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21 FARMERS & MERCHANTS TRUST

22 COMPANY, a California corporation,

23 as administrator and trustee of the

24 Elliott Broidy SEP IRA

25 **UNITED STATES DISTRICT COURT**
26 **CENTRAL DISTRICT OF CALIFORNIA**

27 FARMERS & MERCHANTS TRUST)
28 COMPANY, a California corporation, as)
29 administrator and trustee of the Elliott)
30 Broidy SEP IRA,)

31 Plaintiff,)

32 vs.)

33 CITI HEDGE FUND SERVICES)
34 NORTH AMERICA, INC., a Delaware)
35 corporation; and DOES 1 through 20,)
36 inclusive,)

37 Defendant.)

38 Case No. CV13-04895 R(VBKx)

39 **ORDER ON STIPULATION AND**
40 **PROTECTIVE ORDER**

ORDER

Good cause appearing, the Court hereby approves this Stipulation and Protective Order.

IT IS SO ORDERED

DATED: _Oct. 1, 2013_

A handwritten signature in blue ink, appearing to read 'Real', is written over a horizontal line.

HON. MANUEL L. REAL

UNITED STATES DISTRICT JUDGE

1 JULIE L. TAYLOR, CASB No. 154341
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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
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19 FARMERS & MERCHANTS TRUST)
20 COMPANY, a California corporation, as)
21 administrator and trustee of the Elliott)
Broidy SEP IRA,)

22 Plaintiff,)

23 vs.)

24 CITI HEDGE FUND SERVICES)
25 NORTH AMERICA, INC., a Delaware)
26 corporation; and DOES 1 through 20,)
inclusive,)

27 Defendant.)
28)

Case No. CV13-04895 R(VBKx)

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER**

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I.

PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve the production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than conducting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order (the “Order”). The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the Federal Rules of Civil Procedure, Rule 26 and other applicable legal principles. The parties further acknowledge that this Stipulated Protective Order does not entitle them to file confidential information under seal, and that a party seeking to do so, must comply with the procedures set forth in Section 11.3, below.

II.

DEFINITIONS

2.1 Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: All items or information,

1 regardless of the medium or manner in which it is generated, stored, or maintained
2 (including, among other things, testimony, transcripts, and tangible things), that are
3 produced or generated in disclosures or responses to discovery in this matter.

4 2.6 Expert: A person with specialized knowledge or experience in a
5 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
6 as an expert witness or as a consultant in this action.

7 2.7 House Counsel: Attorneys who are employees of a party to this
8 action. House Counsel does not include Outside Counsel of Record or any other
9 outside counsel.

10 2.8 Non-Party: Any natural person, partnership, corporation,
11 association, or other legal entity not named as a Party to this action.

12 2.9 Outside Counsel of Record: Attorneys who are not employees of a
13 party to this action but are retained to represent or advise a party to this action and have
14 appeared in this action on behalf of that party or are affiliated with a law firm which has
15 appeared on behalf of that party.

16 2.10 Party: Any party to this action, including all of its officers,
17 directors, employees, consultants, retained experts, and Outside Counsel of Record (and
18 their support staffs).

19 2.11 Producing Party: A Party or Non-Party that produces Disclosure or
20 Discovery Material in this action.

21 2.12 Professional Vendors: Persons or entities that provide litigation
22 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
23 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
24 their employees and subcontractors.

25 2.13 Protected Material: Any Disclosure or Discovery Material that is
26 designated as “CONFIDENTIAL.”

27 2.14 Receiving Party: A Party that receives Disclosure or Discovery
28 Material from a Producing Party.

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III.

SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material for motions and/or at trial shall be governed by a separate agreement or order. However, a party responding to a dispositive motion may file any confidential document with the Court.

IV.

DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court Order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

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V.

DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take reasonable care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify—so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced. However, this Order shall apply retroactively to material attached to previously-filed declarations regardless of the lack of a confidential designation on such materials.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial

1 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
2 page that contains protected material. If only a portion or portions of the material on a
3 page qualifies for protection, the Producing Party also must clearly identify the
4 protected portion(s) (e.g., by making appropriate markings in the margins).

5 If only a portion or portions of the material on a page qualifies for
6 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
7 by making appropriate markings in the margins).

8 (b) testimony given in deposition or in other pretrial or trial
9 proceedings, that the Designating Party identifies on the record, before the close of the
10 deposition, hearing, or other proceeding, all protected testimony. When it is impractical
11 to identify separately each portion of testimony that is entitled to protection, and when
12 it appears that substantial portions of the testimony may qualify for protection, the Party
13 or non-party that sponsors, offers, or gives the testimony may invoke on the record
14 (before the deposition or proceeding is concluded) a right to have up to 20 days to
15 identify the specific portions of the testimony as to which protection is sought. Only
16 those portions of the testimony that are appropriately designated for protection within
17 the 20 days shall be covered by the provisions of this Stipulated Protective Order.

18 Transcript pages containing Protected Material must be separately bound
19 by the court reporter, who must affix to the top of each such page the legend
20 “CONFIDENTIAL” as instructed by the Party or nonparty offering or sponsoring the
21 witness or presenting the testimony.

22 (c) for information produced in some form other than documentary and
23 for any other tangible items, that the Producing Party affix in a prominent place on the
24 exterior of the container or containers in which the information or item is stored the
25 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
26 warrant protection, the Producing Party, to the extent practicable, shall identify the
27 protected portion(s).

28 ///

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

VI.

CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must complete the process by conferring directly within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court intervention, the Designating Party shall file and serve a motion to retain confidentiality pursuant to Local Civil Rules 7-3 to 7-8 with 5 days of the conclusion of the meet and confer process. If the Designating Party fails to file such a motion within this time frame, the confidentiality designation is automatically removed, and the Designating Party waives such confidentiality designation. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party, whether the challenge is initiated by the Producing Party or by the Receiving Party. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

VII.

ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. Except to the extent that it is determined by the Court and/or agreed among the Parties in this action that any Receiving Party has the right to possess and retain Protected Material and to use such material beyond any restrictions imposed herein, a Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation and not for any

1 improper purpose. Such Protected Material may be disclosed only to the categories of
2 persons and under the conditions described in this Order. When the litigation has been
3 terminated, a Receiving Party must comply with the provisions of section 12 below
4 (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at
6 a location and in a secure manner that ensures that access is limited to the persons
7 authorized under this Order.

8 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Except to
9 the extent that it is determined by the Court and/or agreed among the Parties in this
10 action that any Receiving Party has the right to possess and retain Protected Material
11 and to use such material beyond any restrictions imposed herein, unless otherwise
12 ordered by the Court or permitted in writing by the Designating Party, a Receiving
13 Party may disclose any information or item designated “CONFIDENTIAL” only to:

14 (a) The Receiving Party’s Outside Counsel of Record in this action, as
15 well as Outside Counsel of Record’s support staff directly working on this action with
16 Outside Counsel of Record’s, such as legal secretaries and paralegals to whom it is
17 reasonably necessary to disclose the information for this litigation and who have signed
18 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (b) The Receiving Party and its officers, directors, and key decision
20 maker employees (including House Counsel) of the Receiving Party to whom
21 disclosure is reasonably necessary for this litigation;

22 (c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this litigation and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (d) The Court and its personnel;

26 (e) Court reporters and their staff, professional jury or trial consultants,
27 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for
28 this litigation and who have signed the “Acknowledgment and Agreement to Be

1 Bound” (Exhibit A);

2 (f) During their depositions, witnesses in the action to whom disclosure
3 is reasonably necessary, unless otherwise agreed by the Designating Party or ordered by
4 the Court. Pages of transcribed deposition testimony or exhibits to depositions that
5 reveal Protected Material must be separately bound by the court reporter and may not
6 be disclosed to anyone except as permitted under this Stipulated Protective Order.

7 (g) The author or recipient of a document containing the information or
8 a custodian or other person who otherwise possessed or knew the information.

9 **VIII.**

10 **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
11 **OTHER LITIGATION**

12 If a Party is served with a subpoena or a court Order issued in other
13 litigation that compels disclosure of any information or items designated in this action
14 as “CONFIDENTIAL,” that Party must:

15 (a) promptly notify in writing the Designating Party. Such notification
16 shall include a copy of the subpoena or court order; and

17 (b) promptly notify in writing the party who caused the subpoena or
18 Order to issue in the other litigation that some or all of the material covered by the
19 subpoena or Order is subject to this Protective Order. Such notification shall include a
20 copy of this Stipulated Protective Order.

21
22 The Designating Party shall bear the burden and expense of seeking
23 protection in that court of its confidential material—and nothing in these provisions
24 should be construed as authorizing or encouraging a Receiving Party in this action to
25 disobey a lawful directive from another court.

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IX.

**A NON-PARTY'S PROTECTED MATERIALS OUGHT TO BE PRODUCED IN
THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL". Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and,

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective Order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party must produce the Non-Party's confidential information responsive to the discovery request(s). If the Non-Party timely obtains a protective order, the Receiving Party shall not produce only information in its possession or control that is subject to the protective order. All other information shall be produced. ¹ Absent a

¹ The purpose of this provision is to alert the interested parties to the existence of

1 court Order to the contrary, the Non-Party shall bear the burden and expense of seeking
2 protection in this Court of its Protected Material.

3 **X.**

4 **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has
6 disclosed Protected Material to any person or in any circumstance not authorized under
7 this Stipulated Protective Order, the Receiving Party must immediately (a) notify in
8 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to
9 retrieve all unauthorized copies of the Protected Material, (c) inform the person or
10 persons to whom unauthorized disclosures were made of all the terms of this Order, and
11 (d) request such person or persons to execute the “Acknowledgment and Agreement to
12 Be Bound” that is attached hereto as Exhibit A.

13 **XI.**

14 **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
15 **PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection, the
18 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
20 may be established in an e-discovery Order that provides for production without prior
21 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
22 parties reach an agreement on the effect of disclosure of a communication or
23 information covered by the attorney-client privilege or work product protection, the
24 parties may incorporate their agreement in the stipulated protective Order submitted to
25 the court.

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27 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to
28 protect its confidentiality interests in this court.

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XII.

MISCELLANEOUS

11.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

11.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

11.3 Filing Documents Under Seal. Subject to public policy, and further Court order, nothing shall be filed under seal, and the Court shall not be required to take any action, without separate prior order by the Court before whom the hearing or proceeding will take place, after application by the affected party with appropriate notice to opposing counsel.

If the Court grants a party permission to file an item under seal, a duplicate disclosing all nonconfidential information, if any, shall be filed and made part of the public record. The item may be redacted to eliminate confidential material from the document. The document shall be titled to show that it corresponds to an item filed under seal, e.g., “Redacted Copy of Sealed Declaration of John Smith in Support of Motion for Summary Judgment.” The sealed and redacted documents shall be filed simultaneously.

XIII.

FINAL DISPOSITION

Except to the extent that it is determined in this action that any Receiving Party has the right to possess and retain Protected Material, within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Protected
2 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
3 must submit a written certification to the Producing Party (and, if not the same person
4 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
5 category, where appropriate) all the Protected Material that was returned or destroyed
6 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
7 compilations, summaries or any other format reproducing or capturing any of the
8 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
9 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
10 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
11 work product, and consultant and expert work product, even if such materials contain
12 Protected Material. Any such archival copies that contain or constitute Protected
13 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).
14

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16 IT IS SO STIPULATED AND AGREED:
17

18 DATED: _____
19

Julie L. Taylor
Tara B. Voss
KEESAL, YOUNG & LOGAN
Attorneys for Defendant
CITI HEDGE FUND SERVICES NORTH
AMERICA, INC.
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23

24 DATED: _____
25

Andrew F. Kim
PLONSKER LAW, LLP
Attorneys for Plaintiff
FARMERS & MERCHANTS TRUST
COMPANY, a California corporation, as
administrator and trustee of the Elliott Broidy
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ORDER

Good cause appearing, the Court hereby approves this Stipulation and Protective Order.

IT IS SO ORDERED

DATED: _____

HON. MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

1
2 **EXHIBIT A**

3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**
4

5 I, _____ [print or type
6 full name], of _____
7 _____ [print or type full address], declare under penalty of
8 perjury that I have read in its entirety and understand the Stipulated Protective Order
9 that was issued by the United States District Court for the Central District of California
10 on _____ [date] in the case of FARMERS & MERCHANTS TRUST
11 COMPANY, a California corporation, as administrator and trustee of the Elliott Broidy
12 SEP IRA v. CITI HEDGE FUND SERVICES NORTH AMERICA, INC., a Delaware
13 corporation; and DOES 1 through 20, inclusive, Case No. CV13-04895 R(VBKx).

14 I agree to comply with and to be bound by all the terms of this Stipulated
15 Protective Order and I understand and acknowledge that failure to so comply could
16 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
17 that I will not disclose in any manner any information or item that is subject to this
18 Stipulated Protective Order to any person or entity except in strict compliance with the
19 provisions of this Order.

20 I further agree to submit to the jurisdiction of the United States District
21 Court for the Central District of California for the purpose of enforcing the terms of this
22 Stipulated Protective Order, even if such enforcement proceedings occur after
23 termination of this action.

24 I hereby appoint _____ [print or
25 type full name] of _____
26 _____ [print or type full address and telephone
27 number] as my California agent for service of process in connection with this action or
28 ///

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2
3 any proceedings related to enforcement of this Stipulated Protective Order.
4

5 Date: _____

6 City and State where sworn and signed: _____

7 Printed Name: _____

8 Signature: _____
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