LBI Trustee Files U.S. Supreme Court Petition for Writ of Certiorari Over $4 Billion Asset Sale Dispute with Barclays

New York, NY, December 15, 2014 - James W. Giddens, Trustee for the liquidation of Lehman Brothers Inc. (LBI) under the Securities Investor Protection Act (SIPA), is today filing a petition for writ of certiorari with the U.S. Supreme Court seeking review of lower court rulings that awarded margin cash assets to Barclays (NYSE: BCS) contrary to the Bankruptcy Code and the Due Process clause of the U.S. Constitution.

"This petition is consistent with my fiduciary duty as Trustee to protect the interests of customers and creditors, and it seeks to uphold the protections of the Bankruptcy Code and the Due Process clause of the U.S. Constitution," Giddens said.

"While the Bankruptcy Court rightly rejected Barclays' claims to the margin cash assets, the decisions by the District and Appeals Courts reduced the amount available for the general estate by $4 billion, frustrated the purpose of the liquidation, and undermined the credibility of a sale hearing," Giddens continued.

Barclays purchased Lehman's brokerage business following a Section 363 hearing in Bankruptcy Court that began on September 19, 2008. During the hearing, the parties to the transaction made repeated and unambiguous representations that "no cash" was to be included in the sale. These representations were the basis for all parties, including the Securities Investor Protection Corporation, assenting to the transaction and the Bankruptcy Court approving the transaction. Despite this, more than a year later, Barclays claimed that a post-transaction "clarification letter," which was never subject to notice, hearing or Bankruptcy Court approval as required by Section 363, entitled it to $4 billion in margin cash assets.

The same Bankruptcy Court judge who oversaw the Section 363 hearing later conducted an exhaustive 34-day trial over Barclays' disputed claim to these assets. The judge heard extensive testimony and evidence, concluded that "no cash" meant "no cash," and denied Barclays' $4 billion request.

The U.S. District Court for the Southern District of New York and the U.S. Court of Appeals for the Second Circuit held otherwise, permitting the subsequent "clarification letter" to trump the conflicting, express representations on which the Bankruptcy Court relied to approve the sale in the first place.

A Section 363 hearing permits a trustee to sell a debtor's property outside the ordinary course of business only after "notice and a hearing" before the Bankruptcy Court. This critical protection allows all interested parties to have an opportunity to learn about and potentially object to the sale terms and ensures that there is meaningful judicial oversight and review of the transaction.

If the Appeals Court and District Court decisions are left standing, long-term damage to the Section 363 process will result:

- The decisions provide a playbook for sophisticated parties and lawyers to game Section 363 sales to the detriment of trustees, creditors, and customers.

- The decisions undercut the ability of the Bankruptcy Court and interested parties to rely on representations made during a Section 363 hearing, threatening the integrity of those proceedings and the efficacy of those sales.

- The decisions hinder the judicial efficiency and flexibility that Section 363 sales often require.

Counsels for the Trustee on this issue include Paul D. Clement, George W. Hicks, Jr. and Barbara Smith Grieco of Bancroft PLLC, and James B. Kobak, Jr., Christopher K. Kiplok and Savvas A. Foukas of Hughes Hubbard & Reed LLP.

Status of the Liquidation
The Trustee has appropriately reserved for the Barclays litigation, and the decision to file this petition does not affect the distributions already made to customers and general creditors.

At the outset of the LBI liquidation, the extent of customer distributions was unknown and the potential for a general estate was in doubt. Currently:

- All customer and priority claims have been paid in full.

- The first interim distribution to general creditors, begun in September 2014, totaled $2.6 billion and equaled 17 percent of the total amount of allowed unsecured general creditor claims.

- Total distributions are more than $110 billion, representing the largest distribution across the worldwide Lehman insolvency proceedings.

The Trustee expects to be able to make additional interim distributions to unsecured general claimants as he continues to wind-down the estate.

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