**Hearing Date: August 4, 2015 at 10:00 a.m. (Prevailing Eastern Time)**
**Response Deadline: July 27, 2015 at 4:00 p.m. (Prevailing Eastern Time)**

HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
Telephone: (212) 837-6000
Facsimile: (212) 422-4726

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

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

**NOTICE OF TRUSTEE'S MOTION FOR AN ORDER TO (I) ESTABLISH A THIRD INTERIM DISTRIBUTION FUND FOR GENERAL UNSECURED CREDITOR CLAIMS, (II) RELEASE RESERVES FROM THE SECURED AND PRIORITY CLAIM RESERVE, THE FIRST INTERIM DISTRIBUTION FUND, AND THE SECOND INTERIM DISTRIBUTION FUND, AND (III) MAKE A THIRD INTERIM DISTRIBUTION TO HOLDERS OF ALLOWED GENERAL UNSECURED CREDITOR CLAIMS WITH A RECORD DATE OF JULY 10, 2015**

**PLEASE TAKE NOTICE** that on July 13, 2015, James W. Giddens (the "Trustee"), as Trustee for the liquidation of the business of Lehman Brothers Inc. ("LBI") under the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. sections 78aaa *et seq*. ("SIPA"), by and through his undersigned counsel, hereby submits this motion to authorize the Trustee to: (i) establish a third interim distribution fund for general unsecured creditor claims; (ii) release reserves from the Secured and Priority Claim Reserve, the First Interim Distribution Fund, and the Second Interim Distribution Fund; and (iii) make a third interim distribution to record holders of general unsecured creditor claims as of July 10, 2015 (the "Record Date") that are currently allowed or become allowable (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 **August 4, 2015 at 10:00 a.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 **July 27, 2015 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.: James B. Kobak, Jr., Esq. and Anson B. Frelinghuysen, Esq.; (b) the Securities Investor Protection Corporation, 805 Fifteenth Street, N.W., Suite 800, Washington, D.C. 20005, Attn.: Kenneth J. Caputo, Esq.; and (c) Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn.: Maurice Horwitz, 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 or opportunity to be heard offered to any party.

Dated: New York, New York
July 13, 2015

HUGHES HUBBARD & REED LLP

By: /s/ Christopher K. Kiplok

James B. Kobak, Jr.
Christopher K. Kiplok
Anson B. Frelinghuysen
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Attorneys for James W. Giddens, Trustee for the SIPA Liquidation of Lehman Brothers Inc.

**Hearing Date: August 4, 2015 at 10:00 a.m. (Prevailing Eastern Time)**
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**TRUSTEE'S MOTION FOR AN ORDER TO (I) ESTABLISH A THIRD INTERIM DISTRIBUTION FUND FOR GENERAL UNSECURED CREDITOR CLAIMS, (II) RELEASE RESERVES FROM THE SECURED AND PRIORITY CLAIM RESERVE, THE FIRST INTERIM DISTRIBUTION FUND, AND THE SECOND INTERIM DISTRIBUTION FUND, AND (III) MAKE A THIRD INTERIM DISTRIBUTION TO HOLDERS OF ALLOWED GENERAL UNSECURED CREDITOR CLAIMS WITH A RECORD DATE OF JULY 10, 2015**

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**Hearing Date: August 4, 2015 at 10:00 a.m. (Prevailing Eastern Time)**
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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 MOTION FOR AN ORDER TO (I) ESTABLISH A THIRD INTERIM DISTRIBUTION FUND FOR GENERAL UNSECURED CREDITOR CLAIMS, (II) RELEASE RESERVES FROM THE SECURED AND PRIORITY CLAIM RESERVE, THE FIRST INTERIM DISTRIBUTION FUND, AND THE SECOND INTERIM DISTRIBUTION FUND, AND (III) MAKE A THIRD INTERIM DISTRIBUTION TO HOLDERS OF ALLOWED GENERAL UNSECURED CREDITOR CLAIMS WITH A RECORD DATE OF JULY 10, 2015**

James W. Giddens (the "Trustee"), as Trustee for the liquidation of the business of Lehman Brothers Inc. ("LBI") under the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. sections 78aaa *et seq.* ("SIPA"), by and through his undersigned counsel, hereby submits this motion to authorize the Trustee to: (i) establish a third interim distribution fund for general unsecured creditor claims; (ii) release reserves from the Secured and Priority Claim Reserve, the First Interim Distribution Fund, and the Second Interim Distribution Fund; and (iii) make a third interim distribution to record holders of allowed general unsecured creditor claims as of July 10, 2015 (the "Record Date") that are currently allowed or become allowable (the "Motion"). In support of the Motion, the Trustee respectfully states the following:

**Preliminary Statement**

1. Having distributed more than $6.142 billion to LBI's secured, administrative, priority, and general unsecured creditors in the past year, the Trustee now seeks the Court's approval to make an additional distribution to general unsecured creditors of nearly $2 billion.

2. If approved, this third interim distribution would achieve a cumulative thirty-five percent interim distribution to LBI's general unsecured creditors. This result, in the largest broker-dealer insolvency in history, could not have been anticipated in the dark days of the financial crisis when this liquidation began. Indeed, at that time, a one-hundred percent distribution to customers was in doubt, and even the prospect of a meaningful general unsecured distribution seemed remote. Today, over one hundred and eleven thousand customers have received one-hundred percent distributions of over $106 billion in customer property; secured, administrative, and priority claims have been paid in full; and general unsecured creditors have already received interim distributions of twenty-seven percent.

3. Reaching this milestone is possible due to the payment of customer claims and the continued resolution of customer and general creditor disputes, all of which together have enabled the Trustee to allocate over $663 million to the general estate and release over $1.180 billion in reserves that are no longer necessary. But in a broader sense, the results achieved to date are a testament to the effectiveness of SIPA and the Bankruptcy Code, and the professionalism of the judges, court personnel, regulators, and professionals who participate in the process.

4. To advance to this important phase of the liquidation, the Trustee has closely considered the prospect of various pending litigations and the potential impact on available estate reserves. Should the Court grant the relief requested in this Motion, significantly all estate assets will be dedicated to litigation reserves or distribution funds. Any further distribution from the

LBI estate beyond the proposed third interim distribution will be contingent upon the reduction of existing reserves by the successful litigation of disputed customer, secured, administrative, and priority, and general unsecured creditor claims, which may not be until the conclusion of this liquidation proceeding.

5. The Securities Investor Protection Corporation, which oversees all aspects of this liquidation, supports the relief requested.

**Background**

6. On September 19, 2008 (the "Filing Date"), the Honorable Gerard E. Lynch, United States District Court Judge for the 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 pursuant to section 78eee(b)(4) of SIPA, in the case captioned In re Lehman Brothers Inc., Case No. 08-01420 (SCC) (the "SIPA Proceeding").

7. On November 15, 2012, the Court entered the Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b) for Approval of General Creditor Claim Objection Procedures (the "Objection Procedures Order," ECF No. 5441) establishing procedures for the Trustee to object to general creditor claims.

**General Estate Distributions**

8. Alongside the resolution of general creditor claims, the Trustee has effectuated distributions of over $6.142 billion[1] from the general estate pursuant to three Orders entered by this Court:

- The Trustee established a Secured and Priority Claim Reserve of $622 million and has distributed $252 million of that since July 2014 (ECF No. 9273; Frelinghuysen Decl. ¶ 3);
- The Trustee established a First Interim Distribution Fund of $4.654 billion and has distributed $3.707 billion of that since September 2014 (ECF No. 9647; Frelinghuysen Decl. ¶ 4); and
- The Trustee established a Second Interim Distribution Fund of $2.429 billion and has distributed $2.183 billion of that since March 2015. (ECF No. 11358; Frelinghuysen Decl. ¶ 5.)

9. Between February 6, 2015 and June 30, 2015, the Trustee has resolved further secured and priority claims and general unsecured creditor claims for amounts less than their capped amounts. (Frelinghuysen Decl. ¶ 6.) As a result, the reserve for such claims no longer needs to be maintained. (Id.) Instead, $197 million in reserves can be released, collectively, from the Secured and Priority Claim Reserve, the First Interim Distribution Fund, and the Second Interim Distribution Fund. (Id.) The holders of the claims for whom these reserves were initially set have either received allowed claims and commensurate distributions or have had their entitlement to allowed claims denied by the Court by final order. (Id.)

10. Other than the release of reserves that are no longer necessary, the Secured and Priority Claim Reserve and the First and Second Interim Distribution Funds are unaffected by the relief sought in this Motion. (Frelinghuysen Decl. ¶ 7.) Respectively, each will continue to hold

1. For the purposes of this Motion, estate assets and liabilities are calculated as of June 30, 2015, with supporting information available in the Declaration of Anson B. Frelinghuysen, dated July 13, 2015 (the "Frelinghuysen Decl.") and attached as Exhibit 1.

a reserve equivalent to one-hundred percent, seventeen percent, and ten percent of the capped amount of all unresolved claims or of the allowed amount of all otherwise undistributed claims. (Id.) Holders of unresolved or otherwise undistributed secured and priority claims as of the record date for such claims (July 16, 2014) will remain entitled to a one-hundred percent distribution on their claims if they are allowed and upon the return of the necessary distribution information. (Id.) And holders of general unsecured creditor claims as of the record date for the first interim general unsecured claim distribution (July 15, 2014) and as of the record date for the second interim general unsecured claim distribution (February 6, 2015) will remain entitled to a seventeen percent and ten percent distribution on their claims if those claims are allowed and upon the return of the necessary distribution information. (Id.)

11. The Trustee urges claimants holding allowed claims to return the requested and necessary distribution information so that the Trustee may make distribution on those claims. In June 2015, the Trustee sent follow-up notices to each claimant that has yet to return distribution information or that returned distribution information that was insufficient or incomplete. (Frelinghuysen Decl. ¶ 8.) Later this year, the Trustee anticipates filing a motion to expunge allowed general creditor claims held by claimants who have not provided distribution information to the Trustee. (Id.)

**The Proposed Third Interim General Unsecured Distribution**

12. There are four categories of general unsecured creditor claims subject to the Trustee's proposed third interim general unsecured distribution:[2]

a. Claims that have been allowed or settled ("Allowed Unsecured Claims");

2. At least two business days prior to the hearing on this Motion, the Trustee will submit schedules reflective of the July 10, 2015 record date status of all general unsecured claims, which schedules will be the sole basis entitling holders of general unsecured creditor claims to a third interim distribution.

b. Claims, the allowance of which is pending before the Court ("Pending Claims");

c. Claims subject to objections pending before the Court where the validity of the claim or claimed amount is in dispute ("Unresolved Claims"); and

d. Claims subordinated or reclassified to equity ("Subordinated Claims").

13. As of June 30, 2015, the LBI general estate contained approximately $1.941 billion in assets, of which $1.837 billion is dedicated to required reserves. (Frelinghuysen Decl. ¶ 10.) This leaves only $104 million available for a supplemental distribution to LBI's general unsecured creditors. (Id.) To advance with a further interim distribution to LBI's creditors, the Trustee has allocated $663 million to the general estate and can release $1.180 billion in reserves that are no longer necessary, as follows:

- Resolution of customer disputes permits the allocation to the general estate of $624 million of excess customer property while still maintaining sufficient customer reserves to fully pay any disputed customer claims should they become allowed customer claims (Frelinghuysen Decl. ¶ 11);

- The Court-approved settlement with Barclays Capital Inc. permits the release of $583 million previously reserved for Barclays disputes (Frelinghuysen Decl. ¶ 12);

- General progress in concluding the LBI liquidation and advancing all disputed customer and general unsecured creditor claims to active litigation allows for the reduction of the Administrative Expense Reserve, which was established at $850 million pursuant to the First Interim Distribution Order, to $450 million, permitting the release of $400 million to LBI's general unsecured creditors (Frelinghuysen Decl. ¶ 9);

- Resolution of secured and priority and general unsecured creditor claims enables the release of $197 million of reserves from the Secured and Priority Claim Reserve, the First Interim Distribution Fund, and the Second Interim Distribution Fund, collectively (Frelinghuysen Decl. ¶ 6); and

- Complete payment of customer claims, including claims to income paid on allowed securities after the Filing Date, permits the allocation to the

general estate of $39 million of excess post Filing Date income on estate securities. (Frelinghuysen Decl. ¶ 11.)

14. As a result of these allocations and reserve releases, a total of $1.947 billion is available for a third interim general unsecured distribution. (Frelinghuysen Decl. ¶ 12.) The Trustee seeks this Court's authorization to use $1.891 billion of this amount to fund a Third Interim Distribution Fund for the purposes of making a further interim distribution of eight percent to record holders of allowed general unsecured creditor claims as of July 10, 2015. The Trustee will also maintain, within the Third Interim Distribution Fund, reserves equal to eight percent of the allowed amount of all Allowed Unsecured Claims plus eight percent of the previously-capped amount of all remaining Unresolved and Pending Claims.

15. By maintaining sufficient customer, secured and priority, and general unsecured creditor reserves, the Trustee assures that claimants with disputed claims are not prejudiced by the relief requested by this Motion. To the extent an Unresolved or Pending Claim becomes an allowed general unsecured creditor claim, the Trustee will make a distribution on that claim to the relevant record date holder from each of the distribution funds.

## Jurisdiction

16. Following removal to this Court for all purposes as required for SIPA cases by section 78eee(b)(4) of SIPA, 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." 15 U.S.C. § 78eee(b)(4).

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

**Relief Requested**

18. By this Motion, the Trustee requests that, pursuant to section 105(a), 502(a), 502(c), and 726 of the Bankruptcy Code and Bankruptcy Rule 3009, as made applicable to the SIPA Proceeding pursuant to SIPA sections 78fff(b), 78fff-1(a), and 78fff(e), the Court authorize the Trustee to:

a. Establish a Third Interim Distribution Fund in the amount of approximately $1.891 billion for all general unsecured creditor claims;

b. Release reserves that are no longer necessary from the Secured and Priority Claim Reserve, the First Interim Distribution Fund, the Second Interim Distribution Fund, and the Administrative Expense Reserve (Frelinghuysen Decl. ¶ 12);

c. Establish July 10, 2015 as the Record Date for the third interim distribution, *nunc pro tunc*, pursuant to the Notice of Record Date filed on June 29, 2015 (ECF No. 12389); and

d. Make a third interim distribution to holders of the Allowed Unsecured Claims as of the Record Date or to holders of Unresolved Claims or Pending Claims as of the same Record Date, if and when such claims become allowed claims.[3]

19. Nothing set forth in this Motion shall be deemed or construed as an admission of the Trustee as to any liability for any Unresolved or Pending Claim or as to the status of such claims. Nothing in this Motion is intended to affect or alter the capped amount for any of the Unresolved or Pending Claims. Further, nothing in this Motion is intended to limit the ability of

3. To the extent that any Unresolved or Pending Claim becomes an Allowed Unsecured Claim pursuant to (i) an order or judgment of the Bankruptcy Court as entered on the docket or (ii) a stipulation between the Trustee and the holder of such claim that has been approved by the Court, the Trustee will make the requisite *pro rata* distribution to the holder of each such Allowed Unsecured Claim as of the Record Date without further notice or Order of the Court. With respect to any Unresolved or Pending Claims the Trustee determines should be Allowed Unsecured Claims other than pursuant to Order of this Court or Court-approved stipulation, the Trustee shall periodically file with the Court a supplemental schedule of such claim(s) (a "Supplemental Distribution Schedule") and serve the same on the holder of such claim(s) and all parties in interest that have filed a notice of appearance and requested notice in the LBI SIPA proceeding.

any holder of any Unresolved Claim to obtain a determination of the validity of its claim and receive from the appropriate reserve its finally determined amount through future distributions.

20. For the further avoidance of doubt, this Motion is not a request by the Trustee for an extension of the deadline for holders of pre-Filing Date customer or general creditor claims, including any 503(b)(9) Claims, to file proofs of claim relating thereto, which deadline was established as the Claims Bar Date, or for an extension of the deadline for holders of claims for administrative expenses arising between the Filing Date and August 31, 2013, to file proofs of claim relating thereto, which deadline was established as the Administrative Bar Date.

## Basis for Relief

### I. The Third Interim Distribution Is Consistent With This Court's Prior Distribution Orders.

21. The Trustee now seeks relief that is consistent with the relief already granted by this Court on July 2, 2014 in the Secured and Priority Reserve Order, on July 31, 2014 in the First Interim Distribution Order, and on February 19, 2015 in the Second Interim Distribution Order. The Trustee has given effect to those orders by distributing over $6.142 billion in property to LBI's creditors. Now, five months later, the Trustee seeks to bolster those distributions through the creation and funding of the Third Interim Distribution Fund, including by releasing reserves initially set by this Court that are no longer necessary.

22. In *In re Lehman Bros. Holdings Inc.* – the chapter 11 proceeding for LBI's former parent company and certain of its former affiliates – the debtors' plan of reorganization provided for the plan administrator to retain available cash in an aggregate amount equal to the *pro rata* share of the distributions that would have been made to each holder of an unresolved claim if such unresolved claim were an allowed claim. *See* Order Confirming Modified Third Amended Joint Chapter 11 Plain of Lehman Bros. Holdings Inc. and Its Affiliated Debtors, *In re Lehman*

*Bros. Holdings Inc.*, No. 08-13555 (JMP) (Bankr. S.D.N.Y. Dec. 5, 2011), ECF No. 23023 (section 8.4 of debtors' plan of reorganization). By reserving for unresolved claims in this way, as the Trustee has done and proposes to continue doing, holders of unresolved claims are not prejudiced by the distribution of assets to holders of allowed claims. And holders of allowed claims are able to receive a return on their claims in advance of all claim disputes being resolved.

## II. Interim Distributions To General Creditors In SIPA Liquidations Are Permitted Under Section 726 of the Bankruptcy Code.

23. SIPA section 78fff(e) provides that distributions from the general estate shall be made in accordance with section 726 of the Bankruptcy Code. *See* SIPA § 78fff(e). Section 726(a) of the Bankruptcy Code, in turn, provides that property of the estate shall be distributed first to claims entitled to priority under section 507 of the Bankruptcy Code and second to "any allowed unsecured claim." 11 U.S.C. § 726(a)(1), (2). Bankruptcy Rule 3009 provides that in a chapter 7 case, "dividends to creditors shall be paid as promptly as practicable."

24. The relief the Trustee seeks is similar to relief granted by other courts in similar circumstances. In *In re Asia Global Crossing Ltd*., the chapter 7 trustee, relying on sections 105(a) and 726 of the Bankruptcy Code, sought and received court approval to make multiple interim distributions to creditors of the debtor's estates in light of the significant amount of cash available for each distribution, while also maintaining sufficient reserves for disputed claims and the continuing administrative expenses of the estate. *See In re Asia Global Crossing Ltd.*, Case Nos. 02-15749 (SMB), 02-15750 (SMB), ECF Nos. 517, 692, 838, 932, 996 (chapter 7 trustee's motions for orders authorizing and approving interim distribution and claim reserves); *see also In re Refco, LLC*, No. 05-60134 (RDD), at *2 (Bankr. S.D.N.Y. June 14, 2007), ECF Nos. 779, 847, 1226 (authorizing chapter 7 trustee to make several interim distributions to holders of allowed claims).

25. By this Motion, the Trustee seeks to make a third interim distribution to the holders of the Allowed Unsecured Claims and to the holders of Unresolved Claims and Pending Claims that become allowed claims. The Trustee has conducted an extensive analysis of the financial condition of the LBI estate, and, based on that analysis, determined that the time is appropriate to distribute a further dividend to LBI's creditors. There are assets of approximately $1.947 billion, inclusive of allocations of property to the general estate and the release reserves the Trustee proposes by this Motion, that are available to fund a third interim distribution to LBI's creditors and create a reserve for unresolved claims.

**Objections to Claims and Reservation of Rights**

26. The Trustee reserves all rights and defenses with respect to any Unresolved or Pending Claim, including the right to assert set off or recoupment.

27. Based on the foregoing, the Trustee submits that the relief requested herein is necessary and appropriate, is in the best interests of the LBI estate and its creditors, and should be granted in all respects.

**Notice**

28. Notice of this Motion will be provided in accordance with the Court's Amended Case Management Order (ECF No. 3466), will be immediately available for inspection upon filing with the Court at the Trustee's website, www.lehmantrustee.com, and will be mailed by overnight mail to the current holders of all pending general creditor claims. The Trustee submits that no other or further notice need be provided.

**No Prior Request**

29. No prior motion for the relief requested herein has been made to this or any other court.

## CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court grant the relief requested herein as provided in the proposed Order annexed hereto as Exhibit 2 and such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 13, 2015

HUGHES HUBBARD & REED LLP

By: /s/ Christopher K. Kiplok

James B. Kobak, Jr.
Christopher K. Kiplok
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Attorneys for James W. Giddens, Trustee for the SIPA Liquidation of Lehman Brothers Inc.

# Exhibit 1

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

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

**DECLARATION OF ANSON B. FRELINGHUYSEN IN SUPPORT OF THE TRUSTEE'S MOTION FOR AN ORDER TO (I) ESTABLISH A THIRD INTERIM DISTRIBUTION FUND FOR GENERAL UNSECURED CREDITOR CLAIMS, (II) RELEASE RESERVES FROM THE SECURED AND PRIORITY CLAIM RESERVE, THE FIRST INTERIM DISTRIBUTION FUND, AND THE SECOND INTERIM DISTRIBUTION FUND AND (III) MAKE A THIRD INTERIM DISTRIBUTION TO HOLDERS OF ALLOWED GENERAL UNSECURED CREDITOR CLAIMS WITH A RECORD DATE OF JULY 10, 2015**

Pursuant to 28 U.S.C. § 1746, I, Anson B. Frelinghuysen, hereby declare as follows:

1. I am an attorney duly admitted to practice in this Court and an associate at the law firm of Hughes Hubbard & Reed LLP, attorneys for James W. Giddens (the "Trustee"), Trustee for the SIPA liquidation of Lehman Brothers Inc. ("LBI"). I submit this declaration in support of the Trustee's Motion for an Order to: (i) establish a third interim distribution fund for general unsecured creditor claims; (ii) release reserves from the Secured and Priority Claim Reserve, the First Interim Distribution Fund, and the Second Interim Distribution Fund; and (iii) make a third interim distribution to record holders of general unsecured creditor claims as of July 10, 2015 (the "Record Date") that are currently allowed or become allowable (the "Motion").[1]

2. All information presented in this Declaration is as of June 30, 2015 and is based on information available at this time, including the entry of certain orders in July 2015 that

1. All terms used herein shall have the same meaning as defined in the Motion.

confirm estate liabilities as of June 30, 2015 (e.g., Order Expunging Certain Duplicative Claims (ECF No. 12425), Order Expunging Customer Claim 900006447 (ECF No. 12454), and Order Expunging Customer Claim 900007227 (ECF No. 12455)). The information presented in this Declaration, including corrections, if any, may be materially updated in the future, and the declarant reserves all rights to do so. The selected balances and information contained herein have not been and will not be subject to audit or review by external accountants.

3. The Trustee established the Secured and Priority Claim Reserve of $621,565,884 (inclusive of the supplemental adjustments detailed herein) pursuant to the SAP Reserve Order. (ECF No. 9273.) Subsequent to its creation, the Secured and Priority Claim Reserve was increased to account for claims held by Barclays Capital Inc. (ECF No. 9244) and the Internal Revenue Service. The Trustee has distributed $252,412,744 from the Secured and Priority Claim Reserve since July 2014. Pursuant to the Second Interim Distribution Order, the Trustee released $69,024,789 from the Secured and Priority Claim Reserve with respect to claims resolved for less than their previously-capped amount. (ECF No. 11358.)

4. The Trustee established the First Interim Distribution Fund of $4,654,480,614 (inclusive of the supplemental adjustments detailed herein) pursuant to the First Interim General Unsecured Distribution Order. (ECF No. 9647.) Subsequent to its creation, the First Interim Distribution Fund has been supplemented by $36,395,235, as follows: (i) by $652,592 to accommodate several claims that were erroneously not included on the original capping schedules or that were not included in their proper amount but that the Trustee has since placed on Supplemental Distribution Schedules filed with the Court; and (ii) by $35,742,643 for certain customer-asserted claims that have been resolved in favor of general unsecured creditor claims, which amount has been allocated from the customer estate to the general estate to fund the

general creditor distribution on these claims. The Trustee has distributed $3,707,266,225 from the First Interim Distribution Fund since September 2014. Pursuant to the Second Interim Distribution Order, the Trustee released $525,004,010 from the First Interim Distribution Fund with respect to claims resolved for less than their previously-capped amount. (ECF No. 11358.)

5. The Trustee established the Second Interim Distribution Fund of $2,429,103,885 (inclusive of the supplemental adjustments detailed herein) pursuant to the Second Interim General Unsecured Distribution Order. (ECF No. 11358.) Subsequent to its creation, the Second Interim Distribution Fund has been supplemented by $17,817,126, as follows: (i) by $52,460 to accommodate one claim that was erroneously not included on the original capping schedules but that the Trustee has since placed on a Supplemental Distribution Schedule filed with the Court; and (ii) by $17,764,666 for certain customer-asserted claims that have been resolved in favor of general unsecured creditor claims, which amount has been allocated from the customer estate to the general estate to fund the general creditor distribution on these claims. The Trustee has distributed $2,182,381,207 from the Second Interim Distribution Fund since March 2015.

6. Between February 6, 2015 and June 30, 2015, the Trustee has resolved further secured and priority claims and further general unsecured creditor claims for amounts less than their capped amounts. As a result, the Trustee has determined that the reserve for such claims no longer needs to be maintained and that $197,594,499 in reserves can be released, collectively, from the Secured and Priority Claim Reserve, the First Interim Distribution Fund, and the Second Interim Distribution Fund, as follows:

| | Allowed For Less Than Reserve | Withdrawn or Expunged | Subordinated | Total Releasable Reserve |
|---|---|---|---|---|
| Secured and Priority Claim Reserve | $53,179 | $20,691,034 | $159,132 | $20,903,345 |
| First Interim Distribution Fund | $80,711,238 | $30,316,425 | $222,323 | $111,249,986 |
| Second Interim Distribution Fund | $47,477,199 | $17,833,191 | $130,778 | $65,411,168 |
| Total Releasable Reserve | | | | $197,594,499 |

The holders of the claims for whom these reserves were initially set have either received allowed claims and commensurate distributions or have had their entitlement to allowed claims denied by the Court by final order.

7. Other than the release of reserves that are no longer necessary, the Secured and Priority Claim Reserve and the First and Second Interim Distribution Funds are unaffected by the relief sought in the Motion. Respectively, each will continue to hold a reserve equivalent to one-hundred percent, seventeen percent, and ten percent of the capped amount of all unresolved claims or of the allowed amount of all otherwise undistributed claims. Holders of unresolved or otherwise undistributed secured and priority claims as of the record date for such claims (July 16, 2014) will remain entitled to a one-hundred percent distribution on their claims if they are allowed and upon the return of the necessary distribution information. And holders of general unsecured creditor claims as of the record date for the first interim general unsecured claim distribution (July 15, 2014) and as of the record date for the second interim general unsecured claim distribution (February 6, 2015) will remain entitled to a seventeen percent and ten percent distribution on their claims if those claims are allowed and upon the return of the necessary distribution information.

8. In June 2015, the Trustee sent follow-up notices to each claimant that has yet to return distribution information or that returned distribution information that was insufficient or incomplete. (ECF No. 12280, 12375.) Later this year, the Trustee anticipates filing a motion to expunge allowed general creditor claims held by claimants who have not provided distribution information to the Trustee.

9. The Trustee has evaluated the estate's ongoing administrative expenses through completion of the LBI liquidation. All disputed customer, secured and priority, and general unsecured creditor claims are now pending before the Court or on appeal. The Trustee has determined that the Administrative Expense Reserve, which was established at $850 million pursuant to the First Interim Distribution Order, can be reduced to $450 million. This permits the release of $400 million to LBI's general unsecured creditors.

10. As of June 30, 2015, the LBI general estate contained $1,941,075,639 in assets. The LBI general estate is subject to required reserves of $1,837,236,416 as follows:

| | Disputed Claim Reserve[2] | Releasable Reserve[3] | Ineligible Claim Reserve[4] | Total Reserve |
|---|---|---|---|---|
| Secured and Priority Reserve | $278,694,196 | $20,903,345 | $530,810 | $300,128,351 |
| First Interim Distribution Fund | $243,961,595 | $111,249,986 | $66,998,798 | $422,210,379 |
| Second Interim Distribution Fund | $143,506,821 | $65,441,168 | $37,774,689 | $246,722,678 |
| Administrative Expense Reserve | | | | $850,000,000 |
| Distribution-Related Tax Reserve | | | | $18,291,219 |
| Total Reserve | | | | $1,837,352,627 |

This leaves only $103,723,012 available for a supplemental distribution to LBI's general unsecured creditors.

11. The Trustee has supplemented the $103,723,012 available from the LBI general estate with allocations to the general estate of $663,130,869 as follows: (i) $623,581,853 of excess customer property; and (ii) $39,549,016 of excess income received on estate securities after the Filing Date.

12. To further supplement the assets available for the third interim distribution, the Trustee has determined that $1,180,360,676 of reserves are no longer necessary and proposes the release of those reserves, as follows: (i) $20,903,345 from the Secured and Priority Claim

2. This category represents the full, capped amount of disputed secured and priority claims or seventeen and ten percent of the capped amount of disputed general unsecured creditor claims.

3. This category represents funds subject to release (pursuant to the Motion) as no longer necessary due the resolution of the claims below the previously-capped amount.

4. This category represents claims that are ineligible to receive distributions because the claimants have not provided the Trustee with necessary distribution information or the distribution information is currently being processed. The values are calculated at the full, allowed amount of secured and priority claims or seventeen and ten percent of the allowed amount of disputed general unsecured creditor claims.

Reserve; (ii) $111,249,986 from the First Interim Distribution Fund; (iii) $65,441,168 from the Second Interim Distribution Fund; (iv) $582,766,177 from the Barclays litigation reserve, as authorized by this Court's Order of June 29, 2015 (ECF No. 12379); and (v) $400 million from the Administrative Expense Reserve. As a result of these allocations and reserve releases, a total of $1,947,214,557 is available for a third interim distribution.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 13, 2015

/s/ Anson B. Frelinghuysen
Anson B. Frelinghuysen

# Exhibit 2

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

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

**[PROPOSED] ORDER TO (I) ESTABLISH A THIRD INTERIM DISTRIBUTION FUND FOR GENERAL UNSECURED CREDITOR CLAIMS, (II) RELEASE RESERVES FROM THE SECURED AND PRIORITY CLAIM RESERVE, THE FIRST INTERIM DISTRIBUTION FUND, AND THE SECOND INTERIM DISTRIBUTION FUND, AND (III) MAKE A THIRD INTERIM DISTRIBUTION TO HOLDERS OF ALLOWED GENERAL UNSECURED CREDITOR CLAIMS WITH A RECORD DATE OF JULY 10, 2015**

Upon the motion, dated July 13, 2015 (the "Motion"),[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 of 1970, as amended, 15 U.S.C. sections 78aaa *et seq.* ("SIPA"),[2] for entry of an order to: (i) establish a third interim distribution fund for general unsecured creditor claims; (ii) release reserves from the Secured and Priority Claim Reserve, the First Interim Distribution Fund, and the Second Interim Distribution Fund; and (iii) make a third interim distribution to record holders of general unsecured creditor claims as of July 10, 2015 that are currently allowed or become allowable, as more fully described in the Motion; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is in the best interests of the LBI estate, its creditors, and all parties in interest and that

1. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

2. References to SIPA refer to the statutory sections in effect as of the commencement of LBI's liquidation.

the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted in all respects as provided herein and all objections thereto are overruled; and it is further

ORDERED that the establishment of the Third Interim Distribution Fund in an amount of $1.891 billion or more is approved and that the Third Interim Distribution Fund shall be used to make a third interim distribution to the holders of the Allowed Unsecured Claims listed on Schedule A[3] and to establish *pro rata* reserves for the Unresolved and Pending Claims listed on Schedules B and C in the amount listed on each Schedule; and it is further

ORDERED that the Trustee is authorized to release unnecessary reserves of $21 million from the Secured and Priority Claim Reserve, $111 million from the First Interim Distribution Fund, and $65 million from the Second Interim Distribution Fund; and it is further

ORDERED that, with respect to the Unresolved and Pending Claims, the First Interim Distribution Order (ECF No. 9520) shall continue to apply as to the *pro rata* reserves maintained and distributions made pursuant to such Order, in addition to the *pro rata* reserves and distributions authorized herein; and it is further

ORDERED that, with respect to the Unresolved and Pending Claims, the Second Interim Distribution Order (ECF No. 11358) shall continue to apply as to the *pro rata* reserves maintained and distributions made pursuant to such Order, in addition to the *pro rata* reserves and distributions authorized herein; and it is further

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3. On July __, 2015, the Trustee filed schedules (the "Schedules") reflective of the July 10, 2015 record date status of all general unsecured claims, which schedules will be the sole basis entitling holders of general unsecured claims to a third interim distribution.

ORDERED that the Trustee is authorized to make a third interim distribution to the holders of the Allowed Unsecured Claims listed on Schedule A and to release the amounts corresponding to the Allowed Unsecured Claims from the Third Interim Distribution Fund; and it is further

ORDERED that the record date for the purpose of making the third interim distribution authorized herein for all holders of claims is July 10, 2015 (the "Record Date"), and that the Trustee's publication of notice of the establishment of the Record Date on the Trustee's website (www.lehmantrustee.com) on June 29, 2015 (ECF No. 12389) constituted good and sufficient notice of the Record Date, and it is further

ORDERED that the ultimate amount of the third interim distribution will be determined by the Trustee based on an analysis of general estate assets and liabilities at the time of distribution; and it is further

ORDERED that if and to the extent that an Unresolved or Pending Claim becomes an Allowed Unsecured Claim pursuant to a Final Order[4] entered by this Court (or another court of competent jurisdiction) or stipulation between the Trustee and the holder of such claim that has been approved by the Court, the Trustee is authorized to make the requisite *pro rata* distribution to the holder of each such allowed unsecured claim as of the Record Date and to release the amount corresponding with such claim from the Third Interim Distribution Fund without further notice or Order of the Court; and it is further

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4. For the purposes of this Order, the term "Final Order" shall mean an order or judgment of the Bankruptcy Court as entered on the docket, the operation or effect of which has not been stayed, reversed, or amended, and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review, writ of certiorari, or rehearing was filed or, if filed, remains pending, *provided however*, that no order shall fail to become a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure, Bankruptcy Rule 9024, any similar local bankruptcy rule or any similar state statute or rule may be filed with respect to such order.

ORDERED that with respect to Unresolved or Pending Claims the Trustee determines should be Allowed Unsecured Claims other than pursuant to Order of this Court, the Trustee shall periodically file with the Court a supplemental schedule of such claim(s) (a "Supplemental Distribution Schedule") and serve the same on the holder(s) of such claim(s) and all parties in interest that have filed a notice of appearance and requested notice in the LBI SIPA proceeding; and it is further

ORDERED that unless a written objection to that Supplemental Distribution Schedule is filed and served on the Trustee's counsel and the holder(s) of such claim(s) within ten (10) days of the date of service of the Supplemental Distribution Schedule, the Trustee shall be authorized to make the requisite *pro rata* distributions to the holder(s) of the Allowed Unsecured Claims identified in the Supplemental Distribution Schedule as of the Record Date and to release the amount(s) corresponding with respect to such claim(s) from the Third Interim Distribution Fund; and it is further

ORDERED that with respect to Unresolved or Pending Claims that, either in whole or in part, become disallowed, expunged or reclassified as subordinated claims or equity interests by Final Order entered by this Court (or another court of competent jurisdiction), or that are settled or withdrawn with similar effect, the Trustee is authorized to release the amount corresponding to the disallowed, expunged or reclassified portion of such claim(s) from the Third Interim Distribution Fund without further Order of the Court; and it is further

ORDERED that nothing in this Order shall affect the administrative expense claims of any person or entity who is a professional advisor (*e.g.*, counsel, financial advisors, accountants, claims agents) retained by the Trustee, including all counsel retained pursuant to orders of the Bankruptcy Court and the District Court, and all other professionals retained, with

permission from SIPC, pursuant to SIPA section 78fff-1(a)(1), and SIPC itself, nor shall it affect any claims for administrative expenses arising after August 31, 2013 as there is no bar date for such claims at this time; and it is further

ORDERED that the Trustee is authorized and empowered to take such steps and perform such acts as may be necessary to implement this Order and the effectuation of all distributions authorized by this Order, including without limitation requiring holders of Allowed Unsecured Claims to complete all tax forms and other documentation necessary to be received by the Trustee prior to effectuation of such distributions; and it is further

ORDERED that entry of this Order is without prejudice to the right of the Trustee to seek a further order of this Court disallowing, expunging, objecting to or otherwise resolving any of the unresolved claims; 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
_____, 2015

HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE