

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



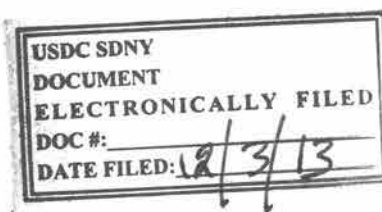
In re LEHMAN BROTHERS SECURITIES
AND ERISA LITIGATION

Case No. 09-MD-2017 (LAK)

This Document Applies To:

ECF CASE

*In re Lehman Brothers Equity/Debt
Securities Litigation, 08-CV-5523-LAK*



**~~PROPOSED~~ ORDER CONCERNING PROPOSED SETTLEMENT
WITH DEFENDANT ERNST & YOUNG LLP**

WHEREAS:

A. Class Representative Oklahoma Firefighters Pension and Retirement System (“Oklahoma”), the Court-appointed Lead Plaintiffs Alameda County Employees’ Retirement Association, Government of Guam Retirement Fund, Northern Ireland Local Government Officers’ Superannuation Committee, City of Edinburgh Council as Administering Authority of the Lothian Pension Fund, and Operating Engineers Local 3 Trust Fund (“Lead Plaintiffs”; collectively, with Oklahoma, “Plaintiffs”) on behalf of the Settlement Class (as hereinafter defined), and Ernst & Young LLP (“EY”; collectively, with Plaintiffs, the “Settling Parties”) entered into a Stipulation of Settlement and Release dated as of November 20, 2013 (the “Stipulation”), which, together with the exhibits annexed thereto, sets forth the terms and conditions of their proposed settlement and the release of claims and dismissal of the Action against EY with prejudice upon the terms and conditions set forth therein (the “EY Settlement” or “Settlement”);

B. Plaintiffs have moved the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order concerning the proposed Settlement;

C. EY does not oppose this request; and

D. The Court is familiar with and has reviewed the record in the Action and has reviewed the Stipulation, including the exhibits attached to the Stipulation, and found good cause for entering the following Order:

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court, for the purposes of this Order, adopts all defined terms as set forth in the Stipulation unless otherwise defined herein.

2. Pending further order of the Court, all litigation activity against or by EY in this Action, except that contemplated herein, in the Stipulation, in the Notice or in the Judgment, is hereby stayed and all hearings, deadlines and other proceedings in this Action to the extent they involve claims against EY, except for the Fairness Hearing (defined below), are hereby taken off calendar.

CLASS CERTIFICATION

3. The Court finds, upon a preliminary evaluation, that for purposes of the Settlement only, that the requirements of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, have been met and the Settlement Class (or “EY Settlement Class”) should be defined as all investors who (a) purchased or otherwise acquired Lehman Securities identified in Appendix A to the Stipulation, (b) purchased or otherwise acquired Lehman Structured Notes identified in Appendix B to the Stipulation, and/or (c) purchased or otherwise acquired Lehman common stock or call options and/or sold Lehman put options, during the Settlement Class Period. Excluded from the Settlement Class are (i) the named defendants in the Complaint, (ii)

Lehman, (iii) the executive officers and directors of each Defendant or Lehman, (iv) any entity in which any Defendant or Lehman have or had a controlling interest, (v) members of any Defendant's immediate families, (vi) the plaintiffs named in the actions listed on Appendix C to the Stipulation (the "Individual Actions") who do not request removal from the excluded list in accordance with Paragraph 34 of the Stipulation (the "Individual Action Plaintiffs"); (vii) any person or entity that has (a) litigated claims in any forum against EY arising out of the purchase of Lehman Securities during any portion of the Settlement Class Period and received a judgment, or (b) settled and released claims against EY arising out of the purchase of Lehman Securities during any portion of the Settlement Class Period (as identified on a confidential exhibit that will be produced by EY on a confidential basis to the Claims Administrator, but shall not be provided to Co-Lead Counsel or Lead Plaintiffs or to any other person or entity); and (viii) the legal representatives, heirs, successors or assigns of any such excluded party. Also excluded from the Settlement Class are any persons or entities who exclude themselves by filing a timely request for exclusion in accordance with the requirements set forth in the Notice.

4. The Court hereby finds based on a preliminary evaluation that pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of the Settlement only, the following are adequate class representatives and preliminarily certifies the following as Settlement Class Representatives for the Settlement Class: Lead Plaintiffs and Oklahoma. The Court further certifies Co-Lead Counsel as Class Counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

5. The Court finds, based on a preliminary evaluation, for purposes of the Settlement only, that as to the Settlement Class, the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the

number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Settlement Class Representatives are typical of the claims of the Settlement Class; (d) the Settlement Class Representatives and Co-Lead Counsel have and will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

MAILING AND PUBLICATION OF NOTICE

6. The Court authorizes Co-Lead Counsel to retain, and the Court hereby appoints, The Garden City Group, Inc. as the Claims Administrator to supervise and administer the notice procedure, as well as the processing of claims as more fully set forth below:

a. No later than 10 business days following entry of this Order, the Claims Administrator shall cause a copy of the Notice and Claim Form, substantially in the form annexed hereto as Exhibits A-1 and A-2, respectively, to be mailed by first-class mail, postage prepaid, to those members of the Settlement Class who may be identified through reasonable effort, including in the records that the Claims Administrator obtained in connection with the D&O Settlement and UW Settlements (the “Notice Date”);

b. A summary notice (the “Summary Notice”), substantially in the form annexed hereto as Exhibit A-3, shall be published once in the national edition of *The Wall Street Journal* and *Investor’s Business Daily* no later than 10 business days after the Notice Date; and

c. The Notice, the Summary Notice and the Claim Form shall also be placed on the Claims Administrator's website, and the website created for the D&O and UW Settlements, on or before the Notice Date.

7. The Court approves the form of the Notice and Summary Notice (together, the "Notices") and the Claim Form, and finds that the procedures established for publication, mailing and distribution of such Notices substantially in the manner and form set forth in Paragraph 6 of this Order meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934 (the "Exchange Act"), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), 15 U.S.C. § 78u-4(a)(7), the Constitution of the United States, and any other applicable law, and constitute the best notice practicable under the circumstances.

8. No later than 35 calendar days prior to the Settlement Hearing, Co-Lead Counsel shall cause to be filed with the Court affidavits or declarations showing that the mailing and publication have been made in accordance with this Order.

9. Nominees who purchased Lehman Securities for beneficial owners who are Settlement Class Members are directed to: (a) request within fourteen (14) calendar days of receipt of the Notice additional copies of the Notice and the Claim Form from the Claims Administrator for such beneficial owners, including those beneficial owners to which it previously sent a notice of the D&O or UW Settlements; or (b) send a list of the names and addresses of such beneficial owners to the Claims Administrator within fourteen (14) calendar days after receipt of the Notice, unless the names and addresses were previously provided to the Claims Administrator in connection with the D&O or UW Settlements. If a nominee elects to send the Notice to beneficial owners, such nominee is directed to mail the Notice within fourteen

(14) calendar days of receipt of the additional copies of the Notice from the Claims Administrator, and upon such mailing, the nominee shall send a statement to the Claims Administrator confirming that the mailing was made as directed. Upon full compliance with this Order, including the timely mailing of the Notice to beneficial owners, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought and reflecting compliance with these instructions, including timely mailing of the Notice, if the nominee elected or elects to do so. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Fund.

HEARING: RIGHT TO BE HEARD

10. The Court will hold a settlement hearing (the “Approval Hearing” or “Fairness Hearing” or “Settlement Hearing”) on ^{April 15, 2014} ~~[DATE TO BE INSERTED]~~, at ^{4:30} ~~12:00~~ p.m., in the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, Courtroom ²¹⁸ ~~12D~~, for the following purposes: (i) to determine whether the Settlement should be approved as fair, reasonable, adequate and in the best interests of the Settlement Class; (ii) to determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation, should be entered dismissing and releasing the Settled Claims (as that term is defined in the Stipulation) with prejudice; (iii) to rule upon the Plan of Allocation; (iv) to rule upon Co-Lead Counsel’s application for an award of attorneys’ fees and reimbursement of Litigation Expenses; and (v) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Papers in support of the Settlement, the Plan of Allocation and Co-Lead Counsel’s application for attorneys’ fees and reimbursement of Litigation Expenses shall be filed no later

than 35 calendar days prior to the Approval Hearing. Reply papers shall be filed no later than 7 calendar days prior to the Approval Hearing.

11. Any member of the Settlement Class may appear at the Approval Hearing and show cause why the proposed Settlement embodied in the Stipulation should or should not be approved as fair, reasonable, adequate and in the best interests of the Settlement Class, or why the Judgment should or should not be entered thereon, and/or to present opposition to the Plan of Allocation or to the application of Co-Lead Counsel for attorneys' fees and reimbursement of Litigation Expenses. However, no Settlement Class Member or any other person shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the terms of the Plan of Allocation or the application by Co-Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses, unless, no later than 21 calendar days prior to the Approval Hearing, that Settlement Class Member or person (i) filed said objections, papers and briefs with the Clerk of the United States District Court for the Southern District of New York; and (ii) has served written objections, by hand or first-class mail, including the basis therefor, as well as copies of any papers and/or briefs in support of his, her or its position upon each of the following counsel for receipt no later than 21 calendar days prior to the Approval Hearing: David Stickney, Bernstein Litowitz Berger & Grossmann LLP, 12481 High Bluff Drive, Suite 300, San Diego, CA 92130 and David Kessler, Kessler Topaz Meltzer & Check, LLP, 280 King of Prussia Road, Radnor, PA 19087 on behalf of the Plaintiffs and the Settlement Class; and Miles N. Ruthberg, Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022 as counsel for EY. Co-Lead Counsel will promptly provide copies of any objections received to counsel for EY *and file copies*

be with the Court.

12. Any objection must include: (a) the full name, address, and phone number of the objecting Settlement Class Member; (b) a list and documentation of all of the Settlement Class Member's transactions involving Lehman Securities during the Settlement Class Period, including brokerage confirmation receipts or other competent documentary evidence of such transactions, including the amount and date of each purchase, acquisition or sale and the price paid and/or received; (c) a written statement of all grounds for the objection accompanied by any legal support for the objection; (d) copies of any papers, briefs or other documents upon which the objection is based; (e) a list of ^{any} all persons who will be called to testify in support of the objection; (f) a statement of whether the objector intends to appear at the Approval Hearing; (g) a list of other cases in which the objector or the objector's counsel have appeared either as settlement objectors or as counsel for objectors in the preceding five years; and (h) the objector's signature, even if represented by counsel. If the objector intends to appear at the Approval Hearing through counsel, the objection must also state the identity of all attorneys who will appear on his, her or its behalf at the Approval Hearing. Any Settlement Class Member who does not make his, her or its objection in the manner provided for herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the Settlement as reflected in the Stipulation, to the Plan of Allocation or to the application by Co-Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses. By objecting to the Settlement, the Plan of Allocation and/or the application by Co-Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses, or otherwise requesting to be heard at the Approval Hearing, a person or entity shall be deemed to have submitted to the jurisdiction of the Court with respect to the person's or entity's objection or request to be heard and the subject matter of the Settlement, including, but not limited to,

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enforcement of the terms of the Settlement (including, but not limited to, the release of the Settled Claims provided for in the Stipulation and the Judgment).

13. If approved, all Settlement Class Members will be bound by the proposed Settlement provided for in the Stipulation, and by any judgment or determination of the Court affecting Settlement Class Members, regardless of whether or not a Settlement Class Member submits a Claim Form.

14. Any member of the Settlement Class may enter an appearance in the Action, at his, her or its own expense, individually or through counsel of his, her or its own choice. If they do not enter an appearance, they will be represented by Co-Lead Counsel.

15. The Court reserves the right to (a) adjourn or continue the Approval Hearing, or any adjournment or continuance thereof, without further notice to Settlement Class Members and (b) approve the Stipulation with modification and without further notice to Settlement Class Members. The Court retains jurisdiction of this Action to consider all further applications arising out of or otherwise relating to the proposed Settlement, and as otherwise warranted.

16. All Settlement Class Members shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Settlement Class.

CLAIMS PROCESS

17. In order to be potentially eligible to participate in the Settlement, a Settlement Class Member must complete and submit a Claim Form in accordance with the instructions contained therein, or have previously submitted a valid Claim Form in connection with the D&O or UW Settlements. To be valid and accepted, Claim Forms submitted in connection with the Settlement must be postmarked no later than 120 calendar days after the Notice Date.

18. Any Settlement Class Member who does not timely submit a valid Claim Form, or did not previously submit a valid Claim Form in connection with the D&O or UW Settlements, shall not be eligible to share in the Settlement Fund, unless otherwise ordered by the Court, but will otherwise be bound by all of the terms of the Stipulation and Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for therein.

EXCLUSION FROM THE SETTLEMENT CLASS

19. Any requests for exclusion must be submitted in accordance with the instructions included in the Notice and for receipt no later than 21 calendar days prior to the Approval Hearing. Any Settlement Class Member who wishes to be excluded from the Settlement Class should provide his, her or its name, address, and telephone number. The Settlement Class Member should also provide information containing the Settlement Class Member's transactions in Lehman Securities, including the date(s), price(s), type(s) and amount(s) of all purchases, acquisitions, and sales of Lehman Securities during the Settlement Class Period. The request must include a statement that the person or entity wishes to be excluded from the EY Settlement Class, and be signed by the person or entity requesting exclusion. All persons who submit valid and timely requests for exclusion in the manner set forth in this paragraph and the Notice shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any final judgment.

20. Any member of the Settlement Class who does not request exclusion from the Settlement Class in the manner stated in this Order and the Notice shall be deemed to have waived his, her or its right to be excluded from the Settlement Class, and shall forever be barred from requesting exclusion from the Settlement Class in this or any other proceeding, and shall

be bound by the Settlement and the Judgment, including, but not limited to the release of the Settled Claims against the Released Parties provided for in the Stipulation and the Judgment, if the Court approves the Settlement.

21. As set forth above, plaintiffs named in the Individual Actions listed on Appendix C to the Stipulation who do not request removal from the excluded list in accordance with Paragraph 34 of the Stipulation are excluded from the Settlement Class. The Individual Action Plaintiffs may remove themselves from the excluded list and participate in the Settlement by requesting such removal in writing, ~~and filing a copy of such request with the Court~~ agreeing to forego their particular Individual Action and agreeing not to object to any aspect of the Settlement, including the terms of the Settlement, the Plan of Allocation or the requested attorney's fees and reimbursement of Litigation Expenses. Such written request must be received by Co-Lead Counsel and EY's Counsel no later than twenty-one (21) calendar days prior to the Settlement Hearing.

22. The Released Parties shall have no responsibility or liability whatsoever with respect to the Plan of Allocation or Co-Lead Counsel's application for an award of attorneys' fees and reimbursement of Litigation Expenses. The Plan of Allocation and Co-Lead Counsel's application for an award of attorneys' fees and reimbursement of Litigation Expenses will be considered separately from the fairness, reasonableness and adequacy of the Settlement. At or after the Approval Hearing, the Court will determine whether Co-Lead Counsel's proposed Plan of Allocation should be approved, and the amount of attorneys' fees and Litigation Expenses to be awarded to Co-Lead Counsel. Any appeal from any orders relating solely to the Plan of Allocation or solely to Co-Lead Counsel's application for an award of attorneys' fees and Litigation Expenses, or any reversal or modification thereof, shall not operate to terminate or

cancel the Settlement, or affect or delay the finality of the Judgment approving the Stipulation and the Settlement of the Action set forth therein.

23. If a person or entity previously excluded him/her/itself from one or both of the settlement classes certified in connection with the D&O or UW Settlements, or any other settlement, he/she/it is not automatically excluded from the EY Settlement Class. In order to exclude oneself from the EY Settlement Class, the procedures set forth in this Order must be followed. In addition, this Court is not opining on the ability of a person or entity who seeks to exclude themselves from the EY Settlement Class to subsequently bring an action against any of the Released Parties.

24. Only Settlement Class Members and Co-Lead Counsel shall have any right to any portion of, or any rights in the distribution of, the Settlement Fund, unless otherwise ordered by the Court or otherwise provided in the Stipulation.

25. All funds held by the Escrow Agent shall be deemed and considered to be in custodia legis and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Stipulation and/or further order of the Court.

26. As set forth in the Stipulation, notwithstanding the fact that the Effective Date has not yet occurred, Co-Lead Counsel may pay from the Settlement Fund, without further approval from EY or further order of this Court, all reasonable Notice and Administration Costs actually incurred. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Notice and Proof of Claim Form, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, publication of the Summary Notice, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing Notice and processing the submitted Claims, and the fees, if any, of the Escrow

Agent. In the event that the Settlement is terminated pursuant to the terms of the Stipulation, all Notice and Administration Costs reasonably paid or reasonably incurred, including any related fees, shall not be returned or repaid to EY or any other Released Party, or to any person or entity who or which paid any portion of the Settlement Amount on their behalf.

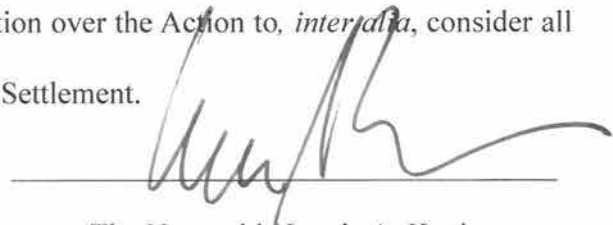
27. The fact and terms of this Order and the Settlement, all negotiations, discussions, drafts and proceedings in connection with this Order and the Settlement, and any act performed or document signed in connection with this Order and the Settlement, shall not, in this or any other Court, administrative agency, arbitration forum or other tribunal, constitute an admission of, or evidence of, or be deemed to create any inference of, (i) any acts of wrongdoing or lack of wrongdoing, (ii) any liability on the part of EY or any other released party to Named Plaintiffs, the Settlement Class or anyone else, (iii) any deficiency of any claim or defense that has been or could have been asserted in this Action, (iv) any damages or lack of damages suffered by Named Plaintiffs, the Settlement Class or anyone else, or (v) that the Settlement Amount (or any other amount) represents the amount that could or would have been recovered in this Action against EY if it was not settled at this point in time. The fact and terms of this Order and the Settlement, all negotiations, discussions, drafts and proceedings in connection with this Order and the Settlement, and any act performed or document signed in connection with this Order and the Settlement, shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum or other tribunal, except as necessary to enforce the terms of this Order and/or the Settlement, including, but not limited to, the Judgment and the release of the Settled Claims provided for in the Stipulation.

28. Co-Lead Counsel shall apply to this Court, on notice to EY's Counsel, for a Class Distribution Order, *inter alia*: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; and (b) if the Effective Date has occurred, directing payment of the Net Settlement Fund to the Authorized Claimants from the Escrow Account. Payment and/or distribution of any of the Settlement Amount to Settlement Class Members shall be made only after the Effective Date.

29. In the event that the Settlement fails to become effective in accordance with its terms, or if the Judgment is not entered or is reversed, vacated or materially modified on appeal (and, in the event of material modification, if any party elects to terminate the Settlement), this Order (except Paragraphs 25 and 26) shall be null and void, the Stipulation shall be deemed terminated, and the Settling Parties shall return to their positions without prejudice in any way, as provided for in the Stipulation.

30. The Court retains exclusive jurisdiction over the Action to, *inter alia*, consider all further matters arising out of or connected with the Settlement.

Dated: December 3, 2013



The Honorable Lewis A. Kaplan
United States District Judge