Remarks of James W. Giddens
Bankruptcy Court Hearing
State of the Lehman Brothers Inc. Estate
August 17, 2017[1]

Good morning, Your Honor.

Thank you for providing this opportunity to update the Court and creditors on the state of the Lehman Brothers Inc. estate. I appreciate the update we just received about the impressive progress made in the Lehman Brothers Holdings Inc. estate. As you know, several years ago, we reached a settlement agreement between LBI and LBHI, avoiding years of potentially protracted and costly litigation, and setting both estates up for the successes we are reporting to you today.

It has now been nearly nine years since the liquidation proceeding began under the Securities Investor Protection Act, and we continue to move towards substantial completion.

As Trustee, it is particularly satisfying to report that not a single one of the more than 140,000 claims remains before the Bankruptcy Court for resolution – a fact that clearly demonstrates how much progress has been made towards closing out the liquidation. I'd like to thank this Court for resolving the issues that were before you deliberately and thoughtfully. We now await resolution of a handful of issues that are before appellate courts.

In the dark days of Lehman's failure, as the largest bankruptcy in history threatened global markets and economic stability, very few observers thought we would be able to accomplish the recoveries and distributions we have made in this proceeding.

The early administration of the LBI bankruptcy was marked by chaotic conditions which the Bankruptcy Court termed the "Fog of Lehman." My office faced numerous challenges caused by huge gaps in available information, general market unpredictability, various administrative obstacles, and the failure of key counterparties to provide immediate and accurate information.

Despite these and other hurdles, we have continued, at every point, to recover as many assets as possible and distribute them promptly, efficiently and fairly, in order to maximize the estate for all creditors.

As this Court is well aware, customer claims have been fully satisfied – with most customer claims fulfilled within weeks of the liquidation. Secured, priority and administrative creditors have also received full distributions. General creditors have received five interim distributions, bringing the cumulative payout on allowed unsecured general creditor claims to 39 percent, far exceeding initial expectations.

[1] These constitute Mr. Giddens prepared remarks. The transcript of the August 17, 2017 hearing in *In re Lehman Brothers Inc.*, Case No. 08-1420 (SCC) SIPA should be consulted for all statements made in connection with such remarks as presented at the hearing.

It is notable that while the liquidation has entered a phase of substantial completion, the proceeding remains a mega-case given the assets that must continue to remain on hand for reserves and internal controls.

We are now focused on the matters before appellate courts where the estate is the appellee in every instance. When these outstanding issues are resolved, I will then be able to seek the Court's approval for a final distribution that will complete the full wind-down of the estate and the closure of the liquidation proceeding.

But before going into the unresolved issues, I would like to provide a brief recap of where the estate stands today and what has been accomplished so far.

LBI Estate Today and Distributions to Date

The LBI liquidation presented a case of unprecedented magnitude and complexity. Certain asserted customer claims, including the LBIE claim and the LBHI claim, were by themselves larger than any previous SIPA proceeding in history.

Of the approximately 140,000 claims that were asserted at the beginning of this liquidation, only approximately 400 general creditor claims and one customer claim remain. All of the remaining general creditor claims are now pending on appeal before District and Circuit Courts. There is one remaining customer claim, in which our determination, supported by SIPC, was upheld by the Second Circuit. We are awaiting expiration of the *certiorari* period in September. My office continues to hold approximately $330 million in reserves for remaining claims.

In total, Lehman's broker-dealer customers and creditors have now received more than $115 billion in distributions. Importantly, more than 111,000 retail customers received 100 percent of their property – about $106 billion – within days of the bankruptcy due to the unique account transfer process under SIPA. Following those customer account transfers, over 14,000 customer claims with an asserted value of approximately $50 billion were resolved. In addition, secured and priority creditors received 100 percent of their property, totaling $253 million.

At the outset of the liquidation in 2008, the prevailing expectation was that general unsecured creditors would not receive substantial recoveries. I'm very proud that through great effort and diligence by many, including this Court, the estate has distributed almost $9 billion to general unsecured creditors, bringing these creditors to 39 percent recoveries.

Additional distributions to general creditors remain possible, and the timing of any future general creditor distribution will largely depend on the outcomes of the appellate claim litigations where a small number of claimants have appealed Court rulings upholding my claims determinations.

Progress in the Last Year

Since I was before you a year ago to provide an update on the estate, significant progress has been made in resolving remaining claims and winding down the estate.

We reached final resolution on seven general creditor claims asserted in the amount of $116 million, along with all of the administrative expense claims filed before the bar date. We sold the remaining affiliate claims held by the estate and continued to marshal other assets, recovering an additional $11.1 million for the estate in the last year. The Court also granted approval of two data abandonment motions that resulted in sizeable annual savings.

Perhaps most notably, we distributed another $226 million to holders of allowed general unsecured claims, bringing the total distributions to those claimants to 39 cents on the dollar.

Unresolved Issues

While I am satisfied to have resolved 14,794 general creditor claims, asserted in the value of $129 billion, several hundred general creditor claims remain unresolved. Resolution of these claims remains our focus in the effort to close out the LBI estate.

Approximately 400 general creditor claims remain, asserted in the value of $453 million. While the total dollar amount of the remaining claims is substantial, the issues are all well-defined at this time. These claims fall into four categories: the Executive and Select Employee Plan, or ESEP, claims, equity award claims, market loss claims and bonus and wage claims.

The vast majority of the remaining claims – 381 claims asserted in the value of $271 million – are ESEP claims and are subject to a consolidated adversary proceeding. I have determined that these claims are subordinated, which was affirmed last month in a summary judgment ruling by this Court. Many of the ESEP claims were asserted with a secured status, and I have set aside reserves at one hundred cents on the dollar pending the outcome of this litigation.

Regarding the bonus claims, just three weeks ago the Second Circuit Court of Appeals upheld the principle of no double recovery against the claimants, which is consistent with the ruling from this Court.

Rulings affirming my determinations regarding the equity awards and market loss claims have been appealed by the claimants, and in each of these matters, oral arguments are scheduled to occur in the coming months.

The closure of the estate is dependent on the final resolution of these appeals by the relevant Appellate Court, which will depend on court calendars. We are hopeful that the remaining claims appeals will be resolved swiftly and efficiently.

While the remaining assets to be recovered are de minimis in the context of a $120 billion estate, we continue to pursue estate assets, and we anticipate auctioning remaining class action claims and other residual outstanding obligations to the estate as we near the end of the case.

Next Steps

At this point in the liquidation, the assets that continue to be held are for the necessary reserves related to the unresolved claims I have just described. All other assets have been promptly distributed as they have become available, and our intention is to continue interim distributions to general creditors if and when reserves are freed up as claims are resolved.

Once the remaining claims are finally resolved, we will commence the final steps to close the LBI estate. At that time, we will seek the Court's approval for the preservation of required data and abandonment of unnecessary systems and information, for a final distribution to creditors, and ultimately, for my discharge.

I can assure you that we are committed to the prompt closure of the LBI estate.

Recommendations

Before concluding, I would like to touch on some of the lessons we've learned from this liquidation.

While the amount distributed to general creditors has far exceeded initial expectations, it cannot be ignored that unsecured creditors will lose over half of their claims, and there are large unsubordinated claims, totaling approximately $14.7 billion, that will receive no distributions. This is an unfortunate byproduct of the sale to Barclays and the state of Lehman's business at the time of the bankruptcy.

In the estate's Realization Report, I reported that general estate assets would be at least $15.2 billion less than the assets available as of the Filing Date. The largest cause of losses were some of the terms of the emergency transaction with Barclays negotiated in the days and hours before the liquidation.

Barclays acquired over $11 billion in assets, plus LBI's former employees, intellectual property, high worth customer accounts and an entry into the US market in exchange for $2.4 billion of payments to third parties to settle LBI obligations. This resulted in a multi-billion dollar loss to the LBI estate, and the assets paid to Barclays significantly diminished amounts available for LBI's unsecured general creditors.

In addition to the Barclays transaction, two additional factors contributed to the unsecured losses. First, on the Filing Date, LBI's valuation of assets exceeded their realizable market position. Second, prior to bankruptcy, LBI was a hub among the 2,600 affiliates of the worldwide Lehman enterprise. With nearly all affiliates in bankruptcy or similar proceedings around the world, the

realized value of all investments in affiliates and affiliate receivables became substantially less than book value. At the same time, claims from affiliates were far in excess of the anticipated book value as of the filing date.

The losses that will occur in this liquidation are unfortunate, but in my view, were not unavoidable. Reforms can be made to help avoid repetition of such losses in future liquidation proceedings. I applaud all well-intentioned efforts to avoid future collapses. But the reality is that there will be future failures, be they caused by cyber-attacks, human errors, or the conduct of bad actors. Calls for reforms, such as those outlined in the report of the SIPC Modernization Task Force, of which I was a member, should not be ignored. There are three reforms in particular that I believe merit further study.

First, as proposed by the Task Force, I support increasing SIPC's maximum coverage from $500,000 to $1.3 million. Future coverage limits should also be tied to inflation. This would immediately and significantly increase the protection for customers, especially those who are not large or professional investors.

Second, also from the Task Force report, I propose eliminating the distinction between claims for cash and claims for securities. This reform would resolve potential disparate treatment of customers and increase the amount of customer protection available.

Finally, I believe consideration should also be given to expanding the borrowing and guarantee authority available to SIPC trustees or other liquidators. The SIPC fund has met the demands of all previous SIPA liquidations. However, the Lehman liquidation in particular demonstrated that just one failure of a SIPC member broker-dealer could require at least the temporary availability of much more substantial sums. The ability to quickly and efficiently return customer property in the early days of a liquidation would be enhanced if the borrowing limit were increased.

Of course, one of the most important lessons of this administration, in connection with the LBHI bankruptcy proceeding, is that the bankruptcy process and the SIPA regime have been tried and tested and shown to not only work, but work well.

Conclusion

In conclusion, I would like to thank SIPC, the SEC, the CFTC, FINRA, the Senate Banking Committee, the House Financial Services Committee, and others who have played an active role in the LBI administration and provided substantial support and guidance.

The progress we have seen in the LBI liquidation would not have been possible without the oversight of the United States Bankruptcy Court, including Judge Peck and, of course, Your Honor. Between Judge Peck and yourself, your commitment to fairly, thoughtfully and swiftly addressing the myriad of complex issues that have come before you in this liquidation proceeding in the last nine years has been truly admirable.

Thank you, your Honor.