Stoia Geller Rudman & Robbins LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, Telephone: (800) 449-4900.

## **I. NOTICE OF HEARING ON PROPOSED SETTLEMENT**

A hearing (the "Settlement Hearing") will be held on October 29, 2008, at 9:00 a.m., before the Honorable Phyllis J. Hamilton, United States District Judge, Northern District of California, San Francisco Division, at the United States Courthouse, 450 Golden Gate Avenue, San Francisco, California. The purpose of the Settlement Hearing will be to determine: (1) whether the settlement consisting of \$15,000,000 in cash should be approved as fair, reasonable and adequate to the members of the Class (as defined below); (2) whether the proposed plan to distribute the settlement proceeds (the "Plan of Allocation") is fair, reasonable, and adequate; (3) whether the application by plaintiffs' counsel for an award of attorney fees and expenses should be approved; and (4) whether the Action should be dismissed with prejudice. The Court may adjourn or continue the Settlement Hearing without further notice to the Settlement Class.

## **II. DEFINITIONS USED IN THIS NOTICE**

1. "Action" means Master File No. C-00-2287-PJH(EMC), and all complaints consolidated therewith.
2. "Authorized Claimant" means a Class Member who submits a timely and valid Proof of Claim and Release form to the Claims Administrator.
3. "C-Cube" means the company known as C-Cube Microsystems, Inc. that merged with Harmonic Inc. on May 3, 2000.
4. "Class Representatives" means Robert G. Knollenberg and Joseph Ivanich.
5. "Defendants" means Harmonic and the Individual Defendants.
6. "Form S-4" means the Form S-4 Registration Statement and Joint Proxy Statement/Prospectus filed with the Securities and Exchange Commission on March 23, 2000.
7. "Harmonic" means Harmonic Inc., including any of its predecessors, successors, parents, subsidiaries, divisions, affiliates or related affiliates, officers or directors, except as used in paragraph 9.4 of the Stipulation, in which it means Harmonic Inc.
8. "Individual Defendants" means Anthony J. Ley, Robin N. Dickson, Michel L. Vaillaud, E. Floyd Kvamme, Barry D. LeMieux, David Lane, and Moshe Nazarathy.
9. "Net Settlement Fund" means the Gross Settlement Fund (\$15,000,000 plus interest) less: notice and administration costs and expenses as described in paragraph 4.7 of the Stipulation, Taxes and Tax Expenses as described in paragraph 4.11 of the Stipulation, and the amount of the Fee and Expense Award.
10. "Person" means a natural person, individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, joint venturer, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and, as applicable, their/its respective spouses, heirs, executors, administrators, predecessors, successors, representatives, or assignees.
11. "Released Claims" means any and all claims or causes of action, demands, rights, liabilities, suits, debts, obligations and causes of action of every nature and description whatsoever, known or unknown (including Unknown Claims as defined in paragraph 14 hereof), contingent or absolute, mature or unmature, discoverable or undiscoverable, whether concealed or hidden, asserted or that might have been asserted against the Released Parties based upon, arising out of, or related to any of the facts, transactions, events, occurrences, disclosures, statements, acts, omissions or failures to act which were or could have or might have been alleged in or embraced or otherwise referred to or encompassed by the Action, and which arise out of or relate to the exchange of shares of C-Cube for Harmonic shares or the purchase or other acquisition, prior to June 26, 2000,

of Harmonic shares, regardless of upon what legal theory based, whether legal or equitable, including without limitation, claims for negligence, gross negligence, fraud, breach of fiduciary duty, breach of the duty of care or loyalty or violations of the common law, administrative rule or regulation, tort, contract, equity, or otherwise or of any state or federal statutes, rules or regulations. Claims that Defendants improperly defended or settled the Action are also Released Claims.

12. "Released Parties" means each and all of the Defendants, Defendants' D&O Insurers, and each and any of Defendants' respective past, present or future directors, officers, employees, partnerships and partners, principals, agents, controlling shareholders, any entity in which any Defendant or any member(s) of that Defendant's immediate family has or have a controlling interest (directly or indirectly), attorneys, accountants, auditors, investment banks and investment bankers, underwriters, advisors, financial advisors, personal or legal representatives, analysts, agents, associates, servants, insurers, co-insurers and reinsurers, predecessors, successors, parents, subsidiaries, divisions, assigns, joint ventures and joint venturers, spouses, heirs, executors, administrators, related or affiliated entities, members of an Individual Defendant's immediate family, and any trust of which any Defendant is the settlor or which is for the benefit of any Individual Defendant or member(s) of his family, and all other Persons.

13. "Stipulation" means the Stipulation and Agreement of Settlement as of March 17, 2008.

14. "Unknown Claims" means any Released Claims that Class Representatives or any other Class Member do not know or suspect to exist in their favor at the time of the release of the Released Parties which, if known by them, might have affected their settlement with and release of the Released Parties, or might have affected their decision not to object to this settlement. With respect to any and all Released Claims against the Released Parties, the Settling Parties stipulate and agree that, upon the Effective Date, the Class Representatives shall expressly waive and relinquish, and the other Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits conferred by §1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR**

and by any United States law or any law of any state or territory of the United States, or principle of common law, or of international or foreign law, which is similar, comparable or equivalent to §1542 of the California Civil Code. Class Representatives and the other Class Members may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the Released Claims, but the Settling Parties hereby stipulate and agree that upon the Effective Date, the Class Representatives fully, finally, and forever settle and release, and each other Class Member shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released the Released Parties from any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

### III. THE LITIGATION

On and after June 28, 2000, thirteen class action lawsuits were filed in the United States District Court for the Northern District of California: *Smith v. Harmonic Inc.* (C 00-2287 PJH); *Sod v. Harmonic Inc.* (C 00-2289 PJH); *Hale v. Harmonic Inc.* (C 00-2306 PJH); *Roomberg v. Harmonic Inc.* (C 00-2323 PJH); *Sproule v. Harmonic Inc.* (C 00-2333 PJH); *Shalom v. Harmonic Inc.* (C 00-2390 PJH); *Cottrell v. Harmonic Inc.* (C 00-2404 PJH); *Vasquez v. Harmonic Inc.* (C 00-2486 PJH); *McMillan v. Harmonic Inc.* (C 00-2509 PJH); *Qu v. Harmonic Inc.* (C 00-2963 PJH); *Krim v. Harmonic Inc.* (C 00-2964 PJH); *Krozier v. Harmonic Inc.* (C 00-2965 PJH); and *Gunn v. Harmonic Inc.* (C 00-20897 EAI).

On October 4, 2000, the Court ordered these lawsuits consolidated for all purposes under the caption *In re Harmonic Inc. Securities Litigation*, Master File No. C-00-2287-PJH(EMC), and provided for the filing of a consolidated complaint.

The Consolidated Amended Complaint named as defendants Harmonic and the Individual Defendants, C-Cube Microsystems, Inc. and several of its officers and directors and alleged violations of §§10(b), 14(a) and 20(a) of the Securities Exchange Act of 1934 and Rules 10b-5 and 14a-9 promulgated thereunder, and §§11, 12 and 15 of the Securities Act of 1933, on behalf of a class of persons who purchased Harmonic stock between January 19, 2000, and June 26, 2000, or who purchased C-Cube stock between January 19, 2000, and May 3, 2000. All defendants moved to dismiss the Consolidated Amended Complaint on February 13, 2001. On July 5, 2001, the Court entered an order dismissing the Consolidated Amended Complaint with leave to amend.

The Second Amended Complaint was filed on August 13, 2001. Defendants moved to dismiss the Second Amended Complaint on September 24, 2001. The Court entered an Order dismissing the Second Amended Complaint without leave to amend on November 13, 2002.

On July 1, 2003, the plaintiff filed a notice of appeal of the dismissal of the Second Amended Complaint. On February 16, 2006, the Ninth Circuit Court of Appeals affirmed the dismissal of claims brought under §§10(b), 14(a) and 20(a) of the Securities Exchange Act of 1934 and Rules 10b-5 and 14a-9 promulgated thereunder against all defendants, and reversed the dismissal of claims brought under §§11 and 12 of the Securities Act of 1933. With respect to the claims brought under §15 of the Securities Act of 1933, the Court of Appeals affirmed the dismissal of the §15 claim against Harmonic but granted leave to amend, and reversed dismissal of the §15 claim against Individual Defendant Ley. The Court of Appeals remanded the case to the district court for proceedings consistent with the opinion.

The Third Consolidated Amended Complaint was filed on May 17, 2006. Defendants moved to dismiss and strike certain allegations in the Third Consolidated Amended Complaint on June 23, 2006. On December 11, 2006, the Court granted in part and denied in part Defendants' motion to dismiss and strike.

On May 31, 2007, the Court entered a Stipulation and Order certifying the class as a class action pursuant to Federal Rule of Civil Procedure 23(b)(3). The Class is defined as all persons and entities who (1) were shareholders of C-Cube, and, as part of the May 3, 2000 merger of Harmonic and C-Cube, exchanged shares of C-Cube for Harmonic shares that were issued pursuant to the Form S-4 Registration Statement and Joint Proxy Statement/Prospectus filed with the Securities and Exchange Commission on March 23, 2000, or (2) on or before June 26, 2000, purchased or otherwise acquired Harmonic shares that are traceable to shares issued pursuant to the Form S-4. Excluded from the Class are the Defendants, their directors and officers, members of their immediate families, any entity in which any Defendant has a controlling interest, and the legal representatives, heirs, successors, or assigns of any such excluded party. The Court certified Lead Plaintiff Robert G. Knollenberg and Joseph Ivanich as representatives of the Class, and designated Lerach Coughlin Stoia Geller Rudman & Robbins LLP (now Coughlin Stoia Geller Rudman & Robbins LLP), Barrack, Rodos & Bacine, Schiffrin Barroway Topaz & Kessler LLP and Schoengold, Sporn, Laitman & Lometti, P.C. as class counsel pursuant to Federal Rule of Civil Procedure 23(g).

From February 2007 through January 2008, the Settling Parties engaged in extensive discovery. The Settling Parties issued written discovery, conducted twenty-one depositions, and issued subpoenas for documents from non-parties. Approximately 300,000 pages of paper and electronic documents have been produced in the Action.

#### **IV. CLAIMS OF THE CLASS REPRESENTATIVES AND BENEFITS OF SETTLEMENT**

The Class Representatives, by their counsel, have conducted discussions and arm's-length negotiations with Defendants' counsel with respect to a compromise and settlement of the Action with a view to settling all of the issues in dispute and achieving the best relief possible consistent with the interests of the Class.

Based upon their investigation and pretrial discovery as set forth above, class counsel have concluded that the terms and conditions of the Stipulation are fair, reasonable and adequate to the Class Representatives and other Class Members, and in their best interests, and have agreed to settle the claims raised in the Action pursuant to the terms and provisions of the Stipulation, after considering (a) the substantial benefits that the Class Representatives and the Class Members will receive from settlement of the Action, (b) the attendant risks of litigation, and (c) the desirability of permitting the settlement to be consummated as provided by the terms of the Stipulation.

#### **V. DEFENDANTS' STATEMENT AND DENIALS OF WRONGDOING AND LIABILITY**

Defendants have denied and continue to deny each and all of the claims and contentions alleged in the Action, and that they have committed any violations of law or engaged in any wrongful acts alleged, or that could have been alleged, in the Action. Nonetheless, Defendants have concluded that further conduct of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation, in order to limit further expense, inconvenience and distraction, and to dispose of the burden of protracted litigation. Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like these. Defendants have, therefore, determined that it is desirable and beneficial to them that the Action be settled in the manner and upon the terms and conditions set forth in the Stipulation.

#### **VI. TERMS OF THE PROPOSED SETTLEMENT**

The Defendants and their D&O Insurers have paid or caused to be paid into an escrow account, pursuant to the terms of the Stipulation, cash in the amount of \$15,000,000 which has been earning and will continue to earn interest for the benefit of the Class.

A portion of the settlement proceeds will be used for certain administrative expenses, including costs of printing and mailing this Settlement Notice, the cost of publishing a newspaper notice, payment of any taxes assessed against the Settlement Fund and costs associated with the processing of claims submitted. In addition, as explained below, a portion of the Settlement Fund may be awarded by the Court to counsel for plaintiffs as attorney fees and expenses. The balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the Plan of Allocation described below to Class Members who submit valid and timely Proof of Claim and Release forms.

## VII. THE RIGHTS OF CLASS MEMBERS

If you are a Class Member, you may receive the benefit of, and you will be bound by the terms of, the proposed settlement described in this Settlement Notice, upon approval of it by the Court.

If you are a Class Member, you have the following options:

1. You may file a Proof of Claim and Release form as described below. If you choose this option, you will remain a Class Member, you will share in the proceeds of the proposed settlement if your claim is timely and valid and if the proposed settlement is finally approved by the Court, and you will be bound by the Judgment and release described below.

2. If you do not wish to be included in the Class and you do not wish to participate in the proposed settlement described in this Settlement Notice, you may request to be excluded. To do so, you must so state in writing postmarked no later than October 6, 2008. You must set forth: (a) your name, address and telephone number; (b) the number of shares of Harmonic common stock purchased or acquired on or prior to June 26, 2000 that were issued pursuant to or traceable to the shares issued pursuant to the Form S-4 Registration Statement and Joint Proxy Statement/Prospectus filed with the Securities and Exchange Commission on March 23, 2000 and the number of such shares sold on or before June 28, 2000 or held on June 29, 2000 and the dates of such purchase(s), acquisition(s) and/or sale(s); and (c) that you wish to be excluded from the Class. The exclusion request should be addressed as follows:

*Harmonic Securities Litigation*  
EXCLUSIONS  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 990  
Corte Madera, CA 94976-0990

NO REQUEST FOR EXCLUSION WILL BE CONSIDERED VALID UNLESS ALL OF THE INFORMATION DESCRIBED ABOVE IS INCLUDED IN ANY SUCH REQUEST.

3. If you validly request exclusion from the Class, (a) you will be excluded from the Class, (b) you will not share in the proceeds of the settlement described herein, (c) you will not be bound by any judgment entered in the Action, and (d) you will not be precluded, by reason of your decision to request exclusion from the Class, from otherwise prosecuting an individual claim, if timely, against Defendants based on the matters complained of in the Action.

4. If you do not request in writing to be excluded from the Class as set forth in paragraph 2 above, you will be bound by any and all determinations or judgments in the Action in connection with the settlement entered into or approved by the Court, whether favorable or unfavorable to the Class, and you shall be deemed to have, and by operation of the Judgment shall have, fully released all of the Released Claims against the Released Parties, whether or not you submit a valid Proof of Claim and Release form.

5. You may do nothing at all. If you choose this option, you will not share in the proceeds of the settlement, but you will be bound by any judgment entered by the Court, and you shall be deemed to have, and by operation of the Judgment shall have, fully released all of the Released Claims against the Released Parties.

6. If you are a Class Member, you may, but are not required to, enter an appearance through counsel of your own choosing at your own expense. If you do not do so, you will be represented by class counsel: Coughlin Stoia Geller Rudman & Robbins LLP; Barrack Rodos & Bacine; Schiffrin Barroway Topaz & Kessler, LLP; and Schoengold, Sporn, Laitman & Lometti, P.C.

## VIII. PLAN OF ALLOCATION

The Net Settlement Fund will be distributed to Class Members who submit valid, timely Proof of Claim and Release forms ("Authorized Claimants") under the Plan of Allocation described below. The Plan of Allocation provides that you will be eligible to participate in the distribution of the Net Settlement Fund only if you have a net loss on all transactions in Harmonic common stock during the Class period.

For purposes of determining the amount an Authorized Claimant may recover under the Plan of Allocation, class counsel have consulted with their damage consultants and the Plan of Allocation reflects an assessment of the damages that they believe could have been recovered had Representative Plaintiffs prevailed at trial.

To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's claim, as defined below. If, however (as is more likely), the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants.

A claim will be calculated as follows:

For shares of Harmonic common stock issued pursuant to, or traceable to, the above-referenced Registration Statement filed with the Securities and Exchange Commission in connection with Harmonic's acquisition of C-Cube, and

1. Sold prior to June 29, 2000, the claim per share is the lesser of: (i) the price per share on the day of purchase or acquisition less the sales price per share, or (ii) \$72.25 less the sales price per share.

2. Retained at the end of June 28, 2000, or, sold on or after June 29, 2000, the claim per share is the lesser of: (i) the price per share on the day of purchase or acquisition less the sales price per share, or (ii) \$49.81 per share.

The date of purchase or sale is the "contract" or "trade" date as distinguished from the "settlement" date.

For Class Members who held Harmonic common stock at the beginning of the relevant period or made multiple purchases or sales during the relevant period, the first-in, first-out ("FIFO") method will be applied to such holdings, purchases, acquisitions and sales for purposes of calculating a claim. Under the FIFO method, sales of shares during the relevant period will be matched, in chronological order, first against shares held at the beginning of the relevant period. The remaining sales of shares during the relevant period will then be matched, in chronological order, against shares purchased during the relevant period.

A Class Member will be eligible to receive a distribution from the Net Settlement Fund only if a Class Member had a net loss, after all profits from qualifying transactions in Harmonic common stock between May 3 and June 29, 2000 are subtracted from all losses. However, the proceeds from sales of securities which have been matched against securities held at the beginning of the Class period will not be used in the calculation of such net loss. No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than \$10.00.

The Court has reserved jurisdiction to allow, disallow or adjust the claim of any Class Member on equitable grounds.

Payment pursuant to the Plan of Allocation set forth above shall be conclusive against all Authorized Claimants. No Person shall have any claim against class counsel or any claims administrator or Defendants or other Person designated by class counsel or Defendants or Defendants' counsel based on distributions made substantially in accordance with the Stipulation and the settlement contained therein, the Plan of Allocation, or further orders of the Court.

## **IX. PARTICIPATION IN THE SETTLEMENT**

**TO PARTICIPATE IN THE DISTRIBUTION OF THE NET SETTLEMENT FUND, YOU MUST TIMELY COMPLETE AND RETURN THE PROOF OF CLAIM AND RELEASE FORM THAT ACCOMPANIES THIS NOTICE.** The Proof of Claim and Release form must be postmarked on or before November 20, 2008, and delivered to the Claims Administrator at the address set forth in Section XIV below. Unless the Court orders otherwise, if you do not timely submit a valid Proof of Claim and Release form, you will be barred from receiving any payments from the Net Settlement Fund, but will in all other respects be bound by the provisions of the Stipulation and the Judgment.

## **X. DISMISSAL AND RELEASES**

If the proposed settlement is approved, the Court will enter a Final Judgment ("Judgment"). The Judgment will dismiss the Released Claims with prejudice as to all Defendants. The Judgment will provide that all Class Members shall be deemed to have released and forever discharged all Released Claims (to the extent members of the Class have such claims) against all Released Parties and that the Released Parties shall be deemed to have released and discharged all Class Members and counsel to the Class Representatives from all claims arising out of the prosecution and settlement of the Action or the Released Claims.

## **XI. APPLICATION FOR FEES AND EXPENSES**

At the Settlement Hearing, counsel for plaintiffs will request the Court to award attorney fees of 27% of the Settlement Fund, plus litigation related expenses, not to exceed \$500,000, plus interest thereon. Such sums as may be approved by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

To date, plaintiffs' counsel have not received any payment for their services in conducting this litigation on behalf of the Class Representatives and members of the Class, nor have counsel been paid their expenses. The fee requested by plaintiffs' counsel will compensate counsel for their efforts in achieving the Settlement Fund for the benefit of the Class, and for their risk in undertaking this representation on a wholly contingent basis. Plaintiffs' counsel represent that the fee requested is well within the range of fees awarded to plaintiffs' counsel under similar circumstances in other litigation of this type.

## **XII. CONDITIONS FOR SETTLEMENT**

The settlement is conditioned upon the occurrence of certain events described in the Stipulation. Those events include, among other things: (1) entry of the Judgment by the Court, as provided for in the Stipulation; and (2) expiration of the time to appeal from or alter or amend the Judgment. If, for any reason, any one of the conditions described in the Stipulation is not

met, the Stipulation might be terminated and, if terminated, will become null and void, and the parties to the Stipulation will be restored to their respective positions as of January 30, 2008.

### **XIII. THE RIGHT TO BE HEARD AT THE HEARING**

Any Class Member who objects to any aspect of the settlement, the Plan of Allocation, or the application for attorney fees and expenses, may appear and be heard at the Settlement Hearing. Any such Person is encouraged, but is not required, to submit a written notice of objection, such that it is received on or before October 6, 2008, by each of the following:

*Court:*

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION  
450 Golden Gate Avenue  
San Francisco, CA 94102

*One of the Counsel for Class Representatives:*

COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
SHAWN A. WILLIAMS  
100 Pine Street, Suite 2600  
San Francisco, CA 94111

*Counsel for Defendants:*

MORRISON & FOERSTER LLP  
TERRI GARLAND  
425 Market Street  
San Francisco, CA 94105

The notice of objection if filed must demonstrate the objecting Person's membership in the Class, including the number of shares of Harmonic common stock acquired pursuant or traceable to the exchange of C-Cube common stock for Harmonic stock between May 3, 2000 and June 19, 2000 and contain a statement of the reasons for objection.

### **XIV. SPECIAL NOTICE TO NOMINEES**

If you hold any qualifying Harmonic common stock purchased or acquired as nominee for a beneficial owner, then, within ten (10) days after you receive this Settlement Notice, you must either: (1) send a copy of this Settlement Notice and the Proof of Claim and Release form by first class mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

*Harmonic Securities Litigation*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 990  
Corte Madera, CA 94976-0990

If you choose to mail the Settlement Notice and Proof of Claim and Release form yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for, or advancement of, reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Settlement Notice and Proof of Claim and Release form and which would not have been incurred but for the obligation to forward the Settlement Notice and Proof of Claim and Release form, upon submission of appropriate documentation to the Claims Administrator.

### **XV. EXAMINATION OF PAPERS**

This Settlement Notice is a summary and does not describe all of the details of the Stipulation. For full details of the matters discussed in this Settlement Notice, you may review the Stipulation filed with the Court, which may be inspected during business hours, at the office of the Clerk of the Court, Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, California or at [www.gilardi.com](http://www.gilardi.com).

If you have any questions about the settlement of the litigation, you may contact class counsel by writing:

COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
SHAWN A. WILLIAMS  
100 Pine Street, Suite 2600  
San Francisco, CA 94111

**PLEASE DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.**

DATED: July 31, 2008

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION