

Hearing Date:

November 14, 2012 at 10:00 a.m. (prevailing Eastern Time)

Response Deadline:

October 25, 2012 at 4:00 p.m. (prevailing Eastern Time)

James B. Kobak, Jr.
Christopher K. Kiplok
Jeffrey M. Greilsheimer
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
Telephone: (212) 837-6000
Facsimile: (212) 422-4726
Email: kobak@hugheshubbard.com
kiplok@hugheshubbard.com
greilshe@hugheshubbard.com

*Attorneys for James W. Giddens,
Trustee for the SIPA Liquidation of Lehman Brothers Inc.*

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

In re

LEHMAN BROTHERS INC.,

Debtor.

Case No. 08-01420 (JMP) SIPA

Rel. Docket No. 3931

**NOTICE OF MOTION PURSUANT TO FEDERAL
RULE OF BANKRUPTCY PROCEDURE 9019 FOR ENTRY
OF AN ORDER APPROVING SETTLEMENT AGREEMENT**

PLEASE TAKE NOTICE that on October 3, 2012, James W. Giddens (the “Trustee”), as trustee for the liquidation of the business of Lehman Brothers Inc. (“Debtor” or “LBI”) under the Securities Investor Protection Act of 1970, as amended (“SIPA”), 15 U.S.C. §§ 78aaa *et seq.*, by and through his undersigned counsel, filed a motion pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure for an Order Approving Settlement Agreement with Lehman Brothers Finance AG, in liquidation (a/k/a Lehman Brothers Finance SA, in liquidation) (the “Motion”), and that a hearing to consider the Motion, if necessary, will be held before the

Honorable James M. Peck, United States Bankruptcy Judge, at the United States Bankruptcy Court, Alexander Hamilton Customs House, Courtroom 601, One Bowling Green, New York, New York 10004 (the "Bankruptcy Court") on **November 14, 2012 at 10:00 a.m.** (prevailing Eastern time) or as soon thereafter as counsel may be heard (the "Hearing").

PLEASE TAKE FURTHER NOTICE that objections, if any, to entry of the order must (i) be in writing; (ii) state the name and address of the objecting party and nature of the claim or interest of such party; (iii) state with particularity the legal and factual bases of such objection; (iv) conform to the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules; (v) be filed with the Bankruptcy Court, together with proof of service, electronically, in accordance with General Order M-399, by registered users of the Court's Electronic Case Files system, and by all other parties in interest, on a 3.5 inch disk or CD-ROM, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word proceeding format no later than **October 25, 2012 at 4:00 p.m.** (the "Objection Deadline"); and (vi) be served on (a) Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York, 10004, Attn: James B. Kobak, Jr., Esq. and Jeffrey M. Greilsheimer, Esq.; (b) Securities Investor Protection Corporation, 805 Fifteenth Street, N.W., Suite 800, Washington, DC 20005, Attn: Kenneth J. Caputo, Esq.; (c) Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Richard P. Krasnow, Esq., Lori R. Fife, Esq., Robert J. Lemons, Esq., and Jacqueline Marcus, Esq.; (d) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005, Attn: Dennis F. Dunne, Esq., Dennis O'Donnell, Esq., and Evan Fleck, Esq.; (e) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, Attn: Michael A. Rosenthal, Esq.; and (f) Gibson, Dunn & Crutcher LLP, 2100 McKinney Avenue, Suite 1100, Dallas, Texas 75201, Attn: Robert B. Krakow, Esq., with a courtesy copy to the

chambers of the Honorable James M. Peck, One Bowling Green, New York, New York 10004,
Courtroom 601.

PLEASE TAKE FURTHER NOTICE that if no objections are timely filed and served with respect to the Motion, the Debtor may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which may be entered with no further notice or opportunity to be heard offered to any party.

Dated: New York, New York
October 3, 2012

HUGHES HUBBARD & REED LLP

By: /s/ Christopher K. Kiplok
James B. Kobak, Jr.
Christopher K. Kiplok
Jeffrey M. Greilsheimer

One Battery Park Plaza
New York, New York 10004
Telephone: (212) 837-6000
Facsimile: (212) 422-4726
Email: kobak@hugheshubbard.com
kiplok@hugheshubbard.com
greilshe@hugheshubbard.com

*Attorneys for James W. Giddens,
Trustee for the SIPA Liquidation of Lehman
Brothers Inc.*

Hearing Date:

November 14, 2012 at 10:00 a.m. (prevailing Eastern Time)

Response Deadline:

October 25, 2012 at 4:00 p.m. (prevailing Eastern Time)

James B. Kobak, Jr.
Christopher K. Kiplok
Jeffrey M. Greilsheimer
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
Telephone: (212) 837-6000
Facsimile: (212) 422-4726
Email: kobak@hugheshubbard.com
kiplok@hugheshubbard.com
greilshe@hugheshubbard.com

*Attorneys for James W. Giddens,
Trustee for the SIPA Liquidation of Lehman Brothers Inc.*

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

In re

LEHMAN BROTHERS INC.,

Debtor.

Case No. 08-01420 (JMP) SIPA

Rel. Docket No. 3931

**MOTION PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9019 FOR ENTRY OF
AN ORDER APPROVING SETTLEMENT AGREEMENT**

James W. Giddens (the “Trustee”), as Trustee for the SIPA liquidation of Lehman Brothers Inc. (“LBI”) under the Securities Investor Protection Act, 15 U.S.C § 78aaa *et seq.* (“SIPA”),¹ by and through his undersigned counsel, hereby files this motion (the “Motion”) pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for approval of a settlement and compromise between the Trustee and PricewaterhouseCoopers AG, Zurich (“PwC (Zurich)” or the “LBF Liquidators”), in its capacity as liquidator of Lehman

¹ SIPA appears at 15 U.S.C. § 78aaa. For convenience, subsequent references to SIPA will omit “15 U.S.C.”

Brothers Finance, AG (a/k/a Lehman Brothers Finance, SA) (“LBF”), of all claims between LBI and LBF as described below.²

I. PRELIMINARY STATEMENT

1. After years of good faith negotiation and account reconciliation between the Trustee’s professionals and the LBF Liquidators and their professionals, the Trustee has achieved a settlement of LBF’s claims. LBF asserted customer and general creditor claims against LBI, seeking a total of nearly \$6 billion based on securities and cash held in its accounts at LBI, intercompany accounts, and repurchase and reverse repurchase transactions, derivatives, and other transactions. The Trustee challenged the validity, propriety, valuation and classification of LBF’s claims during the negotiations with LBF. Ultimately, the Trustee and the LBF Liquidators were able to consider the claims, counterclaims and related defenses of the two parties and arrived at the economic resolution of their differences contained in the Settlement Agreement (defined below).

2. The settlement with LBF is an important step in the Trustee’s efforts to make as substantial a distribution to customers as possible as soon as possible. Aside from the claims submitted by Lehman Brothers International (Europe) (“LBIE”) (which are the subject of ongoing negotiations) and the claims submitted by the Chapter 11 Debtors (which are the subject of a settlement in principle), the claims asserted by LBF are by far the largest claims submitted in the SIPA proceeding. The elimination of the uncertainty and need for a very substantial reserve

² The Swiss Federal Banking Commission appointed PricewaterhouseCoopers AG, Zurich as the Liquidator of LBF on October 29, 2008.

through the settlement with LBF will greatly enhance the Trustee's ability to make a substantial distribution to customers.

3. To avoid the expense and uncertainty of litigation, the parties have agreed to resolve their respective claims in accordance with the terms set forth in the settlement agreement, dated October 3, 2012, attached hereto as Exhibit 1 (the "Settlement Agreement"). The Trustee believes that the compromises embodied in the Settlement Agreement are a reasonable resolution of the claims between the parties. If approved, the Settlement Agreement will result in an allowed customer claim in the amount of US\$189,924,000.00 (one hundred eighty-nine million nine hundred twenty-four thousand U.S. dollars) and an unsecured non-priority general creditor claim in the amount of US\$360,000,000.00 (three hundred sixty million U.S. dollars) for LBF. The allowed claim are less than 6% of the potential customer claim and less than 10% of LBF's aggregate asserted claims. The settlement is the result of extensive due diligence by the parties and arm's-length, good faith negotiations, and it resolves all claims between the Trustee and LBF with appropriate allowances by both parties commensurate with the approach taken by the Trustee in settling claims by and against LBI's former affiliates.

II. JURISDICTION AND VENUE

4. On September 19, 2008 (the "Filing Date"), the Honorable Gerard E. Lynch, Judge of United States District Court for the Southern District of New York, entered an Order Commencing Liquidation (the "LBI Liquidation Order," ECF No. 1) pursuant to the provisions of the SIPA in the case captioned *Securities Investor Protection Corp. v. Lehman Brothers Inc.*, Case No. 08-CIV-8119 (GEL).

5. The LBI Liquidation Order (i) appointed the Trustee for the liquidation of the business of LBI pursuant to SIPA § 78eee(b)(3); (ii) appointed counsel to the Trustee

pursuant to section 78eee(b)(3); and (iii) removed this case to this Court pursuant to section 78eee(b)(1), in the case captioned *In re Lehman Brothers Inc.*, Case No. 08-01420 (JMP).

6. Following removal to this Court, this Court has “all of the jurisdiction, powers, and duties conferred by [SIPA] upon the court to which the application for the issuance of the protective decree was made.” SIPA § 78eee(b)(4). Venue is proper in this Court pursuant to SIPA § 78eee(a)(3) and 15 U.S.C. § 78aa.

III. BACKGROUND

7. The primary purpose of a SIPA proceeding is to return customer accounts so that customers are able to recover their property. The Trustee has a specific statutory duty to deliver securities to or on behalf of customers to the maximum extent practicable. SIPA § 78fff-1(b)(1). LBF filed claims in the LBI SIPA proceeding seeking recoveries as both a customer and a general creditor of LBI.

8. LBF is a Swiss company that is a wholly owned subsidiary of LBHI and an affiliate of LBI. LBF’s principal business was providing financial services and serving as a financial intermediary, including structuring, issuing and entering into derivative transactions, and related activities.

9. On September 30, 2008, the Swiss Federal Banking Commission, which is now known as the Swiss Financial Market Supervisory Agency (“FINMA”), assumed regulatory authority over LBF. On October 29, 2008, FINMA placed LBF into liquidation and appointed PwC as liquidators for LBF. On December 22, 2008, FINMA commenced bankruptcy proceedings for LBF and appointed PwC (Zurich) the bankruptcy liquidators of, and authorized foreign representative for, LBF. This Court entered an *Order Granting Recognition of Foreign Main Proceeding and Related Relief Under Chapter 15*, dated March 12, 2009 (Case No. 09-10583, ECF No. 24).

10. As part of the Trustee's statutory duties, the Trustee engaged in an extensive effort to understand the economic relationship between LBI and LBF. In addition to filing a claim in LBF's Swiss liquidation proceeding, the Trustee received and evaluated the claims submitted by LBF in this case.

IV. THE CLAIMS

A. LBF's Claims

1. LBF's Customer Claims

11. On January 29, 2009, LBF submitted Customer Claim No. 800002528 seeking the return of more than 300 securities positions held in trading accounts LBF maintained at LBI. LBF did not assert the value of the claimed securities. On January 30, 2009, LBF submitted Customer Claim No. 900004242 seeking the return of the same securities LBF claimed on the previous day. LBF reserved its rights to amend and supplement the information contained in its customer claims.

12. On May 14, 2010, based on limited information, the Trustee issued a Notice of Determination denying Customer Claim Nos. 800002528 and 900004242 because it appeared that LBF's claims should have been asserted against another Lehman affiliate or were otherwise not entitled to customer status. On December 1, 2010, LBF timely objected to the Trustee's determination of both claims. (Reply/Objection to Trustee's Determination of Claims Based on Customer Securities Claim Numbers 800002528 and 900004242 (the "Objection," ECF No. 3931.) LBF asserted that the securities at issue were customer claims under SIPA and the Trustee had not offered proof demonstrating that LBF did not have a direct relationship with LBI with respect to the securities. (Objection at 3-4.)

2. LBF's General Creditor Claims

13. On May 29, 2009, LBF submitted a General Creditor Claim No. 700002261 seeking a lump sum of \$2,186,049,037.44 without supporting detail. On May 30, 2009, LBF submitted General Creditor Claim No. 5520 seeking \$2,186,049,037.44 for repurchase and reverse repurchase transactions, derivatives, and other transactions, and intercompany accounts. LBF "reserve[d] the right to supplement and amend this proof of claim, or file additional proofs of claim." (Claim No. 5520 at 2.)

14. On November 2, 2009, LBF submitted General Creditor Claim No. 6178 as an amendment to its previously submitted general creditor claims. In addition to repeating LBF's prior customer and general creditor claims for cash, securities and other assets, this amendment provided additional information and expanded the claim to seek additional assets. Through the reconciliation process with the Trustee's professionals, LBF adjusted its claim and provided additional evidentiary support of such claims. As amended, LBF's customer and general creditor claims sought an aggregate amount of \$5,955,424,046.82.

B. LBI's Claims

15. On August 10, 2009, LBI timely submitted a claim in LBF's Swiss bankruptcy proceeding for repurchase and reverse repurchase transactions, securities, cash and failed trades, and general intercompany accounts, seeking a recovery of \$2,128,349,134.

C. The Reconciliation Process

16. The Trustee's professionals have made a substantial effort to reconcile LBF's claims with LBI's books and records. During that process, LBF continued to supply additional information in support of its claims through in-person meetings, teleconferences, by email and in response to a subpoena from the Trustee. In particular, additional information provided by LBF assisted the Trustee's professionals in reconciling LBF's claims to LBI's books

and records by providing more specific information about the claims, including: account numbers, account names, identifying securities by CUSIP or ISIN, specifying cash positions on an account-by-account basis and supplementing the pricing information for claimed positions. In addition to the securities that LBF and the Trustee were able to value, LBF also claimed 152 illiquid securities positions. The Trustee has not undertaken the expense of seeking to estimate the value of these illiquid securities and such securities were afforded no value by the Trustee in negotiating the settlement.

17. LBF and the Trustee's professionals were able to reconcile and agree on the values of many positions claimed by each party. Although the parties were able to make substantial progress in reconciling the claims asserted by each party, significant disputes over complex factual and legal issues remained, including the propriety of amendments, proper valuation of unpriced securities, the proper application of setoff, applicability of subordination agreements and evidence of subordination in LBI's books and records, and appropriate claims classification under SIPA for securities, cash and other assets claimed by LBF.

18. The Settlement Agreement provides a final resolution of all legal and factual issues between the two estates. The reconciliation process allowed for the reduction of LBF's claims from nearly \$6 billion to approximately \$550 million -- in excess of a 90% reduction. Specifically, less than \$190 million of the \$3.3 billion that LBF asserted to be customer claims or that may have qualified for customer status is being allowed as a customer claim against LBI -- a reduction of more than 94%. Further, by settling these claims, the Trustee is able to avoid the expense and delay that would be associated with litigation and the need to reserve for possible unfavorable outcomes of that litigation when making distributions. Thus,

the settlement benefits the customers and creditors of LBI by significantly reducing the outstanding claims against LBI's estates and will aid the Trustee in making distributions.

V. THE SETTLEMENT AGREEMENT

19. The principal terms of the proposed Settlement Agreement allow LBF a customer claim against LBI in the amount of US\$189,924,000.00 (one hundred eighty-nine million nine hundred twenty-four thousand U.S. dollars) and an unsecured non-priority general creditor claim against LBI in the amount of US\$360,000,000.00 (three hundred sixty million U.S. dollars). In addition, the parties are exchanging mutual full releases of all other claims against each other.³ Thus, if the Settlement Agreement is approved, all that will remain will be the Trustee's obligation to make distributions on account of the claims allowed pursuant to the Settlement Agreement.

VI. RELIEF REQUESTED

20. The Trustee has determined that litigating LBF's claims, with the associated costs and risks, would not be in the best interest of LBI's estate. By this Motion, the Trustee requests approval of the Settlement Agreement pursuant to Bankruptcy Rule 9019.

VII. BASIS FOR RELIEF

21. Bankruptcy Rule 9019 provides, in relevant part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." The rule "empowers the Bankruptcy Court to approve compromises and settlements if they are in the best interests of the estate." *Vaughn v. Drexel Burnham Lambert Grp., Inc. (In re Drexel*

³ The precise terms of the parties' agreement are reflected in the Settlement Agreement, attached hereto as Exhibit 1.

Burnham Lambert Grp., Inc.), 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991) (approving settlement agreement).

22. The Court may approve a proposed settlement that is reasonable, “is fair and equitable, and is in the best interests of the [debtor’s] estate.” *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry Inc. v. Anderson*, 390 U.S. 414, 424 (1968)), *aff’d*, 17 F.3d 600 (2d Cir. 1994). “A decision to either accept or reject a [particular] compromise or settlement is within the sound discretion of the Court.” *In re Drexel Burnham*, 134 B.R. at 505. It is appropriate for the Court to “consider the opinions of the trustee or debtor and their counsel that a settlement is fair and equitable.” *Nellis v. Shugrue*, 165 B.R. 115, 122 (S.D.N.Y. 1994) (affirming bankruptcy court’s approval of settlement agreement). Deference should be given to an agreement reached “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998) (approving settlement agreement and overruling objections thereto); *see also Shugrue*, 165 B.R. at 123 (“the general rule [is] that settlements are favored and, in fact, encouraged by the approval process outlined above”).

23. In determining whether to approve a settlement, the Court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness.” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (internal quotation omitted); *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993) (in making the determination of reasonableness, the court need not conduct a “mini-trial” on the merits). “All that [the proponent of the settlement] must do is establish [that] it is prudent to eliminate the risks of litigation to achieve specific certainty though admittedly [the settlement] might be

considerably less (or more) than were the case fought to the bitter end.” *Florida Trailer & Equip. Co. v. Deal*, 284 F.2d 567, 573 (5th Cir. 1960) (citation omitted) (affirming approval of settlement agreement).

VIII. THE SETTLEMENT OF THE LBF CLAIMS IS REASONABLE, FAIR AND EQUITABLE, AND IN THE BEST INTERESTS OF LBI’S ESTATE

24. The Settlement Agreement should be approved because it falls within the range of reasonable outcomes. *See Cosoff*, 699 F.2d at 608 (settlement should not “fall[] below the lowest point in the range of reasonableness”). The Settlement Agreement is the product of extensive arm’s-length negotiations between the Trustee and the LBF Liquidators and represents the parties’ good faith compromise of potential disputes.

25. First, the Settlement Agreement will resolve the claims submitted by LBF at amounts well below the claimed amounts, thereby preserving value for the LBI customer and general estates. *See In re Ionosphere*, 156 B.R. at 426 (court may approve settlement that is “in the best interests of the [debtor’s] estate”). The allowed customer claim amount of approximately \$190 million represents more than a 94% reduction from the \$3.3 billion that LBF asserted was a customer claim or that could have qualified for customer status. Further, the LBI estates will benefit from the value of the 152 illiquid securities positions that have not been valued at this time. Taken together, the allowed customer and general creditor claims against LBI represent less than 10% of the amounts LBF claimed. Additionally, the proposed settlement will facilitate the Trustee’s efforts to distribute customer property in a manner consistent with the mandate of SIPA without the uncertainty and delay associated with litigating LBF’s disputed customer claim.

26. Second, the proposed settlements are the product of significant effort to reconcile LBF’s substantial claims against the LBI estate. Litigation of these claims would

likely (i) require complex securities valuation at additional expense to the LBI estate; (ii) raise myriad legal issues, including the customer status of affiliates, the propriety of post-bar date claim amendments, the application of set off and subordination to thousands of accounts and transactions, and SIPA's application to certain types of securities and cash collateral; and (iii) divert significant resources and attention of the Trustee and his professionals as well as the Court. The Settlement Agreement avoids the costs and inherent uncertainty attendant to litigation, especially litigation concerning the complex factual and legal issues present here. *See Florida Trailer*, 284 F.2d at 573 (proponent of settlement need only establish that it is "prudent to eliminate risks of litigation"). These benefits far outweigh any advantage the Trustee might achieve by having the dispute adjudicated by this Court.

27. Third, pursuant to the proposed Settlement Agreement, LBF releases all claims against the LBI estate, except those expressly allowed by the Settlement Agreement. These releases reduce the risk of future litigation. *See id.*

28. Accordingly, the Trustee respectfully submits that the settlements and compromises embodied in the Settlement Agreement are appropriate in light of the relevant factors, are fair and equitable, fall well within the range of reasonableness, and represent a benefit to LBI's customers, creditors and all parties in interest. For these reasons, the Settlement Agreement should be approved.

IX. NOTICE

29. The Trustee has provided notice of the Motion pursuant to the Amended Case Management Order entered in this proceeding (ECF No. 3466). The Trustee submits that no other or further notice need be given.

X. NO PRIOR REQUEST

30. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court (i) enter the proposed Order substantially in the form attached as Exhibit 2 approving the Settlement Agreement, and (ii) grant such additional and further relief as the Court deems just and appropriate.

Dated: New York, New York
October 3, 2012

HUGHES HUBBARD & REED LLP

By: /s/ Christopher K. Kiplok

James B. Kobak, Jr.

Christopher K. Kiplok

Jeffrey M. Greilsheimer

One Battery Park Plaza

New York, New York 10004

Telephone: (212) 837-6000

Facsimile: (212) 422-4726

Email: kobak@hugheshubbard.com

kiplok@hugheshubbard.com

greilshe@hugheshubbard.com

*Attorneys for James W. Giddens, Trustee for
the SIPA Liquidation of Lehman Brothers
Inc.*

EXHIBIT 1

SETTLEMENT AGREEMENT
BETWEEN LBI TRUSTEE AND LBF

This Settlement Agreement is made and entered into as of October 3, 2012 among the LBI Trustee and LBF. Capitalized terms are used as defined in the Definitions in Section 1.01.

RECITALS

WHEREAS, on September 19, 2008, the Honorable Gerard E. Lynch, District Judge of the United States District Court for the Southern District of New York, entered the LBI Liquidation Order which, among other things, (i) appointed the LBI Trustee for the liquidation of the business of LBI pursuant to SIPA § 78eee(b)(3) and (ii) removed the case to the Bankruptcy Court pursuant to SIPA § 78eee(b)(1);

WHEREAS, on December 19, 2008 (with effect as of December 22, 2008), the Swiss Federal Banking Commission opened bankruptcy proceedings over LBF and appointed PricewaterhouseCoopers (Zurich) as bankruptcy liquidator of LBF;

WHEREAS, on March 12, 2009, the Bankruptcy Court entered an order pursuant to chapter 15 of the Bankruptcy Code recognizing (a) PwC, in its capacity as the bankruptcy liquidator of LBF, as the duly appointed and authorized "foreign representative" of LBF, and (b) the Swiss bankruptcy proceeding related to LBF as a "foreign main proceeding";

WHEREAS, the LBI Trustee and LBF are parties to the Lehman Global Protocol which, among other things, provides for mutual information sharing and cooperation between the parties thereto;

WHEREAS, the LBI Trustee submitted Claims against LBF;

WHEREAS, LBF filed Claims against LBI;

WHEREAS, the Parties are desirous of resolving all disputes and issues between the LBI Trustee/LBI and LBF so as to avoid extensive, uncertain and expensive litigation;

NOW, THEREFORE, in consideration of the recitals stated above, the agreements, promises and warranties set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I. DEFINITIONS, CONSTRUCTION & INTERPRETATION

Section 1.01 *Definitions.* Capitalized terms used herein shall have the following meanings:

Affiliate means each of LBHI and any entity of which LBHI was the direct or indirect ultimate parent company as of September 15, 2008.

Asset means, as the context requires, property, rights, Claims and assets, including securities and money.

US Bankruptcy Code means title 11 of the United States Code.

Bankruptcy Court means the United States Bankruptcy Court for the Southern District of New York.

Bankruptcy Court Approval means the entry (a) in the LBI SIPA Proceeding, of a Final Order of the Bankruptcy Court approving the Settlement Agreement and granting the LBI Trustee authority to execute and deliver this Settlement Agreement, perform all obligations hereunder and comply with the terms of this Settlement Agreement; and (b) in the LBF Chapter 15 Proceeding, of a Final Order of the Bankruptcy Court approving the Settlement Agreement and granting PwC, in its capacity as bankruptcy liquidator of LBF, authority to execute and deliver this Settlement Agreement, perform all obligations hereunder and comply with the terms of this Settlement Agreement.

Business Day means any day that is not a Saturday, Sunday, United States federal holiday, a New York state holiday, a Swiss national holiday, a holiday in the Canton of Zurich, or a public holiday in the City of Zurich.

Claim means: (i) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy (or right to payment to which it gives rise) is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Conditions to Effectiveness means the occurrence of each of the following events: (i) Bankruptcy Court Approval, (ii) LBF Creditors' Committee Approval, (iii) the LBF Liquidator publishes the realization plan with respect to this Settlement Agreement no later than 30 days following the approval by the LBF Creditors' Committee, (iv) (a) no creditor of LBF requests an order from FINMA in due time and form, or (b) if such an order is requested in due time and form, (1) FINMA issues a final and enforceable order that does not disapprove in substance the Settlement Agreement, or its execution by the LBF Liquidator (the "FINMA Settlement Order") and such a FINMA Settlement Order is not substantially altered, or modified by FINMA itself (*Wiedererwägung*) prior to the Effective Date, or (2) a competent Swiss court issues a Final Order that does not declare invalid, or set aside in total or in part the FINMA Settlement Order and that thereby does not disapprove in substance the Settlement Agreement, or its execution by the LBF Liquidator, (v) LBF publishes the offer for assignment of the claims asserted by LBF against LBI pursuant to Art. 260 of the Swiss Federal Law on Debt Enforcement and Bankruptcy no later than 30 days following the approval by the LBF Creditors' Committee, and (vi) no creditor of LBF requests the assignment of the LBF claims against LBI according to Article 260 of the Swiss Federal Law on Debt Enforcement and Bankruptcy in due time and form (including deposit of the settlement interest amount as determined by the LBF Liquidator).

Effective Date means the first Business Day after the last Condition to Effectiveness has occurred.

Encumbrance means any interest or equity of any Person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, option, restriction, right of first refusal, right of pre-emption, third-party right or interest, other right that encumbers or restricts the entitlement of the owner or holder of an Asset until one or more obligations owed to another Person are discharged in full, other encumbrance or security interest or arrangement of any kind, or another type of preferential arrangement (including, without limitation, a title transfer or retention arrangement) having similar effect and any agreement or obligation to create or grant any of the aforesaid.

Execution Date means the date this Settlement Agreement is executed by all Parties.

Extended Lien Provision means (1) with respect to LBI, a term in any agreement between LBI and an Affiliate which purports to confer an Encumbrance in favor of any other Affiliate in respect of Assets to secure debts owed by LBI to such other Affiliate; and (2) with respect to LBF, a term in any agreement between that LBF and an Affiliate which purports to confer an Encumbrance in favor of any other Affiliate in respect of Assets to secure debts owed by LBF to such other Affiliate.

Final Order means an order of the Bankruptcy Court, a competent Swiss court or any other court of competent jurisdiction that

- i. is in full force and effect;
- ii. is not reversed or vacated; and
- iii. as to which the time to appeal, petition for certiorari, and move for reargument or rehearing has expired and (A) as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or (B) in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been timely sought, such appeal, writ of certiorari, or reargument or rehearing shall have been withdrawn, denied or resolved by the highest court to which such order was appealed or from which certiorari, rehearing or reargument was sought; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, any analogous rule under Swiss law, including Art. 328 et seq. of the Swiss Federal Rules on Civil Procedure (*Zivilprozessordnung*), Art. 121 et seq. of the Swiss Federal Act on the Federal Supreme Court (*Bundesgerichtsgesetz*), Art. 45 of the Swiss Federal Act on Administrative Courts (*Verwaltungsgerichtsgesetz*), or any other applicable law, may be filed with respect to such order shall not prevent such order from being a Final Order.

FINMA means the Swiss Financial Market Supervisory Authority, the successor to the Swiss Federal Banking Commission

LBF means Lehman Brothers Finance AG in liquidation (a/k/a Lehman Brothers Finance SA en liquidation).

LBF Asset means, wherever located and by whomever held, any Asset owned or held directly or indirectly by LBF or to which LBF is directly or indirectly entitled.

LBF Allowed Claims means the Claims of LBF in Section 3.01 which are allowed pursuant to this Settlement Agreement.

LBF Bankruptcy Order means the Order entered by the Swiss Federal Banking Commission on December 19, 2008 (with effect of December 22, 2008), opening bankruptcy proceedings over LBF and appointing PwC (Zurich) as bankruptcy liquidator of LBF with sole authority to act on LBF's behalf.

LBF Chapter 15 Proceeding means the chapter 15 proceeding involving LBF pending in the Bankruptcy Court and captioned *In re Lehman Brothers Finance AG, In Liquidation*, Case No. 09-10583 (JMP).

LBF Creditors' Committee Approval means earlier of (1) passage of a resolution by LBF's Creditors' Committee approving entry into a settlement between LBF and LBI substantially in accordance with the terms of this Settlement Agreement; or (2) the passage of 30 days time from the execution of this Settlement Agreement without the LBF Creditors' Committee resolving to reject this Settlement Agreement.

LBF Liquidation Order means the Order entered by the Swiss Federal Banking Commission on October 29, 2008, appointing PwC (Zurich) as liquidator of LBF with sole authority to act on LBF's behalf, and prohibiting LBF's board of directors and officers from taking any legal actions on the company's behalf.

LBF Liquidators means PwC (Zurich), as liquidators and bankruptcy liquidators of LBF.

LBF Released Claim means all claims, demands, rights, duties, remedies, judgments, executions, debts, damages, liabilities, causes of action, costs, expenses, and Claims, of every kind, nature, character and description whatsoever (other than the LBF Allowed Claims), whether accrued or unaccrued, known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, certain or contingent, whether based on contract, federal, state, local, statutory or common law (including Swiss Law) or any other law, rule or regulation of any jurisdiction, or otherwise, that have been, could have been or might hereafter be asserted in any action, suit or proceeding, whether directly, indirectly, representatively or in any other capacity, in law or in equity, by the LBF Releasing Parties against any of the LBF Released Parties arising out of or in any way related to any members of the former Lehman Brothers group (including, without limitation, the business activities, assets or liabilities thereof). The release of the LBF Released Claims by the LBF Releasing Parties shall be a waiver and relinquishment, to the fullest extent permitted by law, of all provisions, laws and rules limiting relinquishment of unknown or unsuspected claims, including the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
OR HER SETTLEMENT WITH THE DEBTOR”

and any and all provisions, rights and benefits of any similar statute or common law rule of any other jurisdiction. The term LBF Released Claim shall specifically include, without limitation: (i) any administrative expense claim arising under applicable Swiss Law or US Bankruptcy Law, (ii) any US Avoidance Action or Swiss Avoidance Action, (iii) any right of subrogation; and (iv) any Claim based upon any Extended Lien Provision; the term LBF Released Claim shall specifically not include the LBF Allowed Claims and any Non-Party Claim.

LBF Released Parties means the following Persons: (i) LBI, (ii) the LBI Trustee, (iii) SIPC, (iv) all past and present employees, professionals and advisors of SIPC, LBI and the LBI Trustee, respectively, and (v) all successors, assigns, heirs, and personal representatives, and all past and present officers, directors, employees, agents, representatives, consultants, financial advisors, accountants and attorneys, of each Person referred to in this definition.

LBF Releasing Party means LBF, on behalf of itself, its estate, its successors and assigns, and any Person claiming through or on behalf of such LBF (including the LBF Liquidators).

LBHI means Lehman Brothers Holdings Inc.

LBI means Lehman Brothers Inc.

LBI Asset means, wherever located and by whomever held, any Asset owned or held directly or indirectly by the LBI Trustee or to which the LBI Trustee is directly or indirectly entitled.

LBI Fund of Customer Property means the fund of LBI property available for the payment of customer claims against LBI.

LBI Liquidation Order means the Order Commencing Liquidation, entered September 19, 2008, by the Honorable Gerard E. Lynch, District Judge of the United States District Court for the Southern District of New York, pursuant to the provisions of SIPA in the case captioned *SIPC vs. LBI*, Case No. 08-CIV-8119 (GEL).

LBI Released Claim means all claims, demands, rights, duties, remedies, judgments, executions, debts, damages, liabilities, causes of action, costs, expenses, and Claims, of every kind, nature, character and description whatsoever, whether accrued or unaccrued, known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, certain or contingent, whether based on contract, federal, state, local, statutory or common law (including Swiss Law) or any other law, rule or regulation of any jurisdiction, or otherwise, that have been, could have been or might hereafter be asserted in any action, suit or proceeding, whether directly, indirectly, representatively or in any other capacity, in law or in equity, by the LBI Releasing Parties against any of the LBI Released Parties arising out of or in any way related to any members of the former Lehman Brothers group (including, without limitation, the business activities, assets or liabilities thereof). The release of the LBI Released Claims by the LBI Releasing Parties shall be a waiver and relinquishment, to the fullest extent permitted by law, of

all provisions, laws and rules limiting relinquishment of unknown or unsuspected claims, including the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR”

and any and all provisions, rights and benefits of any similar statute or common law rule of any other jurisdiction. The term LBI Released Claim shall specifically include, without limitation: (i) any administrative expense claim arising under applicable Swiss Law or US Bankruptcy Law, (ii) any US Avoidance Action or Swiss Avoidance Action, (iii) any right of subrogation; and (iv) any Claim based upon any Extended Lien Provision; the term LBI Released Claim shall specifically not include any Non-Party Claim.

LBI Released Parties means the following Persons: (i) LBF, (ii) the LBF Liquidators, (iii) FINMA, (iv) all past and present employees, professionals and advisors of FINMA, LBF and the LBF Liquidators, respectively, and (v) all successors, assigns, heirs, and personal representatives, and all past and present officers, directors, employees, agents, representatives, consultants, financial advisors, accountants and attorneys, of each Person referred to in this definition.

LBI Releasing Parties means the LBI Trustee, on behalf of himself, the LBI estate, his successors and assigns, and any entity claiming through or on behalf of the LBI Trustee or LBI.

LBI SIPA Proceeding means the SIPA liquidation of LBI pending in the Bankruptcy Court and captioned *In re Lehman Brothers Inc.*, 08-01420 (JMP) SIPA.

LBI Trustee means James W. Giddens, as trustee in the SIPA liquidation of LBI, without personal liability and solely in his capacity as trustee and on behalf of LBI.

Lehman Global Protocol means the Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies dated May 12, 2009.

Non-Party Claim means any Claim of a Party against any Person other than a Party, including without limitation any such Claim arising from the guaranty of an obligation of a Party.

Party means the LBI Trustee and LBF.

Parties means, collectively, the LBI Trustee and LBF.

Person means an individual, partnership, government entity, corporation, limited liability company, limited liability partnership or any other entity.

PwC (Zurich) means PricewaterhouseCoopers AG, Zurich.

Security Interest Claim means a Claim by a Person to the benefit of an Encumbrance.

Settlement Agreement means this agreement.

SIPA means the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. § 78aaa *et seq.*, in effect as of September 19, 2008.

SIPC means the Securities Investor Protection Corporation.

Swiss Avoidance Actions means all avoidance actions and causes of action which may be brought by LBF against any LBF Released Party pursuant to applicable Swiss Law, including but not limited to the provisions of Art. 285 *et seq.* of the Swiss Federal Law on Debt Enforcement and Bankruptcy.

Swiss Law means the laws of Switzerland .

US\$ means the lawful currency of the United States of America.

US Avoidance Action means (i) any and all actions under US Bankruptcy Law seeking the avoidance of a transfer or obligation, including Sections 542-553 of the US Bankruptcy Code; and (ii) similar actions under other applicable law.

US Bankruptcy Law means the US Bankruptcy Code, SIPA and any other law applicable in the LBI SIPA Proceeding.

Section 1.02 *Construction.* This Settlement Agreement shall be interpreted according to the following rules of construction:

- (a) This Settlement Agreement constitutes a fully negotiated agreement among commercially sophisticated parties and therefore shall not be construed or interpreted for or against any Party, and any rule or maxim of construction to such effect shall not apply to this Settlement Agreement.
- (b) Words or terms expressed in the plural include the singular and vice versa.
- (c) Words importing a gender include every gender.
- (d) The word “including” does not limit the generality of any preceding words.
- (e) The word “or” shall not be exclusive.

Section 1.03 *Severability.* If any term or other provision of this Settlement Agreement is invalid, illegal or incapable of being enforced, all other terms and provisions of this Settlement Agreement shall nevertheless remain in full force and effect.

Section 1.04 *Headings.* The headings utilized in this Settlement Agreement are for convenience only and shall in no way affect the construction, meaning or interpretation hereof.

Section 1.05 *Binding Effect; Successor and Assigns.*

- (a) Any declaration or statement of the LBI Trustee shall only be made in his capacity and function as the LBI Trustee and shall in no circumstance be construed as being a declaration or statement of the LBI Trustee on his own and personal behalf.
- (b) Any declaration or statement of the LBF Liquidators shall only be made in their respective capacities and functions as the liquidators of LBF, and shall in no circumstance be construed as being a declaration or statement of the LBF Liquidators on their own and personal behalf.
- (c) This Settlement Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

Section 1.06 *Entire Agreement*. This Settlement Agreement constitutes the entire and only agreement of the Parties concerning the subject matter hereof. This Settlement Agreement supersedes and replaces any and all prior or contemporaneous verbal or written agreements between the Parties concerning the subject matter hereof.

Section 1.07 *No Oral Modifications*. This Settlement Agreement may not be modified or amended except by written agreement of the Parties. No waiver of any provision of this agreement shall be valid unless in writing signed by the waiving Party. No waiver of any breach of any term or provision of this Settlement Agreement shall be construed as a waiver of any subsequent breach.

Section 1.08 *No Admission of Liability*. Each Party acknowledges that this Settlement Agreement effects a settlement of potential Claims and counterclaims some or all of which are denied and contested, and that nothing contained herein shall be construed as an admission of liability or wrongdoing.

ARTICLE II. EFFECTIVENESS

Section 2.01 *Effectiveness*. This Settlement Agreement shall become effective on and from the Effective Date.

Section 2.02 *Counterparts*. This Settlement Agreement may be executed in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart. A copy or a facsimile of a signature shall be binding upon the signatory as if it were an original signature.

ARTICLE III. SETTLEMENT OF CLAIMS

Section 3.01 *LBF Allowed Claims*. The LBI Trustee agrees that the following LBF Allowed Claims shall be allowed against the estate of LBI and paid, without reserve or holdback (except to the extent that a person not a party to this Settlement Agreement timely asserts that the LBF Allowed Claims are subject, in whole or in part, to an Encumbrance), in the manner provided in the LBI SIPA Proceeding: (1) a customer claim in the amount of US\$189,924,000.00 (one hundred eighty-nine million nine hundred twenty-four thousand U.S. dollars) representing the September 19, 2008 value of 1,292 (one thousand two hundred ninety-two) shares of Berkshire Hathaway Class A common stock (the "LBF Allowed Customer Claim"); and (2) an unsecured

non-priority general creditor claim in the amount of US\$360,000,000.00 (three hundred sixty million U.S. dollars) (the "LBF Allowed Unsecured Claim").

Section 3.02 *Expungement and Disallowance of Claims.* Other than as provided for in Section 3.01 or Article VIII, any and all Claims which have been, or could be, asserted by LBF or the LBI Trustee against each other, in any proceeding or forum, shall be expunged, disallowed and released in accordance with Article VIII.

ARTICLE IV. EXTENDED LIENS

Section 4.01 *LBI Trustee's Release of Extended Liens.* The LBI Trustee:

- (a) Waives and releases any Claim, right and entitlement that LBI or the LBI Trustee may have to the exercise of any Extended Lien Provision or enforcement of any Encumbrance over any LBF Asset.
- (b) Covenants and agrees that he shall not, on behalf of himself, LBI or for the benefit of another Person, apply or exercise, or seek the application or exercise of any Extended Lien Provision or enforcement of any Encumbrance or right of set-off or counterclaim or any similar or analogous procedure or right in respect of any LBF Asset.

Section 4.02 *LBF's Release of Extended Liens.* LBF:

- (a) Waives and releases any Claim, right and entitlement that LBF or the LBF Liquidators may have to the exercise of any Extended Lien Provision or enforcement of any Encumbrance over any LBI Asset.
- (b) Covenants and agrees that it shall not, on behalf of itself or for the benefit of another Person apply or exercise, or seek the application or exercise of any Extended Lien Provision or enforcement of any Encumbrance or right of set-off or counterclaim or any similar or analogous procedure or right in respect of any LBI Asset.

Section 4.03 *Valid Extended Lien Provision.* Without limiting the generality of the release of extended liens provided in Section 4.01 and 4.02, if: (i) a Person (other than LBI) asserts that it has a claim against LBF that is secured by an Extended Lien Provision over either the LBF Allowed Customer Claim or the LBF Allowed Unsecured Claim (an "Extended Lien Claim"), then LBI shall follow any Final Order resolving a dispute between the relevant parties to the dispute or, in the alternative, follow the joint instruction of LBF and the Person asserting the Extended Lien Claim. Where any such Extended Lien Claim is asserted against the LBF Allowed Customer Claim or the LBF Allowed Unsecured Claim, LBI shall, at LBF's expense, provide reasonable assistance (including access to witnesses and non-privileged documents) in support of any defense that LBF may assert in any legal proceedings with respect to the same. LBI shall not take a position with respect to the validity of an Extended Lien Claim asserted against the LBF Allowed Customer Claim or the LBF Allowed Unsecured Claim.

ARTICLE V. COVENANTS, REPRESENTATIONS & WARRANTIES

Section 5.01 *Covenants, Representations & Warranties by the LBI Trustee.* In order to induce LBF and the LBF Liquidators to enter into and perform their obligations under this Settlement Agreement, the LBI Trustee hereby covenants, represents, warrants and acknowledges as follows:

- (a) *Bankruptcy Court Approval.* As soon as practicable after execution of this Settlement Agreement, the LBI Trustee shall seek Bankruptcy Court Approval.
- (b) *Authority.* Subject to Bankruptcy Court Approval, (i) the LBI Trustee has the power and authority to execute, deliver and perform his obligations under this Settlement Agreement and to bind the LBI estate, and to consummate the transactions contemplated herein; and (ii) the execution, delivery and performance of this Settlement Agreement by the LBI Trustee and the consummation of the transactions contemplated herein have been duly authorized by all necessary action on the part of the LBI Trustee and no other proceedings on the part of the LBI Trustee are necessary to authorize and approve this Settlement Agreement or any of the transactions contemplated herein.
- (c) *Validity.* Subject to Bankruptcy Court Approval, this Settlement Agreement has been duly executed and delivered by the LBI Trustee and constitutes the legal, valid and binding agreement of the LBI Trustee, enforceable against the LBI Trustee in accordance with its terms.
- (d) *Authorization of Governmental Authorities and Creditors.* Subject to Bankruptcy Court Approval, no action by (including any authorization, consent or approval), in respect of, or filing with, any governmental authority is required for, or in connection with, the valid and lawful authorization, execution, delivery and performance by the LBI Trustee pursuant to this Settlement Agreement, other than as provided herein.
- (e) *No Reliance Other Than Representations, Warranties & Covenants.* The LBI Trustee and LBI, acting through the LBI Trustee: (i) is a sophisticated party with respect to the subject matter of this Settlement Agreement, (ii) has been represented and advised by legal counsel in connection with this Settlement Agreement, (iii) has adequate information concerning the matters that are the subject of this Settlement Agreement, (iv) acknowledges that he has entered into this Settlement Agreement voluntarily and of his own choice and not under coercion or duress, and (v) has independently and without reliance upon LBF, the LBF Liquidators or any officer, employee, agent, counsel or other representative thereof, and based on such information as the LBI Trustee has deemed appropriate, made his own analysis and decision to enter into this Settlement Agreement, provided, that the LBI Trustee has relied upon the express representations, warranties and covenants of the LBF and LBF Liquidators in this Settlement Agreement.

Section 5.02 *Covenants, Representations & Warranties by LBF.* In order to induce the LBI Trustee to enter into and perform his obligations under this Settlement Agreement, each of the LBF Liquidators and LBF hereby covenants, represents, warrants and acknowledges as follows:

- (a) *LBF Creditors' Committee Approval.* As soon as practicable after execution of this Settlement Agreement, LBF, acting through the LBF Liquidators, shall seek LBF Creditors' Committee Approval and Bankruptcy Court Approval.
- (b) *Authority.* Subject to the Conditions to Effectiveness, (i) LBF has the power and authority to execute, deliver and perform its obligations under this Settlement Agreement, and to consummate the transactions contemplated herein; and (ii) the execution, delivery and performance of this Settlement Agreement by LBF and the consummation of the transactions contemplated herein have been duly authorized by all necessary action on the part of LBF and no other proceedings on the part of LBF are necessary to authorize and approve this Settlement Agreement or any of the transactions contemplated herein.
- (c) *Validity.* Subject to the Conditions to Effectiveness, this Settlement Agreement has been duly executed and delivered by LBF and constitutes the legal, valid and binding agreement of LBF, enforceable against LBF in accordance with its terms.
- (d) *Authorization of Governmental Authorities and Creditors.* Subject to the Conditions to Effectiveness, no action by (including any authorization, consent or approval), in respect of, or filing with, any governmental authority is required for, or in connection with, the valid and lawful authorization, execution, delivery and performance by LBF and/or the LBF Liquidators pursuant to this Settlement Agreement, other than as provided herein.
- (e) *No Reliance Other Than Representations, Warranties & Covenants.* The LBF Liquidators and LBF acting through the LBF Liquidators (i) is a sophisticated party with respect to the subject matter of this Settlement Agreement, (ii) has been represented and advised by legal counsel in connection with this Settlement Agreement, (iii) has adequate information concerning the matters that are the subject of this Settlement Agreement, (iv) acknowledges that it has entered into this Settlement Agreement voluntarily and of its own choice and not under coercion or duress; and (v) has independently and without reliance upon the LBI Trustee or any of the LBI Trustee's or LBI's respective affiliates or any officer, employee, agent, counsel or other representative thereof, and based on such information as each of the LBF Liquidators and LBF has deemed appropriate, made its own analysis and decision to enter into this Settlement Agreement, provided, that each of the LBF Liquidators and LBF has relied upon the express representations, warranties and covenants of the LBI Trustee in this Settlement Agreement.
- (f) *Title; No Prior Transfer of Claims.*
 - (i) As of the Execution Date, LBF owns and has good title to its respective LBF Allowed Claims, free and clear of any and all liens, security interests, participations or Encumbrances created or incurred by or against LBF and has not transferred or assigned to any other person any of the LBF Allowed Claims that are the subject of this Settlement Agreement, in whole or in part.
 - (ii) After the Effective Date, LBF may transfer any LBF Allowed Claim, or any rights or interests arising thereunder, in whole or in part, to one or more transferees; provided, that any transferee of such LBF Allowed Claims agrees in writing that the terms of this

Settlement Agreement shall be binding in all respects upon, and shall govern its acts and those of any successor transferees. This subsection (ii) shall constitute consent by the LBI Trustee to any transfer or assignment of the LBF Allowed Claims, in whole or in part, that complies with this subsection.

ARTICLE VI. CONTRACTS

Section 6.01 *Contracts*. Any contract or agreement not identified in this section that is between (i) LBI or the LBI Trustee, and (ii) LBF or any LBF Liquidator, shall be rejected pursuant to section 365 of the Bankruptcy Code or otherwise terminated. Any Claim that arises from the rejection or termination of such contract or agreement is deemed to be satisfied in full by the terms and provisions of this Settlement Agreement. The following contract shall survive the execution and consummation of this Settlement Agreement and shall continue to be enforceable pursuant to the terms thereof: The Lehman Global Protocol

ARTICLE VII. CONTINUING CO-OPERATION

Section 7.01 The Parties will continue to exchange data relating to the respective bankruptcy cases and insolvency proceedings in order to assist each other in resolving Claims of Affiliates and other creditors pursuant to and subject to the terms of: (i) any data sharing agreement between (among others) the Parties, and (ii) the Lehman Global Protocol.

ARTICLE VIII. RELEASES

Section 8.01 *LBI Release*.

- (a) In consideration for LBF's execution of this Settlement Agreement and in exchange for the obligations of LBF and the LBF Liquidator under this Settlement Agreement, including the mutual release provisions of this Article VIII, effective upon the occurrence of the Effective Date each LBI Releasing Party hereby irrevocably releases, discharges and acquits, fully and forever, each LBI Released Party from any and all LBI Released Claims.
- (b) Nothing in this Settlement Agreement shall operate as a release or waiver of any LBI Non-Party Claim.

Section 8.02 *LBF Release*.

- (a) In consideration for the LBI Trustee's execution of this Settlement Agreement and in exchange for the obligations of LBI and the LBI Trustee under this Settlement Agreement, including the allowance of the LBF Allowed Claims and the mutual release provisions of this Article VIII, effective upon the occurrence of the Effective Date, each LBF Releasing Party hereby irrevocably releases, discharges and acquits, fully and forever, each LBF Released Party from any and all LBF Released Claims.
- (b) Nothing in this Settlement Agreement shall operate as a release or waiver of any LBF Non-Party Claim.

Section 8.03 *Interpretation of Releases.* For the avoidance of any doubt, nothing in this agreement shall be interpreted or construed (a) as a release or waiver of any claim for (1) breach of any provision of this Settlement Agreement; or (2) breach of any provision of the Lehman Global Protocol that occurs after the Effective Date; or (b) as a release or waiver that impairs or restricts the ability to assert, pursue or prove Non-Party Claims, including Non-Party Claims that arise with respect to or are related to the LBF Allowed Claims or the LBF Released Claims.

ARTICLE IX. TERMINATION

Section 9.01 *Automatic Termination.* This Settlement Agreement shall automatically terminate upon the occurrence of any of the following events: (i) the entry of a Final Order denying Bankruptcy Court Approval, (ii) the LBF Creditors' Committee resolves to reject this Settlement Agreement within 30 days of the execution of this Settlement Agreement, (iii) if a creditor of LBF requests the assignment of the LBF claims against LBI according to Article 260 of the Swiss Federal Law on Debt Enforcement and Bankruptcy in due time and form (including deposit of the settlement interest amount as determined by the LBF Liquidator), (iv) if FINMA issues an order substantially disapproving the Settlement Agreement, or its execution by the LBF Liquidator prior to the Effective Date, or (v) a competent Swiss court by Final Order declares invalid, or sets aside in total or in part the FINMA Settlement Order and thereby substantially disapproves the Settlement Agreement, or its execution by the LBF Liquidator.

Section 9.02 *The LBI Trustee's Right to Terminate.* The LBI Trustee shall have the right to terminate this Settlement Agreement before the Effective Date by written notice to LBF consistent with Article XI hereof if there is a material breach of the representations, warranties or covenants of LBF hereunder, and LBF shall fail to cure such breach within ten (10) Business Days following written notice of such breach from the LBI Trustee.

Section 9.03 *LBF's Right to Terminate.* LBF shall have the right to terminate this Settlement Agreement before the Effective Date by written notice to the LBI Trustee consistent with Article XI if there is a material breach of the representations, warranties or covenants of the LBI Trustee hereunder, and the LBI Trustee shall fail to cure such breach within ten (10) Business Days following written notice of such breach from the LBF Liquidators.

Section 9.04 *Effect of Termination.* In the event that this Settlement Agreement is terminated in accordance with its terms, then neither this Settlement Agreement, nor any motion or other pleading filed in the Bankruptcy Court or Swiss Court with respect to the approval of this Settlement Agreement, shall have any *res judicata*, evidentiary or collateral estoppel effect or be of any force or effect. Each of the Parties' respective interests, rights, remedies and defenses shall be restored without prejudice as if this Settlement Agreement had never been executed (except as to this Section) and the Parties hereto shall be automatically relieved of any further obligations hereunder. Except as expressly provided herein, this Settlement Agreement and all communications and negotiations among the Parties with respect hereto or any of the transactions contemplated hereunder are without waiver of or prejudice to the Parties' rights and remedies and the Parties hereby reserve all claims, defenses and positions that they may have with respect to each other.

ARTICLE X. VENUE AND CHOICE OF LAW

Section 10.01 *Venue.*

- (a) To the maximum extent permissible by law, the Parties expressly consent and submit to the exclusive jurisdiction of the Bankruptcy Court over any actions or proceedings relating to the enforcement or interpretation of this Settlement Agreement and any Party bringing such action or proceeding shall bring such action or proceeding in the Bankruptcy Court.
- (b) Each of the Parties agrees that a final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.
- (c) If the Bankruptcy Court refuses or abstains from exercising jurisdiction over the enforcement of this Settlement Agreement and/or any actions or proceedings arising hereunder or thereunder, then the Parties agree that venue shall be in any court in the State of New York having proper jurisdiction.
- (d) Each Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, (i) any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Settlement Agreement with the Bankruptcy Court or with any other state or federal court located within the County of New York in the State of New York; and (ii) the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.
- (e) Each Party irrevocably consents to service of process in the manner provided for notices in Article XI hereof. Nothing in this Settlement Agreement will affect the right, or requirement, of any Party to this Settlement Agreement to serve process in any other manner permitted or required by applicable law.

Section 10.02 *Choice of Law.* This Settlement Agreement and all claims and disputes arising out of or in connection with this Settlement Agreement, shall be governed by and construed in accordance with the laws of the State of New York and US Bankruptcy Law, without regard to choice of law principles to the extent such principles would apply a law other than that of the State of New York or US Bankruptcy Law.

ARTICLE XI. NOTICES

All notices and other communications given or made pursuant to this Settlement Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next Business Day, (c) three days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one Business Day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

To the LBI Trustee at:

Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, New York 10004
Attn: James B. Kobak, Jr. & Jeffrey M. Greilsheimer
Email: kobak@hugheshubbard.com
greilshe@hugheshubbard.com

To LBF:

PricewaterhouseCoopers AG, Zurich
As Bankruptcy Liquidator for Lehman
Brothers Finance AG In Liquidation
Stampfenbachstrasse 48
Zurich, Switzerland
Attn: Christiana Suhr Brunner & Marco Grossi
Email: christiana.suhr.brunner@ch.pwc.com
marco.grossi@ch.pwc.com

With a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166-0193
Attn: Michael A. Rosenthal
Email: MRosenthal@gibsondunn.com

-and-

Gibson, Dunn & Crutcher LLP
2100 McKinney Avenue, Suite 1100
Dallas, Texas 75201
Attn: Robert B. Krakow
Email: rkrakow@gibsondunn.com

or to such other address as may have been furnished by a Party to the other Party by notice given in accordance with the requirements set forth above.

ARTICLE XII. EXPENSES

The fees and expenses incurred by each Party (including the fees of any attorneys, accountants, investment bankers, financial advisors or any other professionals engaged by such Party) in connection with this Settlement Agreement and the transactions contemplated hereby, whether or not the transactions contemplated hereby are consummated, shall be paid by such Party.

ARTICLE XIII. NO PERSONAL LIABILITY

Section 13.01 *LBI Trustee*. The Parties accept and agree that this Settlement Agreement and all actions and measures contained herein do not give rise to any personal liability on the part of the LBI Trustee, his firm and its partners and employees, and their representatives or other professional advisors, and to the extent any such personal liability existed, the Parties explicitly waive any and all potential rights and claims against them, their firm and its partners and employees, and their representatives and other professional advisors. Any claim by a Party against the LBI Trustee or LBI arising under or relating to this Settlement Agreement shall, except with respect to the LBF Allowed Customer Claim, only be satisfied out of the assets of LBI that are allocated to the LBI general estate. Any claim by a Party against the LBI Trustee or LBI arising under or relating to this Settlement Agreement with respect to the LBF Allowed Customer Claim shall only be satisfied out of the assets of the LBI general estate and the LBI Fund of Customer Property in accordance with SIPA.

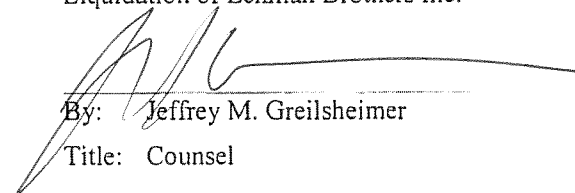
Section 13.02 *LBF Liquidators*. The Parties accept and agree that this Settlement Agreement and all actions and measures contained herein do not give rise to any personal liability on the part of the LBF Liquidators, their firm and its partners and employees, and their representatives or other professional advisors, and to the extent any such personal liability existed, the Parties explicitly waive any and all potential rights and claims against them, their firm and its partners and employees, and their representatives and other professional advisors. Any claim by a Party against the LBF Liquidators or LBF arising under or relating to this Settlement Agreement shall only be satisfied out of the assets of the insolvency estate of LBF.

ARTICLE XIV. WAIVER OF JURY TRIAL

EACH OF THE PARTIES HERETO HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS SETTLEMENT AGREEMENT OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH OR IN RESPECT OF ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ARISING OUT OF ANY EXERCISE BY ANY PARTY OF ITS RESPECTIVE RIGHTS UNDER THIS SETTLEMENT AGREEMENT OR IN ANY WAY RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ANY ACTION TO RESCIND OR CANCEL THIS SETTLEMENT AGREEMENT AND WITH RESPECT TO ANY CLAIM OR DEFENSE ASSERTING THAT THIS SETTLEMENT AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER OF RIGHT TO TRIAL BY JURY IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF THE PARTIES HERETO IS HEREBY AUTHORIZED TO FILE A COPY OF THIS ARTICLE XIV IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER. THIS WAIVER OF JURY TRIAL IS A MATERIAL

INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS SETTLEMENT
AGREEMENT.

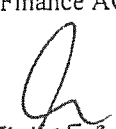
James. W. Giddens, as SIPA Trustee for the
Liquidation of Lehman Brothers Inc.


By: Jeffrey M. Greilsheimer

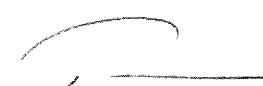
Title: Counsel

Lehman Brothers Finance AG in liquidation
(a/k/a Lehman Brothers Finance SA en
liquidation)

By: PricewaterhouseCoopers AG (Zurich),
as bankruptcy liquidator of Lehman
Brothers Finance AG in Liquidation


S. NEUFMAYER FOR C. SUHR
By: Christiana Suhr Brunner

Title: Liquidator


By: Pascal Portmann

Title: Liquidator

EXHIBIT 2

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

In re

LEHMAN BROTHERS INC.,

Debtor.

Case No. 08-01420 (JMP) SIPA

Rel. Docket No. 3931

**[PROPOSED] ORDER APPROVING SETTLEMENT AGREEMENT
BETWEEN THE TRUSTEE AND LEHMAN BROTHERS FINANCE AG, IN
LIQUIDATION (A/K/A LEHMAN BROTHERS FINANCE SA, IN LIQUIDATION)**

Upon the motion dated October 3, 2012 (the “Motion,” ECF No. [TBD])¹ of James W. Giddens (the “Trustee”), as trustee for the liquidation of the business of Lehman Brothers Inc. (“LBI”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* (“SIPA”), seeking entry of an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) approving the settlement agreement entered into by the Trustee and PricewaterhouseCoopers AG (Zurich), in its capacity as liquidators for the liquidation of Lehman Brothers Finance AG (a/k/a Lehman Brothers Finance, SA) (“LBF”); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with SIPA § 78eee(b)(4); and venue being proper before this Court pursuant to SIPA § 78eee(a)(3) and 15 U.S.C. § 78aa; and due and proper notice of the Motion having been provided in accordance with the Amended Case Management Order; and a reasonable opportunity to object or be heard regarding the Motion having been afforded to all such parties; and it appearing that no other or further notice need be provided; and the relief requested in the

1. Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

Motion is appropriate and in the best interests of the LBI estate, its customers, its creditors, and all parties in interest; and sufficient cause appearing therefore, it is

ORDERED that the Court having determined and found that the proposed compromises and settlements set forth in the Settlement Agreement are reasonable and appropriate and consummation of the transactions contemplated by the Agreement is in the best interests of the LBI estate, its customers and creditors, the Motion is GRANTED; and it is further

ORDERED that LBF shall have an allowed customer claim against LBI in the amount of US\$189,924,000.00 (one hundred eighty-nine million nine hundred twenty-four thousand U.S. dollars) and an allowed unsecured non-priority general creditor claim against LBI in the amount of US\$360,000,000.00 (three hundred sixty million U.S. dollars); and it is further

ORDERED that the Objection filed by LBF on December 1, 2010 (ECF No. 3931) is hereby expunged with prejudice; and it is further

ORDERED that any and all Claims asserted by LBF or the LBI Trustee against each other shall be expunged, disallowed and released in accordance with the Settlement Agreement; and it is further

ORDERED that any objections to the Motion that have not otherwise been withdrawn or resolved are overruled; and it is further

ORDERED that pursuant to Bankruptcy Rule 9019, the compromises and settlements described in the Motion and contemplated by and provided for in the Settlement Agreement are approved; and it is further

ORDERED that the Trustee is authorized to take any and all actions reasonably necessary to consummate the Settlement Agreement and perform any and all obligations contemplated therein; and it is further

ORDERED that notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York
_____, 2012

HONORABLE JAMES M. PECK,
UNITED STATES BANKRUPTCY JUDGE