

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

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In re: :

LEHMAN BROTHERS INC., :

Debtor. :

Case No. 08-01420
(JMP) SIPA

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**STIPULATION AND ORDER IN CONNECTION WITH THE AVOIDANCE CLAIM
SETTLEMENT WITH EXECUTIVE FLITEWAYS INC.**

WHEREAS, on September 19, 2008 (the “FilingDate”), on the application of the Securities Investor Protection Corporation (“SIPC”), the Honorable Gerard E. Lynch, then a United States District Judge for the Southern District of New York, entered an Order Commencing Liquidation (the “LBI Liquidation Order”) pursuant to the provisions of SIPA, in the case captioned *Securities Investor Protection Corp. v. Lehman Brothers Inc.*, Case No. 08-CIV-8119 (GEL);

WHEREAS, the LBI Liquidation Order *inter alia*: (i) appointed James W. Giddens as Trustee (the “Trustee”) for the liquidation of the business of Lehman Brothers Inc. (“LBI”) pursuant to section 78eee(b)(3) of SIPA; and (ii) removed the case to the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) pursuant to section 78eee(b)(4) of SIPA;

WHEREAS, on or about August 23, 2010, the Trustee sent a letter to Executive Fliteways, Inc. (“EFI”) demanding repayment for certain transfers (the “Transfers”) totaling \$2,505,400.57 made by LBI to EFI during the 90 days prior to the Filing Date;

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 Filing Date as preferential and/or fraudulent transfers pursuant to sections 544, 547, 548 and 550 of the Bankruptcy Code (“Avoidance Proceedings”) (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);

WHEREAS, the Trustee, through his representatives, and EFI have evaluated the Transfers in order to determine whether the Transfers constitute preferential transfers subject to avoidance under sections 547 and 550 of the Bankruptcy Code, 11 U.S.C. §§ 547 and 550 and section 8(c)(3) of the SIPA, 15 U.S.C. § 78fff-2(c)(3);

WHEREAS, EFI has denied that the Transfers could give rise to Avoidance Proceedings and asserted that it possesses defenses to any Avoidance Proceedings commenced on account of the Transfers, including that the payments were made in the ordinary course of business; and

WHEREAS, the Trustee and EFI (each a “Party” and, together, the “Parties”) desire to avoid the expense and uncertainties of further litigation and to settle and compromise the Avoidance Claim and the Adversary Proceeding, subject to the terms of this Stipulation and Order; and

WHEREAS, the Trustee has determined, in consultation with his professional advisors, that it is in the best interests of the LBI Estate, its customers and creditors that the Avoidance Claim be released subject to the payment to the Trustee of One-Hundred Fifty Thousand Dollars (\$150,000.00) in the aggregate (the “Settlement Amount”), in the manner and upon the terms as set forth in this Stipulation and Order and agreed upon by the Parties;

WHEREAS, the Parties have negotiated in good faith concerning their respective rights with respect to the Avoidance Claim, and believe they have reached a fair and equitable and reasonable determination with respect to the Settlement Amount;

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. **Settlement.**

a. EFI agrees to pay, by wire transfer to LBI, pursuant to instructions provided by the Trustee, the Settlement Amount of \$150,000.00 on or before the later of three business days from the Effective Date (as defined below) or December 2, 2013.

b. EFI, on behalf of itself and all its affiliates and subsidiaries, agrees to waive any claims against the LBI estate, including, without limitation, any right to file a claim under section 502(h) of the Bankruptcy Code.

2. **Effective Date.** This Stipulation and Order shall be effective and binding upon the Parties as of the date this Stipulation and Order is so ordered by the Court (the "Effective Date").

3. **No Admission of Liability.** It is understood and agreed that the payment of the Settlement Amount under this Stipulation and Order is not to be construed against EFI as an admission of liability.

4. **Releases.**

a. Upon payment in full of the entire Settlement Amount, to the fullest extent permitted by applicable law, each Party, on its own behalf and on behalf of its current and former agents, employees, managers, members, subsidiaries, affiliates, assigns, heirs, attorneys, successors, and representatives (collectively, the "Releasors"), in consideration of the execution and delivery of this Stipulation and Order, 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 and former agents, employees, managers, members, subsidiaries, affiliates, assigns, heirs, attorneys, successors and representatives including, in the case of the Trustee, SIPC (collectively, the "Releasees"), and each of them, from any and all Claims (defined below in paragraph 4(b)) which the Releasors 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, from the beginning of the world to the date hereof.

b. As used in this paragraph and elsewhere in this Stipulation and Order, 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 Order, payment of the Settlement Amount, and granting the releases contained herein, it shall have no further rights, and the other Party to this Stipulation and Order shall have no further obligations, in connection with the Transfers.

5. **Representations and Warranties.**

a. Each Party hereby represents and warrants to the other Party that the person signing this Stipulation and Order on its behalf is duly authorized to enter into this Stipulation and Order 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 and Order.

b. Each Party hereby represents and warrants to the other Party that: (i) it has the power and authority to execute this Stipulation and Order; (ii) neither the execution nor the

performance of this Stipulation and Order by such Party violates any other contract by which such Party is bound; (iii) neither the execution nor the performance of this Stipulation and Order 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 and Order constitutes a valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

6. **Drafting And Construction of Agreement.** This Stipulation and Order 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.

7. **Entire Agreement.** This Stipulation and Order 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 and Order which fully and completely expresses the Parties' agreement. The Parties agree and affirm that the only consideration for the execution of this Stipulation and Order 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.

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

9. **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 and Order.

10. **Notices.** Any notices, demands, requests and communications required to be made by or relating to this Stipulation and Order 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
glemann@hugheshubbard.com

(b) if to EFI:

Executive Fliteways, Inc.
c/o Robert S. Moran, Jr., Esq.
McBreen & Kopko
110 Summit Ave.
Montvale, NJ 07645
Facsimile: (201) 476-0574
bmoran@mklawnj.com

11. **Counterparts.** This Stipulation and Order 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.

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

13. **Governing Law.** This Stipulation and Order, 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 and Order. 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 and Order) are incorporated in this Stipulation and Order 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
6th day of November, 2013.

By: /s/ Robert S. Moran, Jr.
Robert S. Moran, Jr.

MCBREEN & KOPKO
110 Summit Ave.
Montvale, NJ 07645
(201) 476-5400

ATTORNEYS FOR EXECUTIVE
FLITEWAYS, INC.

By: /s/ Gabrielle Glemann
Michael E. Salzman
Gabrielle Glemann

HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

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

SO ORDERED this ____ day of _____ 2013

UNITED STATES BANKRUPTCY JUDGE