

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

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| In re: | : |
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| LEHMAN BROTHERS INC., | : |
| | : |
| Debtor. | : |
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Case No. 08-01420
(JMP) SIPA

**STIPULATION AND ORDER IN CONNECTION WITH THE AVOIDANCE CLAIM
SETTLEMENT WITH CONVERGEX SOLUTIONS LLC**

This Stipulation and Order (the “Stipulation”) is entered on the date hereof by and between James W. Giddens (the “Trustee”), as trustee for the liquidation of Lehman Brothers Inc. (“LBI”) under the Securities Investor Protection Act of 1970, as amended (“SIPA”), and ConvergEx Solutions LLC, f/k/a BNY Jaywalk LLC (“ConvergEx,” and together with the Trustee, the “Parties”).

WHEREAS, on September 19, 2008 (the “Filing Date”), a proceeding was commenced under SIPA with respect to LBI, and the Trustee was appointed (Case No. 08-01420);

WHEREAS, on or about August 12, 2010, the Trustee asserted that he possesses a claim (the “Avoidance Claim”) against ConvergEx for certain transfers (the “Transfers”) totaling \$2,210,000.00 made by LBI during the 90 days prior to the Filing Date;

WHEREAS, ConvergEx has asserted that it possesses defenses to the Avoidance Claim and the Parties have tolled the Avoidance Claim to allow for further negotiations;

WHEREAS, on or about January 20, 2009, BNY ConvergEx Execution Solutions LLC (“BNY ConvergEx”), an affiliate of ConvergEx, commonly owned by ConvergEx Holdings, LLC, filed a general creditor claim (Claim No. 7000566) against the estate of LBI;

WHEREAS, on or about January 27, 2009, BNY ConvergEx filed customer claims pursuant to SIPA against the estate of LBI, which the Trustee denied and reclassified as

general creditor claims (Claim Nos. 8001673, 8001676, 8001677, 8001680, 8001683, and collectively, the “Reclassified Claims”) on or about May 6, 2009;

WHEREAS, on or about March 15, 2013, this Court issued an Order Granting the Trustee’s Twenty-Seventh Omnibus Objection to General Creditor Claims (Duplicative Claims), which disallowed and expunged the Reclassified Claims as duplicative of surviving Claim No. 7000566;

WHEREAS, on September 10, 2010, this Court issued an Order approving and authorizing procedures for LBI and Lehman Brothers Holdings Inc. and certain of its affiliates (collectively, the “LBHI Entities”), individually or jointly, to assert claims and commence adversary proceedings to avoid and recover transfers made by LBI and the LBHI Entities to third parties prior to the Commencement Date as preferential and/or fraudulent transfers pursuant to 11 U.S.C. §§ 544, 547, 548 and 550 (ECF No. 3664);

WHEREAS, on December 8, 2010, this Court issued an Amended Order Establishing Procedures Governing Claims Asserted and Adversary Proceedings Commenced by the Trustee Pursuant to 11 U.S.C. §§ 544, 547, 548 and 550 (the “Preference Procedures Order”) (ECF No. 3964). The Preference Procedures Order directs the Trustee to seek Court approval of the proposed settlement by a Notice of Presentment, in accordance with the Amended Case Management Order entered in this proceeding (ECF No. 3466);

WHEREAS, after good faith, arms’ length negotiations, the Parties have agreed to resolve the Avoidance Claim pursuant to the Preference Procedures, the Parties have agreed to resolve all issues regarding the Avoidance Claim and related matters pursuant to the terms and conditions set forth in this Stipulation and Order.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Stipulation and Order and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties hereto, it is hereby stipulated and agreed by the Parties hereto that:

1. **Effective Date.** This Stipulation shall not become effective unless and until it has been executed by the Parties and approved by Final Order (defined below) of the Bankruptcy Court (the “Effective Date”). Final Order shall mean an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket of such court, the operation or effect of which has not been stayed, reversed, or amended, and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending, *provided, however*, that no order shall fail to be a final order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rule of Civil Procedure, Bankruptcy Rule 9024, any similar local bankruptcy rule or any similar state statute or rule may be filed with respect to such order.

2. **Settlement.**

a. On the Effective Date, all claims asserted or filed by ConvergeEx or its affiliated entities, commonly owned by ConvergeEx Holdings, LLC, against the estate of LBI, (including Claim No. 7000566) are deemed withdrawn with prejudice.

b. ConvergeEx, on behalf of itself and its affiliated entities, waives any and all claims against the LBI estate not previously asserted in the claims referenced herein.

c. On the Effective Date, the Avoidance Claim shall be deemed discontinued, and the Trustee warrants that he will not commence an adversary proceeding against ConvergeEx or those affiliated entities related to the Avoidance Claim.

3. **Releases.**

a. As of the Effective Date, to the fullest extent permitted by applicable law, each Party, on its own behalf and on behalf of its current agents, employees, managers, members, subsidiaries, affiliates (limited in the case of ConvergeEx to affiliates that are commonly owned by ConvergeEx Holdings LLC), assigns, heirs, attorneys, successors, and representatives (collectively, the “Releasers”), in consideration of the execution and delivery of this Stipulation,

and other good and valuable consideration received from the other, the receipt and sufficiency of which are hereby acknowledged, hereby releases, waives, acquits and forever discharges the other Party, its current agents, employees, managers, members, subsidiaries, affiliates, assigns, heirs, attorneys, successors and representatives including, in the case of the Trustee, the Securities Investor Protection Corporation (collectively, the “Releasees”), and each of them, from any and all Claims (defined below in paragraph 4(b)) which the Releasers may have or may hereafter claim to have, or which might have been alleged, against the Releasees arising out of or relating in any way to or in connection with the Transfers or with the transactions giving rise to the claims asserted or filed by ConvergeEx or affiliated entities commonly owned by ConvergeEx Holdings, LLC against the estate of LBI, from the beginning of the world to the date hereof.

b. As used in this paragraph and elsewhere in this Stipulation, the term “Claims” means and refers to any and all accounts, actions, agreements, bonds, bills, causes of action, claims, contracts, controversies, costs, covenants, damages, disputes, proceedings, duties, penalties, debts, executions, judgments, lawsuits, liabilities, obligations, promises, reckonings, specialties, suits, sums of money, trespasses, variances, of whatever kind, nature, character or description, including, without limitation, claims for monies, damages (whether direct, indirect, liquidated, consequential or incidental), equitable relief of any kind, costs, expenses, losses and attorneys’, accountants’ and experts’ fees and expenses, and suits of every nature and description whatsoever, whether known or unknown, anticipated or unanticipated, suspected or unsuspected, whether asserted or unasserted, accrued or unaccrued, whether based on federal, state, local, foreign, statutory, common law or any other law, rule or regulation (including, without limitation, the New York Uniform Commercial Code and the common law relating to the rights of pledgors and pledgees with respect to pledged collateral), whether based upon contract, warranty, tort, fraud, negligence, or otherwise, whether at law or in equity, and whether for sums of money, costs, interest, expenses, attorneys’ fees, injunctive relief, declaratory relief or other equitable relief.

c. Each Party expressly acknowledges and agrees that, upon execution of this Stipulation, and granting the releases contained herein, it shall have no further rights, and the other Party to this Stipulation shall have no further obligations, in connection with the Transfers.

4. **Representations and Warranties.**

a. Each Party hereby represents and warrants to the other Party that the person signing this Stipulation on its behalf is duly authorized to enter into this Stipulation on that Party's behalf and that no further consent or approval is required from or by any other person, party, or entity in order for such Party to enter into, or carry out, the provisions of this Stipulation.

b. Each Party hereby represents and warrants to the other Party that: (i) it has the power and authority to execute this Stipulation; (ii) neither the execution nor the performance of this Stipulation by such Party violates any other contract by which such Party is bound; (iii) neither the execution nor the performance of this Stipulation by such Party violates any charter, regulation, corporate resolution, by-law or other corporate restriction to which such Party is subject; and (iv) upon its execution hereof, this Stipulation constitutes a valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

c. ConvergEx represents and warrants to the Trustee that it has the power and authority to execute this Stipulation on behalf of BNY ConvergEx.

5. **Drafting And Construction of Agreement.** This Stipulation is the product of negotiations between the Parties and shall be deemed to have been drafted jointly by the Parties hereto, and any uncertainties or ambiguities inherent in this Stipulation, or arising therefrom, shall not be interpreted, construed or resolved in favor of, or against, any party or parties hereto based upon the principle of *contra proferentem* or any other doctrine of interpretation or construction that purports to attribute significance to the identity of the drafter.

6. **Entire Agreement.** This Stipulation constitutes the entire and only agreement between the Parties with respect to the subject matter hereof, and the Parties hereby expressly agree that any and all other understandings or agreements heretofore had by them with respect to the subject matters covered herein, whether oral or written, are superseded by, and merged into, this Stipulation which fully and completely expresses the Parties' agreement. The Parties agree and affirm that the only consideration for the execution of this Stipulation are the

terms stated herein and that there are no other promises or agreements of any kind which have caused them to execute this instrument.

7. **Amendment Or Modification.** This Stipulation may not be amended or modified orally. Accordingly, no amendment to, or modification of, this Stipulation shall be effective unless it is made in writing and signed by duly authorized representatives of each and every Party to this Stipulation.

8. **Change of Law.** The Parties agree that subsequent changes in any law deemed applicable, through legislation or judicial decision, which create or find additional or different rights or obligations of the Parties, shall not affect this Stipulation.

9. **Notices.** 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, electronic mail, or by facsimile, addressed as follows:

(a) if to the Trustee for LBI:

James W. Giddens
Trustee for the SIPA Liquidation of Lehman Brothers Inc.
c/o Michael E. Salzman, Esq.
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004-1482
Facsimile: (212) 422-4726
salzman@hugheshubbard.com
zakai@hugheshubbard.com

(b) if to ConvergEx:

ConvergEx Solutions LLC
c/o Christopher A. Blackwell, Esq.
SCHULMAN BLACKWELL LLP
11 Broadway, Suite 615
New York, New York 10004
Facsimile: (646) 304-1117
cblackwell@schulmanblackwell.com
dschulman@schulmanblackwell.com

-with a copy to-

ConvergEx Group
c/o Steven Heineman, Esq.
1633 Broadway, 48th Floor
New York, New York 10019

10. **Counterparts.** This Stipulation may be executed in counterparts, and each of such counterparts shall for all purposes be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

11. **Costs.** Each Party shall bear its own costs and expenses in connection with this matter, including legal fees and expenses.

12. **Governing Law.** This Stipulation, and its validity, interpretation and legal effect, shall be governed by, and construed in accordance with, the laws of the State of New York, without reference to conflicts of law (other than Section 5-1401 of the New York General Obligations Law). Each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court over any disputes arising from, or relating to, this Stipulation. To the extent that any rule, regulation, or law purports to limit or condition a Party's right to release or waive claims, including future or unknown claims, the Parties agree that the words required to effectuate any of the releases and waivers contained herein (subject always to the other terms and conditions of this Stipulation) are incorporated in this Stipulation as if they appeared fully in text, and each Party represents and warrants that it will not assert any such rule, regulation or law (or allow any rule, regulation or law to be asserted on its behalf) in any proceeding of any kind.

[Remainder of page is intentionally left blank.]

WITNESS the due execution hereof, intending to be legally bound hereby, this 16
day of April, 2013.

By: /s/ Dan J. Schulman
Dan J. Schulman
Christopher A. Blackwell

By: /s/ Michael E. Salzman
Michael E. Salzman
Jason E. Zakai

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One Battery Park Plaza
New York, New York 10004
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ATTORNEYS FOR CONVERGEX
SOLUTIONS LLC AND BNY CONVERGEX
EXECUTION SOLUTIONS LLC

ATTORNEYS FOR JAMES W. GIDDENS,
ESQ., AS TRUSTEE FOR THE SIPA
LIQUIDATION OF LEHMAN BROTHERS
INC.

SO ORDERED this ____ day of _____ 2013

UNITED STATES BANKRUPTCY JUDGE