

In re Lehman Brothers Mortgage-Backed Securities Litigation
No. 08-CV-6762 (LAK)

TERM SHEET TO SETTLE CLASS ACTION

1. **Settlement Amount:** Forty million dollars (\$40,000,000) in cash (the “Settlement Amount”), of which (i) thirty-one million seven hundred thousand dollars (\$31,700,000) shall be paid by certain insurers (“Insurers”) that issued directors and officers insurance policies to Lehman Brothers Holdings, Inc. (“LBHI”), for the 2007-2008 and 2008-2009 policy periods (the “D&O Policies”) and (ii) eight million three hundred thousand dollars (\$8,300,000) shall be paid by LBHI (the “LBHI Payment”).
2. **Settling Parties:** The Settling Parties include Lana Franks Harber, Edward Grieb, Richard McKinney, Kristine Smith, James J. Sullivan, Samir Tabet, and Mark Zusy (the “Defendants”) and, on behalf of the Class as defined in ¶ 7 below, Lead Plaintiff Locals 302 and 612 of the International Union of Operating Engineers – Employers Construction Industry Retirement Trust (the “Operating Engineers” or “Lead Plaintiff”) and Additional Named Plaintiffs New Jersey Carpenters Health Fund and Boilermakers-Blacksmith National Pension Trust (collectively with Operating Engineers, “Plaintiffs”) in the action captioned *In re Lehman Brothers Mortgage-Backed Securities Litigation*, No. 08-CV-6762 (LAK) (the “Class Action”) and proposed intervenors Iowa Public Employees’ Retirement System (“IPERS”) and Public Employees’ Retirement System of Mississippi (“MissPERS” and, with IPERS, the “Intervenors”).
3. **Bankruptcy Court Order:** The Settlement is subject to entry of an order (the “Bankruptcy Order”) by the Bankruptcy Court for the Southern District of New York in the matter captioned *In re Lehman Brothers Holdings, Inc., et al*, Chapter 11 Case No. 08-13555 (the “Bankruptcy Case”), (i) authorizing relief from the automatic stay to the extent applicable and approving, solely to the extent necessary, the use of the proceeds of the applicable D&O Policies and (ii) authorizing the LBHI Payment to fund the Settlement

Amount. Defendants and/or LBHI shall take all necessary steps to file motions seeking such relief in the Bankruptcy Case on before November 9, 2011.

4. **Deposit of Settlement Amount:** The Settlement Amount shall be deposited into an interest-bearing Escrow Account the later of (i) within 10 business days of entry of the Bankruptcy Order, or (ii) execution of the Agreement (as defined below). Counsel for the Lead Plaintiff (“Lead Counsel”) and counsel for Defendants shall jointly control the Escrow Account and shall provide the escrow agent with instructions consistent with appropriate court approvals and the terms of the Agreement (as defined below). Following the dates upon which the Bankruptcy Court entered the Bankruptcy Order and the District Court (as defined below) has granted final approval of the Settlement, counsel for the Defendants or their liaison counsel shall withdraw from their joint control of the Escrow Account.

5. **Motion for Preliminary Approval:** The Settling Parties will file a Stipulation of Settlement and Release (the “Agreement”) and motion for preliminary approval in the Class Action pending in the United States District Court for the Southern District of New York (the “District Court”) within 30 days of the entry of the Bankruptcy Order (unless the Settling Parties agree to an extension of time). The Settling Parties will endeavor in good faith to negotiate the settlement papers so as to avoid unnecessary cost and delays. Counsel for Defendants shall be available for regular conference calls and drafting sessions in order to document the Agreement in a timely manner. The Settling Parties have executed this Term Sheet with the understanding that an Agreement will be agreed upon by the Settling Parties. The Settling Parties will consult with Hon. Daniel Weinstein or, at his direction, Jed D. Melnick (with Hon. Daniel Weinstein, the “Mediator”), over disputes related to the drafting or execution of the Agreement, per ¶ 20 below.

6. **Bar Order:** The Agreement will include a provision requiring, upon entry of the judgment, the entry of a mutual bar order in accordance with 15 U.S.C. §78u-4(f)(7)(A) that is consistent with Second Circuit precedent.

7. **Class Certification:** The Settling Defendants will stipulate to certification of the Class for settlement purposes only, to the appointment of Plaintiffs and Intervenor as the Class Representatives, and to the appointment of Lead Counsel as Class Counsel. The settlement class is defined as follows:

All persons or entities who purchased or otherwise acquired mortgage pass-through certificates pursuant or traceable to Structured Asset Securities Corporation's August 16, 2005 Registration Statement or May 10, 2006 Registration Statement, and the accompanying prospectuses and prospectus supplements in one or more of the following 17 offerings and who were damaged thereby: the LXS 2005-5N offering, LXS 2005-7N offering, LXS 2005-6 offering, LXS 2005-8 offering, LXS 2006-2N offering, LXS 2006-14N offering, LXS 2006-16N offering, LXS 2006-GP2 offering, GMFT 2006-AR4 offering, GMFT 2006-AR5 offering, SARM 2006-1 offering, SARM 2006-4 offering, SARM 2007-6 offering, SASCO 2007-BC1 offering, SASCO 2007-EQ1 offering, SASCO 2007-OSI offering and FFMLT 2006-FFB offering (collectively, the "Certificates"). Excluded from the Class are the Lehman Brothers Holdings, Inc. ("LBHI"), Lehman Brothers, Inc. ("LBI"), Structured Asset Securities Corporation ("SASCO"), Defendants and their respective officers, affiliates and directors at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns.

8. **The Class' Release:** Upon final judicial approval of the Agreement, the Bankruptcy Order and a judgment which includes the Bar Order, and exhaustion of all appeal periods and all appeals if any, relating to said orders (the "Effective Date"), and the Payment of the Settlement Amount, the Class will release as against the Defendants and any other releasees to be defined in the Agreement including, *inter alia*, the Insurers, the Debtors¹ in the

¹ As used herein, "Debtors" means Lehman Brothers Holdings Inc. ("LBHI"); Lehman Brothers Special Financing Inc. ("LBSF"); Lehman Commercial Paper Inc. ("LCPI"); Lehman Brothers Commercial Corporation;

Bankruptcy Case and Lehman Brothers Inc. (collectively, the "Released Parties"), any and all claims, rights, remedies, demands, liabilities, or causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, punitive damages, compensation, restitution, rescission, interest, attorneys' fees/costs, expert or consulting fees, and any other costs, expenses, losses or liabilities of any kind or nature whatsoever), whether legal, statutory or equitable in nature to the fullest extent that the law permits their release in this action, by or on behalf of Plaintiffs, Intervenors or any other Class Members against any of the Released Parties that have been alleged or could have been alleged in the Complaint or in any preceding complaints by any of the Class Members (or in any forum or proceeding or otherwise), whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, whether known claims or unknown claims, whether class, representative, or individual in nature, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, whether at law or in equity, matured or unmatured, that (i) are based upon or arise from any of the allegations, transactions, facts, matters, events, disclosures, statements, occurrences, circumstances, representations, conduct, acts, or omissions or failures to act that have been alleged or asserted in the Complaint or in any preceding complaints (or in any forum or proceeding or otherwise), and (ii) are based upon the purchase or acquisition of the Certificates. Notwithstanding the foregoing, the Class will not release any claims relating to the enforcement of the settlement. Plaintiffs and Intervenors further agree, that any proofs of claims that they have filed in the Bankruptcy Case that come within the scope of the foregoing release, including without limitation proofs of claim nos. 22023, 27760 and 22024 (collectively, all such proofs of claim the "Proofs of Claim") shall, upon the Effective Date, be disallowed

Lehman Brothers Financial Products Inc.; Lehman Brothers OTC Derivatives Inc; Lehman Brothers Derivative Products Inc.; Lehman Brothers Commodity Services Inc.; Lehman Scottish Finance L.P.; CES Aviation LLC; CES Aviation V LLC; CES Aviation IX LLC; East Dover Limited; Luxemboug Residential Properties Loan Finance S.a.r.l; BNC Mortgage LLC; Structured Asset Securities Corporation; LB Rose Ranch LLC; LB 2080 Kalakaua Owners LLC; Merit LLC; LB Somerset LLC; LB Preferred Somerset LLC; LB 745 LLC; and PAMI Statler Arms LLC.

with prejudice, and, within ten business days of the Effective Date, Plaintiffs and Intervenor shall file a notice on the docket in the Bankruptcy Case withdrawing the Proofs of Claim.

9. **The Settling Defendants' Release:** Upon the Effective Date, the Defendants will release as against Plaintiffs and Intervenor, and their respective attorneys, and any other Class member, all claims and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against the Defendants, except for claims relating to the enforcement of the settlement.

10. **Not a Claims-Made Settlement:** This is not a claims-made settlement; there will be no reversion of settlement funds to Defendants or the Insurers if the Effective Date occurs.

11. **Claims Administration and Plan of Allocation:** The Defendants will not have any involvement in the selection of the claims administrator, the claims administration process, or the plan of allocation of the Settlement proceeds. The claims administrator shall be selected solely by Lead Counsel, and the plan of allocation will be proposed solely by Lead Counsel, subject to Court approval. The Defendants shall not object to such proposed plan of allocation.

12. **Costs of Notice and Settlement Administration:** Subject to entry of the Bankruptcy Order, notwithstanding the fact that the Effective Date has not yet occurred, the actual costs of notice and settlement administration will be paid from the Escrow Account, not to exceed a reasonable agreed-upon amount that will be set forth in the Agreement, without further order of the Court, provided that no portion of the LBHI Payment shall be paid or expended for any purpose prior to the Effective Date. In the event that the settlement is not consummated, amounts paid for actual costs of notice and settlement

administration shall not be returned or repaid to the Defendants or the Insurers but the full amount of the LBHI Payment shall be repaid to LBHI.

13. **Lead Counsel's Attorneys' Fees and Expenses:** Lead Plaintiff and Intervenor's Counsel's attorneys' fees and expenses, as awarded by the District Court, shall be paid from the Escrow Account upon the approval of the settlement by the District Court, notwithstanding any appeals, subject to a customary agreement by Lead Counsel and Intervenor's Counsel to repay any such funds in the event the settlement is not finally approved or the fee is not approved or is reduced on appeal.

14. **Class Payment:** Payment and/or distribution of any of the Settlement Amount to the class members shall only be made after the Effective Date. In the event the Settlement is terminated or the Effective Date does not occur for any reason, the Settling Parties shall be deemed to have reverted *nunc pro tunc* to their respective status as of the date and time immediately before the execution of this Term Sheet and the Settlement Amount paid by the Insurers on behalf of the Defendants, together with any interest earned thereon, less any taxes actually paid, due or incurred with respect to such income, and less any reasonable administration costs actually paid or incurred not to exceed a reasonable agreed upon amount, shall be returned to the Insurers.

15. **Stay of Proceedings:** Upon the execution of this Term Sheet, (i) the parties shall promptly notify the District Court of the agreement in principle and request that the District Court proceedings against the Defendants be suspended and may disclose the Settlement Amount to the District Court upon request of the District Court; and (ii) Defendants, Lead Plaintiff and Intervenor shall notify the United States Court of Appeals for the Second Circuit of the agreement in principle and request that the appeal designated Case No. 11-1982 be suspended pending final approval of the settlement (at which time the appeal will be dismissed) or, if such suspension is not possible, Lead Plaintiff and

Intervenors shall request a remand of the appeal to the District Court pending such final approval.

16. **Confidentiality**: The parties shall keep strictly confidential the settlement and the terms of the settlement until submission of the motion to the Bankruptcy Court for a Bankruptcy Order, except (i) for notifying the District Court of the agreement as set forth in ¶ 5; (ii) that Defendants may disclose the Settlement Amount and the terms of the settlement to plaintiffs in the actions captioned *Stichting Pensioenfonds ABP v. Franks, et al.*, 10 Civ. 6637 (LAK), and *Federal Home Loan Bank of Boston v. Franks, et al.*, 11 Civ. 10924 (GAO), on a confidential basis in the context of settlement discussions with those plaintiffs; and (iii) that the Defendants may disclose the settlement and the terms of the settlement on a confidential basis to the LBHI and its insurance broker and its counsel, the statutory Creditors' Committee appointed in the Bankruptcy Case and its counsel and advisors, and the Insurers and their counsel.

17. **Rule 11 Compliance**: The Defendants, Plaintiffs and Intervenors agree that each has complied fully with the strictures of Rule 11 of the Federal Rules of Civil Procedure, and that the proposed final judgment will contain a statement to reflect this compliance.

18. **Public Statements**: To the extent practicable, the Settling Parties shall provide to each other, in advance, any public statement announcing the settlement.

19. **Resolution of Disputes**: The Settling Parties will consult with the Mediator over any dispute as to the finalization of the settlement documentation. If for any reason the Mediator is unavailable or has a conflict, a substitute neutral will be agreed upon by the Settling Parties, or in the absence of agreement, appointed by the Mediator.

20. **Binding Agreement**: This Term Sheet is intended by the Settling Parties to be a binding agreement that sets forth material terms and obligations of the Settling Parties in

connection with the settlement, and the Settling Parties shall use their best efforts to consummate the settlement contemplated herein.

21. **Third Party Beneficiary**: The Debtors are express third party beneficiaries of this Term Sheet and may enforce the provisions hereof.

22. **Execution**: This Term Sheet may be executed in counterparts and facsimiles and electronic copies (in PDF form or otherwise) of signatures shall be valid.

IT IS HEREBY AGREED by the undersigned as of November 2, 2011.

COHEN MILSTEIN SELLERS & TOLL PLLC

WOLLMUTH MAHER & DEUTSCH LLP

By: 

Steven J. Toll
Joel P. Laitman
Christopher Lometti
Richard A. Speirs
Michael B. Eisenkraft
Daniel B. Rehns
Kenneth M. Rehns

By: 

William A. Maher
Michael C. Ledley

500 Fifth Avenue
New York, New York 10110
212-382-3300
212-382-0050 (Facsimile)

88 Pine Street, Fourteenth Floor
New York, New York 10005
(212) 828-7797
(212) 828-7745 (Facsimile)

*Attorneys for Defendants Lana Franks
Harber, Edward Grieb, Richard McKinney,
Kristine Smith, James J. Sullivan, Samir
Tabet and Mark L. Zusy*

*Attorneys for Lead Plaintiff, Intervenor IPERS
and the Class*

WOLF POPPER LLP

By: 

Lester L. Levy
James A. Harrod

845 Third Avenue
New York, N.Y. 10022
(212) 759-4600
(212) 486-2093 (Facsimile)

Attorneys for Intervenor Miss. PERS