Hearing Date: May 24, 2022 at 10:00 a.m. (Prevailing Eastern Time)
Response Deadline: May 13, 2022 at 4:00 p.m. (Prevailing Eastern Time)

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

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

NOTICE OF TRUSTEE'S MOTION FOR AN ORDER AUTHORIZING THE TRUSTEE TO ENTER INTO A LIQUIDATING TRUST AGREEMENT AND TRANSFER CERTAIN ESTATE ASSETS TO THE LIQUIDATING TRUST AND GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on April 28, 2022, 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 an Order Authorizing the Trustee to Enter Into a Liquidating Trust Agreement and Transfer Certain Estate Assets to the Liquidating Trust and Granting Related Relief* (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 **May 24, 2022 at 10:00 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 **May 13, 2022 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.: 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
April 28, 2022

HUGHES HUBBARD & REED LLP

By: */s/ Anson B. Frelinghuysen*
Anson B. Frelinghuysen
Jeffrey S. Margolin
Elizabeth A. Beitler
One Battery Park Plaza
New York, New York 10004
Telephone: (212) 837-6000
Facsimile: (212) 422-4726
Email: anson.frelinghuysen@hugheshubbard.com

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

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

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

TRUSTEE'S MOTION FOR AN ORDER AUTHORIZING THE TRUSTEE TO ENTER INTO A LIQUIDATING TRUST AGREEMENT AND TRANSFER CERTAIN ESTATE ASSETS TO THE LIQUIDATING TRUST AND GRANTING RELATED RELIEF

IMPORTANT INFORMATION FOR YOU TO READ

THIS MOTION SEEKS TO ALTER THE RIGHTS OF HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS. PARTIES RECEIVING THIS MOTION SHOULD REVIEW THE MOTION CAREFULLY.

IF YOU HAVE QUESTIONS, PLEASE CONTACT THE TRUSTEE'S COUNSEL, ELIZABETH A. BEITLER, ESQ., AT (212) 837-6008.

This Motion provides information regarding the Trustee's plan to authorize a liquidating trust and distribute to all holders of allowed general unsecured claims a beneficial interest in the Liquidating Trust. Through this Motion, the Trustee seeks to have the Bankruptcy Court approve this plan by entering the Trust Order. A copy of the Trust Agreement is attached hereto as Exhibit A, and a copy of the proposed Trust Order is attached hereto as Exhibit B. Unless otherwise noted, all capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion or the Trust Agreement, as applicable.

HOLDERS ARE ENCOURAGED TO READ THIS MOTION, THE TRUST AGREEMENT, AND THE PROPOSED TRUST ORDER IN THEIR ENTIRETY.

The Bankruptcy Court's approval of this Liquidating Trust does not constitute a guarantee by the Bankruptcy Court of any additional recoveries by the Liquidating Trust or distributions to Liquidating Trust Beneficiaries or an endorsement by the Bankruptcy Court of the merits of the Liquidating Trust. Summaries of the Trust Agreement and statements made in this Motion are qualified in their entirety by reference to the Trust Agreement. The summaries of the financial information and the documents annexed to this Motion or otherwise incorporated herein by reference are qualified in their entirety by reference to those documents. The statements contained in this Motion are made only as of the date of this Motion, unless otherwise indicated, and there is no assurance that the statements contained herein will be correct at any time after such date. Except as otherwise provided in accordance with applicable law, the Trustee is under no duty to update or supplement this Motion.

The U.S. federal income tax obligations of a Holder with respect to its Liquidating Trust Interest(s) are not dependent on the Liquidating Trust distributing any cash or other proceeds. Thus, a Holder may incur a U.S. federal income tax liability with respect to its allocable share of Liquidating Trust income even if the Liquidating Trust does not make a concurrent distribution to the Holder. In general, a distribution of cash by the Liquidating Trust will not be separately taxable to a Holder since the Holder is already regarded for U.S. federal income tax purposes as owning the underlying assets (and was taxed at the time the cash was earned or received by the Liquidating Trust). Holders are urged to consult their tax advisors regarding the appropriate U.S. federal income tax treatment of any subsequent distributions of cash resulting from undeliverable distributions.

TABLE OF CONTENTS

PAGE

PRELIMINARY STATEMENT 1

JURISDICTION 3

BACKGROUND 3

A. Customer Estate Administration 4

B. General Estate Administration 4

C. Current Estate Liability 6

D. Administrative Reserve 7

E. Remaining Estate Assets 8

F. Post-Closing Preparations 9

TERMS OF THE PROPOSED LIQUIDATING TRUST 11

RELIEF REQUESTED 16

BASIS FOR RELIEF 17

I. The Rationales for Authorizing Chapter 11 Liquidating Trusts Apply to the SIPA Proceeding 17

II. Section 105(a) Enables the Court To Authorize the Liquidating Trust as an Equitable Remedy. 18

III. The Liquidating Trust Interests Should Be Exempt from Securities Registration. 19

A. Section 1145 of the Bankruptcy Code Exempts the Liquidating Trust Interests from Securities Registration. 20

B. Bankruptcy Code Section 105(a) Enables the Court To Apply Bankruptcy Code Section 1145 to the SIPA Proceeding. 24

C. Section 3(a)(10) of the Securities Act Exempts the Liquidating Trust Interests from Securities Registration. 25

IV. Entering Into the Liquidating Trust Agreement Is a Sound Exercise of the Trustee's Business Judgment. 28

NOTICE 29

NO PRIOR REQUEST 29

CONCLUSION 30

TABLE OF AUTHORITIES

Page(s)

Cases

In re Abengoa, S.A., No. 16-10754 (KJC) (Bankr. D. Del. Dec. 8, 2016), ECF No. 169 21

In re Amarex, Inc., 53 B.R. 12 (Bankr. W.D. Okla. 1985) 21

In re Bd. of Dirs. of Multicanal S.A., 340 B.R. 154 (Bankr. S.D.N.Y. 2006) 25, 27

In re CGG S.A., 579 B.R. 716 (Bankr. S.D.N.Y. 2017) 21

Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063 (2d Cir. 1983)....18, 28

Cont'l Assurance Co. v. Macleod-Stedman, Inc., 694 F. Supp. 449 (N.D. Ill. 1988)....25

In re Frontier Airlines, Inc., 93 B.R. 1014 (Bankr. D. Colo. 1988) 21

In re Global Crossing Ltd., 295 B.R. 726 (Bankr. S.D.N.Y. 2003) 28

Inv. Co. Inst. v. Conover, 596 F. Supp. 1496 (D.D.C. 1984)....19

In re Ionosphere Clubs, Inc., 100 B.R. 670 (Bankr. S.D.N.Y. 1989)....28

In re Landsbanki Íslands hf., No. 08-14921 (RDD) (Bankr. S.D.N.Y. March 17, 2016), ECF. No. 65 26-27

Licensing By Paolo, Inc. v. Sinatra (*In re Gucci)*, 126 F.3d 380 (2d Cir. 1997)....28

In re Quebecor World Inc., No. 08-13814 (JMP) (Bankr. S.D.N.Y. July 1, 2009), ECF No. 12 21

S.E.C. v. Universal Exp., Inc., 475 F. Supp. 2d 412 (S.D.N.Y. 2007)....20

Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, 474 B.R. 76 (S.D.N.Y. 2012) 18

Statutes and Rules

11 U.S.C. § 105(a) 16, 18, 19, 24

11 U.S.C. § 363(b)(1) 28

11 U.S.C. § 1123(b)(3)(B) 17, 18, 19

11 U.S.C. § 1125 20

11 U.S.C. § 1145 ..... *passim*

15 U.S.C. § 77b(a)(1) 19

15 U.S.C. § 77c(a)(10) 25, 26, 27, 28

15 U.S.C. § 78aa 3

15 U.S.C. § 78c(a)(10) 19

15 U.S.C. § 78eee(a)(3) 3

15 U.S.C. § 78eee(b)(3) 4

15 U.S.C. § 78eee(b)(4) 3, 4

15 U.S.C. § 78fff(b) 16, 18, 28

15 U.S.C. § 78fff-1(a) 16, 28

Legislative and Administrative Proceedings

H.R. Rep. No. 95-595, 95th Cong., 1st Sess. (1977) 21

Borland Int'l, Inc., SEC No-Action Letter, 1987 WL 108550 (Oct. 28, 1987) 27

DYR Liquidating Corp., SEC No-Action Letter, 1987 WL 107598 (Mar. 9, 1987) 19

First N.H. Banks, Inc., SEC No-Action Letter, 1985 WL 53942 (Mar. 7, 1985) 27

SEC Staff Legal Bulletin No. 3A (CF) (June 18, 2008),
https://www.sec.gov/corpfin/staff-legal-bulletin-3a#P28_3453 26

Treatises

Matthew Bender, 1 Fed. Sec. Act of 1933 § 2.05[1] 19

7 Collier on Bankruptcy ¶ 1123.02[3][d] 17

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 an Order Authorizing the Trustee to Enter Into a Liquidating Trust Agreement and Transfer Certain Estate Assets to the Liquidating Trust and Granting Related Relief* (the "Motion"),[1] respectfully represents as follows:

PRELIMINARY STATEMENT

1. Creation and funding of the Liquidating Trust is the final step in the Trustee's administration of estate assets: should the Court grant the relief requested, the entirety of the LBI estate assets not needed for the cost of remaining, *de minimis* administration will be transferred to a liquidating trust for the benefit of LBI's remaining creditors, a small number of willing participants. From there, the Trustee will be well positioned to issue a final report and account and seek discharge, expected in September 2022, nearly fourteen years from the day of appointment. Once the Trustee effectuates the Liquidating Trust and undertakes all related ministerial measures, the LBI estate will be fully administered, and the Trustee, with SIPC approval, will move expeditiously for Court approval to close the estate.

2. In the tumultuous days of Lehman's failure, billions of dollars of cash and securities belonging to over a hundred-thousand unwilling individuals and institutions were at risk. That all-

1. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Trust Agreement. Estate assets and liabilities are calculated as of March 31, 2022. Detailed information regarding the estate is available in the Quarterly Liquidation Balance Sheet as of March 31, 2022 (the "March 31, 2022 Balance Sheet") and the Twenty-Sixth Interim Report for the Period October 1, 2021 through March 31, 2022 (the "Twenty-Sixth Interim Report"), both filed concurrently herewith, and in prior reports to the Court.

but-unthinkable exposure has been narrowed to under $41 million of cash and a handful of speculative recoveries for the benefit of just sixty-two willing individuals and institutions.

3. The Court and parties-in-interest are aware, but it bears repeating: All customers have achieved a 100 percent recovery. All secured, administrative, and priority claimants have achieved a 100 percent recovery. And all general creditors have recovered more than forty-one percent on their claims. These statistics, measured against any reasonable expectation during the midst of Lehman's collapse and the financial crisis of the Great Recession, are astounding. Indeed, the Trustee started his tenure faced with the distinct possibility that customers might not recoup all of their assets.

4. The creation of the Liquidating Trust is the penultimate step in the Trustee's closure plan. Since 2019, the Trustee and SIPC have stated to the Court, creditors, regulators, and others that the Trustee plans to preserve certain assets that may offer longer-dated, speculative future recoveries in a post-closing trust. The Voluntary Supplemental Distribution, approved by the Court in November 2021, was an instrumental precursor for the relief sought in this Motion. The Trustee narrowed the ultimate beneficiary pool for the Liquidating Trust to just sixty-two participants. Not only does this smaller group of counterparties facilitate administration, but their election to become beneficiaries of the Liquidating Trust is a vote of confidence in the Trustee's plan to transition management of the Contingent Assets to Christopher K. Kiplok as administrator of the Liquidating Trust.

5. The Trustee, in consultation with his professionals, has explored and considered the best path available for the LBI liquidation. It is his determination, with his professionals, that the creation of the Liquidating Trust is in the best interest of LBI's remaining creditors and that the Trustee's imminent discharge is appropriate. Mr. Kiplok has been working alongside the Trustee

since his appointment and is best suited to continue the administration of LBI's remaining assets through the Liquidating Trust.

6. To accomplish his closure plan, the Trustee respectfully seeks the Court's entry of an order (the "Trust Order")[2] authorizing the Trustee to: (i) enter into the Liquidating Trust Agreement (the "Trust Agreement")[3] to establish a liquidating trust (the "Liquidating Trust"); (ii) transfer estate assets to the Liquidating Trust; and (iii) transfer the Administrative Reserve (as defined below) to the Administrative Escrow (as defined below). The Trustee further requests that the Court find that the distribution of the Liquidating Trust Interests to the Liquidating Trust Beneficiaries is exempt from securities registration requirements.

7. SIPC has reviewed this Motion, the Trust Agreement, and the proposed Trust Order, and it supports the relief requested herein.

JURISDICTION

8. 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).

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

BACKGROUND

10. On September 19, 2008, the Honorable Gerard E. Lynch, United States District Court Judge for the Southern District of New York, entered the Order Commencing Liquidation

---

2. The proposed Trust Order is attached hereto as **Exhibit B**.

3. The proposed Trust Agreement is attached hereto as **Exhibit A**.

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").

A. Customer Estate Administration

11. The Trustee received approximately 125,000 customer claims through the SIPA account transfer and customer claims processes seeking the return of nearly $180 billion in cash and securities. The Trustee began his stewardship of the LBI estate by transferring over 110,000 accounts to other institutions, allowing former LBI customer access to over $92.301 billion in assets. The Trustee then determined the more than 14,000 remaining customer claims, seeking $101.679 billion: the Trustee allowed or settled 1,011 claims for $13.472 billion (asserted amount $19.203 billion), expunged 7,092 claims (asserted amount $68.899 billion), and reclassified 4,227 customer claims as general creditor claims (asserted amount $13.578 billion). The Trustee achieved 100 percent distribution to LBI's former customers, distributing $13.472 billion through the customer claims process in full satisfaction of all allowed customer claims. The Trustee distributed a total of $105.773 billion to customers through the account transfer and customer claims processes.

B. General Estate Administration

12. Determinations as to all general creditor claims against the LBI estate are now final. More than 15,000 general creditor claims were asserted in an amount of approximately $129 billion. The Trustee allowed or settled 4,813 general creditor claims for $22.9 billion, from an

aggregate asserted amount of $70.1 billion. Pursuant to orders of the Court, the Trustee expunged 10,052 general creditor claims with an initial aggregate asserted amount of $59.184 billion.

13. Through nine separate interim distributions, the Trustee has distributed more than $9.636 billion from the general estate to LBI general creditors pursuant to nine orders entered by the Court. These phased distributions permitted the Trustee to restore cash to LBI's creditors before administration and marshalling were complete. As claims were determined and reserves released, and as the Trustee recovered further LBI property, the distribution rate rose to 41.2841 percent for LBI's unsecured creditors. LBI's secured, administrative, and priority creditors received a 100 percent recovery. The distributions, starting in 2014, were implemented as follows:

- Since July 2014, the Trustee distributed $261 million from the Secured and Priority Claim Reserve (ECF No. 9273);
- Since September 2014, the Trustee distributed $3.861 billion from the First Interim Distribution Fund (ECF No. 95205);
- Since March 2015, the Trustee distributed $2.271 billion from the Second Interim Distribution Fund (ECF No. 11358);
- Since August 2015, the Trustee distributed $1.817 billion from the Third Interim Distribution Fund (ECF No. 12579);
- Since June 2016, the Trustee distributed $681 million from the Fourth Interim Distribution Fund (ECF No. 13683);
- Since April 2017, the Trustee distributed $227 million from the Fifth Interim Distribution Fund (ECF No. 14210);
- Since May 2018, the Trustee distributed $170 million from the Sixth Interim Distribution Fund (ECF No. 14595);
- Since September 2020, the Trustee distributed $70 million from the Seventh Distribution Fund (ECF No. 5138); and
- Since March 2022, the Trustee distributed $275 million from the Final Distribution Fund (ECF No. 15337).

14. 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 those claimants' final general unsecured creditor distribution to 41.23 percent. (ECF No. 14949.) Funds utilized to make those accelerated payments were not LBI estate funds, and AFDE disbursements are not distributions from the LBI estate.[4]

15. To further augment general creditor recoveries and lay the foundation for a post-closing trust that could be more efficiently administered, the Trustee offered the Voluntary Supplemental Distribution alongside the final distribution. Through the Voluntary Supplemental Distribution, certain eligible claimants[5] were able to conclude their long involvement in these proceedings by accepting a supplemental distribution of 0.3224 percent in full and final satisfaction of their claims. Holders of 1,158 claims[6] with an aggregate allowed amount of $1.152 billion accepted the Voluntary Supplemental Distribution at a cumulative distribution rate of 41.6065 percent. (ECF No. 15336.) Such claims are now deemed to have been fully satisfied in accordance with the Voluntary Supplemental Distribution Procedures. (ECF No. 15305.)

C. Current Estate Liability

16. As of March 31, 2022 (the "Record Date"), the actual liability of the LBI estate is $21.393 billion, represented by 2,180 allowed general unsecured claims held by sixty-two separate

4. The ADFE funds were provided by a private sponsor following a competitive, Court-approved bidding process. (ECF No. 14605.)

5. Certain claimholders, all of whom acquired their claims through claims trading, were excluded from participating in the Voluntary Supplemental Distribution. (ECF No. 15305.)

6. Inclusive of 395 claims by former LBI employees for wages, which claims were required to accept the Voluntary Supplemental Distribution. (ECF No. 15305.)

entities.[7] The Voluntary Supplemental Distribution reduced the estate's liability by over $1.152 billion and significantly reduced the number of unique claimants from approximately 1,000 to just sixty-two. Those sixty-two entities—the "Continuing Claimants" from the Voluntary Supplemental Distribution—are the only parties that will receive Liquidating Trust Interests should the Court approve the creation of the Liquidating Trust.[8]

D. Administrative Reserve

17. To ensure the effective administration of the estate, since July 2014, the Trustee has disclosed and maintained a dedicated administrative reserve (the "Administrative Reserve") for the payment of the professionals on whom he relies for the benefit of creditors. (Frelinghuysen Decl.[9] ¶ 16.) As of March 31, 2022, the Administrative Reserve is $38 million. (*Id*.) Upon the formation of the Liquidating Trust, the Trustee anticipates funding the Liquidating Trust with $14 million from the Administrative Reserve. (*Id*.)

18. Prior to and in connection with the June 2022 formation of the Liquidating Trust, the Trustee anticipates estate expenses amounting to approximately $7 million. (*Id.* ¶ 17.) Such expenses will include the payment of professional fees accrued through May 2022, subject to SIPC oversight and, where required, Court approval, and the prepayment of (a) certain Liquidating Trust and estate expenses pertaining to data retention and access and (b) certain professional services (*e.g.*, preparation of final estate tax returns). (*Id*.) The Trustee will continue to pay the estate's expenses from the Administrative Reserve through the Trustee's discharge and closure of this case.

---

7. Over the course of the SIPA Proceeding, 1,142 claims have been expunged pursuant to the Distributions Procedures Order, reducing estate liability by $190 million. (*See* March 31, 2022 Balance Sheet.)

8. Because some of these sixty-two claimant entities are affiliated, the Trust Administrator will face only fifty relationships.

9. The Declaration of Anson B. Frelinghuysen, dated April 28, 2022 (the "Frelinghuysen Declaration") is filed concurrently herewith.

19. Prior to or upon the Trustee's discharge, and as provided for in the proposed Trust Order, any unused portion of the Administrative Reserve will be transferred to an escrow account maintained by Hughes Hubbard & Reed LLP ("Hughes Hubbard") to be used exclusively for the continuing payment of professionals and other expenses related to post-discharge, residual matters of the LBI estate unrelated to the Liquidating Trust, subject to the oversight of SIPC (the "Administrative Escrow"). (*Id.* ¶ 18.) The Administrative Escrow will be automatically and periodically stepped down as follows: to $10 million in March 2023 and then, in September of 2024, 2025, 2026, and 2027, to $8 million, $6 million, $4 million, and $2 million, respectively. (*Id*.) Any portion of the Administrative Escrow in excess of the stepped-down amount will be transferred to the Liquidating Trust (the right to receive such excess funds from the Administrative Reserve, the "Reversionary Administrative Interest"). (*Id*.)

E. Remaining Estate Assets

20. Over the fourteen-year duration of this proceeding, the Trustee has marshalled the broad catalogue of LBI's original assets for the benefit of the customer and general estates.[10] (*Id*. ¶ 10.) Substantially all of LBI's property has been liquidated and the proceeds distributed to LBI's former customers and its creditors. The estate's only remaining significant assets are unliquidated, contingent assets that may take additional time to mature (the "Contingent Assets"). (*Id*.) The Contingent Assets comprise: (a) claims, including potential future claims, asserted on behalf of the LBI estate into certain securities and antitrust class action settlement funds (the "Class Action Claims"); (b) claims asserted on behalf of the LBI estate into an insolvency proceeding being administered under the laws of the Kingdom of Saudi Arabia (the "Saad Claim"); (c) the

10. In July 2022, the Trustee intends to file a final report on the SIPA Proceeding, which he anticipates will include an update to the Trustee's Preliminary Realization Report as of December 31, 2014 (ECF No. 11363).

Reversionary Administrative Interest; and (d) all other legacy LBI non-cash assets that are not being abandoned (the "Legacy Assets").[11] (*Id*.)

21. Recoveries on the Contingent Assets are uncertain and speculative and may require additional or substantial time to mature. (*Id*. ¶ 11.) For instance, certain Class Action Claims held by the estate have not yet been determined pursuant to the established claims processes; for other Class Action Claims, the Trustee's claims have been allowed, but the recoveries on such claims will not be known until the remaining claims have been determined; and in yet other instances, the pool of assets to be distributed remains uncertain. (*Id*.)

22. As summarized above, the Trustee has achieved extraordinary results for LBI's customers and creditors. The remaining work to be done on the Contingent Assets, while complex, is singularly focused. The administration of the Contingent Assets, including the prosecution and settlement of claims, does not require an estate administered under SIPA. Rather, a streamlined asset recovery vehicle absolved of its SIPA obligations and focused on asset recovery, rather than liability management, is appropriate.

F. Post-Closing Preparations

23. After extensive consideration, the liquidating trust mechanic emerged as the best option to pursue the Contingent Assets. As it became clear that the LBI estate would have asset recovery opportunities that extended beyond the liability management aspect of the SIPA Proceeding (which was prolonged by appeals), the Trustee explored and budgeted for various scenarios. (*Id*. ¶¶ 5-9.) In certain considered scenarios involving assets sales, a lower recovery on

11. Alongside this Motion, the Trustee seeks the Court's authority to abandon the estate's remaining assets—those that do not appear to have significant realizable value and thus will not be transferred to the Liquidating Trust. (See *Trustee's Motion for an Order Authorizing the Trustee To Abandon Certain Property and Granting Related Relief*, filed concurrently herewith.)

the Contingent Assets was expected. (*Id*. ¶ 6.) In other scenarios, the expected administration costs were incommensurately high. (*Id*. ¶ 7.) And no other option had the dual benefit of obtaining the Trustee's discharge—and commencing the timing of various post-discharge obligations—while concurrently inserting an experienced fiduciary focused on creditor recoveries. (*Id*. ¶¶ 8-9.)

24. In April 2019, the Trustee first previewed with the Court his intention to create a post-closing mechanism to realize the estate's long-horizon assets. (ECF No. 14905.) At this point, various antitrust settlement funds had emerged as recovery pools into which the LBI estate likely had claims. (*Id*. ¶ 5.) And it also became clear that the claims into these antitrust settlement funds could take significant time to mature. (*Id*.) The Trustee spoke with major participants in the antitrust class action claim industry. (*Id*. ¶ 7.) From those conversations—which took place over a period of months—the Trustee concluded that the sale of the Class Action Claims likely would carry a steep discount given the uncertainties associated with the Class Action Claims and the administration of the various settlement funds. (*Id*.) Likewise, with respect to the Legacy Assets, the Trustee's conversations with other "end of process" participants confirmed that any sale would be at a significant discount—a fire sale. (*Id*.) A presence of a post-closing vehicle, germinated for the purpose of pursuing just the Class Action Claims, eliminated the pressure to take a discount on a sale of the Contingent Assets as a prerequisite to closing the estate. (*Id*. ¶ 8.) Though the Trustee considered other corporate structures, a liquidating trust, as the prevailing mechanism used by debtors to expedite their exits from bankruptcy, was the clear path forward. (*Id*. ¶ 9.)

25. Prior to the Voluntary Supplemental Distribution, the Trustee considered the administrative costs of operating the Liquidating Trust at various magnitudes of potential beneficiaries. (*Id*. ¶ 19.) A lower number of beneficiaries reduces the complexity of

administration and is a significant benefit to all beneficiaries. (*Id*.) To create the most efficient solution for LBI's creditors—and with the long-horizon recovery prospects of the Liquidating Trust as incentive—the Trustee proposed, and the Court approved, the Voluntary Supplemental Distribution. (*Id*.) As discussed above, the Voluntary Supplemental Distribution had a significant administrative benefit: the Liquidating Trust, if approved, will face just sixty-two unique Beneficiaries.

TERMS OF THE PROPOSED LIQUIDATING TRUST

26. If the Court approves the relief requested in this Motion, the Trustee proposes to enter into the Trust Agreement with Christopher K. Kiplok, as Trust Administrator, in June 2022. The principal terms of the Trust Agreement are described below:[12]

- **General Provisions**
  - Nature and Purpose of the Liquidating Trust. The Liquidating Trust will be organized as a "liquidating trust" and a "grantor trust" within the meaning of Treasury Regulations section 301.7701-4(d) and IRC sections 671-677, respectively. The Liquidating Trust will have no objective to continue or engage in the conduct of a trade or business. In furtherance of this objective, the Trust Administrator will, in an expeditious but orderly manner, monetize the Liquidating Trust Assets, make timely distributions to the Liquidating Trust Beneficiaries, not unduly prolong the duration of the Liquidating Trust, and shall take or refrain from taking such other actions as may be necessary, in the Trust Administrator's reasonable judgment.
- **Role of the Trust Administrator**
  - Trust Administrator. Christopher K. Kiplok, a partner of Hughes Hubbard & Reed LLP, will serve as the initial Trust Administrator.

12. The summary of the Trust Agreement contained in this Motion is provided for convenience. In the event of any inconsistency between the summary contained herein and the terms and provisions of the Trust Agreement, the terms and provisions of the Trust Agreement control.

- Compensation of Trust Administrator. The Trust Administrator will be entitled to reasonable compensation in fulfilling his duties pursuant to the Trust Agreement, which fees and expenses will be included in the fees charged to the Liquidating Trust by Hughes Hubbard.

- Professionals. The Trust Administrator may, in his sole discretion, retain such Professionals as are necessary and reasonable to carry out his duties. The Trust Administrator will retain Hughes Hubbard as Primary Counsel to the Trust Administrator, Deloitte Financial Advisory Services LLP as financial advisor to the Trust Administrator, Deloitte Tax LLP as the Trust Administrator's tax advisor, and Epiq Corporate Restructuring, LLC as Trust Registrar. The Trust Administrator may consult with and is entitled to rely on the advice of his Professionals.

- Fiduciary Duties. The Trust Administrator will owe fiduciary duties to the Liquidating Trust Beneficiaries.

- **SIPC Oversight**

  - Compensation of Trust Administrator Professionals. SIPC will review and approve the compensation of Professionals.

  - Successor Trust Administrators A successor Trust Administrator may be appointed at any time by: (i) the current Trust Administrator, with the advice and consent of SIPC, or (ii) if the current Trust Administrator is unable to do so, SIPC. In each case, such appointment will be subject to Bankruptcy Court approval and prior notice to the Liquidating Trust Beneficiaries.

- **Reporting**

  - Quarterly Reporting. The Trust Administrator will issue quarterly reports concerning the activities of the Liquidating Trust, progress in liquidating the Liquidating Trust Assets and making distributions to Liquidating Trust Beneficiaries, and any other material information relating to the administration of the Liquidating Trust. Such reports will be filed with the Bankruptcy Court[13] and made available on the Trust Website.

13. In his final closure papers, the Trustee intends to seek the Court's permission to keep the LBI docket open for limited purposes related to the Liquidating Trust.

- Books and Records. The Trust Administrator will maintain books and records relating to the assets, the income, and the payment of expenses of the Liquidating Trust, and distributions to Liquidating Trust Beneficiaries. The Trust Administrator will not be obligated to maintain such books and records in accordance with U.S. Generally Accepted Accounting Principles.

- **Liquidating Trust Interests**

  - Allocation. On the Effective Date, each Holder of an Allowed Claim (as of the Record Date) will receive, in exchange for such Holder's Allowed Claim(s), a number of Liquidating Trust Interests equal to the percentage, to the nearest ten-thousandth, of such Holder's Allowed Claim(s) as a proportion of the aggregate amount of all Allowed Claims being exchanged for Liquidating Trust Interests. Any Holder of more than one Allowed Claim shall have its position aggregated such that each Holder shall be issued a single allocation of Liquidating Trust Interest.[14] For the avoidance of doubt, such exchange shall be in full and final satisfaction of such Allowed Claims.

- **Assets**

  - Liquidating Trust Assets. The assets to be transferred to the Liquidating Trust on the Effective Date will include:

    (i) the Liquidating Trust Funding;
    (ii) the Accumulated Cash;
    (iii) the Reversionary Administrative Interest;
    (iv) the Class Action Claims;
    (v) the Saad Claim;
    (vi) the Legacy Assets;
    (vii) all documents, data, and other information within the Trustee's custody and control that may support the Trust Administrator's prosecution of the Class Action Claims, the Saad Claim, or the Legacy Assets; and
    (viii) all Privileges of the LBI estate and the Trustee, only insofar as necessary (*i.e.*, only work product and communications related to the Class Action Claims,

14. A summary allocation of Liquidating Trust Interests as of the Record Date (the "Allocation Summary"), listing the allocation of Liquidating Trust Interests by claimant, is annexed as **Exhibit 2** to the proposed Trust Order. A schedule listing all allowed general unsecured claims as of the Record Date that are receiving Liquidating Trust Interests in full and final satisfaction of such claims (the "Detailed Allocation") will be separately filed, concurrently with the filing of this Motion.

the Saad Claim, and the Legacy Assets); *provided*, *however*, that the transfer of such Privileges will not constitute a waiver of such Privileges.

- Federal Income Tax Reporting. All Liquidating Trust Assets received by the Liquidating Trust on the Effective Date will be treated for all income tax purposes as having been (i) first transferred by the Trustee to the Holders of Allowed Claims (thereafter, the Liquidating Trust Beneficiaries) in full and final satisfaction of such Allowed Claims and (ii) immediately thereafter transferred by the Liquidating Trust Beneficiaries to the Liquidating Trust in exchange for Liquidating Trust Interests. The Trust Administrator will, as soon as reasonably practicable after the Effective Date, in its sole discretion, determine the fair market value as of the Effective Date of all assets transferred to the Liquidating Trust. Such fair market value determinations will be used consistently by the Liquidating Trust, the Trust Administrator, the Trustee, and each Liquidating Trust Beneficiary for all United States federal income tax purposes. The Trust Administrator may make subsequent valuations available from time to time for all parties to the Liquidating Trust, to the extent relevant to such parties for tax purposes. The Liquidating Trust Beneficiaries will be treated for federal income tax purposes as the grantors and beneficiaries of the Liquidating Trust and deemed owners of the Liquidating Trust Assets. The Trust Administrator will file tax returns and other tax filings for the Liquidating Trust treating the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a).

- **Distributions**

  - Annual Distributions. Commencing after the first anniversary of the Effective Date, the Trust Administrator will distribute to the Liquidating Trust Beneficiaries at least once every calendar year all Net Liquidating Trust Proceeds in accordance with the provisions of Article 5 of the Trust Agreement. All such distributions will be based on the *pro rata* share of Liquidating Trust Interests held by a Liquidating Trust Beneficiary.

  - Withholding of Taxes. The Trust Administrator will be entitled to deduct and withhold and pay to the appropriate governmental unit all amounts required to be deducted or withheld pursuant to the IRC or any provision of any state, local, or non-U.S. tax law with respect to any payment or

distribution to, or income allocable to, the Liquidating Trust Beneficiaries. All such amounts deducted or withheld will be treated as amounts distributed to such Liquidating Trust Beneficiaries for all purposes of the Trust Agreement. The Trust Administrator is authorized to collect such tax information from the Liquidating Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as the Trust Administrator, in his sole discretion, deems necessary to effectuate the Trust Agreement. The Trust Administrator may refuse to make a distribution to any Liquidating Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered.

- **Trust Administration**

  - Liquidating Trust Funding. On the Effective Date, the Liquidating Trust will be funded with Cash from the LBI estate in the amount of $14 million.

  - Collection of Liquidating Trust Proceeds. The Trust Administrator will collect all Liquidating Trust Proceeds earned with respect to the Liquidating Trust Assets, which Liquidating Trust Proceeds will be added to the Liquidating Trust Assets and held as a part thereof (and which title will be vested in the Liquidating Trust) in the Liquidating Trust Account.

  - Payment of Trust Administration Fees. From and after the Effective Date, the Trust Administrator will pay from the Operational Reserve the Trust Administration Fees in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court. The Trust Administration Fees will be paid from the Operational Reserve. The Liquidating Trust will not have recourse to the Trust Administrator, any of his Professionals, or SIPC for any Trust Administration Fees or other costs and expenses of the Liquidating Trust.

- **Indemnification**

  - Indemnification. From and after the Effective Date, each of the Trustee, his Professionals, the Trust Administrator, his Professionals, SIPC, and its Professionals will be indemnified from all Claims and other assertions of liability arising out of any such Liquidating Trust Indemnified Party's exercise of what such Liquidating Trust Indemnified

Party reasonably understands to be its powers or the discharge of what such Liquidating Trust Indemnified Party reasonably understands to be its duties conferred by the Trust Agreement, any order of the Bankruptcy Court entered pursuant to, or in furtherance of, the Trust Agreement, applicable law, or otherwise (except only for actions or omissions to act to the extent determined by a Final Order to be due to such Liquidating Trust Indemnified Party's own fraud, willful misconduct, or gross negligence on and after the Effective Date). Any indemnification Claim of a Liquidating Trust Indemnified Party will be entitled to a priority distribution from the Liquidating Trust Assets, ahead of the Liquidating Trust Interests and any other Claim to or interest in such assets.

- **Termination**

  - Duration of the Liquidating Trust. The Liquidating Trust will have an initial term of five (5) years but may be extended for one (1) year terms upon a motion of the Trust Administrator before the Bankruptcy Court. No more than three (3) such extensions will be permitted.

RELIEF REQUESTED

27. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, as made applicable to this SIPA Proceeding pursuant to SIPA sections 78fff(b) and 78fff-1(a), the Trustee seeks entry of an order (i) authorizing the creation of the Liquidating Trust pursuant to the terms of the Trust Agreement, including (a) the appointment of Mr. Kiplok as the Trust Administrator, and (b) the distribution of Liquidating Trust Interests to the Beneficiaries in full and final satisfaction of their claims against the LBI estate; (ii) authorizing the Trustee to dispose of estate assets, including by transferring (a) the Contingent Assets to the Liquidating Trust, (b) the Liquidating Trust Funding to the Liquidating Trust, and (c) immediately prior to discharge, the remaining Administrative Reserve to the Administrative Escrow; and (iii) finding that the creation and distribution of the Liquidating Trust Interests are exempt from securities registration.

BASIS FOR RELIEF

I. The Rationales for Authorizing Chapter 11 Liquidating Trusts Apply to the SIPA Proceeding.

28. Liquidating trusts are regularly used to accelerate chapter 11 debtors' return to business: the debtor emerges from bankruptcy to focus on its business, and the liquidating trust assumes responsibility for litigations or other activities that would otherwise be a distraction. *See* 7 Collier on Bankruptcy ¶ 1123.02[3][d] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) (noting that the creation of a liquidating trust as part of a chapter 11 debtor's plan "permits the reorganizing debtor to separate litigation assets from operating assets and emerge from bankruptcy, providing for the long-term liquidation of litigation assets of uncertain value and for the distribution of any proceeds among the debtor's stakeholders."). Section 1123(b)(3)(B) of the Bankruptcy Code provides the statutory basis for a chapter 11 debtor to create a liquidating trust: a chapter 11 plan may provide for "the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any [] claim or interest [belonging to the debtor or to the estate]." 11 U.S.C. § 1123(b)(3)(B).

29. The circumstances of this SIPA Proceeding are similar to those contemplated in chapter 11: the SIPA Proceeding has accomplished—if not exceeded—its purpose. The Trustee has liquidated substantially all of the assets of the business of LBI. Customers have achieved a 100 percent recovery; general creditors have recovered far more than ever expected; the universe of liabilities has, following years of litigation, been finally determined; and a vast majority of claimants (by numerosity) have elected to exit the LBI bankruptcy in return for an accelerated payment through the Voluntary Supplemental Distribution. The only remaining activity is the prosecution of a limited population of outbound claims for the benefit of the narrow band of intentionally remaining creditors. Much as a debtor must emerge from chapter 11, so too must the

SIPA estate close. Without the availability of the proposed Liquidating Trust, that closure could be delayed for years, needlessly extending a complex administration system without a commensurate benefit.

II. Section 105(a) Enables the Court To Authorize the Liquidating Trust as an Equitable Remedy.

30. Section 105(a) of the Bankruptcy Code enables the Court to apply section 1123(b)(3)(B) to the SIPA Proceeding, though that section is intended to apply to chapter 11 cases. Section 105(a), made applicable to this proceeding by SIPA section 78fff(b), provides 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 orders to meet differing circumstances."); *Sec. Inv. 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)).

31. Authorizing the Liquidating Trust is an appropriate use of the Court's power under section 105(a) and is consistent with the purposes of SIPA and the Bankruptcy Code. In addition to providing an efficient platform from which to pursue the Contingent Assets, the Liquidating Trust is a value-maximizing proposition. Without it and the long-horizon optionality it presents, the Trustee would face the prospect of a fire sale of the Contingent Assets. Likewise, other alternatives, including abandoning the Contingent Assets or continuing to pursue them from an open SIPA estate, would not serve the best interests of the estate's creditors. The SIPA Proceeding

will soon reach its fourteenth anniversary, a milestone that the Trustee hopes to mark with his discharge and the final closure of the estate. There is no need to keep the SIPA estate open when a more efficient vehicle exists to continue to serve the best interests of creditors, subject to oversight by SIPC. And it is well within the Court's purview under section 105(a) to extend the section 1123(b)(3)(B) authority to the SIPA Proceeding.

III. The Liquidating Trust Interests Should Be Exempt from Securities Registration.

32. The Trustee believes that the Liquidating Trust Interests are not "securities" within the meaning of either the Securities Act of 1933 (the "Securities Act") or the Securities Exchange Act of 1934 (the "Exchange Act"). *See* 15 U.S.C. § 77b(a)(1) (defining "security" under the Securities Act); 15 U.S.C. § 78c(a)(10) (defining "security" under the Exchange Act); *see also* Matthew Bender, 1 Fed. Sec. Act of 1933 § 2.05[1] (noting that, where the purpose of a trust is geared towards a true fiduciary purpose, rather than a reliance upon investment skill, it is unlikely that such interest will be held to be a security); *Inv. Co. Inst. v. Conover*, 596 F. Supp. 1496, 1502 (D.D.C. 1984) (reasoning that a trust created by a bank to invest collective IRA assets was not a "vehicle for investment" because the bank was "selling its fiduciary services," rather than its investment skills); *DYR Liquidating Corp.*, SEC No-Action Letter, 1987 WL 107598 at *1-2 (Mar. 9, 1987) (SEC declined to deem trust interests in a liquidating trust to be securities because the trust's purpose was limited to "retain[ing], invest[ing] and distribut[ing] the assets of the [liquidating c]ompany for the benefit of the shareholders . . . to discharge certain liabilities").

33. However, to eliminate the need for potential compliance with securities regulations, the Trustee seeks an order from this Court finding that, regardless of whether the Liquidating Trust Interests are "securities," they are exempt from securities registration requirements. To be clear, the Trustee is not seeking the Court's determination regarding whether the Liquidating Trust

Interests are securities; rather, he seeks the Court's determination that, should the Liquidating Trust Interests ever be determined to be securities, registration exemptions apply.

A. Section 1145 of the Bankruptcy Code Exempts the Liquidating Trust Interests from Securities Registration.

34. The Court should find that the exemption from securities registration provided under section 1145(a)(1) of the Bankruptcy Code applies to exempt the issuance of the Liquidating Trust Interests from securities registration requirements. Section 1145(a)(1) provides a limited exemption from registration under federal and state securities law for an offer or sale of securities that are:

> (a) offered or sold "under a plan";
>
> (b) "of the debtor, of an affiliate participating in a joint plan with the debtor or of a successor to the debtor under the plan"; and
>
> (c) "in exchange for a claim against, an interest in, or a claim for an administrative expense in the case concerning, the debtor or such affiliate."

See 11 U.S.C. § 1145(a)(1). Resales of securities that fall within the exemption under section 1145(a)(1) also are exempt from registration, provided that they are accompanied by a written disclosure statement that is approved, after notice and a hearing, by a court as containing "adequate information." 11 U.S.C. §§ 1125, 1145(a)(4). Section 1145(c) causes an offer or sale of securities of the kind and in the manner specified under section 1145(a)(1) to be deemed to be a public offering. *See* 11 U.S.C. § 1145(c).

35. Section 1145 "shield[s] from liability under the federal securities laws those individuals participating in the reorganization of an entity in bankruptcy" for the purpose of "encourag[ing] satisfaction of debts or other existing interests in the debtor." *S.E.C. v. Universal Exp., Inc.*, 475 F. Supp. 2d 412, 425 (S.D.N.Y. 2007). It was enacted in recognition of the perceived unfairness of compelling participants in the chapter 11 process, many of whom may be

involuntary participants, to comply with securities law requirements. *See* H.R. Rep. No. 95-595, 95th Cong., 1st Sess., at 237 (1977) ("Present law presents a creditor with great uncertainty if he wants to sell securities received in a bankruptcy reorganization. This uncertainty acts as a retarding force on the flexibility of the reorganization process. Creditors normally have little choice in deciding whether to 'purchase' securities of the debtor."); *see also In re Frontier Airlines, Inc*., 93 B.R. 1014, 1021 (Bankr. D. Colo. 1988) ("The obvious purpose of section 1145 is to encourage reorganization and to relieve bankrupt entities of the strict requirements of securities laws so long as adequate disclosure is made.") (internal citations and quotations omitted); *In re Amarex, Inc*., 53 B.R. 12, 14 (Bankr. W.D. Okla. 1985) (same).

36. Other bankruptcy courts have extended the protections of section 1145 beyond securities issued pursuant to a chapter 11 plan. *See In re CGG S.A.*, 579 B.R. 716, 720-21 (Bankr. S.D.N.Y. 2017) (approving section 1145(a)(1) exemption for securities issued by foreign debtor in chapter 15 proceedings); Order Under 11 U.S.C. §§ 1507 and 1521 Recognizing and Enforcing the Order of the Spanish Court Homologating a Restructuring Agreement and Granting Related Relief, *In re Abengoa, S.A.*, No. 16-10754 (KJC) (Bankr. D. Del. Dec. 8, 2016), ECF No. 169 (ruling that the securities issued by the foreign debtor were exempt from registration under section 1145 "[b]y virtue of 11 U.S.C. § 1521 and in the alternative 11 U.S.C. § 1507"); Order Granting Recognition and Enforcement of Canadian Sanction Order and Related Relief, *In re Quebecor World Inc*., No. 08-13814 (JMP) (Bankr. S.D.N.Y. July 1, 2009), ECF No. 12 (giving full force and effect to the Canadian Sanction Order, which approved debtors' reliance on the section 1145 exemption to issue securities without registration with the SEC).

37. Section 1145 relief is warranted here because the Liquidating Trust Interests will be issued in exchange for and in satisfaction of the remaining creditors' allowed claims against the

estate. Though the SIPA Proceeding is not a reorganization, its need to close—and its creditors' need to move to a new phase of recovery—is clear. Furthermore, the implementation of this Liquidating Trust is similar to a chapter 11 plan in that it provides for distributions to creditors. A critical component of this plan is that the Liquidating Trust Interests be freely transferable. Thus, they must be exempt from securities registration requirements.

38. The Trustee's detailed estate reporting and disclosures regarding his intention to pursue a liquidating trust justify application of the section 1145 exemption from securities registration requirements (if such requirements are even applicable). Periodic estate balance sheets and SIPA-mandated interim reports disclose, on a regular basis, all material information regarding the administration of the estate and its assets and liabilities. Since the Trustee first introduced the concept of creating a post-closing vehicle to liquidate the estate's long-horizon contingent assets in April 2019, the Trustee's reports have included detailed disclosures regarding the Contingent Assets, their prospects, and the Liquidation Trust.[15] This Motion also attaches the Trust Agreement

15. *See* Letter to the Honorable Shelley C. Chapman Regarding Steps Necessary to Close the Estate, filed Apr. 30, 2019 (ECF No. 14905) ("The Trustee will also seek Court approval for the disposition of remaining assets including, if necessary, a post-closing vehicle for certain contingent and unliquidated assets (e.g., claims pending in multibillion dollar antitrust class action settlement funds that may take substantial time to monetize through sale or collection)."); Trustee's Twenty-First Interim Report for the Period April 1, 2019 Through September 30, 2019, filed Oct. 30, 2019 (ECF No. 15018) ("Consistent with the Trustee's goal of maximizing all LBI assets for creditors, to the extent any potential LBI estate recoveries are not fully realized prior to the closure of the estate, the Trustee may . . . transfer those assets to a post-closing vehicle to operate for the benefit of LBI's allowed general unsecured creditors."); Trustee's Presentation Regarding LBI Legacy Asset Portfolio, filed Aug. 17, 2020 (ECF No. 15136) (describing LBI Legacy Asset Portfolio); Trustee's Twenty-Fifth Interim Report for the Period April 1, 2021 Through September 30, 2021, filed Nov. 3, 2021 (ECF No. 15288) (the "Twenty-Fifth Interim Report") (annexing Contingent Asset presentation); 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, filed Nov. 3, 2021 (ECF No. 15290) (the "Final Distribution Motion") (describing the Trustee's plan to narrow the claimant population through the Voluntary Supplemental Distribution before the remaining claims converted to interests in the Liquidating Trust); Declaration of Christopher K. Kiplok in Support of 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, filed Nov. 3, 2021 (ECF No. 15292) (describing the Trustee's plan for all claimants remaining after the Voluntary Supplemental Distribution to convert to beneficiaries of the Liquidating Trust); *see also* Trustee's Twenty-Second Interim Report for the Period of October 1, 2019 Through March 31,

in full. This Motion, the semi-annual reports provided by the Trustee, and the more extensive disclosures regarding the Contingent Assets in the Final Distribution Motion and Twenty-Fifth Interim Report collectively provide ample disclosure concerning the Contingent Assets, the Liquidating Trust Interests, the Trust Agreement, and the Liquidating Trust itself. Further disclosure through Securities and Exchange Commission ("SEC") registration requirements would impose an unnecessary burden on the Trustee and the estate's creditors without providing a commensurate benefit in the form of substantive additional disclosure.

39. The policy considerations that support section 1145 in the chapter 11 context apply equally here. The Liquidating Trust will allow the Trustee to seek a discharge while concurrently facilitating an orderly and value-maximizing liquidation of remaining assets over the longer time horizon those assets require to mature. That value is enhanced by the fact that the Liquidating Trust Interests will be freely transferrable on the basis that their issuance is deemed to be a public offering under section 1145(c). The flexibility afforded by section 1145 is critical to ensuring that the recipients of the Trust Interests can realize the value provided under this arrangement. Any additional layer of oversight from the SEC is unnecessary here because the Trust Administrator and Liquidating Trust will remain subject to SIPC oversight and the Trust Agreement's reporting requirements.

40. The Liquidating Trust Interests to be issued pursuant to the Trust Agreement satisfy each of the requirements under section 1145. The application of the section 1145 exemption is both necessary and appropriate: it will assist the Trustee in his issuance of the Liquidating Trust

2020, filed Apr. 30, 2020 (ECF No. 15094); Trustee's Twenty-Third Interim Report for the Period of April 1, 2020 Through September 30, 2020, filed Oct. 29, 2020 (ECF No. 15162); Trustee's Twenty-Fourth Interim Report for the Period October 1, 2020 Through March 31, 2021, filed Apr. 29, 2021 (ECF No. 15243).

Interests and accordingly serve to "protect the assets of the debtor" as well as "the interests of the creditors." Application of section 1145 is warranted.

B. Bankruptcy Code Section 105(a) Enables the Court To Apply Bankruptcy Code Section 1145 to the SIPA Proceeding.

41. Just as section 105(a) of the Bankruptcy Code enables the Court to apply section 1123 to this SIPA Proceeding, the same rationales pertain to applying section 1145.[16] The registration exemption sought through section 1145 is an extension of the effectiveness and functionality of the Liquidating Trust. To optimize the Liquidating Trust for the Beneficiaries, the Liquidating Trust Interests should be freely transferable.[17] To the extent that the Court determines that it is an appropriate exercise of its authority to approve the Liquidating Trust, it should also find that section 105 provides adequate authority to apply chapter 11 principles to this SIPA Proceeding where the underlying rationales for those principles align. To provide the benefit of transferability to the Beneficiaries without burdening them with additional administrative cost, the Trustee respectfully requests that the Court exercise its equitable powers under section 105 to provide the registration exemptions available to chapter 11 debtors to the SIPA estate.

42. The availability of an additional avenue for securities registration exemption through the Securities Act (as discussed in Section III.C below) reinforces the propriety of the Court's exercise of its section 105(a) authority to extend a chapter 11 paradigm to this SIPA Proceeding. The ultimate outcome—exemption from securities registration—is available through the Securities Act itself. However, applying the section 1145 exemption aligns with the rationale for authorizing the Liquidating Trust in the first place.

---

16. *See* Section II, *supra*.

17. Absent transferability, the Trust Interests would be categorically not securities, and no section 1145 exemption —not even the protective one sought by the Trustee here—would be needed.

C. Section 3(a)(10) of the Securities Act Exempts the Liquidating Trust Interests from Securities Registration.

43. The Court should also find that the Liquidating Trusts Interests are exempt pursuant to section 3(a)(10) of the Securities Act. Section 3(a)(10) provides that securities shall not be required to register where, as here, (a) they are not exchanged in a case under title 11, (b) they are not offered in exchange for cash, (c) the terms and conditions of the exchange are fair, and (d) there is a fairness hearing with adequate notice:

> Except with respect to a security exchanged in a case under title 11, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval.

15 U.S.C. § 77c(a)(10).

44. Courts applying section 3(a)(10) in the reorganization context have recognized that section 3(a)(10) generally requires the exchange to be both procedurally and substantively fair. *See, e.g.*, *Cont'l Assurance Co. v. Macleod-Stedman, Inc.*, 694 F. Supp. 449, 469 (N.D. Ill. 1988) ("The court concludes that the applicable procedural and substantive fairness requirements of § 3(a)(10) of the 1933 Act have been satisfied."); *In re Bd. of Dirs. of Multicanal S.A.*, 340 B.R. 154, 168 (Bankr. S.D.N.Y. 2006) (explaining that the factors that must be satisfied in connection with the Section 3(a)(10) exemption "can be divided into two categories[:] . . . those factors that concern adequate notice of the hearing and an opportunity to be heard . . . [and] substantive fairness . . . .").

45. The SEC's Division of Corporation Finance has clarified the statutory requirements provided under Section 3(a)(10) through a legal bulletin:

> - The securities must be issued in exchange for securities, claims, or property interests; they cannot be offered for cash.
> - A court or authorized governmental entity must approve the fairness of the terms and conditions of the exchange.
> - The reviewing court or authorized governmental entity must:
>   - find, before approving the transaction, that the terms and conditions of the exchange are fair to those to whom securities will be issued; and
>   - be advised before the hearing that the issuer will rely on the Section 3(a)(10) exemption based on the court's or authorized governmental entity's approval of the transaction.
> - The court or authorized governmental entity must hold a hearing before approving the fairness of the terms and conditions of the transaction.
> - A governmental entity must be expressly authorized by law to hold the hearing, although it is not necessary that the law require the hearing.
> - The fairness hearing must be open to everyone to whom securities would be issued in the proposed exchange.
> - Adequate notice must be given to all those persons.
> - There cannot be any improper impediments to the appearance by those persons at the hearing.

See SEC Staff Legal Bulletin No. 3A (CF) (June 18, 2008), https://www.sec.gov/corpfin/staff-legal-bulletin-3a#P28_3453 (footnotes omitted).[18]

46. The requirements for a Section 3(a)(10) exemption are satisfied here. First, these proceedings arise under SIPA, not title 11, so the statutory carveout does not apply. *Cf.* Order Recognizing and Enforcing Order of the Reykjavík District Court Confirming Composition and

18. The Trustee does not intend to seek a no-action letter from the SEC. Instead, the Trustee will serve this Motion on the SEC, thereby providing notice that the Trustee is seeking a ruling from this Court regarding registration exemptions with respect to the Liquidating Trust Interests.

Granting Related Relief, *In re Landsbanki Íslands hf.*, No. 08-14921 (RDD) (Bankr. S.D.N.Y. Mar. 17, 2016), ECF. No. 65 (finding that requirements of Section 3(a)(10) exemption were met in chapter 15 proceeding, notwithstanding that the authority for chapter 15 proceedings arises under title 11, because the actual exchange was done in connection with the foreign bankruptcy proceeding).

47. Second, the Liquidating Trust Interests will be offered in exchange for the unpaid balance of the claimants' allowed general unsecured claims; no cash will be involved. *See Multicanal*, 340 B.R. at 169 (citing *Borland Int'l, Inc.,* SEC No-Action Letter, 1987 WL 108550 (Oct. 28, 1987); *First N.H. Banks, Inc.,* SEC No-Action Letter, 1985 WL 53942 (Mar. 7, 1985)) ("As the SEC has found in no-action letters, § 3(a)(10) encompasses exchanges involving . . . interests in a trust.").

48. Third, the terms and conditions of the exchange are fair. Claimants who will receive Liquidating Trust Interests have been advised for several months of the intended outcome and have been provided substantial information pertaining to the Contingent Assets as the source of any further distributions.[19] All current claimants made a deliberate choice to continue with the LBI estate and the successor Liquidating Trust, either by opting out of the Voluntary Supplemental Distribution or by not selling their claims. This demonstrated preference to receive the Liquidating Trust Interests indicates that the consideration is fair.

49. Finally, this Motion is being presented to the Bankruptcy Court for hearing with notice, and opportunity to object, to all current holders of general creditor claims, in accordance with this Court's Amended Case Management Order (ECF No. 3466). Doing so satisfies the

19. *See supra* note 15 and accompanying text.

procedural elements of fairness required under section 3(a)(10). Accordingly, the section 3(a)(10) exemption should apply to the exchange of the Liquidating Trust Interests.

IV. Entering Into the Liquidating Trust Agreement Is a Sound Exercise of the Trustee's Business Judgment.

50. Section 363(b)(1) of the Bankruptcy Code, made applicable to this SIPA Proceeding by SIPA sections 78fff(b) and 78fff-1(a), provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." The Bankruptcy Court should approve the Trustee's sale or use of assets of the estate outside the ordinary course of business if the debtor can demonstrate a sound business justification for the proposed transaction. *See, e.g.*, *Lionel Corp.*, 722 F.2d at 1070-71; *Licensing By Paolo, Inc. v. Sinatra* (*In re Gucci)*, 126 F.3d 380, 387 (2d Cir. 1997) (*citing Lionel Corp.*, 722 F.2d at 1071); *In re Ionosphere Clubs, Inc.,* 100 B.R. 670, 680 (Bankr. S.D.N.Y. 1989); *In re Global Crossing Ltd.*, 295 B.R. 726, 742-43, 746 (Bankr. S.D.N.Y. 2003).

51. The Trustee submits in his sound business judgment that the proposed Liquidating Trust Agreement is a reasonable and acceptable form of liquidating trust agreement and that fulfilling his obligations under that Agreement, including transferring the Contingent Assets and Liquidating Trust Funding to the Liquidating Trust, is in the best interest of the LBI estate, its creditors, and the intended Beneficiaries of the Liquidating Trust.

52. Likewise, the simultaneous disposition of the Administrative Reserve to the Administrative Escrow falls within the exercise of the Trustee's sound business judgment. The Administrative Escrow will be used to ensure that all post-closing expenses of the LBI estate that may arise after the Trustee's discharge are covered. To the extent that the funds are not used, the Beneficiaries of the Liquidating Trust maintain a reversionary interest in the funds.

53. This Court's approval of the Liquidating Trust and the Trustee's subsequent establishment of and transfer of the Contingent Assets to the Liquidating Trust represent the last major steps necessary to prepare the estate for closure.

NOTICE

54. 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 Beneficiaries. The Trustee submits that no other or further notice need be provided.

NO PRIOR REQUEST

55. 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 entering the proposed Trust Order, attached hereto as **Exhibit B** and such additional and further relief as the Court deems just and proper.

Dated: New York, New York
April 28, 2022

HUGHES HUBBARD & REED LLP

By: */s/ Anson B. Frelinghuysen*
Anson B. Frelinghuysen
Jeffrey S. Margolin
Elizabeth A. Beitler
One Battery Park Plaza
New York, New York 10004
Telephone: (212) 837-6000
Facsimile: (212) 422-4726
Email: anson.frelinghuysen@hugheshubbard.com

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

Exhibit A

LIQUIDATING TRUST AGREEMENT

Dated as of [_____]

by and between

JAMES W. GIDDENS, AS SIPA TRUSTEE FOR LEHMAN BROTHERS INC.

as Settlor

and

CHRISTOPHER K. KIPLOK

as Trust Administrator

TABLE OF CONTENTS

PAGE

ARTICLE 1: DEFINITIONS....2

ARTICLE 2: ESTABLISHMENT OF THE LIQUIDATING TRUST....8

2.1 Establishment of Liquidating Trust. 8
2.2 Appointment of Trust Administrator. 8
2.3 Declaration of Trust; Transfer of Assets and Privileges. 8
2.4 Title to Liquidating Trust Assets. 9
2.5 Nature and Purpose of the Liquidating Trust. 9
2.6 Relationship Governing the Liquidating Trust. 10

ARTICLE 3: THE TRUST ADMINISTRATOR....10

3.1 Role of the Trust Administrator. 10
3.2 Scope of Authority of the Trust Administrator. 11
3.3 Limitation of the Trust Administrator's Authority. 13
3.4 Tenure, Removal, and Replacement of the Trust Administrator. 13
3.5 Appointment of a Successor Trust Administrator. 14
3.6 Continuance of Liquidating Trust. 15
3.7 Retention of Attorneys, Accountants, and Other Professionals. 15
3.8 Compensation of the Trust Administrator and Its Professionals. 16
3.9 Investment and Safekeeping of Liquidating Trust Assets. 17
3.10 Reporting; Books and Records. 17
3.11 Compliance with Laws. 18
3.12 Standard of Care. 18
3.13 Reliance by the Trust Administrator. 19
3.14 No Bond Required. 19

ARTICLE 4: LIQUIDATING TRUST INTERESTS....20

4.1 Liquidating Trust Interests. 20
4.2 Allocation of Liquidating Trust Interests. 20
4.3 Interests Beneficial Only. 20
4.4 Evidence of Beneficial Interests. 20
4.5 Securities Law Registration. 20
4.6 Limitation on Transferability. 21
4.7 Records of Liquidating Trust Interests. 22
4.8 Conflicting Claims. 22
4.9 Absolute Owners. 23
4.10 No Standing. 23

ARTICLE 5: DISTRIBUTIONS....23

5.1 Annual Distribution; Withholding. 23

5.2 Disbursing Agent. 23
5.3 Manner of Payment or Distribution. 24
5.4 Delivery of Liquidating Trust Distributions. 24
5.5 Distributions Regarding Conflicting Claims. 25
5.6 Inapplicability of Unclaimed Property or Escheat Laws. 25
5.7 Establishment of Available Cash. 25
5.8 Cash Distributions. 25

ARTICLE 6: TRUST ADMINISTRATION 26

6.1 Governance of the Liquidating Trust. 26
6.2 Funding of Liquidating Trust. 26
6.3 Management of Liquidating Trust Assets. 26
6.4 Prosecution and Resolution of Class Action Claims. 26
6.5 Liquidation of Liquidating Trust Assets. 26
6.6 Collection of Liquidating Trust Proceeds. 27
6.7 Payment of Trust Administration Fees. 27
6.8 Notice to Liquidating Trust Beneficiaries. 28

ARTICLE 7: TAX MATTERS 28

7.1 Liquidating Trust. 28
7.2 Federal Income Tax Reporting. 28
7.3 Allocations of Liquidating Trust Taxable Income. 29
7.4 Withholding of Taxes. 29

ARTICLE 8: CUSTODY OF LBI ESTATE DATA 30

8.1 Custody of Retained Estate Records. 30
8.2 Administration of the Retained Estate Records. 30
8.3 Costs of the Retained Estate Records. 31

ARTICLE 9: DURATION AND TERMINATION OF THE LIQUIDATING TRUST 31

9.1 Duration and Termination of the Liquidating Trust. 31
9.2 Continuance of the Liquidating Trust for Winding Down. 31

ARTICLE 10: LIMITATIONS OF LIABILITY AND INDEMNIFICATION 32

10.1 No Further Liability. 32
10.2 Indemnification. 33
10.3 Limitation of Liability. 35
10.4 Liquidating Trust Liabilities. 35
10.5 No Liability for Acts of Predecessors. 35
10.6 No Liability for Good Faith Error of Judgment. 35
10.7 Burden of Proof. 35
10.8 No Implied Obligations. 36

ARTICLE 11: AMENDMENT AND WAIVER....36

11.1 Amendment and Waiver. 36

ARTICLE 12: MISCELLANEOUS PROVISIONS....37

12.1 Intention of Parties to Establish the Liquidating Trust. 37
12.2 Irrevocability. 37
12.3 Investment Company Act. 37
12.4 Reimbursement of Trust Litigation Costs. 37
12.5 Situs; Governing Law. 37
12.6 Jurisdiction. 37
12.7 Severability. 38
12.8 No Third-Party Beneficiaries. 38
12.9 Notices. 38
12.10 Headings. 39
12.11 Counterparts. 39
12.12 Confidentiality. 39
12.13 Meaning of Other Terms. 40
12.14 Entire Agreement. 40

This Liquidating Trust Agreement (the "***Liquidating Trust Agreement***" or this "***Agreement***"), dated as of [_____], by and among James W. Giddens (the "***SIPA Trustee***"), as trustee for the liquidation of the business of Lehman Brothers Inc. ("***LBI***" or the "***Debtor***") under the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa *et seq.*, as amended ("***SIPA***"), and Christopher K. Kiplok, as the trustee pursuant to this Liquidating Trust Agreement (the "***Trust Administrator***"), is executed to establish a liquidating trust (the "***Liquidating Trust***") in connection with the discharge of the SIPA Trustee, the closure of the LBI estate, and the monetization of the Liquidating Trust Assets (as defined below).

WITNESSETH

WHEREAS, on September 19, 2008 (the "***Filing Date***"), the Honorable Gerard E. Lynch, United States District Court for the Southern District of New York, entered the Order Commencing the Liquidation of LBI (the "***LBI Liquidation Order***") pursuant to the provisions of SIPA in the case captioned *Securities Investor Protection Corporation v. Lehman Brothers Inc.*, Case No. 08-CIV-8119 (GEL);

WHEREAS, the LBI Liquidation Order, *inter alia*, (i) appointed the SIPA Trustee for the liquidation of the business of LBI pursuant to section 78eee(b)(3) of SIPA; and (ii) removed the case to the United States Bankruptcy Court for the Southern District of New York (the "***Bankruptcy Court***") for all purposes as required for SIPA cases by section 78eee(b)(4) of SIPA, in the case captioned *In re Lehman Brothers Inc.*, Case No. 08-01420 (the "***SIPA Proceeding***");

WHEREAS, pursuant to the LBI Liquidation Order, the SIPA Trustee took possession of LBI's property, including its books and records; facilitated 100% distributions to LBI's customers, in part through bulk account transfers; marshaled billions of dollars of LBI's assets from around the globe; resolved over 15,000 general estate claims; made 100% distributions to secured and priority creditors; and made distributions of at least 41.2841% on allowed general unsecured creditor claims;

WHEREAS, the LBI estate is fully administered, in accordance with the meaning ascribed to such term pursuant to section 350(a) of the Bankruptcy Code (as defined below), and ready to close, except that certain contingent LBI estate assets that could potentially result in additional funds available for distribution to allowed general creditors of LBI's estate require additional time to mature;

WHEREAS, the availability of the Liquidating Trust permits the SIPA Trustee to seek his discharge and to close the LBI estate, while also enabling allowed general unsecured creditors of the LBI estate to receive potential further distributions from the proceeds of these contingent LBI estate assets;

WHEREAS, the Liquidating Trust will receive the Liquidating Trust Assets from the SIPA Trustee on behalf of the Liquidating Trust Beneficiaries (as defined below);

WHEREAS, the Liquidating Trust is organized for the primary purpose of liquidating and distributing assets transferred to the Liquidating Trust with no objective to

continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust;

WHEREAS, the Liquidating Trust is established to monetize the Liquidating Trust Assets for the benefit of the Liquidating Trust Beneficiaries; and

WHEREAS, the Liquidating Trust is intended to qualify as (i) a "liquidating trust" pursuant to the IRC (as defined below) and the regulations promulgated thereunder, including Treasury Regulations section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or another business, except to the extent reasonably necessary to, and consistent with, the purpose of the Liquidating Trust and (ii) as a "grantor trust" for U.S. federal income tax purposes, pursuant to sections 671-677 of the IRC.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein, the SIPA Trustee and the Trust Administrator agree as follows:

ARTICLE 1

DEFINITIONS

"Accumulated Cash" means any Cash amounts earned by the SIPA Trustee from the date of filing of the *Notice of (I) Outcome of Voluntary Supplemental Distribution and (II) Readiness to Proceed with the Final Distribution and Voluntary Supplemental Distribution*, docketed in the SIPA Proceeding by the SIPA Trustee on February 14, 2022 (ECF No. 15336) through the Effective Date.

"Allowed Claims" means all Allowed general unsecured Claims against the LBI estate as of March 31, 2022, as identified in the *Notice of Allocation of Liquidating Trust Interests*, docketed in the SIPA Proceeding by the SIPA Trustee on April 28, 2022 (ECF No. __).

"Allowed" means, with respect to a Claim filed against the Debtor, (a) as to which the SIPA Trustee and the Holder of the Claim have agreed to the amount of the Claim or a court of competent jurisdiction has determined the amount of the Claim by Final Order; or (b) that is compromised, settled, or otherwise resolved pursuant to the authority of the SIPA Trustee in a Final Order.

"Antitrust Claims" means LBI's right, on account of its legacy operations, to file Claims against settlements relating to or resulting from both current and future antitrust class actions pertaining to various benchmark price fixing and market manipulation lawsuits, including, without limitation, those Claims identified on the non-exhaustive list affixed hereto as Schedule 1.1.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as amended and codified in title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as in effect on the date hereof but, with respect to amendments to the Bankruptcy Code subsequent to the Filing Date, only to the extent that such amendments were made expressly applicable to proceedings which were filed as of the enactment of such amendments.

"Bankruptcy Court" has the meaning ascribed to it in the recitals of this Agreement.

"Bankruptcy Rule" means, collectively, the Federal Rules of Bankruptcy Procedure, promulgated under 28 U.S.C. § 2075, and the general, local and chambers rules of the Bankruptcy Court, as now in effect or hereafter amended, as applicable to the SIPA Proceeding.

"Business Day" means any day, excluding Saturdays, Sundays, and "legal holidays" (as defined in Bankruptcy Rule 9006(a)), on which commercial banks are open for business in New York City.

"Cash" means legal tender of the United States of America and cash equivalents.

"Claim" has the meaning set forth in section 101(5) of the Bankruptcy Code.

"Class Action Claims" means all Securities Claims and Antitrust Claims together.

"Covered Person" has the meaning ascribed to it in Article 12.12.

"days" means calendar days.

"Debtor" has the meaning ascribed to it in the preamble of this Agreement.

"Disability" means a physical or mental impairment that substantially limits the ability of a Person to fulfill his, her, or its duties and obligations.

"Disbursing Agent" means any Person selected by the Trust Administrator, in its sole discretion, to make or facilitate distributions pursuant to this Liquidating Trust Agreement.

"Dissolution Process" has the meaning ascribed to it in Article 9.1(b).

"Distribution Record Date" means the thirtieth (30th) day prior to the Scheduled Distribution Date, unless such day is not a Business Day, then such day shall be the following Business Day.

"Distribution Reserve" has the meaning ascribed to it in Article 5.8(b).

"Effective Date" means the date the Liquidating Trust Agreement becomes effective.

"Entity" has the meaning ascribed to such term in section 101(15) of the Bankruptcy Code.

"Estate Escrow Account" means the escrow account to be maintained by Hughes Hubbard & Reed LLP, subject in all regards to the oversight of SIPC, to be used exclusively for the continuing payment of Professionals and other expenses related to post-discharge, residual matters of the LBI estate unrelated to the Liquidating Trust, including the Estate Fees.

"Estate Fees" means all actual, reasonable and documented out-of-pocket costs, fees, and expenses incurred by the Trust Administrator in connection with the performance of the duties of the Trust Administrator, solely in its capacity as custodian of the Retained Estate Records pursuant to this Agreement, including, without limitation, the actual, reasonable, and documented fees and expenses of the Trust Administrator and its Professionals incurred in connection with the review of the Retained Estate Records to respond to a request for information from a governmental unit related to such Retained Estate Records.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Filing Date" has the meaning ascribed to it in the recitals of this Agreement.

"Final Order" means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the SIPA Proceeding or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move, under Bankruptcy Rule 9023 and/or Rule 59 of the Federal Rules of Civil Procedure, for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing shall have been denied or resulted in no modification of such order; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not prevent such order from being a Final Order.

"Holder" means a Person or Entity holding an Allowed Claim or Liquidating Trust Interest, as the context requires.

"Information" has the meaning ascribed to it in Article 12.12.

"Investment Company Act" means the Investment Company Act of 1940, as amended.

"IRC" means the Internal Revenue Code of 1986, as amended.

"IRS" means the Internal Revenue Service.

"LBI Liquidation Order" has the meaning ascribed to it in the recitals of this Agreement.

"LBI" has the meaning ascribed to it in the preamble of this Agreement.

"Legacy Assets" means all property of the LBI estate, as such term is defined in section 541 of the Bankruptcy Code, that has not been abandoned by an order of the Bankruptcy Court. For the avoidance of doubt, the Legacy Assets shall include the SIPA Trustee's right to recover any and all funds owed to LBI, including, without limitation, (i) the right to collect

unclaimed property pursuant to the laws of each state and (ii) the right to collect dividends attributable to shares of Rotech Medical Corporation.

"Liquidating Trust" has the meaning ascribed to it in the preamble of this Agreement.

"Liquidating Trust Account" means a bank account established at an accredited domestic financial institution for the purposes of holding all Liquidating Trust Assets that are Cash.

"Liquidating Trust Agreement" or this **"Agreement"** has the meaning ascribed to it in the preamble of this Agreement.

"Liquidating Trust Assets" means:

(i) the Liquidating Trust Funding, as such is replenished by trust recoveries from time to time;

(ii) the Accumulated Cash;

(iii) the Reversionary Administrative Interest;

(iv) the Class Action Claims;

(v) the Saad Claim;

(vi) the Legacy Assets;

(vii) all documents, data, and other information within the SIPA Trustee's custody and control that may support the Trust Administrator's prosecution of the Class Action Claims, the Saad Claim, or the Legacy Assets; and

(viii) all Privileges of the LBI estate and the SIPA Trustee, only insofar as necessary (*i.e.*, only work product and communications related to the Class Action Claims, the Saad Claim, and the Legacy Assets); *provided*, *however*, that the transfer of such Privileges shall not constitute a waiver of such Privileges.

"Liquidating Trust Beneficiaries" or "Beneficiaries" means those Holders of Allowed Claims against the Debtor (i) that receive Liquidating Trust Interests pursuant to the Trust Order or (ii) that become Holders of Liquidation Trust Interests pursuant to a transfer in accordance with Article 4.6.

"Liquidating Trust Funding" has the meaning ascribed to it in Article 6.2(a).

"Liquidating Trust Indemnified Party" or "Liquidating Trust Indemnified Parties" has the meaning ascribed to it in Article 10.2(a).

"Liquidating Trust Interests" means the non-certificated beneficial interests of the Liquidating Trust allocable to Holders of Allowed Claims in accordance with the terms and conditions of the Liquidating Trust Agreement.

"Liquidating Trust Proceeds" means any and all gross proceeds, whether Cash or otherwise, generated from or through the liquidation or monetization of or recoveries on the Liquidating Trust Assets or any portion thereof.

"Net Liquidating Trust Proceeds" means Liquidating Trust Proceeds net of amounts allocated by the Trust Administrator to the Operational Reserve to replenish the Operational Reserve to the extent the Trust Administrator, in its sole discretion, deems necessary to ensure that the Operational Reserve contains sufficient funds to pay the current and anticipated Trust Administration Fees for the remainder of the term of the Liquidating Trust and the subsequent winding down of the Liquidating Trust.

"Operational Reserve" means the funds set aside by the Trust Administrator for payment of the Trust Administration Fees.

"Person" shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

"Primary Counsel" means the law firm hired by the Trust Administrator to act as the primary legal counsel for the Trust Administrator. The initial Primary Counsel shall be Hughes Hubbard & Reed LLP.

"Privileges" means any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) associated with the Liquidating Trust Assets.

"Professionals" means any officers, employees, and other Persons or Entities as are necessary to carry out the terms of this Agreement, including lawyers, managers, consultants, accountants, technical, financial, or investment advisors or managers, attorneys, agents or brokers, experts, investigators, appraisers, auctioneers, corporate fiduciaries, depositories, and the Trust Registrar.

"Registry" means the register of Holders of Liquidating Trust Interests maintained by the Trust Registrar.

"Retained Estate Records" means the documents (including, without limitation, those maintained in electronic format) and other information owned by the LBI estate, whether held by the SIPA Trustee, the LBI estate, their respective agents, advisors, attorneys, accountants, or any other Professionals, which must be maintained in accordance with certain record retention requirements under applicable law. For the avoidance of doubt, the Retained Estate Records shall not be considered Liquidating Trust Assets.

"Reversionary Administrative Interest" means the right of the Liquidating Trust to receive any funds in the Estate Escrow Account in excess of the amounts set forth in the Trust Order as provided for therein.

"Saad Claim" means LBI's right to recover its allocable portion of a $230 million judgment, which judgment is held jointly by the LBI estate and Lehman Brothers International (Europe), against Saad Trading, Contracting, and Financial Services Co., which is currently subject to an insolvency proceeding in the Kingdom of Saudi Arabia, and all Claims arising out of or related to the enforcement of such judgment; *provided*, *however*, that any recovery on the Saad Claim shall be net of the agreed administrative costs borne by the administrators of Lehman Brothers International (Europe) to achieve a recovery on the judgment as agreed between the SIPA Trustee and the administrators of Lehman Brothers International (Europe).

"Scheduled Distribution Date" means the date scheduled for an anticipated distribution pursuant to Article 5.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the United States Securities Act of 1933, as amended.

"Securities Claims" means LBI's right, on account of its legacy securities trading and security portfolio, to file Claims against settlements relating to or resulting from both current and future securities class actions, including, without limitation, those Claims identified on the non-exhaustive list affixed hereto as Schedule 1.2.

"SIPA Proceeding" has the meaning ascribed to it in the recitals of this Agreement.

"SIPA Trustee" has the meaning ascribed to it in the preamble of this Agreement.

"SIPA" has the meaning ascribed to it in the preamble of this Agreement.

"SIPC" means the Securities Investor Protection Corporation.

"Termination Date" means the date upon which the Liquidating Trust shall finally be dissolved pursuant to the Dissolution Process.

"TIA" means the Trust Indenture Act of 1939, as amended.

"Trust Administration Fees" means all actual, reasonable and documented out-of-pocket costs, fees, and expenses incurred by the Trust Administrator in connection with the performance of the duties of the Trust Administrator pursuant to this Agreement (other than the Estate Fees), including, without limitation, (i) the actual, reasonable, and documented fees and expenses of the Trust Administrator and its Professionals incurred in connection with the review, execution, and delivery of this Agreement and any related documents and (ii) any taxes imposed on the Liquidating Trust or in respect of the Liquidating Trust Assets.

"Trust Administrator" has the meaning ascribed to it in the preamble of this Agreement.

"Trust Order" means the order of the Bankruptcy Court authorizing the SIPA Trustee to create the Liquidating Trust by entering into the Liquidating Trust Agreement and approving the terms of the Liquidating Trust Agreement.

"Trust Registrar" means any Person selected by the Trust Administrator, in its sole discretion, for the purpose of maintaining the Registry and the Trust Website.

"Trust Website" means the website to be maintained by the Trust Registrar on behalf of the Trust Administrator.

ARTICLE 2

ESTABLISHMENT OF THE LIQUIDATING TRUST

2.1 Establishment of Liquidating Trust.

The SIPA Trustee and the Trust Administrator hereby establish a trust on behalf of the Liquidating Trust Beneficiaries, which shall be known as the "LBI Liquidating Trust," on the terms set forth herein.

2.2 Appointment of Trust Administrator.

(a) Christopher K. Kiplok is hereby appointed to serve as the initial Trust Administrator of the Liquidating Trust effective as of the Effective Date and hereby accepts such appointment.

(b) The Trust Administrator agrees to accept and hold the assets of the Liquidating Trust in trust for the Liquidating Trust Beneficiaries subject to the terms of this Liquidating Trust Agreement.

(c) The Trust Administrator and, in the event that the Trust Administrator resigns or otherwise vacates the position pursuant to this Agreement, each successor Trust Administrator serving from time to time hereunder as appointed pursuant to Article 3.5, shall have all the rights, powers and duties set forth herein.

2.3 Declaration of Trust; Transfer of Assets and Privileges.

(a) To facilitate the discharge of the SIPA Trustee and the closure of the LBI estate, the SIPA Trustee and the Trust Administrator have executed this Agreement. On the Effective Date, the SIPA Trustee on behalf of himself and the LBI estate hereby irrevocably transfers, assigns, conveys, and delivers to the Trust Administrator, as trustee of the Liquidating Trust, (i) all of their respective rights, title, and interests in and to all Liquidating Trust Assets free and clear of any and all liens, Claims, encumbrances, or interests of any kind in such property of any other Person or Entity, and (ii) any Privilege without waiver; *provided*, *however*, that the foregoing shall vest in the Trust Administrator, as trustee of the Liquidating Trust, in trust and for the benefit of the Liquidating Trust Beneficiaries. The Trust Administrator shall be entitled to waive any Privilege with respect to the Liquidating Trust Assets as may be necessary

or appropriate in the sole discretion of the Trust Administrator. Neither the SIPA Trustee nor the LBI estate shall have any reversionary interest whatsoever in any of the foregoing.

(b) Immediately prior to the Effective Date, the SIPA Trustee shall (i) deliver or cause to be delivered to the Trust Administrator, as trustee of the Liquidating Trust, any and all documents and other information in connection with the Liquidating Trust Assets (including those maintained in electronic format and original documents) whether held by the SIPA Trustee, the LBI estate, their respective agents, advisors, attorneys, accountants, or any other Professionals, and (ii) provide the Trust Administrator with access to the LBI estate's agents, advisors, attorneys, accountants, or any other Professionals hired by the SIPA Trustee with knowledge of matters relevant to the Liquidating Trust Assets.

(c) To the extent that any of the foregoing transfers contemplated by this Article 2.3 do not automatically occur on the Effective Date, the SIPA Trustee agrees (i) at the reasonable request of the Trust Administrator, to execute and/or deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), (ii) to take, or cause to be taken, all such further actions as the Trust Administrator may reasonably request to evidence or effectuate the transfer of the Liquidating Trust Assets and the Privileges to the Trust Administrator, as trustee of the Liquidating Trust, and the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder, and (iii) to cooperate with the Trust Administrator in the monetization of the Liquidating Trust Assets.

2.4 Title to Liquidating Trust Assets.

The transfer of the Liquidating Trust Assets to the Liquidating Trust shall be made for the benefit of the Liquidating Trust Beneficiaries. Upon the transfer of the Liquidating Trust Assets, the Trust Administrator, as trustee of the Liquidating Trust, shall automatically succeed to all of the right, title, and interest of the SIPA Trustee in and to the Liquidating Trust Assets, and neither the SIPA Trustee nor the LBI estate will have any further interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust.

2.5 Nature and Purpose of the Liquidating Trust.

The Liquidating Trust is organized and established as a trust, subject to the terms and conditions contained herein for the primary purpose of liquidating its assets, in accordance with Treasury Regulations section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. Accordingly, the Trust Administrator shall, in an expeditious but orderly manner, monetize the Liquidating Trust Assets, make timely distributions to the Liquidating Trust Beneficiaries, not unduly prolong the duration of the Liquidating Trust, and shall take or refrain from taking such other actions as may be necessary, in the Trust Administrator's reasonable judgment, to preserve and maintain the status of the Liquidating Trust as a "liquidating trust" and as a "grantor trust" within the meaning of Treasury Regulations section 301.7701-4(d) and IRC sections 671-677, respectively.

2.6 Relationship Governing the Liquidating Trust.

This Liquidating Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Liquidating Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company, or association, nor shall the Trust Administrator or the Liquidating Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint ventures. The relationship of the Liquidating Trust Beneficiaries to the Liquidating Trust and the Trust Administrator shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Liquidating Trust Agreement.

ARTICLE 3

THE TRUST ADMINISTRATOR

3.1 Role of the Trust Administrator.

(a) Generally. The Trust Administrator shall generally be responsible for the following: (i) liquidating and administering (or abandoning, as the case may be) the Liquidating Trust Assets; (ii) making timely distributions to the Liquidating Trust Beneficiaries in accordance with Article 5; (iii) taking actions on behalf of, and representing, the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries; and (iv) all such other responsibilities as may be vested in the Trust Administrator pursuant to this Agreement and all other applicable orders of the Bankruptcy Court. The Trust Administrator shall be responsible for all decisions and duties with respect to the Liquidating Trust and the Liquidating Trust Assets, and such decisions and duties shall be carried out in accordance with this Agreement and all other applicable orders of the Bankruptcy Court.

(b) Best Interests of Liquidating Trust Beneficiaries. In all circumstances, the Trust Administrator shall act in the best interests of the Liquidating Trust Beneficiaries and in furtherance of the purpose of the Liquidating Trust, and shall use commercially reasonable efforts to liquidate the Liquidating Trust Assets and to make timely distributions and not unreasonably prolong the duration of the Liquidating Trust.

(c) Binding Nature. The Trust Administrator shall have the authority to bind the Liquidating Trust within the limitations set forth herein but shall for all purposes hereunder be acting solely in the capacity of the Trust Administrator and not individually. All actions taken and determinations made by the Trust Administrator in accordance with the provisions of this Liquidating Trust Agreement shall be final and binding upon any and all Persons or Entities having an interest in the Liquidating Trust.

(d) Fiduciary Duties. Pursuant to Liquidating Trust Agreement, the Trust Administrator shall act in a fiduciary capacity on behalf of the Liquidating Trust Beneficiaries. The Trust Administrator's actions with respect to disposition of the Liquidating Trust Assets shall in all events be taken in a manner so as to maximize the value of the Liquidating Trust

Assets and distributions to the Liquidating Trust Beneficiaries, giving due regard to the cost, risk, and delay of any course of action.

3.2 Scope of Authority of the Trust Administrator.

The responsibilities and authority of the Trust Administrator under this Agreement shall include, without limitation, the power but not the obligation to:

(i) accept the Liquidating Trust Assets, pursue the liquidation and marshaling of the Liquidating Trust Assets, preserve and protect the Liquidating Trust Assets, and have exclusive possession and control thereof as permissible under applicable law;

(ii) make or cause to be made distributions to Liquidating Trust Beneficiaries of Liquidating Trust Interests in accordance with the terms of Article 5 of this Agreement;

(iii) protect and enforce the rights of the Liquidating Trust Assets by any method deemed appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(iv) obtain insurance with such coverage and limits as it deems desirable, including insurance covering the liabilities and obligations of the Trust Administrator in the form of an errors and omissions policy, general liability, directors' and officers' insurance, or otherwise;

(v) investigate, pursue, compromise, adjust, arbitrate, sue on or defend, prosecute, abandon, exercise rights, powers, and privileges with respect to, or otherwise deal with and settle, in accordance with the terms set forth herein, the Liquidating Trust Assets;

(vi) seek any relief from or resolution of any disputes concerning this Agreement, the Liquidating Trust, or the Liquidating Trust Assets by the Bankruptcy Court or any other court having jurisdiction, and appear and participate in any proceeding before the Bankruptcy Court or any other court with jurisdiction with respect to any matter regarding or relating to this Agreement, the Liquidating Trust, or the Liquidating Trust Assets;

(vii) sue and be sued and participate, as a party or otherwise, in any judicial, administrative, arbitrative, or other proceeding;

(viii) seek the examination of any Entity under, and subject to, the provisions of Bankruptcy Rule 2004 or any other applicable law or rule, including the Federal Rules of Evidence;

(ix) subject to Article 2.3, assert or waive any privilege or defense on behalf of the Liquidating Trust;

(x) in accordance with Article 3.7 herein, appoint, engage, employ, and compensate, without Bankruptcy Court approval, such Professionals, officers, employees, and other Persons or Entities as are necessary to carry out its duties pursuant to this Liquidating Trust Agreement, in the Trust Administrator's sole discretion;

(xi) in accordance with Article 6.7, determine and cause the Liquidating Trust to pay all of its lawful expenses, debts, charges, taxes and other liabilities, and make all other payments relating to the Liquidating Trust Assets;

(xii) maintain appropriate books and records of the Liquidating Trust, as further described in Article 3.10;

(xiii) in accordance with Article 6 herein, establish such funds, reserves and depository, escrow, or other accounts, as deemed by the Trust Administrator in its sole discretion to be useful in carrying out the purposes of the Liquidating Trust, to hold Cash or Cash equivalents constituting Liquidating Trust Assets;

(xiv) serve as Disbursing Agent and make or cause to be made distributions of the proceeds of the Liquidating Trust Assets to Liquidating Trust Beneficiaries in accordance with the terms of this Liquidating Trust Agreement;

(xv) execute, deliver, and perform such other agreements and documents and to take or cause to be taken any and all such other actions as it may deem necessary or desirable to implement, effectuate, and carry out the purposes of this Agreement;

(xvi) determine the manner of ascertainment of income and principal, and the apportionment of income and principal, and the apportionment between income and principal of all receipts and disbursements, and to select an annual accounting period;

(xvii) in accordance with Article 7 herein, cause to be sent annually, in accordance with the tax laws, a separate statement stating a Liquidating Trust Beneficiary's interest in the Liquidating Trust and its share of the Liquidating Trust's income, gain, loss, deduction, or credit, and to instruct all Beneficiaries to report such items on their federal tax returns;

(xviii) in accordance with Article 7 herein, file (or cause to be prepared and filed) any and all tax and information returns for or with respect to the Liquidating Trust and otherwise engage in all acts that would constitute ordinary performance of the obligations of a trustee under a liquidating trust, including (*a*) the filing of all federal returns as a grantor trust, (*b*) the making of any advance tax payment, (*c*) the withholding from the amount distributable to any Person such amount as may be required by applicable tax law, (*d*) the payment of any taxes (including estimated taxes) properly payable by the Liquidating Trust, (*e*) requesting any appropriate tax determinations, including, without limitation, a determination pursuant to section 505 of the Bankruptcy Code, (*f*) making tax elections and any tax decisions for and on behalf of the Liquidating Trust, (*g*) filing and prosecuting Claims for tax refunds to which the

Liquidating Trust may be entitled, and (*h*) conducting any tax audit or contests, and (*i*) in the event that the Liquidating Trust shall fail or cease to qualify as a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d), taking any and all necessary actions as it shall deem appropriate to have such assets treated as held by an Entity classified as a partnership for federal tax purposes;

(xix) invest and reinvest, pending distribution, any Cash held as part of the Liquidating Trust in accordance with Article 3.9, and liquidate such investments, as deemed appropriate by the Trust Administrator;

(xx) subject to applicable securities laws, if any, establish and maintain the Trust Website for the purpose of, among other things, providing notice of Liquidating Trust activities to Liquidating Trust Beneficiaries pursuant to Article 6.8;

(xxi) solely in a custodial capacity, accept the Retained Estate Records and administer such records in accordance with Article 8;

(xxii) undertake all administrative functions of the Liquidating Trust, including overseeing the winding down and termination of the Liquidating Trust in accordance with Article 9; and

(xxiii) take or refrain from taking any and all actions the Trust Administrator reasonably deems necessary or appropriate for the continuation, protection, and maximization of the Liquidating Trust Assets or to carry out the purposes of this Liquidating Trust Agreement.

3.3 Limitation of the Trust Administrator's Authority.

The Trust Administrator shall, on behalf of the Liquidating Trust, hold the Liquidating Trust out as a trust in the process of liquidation and not as an investment company or an ongoing business. Notwithstanding anything herein to the contrary, the Trust Administrator shall not (i) be authorized to engage in any trade or business, (ii) take actions inconsistent with the orderly liquidation of the Liquidation Trust Assets, as are required or contemplated by applicable law and this Liquidating Trust Agreement, or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Liquidating Trust as a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684 (or any successor thereto).

3.4 Tenure, Removal, and Replacement of the Trust Administrator.

(a) Term of Service. The Trust Administrator shall serve until: (i) the completion of the administration of the Liquidating Trust Assets and the Liquidating Trust, including the winding down of the Liquidating Trust, in accordance with this Agreement; (ii) termination of the Liquidating Trust in accordance with the terms of this Agreement; or (iii) the Trust Administrator's death, Disability, dissolution, liquidation, incapacity, resignation, or removal. In the event the Trust Administrator's appointment terminates by reason of death, Disability, dissolution, liquidation, resignation pursuant to Article 3.4(b), or removal pursuant to Article 3.4(c), the Trust Administrator shall be immediately compensated for all reasonable fees

and expenses accrued through the effective date of termination, whether or not previously invoiced.

(b) Resignation of the Trust Administrator. The Trust Administrator may resign by giving not less than thirty (30) days' prior written notice to the Bankruptcy Court and to the Liquidating Trust Beneficiaries pursuant to Article 6.8. Such resignation will become effective on the later to occur of: (i) the day specified in such notice, and (ii) the appointment of a successor Trust Administrator as provided herein and the acceptance by such successor Trust Administrator of such appointment. If a successor Trust Administrator is not appointed or does not accept its appointment within thirty (30) days following delivery of notice of resignation, the current Trust Administrator may file a motion with the Bankruptcy Court, upon notice and hearing, for the appointment of a successor Trust Administrator.

(c) Removal of the Trust Administrator. The Trust Administrator may be removed only for cause by a Final Order of the Bankruptcy Court, after notice and a hearing; *provided*, *however*, that the Trust Administrator may not be removed until a successor Trust Administrator has been named or is capable of being named immediately upon such removal. For purposes of removing the Trust Administrator, "cause" shall mean fraud, willful misconduct, or gross negligence.

3.5 Appointment of a Successor Trust Administrator.

(a) Appointment. A successor Trust Administrator may be appointed at any time by: (i) the current Trust Administrator, with the advice and consent of SIPC, or (ii) if the current Trust Administrator is unable to do so, SIPC. Such appointment shall be subject to Bankruptcy Court approval and prior notice to the Liquidating Trust Beneficiaries pursuant to Article 6.8.

(b) Acceptance of Appointment. Every successor Trust Administrator appointed hereunder shall execute, acknowledge, and deliver to the predecessor Trust Administrator and its Professionals an instrument accepting the appointment.

(c) Vesting of Rights. Immediately upon the appointment and acceptance of any successor Trust Administrator, all rights, powers, duties, authority, and privileges of the predecessor Trust Administrator hereunder will be vested in and undertaken by the successor Trust Administrator without any further act.

(d) Transfer of Trust Authority and Property. Upon the appointment and acceptance of a successor Trust Administrator, the predecessor Trust Administrator (or the duly appointed legal representative of a deceased or incapacitated Trust Administrator) shall, if applicable, when requested in writing by the successor Trust Administrator, execute and deliver an instrument or instruments conveying and transferring to such successor Trust Administrator upon the Liquidating Trust herein expressed, without recourse to the predecessor Trust Administrator, all the estates, properties, rights, powers, and trusts of such predecessor Trust Administrator, and shall duly assign, transfer, and deliver to such successor Trust Administrator all property and money held hereunder, and all other assets and documents relating to the

Liquidating Trust, the Liquidating Trust Assets, or the Liquidating Trust Interests then in its possession and held hereunder.

(e) Filing of Notice. The appointment and acceptance of a successor Trust Administrator will be evidenced by the successor Trust Administrator's filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor Trust Administrator, and the concurrent posting of a similar notice to the Trust Website.

3.6 Continuance of Liquidating Trust.

The death, Disability, dissolution, liquidation, resignation pursuant to Article 3.4(b), or removal pursuant to Article 3.4(c) of the Trust Administrator, as applicable, shall not operate to terminate the Liquidating Trust created by this Agreement or to revoke any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the Trust Administrator or any prior Trust Administrator.

3.7 Retention of Attorneys, Accountants, and Other Professionals.

(a) Retention. The Trust Administrator may, in its sole discretion, retain such Professionals as it deems necessary and reasonable to aid in the performance of its responsibilities pursuant to the terms of the Liquidating Trust Agreement without further order of the Bankruptcy Court, including, without limitation:

(i) any law firm(s) that the Trust Administrator determines is (are) necessary to perform such functions as may be appropriate to carry out the primary purposes of the Liquidating Trust, including Primary Counsel;

(ii) any independent public accounting firm(s) to, if necessary, audit the financial books and records of the Liquidating Trust, prepare and file all federal, state, and local tax returns and related tax forms on behalf of the Liquidating Trust that the Trust Administrator is obligated to prepare, provide, and file, and perform such other reviews and/or audits as the Trust Administrator may deem advisable to carry out the primary purposes of the Liquidating Trust; and

(iii) such other Professionals as the Trust Administrator deems necessary to carry out the purposes of the Liquidating Trust.

(b) Agreements. Pursuant to the terms of this Liquidating Trust Agreement, the Trust Administrator may enter into any agreement or execute any document required by or consistent with this Agreement to retain such Professionals as the Trust Administrator deems reasonable and necessary and shall perform all of the Liquidating Trust's obligations thereunder. The Trust Administrator may, as it deems reasonable and appropriate, engage such Professionals on a contingent fee basis as permitted by applicable law.

(c) Waiver of Conflicts. For the avoidance of doubt, prior employment in any capacity in the SIPA Proceeding on behalf of LBI, its estate, or any creditors shall not, subject to applicable rules of professional conduct, preclude the Liquidating Trust's retention of such

Professionals; *provided*, *however*, that such retention does not involve holding or representing any interest adverse to the interests of the Liquidating Trust, or otherwise preclude or impair the Trust Administrator from performing its duties under this Liquidating Trust Agreement.

3.8 Compensation of the Trust Administrator and Its Professionals.

(a) Compensation of the Trust Administrator. The Trust Administrator shall be entitled to reasonable compensation in fulfilling its duties pursuant to this Agreement, as provided for in this Article 3.8(a). The Trust Administrator shall invoice its fees for services rendered on an hourly basis through its Primary Counsel, in accordance with such firm's customary billing practices, as "Trust Administration Fees" (as such term is used herein) and then be compensated by such firm at the firm's sole discretion. The Trust Administrator's hourly rate will be as negotiated and agreed to between the Trust Administrator and SIPC. The Trust Administrator shall be entitled to the reimbursement of the Trust Administrator's reasonable and necessary expenses incurred while carrying out its duties as Trust Administrator by submitting such expenses through its Primary Counsel in accordance with such firm's customary billing practices. The hourly rate, compensation structure, and expense reimbursement structure for any subsequent Trust Administrator will be as negotiated and agreed to with SIPC. All compensation and expense reimbursements provided in accordance with this Article 3.8(a) shall be paid without any further order of the Bankruptcy Court.

(b) Compensation of Professionals. Subject to SIPC review and approval, the Trust Administrator shall pay all its Professionals reasonable compensation for services rendered and expenses incurred in accordance with this Liquidating Trust Agreement. Such Professionals shall not be required to file applications or any other documentation with the Bankruptcy Court to receive compensation for services rendered and reimbursement of expenses incurred.

(c) Review of Compensation. Within thirty (30) days of the last day of the month for which compensation is sought: (i) the Trust Administrator, through its Primary Counsel, shall provide a monthly statement, including detailed time records, to SIPC of the compensation and reimbursement of expenses that the Trust Administrator is entitled to for the preceding month for services provided to the Liquidating Trust; and (ii) each Professional shall provide a monthly statement, including detailed time records, to the Trust Administrator of the compensation and reimbursement of expenses incurred for the preceding month for services provided to the Liquidating Trust; *provided*, *however*, that failure of the Trust Administrator or any Professional to serve a monthly statement on the Trust Administrator or SIPC, as applicable, for any one or more months shall not waive or impair the right of such Person to subsequently seek compensation for all or any number of such months in a later statement delivered to the Trust Administrator or SIPC, as applicable. The Trust Administrator, its Professionals, and SIPC shall reasonably agree to adjustments of such invoices as necessary.

(d) Payment. The Trust Administration Fees shall be paid upon approval of such fees and expenses by the Trust Administrator or SIPC, as applicable, without necessity for review or approval by the Bankruptcy Court or any other Person or Entity. Payment of the Trust Administration Fees shall be payable out of the Operational Reserve.

3.9 Investment and Safekeeping of Liquidating Trust Assets.

The right and power of the Trust Administrator to invest the Liquidating Trust Assets, the proceeds thereof, or any income earned by the Liquidating Trust, including Cash held in the Operational Reserve, shall be limited to the right and power to invest such Liquidating Trust Assets only in Cash and U.S. Government securities as defined in section 2(a)(16) of the Investment Company Act; *provided*, *however*, that (a) the scope of any such permissible investments shall be further limited to include only those investments that a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise (including Rev. Proc. 94-45, 1994-2 C.B. 684), (b) the Trust Administrator may retain any Liquidating Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly liquidation of such assets, and (c) the Trust Administrator may expend the Liquidating Trust Assets (i) as reasonably necessary to meet contingent liabilities and maintain the value of the Liquidating Trust Assets during liquidation, (ii) to pay reasonable and documented administrative expenses (including, but not limited to, any taxes imposed on or with respect to the Liquidating Trust or the Liquidating Trust Assets or reasonable fees and expenses in connection with liquidating the Liquidating Trust Assets), subject in all cases to Article 6 of this Agreement, and (iii) to satisfy other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with this Agreement (including, as applicable, Article 6). Such investments shall mature in such amounts and at such times as, in the judgment of the Trust Administrator at the times such investments are made, are necessary, or are desirable with a view to providing funds when needed to make payments from the Liquidating Trust Assets. Any investment purchased with the Liquidating Trust Assets shall be deemed a part of the Liquidating Trust Assets. All interest, distributions, dividends and proceeds received by the Trust Administrator in respect of such investments shall be a part of the Liquidating Trust Assets.

3.10 Reporting; Books and Records.

(a) Fiscal Year. The fiscal year of the Liquidating Trust will begin on the first day of January and end on the last day of December of each year; *provided that* the first fiscal year of the Liquidating Trust will begin on the Effective Date and end on the last day of December of that same year, and the last fiscal year of the Liquidating Trust will begin on the first day of January of the year in which the Termination Date occurs and end on the Termination Date.

(b) Quarterly Reports. Beginning with the first quarter-end following the Effective Date and until the termination of the Liquidating Trust, within thirty (30) days after the end of each such quarter, the Trust Administrator shall issue quarterly reports including information concerning the activities of the Liquidating Trust, a description of the progress of liquidating the Liquidating Trust Assets and the making of distributions to Liquidating Trust Beneficiaries, and any other material information relating to the Liquidating Trust Assets and the administration of the Liquidating Trust for the reporting period. Such reports shall be filed with the Bankruptcy Court and made available on the Trust Website (unless otherwise required by law). The Trust Administrator shall not make available any report or disclosure (or the contents thereof) to any Liquidating Beneficiary in advance of the report or disclosure being posted to the

Trust Website; *provided, however*, that nothing herein shall restrict the Trust Administrator from communicating with a Liquidating Trust Beneficiary regarding nonmaterial or previously disclosed information regarding the Liquidating Trust and its administration; *provided further* that, to the extent the Trust Administrator discusses material information with a Beneficiary, such Beneficiary shall not be permitted to transfer any Liquidating Trust Interests until such material has been disclosed to all Beneficiaries through a quarterly report as provided for in this Article 3.10(b).

(c) Books and Records.

(i) The Trust Administrator shall maintain books and records relating to the assets of the Liquidating Trust and income of the Liquidating Trust and the payment of expenses of, and liabilities of Claims against or assumed by, the Liquidating Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified Cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting and securities law requirements of the Liquidating Trust. Nothing in this Liquidating Trust Agreement requires the Trust Administrator to file with the Bankruptcy Court any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for managing any payment or distribution out of the assets of the Liquidating Trust.

(ii) The books and records maintained by the Trust Administrator, as well as any and all other books and records obtained from LBI or the LBI estate, may be disposed of by the Trust Administrator at such time as the Trust Administrator determines that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Liquidating Trust or the Liquidating Trust Beneficiaries, or upon the dissolution of the Liquidating Trust; *provided*, *however*, that such disposition is in accordance with any relevant orders of the Bankruptcy Court and the relevant retention requirements under governing law, as applicable.

(d) Basis of Presentation. The Trust Administrator shall not be obligated to maintain or provide any information, as required by this Article 3.10, in accordance with U.S. Generally Accepted Accounting Principles. Nor shall the Trust Administrator be required to provide audited financial information in the ordinary course.

3.11 Compliance with Laws.

Any and all distributions of assets of the Liquidating Trust and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws.

3.12 Standard of Care.

The Trust Administrator shall perform the duties and obligations imposed on the Trust Administrator by this Liquidating Trust Agreement with reasonable diligence and care under the circumstances. As further described in Article 10, in no event shall the Trust

Administrator, acting in the capacity as the Trust Administrator or in any other capacity contemplated by this Liquidating Trust Agreement, or any of its duly designated agents, representatives, or Professionals, be liable for any act or omission taken or omitted to be taken by the Trust Administrator except for such of its own acts as shall constitute fraud, willful misconduct, or gross negligence, as determined by Final Order. The Trust Administrator may, in connection with the performance of its functions, and in its sole discretion, consult with its Professionals, and shall not be liable, in the absence of the Trust Administrator's fraud, willful misconduct, or gross negligence, for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Professionals. Notwithstanding such authority, the Trust Administrator shall be under no obligation to consult with its Professionals, and its good faith determination not to do so shall not result in the imposition of liability on the Trust Administrator, unless such determination is based on fraud, willful misconduct, or gross negligence, as determined by Final Order.

3.13 Reliance by the Trust Administrator.

(a) The Trust Administrator may rely, and shall be fully protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Trust Administrator to be genuine and to have been signed or presented by the proper party or parties, in each case without obligation to satisfy itself that the same was given in good faith and without responsibility for errors in delivery, transmission, or receipt.

(b) The Trust Administrator may consult with its Professionals and shall be, in the absence of the Trust Administrator's fraud, willful misconduct, or gross negligence, fully protected in respect of any action taken or suffered by the Trust Administrator in accordance with the opinion of such Professional (whether or not written).

(c) The Trust Administrator may at any time seek instructions from SIPC or the Bankruptcy Court concerning the administration of the Liquidating Trust, the Liquidating Trust Assets, this Liquidating Trust Agreement, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken by the Trust Administrator.

3.14 No Bond Required.

The Trust Administrator (including any successor Trust Administrator appointed pursuant to Article 3.5) shall not be required to give any bond, surety, or other security in any jurisdiction for the performance of any of its duties pursuant to the terms of this Liquidating Trust Agreement.

ARTICLE 4

LIQUIDATING TRUST INTERESTS

4.1 Liquidating Trust Interests.

On the Effective Date, the Trust Administrator shall issue one million (1,000,000) Liquidating Trust Interests to the Holders of Allowed Claims in accordance with Article 4.2 of this Agreement in exchange for each Holder's Allowed Claim(s). For the avoidance of doubt, such exchange shall be in full and final satisfaction of such Allowed Claims.

4.2 Allocation of Liquidating Trust Interests.

On the Effective Date, each Holder of an Allowed Claim shall be allocated a number of Liquidating Trust Interests equal to the percentage, to the nearest ten-thousandth, of such Holder's Allowed Claim(s) as a proportion of the aggregate amount of all Allowed Claims being exchanged for Liquidating Trust Interests. Any Holder of more than one Allowed Claim shall have its positions aggregated such that each Holder shall be issued a single allocation of Liquidating Trust Interests. The Trust Order shall have annexed to it as an exhibit a list of each Holder of an Allowed Claim and such Holder's allocation of Liquidating Trusts Interests.

4.3 Interests Beneficial Only.

The ownership of a Liquidating Trust Interest shall not entitle any Liquidating Trust Beneficiary to any title in or to the Liquidating Trust Assets as such (which title shall be vested in the Liquidating Trust) or to any right to call for a partition or division of the Liquidating Trust Assets or to require an accounting.

4.4 Evidence of Beneficial Interests.

The Liquidating Trust Interests shall, in accordance with this Agreement, be represented by appropriate book entries on the books and records of the Liquidating Trust and not by certificates. No evidence of any sort will be distributed to the Liquidating Trust Beneficiaries with respect to their Liquidating Trust Interests; *provided, however*, that a Liquidating Trust Beneficiary may request, and the Trust Administrator shall provide, a statement of such Liquidating Trust Beneficiary's Liquidating Trust Interests.

4.5 Securities Law Registration.

The parties to this Liquidating Trust Agreement intend that the Liquidating Trust Interests shall not constitute "securities" under applicable laws, but none of the parties represents or warrants that the Liquidating Trust Interests shall not be securities or shall be entitled to exemption from registration under applicable securities laws. In the event that the Liquidating Trust Interests are deemed to constitute securities, the parties hereto intend that the issuance of Liquidating Trust Interests pursuant to this Agreement shall be exempt from registration under the Securities Act (and any applicable state and local laws requiring registration of securities) pursuant to applicable to securities laws and section 1145 of the Bankruptcy Code (as made applicable to the SIPA Proceeding by section 78fff(b) of SIPA and through the Trust Order).

Notwithstanding the foregoing, nothing herein shall be deemed to preclude the Trust Administrator from amending this Liquidating Trust Agreement in accordance with Article 11 hereof to make such changes as are deemed necessary or appropriate by the Trust Administrator, with the advice of counsel, to ensure that the Liquidating Trust is not subject to registration or reporting requirements of the Securities Act, Exchange Act, TIA, or the Investment Company Act. The Liquidating Trust Interests shall not have consent or voting rights or otherwise confer on the Liquidating Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken by the Trust Administrator in connection with the Liquidating Trust. Subject to Article 4.6 hereof, the Trust Administrator shall not take any action to establish or support the establishment of an active trading market with respect to the Liquidating Trust Interests.

4.6 Limitation on Transferability.

(a) The Liquidating Trust Interests are non-transferable and non-assignable during the term of this Agreement except as provided in this Article 4.6.

(b) Assignments of Liquidating Trust Interests by operation of law, including pursuant to the laws of descent and distribution, shall be deemed valid by the Trust Administrator upon receipt by the Trust Administrator of information sufficient, in the Trust Administrator's sole discretion, to substantiate such assignment by operation of law; *provided*, *however*, that the Trust Administrator may rely upon such evidence without any independent investigation.

(c) All other transfers of Liquidating Trust Interests that do not qualify under Article 4.6(a) shall be deemed valid by the Trust Administrator upon receipt by the Trust Administrator of information sufficient, in the Trust Administrator's sole discretion, to substantiate the transfer of the Liquidating Trust Interest(s) from the transferring Beneficiary to the transferee and to ensure proper withholding of taxes with respect to income allocable to the transferring Beneficiary or the transferee. The Trust Administrator, in its sole discretion, may refuse to approve a proposed transfer that could (i) cause the Liquidating Trust to be subject to Entity-level taxation for U.S. federal income tax purposes or otherwise lose its grantor trust status or (ii) require the Liquidating Trust to comply with the registration and reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act.

(d) Upon the Trust Administrator's approval of an assignment or a transfer pursuant to this Article 4.6, the Trust Administrator shall notify the relevant parties of the approval of such transfer and shall cause the Trust Registrar to update the Registry to reflect such transfer. Pursuant to Article 4.7(c), the transfer will only be effective once it is reflected on the Registry.

(e) The Trust Administrator may add such restrictions upon transfer and other terms to this Liquidating Trust Agreement as the Trust Administrator deems necessary or appropriate, with the advice of its Professionals, to permit or facilitate such transfer under applicable securities and other laws.

4.7 Records of Liquidating Trust Interests.

(a) Appointment of Liquidating Trust Registrar. The Trust Administrator may appoint the Trust Registrar for the purpose of registering Liquidating Trust Interests as herein provided. The Trust Registrar may be a duly qualified institution or the Trust Administrator. For its services hereunder, the Trust Registrar shall be entitled to receive reasonable compensation; *provided*, *however*, that if the Trust Registrar is the Trust Administrator, the Trust Administrator will be compensated in accordance with Article 3.8 for its duties as the Trust Registrar in addition to its compensation as the Trust Administrator.

(b) Registry of Liquidating Trust Interests. The Trust Administrator shall cause to be kept at the office of the Trust Registrar, or at such other place or places as shall be designated by the Trust Administrator from time to time, a registry of the Holders of the Liquidating Trust Interests, which shall be maintained pursuant to such reasonable regulations as the Trust Administrator and the Trust Registrar may prescribe. The Trust Registry shall be the sole record of title with respect to Liquidating Trust Interests.

(c) Transfers of Liquidating Trust Interests. To the extent that a transfer of a Liquidating Trust Interest is permitted pursuant to Article 4.6, such transfer shall not be effected until (i) such action is approved by the Trust Administrator and (ii) the Registry has been updated to reflect such action.

(d) Access to the Registry by Liquidating Trust Beneficiaries. Liquidating Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Trust Registrar and the Trust Administrator, and in accordance with reasonable regulations prescribed by the Trust Registrar and the Trust Administrator, to inspect and, at the expense of the Liquidating Trust Beneficiary, to make copies of the Registry, solely as it relates to such Liquidating Trust Beneficiary's Liquidating Trust Interest.

4.8 Conflicting Claims.

(a) If any conflicting claims or demands are made or asserted with respect to a Liquidating Trust Interest under this Agreement, or if there is any disagreement between the assignees, transferees, heirs, representatives, or legatees succeeding to all or a part of such a Liquidating Trust Interest resulting in adverse claims or demands being made in connection with such Liquidating Trust Interest, then, in any of such events, the Trust Administrator shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

(b) The Trust Administrator shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court or (ii) all differences have been resolved by a valid written agreement among all such parties, to the satisfaction of the Trust Administrator, which agreement shall include a complete release of the Liquidating Trust and Trust Administrator. Until the Trust Administrator receives written notice that one of the conditions of the preceding sentence is met, the Trust Administrator may deem and treat, as the absolute owner of the Liquidating Trust Interest, the Beneficiary identified as the owner of that Liquidating Trust Interest in the books and records maintained by the Trust

Administrator or the Registry. The Trust Administrator may deem and treat such Beneficiary as the absolute owner for purposes of receiving distributions and any payments on account thereof for federal and state income tax purposes and for all other purposes whatsoever.

(c) In acting or refraining from acting under and in accordance with this Article 4.8, the Trust Administrator shall be fully protected and incur no liability to any purported Beneficiary or any other Person or Entity pursuant to this Agreement.

4.9 Absolute Owners.

The Trust Administrator may deem and treat each Liquidating Trust Beneficiary of record in the Registry as the absolute owner of such Liquidating Trust Interest, for the purposes of receiving distributions and payments on account thereof, for federal and state income tax purposes, and for all other purposes whatsoever. Unless transferred in accordance with Article 4.6, the Trust Administrator shall not treat any other Person or Entity as the Holder of such Liquidating Trust Interests or a Liquidating Trust Beneficiary.

4.10 No Standing.

No Liquidating Trust Beneficiary shall have standing to direct the Trust Administrator to act, to refrain from acting, or to institute any action or proceeding at law or in equity against any party upon or with respect to the Liquidating Trust Assets.

ARTICLE 5

DISTRIBUTIONS

5.1 Annual Distribution; Withholding.

(a) Commencing after the first anniversary of the Effective Date, the Trust Administrator shall distribute to the Liquidating Trust Beneficiaries at least once every calendar year all Net Liquidating Trust Proceeds in accordance with the provisions of this Article 5.

(b) All such distributions shall be based on the *pro rata* share of Liquidating Trust Interests held by a Liquidating Trust Beneficiary.

(c) The Trust Administrator may withhold from amounts distributable to any Liquidating Trust Beneficiary any and all amounts, determined in the Trust Administrator's sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

(d) No distributions shall be made in excess of the Allowed amount of the Liquidating Trust Beneficiary's Claim against the LBI estate.

5.2 Disbursing Agent.

The Trust Administrator shall have the authority to enter into agreements with one or more Disbursing Agents to facilitate the distributions required under this Agreement. The

Trust Administrator may pay to the Disbursing Agent(s), in accordance with Article 3.8, all reasonable and documented fees and expenses of the Disbursing Agent(s) without the need for any approvals, authorizations, actions, or consents.

5.3 Manner of Payment or Distribution.

(a) At least thirty (30) days prior to the Distribution Record Date, the Trust Administrator shall post notice of the Distribution Record Date and the Scheduled Distribution Date to the Trust Website.

(b) For any Liquidating Trust Beneficiaries entitled to receive a distribution pursuant to this Article 5, the Trust Administrator shall cause each Liquidating Trust Beneficiary to be paid a single payment in respect of such Beneficiary's aggregate Liquidating Trust Interests.

(c) The Trust Administrator shall use reasonable efforts to cause any distributions made pursuant to this Article 5 to be completed by the Scheduled Distribution Date.

(d) Any distribution of Cash by the Liquidating Trust shall be made by the Trust Administrator or Disbursing Agent via (i) a check or (ii) a wire transfer.

(e) The Trust Administrator will be entitled to deduct and withhold any federal, state, or local taxes pursuant to Article 7.4 from any payments made with respect to Liquidating Trust Interests, as appropriate. All such amounts withheld shall be treated as amounts distributed to such Beneficiaries for all purposes of this Agreement.

(f) Each Beneficiary that has received a distribution of Cash in accordance with this Agreement will have sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding, or other tax obligation, on account of such distribution.

5.4 Delivery of Liquidating Trust Distributions.

All distributions under this Agreement to any Liquidating Trust Beneficiary shall be made at the address of such Beneficiary as set forth in the Registry as of the Distribution Record Date. In the event that any distribution to any Liquidating Trust Beneficiary is returned as undeliverable or is otherwise unclaimed by the Liquidating Trust Beneficiary, the Trust Administrator shall have no obligation to locate or attempt to locate or otherwise notify such Liquidating Trust Beneficiary, and such distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and forfeited at the expiration of six (6) months from the applicable distribution date. After such date, all "unclaimed property" or interests in property shall revert to the Liquidating Trust (notwithstanding any applicable federal or state escheat, abandoned or unclaimed property laws to the contrary) for redistribution in accordance with the terms of this Agreement, and the claim of any Beneficiary to such property or interest in property shall be forever barred.

5.5 Distributions Regarding Conflicting Claims.

The Trust Administrator may elect to cause the Liquidating Trust to make no payment or distribution with respect to a Liquidating Trust Interest subject to conflicting claims or demands as described in Article 4.8, or any part thereof, and to refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. Neither the Liquidating Trust nor the Trust Administrator shall be or become liable to any of such parties for their refusal to comply with any such conflicting claims or demands, nor shall the Liquidating Trust or Trust Administrator be liable for interest on any funds which may be so withheld.

5.6 Inapplicability of Unclaimed Property or Escheat Laws.

Unclaimed property held by the Liquidating Trust shall not be subject to the unclaimed property or escheat laws of the United States, any state, or any local governmental unit.

5.7 Establishment of Available Cash.

Prior to making any distributions, the Trust Administrator shall determine the amount of available Cash on hand in excess of the current and anticipated Operational Reserve.

5.8 Cash Distributions.

(a) Notwithstanding anything herein to the contrary, the Trust Administrator shall not be required to make partial distributions or payments of fractions of Liquidating Trust Interests to a Liquidating Trust Beneficiary.

(b) The Trust Administrator may, but shall not be required to, make a Cash distribution to any Liquidating Trust Beneficiary in an amount less than $250. Any funds withheld from distribution pursuant to this Article 5.8(b) shall be held in a separate reserve (the "***Distribution Reserve***") for the benefit of such Liquidating Trust Beneficiary until either (i) the amount held has an economic value greater than or equal to $250 as of the Distribution Record Date, or (ii) the Trust Administrator elects to make a final distribution of the Liquidating Trust. Liquidating Trust Beneficiaries whose distributions are withheld pursuant to this Article 5.8(b) shall have no title or right to, or possession, management, or control of the amounts held in the Distribution Reserve. For the avoidance of doubt, the Liquidating Trust and the Trust Administrator shall not be liable for interest on any funds that may be so withheld pursuant to this Article 5.8(b).

(c) Notwithstanding the foregoing, all available Cash in excess of the current and anticipated Trust Administration Fees shall be distributed in the final distribution of the Liquidating Trust.

ARTICLE 6

TRUST ADMINISTRATION

6.1 Governance of the Liquidating Trust.

The Liquidating Trust will be administered and controlled by the Trust Administrator.

6.2 Funding of Liquidating Trust.

(a) On the Effective Date, the Liquidating Trust shall be funded with Cash from the LBI estate in the amount of fourteen million U.S. dollars ($14,000,000) (the "***Liquidating Trust Funding***"). Any failure or inability of the Liquidating Trust to obtain funding will not affect the enforceability of the Liquidating Trust; *provided, however*, that in no event shall SIPC provide the Liquidating Trust Funding.

(b) On or after the Effective Date, the Trust Administrator shall establish the Liquidating Trust Account and deposit the Liquidating Trust Funding into the Liquidating Trust Account. Thereafter, the Trust Administrator shall deposit all Liquidating Trust Proceeds into the Liquidating Trust Account.

6.3 Management of Liquidating Trust Assets.

(a) Except as otherwise provided in this Agreement, the Trust Administrator may control and exercise authority over the Liquidating Trust Assets, over the management and disposition thereof, and over the management and conduct of the Liquidating Trust, in each case, as necessary or advisable to enable the Trust Administrator to fulfill the intents and purposes of this Agreement (including, without limitation, those stated in Article 2.5).

(b) No Person or Entity dealing with the Liquidating Trust will be obligated to inquire into the authority of the Trust Administrator in connection with the acquisition, protection, conservation, management or disposition of the Liquidating Trust Assets.

6.4 Prosecution and Resolution of Class Action Claims.

The Trust Administrator shall have the exclusive right, power, and interest to pursue, settle, or abandon all Class Action Claims. The Trust Administrator may settle any Class Action Claim in its reasonable business judgment without the need for approval by the Bankruptcy Court.

6.5 Liquidation of Liquidating Trust Assets.

The Trust Administrator shall, in an expeditious but orderly manner and subject to the other provisions of this Agreement, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions in accordance with the terms of this Agreement, and not unduly prolong the existence of the Liquidating Trust. The Trust Administrator shall exercise reasonable business judgment and liquidate the Liquidating Trust Assets to maximize net

recoveries for the Liquidating Trust Beneficiaries, *provided*, *however*, that the Trust Administrator shall be entitled to take into consideration the risks, timing, and costs of potential actions in making determinations as to the methodologies to be employed to maximize such recoveries. Such liquidations may be accomplished through the prosecution, compromise and settlement, abandonment, or dismissal of any or all of the Liquidating Trust Assets, or otherwise through the sale or other disposition of the Liquidating Trust Assets (in whole, in part, or in any combination). The Trust Administrator may incur any reasonable and necessary expenses in connection with the liquidation of the Liquidating Trust Assets and distribution of the Net Liquidating Trust Proceeds. If, in the Trust Administrator's sole judgment, any non-Cash Liquidating Trust Assets cannot be sold in a commercially reasonable manner or the Trust Administrator believes in good faith that such property has inconsequential value to the Liquidating Trust or its Beneficiaries, the Trust Administrator shall have the right to cause the Liquidating Trust to abandon or otherwise dispose of such property.

6.6 Collection of Liquidating Trust Proceeds.

The Trust Administrator shall collect all Liquidating Trust Proceeds earned with respect to the Liquidating Trust Assets, which Liquidating Trust Proceeds shall thereupon be added to the Liquidating Trust Assets and held as a part thereof (and which title shall be vested in the Liquidating Trust) in the Liquidating Trust Account.

6.7 Payment of Trust Administration Fees.

(a) The Trust Administration Fees shall be paid from the Operational Reserve.

(b) The Operational Reserve shall initially be funded with funds from the Liquidating Trust Funding and thereafter may be funded from time to time with additional Cash in an amount determined by the Trust Administrator to be reasonably necessary to cover the actual and anticipated Trust Administration Fees or to otherwise conduct the affairs of the Liquidating Trust. The Liquidating Trust shall not require any Beneficiary to fund expenses of the Liquidating Trust, and the Liquidating Trust shall not make any demands for Cash from the Beneficiaries.

(c) The Operational Reserve shall be used solely as the Trust Administrator determines is reasonably necessary (i) to meet contingent liabilities and to maintain the value of the Liquidating Trust Assets, (ii) to pay the Trust Administration Fees, and (iii) to satisfy other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with this Agreement. Upon the Termination Date, after all Trust Administration Fees have been paid, the remaining Operational Reserve shall be added to the Liquidating Trust Assets and distributed in accordance with Article 9.1(b).

(d) From and after the Effective Date, the Trust Administrator shall pay from the Operational Reserve the Trust Administration Fees in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court.

(e) Notwithstanding any other provision of this Liquidating Trust Agreement to the contrary, the Trust Administrator shall not be required to take any action or enter into or

maintain any Claim, demand, action, or proceeding relating to the Liquidating Trust unless it shall have sufficient funds in the Operational Reserve for that purpose.

(f) The Liquidating Trust shall not have recourse to the Trust Administrator, any of its Professionals, or SIPC for any Trust Administration Fees or other costs and expenses of the Liquidating Trust.

6.8 Notice to Liquidating Trust Beneficiaries.

Any notice or report required to be provided by the Trust Administrator to the Liquidating Trust Beneficiaries pursuant to this Agreement may be accomplished by publication of such notice or report on the Trust Website in lieu of sending actual written notice to the Liquidating Trust Beneficiaries. The Trust Website shall have the functionality to send electronic notifications of new information or notices to any Person or Entity that requests them. The Liquidating Trust Beneficiaries may elect to receive notice of updates to the Trust Website automatically via electronic communication by providing their electronic mail addresses to the Trust Registrar; *provided*, *however*, that the Trust Administrator shall not be obligated to provide actual written notice to any Liquidating Trust Beneficiaries that do not make such election.

ARTICLE 7

TAX MATTERS

7.1 Liquidating Trust.

The Trust will be treated as a "liquidating trust" within the meaning of Treasury Regulations section 301.7701-4(d) and a "grantor trust" pursuant to IRC sections 671-677 for U.S. federal income tax purposes.

7.2 Federal Income Tax Reporting.

(a) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Trust Administrator of a private letter ruling if the Trust Administrator so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Trust Administrator), the Trust Administrator shall file returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulations section 1.671-4(a) and in accordance with this Article 7 and, to the extent permitted by applicable law, shall report consistently with the foregoing for applicable state and local income tax purposes. The Trust Administrator shall also annually send or cause to be sent to each Liquidating Trust Beneficiary a separate statement setting forth such Liquidating Trust Beneficiary's share of items of income, gain, loss, deduction, or credit and will instruct all such Beneficiaries to report such items on their federal and applicable state and local income tax returns or to forward the appropriate information to such Liquidating Trust Beneficiary's underlying beneficial owners with instructions to utilize such information in preparing their federal and applicable state and local income tax returns. The Trust Administrator shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any governmental unit and pay taxes, if any, properly payable by the Liquidating Trust.

(b) As soon as reasonably practicable after the Effective Date, the Trust Administrator shall, in its sole discretion, determine the fair market value as of the Effective Date of all assets transferred to the Liquidating Trust. Such fair market value determinations shall be used consistently by the Liquidating Trust, the Trust Administrator, the SIPA Trustee, and each Liquidating Trust Beneficiary for all United States federal income tax purposes. The Trust Administrator may make subsequent valuations available from time to time for all parties to the Liquidating Trust, to the extent relevant to such parties for tax purposes.

(c) The Trust Administrator may request an expedited determination of taxes of the Liquidating Trust under section 505(b) of the Bankruptcy Code through the effective date of the dissolution of the Liquidating Trust.

(d) For all federal, state, and local income tax purposes, the Trust Administrator and the Liquidating Trust Beneficiaries will treat undivided interests in the initial Liquidating Trust Assets as (i) transferred by the SIPA Trustee to the Liquidating Trust Beneficiaries in full and final satisfaction of their Allowed Claims, and (ii) immediately thereafter, transferred by the Liquidating Trust Beneficiaries to the Liquidating Trust in exchange for Liquidating Trust Interests.

(e) For federal income tax purposes, the Liquidating Trust Beneficiaries will be treated as the grantors and beneficiaries of the Liquidating Trust and deemed owners of the Liquidating Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local tax purposes.

7.3 Allocations of Liquidating Trust Taxable Income.

(a) Allocations of Liquidating Trust taxable income or loss of the Liquidating Trust shall be allocated among the Liquidating Trust Beneficiaries in proportion to their Liquidating Trust Interests. The Liquidating Trust Beneficiaries will be responsible for payment of any taxes due with respect to any taxable income allocated to them.

(b) To the extent of any transfers of Liquidating Trust Interests in accordance with Article 4.6 herein, the Trust Administrator, in its sole discretion, shall allocate taxable income and loss between a transferor and its transferee, and such allocation shall be used by such transferor and transferee for all tax purposes.

7.4 Withholding of Taxes.

(a) The Trust Administrator shall be entitled to deduct and withhold and pay to the appropriate governmental unit all amounts required to be deducted or withheld pursuant to the IRC or any provision of any state, local, or non-U.S. tax law with respect to any payment or distribution to, or income allocable to, the Liquidating Trust Beneficiaries. Notwithstanding the above, the Liquidating Trust Beneficiary that is to receive a distribution pursuant to the Liquidating Trust Agreement shall have the sole and exclusive responsibility for the satisfaction and payment of any taxes imposed on such Beneficiary by any governmental authority, including income, withholding, and other tax obligations, on account of such distribution. All such amounts deducted or withheld shall be treated as amounts distributed to such Liquidating Trust Beneficiaries for all purposes of this Agreement. If the Trust Administrator fails to withhold in

respect of amounts received or distributable to, or income allocable to, any such Liquidating Trust Beneficiary and the Trust Administrator is later held liable for the amount of such withholding, such Liquidating Trust Beneficiary shall reimburse the Trust Administrator for such liability.

(b) The Trust Administrator is authorized to take all actions necessary to comply with applicable withholding and recording requirements, including collecting such tax information from the Liquidating Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as the Trust Administrator, in its sole discretion, deems necessary to effectuate this Agreement. As a condition to receiving distributions under the Liquidating Trust Agreement, all Liquidating Trust Beneficiaries may be required to identify themselves to the Trust Administrator and provide tax information and the specifics of their Liquidating Trust Interests, to the extent the Trust Administrator deems appropriate, including an IRS Form W-9 or, in the case of Liquidating Trust Beneficiaries that are not "United States persons" within the meaning of IRC section 7701(a)(30), certification of foreign status on the applicable IRS Form W-8.

(c) The Trust Administrator may refuse to make a distribution to any Liquidating Trust Beneficiary that fails to furnish information required pursuant to Article 7.4(b) in a timely fashion, until such information is delivered; *provided*, *however*, that if a Liquidating Trust Beneficiary subsequently delivers such information, upon the delivery of such information, the Trust Administrator shall make the distribution to which the Liquidating Trust Beneficiary is entitled, without interest.

ARTICLE 8

CUSTODY OF LBI ESTATE DATA

8.1 Custody of Retained Estate Records.

Immediately prior to the Effective Date, the SIPA Trustee shall deliver or cause to be delivered to the Liquidating Trust the Retained Estate Records, whether held by the SIPA Trustee, the LBI estate, their respective agents, advisors, attorneys, accountants, or any other Professionals, solely for the limited purpose of holding such Retained Estate Records, as custodian, for the duration of the applicable retention period. For the avoidance of doubt, the Liquidating Trust shall not succeed to any rights or obligations of the LBI estate in connection with the maintenance of the Retained Estate Records, and shall hold such Retained Estate Records as a custodian solely for the purpose of administrative ease. In no event shall the Retained Estate Records be considered Liquidating Trust Assets.

8.2 Administration of the Retained Estate Records.

In its custodial capacity, the Trust Administrator shall be authorized to review the applicable retention requirements and to abandon and destroy the Retained Estate Records upon the expiration of all such applicable retention requirements in its sole discretion and without further notice. For the avoidance of doubt, the Trust Administrator may abandon and destroy the Retained Estate Records on an individual basis or collectively, provided that all applicable

retention requirements have expired and that such abandonment and destruction complies with all relevant duties.

8.3 Costs of the Retained Estate Records.

The Estate Fees shall not be chargeable to the Liquidating Trust, and shall instead be payable from the Estate Escrow Account.

ARTICLE 9

DURATION AND TERMINATION OF THE LIQUIDATING TRUST

9.1 Duration and Termination of the Liquidating Trust.

(a) The Trust Administrator and the Liquidating Trust may be discharged or dissolved, as the case may be, at such time as (i) all of the Liquidating Trust Assets have been distributed pursuant to this Agreement, (ii) the Trust Administrator determines, in its sole discretion, that the administration of any remaining Liquidating Trust Assets is not likely to yield sufficient additional Net Liquidating Trust Proceeds to justify further pursuit, or (iii) all distributions required to be made by the Trust Administrator pursuant this Agreement have been made. The Liquidating Trust shall have an initial term of five (5) years. At any time, within six months of the Trust's termination, the Bankruptcy Court, upon motion of the Trust Administrator, may extend the term of the trust for one (1) year, if such extension is necessary to the liquidating purpose of the Liquidating Trust and in the best interest of the Beneficiaries. The Bankruptcy Court may approve multiple extensions of the term of the Liquidating Trust, but all such extensions may not exceed three (3) years.

(b) The Liquidating Trust may be terminated earlier than its scheduled termination if, at any time, the Trust Administrator determines that the expense of administering the Liquidating Trust so as to make a final distribution to the Liquidating Trust Beneficiaries is likely to exceed the value of the Liquidating Trust Assets then remaining in the Liquidating Trust. In such instance, the Trust Administrator may apply to the Bankruptcy Court for authority to: (i) reserve any amount necessary to dissolve the Liquidating Trust, including any and all amounts required to provide for its own costs and expenses; (ii) transfer to SIPC, or SIPC's designee, any remaining Liquidating Trust Assets; and (iii) dissolve the Liquidating Trust (all of the foregoing actions in clauses (i) through (iii) being referred to as the "***Dissolution Process***").

9.2 Continuance of the Liquidating Trust for Winding Down.

(a) During the Dissolution Process, the Trust Administrator, solely for the purpose of liquidating and winding down the affairs of the Liquidating Trust, shall continue to act as such until its duties have been fully performed. During the Dissolution Process, the Trust Administrator shall continue to be entitled to receive reasonable compensation pursuant to Article 3.8, until such time as the Dissolution Process is completed.

(b) Following the Termination Date, the Trust Administrator shall not be obligated to retain the books, records, the Registry, and certificates and other documents and files that have been delivered to or created by the Trust Administrator in connection with the

administration of the Liquidating Trust. At the Trust Administrator's sole discretion, all of such records and documents may, but need not, be destroyed at any time after the Termination Date. For the avoidance of doubt, the Trust Administrator shall have no continuing obligations to maintain the Retained Estate Records, which shall be disposed of upon the expiration of the relevant record retention requirements in accordance with Article 8.2, after the Termination Date.

(c) Except as otherwise specifically provided herein, upon the Termination Date, the Trust Administrator shall have no further duties or obligations hereunder.

ARTICLE 10

LIMITATIONS OF LIABILITY AND INDEMNIFICATION

10.1 No Further Liability.

(a) The Trust Administrator and its Professionals shall have no liability for any actions or omissions in accordance with this Agreement or with respect to the Liquidating Trust unless arising out of such Person's or Entity's own fraud, willful misconduct, or gross negligence, as determined by Final Order. Unless arising out of such Person's own fraud, willful misconduct, or gross negligence, as determined by Final Order, in performing its duties under this Agreement, the Trust Administrator and its Professionals (as applicable) shall have no liability for any action taken by such Person or Entity in accordance with the advice of the Professionals retained by the Trust Administrator pursuant to Article 3.7.

(b) Without limiting the generality of the foregoing, the Trust Administrator and its Professionals may rely without independent investigation on copies of orders of the Bankruptcy Court reasonably believed by such Person or Entity to be genuine and shall have no liability for actions taken in reliance thereon.

(c) None of the provisions of this Agreement shall require the Trust Administrator or its Professionals to expend or risk their own funds or otherwise incur personal financial liability in the performance of any of their duties hereunder or in the exercise of any of their rights and powers hereunder.

(d) Each of the Trust Administrator and its Professionals may rely without inquiry upon writings delivered to such Person or Entity pursuant to this Agreement that such Person or Entity reasonably believes to be genuine and to have been properly given.

(e) Notwithstanding the foregoing, nothing in this Article 10.1 shall relieve the Trust Administrator and its Professionals from any liability for any actions or omissions arising out of such Person's or Entity's fraud, willful misconduct, or gross negligence, as determined by Final Order.

(f) The Trust Administrator shall not be held liable for any action taken or omitted to be taken with the express approval of the Bankruptcy Court or of SIPC.

(g) Neither the termination of this Agreement nor its amendment, modification or repeal of this Article 10.1 shall adversely affect any right or protection of the Trust Administrator and its Professionals that exists at the time of such amendment, modification, or repeal.

10.2 Indemnification.

(a) From and after the Effective Date, each of the SIPA Trustee, his Professionals, the Trust Administrator, its Professionals, SIPC, and its Professionals (each, a "***Liquidating Trust Indemnified Party***," and collectively, the "***Liquidating Trust Indemnified Parties***") shall be, and hereby is, indemnified by the Liquidating Trust, to the fullest extent permitted by applicable law, from and against any and all Claims, debts, dues, accounts, actions, suits, causes of action, bonds, covenants, judgments, damages, attorneys' fees, defense costs, taxes, and other assertions of liability arising out of any such Liquidating Trust Indemnified Party's exercise of what such Liquidating Trust Indemnified Party reasonably understands to be its powers or the discharge of what such Liquidating Trust Indemnified Party reasonably understands to be its duties conferred by this Agreement, any order of the Bankruptcy Court entered pursuant to, or in furtherance of, this Agreement, applicable law, or otherwise (except only for actions or omissions to act to the extent determined by a Final Order to be due to such Liquidating Trust Indemnified Party's own fraud, willful misconduct, or gross negligence on and after the Effective Date). The foregoing indemnification shall also extend to matters directly or indirectly in connection with, arising out of, based on, or in any way related to: (i) this Agreement; (ii) the services to be rendered pursuant to this Agreement; (iii) any document or information, whether oral or written, referred to herein or supplied to the Trust Administrator; or (iv) proceedings by or on behalf of any Liquidating Trust Beneficiary or any creditor of the Liquidating Trust.

(b) The Trust Administrator shall, on demand, advance or pay promptly, at the election of the Liquidating Trust Indemnified Party, solely out of the Liquidating Trust Assets, on behalf of each Liquidating Trust Indemnified Party, attorneys' fees and other expenses and disbursements to which such Liquidating Trust Indemnified Party would be entitled pursuant to the foregoing indemnification provision; *provided, however*, that any Liquidating Trust Indemnified Party receiving any such advance shall execute a written undertaking to repay such advance if a court of competent jurisdiction ultimately determines, by Final Order, that such Liquidating Trust Indemnified Party is not entitled to indemnification hereunder due to such Person's or Entity's own fraud, willful misconduct, or gross negligence.

(c) Any indemnification Claim of a Liquidating Trust Indemnified Party shall be entitled to a priority distribution from the Liquidating Trust Assets, ahead of the Liquidating Trust Interests and any other Claim to or interest in such assets.

(d) In any matter covered by this Article 10, any party entitled to indemnification shall have the right to employ such party's own separate counsel, at the Liquidating Trust's expense, subject to the foregoing terms and conditions. In addition, the Trust Administrator shall purchase insurance coverage, as provided in Article 3.2(iv) hereof, using funds from the Liquidating Trust Assets.

(e) The indemnification provided under this Article 10 shall survive the death, dissolution, resignation, or removal, as may be applicable, of the Trust Administrator or any other Liquidating Trust Indemnified Party and shall inure to the benefit of the Trust Administrator's and each other Liquidating Trust Indemnified Party's respective heirs, successors, and assigns.

(f) The foregoing indemnity in respect of any Liquidating Trust Indemnified Party shall survive the termination of such Liquidating Trust Indemnified Party from the capacity for which such party is indemnified. Termination or modification of this Agreement shall not affect any indemnification rights or obligations set forth herein.

(g) The Trust Administrator may, in its sole discretion, cause the Liquidating Trust to indemnify any Person or Entity who is not a Liquidating Trust Indemnified Party for any loss, cost, damage, expense, or liability for which a Liquidating Trust Indemnified Party would be entitled to mandatory indemnification under this Article 10.

(h) Any Liquidating Trust Indemnified Party may waive the benefits of indemnification under this Article 10, but only by an instrument in writing executed by such Liquidating Trust Indemnified Party.

(i) The rights to indemnification under this Article 10 are not exclusive of other rights that any Liquidating Trust Indemnified Party may otherwise have at law or in equity, including, without limitation, common law rights to indemnification or contribution. Nothing in this Article 10 will affect the rights or obligations of any Person or Entity (or the limitations on those rights or obligations) under any other agreement or instrument to which that Person or Entity is a party. Further, the Trust Administrator hereby agrees: (i) that the Liquidating Trust is the indemnitor of first resort (*i.e.*, in the event any Liquidating Trust Indemnified Party has the right to receive indemnification from one or more third parties, the Liquidating Trust's obligations to such Liquidating Trust Indemnified Party are primary); (ii) that the Liquidating Trust shall be required to pay from the Liquidating Trust Assets the full amount of expenses (including attorneys' fees) actually incurred by such Liquidating Trust Indemnified Party in connection with any proceeding as to which the Liquidating Trust Indemnified Party is entitled to indemnification hereunder in advance of the final disposition of such proceeding; (iii) that the Liquidating Trust irrevocably waives, relinquishes, and releases such Liquidating Trust Indemnified Party from any and all Claims by the Liquidating Trust against such Liquidating Trust Indemnified Party for contribution, subrogation, or any other recovery of any kind in respect thereof; and (iv) no Liquidating Trust Indemnified Party shall have the obligation to reduce, offset, allocate, pursue, or apportion any indemnification advancement, contribution, or insurance coverage among multiple parties owing indemnification obligations to such Liquidating Trust Indemnified Party prior to the Liquidating Trust's satisfaction of its indemnification obligations hereunder. For the avoidance of doubt, each Liquidating Trust Indemnified Party shall be entitled, subject to the terms hereof, to indemnification for any costs and attorneys' fees such Liquidating Trust Indemnified Party may incur in connection with enforcing any of its rights under this Article 10.

(j) The indemnity provided to the SIPA Trustee and his Professionals in Article 10(a) shall additionally indemnify the SIPA Trustee and his Professionals from and

against any and all Claims, debts, dues, accounts, actions, suits, causes of action, bonds, covenants, judgments, damages, attorneys' fees, defense costs, taxes, and other assertions of liability arising out of the exercise of what the SIPA Trustee and his Professionals each reasonably understood to be the SIPA Trustee's powers or the discharge of what SIPA Trustee and his Professionals reasonably understood to be the SIPA Trustee's duties as SIPA Trustee conferred by SIPA, the LBI Liquidation Order, any order of the Bankruptcy Court entered pursuant to, or in furtherance of, the SIPA Proceeding, applicable law, or otherwise (except only for actions or omissions to act to the extent determined by a Final Order to be due to the SIPA Trustee's or his Professionals' own fraud, willful misconduct, or gross negligence on and after the Effective Date).

10.3 Limitation of Liability.

None of the Liquidating Trust Indemnified Parties shall be liable for indirect, punitive, exemplary, consequential, special, or other damages for a breach of this Agreement, except to the extent his/her/its actions or omissions to act, as determined by a Final Order, are due to such Liquidating Trust Indemnified Party's own fraud, willful misconduct, or gross negligence from and after the Effective Date and any of the foregoing damages are awarded pursuant to any such Final Order.

10.4 Liquidating Trust Liabilities.

All liabilities of the Liquidating Trust, including, without limitation, indemnity obligations under this Article 10, will be liabilities of the Liquidating Trust as an Entity and will be paid or satisfied solely from the Net Liquidating Trust Proceeds. No liability of the Liquidating Trust will be payable in whole or in part by any Liquidating Trust Beneficiary individually or in the Liquidating Trust Beneficiary's capacity as a Liquidating Trust Beneficiary, by any representative, member, partner, shareholder, director, officer, professional, employees, agent, affiliate, or advisor of any Liquidating Trust Beneficiary, by the Trust Administrator individually or in the Trust Administrator's capacity as Trust Administrator, by any Professionals, or by the Liquidating Trust.

10.5 No Liability for Acts of Predecessors.

No successor Trust Administrator shall be in any way liable for the acts or omissions of any prior Trust Administrator, unless a successor Trust Administrator expressly assumes such liability.

10.6 No Liability for Good Faith Error of Judgment.

The Trust Administrator shall not be liable for any error of judgment made in good faith, unless it shall be finally determined by a Final Order that the Trust Administrator was fraudulent, willfully misconductive, or grossly negligent in ascertaining the pertinent facts.

10.7 Burden of Proof.

In making a determination with respect to entitlement to exculpation or indemnification hereunder, the court, Person, or Entity making such determination shall presume

that any Liquidating Trust Indemnified Party is entitled to exculpation and indemnification under this Agreement and any Person or Entity seeking to overcome such presumption shall have the burden of proof to overcome that presumption.

10.8 No Implied Obligations.

The Trust Administrator shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into this Agreement against the Trust Administrator.

ARTICLE 11

AMENDMENT AND WAIVER

11.1 Amendment and Waiver.

(a) No provision of this Agreement may be amended, supplemented, or waived in any way that (i) adversely affects the distributions to be made under this Agreement to any of the Liquidating Trust Beneficiaries; (ii) adversely affects the U.S. Federal income tax status of the Liquidating Trust as a "liquidating trust" or a as "grantor trust"; or (iii) is inconsistent with the purpose and intention of the Liquidating Trust to liquidate, in an expeditious but orderly manner, the Liquidating Trust Assets in accordance with Treasury Regulations section 301.7701-4(d).

(b) Subject to Article 11.1(a) in all respects, the Trust Administrator may amend, supplement, or waive any provision of this Agreement, without notice to or the consent of any Liquidating Trust Beneficiary or the approval of the Bankruptcy Court, to: (i) cure any ambiguity, omission, defect, or inconsistency in this Agreement; (ii) comply with any requirements in connection with the U.S. Federal income tax status of the Liquidating Trust as a "liquidating trust" or as a "grantor trust"; (iii) comply with any requirements in connection with maintaining that the Liquidating Trust is not subject to registration or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act; (iv) ensure that the Liquidating Trust is not subject to registration and or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act; or (v) evidence and provide for the acceptance of appointment hereunder by a successor Trust Administrator in accordance with the terms of this Agreement.

(c) Subject to Article 11.1(a) in all respects, the Trust Administrator may amend, supplement, or waive any provision of this Agreement upon approval of the Bankruptcy Court on notice and an opportunity for a hearing.

(d) Nothing herein shall create a right for any Liquidating Trust Beneficiary (or any other Person or Entity) to compel the Trust Administrator to amend, supplement, or waive any provision of this Agreement.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 Intention of Parties to Establish the Liquidating Trust.

This Liquidating Trust Agreement is intended to create a liquidating trust that is classified as a grantor trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Liquidating Trust Agreement may be amended in accordance with Article 11.1 herein to comply with such federal income tax laws, which amendments may apply retroactively.

12.2 Irrevocability.

The Liquidating Trust is irrevocable, but it is subject to amendment as provided for herein.

12.3 Investment Company Act.

The Liquidating Trust is organized as a liquidating Entity in the process of liquidation and therefore should not be considered, and the Liquidating Trust does not and will not hold itself out as, an "investment company" or an Entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act.

12.4 Reimbursement of Trust Litigation Costs.

If the Trust Administrator or the Liquidation Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Liquidating Trust Agreement or the enforcement thereof, the Trust Administrator or the Liquidating Trust, as the case may be, shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses, and fees, including attorneys' fees, from the non-prevailing party, incurred in connection with such dispute or enforcement action. To the extent that the Liquidating Trust has advanced such amounts, the Liquidating Trust may recover such amounts from the non-prevailing party.

12.5 Situs; Governing Law.

The situs or place of administration of the Liquidating Trust shall be the State of New York, and the laws of the State of New York shall govern the administration of such Liquidating Trust and the validity, construction, and meaning and effect of the provisions of this Liquidating Trust Agreement (without reference to principles of conflicts of law that would require or permit application of the law of another jurisdiction).

12.6 Jurisdiction.

The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Liquidating Trust Agreement and to decide any Claims or disputes which may arise or result from, or be connected with, this Liquidating Trust Agreement, or any breach or default

hereunder, and any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties, including the Liquidating Trust Beneficiaries, hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court.

12.7 Severability.

If any provision of this Liquidating Trust Agreement or the application thereof to any Person or Entity or circumstance shall be determined by Final Order to be invalid or unenforceable to any extent, the remainder of this Liquidating Trust Agreement, or the application of such provision to Persons or Entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Liquidating Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

12.8 No Third-Party Beneficiaries.

Except as otherwise specifically provided herein, nothing in this Liquidating Trust Agreement is intended or shall be construed to confer upon or to give any Person or Entity other than the parties hereto, their respective heirs, administrators, executors, successors, or assigns, and the Liquidating Trust Beneficiaries any right to remedies under or by reason of this Liquidating Trust Agreement.

12.9 Notices.

(a) Any notice or other communication to the Trust Administrator required or permitted to be made to under this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally, sent by electronic communication, sent by nationally recognized overnight delivery service, or mailed by first-class mail. The date of receipt of such notice shall be (a) if delivered personally, the date of personal delivery (or refusal upon presentation for delivery), (b) if sent by electronic communication, the date of transmission, (c) if sent by nationally recognized overnight delivery service, the date reflected upon the delivery confirmation, or (d) if mailed by first-class mail, three Business Days after being deposited with the U.S. Postal Service. Until a change of address is communicated, as provided below, all notices, requests and other communications shall be sent to the parties at the following addresses:

If to the Trust Administrator, to:

Christopher K. Kiplok, Esq.
c/o Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, New York, 10004-1482
Email: chris.kiplok@hugheshubbard.com

With a copy to:

Hughes Hubbard & Reed LLP
Attn: Anson B. Frelinghuysen, Esq.

Jeffrey S. Margolin, Esq.
One Battery Park Plaza
New York, New York, 10004-1482
Email: anson.frelinghuysen@hugheshubbard.com
jeff.margolin@hugheshubbard.com

&

The Securities Investor Protection Corporation
Attn: Kenneth J. Caputo, Esq.
Hemant Sharma, Esq.
1667 K Street, N.W., Suite 1000
Washington, D.C. 20006-1620
Email: kcaputo@sipc.org
hsharma@sipc.org

Any of the above parties may change its address, point of contact, or other information from time to time for the purpose of notices to that party by noticing such change on the Trust Website.

(b) Any notice or other communication from the Trust Administrator or its Professionals to the Liquidating Trust Beneficiaries required or permitted to be made to under this Agreement shall be made in accordance with Article 6.8.

12.10 Headings.

The headings contained in this Liquidating Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Liquidating Trust Agreement or of any term or provision hereof.

12.11 Counterparts.

This Liquidating Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument but all together shall constitute one agreement. A scan of an original signature of any party shall be considered to have the same binding legal effect as an original signature.

12.12 Confidentiality.

The Trust Administrator and each successor Trust Administrator (each a "***Covered Person***") shall, during the period that it serves in such capacity under this Liquidating Trust Agreement and following either the termination of this Liquidating Trust Agreement or such Trust Administrator's death, Disability, dissolution, liquidation, incapacity, resignation, or removal hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Entity to which any of the assets of the Liquidating Trust relates or of which it has become aware in its capacity under this Agreement (the "***Information***"), except to the extent disclosure is required by applicable law, order, regulation, or legal process. In the event that any Covered Person is requested or required (by oral

questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand, or similar legal process) to disclose any Information, such Covered Person will furnish only that portion of the Information that the Covered Person, as advised by counsel, is legally required to disclose. Such Covered Person will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any disclosed Information.

12.13 Meaning of Other Terms.

Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, words importing the singular number shall include the plural number and vice versa and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to provisions of the Bankruptcy Code, the Bankruptcy Rules or other law, statute, or regulation, refer to the corresponding Articles, Sections, and other subdivisions of this Liquidating Trust Agreement and the words "herein," "hereof," or "herewith," and words of similar import refer to this Liquidating Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. The term "including" shall mean "including, without limitation."

12.14 Entire Agreement.

This Agreement (including the Recitals) and the Trust Order together constitute the entire agreement by and among the parties hereto with respect to the subject matter hereof, and there are no representations, warranties, covenants, or obligations except as set forth herein or therein. This Agreement and the Trust Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. In the event of a conflict between the terms of this Agreement and the Trust Order, the terms of the Trust Order shall govern and control.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed and acknowledged this Liquidating Trust Agreement as of the date first above written.

SIPA TRUSTEE

[DRAFT]
James W. Giddens, solely in his capacity as trustee for the SIPA liquidation of Lehman Brothers Inc., without personal liability

TRUST ADMINISTRATOR

[DRAFT]
Christopher K. Kiplok

Schedule 1.1

Antitrust Claims

Mayor and City Council of Baltimore v. Credit Suisse AG (In re LIBOR-BasedFinancial Instruments Antitrust Litigation), MDL No. 2262 (NRB), Case No. 11-cv-5450 (NRB) (S.D.N.Y. 2011)

In re Foreign Exchange Benchmark Rates Antitrust Litigation, No. 13-cv-07789(LGS) (S.D.N.Y. 2013)

Sullivan v. Barclays plc, No. 13-cv-2811 (PKC) (S.D.N.Y. 2013)

Laydon v. Mizuho Bank, Ltd., No. 12-cv-3419 (GBD) (S.D.N.Y. 2012)

Sonterra Capital Master Fund Ltd. V. UBS AG, No. 15-cv-5844 (GBD)(S.D.N.Y. 2015)

FTC Capital GMBH v. Credit Suisse Group AG (In re LIBOR-Based FinancialInstruments Antitrust Litigation), MDL No. 11-md-2262 (NRB), Case No. 11-cv-2613 (NRB) (S.D.N.Y. 2011)

Gelboim v. Credit Suisse Group AG (In re LIBOR-Based Financial Instruments Antitrust Litigation), MDL No. 11-md-2262 (NRB), Case No. 12-cv-1025(NRB) (S.D.N.Y. 2012)

33-35 Green Pond Road Assocs. v. Bank of America Corp. (In re LIBOR-Based Financial Instruments Antitrust Litigation), MDL No. 11-md-2262 (NRB), CaseNo. 12-cv-5822 (NRB) (S.D.N.Y. 2012)

In re: London Silver Fixing, Ltd., Antitrust Litigation, No. 1:14-md-02573(S.D.N.Y. 2014)

In re: Commodity Exchange, Inc., Gold Futures and Options TradingLitigation, No. 14-mc-2548 (VEC) (S.D.N.Y. 2014)

In re: SSA Bonds Antitrust Litigation, No. 16-cv-3711 (ER) (S.D.N.Y. 2016)

Schedule 1.2

Securities Claims

Birmingham Retirement and Relief System v. S.A.C. Capital Advisors, L.P., No. 13 Civ. 2459 (VM)(KNF) (S.D.N.Y.)

Carpenters Pension Trust Fund of St. Louis v. Barclays PLC, Civil Action No. 1:12-cv-05329-SAS (S.D.N.Y.)

Dell SEC v. Robert W. Davis, No. 1:10-cv-01464 (D.D.C.); *Dell SEC v. Randal D. Imhoff*, No. 10-cv-01465 (D.D.C); *SEC v. Dell Inc*.

In re Amgen Inc. Securities Litigation, Case No. 07-2536 PSG (PLAx) (C.D. Cal.)

In re Citigroup Inc. Securities Litigation, No. 07 CIV. 9901 (S.D.N.Y.) (SHS)

In re Colonial Bancgroup Securities Litigation, Case No. 09-cv-00104 (M.D. Ala.)

In re Merck & Co., Inc. Securities, Derivative & "ERISA" Litigation, MDL No. 1658 (SRC), Civil Action No. 05-1151 (SRC) (CLW), Civil Action No. 05-2367 (SRC) (CLW) (D.N.J.)

In Re Nortel Networks Corp. Securities Litigation, Master File No. 04 Civ. 2115 (LAP) (S.D.N.Y.); *Gallardi v. Nortel Networks Corporation*, No. 05-CV-285606CP (Ontario Superior Court of Justice); *Skarstedt v. Corporation Nortel Networks*, No. 500-06-000277-059 (Superior Court of Quebec District of Montreal)

In re Pfizer Inc. Securities Litigation, No. 04-cv-9866 (LTS)(HBP) (S.D.N.Y.)

In re Symbol Technologies, Inc. Securities Litigation, No. 05-cv-3923-DRH-AKT (E.D.N.Y.)

Indiana State District Council of Laborers and Hod Carriers Pension and Welfare Fund v. Omnicare, Inc., No. 2:06-cv-00026-WOB-CJS (E.D. Ky.)

Robert F. Bach, et al. v. Amedisys, Inc., Case No. 1:10-cv-00395 (M.D. La)

SEC v. China Energy Savings Technology, Inc., No. 06-cv-6402 (ADS) (E.D.N.Y.)

SEC v. CR Intrinsic Investors, LLC (S.D.N.Y.)

SEC v. Satyam Computer Service Ltd. Securities Litigation, No. 1:11-cv-00672-ESH (D.D.C.); *In re Satyam Computer Service Ltd. Securities Litigation*, No. 09-MD-2027-JPO (S.D.N.Y.)

Sheet Metal Workers Local 32 Pension Fund v. Terex Corp., No. 3:09-cv-02083-RNC (D. Conn)

Yukos Claims Administration

Smilovits v. First Solar, Inc., No. 2:12-cv-00555-DGC (D. Ariz.)

In the Matters of WellCare Health, Inc., Case No. 8:09-cv-00910-VMC-JSS

Norfolk County Retirement System v. Community Health Systems, Inc., Civil Action No. 11-cv-0433 (M.D. Tenn.)

In re ITT Educational Services, Inc. Securities Litigation, Case No. 13-cv-1620-JPO (S.D.N.Y.)

SEC v. American International Group, Inc., 06 Civ. 1000 (S.D.N.Y.) (LAP)

In re American International Group, Inc. 2008 Securities Litigation, Master File No. 08-CV-4772-LTS-DCF (S.D.N.Y.)

In re Weatherford International Securities Litigation, Case No. 11 Civ. 1646 (LAK) (JCF) (S.D.N.Y.)

Plumbers & Pipefitters National Pension Fund et al. v. Burns et al., Case No. 3:05-cv-07393 (N.D. Ohio)

SEC v. AIMSI Technologies, Inc., Case No. 05 CV 4724 (LLS) (S.D.N.Y.)

In re McAfee, Inc. Shareholder Litig., Lead Case No. 1:10-cv-180413 (Sup. Ct. Cal.)

SEC v. Federal Home Loan Mortgage Corporation, Civil Action No: 07-CV-1728-RCL (D.D.C.)

SEC v. Friedland, Case No. 18-cv-00529-MSK-MEH (D. Colo.)

Comité Syndical National de Retraite Bâtirente Inc. v. Société Financière Manuvie (Court File No.: 200- 06-000117-096) (Québec Superior Court)

Merryman v. JPMorgan Chase Bank, N.A., Civil Action No. 1:15-cv-09188-VEC (S.D.N.Y.)

In the Matter of G-Trade Services LLC, Admin. Proc. File No. 3-15654; *In the Matter of Jonathan Samuel Daspin, Admin. Proc*. File No. 3-15652; *In the Matter of Thomas Lekargeren, Admin. Proc*. File No. 3-15653; *SEC v. Craig S. Lax,* Case No. 15-cv-01079-WHW-CLW (D.N.J.); *SEC v. Khaled "Kal" Bassily*, Case No. 16-cv-02733-RJS (S.D.N.Y.)

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

[PROPOSED] ORDER AUTHORIZING THE TRUSTEE TO ENTER INTO A LIQUIDATING TRUST AGREEMENT AND TRANSFER CERTAIN ESTATE ASSETS TO THE LIQUIDATING TRUST AND GRANTING RELATED RELIEF

Upon the motion dated April 28, 2022 (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 an order (this "Trust Order"): (i) authorizing the creation of the Liquidating Trust pursuant to the terms of the Trust Agreement, including (a) the appointment of Christopher K. Kiplok as the Trust Administrator, and (b) the distribution of Liquidating Trust Interests to the Beneficiaries in full and final satisfaction of their claims against the LBI estate; (ii) authorizing the Trustee to dispose of estate assets, including by transferring (a) the Contingent Assets to the Liquidating Trust, (b) the Liquidating Trust Funding to the Liquidating Trust, and (c) prior to discharge, the remaining Administrative Reserve to the Administrative Escrow; and (iii) finding that the creation and distribution of the Liquidating Trust Interests are exempt from securities registration; and it appearing that the Court has 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 Anson B. Frelinghuysen, dated April 28, 2022; 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:[1]

A. Notice of Motion. Notice of the Motion[2] 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. Adequate Information. The Motion, together with the past disclosures by the Trustee detailed in the Motion, provides adequate information (as such term is defined in section 1125(a)(1) of the Bankruptcy Code) regarding the Liquidating Trust Interests and their potential value.

C. Procedural Fairness. The form and manner of notice of the time set for filing objections to, and the hearing to consider approval of, the Motion and reflected in the Affidavit of Service filed by the Trustee's noticing agent, Epiq Corporate Restructuring, LLC ("Epiq"), was proper, adequate, and sufficient notice thereof. The hearing constituted a fairness hearing within the meaning of Section 3(a)(10) of the Securities Act.

---

1. 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.

2. Unless otherwise defined herein, capitalized terms used herein shall have the meaning ascribed to them in the Motion or the Trust Agreement, as applicable.

D. Establishment of Liquidating Trust. The establishment of the Liquidating Trust pursuant to the terms of the Trust Agreement is a fair and appropriate use of the estate's property.

E. Distribution of the Liquidating Trust Interests. The issuance of the Liquidating Trust Interests is an essential element of the Trust Agreement and is in the best interests of the LBI estate and its creditors.

F. Substantive Fairness. Distribution of the Liquidating Trust Interests in full and final satisfaction of the remaining allowed general unsecured claims constitutes fair, full, and adequate consideration for the holders of those claims. The terms and conditions of the Liquidating Trust Interests to be issued under the Trust Agreement in exchange for, and in full and final satisfaction of, such claims are fair and reasonable. Such exchange did not occur in a case under title 11 of the United States Code.

G. Liquidating Trust Interests are Speculative. Liquidating Trust Assets are contingent, unliquidated, and are net of Trust Administration Fees and the Operational Reserve. Liquidating Trust Interests are speculative and may yield little to no recovery.

H. Record Date. The record date for the purpose of determining claim ownership in connection with the distribution of the Liquidating Trust Interests is March 31, 2022 (the "Record Date").

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

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

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

3. The Trust Agreement, attached as **Exhibit 1** hereto, is approved in its entirety and is incorporated herein by reference, having the full force and effect of an order of this Court.[3]

4. The Trustee is authorized and empowered, as a sound exercise of his business judgment, to enter into the Trust Agreement with Christopher K. Kiplok, who is approved and appointed as the Trust Administrator of the Liquidating Trust upon his execution of the Trust Agreement. Each of the Trustee and the Trust Administrator is authorized to perform all acts contemplated by the Trust Agreement.

5. Upon their appointment and retention by the Trust Administrator, each of the following shall be deemed Professionals pursuant to the terms of the Trust Agreement, each in its specified role: Hughes Hubbard & Reed LLP as Primary Counsel; Deloitte Financial Advisory Services LLP as financial advisor; Deloitte Tax LLP as tax advisor; and Epiq as Trust Registrar. The procedures outlined in the Trust Agreement regarding the compensation of the Trust Administrator and its Professionals are approved in all respects, and the Trust Administrator and its Professionals may be compensated by the Liquidating Trust in accordance with such procedures without further order of the Court.

6. At the outset of the Liquidating Trust's existence, the Liquidating Trust Beneficiaries shall be the persons listed on **Exhibit 2** hereto, with each Liquidating Trust Beneficiary allotted the number of Liquidating Trust Interests appearing alongside such Liquidating Trust Beneficiary's name on **Exhibit 2**. The Record Date for the purpose of determining the identity and Claims holdings of each Liquidating Trust Beneficiary is March 31, 2022.

---

3. A purpose of this Trust Order is to approve the Trust Agreement in its entirety and without condition. The failure of this Trust Order to specifically enumerate any provision of the Trust Agreement shall not limit the effectiveness of such provision.

7. The *Notice of Allocation of Liquidating Trust Interests*, docketed by the Trustee on April 28, 2022 (ECF No. __), identifies the claims belonging to each party thereon as of the Record Date and lists the number of Liquidating Trust Interests assigned to each Liquidating Trust Beneficiary.

8. Each of the Liquidating Trust Beneficiaries will be deemed to have received their respective Liquidating Trust Interests upon the Effective Date in full and final satisfaction of such Liquidating Trust Beneficiaries' claims against the LBI estate. The Trustee and the LBI estate shall no longer have any liability to any Liquidating Trust Beneficiary upon such Liquidating Trust Beneficiaries' receipt of the Liquidating Trust Interest.

9. The Trustee is authorized to transfer, and the Trust Administrator is authorized to accept into the Liquidating Trust to be administered pursuant to the terms of the Trust Agreement, the Contingent Assets, which shall include: (a) the Class Action Claims; (b) the Saad Claim; (c) the Reversionary Administrative Interest; and (d) the Legacy Assets. The transfer of the Contingent Assets shall be deemed a transfer of the Contingent Assets to the Liquidating Trust Beneficiaries, who shall be deemed to transfer the Contingent Assets to the Trust Administrator to be administered pursuant to the terms of the Trust Agreement.

10. The Trustee is authorized to transfer, and the Trust Administrator is authorized to accept into the Liquidating Trust to be administered pursuant to the terms of the Trust Agreement, the Liquidating Trust Funding, which amount shall be fourteen million U.S. dollars ($14,000,000), and the Accumulated Cash. In no event shall the Securities Investor Protection Corporation ("SIPC") provide the Liquidating Trust Funding.

11. The Trustee is authorized to transfer, at any time, including at his discharge by an order of the Court, any unused portion of the Administrative Reserve to Hughes Hubbard & Reed

LLP to be held in escrow for the exclusive use of payment of fees and costs (including, without limitation, legal, accounting, and other professional costs) attributable to the LBI estate (but not the Contingent Assets) following the Trustee's discharge and subject to oversight by SIPC (the "Administrative Escrow"). Periodically, the Administrative Escrow shall be rebalanced to the amounts set forth immediately below, with any unused amounts of the Administrative Escrow in excess of the rebalanced amount being transferred to the Liquidating Trust:

Period (in months) following entry of an Order discharging the Trustee	Rebalanced Amount
Six	$10,000,000
Twenty-Four	$8,000,000
Thirty-Six	$6,000,000
Forty-Eight	$4,000,000
Sixty	$2,000,000

12. To the extent any Liquidating Trust Interest is deemed to be a security, the issuance of the Liquidating Trusts Interests in exchange, settlement, and satisfaction of the remaining claimants' allowed general unsecured claims against the LBI estate shall be exempt, pursuant to Section 1145(a)(1) of the Bankruptcy Code and Section 3(a)(10) of the Securities Act of 1933, from registration under the Securities Act and other applicable state securities law.

13. The vesting of the Contingent Assets in the Liquidating Trust shall not violate any restriction under applicable law regarding the assignability or transferability of the Contingent Assets or result in any impairment or limitation of any kind in the full prosecution and recovery of the Contingent Assets that may otherwise result under applicable non-bankruptcy law from the assignment or transfer of the Contingent Assets.

14. As set forth in the Trust Agreement, the Trust Administrator shall not be held liable for any act or omission, except in the case of the Trust Administrator's fraud, willful misconduct, or gross negligence, as determined by final order of a court of competent jurisdiction.

15. Third parties may rely on this Trust Order for purposes of determining that the Contingent Assets are property of the Liquidating Trust subject to administration by the Trust Administrator who may himself, or through his Professionals, control and exercise authority over the Liquidating Trust Assets and the management and disposition thereof.

16. The Liquidating Trust shall receive from the Trustee all Privileges (as defined in the Trust Agreement) relating to the Liquidating Trust Assets. The transfer of such Privileges shall not constitute a waiver of such Privileges.

17. The Trustee and the Trust Administrator, and each of their respective officers, employees, and agents, are hereby authorized to take such actions as are necessary and appropriate to implement the Liquidating Trust, in accordance with the terms of the Trust Agreement, without the necessity of a further order of this Court.

18. The Liquidating Trust shall not be liable for any claims or liabilities against the LBI estate other than as expressly assumed by the Liquidating Trust in the Trust Agreement.

19. In no event will SIPC be liable for the Trust Administration Fees.

20. The Trust Agreement or any document relating thereto may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties and in accordance with the terms thereof, without further order of this Court.

21. 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 from the Filing Date through the date hereof in connection with, relating to, or arising

out of the execution of the Trust Agreement, the decision to establish the Liquidating Trust, the creation of the Liquidating Trust, the administration of the Contingent Assets, or the administration of the Liquidating Trust, except for gross negligence or willful misconduct.

22. This Trust Order shall be binding on all creditors (whether known or unknown) of the LBI estate and all affected third parties, all successors and assigns of the Liquidating Trust, the Trust Administrator, and the Trustee, and shall be not be subject to rejection or revocation.

23. To the extent anything in this Trust Order conflicts with a provision in the Trust Agreement, the terms of this Trust Order shall govern and control.

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

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

Dated: New York, New York
_____, 2022

HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Trust Agreement

Exhibit 2

Allocation Summary

Liquidating Trust Beneficiary	No. of Liquidating Trust Interests
ABSA BANK LIMITED	10
ALLEN & OVERY LLP	111
ANDREWS KURTH LLP	61
BANC OF AMERICA CREDIT PRODUCTS, INC.	1,531
BANCO DE MEXICO	272
BANK OF NEW YORK MELLON, THE	1
BAUPOST PRIVATE INVESTMENTS BVIV-1, L.L.C.	43
BERLIND, ROGER	2
BINNACLE ADVISORS LTD	113
BLACKROCK ADVISORS (UK) LTD	615
BNP PARIBAS SECURITIES CORP.	191
BP 399 PARK AVENUE LLC	2,114
BUTTERFIELD TRUST (BERMUDA) LTD AS TRUSTEE	8
CASEY RIDGE LLC	2,571
CHASE LINCOLN FIRST COMMERCIAL CORP.	9,053
CHICAGO REGIONAL COUNCIL OF CARPENTERS PENSION FUND	3
CHILDREN'S HEALTHCARE OF ATLANTA, INC.	257
COMM OF PENNSYLVANIA STATE EMPLOYEES RETIREMENT SYSTEM	17
CONTRARIAN FUNDS, LLC	1,415
CUSTODY BANK OF JAPAN, LTD, AS TRUSTEE OF BNY MELLON IM 511000	13
CUSTODY BANK OF JAPAN, LTD, AS TRUSTEE OF BNY MELLON IM 905000	4
DEUTSCHE BANK AG, LONDON BRANCH	94,528
EMPYREAN INVESTMENTS, LLC	684,909
ESSEX EQUITY HOLDINGS USA, LLC	935
FAIRLEY WAY, L.L.C.	7,596
FONDO CONSOLIDADO DE RESERVAS PREVISIONALES	3
FUNDO DE PENSOES	3
HALCYON LOAN TRADING FUND LLC	11,060
HARDING, DAVID WINTON	8
HBK MASTER FUND, L.P.	100,071
HLF LP	631
HONG KONG HOUSING AUTHORITY	21
HOWREY LLP	3
HSC/RSC/ESC	4

Liquidating Trust Beneficiary	No. of Liquidating Trust Interests
ING LUXEMBOURG S.A.	66
JPMORGAN CHASE BANK, NA	67
KREBSBACH & SNYDER, PC	2
LAZARET PARTNERS, L.L.C.	160
LEDYARD NAT'L BANK	6
MALLARD WAY, L.L.C.	56,700
MOORE CAPITAL ADVISORS, LLC	571
MOORE GLOBAL INVESTMENTS LLC	270
MUFG SECURITIES EMEA PLC	13
NELSON PLACE, L.L.C.	43
ORRICK, HERRINGTON & SUTCLIFFE LLP	15
PARKER, HUDSON, RAINER & DOBBS, LLP	2
PAUL, HASTINGS, JANOFSKY & WALKER LLP	29
PRECISION ENGRAVING COMPANY	1
PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION OF COLORADO	9
RLT HOLDINGS 2008-2, LLC	44
SILVER POINT CAPITAL FUND, L.P.	4
SILVER POINT CAPITAL OFFSHORE FUND, LTD.	2
SOLSTAR PARTNERS LLC	3,680
SPCP GROUP, LLC	257
TEXAS COUNTY & DISTRICT RETIREMENT SYSTEM	81
THE MASTER TRUST BANK OF JAPAN, LTD, AS TRUSTEE	1
TIBUR DEVELOP CO LTD	27
TRUSTEE FOR CONNECTOR 2000 ASSOCIATION INC.	93
VINCENT PLACE, L.L.C.	19,632
WALT DISNEY RETIREMENT PLAN MASTER TRUST, THE	13
WANNAMAKER DRIVE ACQUISITION LLC	32
WINSTON & STRAWN LLP	3
TOTAL	***1,000,000***