Statement from the Office of James W. Giddens, Trustee for the Liquidation of Lehman Brothers Inc. under the Securities Investor Protection Act:
Testimony Supports Trustee's Position and Demonstrates Weakness of Barclays' Claims

New York, May 7, 2010 – The Office of the Trustee for the Liquidation of Lehman Brothers Inc. (LBI), the broker-dealer of Lehman Brothers, made the following statement today on the first two weeks of trial in the Trustee's lawsuit against Barclays Capital in the U.S. Bankruptcy Court for the Southern District of New York. The SIPA Trustee is seeking recovery of approximately $6.7 billion in disputed assets that Barclays is claiming at the expense of LBI's public customers.

"Testimony by key witnesses including former Lehman president Bart McDade and the Trustee's representatives authoritatively demonstrate that the disputed assets were excluded from the sale of Lehman Brothers Inc.'s brokerage business to Barclays:

- "An overriding premise of the sale is that cash was not part of the transaction. There was a very clear representation at the sale hearing on September 19, 2008 that no cash was available for transfer or would be transferred to Barclays. The Trustee and other parties relied on these representations made to the Court in connection with the sale in the hours following his appointment that day.

- "Barclays was advised by Lehman executives and counsel that the 15c3-3 customer lock-up account containing $769 million of securities was a regulatory protective account and that the likelihood of the U.S. Securities and Exchange Commission approving the transfer of these securities was slim to none. Reports to Barclays' board of directors show that Barclays' finance executives and audit committee were aware of this.

- "The DTCC agreement signed by Barclays, DTCC and the Trustee identify LBI's clearance box accounts, which contained $1.9 billion of securities, as excluded assets from the deal. DTCC wanted these assets to be under the control of the SIPA Trustee as recourse to protect DTCC and its members for billions of open trades it was guaranteeing, and Barclays agreed. The evidence also indicated that Barclays obtained some of those LBI assets by intermingling them with customer account transfers.

"Barclays' math does not add up and its interpretation of the sale order and the parties' agreements would substantially alter the economics of the deal presented to and approved by the Court. It paid $250 million in cash for Lehman's North American capital markets franchise, including 72,000 valuable, high worth customer accounts. Barclays is now claiming an additional $6.7 billion in assets – much of it cash, government securities and other liquid and tradable securities – which amounts to an undisclosed and unauthorized windfall to Barclays.

"The Trustee, along with SIPC and various regulatory authorities, supported the transaction and continues to do so because, at a time of great financial tumult, a fundamental premise of the sale was the protection of LBI's customers. The focus of the Trustee and his team has been to do as much as possible as fast as possible to protect customers, and the transfer of more than 110,000 accounts and $92.2 billion in assets to Neuberger Berman and Barclays was underway from the day of his appointment. Many other accounts were left behind by Barclays, and those accounts are being satisfied through the SIPA claims process. Success by Barclays in obtaining further assets from the Trustee on any of its claims would create a substantial deficiency in the assets available to satisfy customer claims. Customer claims pending in the proceeding amount to an excess of $35 billion."

Appendix: Key Trial Testimony

Media Contact for the Trustee: Kent Jarrell
202-230-1833

APPENDIX: KEY TRIAL TESTIMONY

THE SALE DID NOT INCLUDE THE TRANSFER OF ANY CASH TO BARCLAYS

Witness	Testimony	Date	Cite
Bart McDade	"Q. In terms of Lehman's obligation to provide any of its cash to Barclays, that was zero by the time of the sale hearing? A. Yes, I am sorry, yes. Q. And apart from this retained cash which was ultimately taken out of the deal, was there any Lehman cash, cash equivalents or government securities that you understood were being transferred to Barclays? A. No."	Apr. 26	605:19-606:4
Harvey Miller	"[W]e had made a representation to the Court that no cash was going to Barclays."	Apr. 28	997:8-9
James Kobak	"I didn't even focus on the possibility that [there] could be proprietary cash because there was not supposed to be any cash left at Lehman and because there had been specific representations in open court with hundreds of people there that there was no cash whatever in the deal going to Barclays."	May 5	2629:14-21

THE AGREEMENT TO GIVE BARCLAYS SECURITIES FROM LEHMAN'S RULE 15C3-3 CUSTOMER RESERVE ACCOUNTS WAS CONDITIONAL

Witness	Testimony	Date	Cite
Bart McDade	"Q. Can you please tell the Court whether that deal, that -- what was described to the SEC just hours before the closing, whether that ever changed and specifically whether Lehman ever agreed unconditionally to give Barclays any assets from the 15c3 account? A. To the best of my knowledge, the deal did not change and certainly Lehman was in no position, either with other assets or touching a segregated client asset that obviously needed regulatory approval for anything that we did [with] respect to this as any consideration in the transaction."	Apr. 26	599:9-21
Harvey Miller	"Q. Did you at any time enter into any commitment on behalf of Lehman that Barclays would get the 769 [m]illion dollars [from the Customer Reserve Accounts] unconditionally? A. I assume that when you say me, you are talking about Lehman. Q. I am referring to you personally or anyone that you know acting on behalf of Lehman. A. Absolutely no commitment. Q. Did you or anyone that you know acting on behalf of Lehman undertake or give Michael Klein or anyone at Barclays a commitment that if there was a regulatory problem and the 769 million dollars in securities could not be transferred from inside the 15c3 account, Lehman would be required to substitute and provide 769 million dollars from somewhere outside that account? A. Absolutely not."	Apr. 28	998:5-23

Harvey Miller	"We also, I might add, gave an admonition to Barclays that the likelihood of the SEC ever releasing that [15c3-3] account was slim and none."	Apr. 28	1008:18-21
James Kobak	"Q. Did you at any stage agree or were you ever even asked to agree that Barclays would get 769 million dollars pursuant to this section 8 of the clarification letter unconditionally or absolutely? A. No. It was my understanding that this was a very conditional asset."	May 4	2434:4-10

THE SALE DID NOT INCLUDE THE TRANSFER OF LEHMAN'S MARGIN TO BARCLAYS

Witness	Testimony	Date	Cite
Bart McDade	"Q. Can you please tell the Court whether Lehman's margin assets were included in this sale? A. They were not intended to be included in the transaction. Q. Did you ever authorize any agreement with anyone at Barclays to include any Lehman cash margin in this sale? A. No, I did not."	Apr. 26	603:3-11
Bart McDade	"I wouldn't have used [the margin] assets in -- in the transaction because I wasn't confident that we had those assets to give."	Apr. 27	671:10-13
Steven Berkenfeld	"Q. [S]pecifically, sir, you are not aware of any business agreement between Lehman and Barclays to transfer Lehman's margin assets to Barclays? A. I'm not. I'm not aware of it."	Apr. 27	878:17-21
Harvey Miller	"Q. [Y]ou personally did not have any discussions with anyone at Barclays about Lehman's margin; isn't that right, sir? A. That's correct. . . . . Q. And indeed, you are not aware of anyone at your firm, the Weil Gotshal law firm, who had any discussions with anyone at Barclays concerning the question of Lehman's margin? A. As far as I'm aware. That's correct."	Apr. 28	1008:24-1009:13
James Kobak	"Q. Did you have any discussion with anyone from Barclays about Lehman's margin over the weekend? A. No."	May 4	2428:21-24

THE DTCC CLEARANCE BOX ASSETS WERE SPECIFICALLY EXCLUDED FROM THE SALE

Witness	Testimony	Date	Cite
Bart McDade	"Q. Did you come to learn that Barclays had secured a separate agreement with the DTCC? A. The Lehman team was excluded from all the dialog with DTC, Barclays, the regulators with respect to this. But yes, I came, in general terms, to learn that was the case. . . . . Q. Was it made clear to you you were not invited into the	Apr. 26	601:18-602:20

	room where any of the DTC discussions were going on? A. Extremely clear. Q. Who made that clear? A. The Barclays team."		
Harvey Miller	"Q. Were you at any time invited into any of [the DTCC] negotiations? A. I wasn't. I don't believe anybody else at Weil Gotshal was."	Apr. 28	1001:15-18
Harvey Miller	"Q. The Court has before it two agreements. Under one, the clarification letter, the assets in question are purchased assets, they go to Barclays. Under the other agreement, these same assets are excluded assets, they stay with the estate and are subject to the authority of the trustee. Can you help the Court understand how it could have before it these two agreements? A. The agreement between DTCC and Barclays was a separate agreement. It wasn't an agreement in which Lehman was involved. . . . Q. Are you aware of any effort on the part of Weil Gotshal to confirm the clarification letter to the DTCC letter? A. Since we did not have the [DTCC] letter, I don't believe there were any efforts to do that."	Apr. 28	1003:10-1004:10
James Kobak	"Q. Can you explain to us, sir, how this [DTCC letter] protected the Depository Trust Clearance Corporation? A. Well, my understanding of this agreement was rather than having Barclays assume LBI's positions with respect to the clearing boxes at DTC, that those boxes were going to stay with LBI. It does provide for the guarantee and the 250 million dollars that DTC could look to. The DTC also knew that the boxes would remain in LBI or the trustee's possession."	May 4	2437:21-2438:7
Isaac Montal	"Q. But ultimately at the end of the day Barclays refused to take the accounts, right? A. Barclays refused to give us the unlimited guarantee and told us they weren't going to take anything. Q. They told you they weren't going to take the accounts, right? A. They didn't say accounts. They said they weren't going to take anything."	May 6	50:17-51:2
Isaac Montal	"Q. Did anyone suggest to you that in Barclays' view, this transaction would enable Barclays to take all of the assets and leave DTCC with an empty box? A. No."	May 6	31:11-15
Isaac Montal	"Q. And who was the owner of [the DTCC clearance box] assets? A. Lehman acting through the trustee."	May 6	30:17-18

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