

Presentment Date and Time: November 13, 2012 at 12:00 p.m.
Objection Deadline: November 12, 2012 at 4:00 p.m.

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

In re

LEHMAN BROTHERS INC.,

Debtor.

Case No. 08-01420 (JMP) SIPA

**STIPULATION, AGREEMENT AND ORDER GRANTING THE
BANK OF NEW YORK MELLON TRUST COMPANY, N.A
LIMITED RELIEF FROM THE AUTOMATIC STAY**

James W. Giddens (the “Trustee”), as trustee for the SIPA liquidation of Lehman Brothers Inc. (“LBI”) and The Bank of New York Mellon Trust Company, N.A. (“BNYM”), in its capacity as successor trustee under that certain Indenture dated as of March 1, 1989 (the “Indenture”), hereby stipulate, by and through their respective counsel, as follows:

RECITALS

A. On September 19, 2008 (the “Filing Date”), a proceeding was commenced against LBI under the Securities Investor Protection Act of 1970 (“SIPA”) in the case captioned *Securities Investor Protection Corporation v. Lehman Brothers, Inc.*, Case No. 08-CIV-8119 (GEL) (S.D.N.Y. Sept. 19, 2008) (the “SIPA Proceeding”). On that date, the Honorable Gerard E. Lynch entered an order that, among other things, (i) appointed the Trustee to conduct the liquidation of the business of LBI pursuant to section 78eee(b)(3) of SIPA, (ii) appointed counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA and (iii) removed the SIPC Proceeding to the United States Bankruptcy Court for the Southern District of New York (the “Court”) pursuant to section 78eee(b)(4) of SIPA.

B. LBI and BNYM are parties to that certain guaranteed investment contract (as amended and supplemented from time to time, the "GIC") dated as of March 1, 1989. The GIC, which was originally executed by Liberty National Bank and Trust Company of Louisville (the "Original Trustee") and Shearson Lehman Hutton Investments, Inc. ("Shearson Lehman"), granted Shearson Lehman the right to select investment securities (the "Investment Securities") to be purchased with proceeds of certain municipal bonds issued by the County of Pendleton for the benefit of the Kentucky Association of Counties Leasing Trust (together, the "Kentucky Municipal Claimants"), in return for Shearson Lehman's obligation to pay the Kentucky Municipal Claimants a specified rate of return on their funds. LBI and BNYM are successors to Shearson Lehman and the Original Trustee, respectively.

C. Pursuant to that certain Security Agreement dated as of March 1, 1989 (the "Security Agreement") between the Original Trustee, as secured party, and Shearson Lehman, as pledgor, Shearson Lehman's obligations under the GIC were secured by a first priority lien on and continuing security interest in the Investment Securities themselves and cash held in a segregated account at the Original Trustee and later at BNYM (the "Collateral Account"). The cash and Investment Securities held in the Collateral Account are referred to herein as the "Collateral".

D. On January 20, 2009 and January 30, 2009, BNYM filed customer claims on behalf of the Kentucky Municipal Claimants in the SIPA Proceeding, which were assigned proof of claim numbers 800002951 and 900004801 (the "BNYM Customer Claims"), respectively. Thereafter, on May 29, 2009, BNYM filed a general creditor claim on behalf of the Kentucky Municipal Claimants in the SIPA Proceeding which was assigned proof of claim number 7002245. In each proof of claim, BNYM asserted claims against LBI in the amount of

\$75,540,613 plus interest, costs and attorney's fees for amounts due under the GIC as of the Commencement Date. Although not parties to the GIC, the Kentucky Municipal Claimants and JP Morgan Chase Bank, N.A. ("JPM") filed both customer and creditor claims in respect of their claims under the Indenture, the GIC and the Collateral. Their customer claims, which were assigned proof of claim numbers 800004347, 900003992 and 900004145 were reclassified without objection as amendments and/or duplicates of existing creditor claims by the Trustee. The creditor claims of the Kentucky Municipal Claimants and JPM (claim numbers 5050 and 5048, respectively) are not being addressed in this Stipulation.

E. Although the value of the Investment Securities fluctuates with market conditions, the value of the Collateral in the Collateral Account has been since the Filing Date and remains far less than BNYM's asserted claims. As a result, LBI has no equity in the GIC, Collateral, or the Collateral Account. Therefore, to avoid the time and expense of litigation and to permit BNYM to take possession of the Collateral so that it can transfer ownership of, liquidate or reinvest the Collateral for the benefit of the Kentucky Municipal Claimants, the Parties have agreed to modify the automatic stay solely to permit BNYM to exercise its rights and remedies under the Indenture, the GIC, the Security Agreement and applicable law to take possession of the Collateral in the Collateral Account on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the Parties hereto hereby stipulate and agree as follows:

1. The foregoing recitals are incorporated herein by reference as part of this Stipulation, Agreement and Order (this "Stipulation") as if set forth in full in this paragraph 1.

2. Upon this Stipulation being “so ordered” by the Court (the “Effective Date”), the Automatic Stay shall be modified solely to the extent necessary to allow BNYM to exercise its rights and remedies under the Indenture, the GIC, the Security Agreement and applicable law with respect to the Collateral in the Collateral Account, including, without limitation and at BNYM’s election, transferring ownership of, liquidating or reinvesting the Collateral or the Collateral Account.

3. The modification of the automatic stay granted by this Stipulation shall take effect immediately upon entry of this Order and shall not be stayed by operation of Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

4. The Parties shall cooperate with each other to execute, deliver and implement any instruments and papers and to take any and all actions reasonably necessary to transfer control over the Collateral and the Collateral Account to BNYM. Any transfers pursuant to this Stipulation shall not be avoidable under the Bankruptcy Code or otherwise.

5. BNYM shall notify the Trustee of the proceeds received from liquidation of the Collateral within five (5) business days following completion of such liquidation and provide periodic updates regarding the status of such liquidation and the amount of proceeds realized to date as the Trustee may reasonably request.

6. Upon the Effective Date, the BNYM Customer Claims shall be deemed withdrawn. Nothing contained herein, however, shall affect any creditor claims of BNYM (or the Kentucky Municipal Claimants and JPM) and the Parties expressly reserve any and all rights with respect to the allowance or amount of the balance of such creditor claims, including the amount of any deficiency claim of BNYM.

Miscellaneous

7. The terms and conditions of this Stipulation, and the Parties' respective obligations hereunder, shall become effective only upon the Stipulation being "so ordered" by the Court.

8. Each party represents and warrants that (i) it has all requisite power, authority and legal right to execute and deliver this Stipulation and to perform its obligations hereunder; (ii) this Stipulation has been duly executed and delivered and constitutes the valid and binding agreement of each party; and (iii) the consummation of the transactions contemplated hereby does not and will not conflict with or result in a violation or breach of or default under any applicable law or any contract, agreement or other instrument applicable to such party or any of its respective properties or assets.

9. Any notices, demands, requests and communications required to be made by or relating to this Stipulation shall be made in writing and shall be deemed to have been duly given if sent by overnight courier or by facsimile, addressed as follows:

i. if to the Trustee for LBI:

James W. Giddens
Trustee for the SIPA Liquidation of Lehman Brothers Inc.
c/o Daniel S. Lubell, Esq.
Jeff Margolin, Esq.
HUGHS HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004-1482
Facsimile: (212) 422-4726

ii. if to BNYM:

The Bank of New York Mellon, N.A.
Attn: Michael Hanks
614 W Main Street

Suite 2600
Louisville, KY 40202

With copies to:

Jennifer Feldsher, Esq.
Julian Rainero, Esq.
BRACEWELL & GIULIANI LLP
1251 Avenue of the Americas
New York, New York 10020
Facsimile: (212) 508-6101

10. This Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, including any subsequent trustee elected or appointed for LBI. Nothing contained herein, express or implied, is intended to and shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Stipulation.

11. This Stipulation may not be assigned by any party hereto without the prior written consent of the other party. No amendment, waiver or modification of any provision of this Stipulation shall be effective unless the same shall be in writing and signed by BNYM and the Trustee.

12. This Stipulation constitutes the full and entire agreement and understanding between the Parties pertaining to the subject matter hereof and supersedes prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto made by any party.

13. This Stipulation shall be governed by and construed in accordance with federal bankruptcy law, to the extent applicable, and, where state law is implicated, the internal laws of the State of New York, without giving effect to any principles of conflicts of law, except to the

extent that SIPA or the Bankruptcy Code is applicable. BNYM consents to this Court's jurisdiction for the purpose of implementation, interpretation or enforcement of this Stipulation.

14. This Stipulation may be executed in two or more counterparts, each of which shall be deemed an original, and together considered one and the same agreement effective when one or more counterparts have been signed by each party and delivered to the other party, it being understood that all Parties need not sign the same counterpart. This Stipulation may be executed and delivered via facsimile or electronic transmission (PDF) and such facsimile or electronic submission shall be deemed valid as an original signature and have the same effect as an original counterpart hereof.

WHEREFORE, the Parties to this Stipulation respectfully request that this Court enter this Stipulation and grant the relief set forth herein.

Dated: November 5, 2012
New York, New York

HUGHES HUBBARD & REED LLP

By: 

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*Attorneys for James W. Giddens, Trustee for
the SIPA Liquidation of Lehman Brothers Inc.*

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New York, New York 10020
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Facsimile: (212) 508-6101

*Attorneys for The Bank of New York Mellon
Trust Company, N.A.*

SO ORDERED this ____ day of _____ 2012

UNITED STATES BANKRUPTCY JUDGE