Hearing Date: November 29, 2021 at 9:30 a.m. (Prevailing Eastern Time)
Response Deadline: November 18, 2021 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

NOTICE OF TRUSTEE'S MOTION FOR ORDERS (I) AUTHORIZING A FINAL DISTRIBUTION TO HOLDERS OF ALLOWED GENERAL UNSECURED CREDITOR CLAIMS WITH A RECORD DATE OF NOVEMBER 30, 2021, AND (II) APPROVING THE VOLUNTARY SUPPLEMENTAL DISTRIBUTION AND RELATED PROCEDURES

PLEASE TAKE NOTICE that on November 3, 2021, James W. Giddens (the "Trustee"), as trustee for the liquidation of the business of Lehman Brothers Inc. under the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. sections 78aaa *et seq*., by and through his undersigned counsel, hereby submits this *Motion for Orders (I) Authorizing a Final Distribution to Holders of Allowed General Unsecured Creditor Claims with a Record Date of November 30, 2021, and (II) Approving the Voluntary Supplemental Distribution and Related Procedures* (the "Motion").

PLEASE TAKE FURTHER NOTICE that a telephonic hearing on the Motion will be held before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, on **November 29, 2021 at 9:30 a.m. (Prevailing Eastern Time)** or as soon thereafter as counsel may be heard (the "Hearing").

PLEASE TAKE FURTHER NOTICE that, in accordance with General Order M-543, dated March 20, 2020 (Morris, C.J.) ("General Order M-543"), the Hearing will be conducted telephonically. Any parties wishing to participate must do so telephonically by making arrangements through CourtSolutions, LLC (www.courtsolutions.com). Instructions to register for CourtSolutions, LLC are attached to General Order M-543.

PLEASE TAKE FURTHER NOTICE that the Motion has been filed electronically with the Bankruptcy Court and, as such, may be examined and inspected by interested parties on (i) the Court's website (http://www.nysb.uscourts.gov) or (ii) the website of the Trustee (http://www.lehmantrustee.com).

PLEASE TAKE FURTHER NOTICE that responses, if any, to entry of either of the two orders 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 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 18, 2021 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 Anson B. Frelinghuysen, Esq.; and (b) the Securities Investor Protection Corporation, 1667 K St. N.W., Suite 1000, Washington, D.C. 20006, Attn.: Kenneth J. Caputo, Esq. and Hemant Sharma, 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, so as to be received by no later than the Response Deadline.

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the Hearing. Failure to appear may result in relief being granted upon default.

Dated: New York, New York
November 3, 2021

HUGHES HUBBARD & REED LLP

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

TRUSTEE'S MOTION FOR ORDERS (I) AUTHORIZING A FINAL DISTRIBUTION TO HOLDERS OF ALLOWED GENERAL UNSECURED CREDITOR CLAIMS WITH A RECORD DATE OF NOVEMBER 30, 2021, AND (II) APPROVING THE VOLUNTARY SUPPLEMENTAL DISTRIBUTION AND RELATED PROCEDURES

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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") 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 and with the advice and support of the Securities Investor Protection Corporation ("SIPC"), in support of his *Motion for Orders (I) Authorizing a Final Distribution to Holders of Allowed General Unsecured Creditor Claims with a Record Date of November 30, 2021, and (II) Approving the Voluntary Supplemental Distribution and Related Procedures* (the "Motion"),[1] respectfully represents as follows:

PRELIMINARY STATEMENT

1. For more than two years, the Trustee and SIPC have stated to the Court, creditors, regulators, and others, that this case, the largest SIPA liquidation in history, would move to final distribution and closure as soon as all appellate claims-related litigation was resolved, with the Trustee preserving any longer-dated, speculative future recoveries in a post-closing trust for the benefit of those creditors willing and able to bear that time horizon and risk. The time to begin that process is now, as the sole remaining claims-related litigation reaches the final phases of its appellate process.

2. By this Motion, the Trustee respectfully seeks this Court's authority to initiate a final distribution of at least 1.1925 percent to general unsecured creditors of the estate (the "Final

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1. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Voluntary Supplemental Distribution Procedures, attached as Exhibit 1 to Exhibit B hereof (the "Procedures"). Estate assets and liabilities are calculated as of September 30, 2021, with supporting information available in the Declaration of Hilary McDonnell, dated November 3, 2021 (the "McDonnell Declaration"), filed concurrently herewith. Information regarding the estate's allowed claim populations is as of September 30, 2021, with supporting information available in the Declaration of Christopher K. Kiplok, dated November 3, 2021 (the "Kiplok Declaration"), filed concurrently herewith. The Trustee has also concurrently filed the Twenty-Fifth Interim Report regarding the administration of the estate through September 30, 2021, which contains a full report on the status of the LBI liquidation and a Contingent Asset annex, and the Quarterly Liquidation Balance Sheet as of September 30, 2021 (the "Interim Reporting").

Distribution"), bringing total distributions to general unsecured creditors to at least 41.2530 percent.[2] The Trustee also seeks this Court's approval of a supplemental distribution to all but the four largest claim holders in full and final satisfaction of their claims, bringing their exposure to Lehman's historic failure to an end, at a premium in excess of what they would otherwise receive (the "Voluntary Supplemental Distribution"). Though many claimants will have the option to choose to remain LBI claimants instead of accepting an enhanced final distribution, the anticipated substantial reduction in the number of claims remaining in the estate will best prepare this liquidation for its intended closure in the third quarter of 2022.

3. The Final Distribution is the centerpiece of the Trustee's plan to bring the SIPA Proceeding to a close. Through the Final Distribution, the Trustee will distribute the entirety of the estate's remaining cash net of administrative reserves. In parallel, the Trustee will wind down all remaining administration of the estate, including issuing final reports and accountings following the distribution of cash contemplated by the Final Distribution.

4. The Final Distribution is also the capstone of value transfer to all of LBI's customers and creditors. Through the distribution of more than $105.699 billion in cash and securities and against a backdrop of spiraling financial markets and unprecedented economic distress, the Trustee achieved 100 percent recoveries for LBI's more than 111,822 former customers. With customers fully protected, the Trustee resolved all of LBI's secured, administrative, and priority claims and effected 100 percent distributions totaling more than $261 million to those with allowed claims. And then, through seven interim distributions, the Trustee distributed more than $9.096 billion to LBI's general unsecured creditors. If approved, the Final Distribution will deliver general unsecured recoveries cumulatively exceeding $9.372 billion,

2. The distribution rate for the Final Distribution may be adjusted upwards as discussed in Note 5.

affording general unsecured creditors a total recovery of at least 41.2530 percent—a feat that seemed next to impossible thirteen years ago. Total estate distributions will exceed $115.332 billion.

5. The Voluntary Supplemental Distribution provides an opportunity for nearly all claimants to immediately exit the LBI liquidation by accepting a supplemental and enhanced distribution from the estate. This supplemental distribution—equal to the liquidating value of the estate plus an incentive premium—allows claimants to accept a higher payout than that to which they would be otherwise entitled in exchange for a release of any right to a share of speculative future recoveries. For many of the claimants, the Voluntary Supplemental Distribution is their only opportunity to monetize their claims, as there is not a claims trading market for relatively small claimholders. No such hurdle exists in the Voluntary Supplemental Distribution, which provides the prospect of an immediate, non-contingent recovery. Notwithstanding this proposed guaranteed outcome, the Procedures provide for as many claimants as administratively possible to "opt out" of participation in the Voluntary Supplemental Distribution. Such claims, upon closure of the estate, are anticipated to convert into interests in a post-closing liquidating trust charged with pursuing the estate's long-horizon, contingent, non-cash assets (the "Trust").[3] These speculative, contingent assets may not yield a recovery for several years, if at all.

6. Not all claimants may opt out of the Voluntary Supplemental Distribution. Adverse tax consequences and other administrative necessities require that former LBI employee wage-based claims, regardless of the current owners, may not opt-out of the Voluntary Supplemental Distribution: upon effectuation of the Voluntary Supplemental Distribution, such claims will automatically receive the cash supplement and be deemed fully satisfied.

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3. The Trustee is currently considering the merits of seeking Court authority to establish the Trust.

7. Not all claims are eligible to receive the cash supplement being provided by the Voluntary Supplemental Distribution. The estate's four largest claimants, each holding more than $1.9 billion in allowed claims—and together $20.696 billion, representing 92 percent of the estate's total unsecured liability—are not eligible to receive the Voluntary Supplemental Distribution. These positions are of such a size that they would render the Voluntary Supplemental Distribution impractical. The Trustee's professionals understand that these claimants are willing to speculate on longer-dated recoveries, including the risk of no further distributions from the Trust.

8. Together, the Final Distribution and the Voluntary Supplemental Distribution will use the entirety of the estate's non-reserved cash. Of $275 million available, $6 million will be allocated to funding the Voluntary Supplemental Distribution, and the remaining $269 million will be used to effectuate the Final Distribution.

9. The Trustee submits, in his business judgement, that the time for this Motion is now. On September 10, 2021, the United States Court of Appeals for the Second Circuit (the "Second Circuit") affirmed the Bankruptcy Court's and the District Court's orders in connection with the Executive and Select Employee Deferred Compensation Plan ("ESEP") litigation, resolving the estate's final unresolved general creditor claims and dismissing an adversary proceeding to recover the same amounts outside the estate.[4] The ESEP Order is not final. The deadline to file a petition for a writ of certiorari with the Supreme Court of the United States is

4. The Second Circuit issued a summary order affirming (1) the Bankruptcy Court's order, and District Court's affirmance thereof, reclassifying as unsecured those ESEP claims that had been asserted with secured or priority status, *344 Individuals v. Giddens (In re LBI)*, Case No. 19-3245 (2d Cir.) (ECF No. 95), and (2) the Bankruptcy Court's dismissal of the ESEP claimants' adversary proceeding in which the claimants contended that any amounts due to them under the ESEP are not part of the LBI estate and that those amounts, plus unspecified interest, costs, and fees, should be turned over to them, *LBI Deferred Compensation Defense Steering Committee v. Giddens*, Case No. 20-3757 (2d Cir.) (ECF No. 74) (the "ESEP Order").

January 10, 2022. The Trustee brings this Motion now to request the authority to effectuate immediate distributions upon—and only upon—finality of the ESEP Order. **The Trustee will not release the Final Distribution nor the Voluntary Supplemental Distribution unless and until the ESEP Order is final and non-appealable**.

10. The Trustee does not seek approval of the Final Distribution Order unless and until the ESEP Order has become final. However, because the Voluntary Supplemental Distribution contains lengthy notice periods to allow a full opportunity for claimant evaluation, the Trustee respectfully seeks its approval promptly following the hearing on this Motion. The Trustee brings the Motion with respect to *both* orders now because disclosures in this Motion about the Final Distribution are necessary to provide claimants with sufficient information to make an informed decision regarding the Voluntary Supplemental Distribution. Funds for the Final Distribution and the Voluntary Supplemental Distribution will not be released unless and until the ESEP Order is final. The Trustee anticipates filing, in consultation with SIPC, a notice with the Court when the ESEP Order has become final and non-appealable, including submitting the final version of the proposed Final Distribution Order for the Court's approval (the "Notice of Readiness").[5] Only after the Trustee has filed the Notice of Readiness does the Trustee respectfully request that the Court enter the Final Distribution Order. Though the ESEP litigation appellate process (and the Court's approval of the Procedures) will dictate the calendar, the timeline below presents the Trustee's best prediction of an indicative timeline for the Court's consideration:

5. The Trustee anticipates that the Notice of Readiness will also provide an update, in consultation with SIPC, of any potential additional amounts available for the Final Distribution. Such amounts may include the unused portion of the Allocation, recoveries on the Contingent Assets (as defined below) received by such date (if any), other additional recoveries, and funds from the administrative reserve that the Trustee, in consultation with SIPC, determines are not needed to conclude the liquidation or fund the Trust. Such amounts may be *de minimis*.

November 18, 2021	Deadline to object to the Motion
November 29, 2021	Joint hearing regarding the Final Distribution Order and Voluntary Supplemental Distribution Order
Proposed Entry of Voluntary Supplemental Distribution Order	
November 30, 2021	Record Date for Distributions
December 7, 2021	• Trustee files Record Date Schedule of Claims • Trustee serves: o the Solicitation Package to all Eligible Claimants; o the Excluded Claimants Mailing to all Excluded Claimants; and o the Employee Claimants Mailing to all Employee Claimants
February 5, 2022	Opt-Out Deadline (60 days after mailing)
February 15, 2022	Trustee files Notice of Outcome
ESEP Order Becomes Final	
Ten (10) days later	Trustee files Notice of Readiness
Proposed Entry of Final Distribution Order	
Fifteen (15) days later	Trustee effectuates the Final Distribution and the Voluntary Supplemental Distribution

11. SIPC has reviewed this Motion, and it supports the relief requested herein.

JURISDICTION

12. 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).

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

BACKGROUND

14. 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) (S.D.N.Y. Sept. 19, 2008). 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) (Bankr. S.D.N.Y. Sept. 19, 2008) (the "SIPA Proceeding").

15. On November 5, 2015, the Court entered the *Order to Establish (I) a Deadline of December 15, 2015 for Submission of Required Distribution Information By Specified General Estate Claimants and (II) Related Distribution Procedures* (the "Distribution Procedures Order," ECF No. 13039), establishing procedures for the Trustee to expunge waived allowed general creditor claims upon sixty days' notice.

A. Prior General Estate Distributions

16. The Trustee has effected distributions of more than $9.096 billion from the general estate pursuant to eight orders entered by the Court:

- The Trustee established the Secured and Priority Claim Reserve of $627 million and has distributed $261 million of that since July 2014 (ECF No. 9273; McDonnell Decl. ¶ 4);
- The Trustee established the First Interim Distribution Fund of $4.686 billion and has distributed $3.861 billion of that since September 2014 (ECF No. 9520; McDonnell Decl. ¶ 5);
- The Trustee established the Second Interim Distribution Fund of $2.448 billion and has distributed $2.271 billion of that since March 2015 (ECF No. 11358; McDonnell Decl. ¶ 6);
- The Trustee established the Third Interim Distribution Fund of $1.902 billion and has distributed $1.817 billion of that since August 2015 (ECF No. 12579; McDonnell Decl. ¶ 7);
- The Trustee established the Fourth Interim Distribution Fund of $688 million and has distributed $681 million of that since June 2016 (ECF No. 13683; McDonnell Decl. ¶ 8);

- The Trustee established the Fifth Interim Distribution Fund of $229 million and has distributed $227 million of that since April 2017 (ECF No. 14210; McDonnell Decl. ¶ 9);

- The Trustee established the Sixth Interim Distribution Fund of $170 million and has distributed $170 million of that since May 2018 (ECF No. 14595; McDonnell Decl. ¶ 10); and

- The Trustee established the Seventh Distribution Fund of $70 million and has distributed $70 million of that since September 2020 (ECF No. 15138; McDonnell Decl. ¶ 12).

17. In addition, the Trustee disbursed accelerated payments of approximately $6 million to the holders of the 859 claims that elected to participate in the Accelerated Final Distribution Election (the "AFDE") implemented in 2018, bringing their final general unsecured creditor distribution up to 41.23%. (ECF No. 14605; McDonnell Decl. ¶ 11.) Funds utilized to make these accelerated payments were not LBI estate funds, and AFDE disbursements are not distributions from the LBI estate.

B. LBI Allowed General Creditor Claims

18. The LBI estate currently has 3,356 allowed general unsecured claims with a total allowed liability of approximately $22.557 billion. (Kiplok Decl. ¶ 4.) The allowed claims include: (1) claims held by claims purchasers (2,271 claims allowed for approximately $21.666 billion, the "Aggregate Claims"); (2) claims held by individual claimants (690 claims allowed for approximately $746 million, the "Individual Claims");[6] and (3) claims allowed with respect to former LBI employees on account of wages, regardless of whether still held by those employees (395 claims allowed for approximately $145 million, the "Employee Claims"). (*Id*. ¶ 5.)

6. Prior to the AFDE, there were 1,866 Individual Claims, 862 of which elected to participate in the AFDE. (ECF Nos. 14666, 14679.) A further 302 Individual Claims were expunged pursuant to the Distribution Procedures Order, including three claims that had previously elected to participate in the AFDE. (ECF Nos. 14668, 14683, 14861, 14925, 15119, and 15271.) In the intervening period, an additional six general unsecured claims have been allowed as Individual Claims (ECF No. 15277), while twenty-one claims became Aggregate Claims.

19. Aggregate Claims account for 96% of the allowed general unsecured creditor population by value. (*Id.* ¶ 6.) Within the Aggregate Claims, just four parties (directly or through affiliates) each control more than $1.9 billion in claims. (*Id.*) Collectively, these four parties own $20.696 billion in allowed general unsecured claims, or 92% of the estate's entire remaining liability. (*Id.*) These four parties are the Excluded Claimants in the Procedures. For every dollar the Trustee recovers, ninety-two cents flow through to the Excluded Claimants.

20. Employee Claims—regardless of whether these claims are still held by the former employee or by a claim transferee—require the Trustee to withhold employment and income taxes, to pay the employer's share of employment taxes and to issue Internal Revenue Service Forms W-2 in connection with each distribution. (*Id.* ¶ 7.) Though they represent less than 1% of the allowed claim population by value, the payroll-like processing of the Employee Claims extends both their timetable for distribution and the time and cost that the Trustee's professionals must dedicate to processing the Employee Claims. (*Id.*) As such, the Employee Claims increase the cost of administration of the estate. (*Id.*)

C. Progress of the Liquidation

21. The Trustee has made significant progress in the liquidation in the past thirteen months, which enables the Trustee to seek the relief described in this Motion:

- First, the Trustee has now resolved, subject to finality of the ESEP Order, all remaining general creditor claims, including the ESEP claims.[7] Upon finality of the ESEP Order's affirmation of the Bankruptcy Court's prior orders, the Trustee will release $264 million previously reserved for such claims. (McDonnell Decl. ¶ 13.)

- Second, as a result of the resolution of all remaining general creditor claims, including (upon finality of the ESEP Order) the

7. A single administrative expense claim from the New York City Department of Finance remains pending. The Trustee maintains a reserve of $77,035 with respect thereto.

ESEP claims, an additional $7 million can be released from previous distribution-linked tax reserves. (*Id*.)

- Third, the Trustee has recovered approximately $3 million in connection with LBI bank account marshaling, unclaimed property collections, and other affirmative recoveries. (*Id*. ¶ 17.)

- Fourth, an additional $294,095 has become available by virtue of the Distribution Procedures Order. (*Id*. ¶ 14.)

22. In conjunction with certain other *de minimis* recoveries and reserve adjustments, a total of $275 million is potentially available for an eighth and final general unsecured distribution, inclusive of the accruals and reserve releases detailed above. (*Id*. ¶ 20.)

23. At this time, the estate's significant remaining unliquidated assets are contingent claims into certain class action settlement funds and an insolvency proceeding being administered under the laws of the Kingdom of Saudi Arabia and other non-cash assets that cannot yet be liquidated (collectively, the "Contingent Assets"), which require additional time to mature.[8] (Kiplok Decl. ¶ 8.) However, the timing required for these Contingent Assets to mature (if they mature at all) is uncertain, and it could take years for there to be any recovery, which may be small or even zero. (*Id*.) As part of the Trustee's closure plan, the Trustee is considering the merits of seeking Court authority to establish the Trust to recover any potential value on these Contingent Assets without unnecessarily prolonging the SIPA Proceeding. (*Id.* ¶ 9.)

24. With the prospect of a further recovery both contingent and potentially distant, the Trustee proposes the Voluntary Supplemental Distribution to afford nearly all claimants the opportunity to obtain a final resolution of their claims in the near term. Rather than possibly waiting years for the Contingent Assets—which may or may not ultimately achieve a recovery—

8. For additional information regarding the Contingent Assets, including other categories of potential recoveries, see the Interim Reporting.

eligible claimants should be able to immediately monetize the value of their remaining claims without bearing the risk that the Contingent Assets may yield a zero recovery. Accordingly, the Trustee proposes the Voluntary Supplemental Distribution.

25. Given the uncertain nature of the Contingent Assets, the Trustee cannot assure claimants that distributions from the Trust over time will be the same, greater, or less than the total Voluntary Supplemental Distribution. Actual distributions from the Trust may vary materially from estimates. Pursuant to the Procedures, each Eligible Claimant can make its own decision with respect to its Eligible Claims.[9] Accordingly, the Trustee does not believe that Eligible Claimants will be harmed by the relief requested.

RELIEF REQUESTED

26. Pursuant to sections 105(a), 502(a), 502(c), and 726 of the Bankruptcy Code and Bankruptcy Rules 2002 and 3009, as made applicable to the SIPA Proceeding pursuant to SIPA sections 78fff(b), 78fff-1(a), and 78fff(e), the Trustee seeks entry of two orders, one to authorize the Trustee to make the Final Distribution and one to approve the Voluntary Supplemental Distribution:

- At the availability of the Court following the filing of the Notice of Readiness (i.e., after the ESEP Order has become final and non-appealable), an order substantially in the form attached hereto as Exhibit A (the "Final Distribution Order") authorizing the Trustee to:

9. Eligible Claimants can weigh, among other considerations, certainty of the amount and time value of the Supplement against the potential for higher or lower and faster or slower distributions from the Trust over an undetermined period. Some Eligible Claimants may view the Supplement as foregoing potential upside on the LBI estate's asset recovery; others may view the Supplement as de-risking potential downside of holding its investment in future cash flows that are primarily dependent on the outcome of claim processes managed by others, pertaining to pools of assets as to which an unknown number of persons have claims of unknown magnitude. All Eligible Claimants should carefully review the Interim Reporting, which identifies important assumptions, caveats, and notes underlying the recovery that may or may not be achieved.

- establish a Final Distribution Fund in the amount of at least $269 million for an eighth and final distribution of at least 1.1925% to all general unsecured creditor claims;

- release reserves that are no longer necessary from the Secured and Priority Claim Reserve, the First Interim Distribution Fund, the Second Interim Distribution Fund, the Third Interim Distribution Fund, the Fourth Interim Distribution Fund, the Fifth Interim Distribution Fund, the Sixth Interim Distribution Fund, and the Seventh Interim Distribution Fund (McDonnell Decl. ¶¶ 13-14, 16);

- establish November 30, 2021 as the Record Date for the eighth and final distribution pursuant to the Notice of Record Date filed concurrently herewith; and

- make a Final Distribution to Record Date holders of allowed general unsecured claims.[10]

- As soon after the hearing on the Motion as is convenient to the Court, an order substantially in the form attached hereto as Exhibit B (the "Voluntary Supplemental Distribution Order"):

  - establishing November 30, 2021 as the Record Date for the Voluntary Supplemental Distribution pursuant to the Notice of Record Date filed concurrently herewith;[11]

  - approving the Trustee's proposed Procedures for the Voluntary Supplemental Distribution, attached to the Voluntary Supplemental Distribution Order as Exhibit 1 (the "Procedures");[12]

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10. The LBI General Creditor Claims Register, available on the Trustee's website at www.lehmantrustee.com, is determinative of claim ownership and status. The Record Date holders of allowed general unsecured claims will be determined based on the claim ownership and status reflected on the LBI General Creditor Claims Register on the Record Date.

11. The Procedures delineate the categories of claims for purposes of the Voluntary Supplemental Distribution. The claims comprising these categories will be determined, in part, according to claim ownership on the Record Date. The population of Employee Claims is currently known and not subject to change because the Employee Claims continue to be Employee Claims regardless of the owner of such claims. The minimum population of Excluded Claims is also currently known. However, it is possible that an Eligible Claim becomes an Excluded Claim between the date hereof and the Record Date.

12. As promptly as possible after the Record Date, the Trustee will file schedules with the Court indicating the Record Date status of all general unsecured creditor claims (the "Record Date Schedules"). The designation of claims on the Record Date Schedules will be the conclusive, final, and sole basis for voluntary participation in, exclusion from, or mandatory participation in the Voluntary Supplemental Distribution.

- approving the Supplemental Rate of 0.3224% and the method of its calculation;
- approving the form of the notice for Eligible Claims, attached to the Voluntary Supplemental Distribution Order as Exhibit 2 (the "Notice");
- approving the form of the opt-out election, attached to the Voluntary Supplemental Distribution Order as Exhibit 3 (the "Opt-Out Form");
- approving the form of the notice for Employee Claims, attached to the Voluntary Supplemental Distribution Order as Exhibit 4 (the "Employee Notice");
- authorizing the Trustee to exclude the Excluded Claimants from participation in the Voluntary Supplemental Distribution;
- authorizing the Trustee to compel the Employee Claimants to accept the Voluntary Supplemental Distribution in full and final satisfaction of their claims; and
- authorizing the Trustee, after the ESEP Order has become final and non-appealable, to effectuate the Voluntary Supplemental Distribution to Participating Claims pursuant to the Procedures.

27. To assure a prompt distribution of the Voluntary Supplemental Distribution following finality of the ESEP Order, the Trustee must commence the process described in the Procedures as soon as possible. Provided the Record Date is applicable to the Final Distribution, the Trustee will be able to expeditiously effect the Final Distribution after entry of the Final Distribution Order. Accordingly, the Trustee seeks prompt entry of the Voluntary Supplemental Distribution Order only and later entry—after the ESEP Order is final and the Trustee has filed the Notice of Readiness—of the Final Distribution Order.

28. Subject to finality of the ESEP Order, the Trustee has now resolved all general creditor claims, including all secured, administrative, priority, and unsecured claims. Accordingly, the Trustee does not seek the authority—and does not intend to—establish an additional reserve

to make distributions to unresolved claims. All cash previously reserved for any unresolved claims will be released and made available for distribution to the estate's allowed general unsecured creditors if and when the ESEP Order becomes final. The Trustee will use every available dollar in the estate for the Final Distribution and the Voluntary Supplemental Distribution, leaving only funds reserved for estate administration, winding down and closing the estate, and prosecuting and preserving future affirmative claims for creditors.

29. For the 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 June 1, 2009, or for an extension of the deadline for holders of claims for administrative expenses arising between the Filing Date and October 31, 2021, to file proofs of claim relating thereto.[13]

PROPOSED VOLUNTARY SUPPLEMENTAL DISTRIBUTION PROCEDURES

30. The Trustee proposes to execute the Voluntary Supplemental Distribution in accordance with the Procedures, the principal terms of which are described below:[14]

- **Eligible Claims**
  - Eligible Claims. All allowed general unsecured claims that are not Excluded Claims or Employee Claims are Eligible Claims. Only Eligible Claims may participate in the Voluntary Supplemental Distribution.

13. The Trustee intends to file shortly his *Motion for an Order Pursuant to Section 503(a) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(3) Establishing a Fourth Supplemental Deadline for Filing Requests for Payment of Certain Administrative Expenses and Procedures Relating Thereto and Approving the Form and Manner of Notice Thereof*, establishing a bar date for administrative claims incurred for the period of June 1, 2020 through October 31, 2021, as further described in such motion.

14. The summary of the Procedures contained in this Motion is provided for purposes of convenience only. In the event of any inconsistency between the summary contained herein and the terms and provisions of the Procedures, the terms and provisions of the Procedures shall control.

- Excluded Claims. All claims held by Empyrean Investments LLC, The Baupost Group, L.L.C., Deutsche Bank AG, London Branch, and HBK Master Fund L.P. (and each such party's Affiliates (as that term is defined in the Securities Act of 1933)) (the "Excluded Claimants") on September 30, 2021, or acquired by any Excluded Claimant between September 30, 2021 and the Record Date are Excluded Claims.

- Employee Claims. All claims originally filed by former LBI employees on account of wages owed as of the Filing Date are Employee Claims. Employee Claims must participate in the Voluntary Supplemental Distribution, including if the owner of such Employee Claim is an Excluded Claimant.

- Record Date Schedules. As promptly as possible after the Record Date, the Trustee will file the Record Date Schedules, listing the Eligible Claims,[15] Excluded Claims, and Employee Claims.

- **Notice to Claimants**

  - Eligible Claimants Mailing. As promptly as possible after the Record Date, the Trustee shall serve on each Eligible Claimant the following materials by overnight delivery (collectively, the "Solicitation Package"):

    (i) Notice;
    (ii) the Opt-Out Form;
    (iii) the Voluntary Supplemental Distribution Order;
    (iv) the Record Date Schedules; and
    (v) such other materials as the Court may direct.

  - Excluded Claimants Mailing. As promptly as possible after the Record Date, the Trustee shall serve on each Excluded Claimant the following materials by overnight delivery:

    (i) the Voluntary Supplemental Distribution Order;
    (ii) the Record Date Schedules; and
    (iii) such other materials as the Court may direct.

15. As discussed below, because Employee Claims are not eligible to participate in the Trust, all Employee Claims will automatically be deemed Participating Claims and will not be permitted to opt out of the Voluntary Supplemental Distribution.

- Employee Claimants Mailing. As promptly as possible after the Record Date, the Trustee shall serve on each Employee Claimant the following materials by overnight delivery:

  (i) the Employee Notice;
  (ii) the Voluntary Supplemental Distribution Order;
  (iii) the Record Date Schedules; and
  (iv) such other materials as the Court may direct.

- **Opt-Out Process**

  - Opt-Out Process. To decline participation in the Voluntary Supplemental Distribution, an Eligible Claimant must complete and execute the Opt-Out Form and return it to the Trustee by: (i) emailing a scan of the completed and executed Opt-Out Form to LBIoptout@epiqglobal.com; or (ii) mailing the completed and executed Opt-Out Form via the United States Postal Service, overnight delivery, or courier service to the address provided in the Notice (the submission must be received by or electronically submitted on or before the Opt-Out Deadline to be deemed timely). Any Eligible Claimant declining to participate in the Voluntary Supplemental Distribution on account of its Eligible Claims must be the owner of such Eligible Claim on the Record Date. The terms of the Opt-Out Form are binding as to the associated claim(s) and as to the party executing it and irrevocable with respect to the associated claim(s) upon submission.

  - Opt-Out Deadline. The deadline to return the Opt-Out Form is sixty (60) days after the mailing date of the Solicitation Package (the "Opt-Out Deadline").

- **Participating Claims**

  - Participating Claims. The Participating Claims are: (i) all Eligible Claims that do not execute and return a completed Opt-Out Form to the Trustee by the Opt-Out Deadline and (ii) all Employee Claims. Only Participating Claims will receive the Supplement.

  - Continuing Claims. The Continuing Claims are: (i) all Excluded Claims and (ii) all claims with respect to which a valid Opt-Out Form has been timely received by the Trustee. Continuing Claims will not receive the Supplement.

- Notice of Outcome. As promptly as possible following the Opt-Out Deadline, the Trustee will file a notice with the Court (the "Notice of Outcome"): (i) reflecting the outcome of the Voluntary Supplemental Distribution; (ii) scheduling the Continuing Claims (including indicating the Opt-Out Claims) and the Participating Claims; (iii) providing the cumulative amount of all Supplements to be distributed; and (iv) providing the amount of the Allocation not utilized and instead available for the Final Distribution. Upon the Trustee's filing of the Notice of Outcome, each Participating Claim will be deemed to have been paid in full and final satisfaction of such claim and will be expunged from the LBI General Creditor Claims Register as fully satisfied and no longer a liability of the LBI estate as of the date of filing of the Notice of Outcome.

- **Calculation and Distribution of the Supplement**

  - Supplemental Rate. The incremental Voluntary Supplemental Distribution rate will be 0.3224% (the "Supplemental Rate'"). This rate reflects (i) a hypothetical, immediate, and cost-free liquidation of the LBI estate pursuant to which the entire administrative reserve ($48 million) would be released and available to be distributed *pro rata* to all Claims plus (ii) an administrative enhancement serving to pass-through $2 million to the Participating Claimants related to expected reductions in administrative expenses resulting from a consolidated creditor base.

  - Allocation. The Allocation is calculated as the aggregate allowed amount of all the Eligible Claims and Employee Claims, multiplied by the Supplemental Rate. Any portion of the Allocation not utilized to fund the Supplements shall become available to—and shall be utilized for—the Final Distribution.

  - Supplement. The Supplement for each Participating Claim will equal the allowed amount of such claim multiplied by the Supplemental Rate.

  - Distribution of the Supplement. Concurrently with making the Final Distribution, the Trustee shall distribute to each Participating Claimant the Supplement associated with each Participating Claim. This distribution is in addition to the Final Distribution. The Trustee is authorized to take all actions necessary to comply with applicable tax withholding

and reporting requirements and to deduct any federal, state, or local withholding taxes from the distribution of the Supplement, as may be required. Any amounts withheld pursuant to the preceding sentence shall be deemed to have been distributed to and received by the Participating Claimant.

- Application of Distribution Procedures Order. The Distribution Procedures Order and its provisions for the noticing and subsequent expungement of claims shall be generally effective with respect to the Participating Claims and the distribution of the Supplements.

- **Termination**

  - Final Distribution Order. In the event the Final Distribution Order is not entered and the Trustee provides notice to the Court that its entry is not expected or is no longer being sought by the Trustee, the Voluntary Supplemental Distribution shall be terminated.

  - Termination Right. At any time before the distribution of the Supplements, the Trustee may, in his sole and absolute discretion, terminate the Voluntary Supplemental Distribution.

  - Effect on Participating Claims. In the event that the Voluntary Supplemental Distribution is terminated, any and all Participating Claimants shall have the same interests, rights, entitlements, and claims in respect of their Participating Claim as if the Voluntary Supplemental Distribution had never occurred. Opt-Out Forms submitted to the Trustee shall be null and void absolutely, provided, however, that the Opt-Out Claimant's authorization to effectuate a distribution by wire transfer shall survive.

31. The Voluntary Supplemental Distribution creates a mechanism for Eligible Claimants and Employee Claimants to achieve a full and final resolution of their claims in return for immediate cash at an increased rate. Eligible Claimants will thereby be able to—and Employee Claimants will be compelled to—end their prolonged involvement with the LBI estate and distribution process. Alternatively, Eligible Claimants may elect to opt their Eligible Claims out

of the Voluntary Supplemental Distribution, assuming the risk that the use of some of the administrative reserve to monetize the Contingent Assets might result in a zero recovery.

32. Holders of Aggregate Claims (including such holders' affiliates) whose Aggregate Claims amount to more than $1.9 billion—defined as the Excluded Claimants—are not eligible to participate in the Voluntary Supplemental Distribution. Excluded Claims will not receive a Supplement and, upon closure of the estate, are expected to convert to interests in the Trust. The Trustee understands that a market exists among Excluded Claimants for the purchase and sale of these substantial claims. To the extent that any Excluded Claimant would prefer to exit the SIPA Proceeding, it can do so by trading out of its position prior to the Record Date.[16]

33. Employee Claims will not be permitted to opt out of the Voluntary Supplemental Distribution. The Employee Claims would present particular administrative burdens—to the holders of the Employee Claims, to the LBI estate, and to other creditors—if the Employee Claims are converted to beneficial interests in the Trust. (Kiplok Decl. ¶¶ 11-12, 14.) By compelling the participation of Employee Claims, the Voluntary Supplemental Distribution reduces the estate's additional administrative costs—borne by all other claimants—that would be required to complete the Employee Claims' transition to the Trust. (*Id*. ¶ 15.) Accordingly, for the benefit of all claimants, the Trustee will deem all Employee Claims to be Participating Claims, and such claims will not be permitted to opt out of the Voluntary Supplemental Distribution.

34. Neither the Trustee nor his professionals opine as to whether the Supplement will result in a payment to Participating Claimants that is the same, greater, or less than the amount the Participating Claimant would otherwise receive. (*Id*. ¶ 20.) However, the Supplement is a fair

16. The Trustee's professionals discussed the mechanics and economics of the Voluntary Supplemental Distribution with the Excluded Claimants prior to filing the Motion.

approximation of the terminal value, calculated by assuming all administrative reserves can be released now (which, of course, they cannot, since future administrative costs must be reserved for), plus an enhancement. (*Id*. ¶ 16.) A hypothetical increase of available cash of $48 million would result in an incremental distribution of 0.2143% to all allowed claimants. (*Id*.) The Supplemental Rate also includes an administrative enhancement equal to an incremental 0.1081% distribution. (*Id*. ¶ 17.) This $2 million administrative enhancement is designed both to incentivize Eligible Claimants to accept the Voluntary Supplemental Distribution and to pass the administrative cost savings of the creditor consolidation through to the Participating Claimants on a *pro rata* basis. (*Id*.) In other words, the premium being distributed through the Voluntary Supplemental Distribution is equivalent to the Trustee distributing an additional $50 million *pro rata* to all holders of general unsecured claims. There is no guarantee that the Trustee will ever be able to effectuate an actual distribution of $50 million at any time in the future, as future distributions depend on the extent of recoveries, if any, with respect to the Contingent Assets.

35. The Voluntary Supplemental Distribution offers finality and an increased terminal distribution rate to Participating Claimants well in advance of any distribution contemplated by the Trust. (*Id*. ¶ 18.) In contrast, Continuing Claimants are electing to balance the cost of prosecuting the Contingent Assets against the potential for an upside. (*Id*. ¶ 19.) The funds allocated to the Trust—which may be the entirety of the administrative reserve at the conclusion of the SIPA liquidation—may result in a return of zero. (*Id*.) This would be a loss compared to the recovery presented by the Voluntary Supplemental Distribution. (*Id*.)

BASIS FOR RELIEF

I. The Final Distribution Is Consistent with This Court's Prior Distribution Orders.

36. The Trustee seeks relief that is consistent with the relief already granted by this Court in the Secured and Priority Reserve Order, the First Interim Distribution Order, the Second

Interim Distribution Order, the Third Interim Distribution Order, the Fourth Interim Distribution Order, the Fifth Interim Distribution Order, the Sixth Interim Distribution Order, and the Seventh Interim Distribution Order. *See* Secured and Priority Claim Reserve Order (ECF No. 9273); First Interim General Unsecured Distribution Order (ECF No. 9520); Second Interim General Unsecured Distribution Order (ECF No. 11358); Third Interim General Unsecured Distribution Order (ECF No. 12579); Fourth Interim General Unsecured Distribution Order (ECF No. 13683); Fifth Interim General Unsecured Distribution Order (ECF No. 14210); Sixth Interim General Unsecured Distribution Order (ECF No. 14595); Seventh Interim General Unsecured Distribution Order (ECF No. 15128). The Trustee has given effect to those orders by distributing more than $9.096 billion in property to LBI's creditors. The Trustee now seeks authority to conclude the liquidation through the creation and funding of the Final Distribution Fund, including by releasing reserves initially set by this Court that are no longer necessary once the ESEP Order becomes final.

II. Final Distributions to General Creditors Are Permitted in SIPA Liquidations Under Section 726 of the Bankruptcy Code.

37. Section 78fff(e) of SIPA provides that distributions from the general estate shall be made in accordance with section 726 of the Bankruptcy Code. *See* 15 U.S.C. § 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." Fed. R. Bankr. P. 3009.

38. By this Motion, the Trustee seeks to make an eighth and final distribution to the holders of allowed general unsecured claims after the ESEP Order becomes final and non-appealable. The Trustee and his counsel have now resolved all general unsecured creditor claims

against the LBI estate and, based on that resolution, determined that, once the ESEP Order is final and non-appealable, the time is appropriate to distribute a final dividend to LBI's general unsecured creditors.

III. The Voluntary Supplemental Distribution Is Appropriate and Should Be Approved.

39. Section 105(a) of the Bankruptcy Code provides, in pertinent part, that a bankruptcy court may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions [of the Bankruptcy Code]." 11 U.S.C. § 105(a). Under section 105(a), the Court has expansive equitable power to fashion any order or decree that is in the interest of preserving or protecting the value of a debtor's assets. *See, e.g.*, *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1069 (2d Cir. 1983) ("[A] bankruptcy judge must have substantial freedom to tailor his order to meet differing circumstances."); *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 474 B.R. 76, 85 (S.D.N.Y. 2012) ("[B]ankruptcy courts are empowered to utilize their equitable powers under section 105 where appropriate 'to facilitate the implementation of other Bankruptcy Code provisions.'" (internal citations omitted)).

40. Authorizing the Trustee to execute the Voluntary Supplemental Distribution is an appropriate use of the Court's power under section 105(a) of the Bankruptcy Code and is consistent with the purposes of Bankruptcy Rule 3009, which is intended to protect the interests of creditors in prompt and efficient administration of their claims distributions. This goal will be furthered by affording Eligible Claimants the opportunity to monetize the remaining value of their Eligible Claims and conclude their exposure to the LBI estate.

41. The Excluded Claimants have the resources, financial sophistication, and market access to exit the LBI bankruptcy at any point. Because of the Record Date, the Excluded Claimants must complete any final trades by November 30, 2021 to either confirm their continuing participation in the SIPA Proceeding or exit themselves by selling down their positions. Though

time-constrained if seeking an alternate position, the Excluded Claimants are not harmed by the relief sought by the Trustee in this Motion.

42. Compelling the holders of the Employee Claims to accept the Voluntary Supplemental Distribution is necessary to the effective administration of the estate and its efficient conclusion. Forcing the cost of transitioning the Employee Claims—which comprise less than 1% of the estate's claims—to the Trust and of administering the Trust with numerous super-minority holders incommensurately burdens the Excluded Claimants—who own 92% of the estate's value. Section 1122(b) of the Bankruptcy Code explicitly affords bankruptcy courts the authority to approve "convenience classes" that are "reasonable and necessary for administrative convenience." 11 U.S.C. § 1122(b). Here, the holders of Employee Claims are receiving a premium (in addition to their Final Distribution) in full and final satisfaction of their Employee Claims. This premium is being used to alleviate the administrative burden on the remaining claimants caused by the Employee Claims' unique wage attributes. This supplemental distribution is being funded by the Excluded Claimants and by any Eligible Claimant that chooses to opt out of the Voluntary Supplemental Distribution (i.e., the Continuing Claimants). The Continuing Claimants are not only forgoing the Supplement but also agreeing to allocate cash from the Final Distribution to other creditors. This approach is akin to a reallocation of value among creditors in a chapter 11 plan. *See, e.g.*, *In re Worldcom, Inc*., No. 02-13533 (AJG), 2003 WL 23861928 at *61 (Bankr. S.D.N.Y. Oct. 31, 2003). To the extent that an Eligible Claimant disagrees with the economics of reallocating funds to an accepting class of claimants, it can instead accept the Supplement and exit the SIPA Proceeding.

IV. This Court Has Previously Implemented Processes Similar to the Voluntary Supplemental Distribution.

43. This Court has authorized relief similar to the Voluntary Supplemental Distribution in this case in 2018 when it entered an order authorizing the Trustee to execute the AFDE, permitting allowed general unsecured claimants to sell their claims to a single claims purchaser and to "cash out" of the LBI proceedings with a market rate of return. (ECF No. 14605.) Over eight hundred claimants participated in that very successful process. (ECF No. 14666.) The Court also approved a similar process to the Voluntary Supplemental Distribution in the chapter 11 proceedings of LBI's former parent, Lehman Brothers Holdings Inc. ("LBHI"), which was successfully implemented.[17]

NOTICE

44. 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 general creditor claims. The Trustee submits that no other or further notice need be provided.

17. *See* Order Authorizing Final Distribution for Certain Creditors of Lehman Brothers Holdings Inc. and Granting Related Relief, *In re Lehman Bros. Holdings Inc.*, No. 08-13555 (SCC) (Bankr. S.D.N.Y. July 1, 2021), ECF No. 61161; *see also* Quarterly Financial Report as of June 30, 2021, *In re Lehman Bros. Holdings Inc.*, No. 08-13555 (SCC) (Bankr. S.D.N.Y. Sept. 30, 2021), ECF No. 61324 (stating that approximately 84 percent of LBHI's creditor population participated in their process). The Court also approved a process similar to the AFDE in the LBHI proceedings. *See* Order Approving (I) Claims Consolidation Auction; (II) the Sponsor Bid Form; (III) the Form of the Notice of Such Procedures; (IV) the Form of the Election, Assignment, and Release; (V) the Population of Eligible Claims; and (VI) the Form of the Notice of Electing Claims, *In re Lehman Bros. Holdings Inc.*, No. 08-13555 (SCC) (Bankr. S.D.N.Y. Sept. 11, 2019), ECF No. 59928, and Order Authorizing Plan Administrator to Effectuate Claims Consolidation Auction, *In re Lehman Bros. Holdings Inc.*, No. 08-13555 (SCC) (Bankr. S.D.N.Y. Nov. 12, 2019), ECF No. 60221. Affiliates of LBI in foreign jurisdictions, in particular Lehman Brothers International (Europe), have undertaken similar processes to benefit claimants and simplify the administration of their estates. (*See* ECF No. 14568 at ¶ 40.)

NO PRIOR REQUEST

45. 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 by (i) entering, following the Trustee's filing of the Notice of Readiness, the proposed Final Distribution Order, attached hereto as Exhibit A; (ii) entering the proposed Voluntary Supplemental Distribution Order, attached hereto as Exhibit B; and (iii) such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 3, 2021

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

[PROPOSED] ORDER AUTHORIZING A FINAL DISTRIBUTION TO HOLDERS OF ALLOWED GENERAL UNSECURED CREDITOR CLAIMS

Upon the motion, dated November 3, 2021 (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 authorizing the Trustee to effectuate a final distribution to holders of general unsecured creditor claims, 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 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

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.

ORDERED that the establishment of the Final Distribution Fund in an amount of approximately $269 million is approved and that the Final Distribution Fund shall be used to make an eighth and final distribution to the holders of all allowed general unsecured claims; and it is further

ORDERED that pursuant to section 105(a) of the Bankruptcy Code, as made applicable to this SIPA proceeding by SIPA sections 78fff(b) and 78fff-1(a), to the maximum extent permitted by the Bankruptcy Code and applicable law, neither SIPC nor the Trustee, nor any of their respective representatives, agents, officers, directors, employees, partners, advisors, attorneys, or other professionals shall have nor incur any liability, or be subject to any right of action for any act or omission in connection with, relating to, or arising out of the execution of the eighth and final distribution, except for gross negligence or willful misconduct; and it is further

ORDERED that the Trustee is authorized to release unnecessary reserves of $260,658,600 from the Secured and Priority Claim Reserve, $1,593,529 from the First Interim Distribution Fund, $937,370 from the Second Interim Distribution Fund, $749,896 from the Third Interim Distribution Fund, $281,211 from the Fourth Interim Distribution Fund, $93,737 from the Fifth Interim Distribution Fund; $70,303 from the Sixth Interim Distribution Fund; and $323,200 from the Seventh Interim Distribution Fund; and it is further

ORDERED that the Secured and Priority Claim Reserve Order (ECF No. 9273) shall continue to apply as to the reserves and distributions made pursuant to such Order; and it is further

ORDERED that, having filed the Notice of Readiness with the Court, the Trustee is authorized to make a final distribution to the holders of all allowed general unsecured claims

and to release the amounts corresponding to the allowed general unsecured claims from the Final Distribution Fund; and it is further

ORDERED that the ultimate amount of the final 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 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 [October 31, 2021][3] 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 general unsecured claims to complete all tax forms and other documentation necessary to be received by the Trustee prior to effectuation of such distributions as further provided for in the Distribution Procedures Order (ECF No. 13039); and it is further

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3. [The Trustee intends to file shortly his *Motion for an Order Pursuant to Section 503(a) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(3) Establishing a Fourth Supplemental Deadline for Filing Requests for Payment of Certain Administrative Expenses and Procedures Relating Thereto and Approving the Form and Manner of Notice Thereof*, establishing a bar date for administrative claims incurred for the period of June 1, 2020 through October 31, 2021, as further described in such motion.]

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 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
_____, 2022

HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

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 APPROVING THE VOLUNTARY SUPPLEMENTAL DISTRIBUTION WITH A RECORD DATE OF NOVEMBER 30, 2021 AND RELATED PROCEDURES

Upon the motion dated November 3, 2021 (the "Motion") 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"), seeking entry of, among other things, an order (this "Voluntary Supplemental Distribution Order"): (a) establishing November 30, 2021 as the Record Date; (b) approving the procedures for the Voluntary Supplemental Distribution,[1] attached hereto as Exhibit 1 (the "Procedures"); (c) approving the Supplemental Rate of 0.3224%; (d) approving the form of the notice for Eligible Claims, attached hereto as Exhibit 2 (the "Notice"); (e) approving the form of the opt-out election, attached hereto as Exhibit 3 (the "Opt-Out Form"); (f) approving the form of the notice for Employee Claims, attached hereto as Exhibit 4, (the "Employee Notice," and together, the "Notices"); (g) authorizing the Trustee to exclude the Excluded Claimants from participation in the Voluntary Supplemental Distribution; (h) authorizing the Trustee to compel the Employee Claimants to accept the Voluntary Supplement Distribution; and (i) authorizing the Trustee to effectuate the Voluntary Supplemental Distribution; and it appearing that the Court has

1. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Procedures.

jurisdiction over the Motion pursuant to SIPA § 78eee(b)(4); and venue being proper before this Court pursuant to SIPA § 78eee(a)(3) and 15 U.S.C. § 78aa; the Court having considered the Motion and the accompanying Declaration of Christopher K. Kiplok, dated November 3, 2021; and it appearing that the relief requested in the Motion is in the best interests of the LBI estate, its creditors, and other parties-in-interest; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:[2]

A. Notice of Motion. Notice of the Motion was adequate and sufficient under the circumstances of this SIPA proceeding, and the notice complied with all applicable requirements of 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* (ECF No. 3466) as modified by the *Order Modifying Amended Case Management Order Solely as to the Master Service List* (ECF No. 15082) (together, the "Case Management Order").

B. Procedures. The Procedures are fair, reasonable, and appropriate under the circumstances of this SIPA proceeding.

C. Notice to Claimants.

(i) Solicitation Package. The Solicitation Package is reasonably calculated to provide all Eligible Claimants with (i) timely and proper notice of the Voluntary Supplemental Distribution and (ii) sufficient information

2. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

regarding participation in the Voluntary Supplemental Distribution and instructions for opting out.

(ii) Opt-Out. The Opt-Out Form is (i) fair, reasonable, and appropriate under the circumstances of this SIPA proceeding and (ii) sufficient for the purposes of allowing Eligible Claimants to opt their Eligible Claims out of participation in the Voluntary Supplemental Distribution.

(iii) Employee Notice. The Employee Notice, together with its anticipated enclosures and the service of the Motion in compliance with the Case Management Order, is reasonably calculated to provide all Employee Claimants with (i) timely and proper notice of the Voluntary Supplemental Distribution and (ii) sufficient information regarding the compulsory participation in the Voluntary Supplemental Distribution for the Employee Claims.

D. Eligible Claims. The Trustee has articulated good and sufficient reasons for the designation of Eligible Claims as all those that are not Excluded Claims or Employee Claims.

E. Excluded Claims. The Trustee has articulated good and sufficient reasons for the designation of Excluded Claims as all claims that are held by Empyrean Investments LLC, The Baupost Group, L.L.C., Deutsche Bank AG, London Branch, and HBK Master Fund L.P. (and each such party's Affiliates (as that term is defined in the Securities Act of 1933)) on September 30, 2021, or acquired between September 30, 2021 and the Record Date.

F. Employee Claims. The Trustee has articulated good and sufficient reasons for the designation of Employee Claims as all claims originally filed by former LBI employees on account of wages owed as of the Filing Date.

G. Supplemental Rate. The Supplemental Rate is fair, reasonable, and appropriate in light of the circumstances of this SIPA proceeding. The Trustee has articulated good and sufficient reasons for the calculation of the Supplemental Rate, which comprises a liquidation value component and an administrative enhancement component.

H. Distribution of the Supplement. Payment of the Voluntary Supplemental Distribution constitutes fair, full, and adequate consideration to the holders of the Participating Claims in full and final satisfaction of those claims.

I. Record Date. The record date for the purpose of determining claim ownership in connection with the Voluntary Supplemental Distribution is November 30, 2021 (the "Record Date"). Entry of this Order and the Trustee's docketing of the notice of the establishment of the Record Date in this proceeding, service complying with all requirements of the Case Management Order, and publication on the Trustee's website (www.lehmantrustee.com) constitutes good and sufficient notice of the Record Date.

J. Expungement of Claims. The Trustee has articulated good and sufficient reasons for the expungement of the Participating Claims upon filing of the Notice of Outcome as the Participating Claims shall be deemed to have been paid in full and finally satisfied. The Notice, together with its anticipated enclosures, is reasonably calculated to provide all holders of Eligible Claims with timely and proper notice of the possible expungement of their Eligible Claims if such claims do not opt out of the Voluntary Supplemental Distribution. The Employee Notice, together with its anticipated enclosures, is reasonably calculated to provide all holders of Employee Claims with timely and proper notice of the compulsory expungement of their Employee Claims as such claims will not be permitted to opt out of the Voluntary Supplemental Distribution.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is granted in all respects as set forth in this Voluntary Supplemental Distribution Order.

2. Any objections to the entry of this Procedures Order or the relief granted herein that have not been withdrawn, waived, or settled, or otherwise resolved are hereby denied and overruled.

3. The Procedures are approved in their entirety and are incorporated herein by reference, having the full force and effect of an order of this Court.

4. The Trustee is authorized to proceed with the Voluntary Supplemental Distribution in accordance with the Procedures and the Record Date Schedules to be docketed by the Trustee, taking all actions appropriate for its effectuation.

5. The Record Date for the purpose of making the Voluntary Supplemental Distribution authorized herein is November 30, 2021, and the Trustee's docketing of the notice of establishment of the Record Date in this proceeding, service in compliance with the Case Management Order, and publication on the Trustee's website (www.lehmantrustee.com) on November 3, 2021 shall constitute good and sufficient notice of the Record Date.

6. Pursuant to section 105(a) of the Bankruptcy Code, as made applicable to this SIPA proceeding by SIPA sections 78fff(b) and 78fff-1(a), to the maximum extent permitted by the Bankruptcy Code and applicable law, neither SIPC nor the Trustee, nor any of their respective representatives, agents, officers, directors, employees, partners, advisors, attorneys, or other professionals shall have nor incur any liability, or be subject to any right of action for any act or omission in connection with, relating to, or arising out of the execution of the Voluntary Supplemental Distribution, except for gross negligence or willful misconduct.

7. The Voluntary Supplemental Distribution shall be conducted in accordance with the provisions of this Voluntary Supplemental Distribution Order and the Procedures.

8. The Notice and Opt-Out Form are approved in their entirety.

9. The Employee Notice is approved in its entirety.

10. Each and every executed Opt-Out Form, once deemed valid by the Trustee, is binding as to the associated claim(s) and as to the party executing it and irrevocable with respect to every claim owned on the Record Date by the executing party upon submission.

11. Only Eligible Claims may participate in the Voluntary Supplemental Distribution. Excluded Claims are not permitted to participate in the Voluntary Supplemental Distribution. Employee Claims must participate in the Voluntary Supplemental Distribution, including if the owner of such Employee Claim is an Excluded Claimant.

12. Upon filing of the Notice of Outcome by the Trustee, the Participating Claims listed therein shall be deemed to have been paid in full and final satisfaction of such claims and will be expunged from the LBI General Creditor Claims Register as fully satisfied and no longer a liability of the LBI estate.

13. 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 unresolved claims.

14. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

15. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York
_____, 2021

HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

UNITED STATED BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

VOLUNTARY SUPPLEMENTAL DISTRIBUTION PROCEDURES[1]

These procedures (the "Procedures") have been approved by order of the United States Bankruptcy Court for the Southern District of New York (the "Court") entered on November [__], 2021 (ECF No. [__]) in the above-captioned case (the "Voluntary Supplemental Distribution Order") and are attached as Exhibit 1 thereto.[2]

These Procedures set forth the terms and conditions pursuant to which James W. Giddens (the "Trustee"), as trustee for the liquidation of Lehman Brothers Inc. ("LBI") under the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. sections 78aaa *et seq.* ("SIPA"), is authorized to provide a supplemental distribution on specified claims in full and final satisfaction of such claims (the "Voluntary Supplemental Distribution").

For purposes of these Procedures, the owner of a claim is the holder of record of such claim on November 30, 2021, the record date established pursuant to the Notice of Record Date filed on November 3, 2021 (ECF No. [__]) (the "Record Date"). The LBI General Creditor Claims Register, available on the Trustee's website (www.lehmantrustee.com), is determinative of claim ownership.

As promptly as possible after the Record Date, the Trustee will file schedules with the Court listing the Eligible Claims, the Employee Claims, and the Excluded Claims (as each such category is defined in Section I) as of the Record Date (the "Record Date Schedules"). The Record Date Schedules are incorporated by reference into these Procedures so as to have the effect of such Record Date Schedules being ordered by the Court.

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1. Please visit the Trustee's website (www.lehmantrustee.com) for a complete set of all materials related to the Voluntary Supplemental Distribution.

2. On November 29, 2021, the Court considered the *Motion for Orders (I) Authorizing a Final Distribution to Holders of Allowed General Unsecured Creditor Claims with a Record Date of November 30, 2021, and (II) Approving the Voluntary Supplemental Distribution and Related Procedures* (the "Motion"). Upon submission of the Notice of Readiness, the Trustee expects the Court will enter the proposed *Order Authorizing a Final Distribution to Holders of Allowed General Unsecured Creditor Claims with a Record Date of November 30, 2021* (the "Final Distribution Order") authorizing the Trustee to make a final distribution of at least 1.1925% to all holders of general unsecured creditor claims (the "Final Distribution").

I. Claim Status.

A. Eligible Claims. All allowed general unsecured claims ("Claims") that are not Excluded Claims (as defined in Section I.B) or Employee Claims (as defined in Section I.C) are "Eligible Claims," and the owner of each such claim is an "Eligible Claimant."

B. Excluded Claims. All Claims held by Empyrean Investments LLC, The Baupost Group, L.L.C., Deutsche Bank AG, London Branch, and HBK Master Fund L.P. (and each such party's Affiliates (as that term is defined in the Securities Act of 1933)) (the "Excluded Claimants") on September 30, 2021, or acquired by any Excluded Claimant between September 30, 2021 and the Record Date, are "Excluded Claims."[3]

C. Employee Claims. All Claims originally filed by former LBI employees on account of wages owed as of the Filing Date (as defined in the Motion) are "Employee Claims," and the owner of each such Claim is an "Employee Claimant."[4]

D. Impact of Claim Status. Eligible Claims may participate in the Voluntary Supplemental Distribution. Excluded Claims that are not Employee Claims cannot participate in the Voluntary Supplemental Distribution. Employee Claims must participate in the Voluntary Supplemental Distribution, including if the owner of such Employee Claim is an Excluded Claimant.

II. Notice to Claimants.

A. Eligible Claimants. As promptly as possible after the Record Date, the Trustee shall serve on each Eligible Claimant the following materials by overnight delivery (collectively, the "Solicitation Package"):

(i) A notice, substantially in the form of Exhibit 2 to the Voluntary Supplemental Distribution Order, describing the Voluntary Supplemental Distribution and providing information for accepting or opting out of the Voluntary Supplemental Distribution (the "Notice");

(ii) A form, substantially in the form of Exhibit 3 to the Voluntary Supplemental Distribution Order, providing the Eligible Claimants with the only mechanism to opt out of the Voluntary Supplemental Distribution with respect to all Eligible Claims held by such Eligible Claimant, including acceptance of distributions by wire transfer only (the "Opt-Out Form");

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3. The Excluded Claimants are claimants that own, on their own behalf or on a cumulative basis through their Affiliates, Claims allowed in an aggregate amount exceeding $1.9 billion.

4. The Employee Claims are scheduled on Schedule I to the Kiplok Declaration (ECF No. [__]).

(iii) The Voluntary Supplemental Distribution Order (including these Procedures, but not the form Ancillary Documents (as defined in Section II.C(i)));

(iv) The Record Date Schedules; and

(v) Such other materials as the Court may direct.

B. Excluded Claimants. As promptly as possible after the Record Date, the Trustee shall serve on each Excluded Claimant the following materials by overnight delivery:

(i) The Voluntary Supplemental Distribution Order (including these Procedures, but not the form Ancillary Documents);

(ii) The Record Date Schedules; and

(iii) Such other materials as the Court may direct.

C. Employee Claimants. As promptly as possible after the Record Date, the Trustee shall serve on each Employee Claimant by overnight delivery:

(i) A notice, substantially in the form of Exhibit 4 to the Voluntary Supplemental Distribution Order, describing the Voluntary Supplemental Distribution and providing information regarding the Voluntary Supplemental Distribution for the Employee Claims (the "Employee Notice") and collectively with the Notice and the Opt-Out Form, the "Ancillary Documents");

(ii) The Voluntary Supplemental Distribution Order (including these Procedures, but not the form Ancillary Documents);

(iii) The Record Date Schedules; and

(iv) Such other materials as the Court may direct.

III. Opt-Out Process.

A. To decline participation in the Voluntary Supplemental Distribution, an Eligible Claimant must complete and execute the Opt-Out Form and return it to the Trustee by: (i) emailing a scan of the completed Opt-Out Form to LBIoptout@epiqglobal.com; or (ii) mailing the completed and executed Opt-Out Form to the Trustee via the United States Postal Service, via overnight delivery, or via courier service to the address provided in the Notice.

B. The completed and executed Opt-Out Form must be transmitted to the Trustee such that it arrives on or before the Opt-Out Deadline (as defined in Section III.F hereof). Emailed Opt-Out Forms will be deemed received by the Trustee on the day on which they are sent, provided they are sent to the email address listed in Section III.A(i). All other Opt-Out Forms will be deemed received by the Trustee only when actually received at the address provided in the Notice.

It is the responsibility of the Eligible Claimant transmitting a completed and executed Opt-Out Form to ensure that the Opt-Out Form is actually received by the Trustee on or before the Opt-Out Deadline.

C. The terms of the Opt-Out Form are binding as to the associated Claim(s) and as to the party executing it and irrevocable with respect to the associated Claim(s) upon submission. The Trustee will not accept any negotiation of, or amendment to, the Opt-Out Form. Any Opt-Out Form that is amended, altered, or is otherwise not validly completed or executed (as determined by the Trustee) may be rejected by the Trustee for purposes of opting the associated Claim(s) out of the Voluntary Supplemental Distribution.

D. Any Eligible Claim with respect to which a validly completed and executed Opt-Out Form (as determined by the Trustee) is received by the Trustee on or before the Opt-Out Deadline is an "Opt-Out Claim." The Opt-Out Claims, together with the Excluded Claims, are the "Continuing Claims."

E. Any Opt-Out Form purporting to opt an Employee Claim out of the Voluntary Supplemental Distribution shall be automatically deemed invalid. An Employee Claim cannot become an Opt-Out Claim.

F. The deadline to return, as provided for herein, a completed and executed Opt-Out Form is sixty (60) days after the mailing date of the Solicitation Package (the "Opt-Out Deadline").

IV. Participating Claims.

A. The "Participating Claims" consist of (i) all the Eligible Claims that are not Opt-Out Claims and (ii) all the Employee Claims. The owner of each Participating Claim is a "Participating Claimant."

B. Only Participating Claims will receive a supplementary distribution pursuant to these Procedures. As promptly as possible following the Opt-Out Deadline, the Trustee shall file a notice with the Court (the "Notice of Outcome"): (i) reflecting the outcome of the Voluntary Supplemental Distribution; (ii) scheduling the Continuing Claims (including indicating the Opt-Out Claims) and the Participating Claims; (iii) providing the cumulative amount of all Supplements (as defined in Section V.C) to be distributed; and (iv) providing the amount of the Allocation (as defined in Section V.B) not utilized and instead available for the Final Distribution.

C. Upon the Trustee's filing of the Notice of Outcome, each Participating Claim will be deemed to have been paid in full and final satisfaction of such claim and will be expunged from the LBI General Creditor Claims Register as fully satisfied and no longer a liability of the LBI estate. Following the date of filing of the Notice of Outcome, each Participating Claimants' sole source of recovery against the LBI estate will be collection of the Supplement associated with such Claimants' Participating Claim(s).

V. Calculation and Distribution of the Voluntary Supplemental Distribution.

A. Supplemental Rate. The incremental Voluntary Supplemental Distribution rate is 0.3224% (the "Supplemental Rate"). This rate includes two components: (i) a hypothetical,

immediate, and cost-free liquidation of the LBI estate pursuant to which the entire administrative reserve would be released and available to be distributed *pro rata* to all Claims; and (ii) an administrative enhancement serving to pass-through to the Participating Claimants expected administrative expense reductions resulting from the consolidation of the creditor base. The liquidation analysis results in the hypothetical release of $48 million, producing an incremental distribution of 0.2143%. The administrative enhancement allocates $2 million to the Voluntary Supplemental Distribution, producing an incremental distribution of 0.1081%.

B. The Allocation. The "Allocation" is the $6 million cash amount necessary to fund the Voluntary Supplemental Distribution on all Eligible Claims and Employee Claims and is calculated as the aggregate allowed amount of all the Eligible Claims and Employee Claims, multiplied by the Supplemental Rate. Any portion of the Allocation not utilized to fund the Supplements (as defined in Section V.C) shall become available to—and shall be utilized for—the Final Distribution.

C. The Supplement. The amount of cash of the incremental supplemental distribution that will be distributed to each Participating Claimant pursuant to these Procedures is the allowed amount of such Participating Claimants' Participating Claim(s) multiplied by the Supplemental Rate (the "Supplement").

D. Distribution of the Supplement. Concurrently with making the Final Distribution, the Trustee shall distribute to each Participating Claimant the Supplement associated with such Participating Claimants' Participating Claim(s). This distribution will be made in conjunction with the Final Distribution. The Supplement is cumulative to, and not inclusive of, the 1.1925% proposed distribution to allowed general unsecured creditors through the Final Distribution. No Supplement will be distributed if the Final Distribution Order has not been entered by the Court.

E. Tax Withholding. Nothing in these Procedures shall impair the right of the Trustee to take all actions necessary to comply with applicable withholding and reporting requirements and to deduct any federal, state, or local withholding taxes from the distribution of the Supplement, as may be required. Any amounts withheld pursuant to the preceding sentence shall be deemed to have been distributed to and received by the Participating Claimant.

F. Application of Distribution Procedures Order. The Distribution Procedures Order (ECF No. 13039) and its provisions for the noticing and subsequent expungement of claims shall be generally effective with respect to the Participating Claims and the distribution of the Supplements. Without limitation, specific applications include:

(i) If a Supplement has not been collected by the Participating Claimant, then all rights to payment of the Supplement shall be deemed waived and become property of the LBI estate, and the owner of such claim shall have no right to reinstatement of the subject claim, either against the LBI estate or a successor entity, if any; and

(ii) If a Participating Claimant fails to collect its Final Distribution or its claim is otherwise subject to expungement pursuant to the

Distribution Procedures Order and its noticing provisions, then all rights to the payment of the Final Distribution to such claimant shall be deemed waived, with the proceeds thereof reverting to the LBI estate or a successor entity.

G. Notice Regarding Distribution to Participating Claims. Reasonably promptly following his determination that all Participating Claimants have either received their Supplement or have been deemed to have waived their right to receive such Supplement, the Trustee shall file on the docket of this case a notice providing confirmation that all Supplements have either been received by the Participating Claimants or have been waived.

VI. Termination.

A. Final Distribution Order. In the event the Final Distribution Order is not entered and the Trustee provides notice to the Court that its entry is not expected or is no longer being sought by the Trustee, the Voluntary Supplemental Distribution shall be terminated.

B. Termination Right. At any time before the distribution of the Supplements, the Trustee may, in his sole and absolute discretion, terminate the Voluntary Supplemental Distribution.

C. Effect on Participating Claims. In the event that the Voluntary Supplemental Distribution is terminated pursuant to Sections VI.A or VI.B, any and all Participating Claimants shall have the same interests, rights, entitlements, and claims in respect of their Participating Claim(s) as if the Voluntary Supplemental Distribution had never occurred. Opt-Out Forms submitted to the Trustee shall be null and void absolutely, provided, however, that the Opt-Out Claimant's authorization to effectuate a distribution by wire transfer shall survive.

EXHIBIT 2

James W. Giddens
Trustee for the SIPA Liquidation of Lehman Brothers Inc.
c/o Epiq Corporate Restructuring, LLC
10300 SW Allen Blvd.
Beaverton, OR 97005

***In re* Lehman Brothers Inc.**
Case No. 08-01420 (SCC) SIPA

NOTICE OF VOLUNTARY SUPPLEMENTAL DISTRIBUTION

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE REVIEW IT CAREFULLY.

If you have any questions about the Voluntary Supplemental Distribution, please contact the Trustee's counsel, Hughes Hubbard & Reed LLP, at (212) 837-6313 or teamlehman@hugheshubbard.com.

The Voluntary Supplemental Distribution provides the opportunity to either:

(1) receive a final, incremental distribution equal to at least 1.5150% of your allowed general unsecured claim from the LBI estate in full and final satisfaction of your claim, comprised of (a) a final distribution of at least 1.1925% being distributed to all holders of allowed general unsecured claims, plus (b) an additional distribution of 0.3324% being distributed to holders of allowed general unsecured claims that do not opt out of the Voluntary Supplemental Distribution;

OR

(2) receive an incremental distribution equal to at least 1.1925% of your allowed general unsecured claim from the LBI estate and remain a creditor of the LBI estate.

IF YOU DO NOTHING, YOU WILL RECEIVE OPTION ONE ABOVE.

IF YOU DO NOT WISH TO PARTICIPATE IN THE VOLUNTARY SUPPLEMENTAL DISTRIBUTION AND DO NOT WISH TO RECEIVE A SUPPLEMENTAL DISTRIBUTION, YOU MUST RESPOND BY FEBRUARY [5], 2022.[1]

1. [The Opt-Out Deadline will be calculated as the date falling sixty (60) days after the mailing date of the Solicitation Packages.]

Dear Sir or Madam,

You have received this notice (the "Notice") because you are the holder of a Lehman Brothers Inc. ("LBI") allowed general unsecured claim that is eligible to participate in the Voluntary Supplemental Distribution.[2] The United States Bankruptcy Court for the Southern District of New York (the "Court") has approved the Voluntary Supplemental Distribution, this Notice, and each of the accompanying enclosures.[3] The Procedures provide further information regarding this process.

Your claim has been designated for participation in the Voluntary Supplemental Distribution through which, if you take no further action, you will receive an additional 0.3224% distribution in full and final satisfaction of your claim.[4] Upon distribution, you will no longer be a creditor of the LBI estate and you will not be entitled to further distributions, if any. You may instead choose to forgo this supplemental distribution and maintain your status as a creditor of the LBI estate and entitlement to further distributions (if any) by completing the enclosed opt-out form. Regardless of your decision, you will receive a distribution of at least 1.1925% pursuant to the Trustee's Final Distribution to all allowed general unsecured creditor claims.

All calculations and distributions in this Notice require and are conditioned on the Second Circuit's September 10, 2021 summary order in connection with the ESEP litigation (as further described in the Trustee's Twenty-Fifth Interim Report (ECF No. ___)) becoming final and non-appealable.

The Trustee will not release any distributions until such time as the above-referenced order becomes final and non-appealable.

(1) The Voluntary Supplemental Distribution

The Procedures designate you as participating in the Voluntary Supplemental Distribution, which provides for an immediate, one-time supplemental distribution of cash equal to 0.3224% of the amount of your allowed general unsecured claim, in full and final satisfaction of your eligible claim. The Voluntary Supplemental Distribution payment is in addition to the amount you will receive through the Final Distribution.[5] The premium being distributed to you through the

2. Capitalized terms used but not defined herein have the meanings set forth in the *Trustee's Motion for Orders (I) Authorizing a Final Distribution to Holders of Allowed General Unsecured Creditor Claims with a Record Date of November 30, 2021, and (II) Approving the Voluntary Supplemental Distribution and Related Procedures* (ECF No. ___) (the "Motion").

3. The enclosures are: (a) an Opt-Out Form; (b) the Voluntary Supplemental Distribution Order and Procedures; (c) the Record Date Schedules; and (d) [such other materials as required by the Court]. You were previously served with the Motion (including the proposed Final Distribution Order), the Trustee's Twenty-Fifth Interim Report, and the Trustee's Quarterly Balance Sheet.

4. If you own more than one claim, this notice pertains to all your claims that are not Employee Claims.

5. The Trustee is entitled to deduct any federal, state, or local withholding taxes from such payment and will do so as required.

Voluntary Supplemental Distribution is equivalent to the Trustee distributing an additional $50 million *pro rata* to all holders of general unsecured claims. There is no guarantee that the Trustee will ever be able to effectuate an actual distribution of $50 million at any time in the future, as future distributions depend on the extent of recoveries, if any, with respect to the Contingent Assets discussed below.

You are automatically enrolled in the Voluntary Supplemental Distribution: unless you opt out, you will receive the supplemental distribution in full and final satisfaction of your claim, and you will no longer be a general unsecured creditor of the LBI estate.

(2) The Contingent Assets

The LBI estate currently owns certain long-horizon, contingent, non-cash assets (the "Contingent Assets"). The Contingent Assets may, or may not, in the future yield additional recoveries. Such recoveries may be zero or *de minimis*. To the extent any potential LBI estate recoveries are not realized prior to the date that the Final Distribution is paid, the Trustee may transfer the Contingent Assets to a post-liquidating trust (the "Trust")[6] for the purpose of allowing more time for the assets to mature. Additional information about the Contingent Assets can be found in the Trustee's Twenty-Fifth Interim Report and in the Motion. Upon closure of the LBI estate, claims that are opted out of the Voluntary Supplemental Distribution are anticipated to convert into interests in the Trust.

The Trustee takes no position as to whether you should opt out of the Voluntary Supplemental Distribution and takes no position as to whether your participation in it will result in a distribution that is the same, greater, or less than the amount you will receive if you opt out of the Voluntary Supplemental Distribution.

This Notice and its enclosed materials, as well as the Trustee's Twenty-Fifth Interim Report, are available by contacting the Trustee's claims agent by phone at (866) 841-7868, by email at lbiquestions@epiqglobal.com, by mail at the address on the first page of this notice, or by visiting the Trustee's website at www.lehmantrustee.com.

YOUR CLAIM(S)

If you do not wish to participate in the Voluntary Supplemental Distribution, you must take steps to affirmatively opt out. If you wish to opt out of the Voluntary Supplemental Distribution, you must complete and execute the enclosed Opt-Out Form, including the attached Wire Transfer Request and Instructions Form, and return it to the Trustee by February [5], 2022 (the "Opt-Out Deadline"). You may return the completed and executed Opt-Out Form to the Trustee by:

- Emailing a scan of the completed and executed Opt-Out Form, including the attached Wire Transfer Request and Instructions Form, to LBIoptout@epiqglobal.com; or

6. The Trustee is considering the merits of establishing the Trust and reserves his right to not do so.

- Mailing the completed and executed Opt-Out Form, including the attached Wire Transfer Request and Instructions Form, via first-class U.S. mail, via overnight delivery, or via courier service to:

If by first-class U.S. mail:

Lehman Brothers Inc. (SIPA Proceeding)
Processing Center
c/o Epiq Corporate Restructuring, LLC
Attn: Lehman Brothers Inc. Distribution
P.O. Box 4422
Beaverton, OR 97076-4422

If by overnight delivery or courier service:

Lehman Brothers Inc. (SIPA Proceeding)
Processing Center
c/o Epiq Corporate Restructuring, LLC
Attn: Lehman Brothers Inc. Distribution
10300 SW Allen Blvd.
Beaverton, OR 97005

The completed and executed Opt-Out Form, including the attached Wire Transfer Request and Instructions Form, must be transmitted to the Trustee such that it arrives prior to or on the Opt-Out Deadline. Emailed Opt-Out Forms will be deemed received by the Trustee on the day on which they are sent, provided they are emailed to the email address provided above. All other Opt-Out Forms will only be deemed received by the Trustee when actually received at the address provided above.

You should read the documents enclosed with this Notice carefully. You may wish to consult with an attorney. If you have any questions about the Voluntary Supplemental Distribution, please contact the Trustee's counsel through any of the means described above on the first page of this Notice. If you need access to additional documents or have questions about how to submit an Opt-Out Form, please contact the Trustee's claims agent through any of the means described throughout this Notice.

Dated: New York, New York
December [__], 2021

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

OPT-OUT FORM

THIS FORM AFFECTS YOUR RIGHTS.

BEFORE SIGNING THIS FORM, PLEASE READ THE NOTICE OF VOLUNTARY SUPPLEMENTAL DISTRIBUTION OR VISIT LEHMANTRUSTEE.COM.

By signing this Opt-Out Form, the undersigned certifies that, with respect to the Eligible Claim(s) on the schedule annexed hereto as Exhibit A, it is the holder of, or authorized signatory for, the Eligible Claim(s) as of the Record Date of November 30, 2021, and continues to be the holder of, or authorized signatory for, such claims as of the date this form is completed.

By signing and returning this form, the undersigned, with respect to the claims identified in the attached Exhibit A, elects to (i) opt out of receiving the Voluntary Supplemental Distribution and (ii) remain a general unsecured creditor of the LBI estate.

By signing and returning this form, the undersigned agrees to accept future LBI distributions, if any, by wire transfer. The attached Wire Transfer Request and Instructions Form must be completed and returned with your Opt-Out Form or your Opt-Out Form will be considered invalid.

This form has been approved by the United States Bankruptcy Court for the Southern District of New York. Any attempt to change or adjust this form, or incomplete or inadequate execution of this form, will render the form invalid.

☐ By checking this box, I affirm that I wish to be excluded from the Voluntary Supplemental Distribution.

Name of Eligible Claimant: [PREPOPULATED]

Signature: _____

Name and Title of Signatory (if different than Holder): _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Email Address: _____

Date Completed: _____

EXHIBIT A[1]

CLAIMANT NAME	CLAIM NUMBER	ALLOWED AMOUNT
<< >>	<< >>	<< >>
<< >>	<< >>	<< >>

1. [Each Opt-Out Form Exhibit A to be mailed by the Trustee will be pre-populated with the Claimant Name, the Claim Number(s), and the Allowed Amount(s).]

WIRE TRANSFER REQUEST AND INSTRUCTIONS
Lehman Brothers Inc. | Case No. 08-01420 (SCC) SIPA

To: James W. Giddens, Trustee for the liquidation of Lehman Brothers Inc.

Re:

Claim Name:	
Claim Number(s):	

Dear Mr. Giddens:

I write you in your capacity as Trustee for the SIPA liquidation of Lehman Brothers Inc. and on behalf of the above named Claimant. Claimant hereby requests that the Trustee make any and all distributions to the above noted allowed general unsecured creditor claim(s) held by Claimant via wire transfer in lieu of a physical check.

Claimant acknowledges and agrees that: (I) any distribution made by the Trustee to the wire instructions provided will constitute the distribution of the affected allowed general unsecured creditor claim(s) held by Claimant regardless of whether Claimant actually receives the funds from its bank, (II) if the wire instructions provided below change or otherwise become outdated, *it is Claimant's responsibility to promptly update the wire instructions by sending a notice to the Trustee in the form hereof*, (III) the Trustee may use the wire instructions below for the distribution of general unsecured creditor claims without advising Claimant in advance of any incoming funds and without confirming the continuing accuracy of the wire instructions and (IV) *if the wire fails for any reason, the Trustee will make the distribution via check without notice to Claimant, less any bank fees incurred, and that distribution will be subject to the Distribution Procedures Order*.

The undersigned hereby certifies that: (I) he or she is authorized to bind Claimant as set forth in this letter, (II) he or she, in the representative capacity listed below, is authorized by Claimant to provide the instructions herein, and (III) under penalty of perjury under the laws of the United States of America, the foregoing information is true and correct as of the date set forth below.

Signature of Claimant or Authorized Signatory

Date: M M - D D - Y Y Y Y

Print Name of Claimant or Authorized Signatory (and Title, if applicable)

Contact For Questions Regarding Claimant's Wire Instructions:

Print Name | *Telephone Number*

Email Address

WIRE INSTRUCTIONS

1) Type or print in the boxes below; Use black or blue ink only; Do not staple
2) If you are unable to complete this form as needed, contact your financial institution

1. Beneficiary Account Name

2. Beneficiary Account Street Address

3. Beneficiary Account City

4. State

5. Postal Code

6. Beneficiary Account Country (*Required for Non-US Banks*)

7. ABA Routing Code (*US Banks Only*)

8. SWIFT/BIC Code (*Non-US Banks Only*)

9. Sort Code (*UK/IRL Only*) - -

10. Beneficiary Bank Name

11. IBAN or Account Number (*IBAN Required for European Union Countries and Some Other Non-US Countries*)

12. Does Your Beneficiary Bank Require An IBAN? (*Required Field*) ☐ YES ☐ NO

13. Other Banking Instructions – Specify Further Credit (FFC) Information Here

14. Intermediary Bank SWIFT or ABA#

15. Intermediary Bank Name

_____ _____
Authorized Signature *Date*

_____
Claim Number(s)

EXHIBIT 4

James W. Giddens
Trustee for the SIPA Liquidation of Lehman Brothers Inc.
c/o Epiq Corporate Restructuring, LLC
10300 SW Allen Blvd.
Beaverton, OR 97005

***In re* Lehman Brothers Inc.**
Case No. 08-01420 (SCC) SIPA

NOTICE OF COMPULSORY PARTICIPATION IN THE VOLUNTARY SUPPLEMENTAL DISTRIBUTION

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE REVIEW IT CAREFULLY.

THE BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK HAS AUTHORIZED THE TRUSTEE TO DISTRIBUTE $[_____][1] TO YOU AND CONSIDER YOUR CLAIM FULLY SATISFIED. YOU WILL NO LONGER BE A CREDITOR OF THE LBI ESTATE FOLLOWING THIS DISTRIBUTION.

If you have any questions about the Voluntary Supplemental Distribution, please contact the Trustee's counsel, Hughes Hubbard & Reed LLP, at (212) 837-6313 or teamlehman@hugheshubbard.com.

Dear Sir or Madam,

You are receiving this notice (the "Notice") because you are the holder of a Lehman Brothers Inc. ("LBI") allowed general unsecured claim originally filed by a former LBI employee (which may be you) on account of wages owed as of the Filing Date ("Employee Claim"). As the holder of an Employee Claim, you must participate in the Voluntary Supplemental Distribution.[2] The United States Bankruptcy Court for the Southern District of New York has approved the Voluntary Supplemental Distribution, including the compulsory participation of Employee Claims, this Notice, and each of the accompanying enclosures.[3]

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1. [Each Notice will be pre-populated with the Supplement due on the relevant Employee Claim(s).]

2. Capitalized terms used but not defined herein have the meanings set forth in the *Trustee's Motion for Orders (I) Authorizing a Final Distribution to Holders of Allowed General Unsecured Creditor Claims with a Record Date of November 30, 2021, and (II) Approving the Voluntary Supplemental Distribution and Related Procedures* (ECF No. ___) (the "Motion").

3. The enclosures are: (a) the Voluntary Supplemental Distribution Order and Procedures; (b) the Record Date Schedules; and (c) [such other materials as required by the Court]. You were previously served with the Motion

Your participation in the Voluntary Supplemental Distribution is compulsory. When the Trustee effectuates the Final Distribution and the Voluntary Supplemental Distribution, you

> All calculations and distributions in this Notice require and are conditioned on the Second Circuit's September 10, 2021 summary order in connection with the ESEP litigation (as further described in the Trustee's Twenty-Fifth Interim Report (ECF No. ___)) becoming final and non-appealable.
>
> **The Trustee will not release any distributions until such time as the above-referenced order becomes final and non-appealable.**

will receive (i) a distribution of at least 1.1925% pursuant to the Trustee's eighth and final distribution to all allowed general unsecured creditors, and (ii) an additional distribution of 0.3224% pursuant to the Voluntary Supplemental Distribution in full and final satisfaction of your Employee Claim(s).[4] Once these funds have been distributed, you will not be entitled to receive any further distributions from the Trustee or the LBI estate, and you will no longer be a creditor of the LBI estate.

The Voluntary Supplemental Distribution Order provides that Employee Claims must participate in the Voluntary Supplemental Distribution. As described in the Motion, Employee Claims present administrative burdens on the estate that are incommensurate with their portion of the estate's general liability. The Employee Claims also have tax attributes that may render them prohibitively expensive for both the LBI estate and for the claim holder, to convert into interests in a post-closing liquidating trust, if that occurs.

Accordingly, you will receive, in addition to the Final Distribution, a distribution in the amount of $[____][5] through the Voluntary Supplemental Distribution in full and final satisfaction of your claim. Upon distribution, your Employee Claim(s) will be expunged and you will no longer be a creditor of the LBI estate.

(including the proposed Final Distribution Order), the Trustee's Twenty-Fifth Interim Report, and the Trustee's Quarterly Balance Sheet.

4. The Trustee is entitled to deduct any federal, state, or local withholding taxes from such payment and will do so as required.

5. [Each Notice will be pre-populated with the Supplement due on the relevant Employee Claim(s).]

You should read the documents enclosed with this Notice carefully. You may wish to consult with an attorney. If you have any questions about the Voluntary Supplemental Distribution, please contact the Trustee's counsel through any of the means described above on the first page of this Notice. If you need access to additional documents or have questions about how to submit an Opt-Out Form, please contact the Trustee's claims agent through any of the means described throughout this Notice.

Dated: New York, New York
December [__], 2021

This Notice and its enclosed materials, as well as the Trustee's Twenty-Fifth Interim Report, are available upon request by contacting the Trustee's claims agent by phone at (866) 841-7868, by email at lbiquestions@epiqglobal.com, by mail at the address on the first page of this notice, or by visiting the Trustee's website at www.lehmantrustee.com.