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

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| In re<br><br>LEHMAN BROTHERS INC.,<br><br>Debtor. | Case No. 08-01420 (SCC) SIPA |

# TRUSTEE'S NINETEENTH INTERIM REPORT FOR THE PERIOD APRIL 1, 2018 THROUGH SEPTEMBER 30, 2018 AND QUARTERLY REPORT ON THE GENERAL CREDITOR CLAIMS PROCESS

All information in this Report is based on information available to the Trustee at this time, but this information may be incomplete and should not be relied upon. This Report is not meant to be relied upon by investors or others as a complete description of the LBI estate, its condition (financial or otherwise), prospects, assets, or liabilities. The information in this Report will be updated, including corrections, if any, in future reports to the Court. The information in this Report is not prepared in accordance with U.S. generally accepted accounting principles. The realized value of certain assets may be zero or different from the estimates on which this Report is based. Selected balances and information contained herein have not and will not be subject to audit or review by external accountants. The Trustee reserves all rights to revise this Report.

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TO THE HONORABLE SHELLEY C. CHAPMAN,
UNITED STATES BANKRUPTCY JUDGE:

During the Report Period the Trustee continued to progress the estate towards closure and a final distribution. Among other milestones the Trustee effected a $170 million sixth interim distribution, implemented an innovative Accelerated Final Distribution Election that allowed over 860 claimants to exit the LBI bankruptcy prior to its conclusion, and secured an appellate decision moving the sole remaining claims litigation one step closer to a final adjudication. These and the other matters described in this report are hallmarks of the substantial completion of this liquidation.

General estate distributions now exceed $9.261 billion, with general unsecured creditors having received 39.75% of their allowed claims and secured, administrative, and priority creditors having received full payment on their allowed claims. The remaining claims dispute—which involves 381 general creditor claims asserted in an aggregate capped amount of $271 million relating to the Executive and Select Employee Deferred Compensation Plan—remains on appeal. As the appellee, the Trustee continues to expeditiously pursue judicial confirmation of his legal positions in two litigations: one *sub judice* in the District Court and one in the Second Circuit following the District Court's recent affirmance of the Trustee's position. The Trustee's principal goal is to resolve these matters as promptly as possible so as to close the estate with a final distribution.

The prospect of a further distribution to general unsecured creditors remains. The magnitude and timing of the distribution are contingent, primarily on the outcome of these appeals and on any additional recoveries, including the potential for the

estate to recover on contingent and unliquidated claims filed in certain antitrust class action settlements.

Over the ten years of this case the estate has endeavored to keep all parties-in-interest fully informed on the progress of the liquidation. Most recently, in September, the Trustee and SIPC presented a State of the Estate presentation to the Court, available on www.lehmantrustee.com. (ECF No. 14670.) While that report details the decade-long history of accomplishments and achievements under this Court's supervision, its clear message and the lesson learned is that a failure like Lehman should be avoided, for the benefit of all stakeholders.

At all points, the Trustee and estate professionals have acted in close consultation with the Securities Investor Protection Corporation ("SIPC"), which, by statute, oversees all aspects of the liquidation; have regularly consulted with the United States Securities and Exchange Commission, the Federal Reserve Bank of New York, the Commodity Futures Trading Commission, and the Financial Industry Regulatory Authority; and have routinely updated congressional committees. Their support has been essential to the sound administration of this case.

James W. Giddens (the "Trustee"), as the Securities Investor Protection Act ("SIPA"), 15 U.S.C. §§ 78aaa *et seq*., trustee for the liquidation of Lehman Brothers Inc. ("LBI"), respectfully submits this Nineteenth Interim Report and Quarterly Report on the General Creditor Claims Process (this "Report") in accordance with the terms of the Orders of the Court entered on November 7, 2008 (ECF No. 241) and April 8, 2015 (ECF No. 11741), and pursuant to SIPA § 78fff-1(c).

1. This Report covers the period from April 1, 2018 through September 30, 2018 (the "Report Period").

2. All Interim Reports, along with a complete docket, regular progress updates, Quarterly Reports on the General Creditor Claims Process, and substantial other information about this liquidation, are available on the Trustee's website, www.lehmantrustee.com. The Trustee's most recent State of the Estate presentation is also available on the website. (*See* ECF No. 14670.)

## I. FINANCIAL CONDITION OF ESTATE

3. The Lehman Brothers Inc. Liquidation Balance Sheet as of September 30, 2018 (the "Liquidation Balance Sheet"), filed concurrently with this Report, provides information pertaining to the estate's assets, liabilities, and reserves. This financial information reflects cash and cash equivalents in the amount of approximately $373 million and *de minimis* securities as of September 30, 2018. All of these assets are currently under the Trustee's control.

## II. GENERAL CREDITOR RESERVES AND DISTRIBUTIONS

4. During the Report Period, the Trustee sought the Court's authority to make a sixth interim distribution of approximately $170 million—equivalent to three quarters of a percent of the allowed amount of general unsecured creditor claims. (ECF No. 14569.) On May 31, 2018, the Court entered the Sixth Interim Distribution Order (ECF No. 14595), and, in mid-September, the Trustee distributed substantially all of the sixth interim distribution funds to LBI's general unsecured creditors holding allowed claims.

5. This sixth interim distribution was made possible largely through the allocation of released customer reserves to the general estate following resolution of the last-contested customer claim; the resolution of secured, priority, and general unsecured claims for less than their capped amounts since the fifth interim distribution; and a significant reduction of administrative expenses and a corresponding reduction of the administrative reserve.

6. No additional distribution of property to LBI's general creditors will occur in 2018. A further interim or final distribution is not expected until the sole remaining claims litigation is resolved on a final, non-appealable basis. However, the Trustee will continue to monitor estate assets, liabilities, and reserves on an ongoing basis and prioritize distribution of property to LBI's creditors as promptly and to the greatest extent possible.

7. In total, the Trustee has distributed approximately $9.006 billion to LBI's general unsecured creditors with allowed claims—representing a distribution of 39.75 percent on the allowed amounts—and approximately $256 million to LBI's allowed secured, administrative, and priority creditors—substantially completing 100 percent distributions to those with allowed claims.

8. To assure that claimants in the sole remaining claims litigation are not prejudiced, the Trustee maintains reserves equal to 39.75 percent of the asserted and capped unsecured amounts of those claims and reserves equal to 100 percent of the asserted and capped secured amounts of those claims. For details regarding these and associated tax reserves, see the Liquidation Balance Sheet, note 7. The Trustee will make appropriate distributions to claimants with unresolved and disputed claims in this proceeding once those claims are finally resolved.

**Accelerated Final Distribution Election**[1]

9. During the Report Period, the Trustee sought and obtained the Court's approval of a process to provide holders of approximately 1,800 Eligible Claims with an opportunity to immediately cash out of the LBI estate through a "final distribution" at a market-determined rate in exchange for transferring their claim(s) to a Sponsor that would fund the entire process (the "AFDE").

10. Commending the AFDE process as innovative, the Court authorized the Trustee to effectuate the AFDE pursuant to the Procedures. Working initially with nineteen parties as potential Sponsors, the Trustee engaged in significant dialogue with six of them. On the June 8, 2018, five entities submitted Sponsor Bids with proposed Rates ranging from 1.27% to 1.48%. (ECF No. 14601.) On June 25, 2018, the Court entered the Election Order, approving Deutsche Bank AG, London Branch as the Sponsor at a Rate of 1.48%.

11. Over 860 claimants holding Eligible Claims with an aggregate allowed unsecured amount of $404 million elected to participate in the process. (ECF No. 14666.) This represents a participation rate of 46% of the Eligible Claims, significantly reducing the number of individual claimants to whom the Trustee must administer distributions in the future.

12. On September 13, 2018, concurrently with the sixth interim distribution, the Trustee disbursed substantially all of the Accelerated Payments to holders of the Electing Claims using funds provided to the Trustee by the Sponsor. This disbursement of over $6 million provided Electing Claims with a "final distribution" equal to 1.48%, bringing final general unsecured creditor distributions up to 41.23% for Electing Claims. The Electing Claims are recorded as "fully satisfied" on the claims register maintained by the Trustee's claims agent. The Trustee created a new general unsecured creditor claim (number 6824) in the name of Deutsche Bank AG, London Branch as the Sponsor. It is

1. In paragraphs 9-12, capitalized but not otherwise defined terms have the meaning ascribed to them in the Accelerated Final Distribution Procedures (the "Procedures"). (ECF No. 14596.)

allowed in the amount of $404,390,782, which is the aggregate unsecured allowed amounts of the Electing Claims, meaning it has no effect on the gross LBI general unsecured liabilities.

**Distribution Procedures Motion**

13. On November 5, 2015, the Court entered the Distributions Procedures Order. (ECF No. 13039.) The Distribution Procedures Order furthers the Trustee's goal of expeditiously winding down the LBI estate by preventing delay in the estate's closure resulting from claimants that do not collect their distributions or otherwise do not comply with the Distribution Procedures Order. During the Report Period, the Trustee expunged eleven claims allowed in the aggregate amount of approximately $4 million pursuant to the Distribution Procedures Order. (*See* ECF Nos. 14668.)

## III. GENERAL CREDITOR CLAIMS ADMINISTRATION

**ESEP: The Sole Remaining Claims Litigation**
(381 contested claims; approximately $271 million capped amount)

14. As of September 30, 2018, all but three hundred and eighty-one claims in the LBI estate had been finally resolved. These remaining contested claims are subject to a single consolidated adversary proceeding on review before two separate appellate courts. These claims were filed by former employees of LBI or its predecessors seeking deferred compensation pursuant to the Executive and Select Employee Deferred Compensation Plan ("ESEP"). The Trustee seeks to treat the claims as subordinate pursuant to the terms of the ESEP agreements. In total, the claims are capped at approximately $271 million—of which more than $260 million is asserted and fully reserved for as secured.

15. On July 13, 2017, this Court rendered a memorandum decision granting the Trustee's motion for summary judgment seeking to treat the claims as subordinate pursuant to the terms of the ESEP agreements and denying the claimants' cross-motion for summary judgment. *Giddens v. 344 Individuals*, Case No. 08-1420 SIPA (Bankr. S.D.N.Y. July 13, 2017) (ECF No. 14338). On September 26, 2018, the District Court entered an order affirming this Court's grant of summary judgment in favor of the Trustee and holding that the claims are subordinate to general creditor claims pursuant to the terms of the ESEP Agreements. *See 344 Individuals v. Giddens*, Case No. 17-cv-6246 (AT) (S.D.N.Y. Sept. 26, 2018) (ECF No. 17). On October 24, 2018, the claimants filed a notice of appeal to the United States Court of Appeals for the Second Circuit. *See 344 Individuals v. Giddens*, Case No. 18-3188 (2d Cir. 2018) (ECF No. 1).

16. With respect to these same claims, this Court granted the Trustee's motions to reclassify as unsecured those ESEP claims that had been asserted with secured or priority status. (ECF No. 13053.) The ESEP claimants appealed to the District Court. The appeal has been fully briefed since February 22, 2016, and is *sub judice*. *See 344 Individuals v. Giddens*, Case No. 15-cv-09670 (PGG) (S.D.N.Y.).

**Administrative Claims**
(2 claims; $83,163 asserted amount)

17. On February 21, 2018, the Court approved the Trustee's motion to establish April 2, 2018 as the deadline (the "Second Supplemental Administrative Expense Claim Bar Date") to assert any second supplemental administrative expense claims against the LBI estate arising during the period of November 1, 2016 through February 28, 2018. (ECF No. 14523.)

18. Four administrative expense claims were timely filed against the LBI estate, two of which were subsequently withdrawn. The Internal Revenue Service ("IRS") filed an administrative expense claim for $711,356, which it subsequently amended to $6,127. The New York City Department of Finance filed an administrative expense claim for $77,035. Pending resolution of the two claims, the Trustee maintains reserves with respect to these claims totaling $83,163.

## IV. THE CUSTOMER ESTATE

19. Distributions on allowed customer claims are complete. The Trustee distributed more than $106 billion to over 111,000 customers, including approximately $13.471 billion distributed through the customer claim process in full satisfaction of all of the allowed customer claims. This is by far the largest distribution of customer property and among the largest distributions of any kind in history. Following these distributions, the resolution of all customer claims, and the allocation of $3.112 billion of excess customer property to the general estate, the Trustee—in consultation with SIPC—closed the customer estate in December 2017 pursuant to this Court's order. (ECF No. 14467.)

## V. ASSET MARSHALLING

**Securities Class Action Claims**

20. Since his appointment, the Trustee has filed over 220 claims to securities class action settlement funds and has recovered approximately $34 million. The Trustee has filed a further 21 claims as to which the Trustee has not yet received a determination or an initial distribution.

**Antitrust Class Action Claims**

21. The Trustee has submitted proofs of claim to participate in settlements arising from five antitrust litigations involving allegations of collusive manipulation of several financial industry benchmarks and instruments, as well as misconduct by financial institutions in the foreign exchange market. The settlements for which the Trustee has submitted claims are:

| ANTITRUST LITIGATION | SETTLEMENT FUND |
|---|---|
| **U.S. Dollar LIBOR Litigation** | $590 million |

| | |
|---|---|
| ***Mayor and City Council of Baltimore v. Credit Suisse AG (In re LIBOR-Based Financial Instruments Antitrust Litigation)*, MDL No. 2262 (NRB); No. 11-cv-5450 (NRB) (S.D.N.Y. 2011)** | |
| **Foreign Exchange Benchmark Rates Antitrust Litigation**<br><br>***In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-07789 (LGS) (S.D.N.Y. 2013)** | $2.31 billion |
| **Euribor Litigation**<br><br>***Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y. 2013)** | $309 million |
| **ISDAfix Antitrust Litigation**<br><br>***Alaska Electrical Pension Fund v. Bank of America, N.A.*, No. 14-cv-7126 (JMF) (S.D.N.Y. 2014)** | $504 million |
| **Euroyen Litigation**<br><br>***Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (S.D.N.Y. 2012)**<br>***Sonterra Capital Master Fund Ltd. V. UBS AG*, No. 15-cv-5844 (GBD) (S.D.N.Y. 2015)** | $30 million |

22. The Trustee intends to submit claims in subsequently finalized settlements with any remaining defendants in the five litigations described above. These include additional settlements in the U.S. Dollar LIBOR Litigation and the ISDAfix Antitrust Litigation, both of which have submission deadlines in December 2018.

23. The Trustee does not estimate the expected distribution that the LBI Estate will receive from these securities and antitrust class action litigations because recoveries are contingent, unliquidated, and are therefore speculative. Several variables—including the total recognized loss of the class as a whole in relation to the settlement amount, the number of claimants to file valid proofs of claim, and the magnitude of LBI's allowed claim, if any—will impact the materiality of LBI's recoveries, if any.

## VI. MISCELLANEOUS

### Government and Third Party Investigations

24. The Trustee continues to respond to a reduced flow of document requests and subpoenas as necessary. In total, over the course of the liquidation, the Trustee has made over 1,092 document productions in response to approximately 1,949 governmental and civil litigation requests.

### Tax Matters

25. The Trustee's tax professionals continue to (i) advise the Trustee in complying with LBI's income tax filings; (ii) monitor tax audits, assessments, and claims, including the ongoing audit by New York State Department of Taxation and Finance of the net operating losses reported on LBI's 2014 and 2015 New York franchise tax returns; (iii) respond to tax-related information requests from various tax authorities;

and (iv) coordinate all tax withholding and reporting requirements with respect to LBI and the Trustee, including any withholding and reporting that may be required with respect to distributions made by the Trustee.

## VII. ESTATE WIND DOWN

26. With the appellate process advancing towards conclusion, the Trustee is implementing concrete steps to assure that he can make a final distribution and close the LBI estate promptly following the final resolution of the sole remaining claims litigation. Accordingly, during the Report Period, the Trustee took further measures to reduce expenses wherever possible and prepare the estate for a clear and complete closure at the appropriate time.

27. The AFDE, by cashing out a large population of creditors, significantly narrowed the scope of final distribution mechanics. The effective halving of the number of distribution-eligible individual claims will significantly reduce post-distribution feedback and permit a more prompt and less contingent closure of the LBI estate. In the same vein, this Report Period, the Trustee's professionals prepared to refresh tax forms from claimants whose forms will expire after 2018 and 2019, further readying the estate for a prompt and efficient final distribution.

28. In the Report Period, the Court granted the Trustee's sixth motion authorizing the Trustee to abandon and destroy approximately 754,000 additional documents or over 1.47 terabytes of data. (ECF No. 14662.) The Trustee's effectuation of this and the prior abandonment orders facilitates administrative ease and reduces costs: the Trustee has abandoned over 260 terabytes of data resulting in annual savings of over $2.3 million. The Trustee plans to file additional data abandonment motions with the Court prior to year-end.

29. The Trustee continues to evaluate LBI custodial and vendor agreements and, in the Report Period, closed certain LBI estate bank accounts no longer necessary to effectuate the wind-down phase of the liquidation. The process of repatriating *de minimis* cash balances in legacy LBI bank accounts in foreign jurisdictions and closing those accounts is near conclusion. The Trustee anticipates reducing certain data maintenance charges and is evaluating a plan to transition to fewer providers consistent with the Trustee's strategic goal of fulfilling a wind down and simplifying estate administration.

30. As the LBI administration draws to a close, the Trustee anticipates seeking the Court's approval to, among other things: (i) dispose of residual assets; (ii) establish a final bar date for administrative expense claims; (iii) effectuate a final distribution; and (iv) complete the data abandonment program and arrange for post-closing retention of certain documents and data required to be maintained under applicable laws and SEC and SIPC guidelines. The Trustee also plans to file a final Realization Report documenting the Trustee's successful marshalling of assets. The Trustee will also close all remaining bank accounts and file final tax returns prior to estate closure

31. Through September 30, 2018, the estate had incurred administrative expenses of approximately $13 million in 2018. Through this date, approximately $4.97 million in administrative expenses remain accrued but unpaid. The Trustee has been paying such administrative expenses in accordance with this Court's orders, the Bankruptcy Code, and SIPA. For the period of April 1, 2018 through September 30, 2018, administrative expenses disbursed total approximately $7,831,818. In keeping with the SIPA statute, the services and fees of all professionals were closely reviewed by SIPC and the Trustee throughout the Report Period.

## VIII. CONCLUSION

The foregoing Report represents a summary of the status of this proceeding and the material events that have occurred from April 1, 2018 through September 30, 2018. It will be supplemented and updated by further reports.

Dated: New York, New York
October 31, 2018

Respectfully submitted,

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