

Hearing Date and Time: October 2, 2012 at 9:45 a.m. (ET)
Objection Deadline: September 25, 2012 at 4:00 p.m. (ET)

David R. Hurst
Daniel F. X. Geoghan
YOUNG CONAWAY STARGATT & TAYLOR, LLP
1270 Avenue of the Americas, Suite 2210
New York, New York 10020
Telephone: (212) 332-8840
Facsimile: (212) 332-8855

Proposed Counsel to the Debtor and Debtor-in-Possession

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

In re:)	Chapter 11
)	
FLETCHER INTERNATIONAL, LTD.,)	Case No. 12-12796 (REG)
)	
Debtor.)	
)	

**DEBTOR'S MOTION FOR APPROVAL OF STIPULATION FOR THE USE OF
CASH COLLATERAL OF CREDIT SUISSE ENTITIES**

TABLE OF CONTENTS

	<u>Page</u>
Relief Requested	1
Jurisdiction	3
Relevant Factual Background	4
A. The Cash Collateral and Credit Suisse’s Putative Interest Therein	4
B. Termination of the Prime Brokerage Relationship and Swap Transactions	5
C. The Debtor’s Need for and Request to Use the Cash Collateral and Credit Suisse’s Adequate Protection Package	6
Basis for the Relief Requested	9
A. The Requirement to Provide Adequate Protection	9
B. The Proposed Adequate Protection is Appropriate	10
Notice	12

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>In re Alyucan Interstate Corp.</i> , 12 B.R. 803 (Bankr. D. Utah 1981)	10
<i>In re American Business Fin. Svcs.</i> , Case No. 05-10203 (MFW), 2008 Bankr. Lexis 1225 (Bankr. D. Del. Apr. 10, 2008)	10
<i>In re Carbone Companies</i> , 395 B.R. 631 (Bankr. N.D. Ohio 20008)	10
<i>In re Continental Airlines, Inc.</i> , 146 B.R. 536 (Bankr. D. Del. 1992)	10
<i>In re Elmira Litho, Inc.</i> , 174 B.R. 892 (Bankr. S.D.N.Y. 1994)	12
<i>In re Lombard Wall, Inc.</i> , 23 B.R. 165 (Bankr. S.D.N.Y. 1982)	11
<i>In re Mosello</i> , 195 B.R. 277 (Bankr. S.D.N.Y. 1996)	10
<i>In re Realty Southwest Assocs.</i> , 140 B.R. 360 (Bankr. S.D.N.Y. 1992)	10
<i>In re WorldCom, Inc.</i> , 304 B.R. 611 (Bankr. S.D.N.Y. 2004)	10
STATUTES	
11 U.S.C. § 105	3
11 U.S.C. § 330(a)(3)(A)	2
11 U.S.C. § 330(a)(3)(B)	2
11 U.S.C. § 330(a)(3)(D)	2
11 U.S.C. § 330(a)(3)(E)	2
11 U.S.C. § 330(a)(3)(F)	2
11 U.S.C. § 330(a)(4)(A)(i)	2
11 U.S.C. § 361	2, 3, 10

11 U.S.C. § 363.....3, 8, 9
11 U.S.C. § 363(a)1
11 U.S.C. § 363(c)9, 12
11 U.S.C. § 363(e)2, 9, 12
11 U.S.C. § 363(p)(1)11
11 U.S.C. § 363(p)(2)9
11 U.S.C. § 507.....3
11 U.S.C. § 507(b)3, 8, 10

RULES

Fed. R. Bankr. P. 2002.....3, 12
Fed. R. Bankr. P. 40012, 3
Fed. R. Bankr. P. 4001-2.....2, 3
Fed. R. Bankr. P. 9014.....3

Fletcher International, Ltd., the above-captioned debtor and debtor-in-possession (the “**Debtor**”), files this motion (the “**Motion**”) for the entry of the stipulated order in the form attached hereto as Exhibit A (the “**Stipulation and Order**”), authorizing the Debtor’s use of the cash collateral of Credit Suisse (as defined below) and granting Credit Suisse adequate protection for the Debtor’s use of such cash collateral. In support of the Motion, the Debtor respectfully represents as follows:

Relief Requested¹

1. By this Motion, the Debtor seeks approval of the Stipulation and Order authorizing and approving the Debtor’s use of the cash collateral of Credit Suisse. The Debtor’s unrestricted cash assets primarily consist of approximately \$1.6 million of cash and certain marketable securities being held in a prime brokerage account with Credit Suisse Securities (USA) LLC (“**Securities USA**”). Securities USA has contended that these assets constitute “cash collateral,” as such term is defined in section 363(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) securing obligations of Securities USA and its current and future subsidiaries, parents and affiliates including, without limitation, Credit Suisse Securities (Europe) Limited (“**Securities Europe**” and, collectively with the foregoing entities, “**Credit Suisse**”).

2. The Debtor has an immediate need to access the assets currently in the possession of Securities USA to fund the business as well as the conduct and administration of this chapter 11 case. Credit Suisse has consented to the Debtor’s use of the cash collateral, subject to providing Credit Suisse with adequate protection of its putative interest in these assets

¹ Capitalized terms used in this section shall have the meanings ascribed to them elsewhere in the Motion or, if not defined herein, in the Stipulation and Order.

pursuant to sections 361 and 363(e) of the Bankruptcy Code on the terms set forth in the Stipulation and Order, the material terms of which are as follows:²

The Cash Collateral	The Debtor Funds in the amount of \$1,615,987.05 and the Helix A-1 Shares, which the Debtor values at approximately \$8,231,325.00 as of the date of filing this Motion.
Name of Each Entity with a Putative Interest in Cash Collateral (Customer Agreement, Preamble; Stipulation and Order at ¶ 3)	Credit Suisse Securities (USA) LLC and its current and future subsidiaries, parents and affiliates including, without limitation, Credit Suisse Securities (Europe) Limited.
Purposes for Use of Cash Collateral	To fund the Debtor’s business and the conduct and administration of this chapter 11 case.
Duration	Throughout the Debtor’s chapter 11 case.
Setoff of Prepetition Obligations (Stipulation and Order at ¶ [13])	Upon approval of the Stipulation and Order, Credit Suisse shall be permitted to setoff \$195,673.38 against the Debtor Funds on account of the Pre-Petition Legal Fees incurred in connection with the Customer Agreement.
Adequate Protection, including payment of Credit Suisse’s attorney’s fees and expenses (Stipulation and Order at ¶ [14])	<p><u>Post-Petition Holdback.</u> Credit Suisse shall retain and maintain \$400,000.00 of the Debtor Funds in the Brokerage Account (the “<u>Post-Petition Holdback</u>”) in order to secure the payment of any future Obligations, as defined in the Customer Agreement, including, without limitation, all post-petition legal fees and expenses incurred by Credit Suisse that constitute Obligations under the Customer Agreement (“<u>Post-Petition Legal Fees</u>”). Credit Suisse may retain any amount of the Post-Petition Holdback not setoff subject to paragraph [14(b)] of the Stipulation and Order until (i) there is no longer a possibility of any further Obligations arising, at which time it shall promptly distribute the balance of the Post-Petition Holdback, if any, to the Debtor, or (ii) as further ordered by the Court.</p> <p><u>Setoff of Post-Petition Legal Fees.</u> Credit Suisse is authorized to set off against the Post-Petition Holdback all Post-Petition Legal Fees, as incurred. Prior to setting off any amounts against the Post-Petition Holdback for the Post-Petition Legal Fees, Credit Suisse shall provide the Debtor, the Office of the United States Trustee and counsel to any official committee appointed in this case (each a “<u>Notice Party</u>”) a copy of its invoice and supporting time and disbursement records, which may be redacted as appropriate for reasons of confidentiality, attorney-client privilege and attorney work product, and shall afford such parties ten (10)-days’ opportunity to object to such fees and expenses (the “<u>Objection Period</u>”). In the event that any objection is filed within the Objection Period, the Court shall consider the approval of such fees by determining whether such fees were reasonable, consistent with the standards set forth in sections 330(a)(3)(A), (B), (D), (E) and (F) and 330(a)(4)(A)(i) of the Bankruptcy Code, before Credit Suisse shall be permitted to recover such amounts. For the avoidance of doubt, it shall not be an appropriate basis for objection by a Notice Party that such Post-Petition Legal Fees, to the</p>

² The following constitutes the Debtor’s disclosure of the material terms of the Debtor’s proposed use of cash collateral pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2.

	<p>extent reasonable, were not incurred in connection with services that were reasonably likely to benefit the Debtor’s estate or necessary to the administration of the case. If no objection is asserted within the Objection Period, Credit Suisse shall be permitted, without being required to take any further action or seek any further approvals, to set off the Post-Petition Legal Fees set forth in such invoice against, and recover such amounts from, the Post-Petition Holdback.</p> <p><i>Superpriority Claim.</i> Credit Suisse shall have a superpriority claim (“Superpriority Claim”) pursuant to section 507(b) of the Bankruptcy Code on account of future Obligations. The Superpriority Claim is capped at \$4,500,000, <u>minus</u> the \$195,673.38 paid to Credit Suisse pursuant to paragraph [13] of the Stipulation and Order, <u>minus</u> any amounts that Credit Suisse has setoff pursuant to paragraph [14(b)] of the Stipulation and Order against the Post-Petition Holdback established pursuant to paragraph [14(a)] of the Stipulation and Order. All administrative expense and other priority claims shall be junior and subordinate in all respects (including, without limitation, in terms of payment or the exercise of remedies) to the Superpriority Claim.</p>
<p>Relief/Modification of the Automatic Stay (Stipulation and Order at ¶¶ [13, 14(b) and 18])</p>	<p>Subject to providing the notice required under paragraph [14(b)] of the Stipulation and Order, Credit Suisse shall be permitted to set off the Pre-Petition Legal Fees from the Debtor Funds and the Post-Petition Legal Fees from the Post-Petition Holdback without the need to obtain further order from the Court.</p>

3. The Debtor has no secured creditors and is unaware of any party claiming an interest in the Debtor Assets other than Credit Suisse.

Jurisdiction

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The legal predicates for the relief set forth herein are sections 105, 361, 363 and 507 of the Bankruptcy Code, Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (“**Local Rules**”).

Relevant Factual Background

A. The Cash Collateral and Credit Suisse's Putative Interest Therein

6. Prior to the Petition Date, the Debtor entered into that certain Customer Agreement, Prime Broker Annex thereto and Credit Annex thereto, dated as of July 7, 2006 (together with all other annexes, amendments, and supplements thereto, the "**Customer Agreement**," a copy of which is attached hereto as Exhibit A) with Securities USA. The Customer Agreement establishes the terms and conditions upon which Securities USA would open and maintain one or more accounts for the Debtor for purposes of the Debtor transacting business with Securities USA on behalf of itself and as agent for any other Credit Suisse entity. Credit Suisse did open one such account (the "**Brokerage Account**"), which as of the date hereof holds cash in the amount of \$1,615,987.05 (the "**Debtor Funds**") and 1,000 shares (the "**Helix A-1 Shares**," together with the Debtor Funds, the "**Debtor Assets**") of Series A-1 Cumulative Convertible Preferred Shares of Helix Energy Solutions Group, Inc. ("**Helix**"). The Debtor believes the Helix A-1 Shares have a value of not less than \$8,231,325.00 as of the date of this Motion.

7. The Customer Agreement grants Credit Suisse:

a continuing first priority security interest in, a lien on and a right of set-off against all Collateral³ . . . and all such Collateral shall be subject to a general lien and a continuing first security interest and fixed charge in favor of [Credit Suisse], in each case securing the discharge of all Obligations,⁴ Contracts with [Credit Suisse] and other liabilities of [Debtor] to [Credit Suisse], whether now existing or hereafter arising

³ "**Collateral**" is defined in the Customer Agreement at ¶ 3(e), and it includes amounts maintained in the Brokerage Account, including the Debtor Assets.

⁴ "**Obligations**" are broadly defined in the Customer Agreement to include, *inter alia*, any obligation or liability owing in respect of any customer account of the Debtor including, without limitation, Credit Suisse's "costs and expenses, including, without limitation, reasonable attorney's fees and expenses, incurred in connection with the enforcement or collection by [Credit Suisse] of its rights or claims against [the Debtor], under any Contract with [Credit Suisse] or otherwise." Customer Agreement at ¶ 2.

Customer Agreement at ¶ 3. Credit Suisse has asserted that the Debtor Assets in the Brokerage Account constitute “cash collateral,” as such term is used in section 363(a) of the Bankruptcy Code, that secure any and all Obligations owed to Credit Suisse under the Customer Agreement and the Contracts (as defined below).

8. The Customer Agreement provides that the Debtor shall be liable for, among other things, the following:

- “Payment of reasonable legal and other expenses incurred in connection with the enforcement of [the] Contracts,” Customer Agreement at ¶ 2(g);
- “Any loss or expense incurred in connection with the exercise of remedies under [the Customer Agreement] following the termination of [the Customer Agreement] or the exercise of any other remedies by [Credit Suisse],” Customer Agreement at ¶ 7(b); and
- Releasing, indemnifying and holding harmless Credit Suisse for “any loss, claim, damage or expense (including reasonable attorneys’ fees and expenses)... arising out of or in connection with [the Customer Agreement] or any Contract,” Customer Agreement at ¶ 13.

B. Termination of the Prime Brokerage Relationship and Swap Transactions

9. Contemporaneous with entering into the Customer Agreement, the Debtor and Credit Suisse entered into certain related agreements (each a “**Contract**,” as defined in the Customer Agreement),⁵ including that certain Multicurrency-Cross Border ISDA Master Agreement between Securities Europe and the Debtor, dated as of July 7, 2006, together with the Credit Support Annex and schedules thereto and a Portfolio Swap Annex thereto, pursuant to which Securities Europe and the Debtor entered into certain swap transactions (the “**Swaps**”).

10. On May 23, 2012, Credit Suisse advised the Debtor that it was terminating the parties’ prime brokerage relationship and, specifically, that the Customer Agreement and certain related documents would be terminated as of June 7, 2012. On that same date, Credit

⁵ The term “Contracts” includes the Customer Agreement.

Suisse advised the Debtor that the Swaps would become terminable upon providing the Debtor with one (1) business day notice.

11. On June 15, 2012, Credit Suisse purported to exercise its rights under the Customer Agreement and liquidated 22,000 shares of Series D-1 Cumulative Convertible Preferred Stock (each an “**ION D-1 Share**”) of ION Geophysical Corporation (“**ION**”) and 5,000 shares of Series D-2 Cumulative Convertible Preferred Stock (each an “**ION D-2 Share**”) and with the ION D-1 Shares, collectively, the “**ION Shares**”) of ION, each at prices of \$1,461.4011 per share, for total proceeds of \$39,457,666.02. From June 15 through 25, Credit Suisse closed-out the Swaps, and as of June 25, 2012, the Swaps were fully closed out. After giving effect to the amounts set off by Credit Suisse related to the Swaps and the close out of the Swaps from the proceeds of the ION Shares, the assets in the Brokerage Account consisted of the Debtor Funds in the amount of \$1,615,987.05 and the Helix A-1 Shares.

C. The Debtor’s Need for and Request to Use the Cash Collateral and Credit Suisse’s Adequate Protection Package

12. A significant portion of the Debtor’s assets are illiquid, and the Debtor has a limited amount of liquid assets. The Debtor Funds represent an important source of liquidity for the Debtor and represent substantially all of the unrestricted cash assets of the Debtor. Without access to the Debtor Funds, the Debtor will be unable to fund the operation of its business and the administration of this chapter 11 case.

13. Shortly before the Petition Date, the Debtor requested that Credit Suisse return to it the cash in the Brokerage Account. By letter dated June 21, 2012, Credit Suisse advised the Debtor that it would be “premature for Credit Suisse to release any assets at this time given that the full extent of Fletcher’s indebtedness to Credit Suisse under applicable agreements has yet to be determined.”

14. Shortly after the Petition Date, the Debtor requested that Credit Suisse immediately turnover the Debtor Funds and, upon direction, transfer the Helix A-1 Shares to an account designated by the Debtor. Credit Suisse responded that:

- it holds a valid, binding, enforceable, unavoidable, and perfected first priority security interest in and liens on the Debtor Assets;
- the Debtor Assets represent cash collateral pursuant to section 363 of the Bankruptcy Code in which both the Debtor and Credit Suisse have an interest;
- Credit Suisse is entitled to setoff amounts owed to Credit Suisse (including legal fees and expenses) now or in the future against the Debtor Assets, pursuant to the terms of the Customer Agreement; and
- any such setoff is permissible under applicable law including, but not limited to, section 362(b)(6) of the Bankruptcy Code.

The current, liquidated obligations asserted to be owing under the Customer Agreement as of the Petition Date consist of \$195,673.38 in attorney's fees and expenses incurred by Credit Suisse in connection with Credit Suisse's rights and obligations under the Contracts (the "**Pre-Petition Legal Fees**") and with the Post-Petition Legal Fees, the "**Credit Suisse Legal Fees**").⁶ It is the Debtor's understanding that the contingent, post-petition Obligations that Credit Suisse asserts give rise to its secured claim would arise primarily from any future investigation or litigation involving Credit Suisse related to its relationship with the Debtor and the Contracts, including attorney's fees and costs (all such future amounts, along with any other post-petition Obligations purportedly owing to Credit Suisse, the "**Post-Petition Obligations**"). The Debtor reserves its rights with respect to whether any such Post-Petition Obligations constitute "Obligations" under the Contracts that the Debtor is obligated to pay to Credit Suisse and whether such amounts

⁶ The Debtor reserves the right to challenge whether any of the Credit Suisse Legal Fees are valid Obligation for which the Debtor is required to reimburse Credit Suisse, and the Debtor is not stipulating to or admitting that any of the Credit Suisse Legal Fees are valid Obligations giving rise to a secured claim against the Debtors pursuant to the Customer Agreement and other Contracts.

constitute “secured” claims for which the Debtor Assets serve as cash collateral that would entitle Credit Suisse to adequate protection.

15. Nonetheless, because potential, future claims under the Customer Agreement and the Contracts may arise, that are, at least arguably, secured claims, the Debtor and Credit Suisse have negotiated the terms upon which Credit Suisse would consent to the Debtor’s usage of the Debtor Assets, which represent cash collateral. The Debtor and Credit Suisse have agreed to adequate protection pursuant to sections 361 and 363(e) of the Bankruptcy Code to compensate Credit Suisse for any diminution in the value of its cash collateral. In sum, the Stipulation and Order provides Credit Suisse the following adequate protection:

- Authorizing Credit Suisse to set off the Pre-Petition Legal Fees against the Debtor Funds;
- Allowing Credit Suisse to retain the Post-Petition Holdback, in the amount of \$400,000, for purposes of setting off and recovering the amount of Post-Petition Legal Fees; and
- Granting Credit Suisse a superpriority claim on account of any future Obligations under section 507(b) of the Bankruptcy Code, which, when added to the amounts set off by Credit Suisse from the Debtor Funds and the Post-Petition Holdback on account of the Credit Suisse Legal Fees, shall not exceed \$4.5 million.

The Debtor is not stipulating to the amount, extent or validity of Credit Suisse’s claims under the Customer Agreement related to Post-Petition Obligations, and as a result, amounts paid in accordance with the Stipulation and Order are subject to the Debtor’s rights to recover any amounts that result from a successful challenge to Credit Suisse’s contention that any amounts constitute “Obligations” under the Customer Agreement.

Basis for the Relief Requested

A. *The Requirement to Provide Adequate Protection*

16. Section 363 of the Bankruptcy Code governs a debtor's use of property of the estate, such as the Debtor Assets. The Debtor Assets, which are cash and marketable securities, fall within the type of assets that are defined as "cash collateral" under the Bankruptcy Code. *See* 11 U.S.C. § 363(a). Credit Suisse has contended that it has future unliquidated claims that are secured by the Debtor Assets, and Credit Suisse has the burden of proof as to the "validity, priority or extent," of its interest in the Debtor Assets. *See* 11 U.S.C. § 363(p)(2). As set forth above, the Debtor has reserved the right to challenge to what extent any post-petition amount asserted by Credit Suisse represents a valid "Obligation" giving rise to a secured claim. Therefore, the Debtor Assets represent, at a minimum, the putative "cash collateral" of Credit Suisse for purposes of section 363 of the Bankruptcy Code.⁷

17. Under section 363(c) of the Bankruptcy Code, the

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code further provides that:

Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold or leased, or proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest.

⁷ The Debtor is not stipulating to the extent of any interest that Credit Suisse has in the Debtor Assets nor is the Court so determining such interest through the Stipulation and Order.

11 U.S.C. § 363(e). Credit Suisse has requested that the Debtor provide it adequate protection with respect to the Debtor Assets. As a result, the Bankruptcy Code requires the Debtor to provide Credit Suisse with adequate protection with respect to Credit Suisse's interest in the Debtor Assets for the Debtor to use such assets.

B. The Proposed Adequate Protection is Appropriate

18. What constitutes adequate protection is a fact specific inquiry determined on a case-by-case basis. *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Realty Southwest Assocs.*, 140 B.R. 360, 366 (Bankr. S.D.N.Y. 1992). Section 361 of the Bankruptcy Code provides a non-exhaustive list of acceptable forms of adequate protection, including cash payments, additional liens, replacement liens, and the "indubitable equivalent of such entity's interest in such property." 11 U.S.C. § 361. In addition, section 507(b) of the Bankruptcy Code provides:

If the trustee, under section 362, 363, or 364 of this title, provides adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(2) of this section arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364 (d) of this title, then such creditor's claim under such subsection shall have priority over every other claim allowable under such subsection

11 U.S.C. § 507(b).

19. The purpose of adequate protection is to protect a secured creditor from the decline in the value of its collateral caused by a debtor's use of the collateral during its chapter 11 case, *see In re Carbone Companies*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 20008); *In re Continental Airlines, Inc.*, 146 B.R. 536, 539-40 (Bankr. D. Del. 1992); *In re Alyucan Interstate Corp.*, 12 B.R. 803, 808-09 (Bankr. D. Utah 1981), and "to insure that the secured

creditor receives value for which the creditor bargained for prior to the debtor's bankruptcy." *In re WorldCom, Inc.*, 304 B.R. 611, 618-19 (Bankr. S.D.N.Y. 2004). Courts have awarded adequate protection to parties whose only "secured claims" are contingent, unliquidated indemnification claims. *In re American Business Fin. Svcs.*, Case No. 05-10203 (MFW), 2008 Bankr. Lexis 1225, at *26 (Bankr. D. Del. Apr. 10, 2008) (providing escrow of \$2 million cash as adequate protection for potential indemnity claims); *In re Lombard Wall, Inc.*, 23 B.R. 165 (Bankr. S.D.N.Y. 1982) (providing escrow of \$1.5 million in cash and securities as adequate protection for potential).

20. The Debtor believes that the proposed protection of Credit Suisse's putative interest in the Debtor Assets is appropriate and more than adequate to protect Credit Suisse from any diminution in the value of its putative interest in the Debtor Assets.⁸ Because the Debtor will use a portion of the Debtor Assets to finance its chapter 11 efforts during this case, at a minimum, there will be a diminution in the value of the Debtor Assets themselves. Depending on the amount of the Debtor Assets used in this case, any deficiency in the Post-Petition Holdback and the extent of Credit Suisse's interest in the Debtor Assets, Credit Suisse may face a diminution in the value of the collateral securing its putative claim.

21. First, and foremost, Credit Suisse has consented to the adequate protection proposed by the Debtor. Second, the Debtor believes that the net amount of the adequate protection being provided to Credit Suisse (\$4.5 million) is well in excess of what can reasonably be estimated to be the universe of any future Obligations under the Customer Agreement and the Contracts – what have been asserted, to date, to be Credit Suisse Legal Fees – that are secured by the Debtor Assets. Further, pursuant to the Stipulation and Order, all liquidated, pre-petition

⁸ Pursuant to section 363(p)(1), the Debtor has the burden of proof with respect to adequate protection. 11 U.S.C. §363(p)(1).

amounts that Credit Suisse asserts it is owed under the Contracts will be paid from the Debtor Funds. As a result, other than post-petition legal fees and expenses it may have incurred to date, Credit Suisse will have no interest in the Debtor Assets arising from a non-contingent, liquidated claim. Third, the amount of the Superpriority Claims is significantly less than the value of both the Debtor Assets (valued at approximately \$9.8 mm prior to deducting any Credit Suisse Legal Fees) and the Debtor's total assets (valued at approximately \$47.1 mm). Since the Superpriority Claim can be satisfied from the proceeds of any of the Debtor's assets (which are unencumbered other than Credit Suisse's interests), a significant "equity cushion" exists as to the Superpriority Claim and provides Credit Suisse with adequate protection. *See In re Elmira Litho, Inc.*, 174 B.R. 892, 904 (Bankr. S.D.N.Y. 1994) ("An equity cushion, therefore, provides adequate protection if it is sufficiently large to ensure that the secured creditor will be able to recover its entire debt from the security at the completion of the case.").

22. For the foregoing reasons, the Debtor submits that it is necessary and appropriate to authorize the Debtor to use the Debtor Assets, to the extent such authorization is necessary pursuant to sections 363(c) and (e) of the Bankruptcy Code, and that the terms of the Stipulation and Order provide Credit Suisse with adequate protection to the extent of its interest in the Debtor Assets.

Notice

23. The Debtor will provide notice of this Motion and the proposed Stipulation and Order to: (a) the U.S. Trustee; (b) the defendants in the adversary proceeding pending before the Bankruptcy Court styled *Fletcher International, Ltd. v. Fletcher Income Arbitrage Fund In Voluntary Liquidation, et al.*, Adversary Proceeding Number 12-01740; (c) the parties listed on the Debtor's list of its top twenty (20) unsecured creditors; and (d) all parties that have requested notice pursuant to Bankruptcy Rule 2002 as of the date prior to this

Stipulation and Order being filed with the Court. The Debtor has no secured creditors and is unaware of any party claiming a secured interest in the Debtor Assets other than Credit Suisse. In light of the nature of the relief requested, the Debtor submits that no other or further notice is required.

WHEREFORE, the Debtor respectfully requests that the Court approve and enter the Stipulation and Order and grant such other and further relief as is necessary and appropriate.

Dated: August 31, 2012
New York, New York

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Daniel F. X. Geoghan

David R. Hurst
Daniel F. X. Geoghan
1270 Avenue of the Americas, Suite 2210
New York, New York 10020
Telephone: (212) 332-8840
Facsimile: (212) 332-8855

*Proposed Counsel to the Debtor
and Debtor-in-Possession*

EXHIBIT A

Hearing Date: October 2, 2012 at 9:45 a.m. (ET)
Objection Deadline: September 25, 2012 at 4:00 p.m. (ET)

David R. Hurst
Daniel F. X. Geoghan
YOUNG CONAWAY STARGATT & TAYLOR, LLP
1270 Avenue of the Americas, Suite 2210
New York, New York 10020
Telephone: (212) 332-8840
Facsimile: (212) 332-8855

Proposed Counsel to the Debtor and Debtor-in-Possession

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

In re:)	Chapter 11
FLETCHER INTERNATIONAL, LTD,)	Case No. 12-12796 (REG)
Debtor.)	

STIPULATION AND FINAL ORDER BY AND BETWEEN FLETCHER INTERNATIONAL, LTD. AND CREDIT SUISSE SECURITIES (USA) LLC (A) AUTHORIZING THE USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. §363, (B) GOVERNING RETURN OF ASSETS TO THE DEBTOR, (C) GRANTING ADEQUATE PROTECTION TO CREDIT SUISSE PURSUANT TO 11 U.S.C. §§ 105(A), 361, 362 AND 363, AND (D) ALLOWING SETOFF BY CREDIT SUISSE

This Stipulation and Final Order (the “**Stipulation and Order**”) is entered into by and between the undersigned parties to (A) authorize Fletcher International, Ltd., the debtor and debtor-in-possession (the “**Debtor**”) in the above-captioned case (“**Case**”), to utilize cash collateral pursuant to 11 U.S.C. §363, in which Credit Suisse Securities (USA) LLC (“**Securities USA,**”) and its current and future subsidiaries, parents and affiliates including, without limitation, Credit Suisse Securities (Europe) Limited (“**Securities Europe**” and, collectively with the foregoing entities, “**Credit Suisse**”) have an interest; (B) govern the return of certain assets to the Debtor; (C) grant adequate protection to the interests of Credit Suisse in such cash

collateral; and (D) allow setoff by Credit Suisse against certain assets of the Debtor. **IT IS HEREBY FOUND** that:

1. Commencement of Chapter 11 Case. The Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) on June 29, 2012 (the “**Petition Date**”). The Debtor remains in possession of its property and is continuing to operate and manage its business as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. Jurisdiction. This Court has core jurisdiction over this case, this Stipulation and Order and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334.

3. Customer Agreement. Prior to the Petition Date, the Debtor entered into that certain Customer Agreement, Prime Broker Annex thereto and Credit Annex thereto, dated as of July 7, 2006 (together with all other annexes, amendments, and supplements thereto, the “**Customer Agreement**”) with Securities USA. The Customer Agreement establishes the terms and conditions upon which Securities USA would open and maintain one or more accounts for the Debtor for purposes of the Debtor transacting business with Securities USA on behalf of itself and as agent for any other Credit Suisse entity. Contemporaneously therewith, the Debtor and Credit Suisse entered into certain related agreements (each a “**Contract**,” as defined in the Customer Agreement¹), including that certain Multicurrency-Cross Border ISDA Master Agreement between Securities Europe and the Debtor, dated as of July 7, 2006 (together with the

¹ “**Contracts**,” as used herein, has the meaning ascribed to it in the Preamble to the Customer Agreement and includes, the Customer Agreement, as well as any other agreements to which Debtor is a party. Such other contracts would thus include, without limitation, the ISDA; a Securities Lenders Agreement by the Debtor with Securities Europe and Securities USA, together with any and all annexes thereto, dated July 7, 2006; and an Arranging Loan Agreement by the Debtor with Securities Europe and Securities USA, dated July 7, 2006.

Credit Support Annex and schedules thereto and a Portfolio Swap Annex thereto, the “**ISDA**”), pursuant to which Securities Europe and the Debtor entered into certain swap transactions (the “**Swaps**”).

Among other things, the Customer Agreement:

(a) Granted to Credit Suisse “a continuing first priority security interest in, a lien on and a right of set-off against all Collateral²”, and stated that “all such Collateral shall be subject to a general lien and a continuing first security interest and fixed charge in favor of [Credit Suisse], in each case securing the discharge of all Obligations,³ Contracts with [Credit Suisse] and other liabilities of [Debtor] to [Credit Suisse], whether now existing or hereafter arising”;⁴

(b) Requires the Debtor to pay “reasonable legal and other expenses incurred in connection with the enforcement of [the] Contracts”;⁵

(c) Made the Debtor liable to Credit Suisse for “any loss or expense incurred in connection with the exercise of remedies under [the Customer Agreement] following the termination of [the Customer Agreement] or the exercise of any other remedies by [Credit Suisse]”;⁶

² “Collateral” is defined in the Customer Agreement at ¶ 3(e) (“**Collateral**”).

³ “Obligations” are broadly defined in the Customer Agreement to include, *inter alia*, any obligation or liability owing in respect of any customer account of the Debtor including, without limitation, Credit Suisse’s “costs and expenses, including, without limitation, reasonable attorney’s fees and expenses, incurred in connection with the enforcement or collection by [Credit Suisse] of its rights or claims against [the Debtor], under any Contract with [Credit Suisse] or otherwise” (“**Obligations**”).

⁴ Customer Agreement, at ¶ 3.

⁵ Customer Agreement, at ¶ 2(g).

⁶ Customer Agreement, at ¶ 7(b).

(d) Requires the Debtor to, *inter alia*, indemnify and reimburse Credit Suisse for any loss or expense, “including reasonable attorneys’ fees and expenses” arising out of or in connection with the Customer Agreement or any other Contract;⁷

(e) By its own terms, expressly provides that the Customer Agreement is “a ‘securities contract’ within the meaning of the United States Bankruptcy Code (Title 11 U.S.C., Section 741(7)) . . . ”;⁸ and

(f) Was amended by that certain letter agreement (the “**Letter Agreement**”), dated April 3, 2007, between Securities USA, on behalf of itself and as agent for Securities Europe, and the Debtor to provide, *inter alia*, that the Customer Agreement “is a ‘master netting agreement’ and that [Securities USA, Securities Europe and the Debtor] are ‘master netting participants’, each term as defined in Section 561 of the Bankruptcy Code.”⁹

4. **Debtor Assets.** Pursuant to the Customer Agreement, the Debtor has at least one account with Securities USA, account number XXXX50 (the “**Brokerage Account**”), which as of August 31, 2012 holds cash in the amount of \$1,615,987.05 (the “**Debtor Funds**”) and 1,000 Series A-1 Cumulative Convertible Preferred Shares of Helix Energy Solutions Group, Inc. (the “**Helix A-1 Shares**,” together with the Debtor Funds, the “**Debtor Assets**”);

5. **Certain Pre-petition Events.** Securities USA notified Debtor on July 7, 2011 of Securities USA’s decision to terminate the Customer Agreement and Credit Suisse’s prime brokerage relationship with Debtor. Also on that date, Securities Europe gave notice to Debtor of Securities Europe’s decision to terminate the ISDA, and all open Swaps thereunder.

⁷ Customer Agreement, at ¶ 13.

⁸ Customer Agreement, at ¶ 27(f).

⁹ Letter Agreement, at ¶ 2. The Letter Agreement is also a Contract, as that term is used in the Customer Agreement.

At the request of Debtor, Credit Suisse on multiple occasions extended the applicable termination dates. Credit Suisse has advised the Debtor that during the period from July 7, 2011, until the Petition Date, many developments occurred and many actions were taken as to which Credit Suisse sought and received legal advice for which it incurred legal fees and expenses of \$195,673.38 (the “**Pre-Petition Legal Fees**”) as of June 30, 2012, in connection with Credit Suisse’s rights and obligations under the Contracts, including \$154,005.23 in legal fees and expenses of United States counsel, and \$41,668.15 in legal fees and expenses of counsel in Bermuda and the Cayman Islands.

6. Certain Post-petition Events. Following the Petition Date, the parties to this Stipulation and Order exchanged the following communications with respect to the Debtor Assets:

(a) On July 5, 2012, the Debtor made demand on Securities USA to immediately turnover to the Debtor all of the Debtor Assets, which Debtor asserted constitute assets of the Debtor’s estate under section 541 of the Bankruptcy Code;

(b) Securities USA responded to the Debtor’s request and asserted, *inter alia*, that (i) Credit Suisse holds a valid, binding, enforceable, unavoidable, and perfected first priority security interest in and liens on the Debtor Assets; (ii) the Debtor Assets represent cash collateral pursuant to section 363 of the Bankruptcy Code in which both the Debtor and Credit Suisse have an interest; (iii) Credit Suisse is entitled to setoff amounts owed to Credit Suisse (including legal fees and expenses) now or in the future against the Debtor Assets, pursuant to the terms of the Customer Agreement; and (iv) any such setoff is permissible under applicable law including, but not limited to, section

362(b)(6) of the Bankruptcy Code. Securities USA declined to turnover the Debtor Assets pending resolution of, among other things, the foregoing issues.

7. Cash Collateral. As of the Petition Date, all Collateral constituted “Cash Collateral” as defined in Section 363(a) of the Bankruptcy Code. The Cash Collateral is subject to rights of setoff under the Customer Agreement and applicable law and, by virtue of such setoff rights, are subject to liens in favor of Credit Suisse pursuant to sections 506(a) and 553 of the Bankruptcy Code.

8. Adequate Protection. Credit Suisse is entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the Collateral for, and equal in amount to, the aggregate diminution in value of such interests. Under the circumstances, and given that the adequate protection granted under this Stipulation and Order are consistent with the Bankruptcy Code, the Court finds for purposes of entry of this Stipulation and Order that such adequate protection is reasonable and sufficient, as of the date hereof, to protect the interests of Credit Suisse.

9. Turnover. The parties have agreed that Credit Suisse will turn over to the Debtor \$1,020,313.67 of the Debtor Funds and all of the Helix A-1 Shares, and that Credit Suisse will retain the balance of the Debtor Funds, in the amount of \$595,673.38 (consisting of \$195,673.38 to satisfy the Pre-Petition Legal Fees, as defined in paragraph 5 and \$400,000.00 in Post-Petition Holdback, as defined in paragraph 14(a)), in the Brokerage Account, subject to its rights under the Customer Agreement and under this Stipulation and Order as set forth in paragraphs 13 and 14.

10. Necessity of Agreement. The Debtor represents that the Debtor Funds are a significant source of liquidity for the Debtor during this Case and the Debtor cannot meet its

ongoing post-petition obligations unless it is authorized to use the Debtor Funds. The relief provided herein is, therefore, necessary, essential, and appropriate for the continued operation of the Debtor's business and the preservation of its estate.

11. Good Faith. The Debtor and Credit Suisse have engaged in negotiations regarding the matters addressed in this Stipulation and Order. Based on the record before the Court, the terms set forth herein have been negotiated in good faith and at arm's length, and reflect the Debtor's exercise of prudent business judgment.

12. Notice. Notice of (i) a hearing to consider the final relief requested in this Stipulation and Order, and (ii) the relief requested in this Stipulation and Order, has been provided by the Debtor, whether by telecopy, email, or first class mail, to certain parties in interest, including: (a) the U.S. Trustee; (b) the defendants in the adversary proceeding pending before the Bankruptcy Court styled *Fletcher International, Ltd. v. Fletcher Income Arbitrage Fund In Voluntary Liquidation, et al.*, Adversary Proceeding Number 12-01740; (c) the parties listed on the Debtor's list of its top twenty (20) unsecured creditors; and (d) all parties that have requested notice pursuant to Bankruptcy Rule 2002 as of the date prior to this Stipulation and Order being filed with the Court. Under the circumstances, such notice of the hearing and the relief requested in the Stipulation constitutes due and sufficient notice and complies with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001(b).

Based upon the foregoing findings and conclusions, it is hereby **ORDERED AND ADJUDGED** that:

13. Setoff of Pre-Petition Legal Fees. Upon approval of this Stipulation, Credit Suisse shall be authorized to setoff the Pre-Petition Legal Fees against, and to recover such amount from, the Debtor Funds.

14. Adequate Protection. Credit Suisse is hereby granted the following adequate protection of its interests in the Debtor Assets:

(a) Post-Petition Holdback. Credit Suisse shall retain and maintain \$400,000.00 of the Debtor Funds in the Brokerage Account (the “**Post-Petition Holdback**”) in order to secure the payment of any future Obligations, as defined in the Customer Agreement, including, without limitation, all post-petition legal fees and expenses incurred by Credit Suisse that constitute Obligations under the Customer Agreement (the “**Post-Petition Legal Fees**”). Credit Suisse may retain any amount of the Post-Petition Holdback not setoff subject to paragraph 14(b) until (i) there is no longer a possibility of any further Obligations arising, at which time it shall promptly distribute the balance of the Post-Petition Holdback, if any, to the Debtor, or (ii) as further ordered by the Bankruptcy Court.

(b) Setoff of Post-Petition Legal Fees. Credit Suisse is authorized to setoff against the Post-Petition Holdback all Post-Petition Legal Fees, as incurred. Prior to setting off any amounts against the Post-Petition Holdback for the Post-Petition Legal Fees, Credit Suisse shall provide the Debtor, the Office of the United States Trustee and counsel to any official committee appointed in this case (each a “**Notice Party**”) a copy of its invoice and supporting time and disbursement records, which may be redacted as appropriate for reasons of confidentiality, attorney-client privilege and attorney work product, and shall afford such parties ten (10)-days’ opportunity to object to such fees and expenses (the “**Objection Period**”). In the event that any objection is filed within the Objection Period, the Bankruptcy Court shall consider the approval of such fees by determining whether such fees were reasonable, consistent with the standards set forth in

sections 330(a)(3)(A), (B), (D), (E) and (F) and 330(a)(4)(A)(i) of the Bankruptcy Code, before Credit Suisse shall be permitted to set-off such amounts. For the avoidance of doubt, it shall not be an appropriate basis for objection by a Notice Party that such Post-Petition Legal Fees, to the extent reasonable, were not incurred in connection with services that were reasonably likely to benefit the Debtor's estate or necessary to the administration of the case. If no objection is asserted within the Objection Period, Credit Suisse shall be permitted, without being required to take any further action or seek any further approvals, to setoff the Post-Petition Legal Fees set forth in such invoice against, and recover such amounts from, the Post-Petition Holdback.

(c) Superpriority Claim. Credit Suisse shall have a superpriority claim ("Superpriority Claim") pursuant to section 507(b) of the Bankruptcy Code on account of future Obligations. The Superpriority Claim is capped at \$4,500,000, minus the \$195,673.38 paid to Credit Suisse pursuant to paragraph 13 hereof, minus any amounts that Credit Suisse has setoff pursuant to paragraph 14(b) against the Post-Petition Holdback established pursuant to paragraph 14(a). All administrative expense and other priority claims shall be junior and subordinate in all respects (including, without limitation, in terms of payment or the exercise of remedies) to the Superpriority Claim.

15. Turnover of a Portion of Debtor Funds. The Debtor shall provide Credit Suisse with the relevant account information. Within one (1) business day of receipt of such account information following approval of this Stipulation and Order, Credit Suisse shall wire to the Debtor \$1,020,313.67, which is the current amount of the Debtor Funds, less the amounts set forth in paragraphs 5 and 14 hereof (which amounts total \$595,673.38).

16. Turnover of Helix A-1 Shares. The Debtor shall provide Credit Suisse with the relevant brokerage account information. Within two (2) business days of the receipt of such brokerage account information following approval of this Stipulation and Order, Credit Suisse shall initiate the process to transfer to the Debtor the Helix A-1 Shares.

17. Reservation of Rights. Nothing set forth in this Stipulation and Order shall be deemed an admission or acknowledgement of, a waiver or release of or otherwise effect the claims, counterclaims, contract rights, causes of action and/or defenses thereto of the Debtor or Credit Suisse with respect to the relationship between the parties or any Contract, including (without limitation) those identified in paragraph 3 and footnote 1 of this Stipulation and Order. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgement by Credit Suisse, that the adequate protection granted herein does in fact adequately protect Credit Suisse against any diminution in value of its respective interests in the Collateral and Credit Suisse reserves its right to request any other or further forms of adequate protection for such interests. Nothing herein shall limit the right of Credit Suisse to file any claim, on an unsecured basis, against the Debtor to the extent that its claim exceeds the amount of the Superpriority Claim.

18. Modification of the Automatic Stay. The automatic stay under Section 362(a) of the Bankruptcy Code is hereby modified solely to the extent necessary to allow the parties hereto to comply with this Stipulation and Order.

19. Authorization. The parties hereby represent and warrant to each other that the signatories to this Stipulation and Order are authorized to execute this Stipulation and Order; that each has full power and authority to enter into this Stipulation and Order; that this

Stipulation and Order is duly executed and delivered, and constitutes a valid, binding agreement in accordance with its terms, subject to the approval of the Court.

20. Entire Agreement. This Stipulation and Order reflects the entire agreement of the parties and shall supersede all previous negotiations with respect to the subject matter hereof. All representations, warranties, promises, inducements, or statements of intention made by the parties with respect to the subject matter hereof are embodied in this Stipulation and Order, and the parties shall not be bound by, or liable for, any alleged representation, warranty, inducement, or statement of intention that is not expressly embodied herein.

21. Retention of Jurisdiction. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Stipulation and Order

22. Binding Effect; Successors and Assigns. The provisions of this Stipulation and Order shall be binding upon all parties in interest in this Case, including, without limitation, any committee that may be appointed in this Case, the Debtor and its successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of the Debtor) and Credit Suisse and its successors and assigns, and shall inure to the benefit of the Debtor, Credit Suisse and their respective successors and assigns.

STIPULATED and AGREED to this 31st day of August 2012 by:

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

MILBANK, TWEED, HADLEY &
MCCLOY LLP

/s/ Daniel F. X. Geoghan

Daniel F. X. Geoghan
1270 Avenue of the Americas, Suite 2210
New York, New York 10020
Telephone: (212) 332-8840
Facsimile: (212) 332-8855
dgeoghan@ycst.com

/s/ Richard T. Sharp

Richard T. Sharp
1 Chase Manhattan Plaza
New York, New York 10005
Telephone: (212) 530-5000
Facsimile: (212) 822-5209
rsharp@milbank.com

*Proposed Counsel to the Debtor and Debtor-
in-Possession*

Attorneys for Credit Suisse Securities (USA)
LLC

SO ORDERED this ____ day of October, 2012

Honorable Robert E. Gerber
United States Bankruptcy Judge