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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 (SCC) SIPA

**NOTICE OF MOTION OF JAMES W. GIDDENS, TRUSTEE FOR THE SIPA
LIQUIDATION OF LEHMAN BROTHERS INC., FOR AN ORDER AUTHORIZING
THE ABANDONMENT OF CERTAIN UNNECESSARY DATA**

PLEASE TAKE NOTICE that on November 12, 2018, James W. Giddens (the “Trustee”), as Trustee for the liquidation of the business of Lehman Brothers Inc. (“LBI” or the “Debtor”), by and through his undersigned counsel, filed a motion (the “Motion”), for an order authorizing the abandonment and destruction of certain electronic data as further described in the Motion.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, Courtroom 623, One Bowling Green, New York, New York, 10004 (the “Bankruptcy Court”), on **December 3, 2018 at 1:00 p.m. (Prevailing Eastern Time)** or as soon thereafter as counsel may be heard (the “Hearing”).

PLEASE TAKE FURTHER NOTICE that responses, 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 Filing System, and by all other parties in interest, on a 3.5 inch disk, compact disk, or flash drive, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format no later than **November 26, 2018 at 4:00 p.m. (Prevailing Eastern Time)** (the "Response Deadline"); and (vi) be served on (a) Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York, 10004, Attn: Christopher K. Kiplok, Esq. and Jeffrey S. Margolin, Esq.; and (b) the Securities Investor Protection Corporation, 1667 K Street, N.W., Suite 1000, Washington, DC 20006-1620, Attn: Kenneth J. Caputo, Esq., with a courtesy copy to the chambers of the Honorable Shelley C. Chapman, United States Bankruptcy Court, Courtroom 623, One Bowling Green, New York, New York, 10004.

PLEASE TAKE FURTHER NOTICE that if no responses are timely filed and served with respect to the Motion, the Trustee may, on or after the Response 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 of opportunity to be heard offered to any party.

Dated: New York, New York
November 12, 2018

HUGHES HUBBARD & REED LLP

By: /s/ Christopher K. Kiplok
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*Attorneys for James W. Giddens,
Trustee for the SIPA Liquidation of
Lehman Brothers Inc.*

Hearing Date: December 3, 2018 at 1:00 p.m. (Prevailing Eastern Time)
Response Deadline: November 26, 2018 at 4:00 p.m. (Prevailing Eastern Time)

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

In re

LEHMAN BROTHERS INC.,

Debtor.

Case No. 08-01420 (SCC) SIPA

**MOTION OF JAMES W. GIDDENS, TRUSTEE FOR THE SIPA LIQUIDATION OF
LEHMAN BROTHERS INC., FOR AN ORDER AUTHORIZING THE
ABANDONMENT OF CERTAIN UNNECESSARY DATA**

TABLE OF CONTENTS

	Page(s)
PRELIMINARY STATEMENT	1
BACKGROUND	2
JURISDICTION AND VENUE	4
STATEMENT OF FACTS	4
ARGUMENT	7
I. THE COURT SHOULD APPROVE THE TRUSTEE’S REQUEST TO ABANDON AND DESTROY THE UNNECESSARY DATA AS AN UNNECESSARY BURDEN TO THE ESTATE.	7
NOTICE	9
NO PRIOR RELIEF REQUESTED	9
CONCLUSION.....	10

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>In re Am. Tissue, Inc.</i> , No. 12-322 (GMS), 2015 WL 1516973 (D. Del. Mar. 31, 2015).....	7
<i>In re Celentano</i> , No. 10-22833 (NLW), 2012 Bankr. LEXIS 4122 (Bankr. D.N.J. Sept. 6, 2012).....	8
<i>Fedotov v. Peter T. Roach & Assocs., P.C.</i> , 354 F. Supp. 2d 471 (S.D.N.Y. 2005).....	7
<i>In re Fulton</i> , 162 B.R. 539 (Bankr. W.D. Mo. 1993).....	8
<i>Mele v. First Colony Ins. Co.</i> , 127 B.R. 82 (D.D.C. 1991)	7
<i>In re MF Global Inc.</i> , Case No. 11-2790 (MG) (Bankr. S.D.N.Y. Aug. 19, 2015)	8
<i>In re MF Global Inc.</i> , Case No. 11-2790 (MG) (Bankr. S.D.N.Y. Dec. 16, 2014).....	8
<i>In re Slack</i> , 290 B.R. 282 (Bankr. D.N.J. 2003)	7, 8
<i>In re Syntax-Brilliant Corp.</i> , No. 08-11407 (KJC), 2018 WL 3491758 (Bankr. D. Del. July 18, 2018).....	7
STATUTES AND RULES	
11 U.S.C. § 554.....	7
15 U.S.C. § 78aa	4
15 U.S.C. § 78eee	4
15 U.S.C. § 78fff-1(a)	7
15 U.S.C. § 78fff(b)	7
Fed. R. Bankr. P. 6007	7

OTHER AUTHORITIES

5 COLLIER ON BANKRUPTCY ¶ 554.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014)	7
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TO THE HONORABLE SHELLEY C. CHAPMAN,
UNITED STATES BANKRUPTCY JUDGE:

James W. Giddens (the “Trustee”), as trustee for the liquidation of the business of Lehman Brothers Inc. (“LBI” or the “Debtor”), respectfully requests the issuance of an order authorizing the abandonment and destruction of certain electronic data relating to resolved matters as further described below. In support of this Motion, the Trustee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Trustee continues to implement a data abandonment program consistent with the Trustee’s strategic goal of fulfilling a wind down and simplifying estate administration. To date, the Trustee has effectuated six Court-approved data and document abandonment orders (ECF Nos. 11359, 13599, 13927, 14336, 14465, and 14645), constituting over 260 terabytes of data, which cumulatively have reduced estate preservation costs by over \$2.3 million per year and reduced administrative burdens on the LBI estate.

2. By this Motion, the Trustee seeks this Court’s authority to abandon and destroy over 413,000 documents maintained in connection with the resolved litigation with Barclays Capital Inc. (“Barclays”) and the related interpleader action commenced by the Options Clearing Corporation, captioned *The Options Clearing Corporation v. Barclays Capital Inc., et al.*, No. 08-1759 (Bankr. S.D.N.Y.) (the “OCC Interpleader Action”) (together, the “Barclays Data”). In addition, the Trustee seeks this Court’s authority to abandon and destroy over 53,000 documents maintained in connection with LBI’s relationship with the Depository Trust Company Corporation (“DTCC”) (the “DTCC Data,” together with the Barclays Data, the “Unnecessary Data”). Overall, the Unnecessary Data totals over 466,000 documents constituting over 453 gigabytes of data.

3. With all litigation with Barclays resolved and all LBI-DTCC matters concluded, the Unnecessary Data is no longer needed to effectuate the Trustee's remaining tasks in winding down the LBI estate and serve no remaining LBI estate purpose. The abandonment and destruction of the Unnecessary Data will result in an additional cost savings to the LBI estate.

4. The Securities Investor Protection Corporation ("SIPC") has reviewed this Motion and supports the request for relief sought herein. All potentially interested parties will be served with this Motion.

5. There are no pending document holds related to the Unnecessary Data and none of the Unnecessary Data was created in connection with any pending appellate claims litigation. The Trustee is also current on invoices for the maintenance relating to the Unnecessary Data. Accordingly, the Trustee seeks an order allowing him to abandon and destroy the Unnecessary Data as another necessary step toward the winding down of the estate.

BACKGROUND

6. On September 19, 2008 (the "Filing Date"), the Honorable Gerard E. Lynch, United States District Court, Southern District of New York, entered the Order Commencing Liquidation of LBI (the "LBI Liquidation Order," ECF No. 1) pursuant to the provisions of SIPA in the case captioned *Securities Investor Protection Corporation v. Lehman Brothers Inc.*, Case No. 08-CIV-8119 (GEL). The LBI Liquidation Order, *inter alia*, (i) appointed the Trustee for the liquidation of the business of LBI pursuant to section 78eee(b)(3) of SIPA; and (ii) removed the case to this Court for all purposes as required for SIPA cases by section 78eee(b)(4) of SIPA, in the case captioned *In re Lehman Brothers Inc.*, Case No. 08-01420 (the "SIPA Proceeding"). Pursuant to the LBI Liquidation Order, the

Trustee took possession of LBI's property, including its books and records, information systems, and other data.

7. The Court granted the Trustee's first abandonment motion (ECF No. 11046) by order dated February 19, 2015 and authorized the Trustee to abandon and destroy more than 236 terabytes of outdated and duplicative copies of certain LBI estate computer systems and data. (*See* ECF No. 11359.) That order has been fully effectuated.

8. The Court granted the Trustee's second abandonment motion (ECF No. 13493) by order dated May 12, 2016 and authorized the Trustee to abandon and destroy approximately 17 terabytes of electronic data, as well as unnecessary backup tapes, hard copy documents, and operational materials utilized in the administration of the Trustee's administrative office. (*See* ECF No. 13599.) That order has been fully effectuated.

9. The Court granted the Trustee's third abandonment motion (ECF No. 13853) by order dated October 20, 2016 and authorized the Trustee to abandon and destroy certain electronic data relating to discovery in fully resolved litigations and investigations and certain duplicative brokerage and back-office data. (*See* ECF No. 13927.) That order has been fully effectuated.

10. The Court granted the Trustee's fourth abandonment motion (ECF No. 14312) by order dated July 13, 2017, and authorized the Trustee to abandon and destroy certain electronic data relating to third party productions, searches, and discovery conducted in fully-resolved customer and general creditor claim matters and estate administration. (*See* ECF No. 14336.) That order has been fully effectuated.

11. The Court granted the Trustee's fifth abandonment motion (ECF No. 14443) by order dated December 7, 2017, and authorized the Trustee to abandon and destroy

certain electronic data relating to certain fully-resolved, customer and general creditor litigations. (See ECF No. 14465.) That order has been fully effectuated.

12. The Court granted the Trustee's sixth abandonment motion (ECF No. 14645) by order dated August 14, 2018, and authorized the Trustee to abandon and destroy certain electronic data relating to certain fully-resolved customer and general creditor litigations. (See ECF No. 14662.) That order has been fully effectuated.

JURISDICTION AND VENUE

13. 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).

14. Venue is proper in this Court pursuant to SIPA § 78eee(a)(3) and 15 U.S.C. § 78aa.

STATEMENT OF FACTS

15. Since the commencement of the SIPA Proceeding, the Trustee has continued to work tirelessly to return over \$106 billion to LBI's customers and over \$9.2 billion to general creditors and has substantially completed the major aspects of the liquidation proceeding. Details regarding these efforts are set forth in his interim reports and other updates to the Court.¹

The Trustee's Recent Progress

16. On May 31, 2018, the Court entered the Order Authorizing a Sixth Interim Distribution to Holders of Allowed General Unsecured Creditor Claims with a Record Date of June 30, 2018, which authorized the Trustee to make a sixth interim distribution of

1. The Trustee has filed nineteen interim reports (ECF Nos. 1151, 2055, 3244, 3842, 4245, 4657, 5035, 5394, 6527, 8250, 9839, 11876, 12960, 13545, 13941, 14244, 14431, 14566, and 14760).

approximately \$170 million to general unsecured creditors, equivalent to 0.75% of the allowed amount of general unsecured claims (ECF No. 14595). This is in addition to the more than \$9 billion already distributed and brings total general unsecured creditor claim recoveries to 39.75%. This distribution has been effectuated.

17. On June 25, 2018, to simplify estate administration, the Court entered the Order Authorizing the Trustee to Effectuate the Accelerated Final Distribution Election. This authorized a process to provide over 1,800 eligible claimants the opportunity to immediately receive an additional 1.48% on their allowed claims in exchange for transferring their claims to Deutsche Bank AG, London Branch (ECF No. 14605). Over 860 electing claimants have received a distribution equal to 2.23% of their allowed claims.

18. Moreover, not a single one of the more than 140,000 LBI customer and general creditor claims remains before this Court for resolution. The estate remains in a state of substantial completion and the Trustee continues efforts to reduce administrative expenditures and effectuate a plan for the wind-down of the estate. The abandonment of the Unnecessary Data is a further step in this process.

The Unnecessary Data Proposed To Be Abandoned

19. Over the course of the liquidation, the Trustee's professionals created certain electronic databases that have been used to facilitate analysis related to estate litigations and to assist in the Trustee's statutorily mandated investigation of LBI. After careful review of content and usage, the Trustee has determined that the Unnecessary Data should be destroyed to avoid unnecessary administrative costs.

20. The Unnecessary Data comprises over 466,000 documents totaling over 453 gigabytes of data collected in connection with the resolved Barclays litigation² and related OCC Interpleader Action³ and the Trustee's concluded investigation related to DTCC's activities in the days leading up to commencement of this proceeding. (See Decl. of Michael McCabe, dated November 12, 2018, annexed hereto as Exhibit A, the "McCabe Decl." ¶ 4.) The Barclays Data constitutes both productions from Barclays in connection with the litigation and communications that the Trustee copied from the Lehman communication archive depository maintained by Micro Focus.⁴ The DTCC Data constitutes productions from DTCC during the course of the Trustee's now-concluded investigation.

21. Because the matters to which the Unnecessary Data relate have now been closed, the Unnecessary Data serves no purpose for the administration of the LBI estate. Accordingly, it is the appropriate time to seek Court approval to abandon the Unnecessary Data.

22. For the avoidance of doubt, none of the Unnecessary Data was created in connection with claims litigation pending before appellate courts. None of the data in either database is necessary to complete the final resolution of general creditor claims or the wind-down of the estate or any other litigation or investigation related to LBI. Moreover, the

2. On June 5, 2015, the Trustee and Barclays agreed to a global settlement (the "Barclays Settlement") that resolved all ongoing and potential litigation between them. On June 29, 2015, the Court entered an order approving the Barclays Settlement (ECF No. 12379). Although the Trustee's litigation with Barclays was resolved in 2015, the Trustee maintained the Barclays Data until the final resolution of the OCC Interpleader Action and the global settlement between Barclays and Lehman Brothers International (Europe) ("LBIE"), which occurred in April 2018.

3. On September 20, 2018, the Court entered an order approving the Stipulation Resolving Claims Among Barclays Capital Inc., The Bank of Tokyo-Mitsubishi UFJ, Ltd., and Lloyds Bank PLC, which resolved the OCC Interpleader Action (OCC Interpleader Action ECF No. 90).

4. On November 7, 2018, the Trustee filed a motion seeking this Court's authority to abandon LBI's contractual rights to acquire the Micro Focus communication archive depository (ECF No. 14765). The motion will be heard by the Court on November 29, 2018.

abandonment of the Unnecessary Data will result in further savings to the estate. (McCabe Decl. ¶ 5.)

ARGUMENT

I. THE COURT SHOULD APPROVE THE TRUSTEE’S REQUEST TO ABANDON AND DESTROY THE UNNECESSARY DATA AS AN UNNECESSARY BURDEN TO THE ESTATE.

23. Section 554 of the Bankruptcy Code, made applicable to this proceeding by SIPA sections 78fff(b) and 78fff-1(a), provides, in relevant part, that “after notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a); *see Fedotov v. Peter T. Roach & Assocs., P.C.*, 354 F. Supp. 2d 471, 475 (S.D.N.Y. 2005) (noting long-standing right of trustee to abandon burdensome property). The service of the Motion to all parties in interest ensures that interested parties have an opportunity to object to a proposed abandonment. 5 COLLIER ON BANKRUPTCY ¶ 554.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014).

24. Where requisite notice is given under Federal Rule of Bankruptcy Procedure 6007, the abandonment power under Section 554 allows the trustee to rid the bankruptcy estate of burdensome assets and protect the estate assets against diminution, rather than increase the estate’s burden. *In re Am. Tissue, Inc.*, No. 12-322 (GMS), 2015 WL 1516973, at *4 (D. Del. Mar. 31, 2015). “[A]bandonment provisions are designed to allow the trustee to relinquish assets that would be a financial drain on the estate, or relieve the trustee of the financial burden of administering inconsequential assets that would cost more than they are worth to the estate.” *Mele v. First Colony Ins. Co.*, 127 B.R. 82, 85 (D.D.C. 1991). A trustee’s decision to abandon property of the estate is discretionary. *See In re Syntax-Brilliant Corp.*, No. 08-11407 (KJC), 2018 WL 3491758, at *15 (Bankr. D. Del. July 18, 2018) (citing to *In re Slack*, 290 B.R. 282, 284 (Bankr. D.N.J. 2003)).

25. The business judgment standard applies to a trustee's decision to abandon property that is either of inconsequential value or burdensome to the estate. *Id.* ("The trustee's power to abandon property is discretionary The Court only needs to find the trustee made: 1) a business judgment; 2) in good faith; 3) upon some reasonable basis; and 4) within the trustee's scope of authority.") (citations omitted)).

26. The Trustee's decision not to incur the cost of maintaining the Data is a quintessential business judgment within the Trustee's discretion. *See, e.g., In re Celentano*, No. 10-22833 (NLW), 2012 Bankr. LEXIS 4122 at *10 (Bankr. D.N.J. Sept. 6, 2012) ("[A] trustee's decision to abandon assets of the estate is discretionary."); *In re Fulton*, 162 B.R. 539, 540 (Bankr. W.D. Mo. 1993); *In re Slack*, 290 B.R. at 284. Similar relief has been granted by this Court in this, as well as other, SIPA proceedings. *See* ¶¶ 7-12, *supra*; Memorandum Opinion and Order Granting Motions to Approve Sale and Assumption of MF Global Inc. Assets and for Other Relief, *In re MF Global Inc.*, Case No. 11-2790 (MG) (Bankr. S.D.N.Y. Aug. 19, 2015) (ECF No. 8854), at 22 ("[T]he Trustee has provided notice of his intention to abandon the systems and records and established a sound business reason to support his decision—to jettison unnecessary systems and records in order to expeditiously close the SIPA Proceeding."); Order Authorizing the Abandonment of Certain MF Global Inc. Paper Records, *In re MF Global Inc.*, Case No. 11-2790 (MG) (Bankr. S.D.N.Y. Dec. 16, 2014) (ECF No. 8546). The Trustee's decision is made in good faith on the reasonable basis that maintaining the Unnecessary Data will have no benefit to the estate or anyone else and will hinder the Trustee's efforts to ultimately close the estate.

27. Given that the Unnecessary Data is irrelevant and unnecessary to the remaining steps in winding down the LBI estate, the Trustee seeks this Court's approval to

abandon and destroy the Unnecessary Data. An order approving the abandonment would facilitate administrative ease and would be another step in the orderly closure of the liquidation.

NOTICE

28. Notice of this Motion has been provided to the list of parties requesting notice of pleadings in accordance with the Amended Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures and Related Relief (the “Case Management Order,” ECF No. 3466), as well as the SEC, the CFTC, FINRA, the IRS, the U.S. Attorney’s office, the U.S. Department of Labor, the U.S. Treasury, the Federal Reserve Bank of New York, the Federal Bureau of Investigation, all individuals and entities who have previously served a third-party request for documents on the Trustee, and additionally to Barclays, DTCC, Lehman Brothers Holdings Inc., LBIE, certain service providers, and all claimants with pending disputed claims, and will be immediately available for inspection upon filing with the Court at the Trustee’s website, www.lehmantrustee.com.

NO PRIOR RELIEF REQUESTED

29. Except for the prior abandonment motions, no prior motion for the relief requested herein has been made to this or any other court.

CONCLUSION

30. For the foregoing reasons, the Court should authorize the Trustee to abandon the Unnecessary Data and permit the destruction thereof, as set forth herein. Accordingly, the Trustee respectfully requests that this Court enter the proposed Order attached hereto as Exhibit B and grant such additional and further relief as the Court deems just and proper.

Dated: New York, New York
November 12, 2018

HUGHES HUBBARD & REED LLP

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

EXHIBIT A

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

In re

LEHMAN BROTHERS INC.,

Debtor.

Case No. 08-01420 (SCC) SIPA

DECLARATION OF MICHAEL MCCABE IN SUPPORT OF MOTION OF JAMES W. GIDDENS, TRUSTEE FOR THE SIPA LIQUIDATION OF LEHMAN BROTHERS INC., FOR AN ORDER AUTHORIZING THE ABANDONMENT OF CERTAIN UNNECESSARY DATA

Michael McCabe, under penalty of perjury, declares:

1. I am a Managing Director of Deloitte Transactions and Business Analytics LLP (“DTBA”). James W. Giddens (the “Trustee”), as Trustee for the SIPA liquidation of Lehman Brothers Inc. (“LBI”) has duly authorized me to make and submit this declaration in support of the Trustee’s Motion for an Order Authorizing the Abandonment of Certain Unnecessary Data (the “Motion”).

2. The facts set forth in this declaration are based upon my personal knowledge, upon information and belief, and/or from the books and records of the LBI estate (the “Books and Records”) analyzed by me or other personnel under my supervision and direction. If called and sworn as a witness, I could and would testify competently to the matters set forth herein.

3. Following the commencement of LBI’s SIPA liquidation proceeding, under the direction of the Trustee, the personnel of DTBA’s affiliates assisted the Trustee with the collection of the Books and Records. This involved working with various systems and repository sources to isolate, identify, and have the Trustee take custody of relevant data in

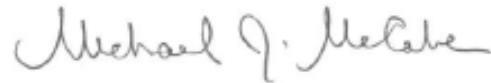
suitable native format. Personnel of DTBA's affiliates conducted an analysis of more than 2,700 trading, accounting, and operational data systems. Additionally, email and other sources of documents were identified for collection.

4. I understand that the Unnecessary Data¹ comprises over 466,000 documents totaling over 453 gigabytes of data collected in connection with certain general creditor and customer claim litigations and claim analysis and related matters.

5. The abandonment will save the estate further administrative expenditures.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 12, 2018



Michael McCabe

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

EXHIBIT B

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

In re

LEHMAN BROTHERS INC.,

Debtor.

Case No. 08-01420 (SCC) SIPA

**[PROPOSED] ORDER AUTHORIZING THE ABANDONMENT OF
CERTAIN UNNECESSARY DATA**

Upon the motion dated November 12, 2018 (the “Motion”)¹ of James W. Giddens (the “Trustee”), as Trustee for the SIPA liquidation of Lehman Brothers Inc. (“LBI”), requesting entry of an order authorizing the abandonment and destruction of certain electronic data relating Barclays Capital Inc. and the Depository Trust Company Corporation (the “Unnecessary Data”), as more fully described in the Motion; 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 it appearing that the relief requested by the Motion is necessary and in the best interests of the estate, its customers, its creditors, and all parties in interest; and it appearing that due and proper notice of the Motion having been given to all parties who may have an interest in the Unnecessary Data, and no other or further notice is necessary; and the Trustee having articulated good, sufficient, and sound business justifications for abandoning the Unnecessary Data; and the Court having reviewed the Motion and having held a hearing with appearances of parties in interest, and it appearing that no objections have been filed to the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein, it is hereby

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

ORDERED that the Motion is GRANTED; and it is further

ORDERED that pursuant to section 554(a) of the Bankruptcy Code, made applicable to this proceeding by SIPA sections 78fff(b) and 78fff-1(a), the Trustee is authorized and directed to abandon the Unnecessary Data commencing fourteen (14) business days following entry of this Order (the “Effective Date”); and it is further

ORDERED that, on the Effective Date, the Unnecessary Data shall no longer constitute property of the LBI estate pursuant to section 541(a) of the Bankruptcy Code and the Trustee and his professionals will have no further responsibility or obligations with respect to the Unnecessary Data, including with respect to subpoenas, document requests, or litigation holds; and it is further

ORDERED that the Trustee shall make payments to maintain the Unnecessary Data until the Effective Date; and it is further

ORDERED that, on the Effective Date, the Trustee shall no longer be required to make further payments related to the Unnecessary Data; and it is further

ORDERED that, commencing on the Effective Date or promptly thereafter, the destruction and termination of any and all of the Unnecessary Data shall be effectuated; and it is further

ORDERED that within five (5) business days of the completion of the destruction of the Unnecessary Data, all third-party service providers shall provide the Trustee certification of destruction affirming the full and complete destruction of the Unnecessary Data; and it is further

ORDERED that the Trustee is authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order; 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
_____, 2018

HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE