

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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: **Chapter 11 Case No.**
: **08-13555 (JMP)**
: **(Jointly Administered)**
: **08-01420 (JMP) SIPA**
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In re :
: **LEHMAN BROTHERS HOLDINGS INC., et al.,** :
: **Debtors.** :
: **Debtor.** :

**STIPULATION AND ORDER IN CONNECTION WITH THE ELEVATION OF
CERTAIN INTERESTS IN MACH GEN, LLC AND ASSUMPTION
UNDER 11 U.S.C. § 365 OF CERTAIN OPEN TRADES**

WHEREAS, on September 19, 2008 (the “Filing Date”), this proceeding was commenced under the Securities Investor Protection Act of 1970 (as amended, “SIPA”) with respect to Lehman Brothers Inc. (“LBI”), and James W. Giddens was appointed as trustee under SIPA (the “Trustee”) to administer LBI’s estate; thereafter, this proceeding was removed to the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, Strategic Value Master Fund, Ltd. (“SVMF”) and BDF Limited (f/k/a Man Mac 3 Limited) (“BDF”; together with SVMF, “SVP”) assert that SVP acquired participation interests in certain equity interests in MACH Gen, LLC (“MACH Gen”), as identified in Schedule A hereto (such interests, the “MACH Gen Participation Interests”), from Lehman Commercial Paper Inc. (“LCPI”), such that SVP became the beneficial owner of such MACH Gen Participation Interests;

WHEREAS, prior to the Filing Date, LCPI assigned its title ownership of the equity interests underlying the MACH Gen Participation Interests (the “MACH Gen Interests”) to LBI;

WHEREAS, prior to the Filing Date, SVMF and BDF entered into two assignment and acceptance agreements (the “A&As”) with LBI, copies of which are attached hereto as Exhibit A, pursuant to which the MACH Gen Participation Interests would be “elevated” such that SVP would become the record holder (as well as the beneficial owner) of such MACH Gen Participation Interests (the “Elevation”);

WHEREAS, due to the commencement of the above-captioned SIPA liquidation proceeding (the “SIPA Proceeding”), the Elevation of the MACH Gen Participation Interests remains unconsummated;

WHEREAS, prior to the Filing Date, SVP entered into six separate trades (the “Open Trades”) with LBI for the purchase from LBI of certain other equity interests in MACH Gen set forth on Schedule B hereto (such interests, the “MACH Gen Open Trade Interests”), which Open Trades remain unsettled;

WHEREAS, the Trustee has determined that it is in the best interests of LBI and LBI’s estate that SVP perform its obligations under the Open Trades, and that the Open Trades be completed;

WHEREAS, Barclays Capital Inc. (“BCI”) has asserted that the Trustee is obligated to deliver to BCI the MACH Gen Participation Interests and the MACH Gen Open Trade Interests (BCI’s claim to the MACH Gen Participation Interests is referred to herein as the “Competing MACH Gen Elevation Claim,” and BCI’s claim to the MACH Gen Open Trade Interests is referred to herein as the “Competing MACH Gen Open Trade Claim”);

WHEREAS, BCI’s claim for Undelivered Clearance Box Assets is currently the subject of litigation pursuant to: (i) the Motions of the Trustee, LBHI, and the Official Committee of Unsecured Creditors of LBHI for relief pursuant to Fed. R. Civ. P. 60 or otherwise with respect to the sale order entered in the SIPA Proceeding or the sale order entered in the Chapter 11 cases of LBHI and its affiliated debtors (such cases, the “Chapter 11 Cases”) on or about September 20, 2008, including any claims under sections 549 and 550 of the Bankruptcy Code (such orders, collectively, the “Sale Orders,”¹ and such motions, collectively, the “Rule 60 Motions”)²; (ii) the related adversary proceedings commenced against BCI by the Trustee, LBHI and the LBHI Creditors Committee on or about November 16, 2009 (such adversary proceedings, the “Adversary Proceedings”)³; and (iii) the Motion of BCI to Enforce the Sale Order and Secure Delivery of All Undelivered Assets, dated as of January 29, 2010 (together with any other pleadings filed or otherwise submitted by BCI in support thereof, the “Enforcement Motion”)⁴;

WHEREAS, LCPI has filed a proof of claim no. 900006436, against LBI for, inter alia, the MACH Gen Interests (the “LCPI-LBI Proof of Claim”) and SVMF and BDF have

1 The Sale Orders are comprised of docket entry 258 in Case No. 08-13555 and docket entry 3 in Case No. 08-01420.

2 The Rule 60 Motions are comprised of docket entries 5148, 5149, 5150, 5151, 5154, 5156, 5169, 5170, 5171, 5172, and 5173 in Case No. 08-13555 and docket entries 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, and 1702 in Case No. 08-01420.

3 The Adversary Proceedings are: Adv. Pro. 09-01732 (JMP), Adv. Pro. 09-01731 (JMP) and 09-01733 (JMP), respectively.

4 The Enforcement Motion is docket entry 6814 in Case No. 08-13555 (JMP) and docket entry 2581 in Case No. 08-01420 (JMP).

filed proof of claim nos. 900005463 and 900005436, respectively, against LBI, for the MACH Gen Participation Interests (the “SVP-LBI Proofs of Claim”);

WHEREAS, SVMF and BDF have filed proof of claim nos. 18803 and 18804, respectively, against LCPI, representing the value of the MACH Gen Participation Interests (the “SVP-LCPI Proofs of Claim”); and

WHEREAS, through arm’s-length and good faith negotiations, SVP, the Trustee, LCPI and BCI (each, a “Party”, and together, the “Parties”) have reached the agreements memorialized in this Stipulation and Order.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES HERETO THAT:

1. The terms and conditions of this Stipulation and Order, and the Parties’ respective obligations hereunder, shall become effective only upon (a) the entry of an order of the Bankruptcy Court approving this Stipulation and Order (the “Approval Order”) and (b) such Approval Order having become final and not subject to any timely application or motion for a stay, rehearing or appeal, and as to which the time to apply or move for a stay, rehearing or appeal has expired (such order, a “Final Order”).

2. The Trustee agrees to take, or cause to be taken, all actions necessary or appropriate to give effect to the Elevation of the MACH Gen Participation Interests and to complete the Open Trades.

3. BCI hereby fully and finally (a) withdraws the Competing MACH Gen Elevation Claim and (b) consents to the Elevation of the MACH Gen Participation Interests. For the avoidance of doubt, BCI hereby acknowledges that it has, and will have, no rights, claims or causes of action against LBI, the Trustee, LCPI or SVP, or any of their respective past, present and future officers, directors, employees, agents, attorneys, representatives, shareholders, parents, subsidiaries, affiliates, predecessors, successors or assigns (to the extent applicable), in the SIPA Proceeding, the Chapter 11 Cases or otherwise, with respect to the MACH Gen Participation Interests.

4. SVP hereby agrees to take, or cause to be taken, all actions reasonably necessary or appropriate to complete the Open Trades in accordance with the terms and conditions hereof and thereof, including the payment of \$5,930,000 (\$5,453,275 of which is on account of the Open Trade to which SVMF is party, and \$476,725 of which is on account of the Open Trade to which BDF is party) (such amount, the “Payment Amount”) in immediately available funds, by wire transfer pursuant to instructions to be provided by the Trustee to SVP, within five business days after the latest of (x) the date on which the Approval Order becomes a Final Order, (y) the date on which the Elevation becomes effective and (z) the date on which the assignments of the MACH Gen Open Trade Interests are consummated and such interests are in the custody of SVP or its designated custodian(s) (such latest date, the “Effective Date”).

5. Nothing in this Stipulation and Order (including any exhibits or schedules thereto) shall (a) bind, be collateral estoppel, res judicata or otherwise prejudice any matter in the Chapter 11 Cases or in the SIPA Proceeding (other than the matters expressly addressed in this

Stipulation and Order and the performance thereof); (b) impair or modify the rights and remedies of BCI (or any affiliate of BCI) in respect of any claims that have been asserted, or may be asserted, by BCI (or any affiliates of BCI) against LBI (or the Trustee as trustee for LBI), the debtors in the Chapter 11 Cases (the “Chapter 11 Debtors”), their respective present or former affiliates, or any third parties, with respect to any matter (other than the matters expressly addressed in this Stipulation and Order and the performance thereof) in the Chapter 11 Cases or in the SIPA Proceeding, and, for the avoidance of doubt, all rights of BCI and its affiliates to: (i) seek the dismissal or the denial of the Rule 60 Motions and/or dismissal or other relief in connection with the Adversary Proceedings or (ii) seek enforcement of the Sale Orders and secure delivery of any allegedly undelivered assets thereunder, including without limitation, pursuant to the Enforcement Motion, are hereby reserved; (c) impair or modify any rights and remedies of the Trustee, LBI or any of the Chapter 11 Debtors or any defenses of BCI or its affiliates in respect of or arising out of any claims that have been asserted, or may be asserted against BCI (or any affiliates of BCI), and related recoveries, including, for the avoidance of doubt, (i) any claims and recoveries that are the subject of, related to or arise out of one or more of the Rule 60 Motions, (ii) any claims that are the subject of, related to or arise out of any of the Adversary Proceedings, or (iii) any claims relating to claimed shortfalls in LBI’s compliance with customer protection rules.

6. BCI hereby consents to the Trustee’s completion of the Open Trades and the transfer by the Trustee of the MACH Gen Open Trade Interests to SVP in accordance with the terms set forth herein. BCI agrees not to assert the Competing MACH Gen Open Trade Claim against the MACH Gen Open Trade Interests or against SVP or any of SVP’s past, present or future officers, directors, employees, agents, attorneys, representatives, shareholders, parents, subsidiaries, affiliates, predecessors, successors, assigns, and/or persons acting on behalf of any of the foregoing. The Competing MACH Gen Open Trade Claim shall be preserved against the Payment Amount to the same extent as if the MACH Gen Open Trade Interests had not been transferred by the Trustee to SVP, and BCI and the Trustee each reserve their respective rights and defenses as to the MACH Gen Open Trade Claim in accordance with the reservation of rights set forth in Paragraph 5 above to the same extent as if the MACH Gen Open Trade Interests had not been transferred to SVP. The Trustee shall not distribute the Payment Amount (a) without the prior written consent of BCI or (b) unless and until a Final Order has been entered resolving the Competing MACH Gen Open Trade Claim.

7. As soon as reasonably practicable after the Effective Date: (a) LCPI will amend the LCPI-LBI Proof of Claim to eliminate the claim for the MACH Gen Interests; and (b) SVP will withdraw the (x) SVP-LCPI Proofs of Claim and (y) SVP-LBI Proofs of Claim.

8. Each of SVMF and BDF represents and warrants to BCI that: (a) as of the Filing Date, SVP was the beneficial owner of the MACH Gen Participation Interests; (b) prior to the Filing Date, SVP entered into the A&As attached as Exhibit A hereto with LBI pursuant to which the MACH Gen Participation Interests of which SVP was the beneficial owner would be “elevated” such that SVP would become the record holder (as well as the beneficial owner) of the MACH Gen Participation Interests; (c) prior to the Filing Date, SVP and LBI timely delivered the executed A&As to MACH Gen so that the Elevation would be processed by MACH Gen on September 25, 2008, in accordance with MACH Gen’s administrative policy;

and (d) as of the Filing Date, no further actions were required to be taken by LBI or SVP in order to effect the Elevation.

9. Each of SVMF and BDF represents and warrants that: (a) it has due authority to enter into this Stipulation and Order on behalf of itself; and (b) to the best of its knowledge, as of the date hereof, apart from the Open Trades, it has no debt obligation outstanding to LBI or LBI's estate.

10. Upon the consummation of the Elevation of the MACH Gen Participation Interests and the Open Trades, each of the Trustee, LBI, LCPI and SVP (including such Party's past, present and future officers, directors, employees, agents, attorneys, representatives, shareholders, parents, subsidiaries, affiliates, predecessors, successors, assigns, and/or persons acting on behalf of any of the foregoing) irrevocably releases and discharges each other from any and all past, present and future claims, causes of action, demands, damages, attorneys' fees, equitable relief (including but not limited to injunctive and declaratory relief), suits seeking damages, legal relief, and demands or rights, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, or based on any statute, regulation or common law of any country, state, province, county, city or municipality, that have been, could have been, may be, or could be alleged or asserted now, in the past, or in the future, related to or in connection with the Elevation of the MACH Gen Participation Interests or the consummation of the Open Trades.

11. Subject to the reservation of rights contained in Paragraphs 5 and 6 above, each Party expressly reserves all of its rights and defenses with respect to any other claims it might have against the other, other than claims in respect of or in connection with the Elevation of the MACH Gen Participation Interests or the Open Trades.

12. The Trustee shall seek, and SVP, LCPI and BCI shall support, Bankruptcy Court approval of this Stipulation and Order in the SIPA Proceeding and the Chapter 11 Cases.

13. Except as otherwise specifically provided for herein, nothing contained in this Stipulation and Order shall create any rights, remedies, or defenses in favor of any party in interest that is not a Party.

14. This Stipulation and Order shall be binding on the Parties (including the estate of LBI) and their respective successors or assigns, including any subsequent trustee elected or appointed for LBI.

15. Each Party hereby submits to the jurisdiction of the Bankruptcy Court for any action, suit or proceeding to enforce this Stipulation and Order, and agrees that any such action, suit or proceeding shall be brought only in the Bankruptcy Court. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to venue of any such action, suit, or proceeding brought in the Bankruptcy Court. The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Stipulation and Order.

16. Neither this Stipulation and Order, nor any of the terms hereof, nor any negotiations or proceedings in connection herewith, shall constitute or be construed as or be

deemed to be evidence of an admission on the part of any party of any liability or wrongdoing whatsoever, or the truth or untruth, or merit or lack of merit, of any claim or defense of any party; nor shall this Stipulation and Order, or any of the terms hereof, or any negotiations or proceedings in connection herewith, or any performance or forbearance hereunder, be offered or received in evidence or used in any proceeding against any party, or used in any proceeding, or otherwise, for any purpose whatsoever except with respect to the effectuation and enforcement of this Stipulation and Order. In the event that the Bankruptcy Court declines to approve this Stipulation and Order, this Stipulation and Order shall be null and void ab initio and without any force and effect.

17. This Stipulation and Order may be signed in counterparts which, when taken as a whole, shall constitute one and the same document, and faxed or PDF signatures shall be deemed originals.

18. Each individual signing this Stipulation and Order on behalf of any Party acknowledges and, with respect to his or her own signature below, warrants and represents that he/she is authorized to execute this Stipulation and Order in his/her representative capacity, as reflected below and on behalf of the Party indicated.

19. This Stipulation and Order shall be governed by and shall be interpreted in accordance with the laws of the State of New York, except to the extent that the Bankruptcy Code or SIPA apply, without regard to New York's rules governing conflicts of laws.

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Dated: New York, New York
February 4, 2011

STRATEGIC VALUE MASTER FUND, LTD.

By: Strategic Value Partners, LLC,
its Investment Manager

By: /s/ James Varley
Name: James Varley
Title: Secretary

BDF LIMITED

By: /s/ Michael Collins
Name: Michael Collins
Title: Director

By: /s/ Lindsee P. Granfield

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ATTORNEYS FOR LEHMAN
COMMERCIAL PAPER INC.

SO ORDERED this ___ day of February 2011

UNITED STATES BANKRUPTCY JUDGE