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

In re

LEHMAN BROTHERS INC.,  
  
Debtor.

Case No. 08-01420 (SCC) SIPA

**TRUSTEE'S EIGHTEENTH INTERIM REPORT  
FOR THE PERIOD OCTOBER 1, 2017 THROUGH MARCH 31, 2018 AND  
QUARTERLY REPORT ON THE GENERAL CREDITOR CLAIMS PROCESS**

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

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

Though significant appellate litigation and the prospect of further distributions to general unsecured creditors remain, administration of the LBI estate is substantially complete. Notably, during the Report Period, the Trustee closed the largest customer estate in history, with the achievement of transferring excess customer property reserves to the general estate. The Trustee also progressed appellate litigation concerning Automated Customer Account Transfers to a final determination—thereby releasing further claim reserves—and filed claims in pending securities and antitrust class action litigations.

As a result of this and other progress detailed in this Report, the Trustee is pleased to today seek this Court's authority to make a sixth interim distribution of approximately \$170 million to LBI's general unsecured creditors. This will be in addition to the more than nine billion dollars already distributed and will bring total general unsecured creditor claim recoveries to thirty-nine and three quarters percent (39.75%), an achievement far in excess of any reasonable expectation during the midst of Lehman's collapse and the financial crisis of the Great Recession.

The sole remaining claims dispute in this SIPA proceeding involves 381 general creditor claims relating to the Executive and Select Employee Deferred Compensation Plan, which were asserted in an aggregate capped amount of \$271 million. This dispute is proceeding as expeditiously as possible through two separate appeals pending in the District Court. The Trustee, as appellee, continues to pursue judicial confirmation of his legal positions, and will otherwise seek to resolve this matter in a manner that is fair and equitable to all stakeholders.

The Trustee's principal goal is to resolve the sole remaining claims matter as promptly as possible in the best interests of LBI's creditors and to close the estate with a final distribution. This may take considerable time as the timetable for closure depends, primarily, on the appellate schedule. Accordingly, the Trustee is also today seeking the Court's authority to administer a process for creditors who have not availed themselves of the opportunity to monetize the remaining value of their general unsecured claims. As detailed in the accompanying motion papers, the goal of this process is to offer as many claimants as possible the opportunity to "cash out" of the distribution process at a fair market price and to conclude their LBI estate exposure, all while further simplifying estate administration in furtherance of the Trustee's goal for a continuing, orderly wind down.

Throughout the case, the estate has endeavored to keep all parties in interest fully informed on the progress of the liquidation. At all points, the Trustee and estate professionals have acted in close consultation with the Securities Investor Protection Corporation ("SIPC"), which, by statute, oversees all aspects of the liquidation; have regularly consulted with the United States Securities and Exchange Commission, the Federal Reserve Bank of New York, the Commodity Futures Trading Commission, and the Financial Industry Regulatory Authority; and have routinely updated congressional committees.

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

2. This Report covers the period from October 1, 2017 through March 31, 2018 (the “Report Period”).

3. All Interim Reports, along with a complete docket, regular progress updates, Quarterly Reports on the General Creditor Claims Process, and substantial other information about this liquidation, are available on the Trustee’s website, [www.lehmantrustee.com](http://www.lehmantrustee.com).

## **I. FINANCIAL CONDITION OF ESTATE**

4. The Lehman Brothers Inc. Liquidation Balance Sheet as of March 31, 2018 (the “Liquidation Balance Sheet”), filed concurrently with this Report, provides information pertaining to the estate’s assets, liabilities, and reserves. This financial information reflects cash and cash equivalents in the amount of approximately \$547 million and *de minimis* securities as of March 31, 2018. All of these assets are currently under the Trustee’s control.

## **II. GENERAL CREDITOR RESERVES AND DISTRIBUTIONS**

5. During the Report Period, the Trustee concluded the fifth interim distribution to holders of allowed general unsecured claims. Through the five interim distributions totaling over \$9.093 billion, the Trustee has distributed approximately \$8.837 billion to LBI’s general unsecured creditors with allowed claims, representing a distribution of 39 percent on the allowed amounts, and approximately \$256 million to LBI’s allowed secured, administrative, and priority creditors, substantially completing 100 percent distributions to those with allowed claims.

6. To assure that claimants with disputed and unresolved claims are not prejudiced, the Trustee maintains reserves equal to 39 percent of the capped amount of unresolved general unsecured creditor claims and 100 percent of unresolved secured, administrative, and priority claims. For details regarding these reserves, see the Liquidation Balance Sheet, note 7. The Trustee will make appropriate distributions to claimants with unresolved claims in this proceeding as those claims are resolved.

7. On May 1, 2018, the Trustee filed his *Motion for Orders (I) Authorizing a Sixth Interim Distribution to Holders of Allowed General Unsecured Creditor Claims with a Record Date of June 30, 2018, (II) Approving the Procedures and Related Documents, and (III) Authorizing the Trustee to Effectuate the Accelerated Final Distribution Election* (the “Motion”). The Motion is scheduled to be heard by this Court on May 31, 2018.

8. By the Motion, the Trustee seeks the Court's authority to make a sixth interim distribution of approximately \$170 million to general unsecured creditors, equivalent to 0.75% of the allowed amount of general unsecured claims. As detailed in the Motion, this distribution is made possible primarily as a result of the closure of the customer estate and reserves being released as appellate courts affirmed this Court's orders regarding certain disputed general creditor claims. The Trustee also determined, in consultation with SIPC, to reduce the Administrative Expense Reserve commensurate with the ongoing progress of this liquidation

9. The Motion also seeks this Court's approval of a process to provide an opportunity for as many eligible claimants as possible to immediately "cash out" of the LBI estate and distribution process in exchange for transferring their claims to a single claim purchaser (the "Accelerated Final Distribution Election"). The Accelerated Final Distribution Election provides over 1,800 claimants with the option to obtain a higher rate of distribution than currently possible from the LBI estate and prepares the estate for efficient closure by reducing the administrative burden of making a final distribution on allowed LBI general unsecured claims.

### **Distribution Procedures Motion**

10. On November 5, 2015, the Court entered the Distributions Procedures Order. (ECF No. 13039.) The Distribution Procedures Order furthers the Trustee's goal of expeditiously winding down the LBI estate by preventing delay in the estate's closure resulting from claimants that do not collect their distributions or otherwise comply with the Distribution Procedures Order. During the Report Period, the Trustee expunged 17 claims allowed in the aggregate amount of approximately \$2 million pursuant to the Distribution Procedures Order. (See ECF Nos. 14433 and 14541.)

## **III. GENERAL CREDITOR CLAIMS ADMINISTRATION**

### **Overview**

11. During the Report Period, the Trustee resolved forty-one general creditor claims, together capped at approximately \$98 million. Following two decisions from the Court of Appeals for the Second Circuit confirming the Trustee's initial claim denials, thirty-five of the claims were reclassified to equity interests and one claim was expunged. The Trustee expunged the five remaining claims pursuant to an appellate decision rendered by the District Court affirming this Court's decision.

12. Cumulatively, as of March 31, 2018, the Trustee has allowed or settled 4,813 general creditor claims (secured, administrative, priority, and unsecured) with an aggregate asserted amount of \$70.1 billion for an allowed amount of \$22.9 billion. Pursuant to orders of the Court, the Trustee has expunged 10,052 general creditor claims (secured, administrative, priority, and unsecured) with an aggregate asserted amount of \$59.184 billion.

13. As of March 31, 2018, all but 381 of the more than 15,000 general creditor claims in the LBI estate had been finally resolved. These remaining contested claims—

consolidated and subject to two appellate reviews—have an aggregate asserted amount capped at approximately \$271 million and are described below.<sup>1</sup>

### **Three Categories of General Creditor Claims Resolved During the Report Period**

#### **Post-Filing Date Bonus & Contractual Wages Claims**

(Resolved)

14. On July 27, 2017, the Second Circuit entered a summary order and judgment affirming the District Court's decision to disallow the remaining claim for a post-September 19, 2008 (the "Filing Date") bonus and contractual wages of a former employee who transferred to Barclays Capital Inc. following its acquisition of numerous assets of LBI's North American broker-dealer business and investment banking operations and its agreement to make 2008 bonus payments. *See Judkins v. Giddens (In re Lehman Bros. Inc.)*, Case No. 16-2788 (2d Cir. July 27, 2017) (ECF No. 98).

15. On October 25, 2017, the deadline to file for certiorari with the Supreme Court expired, and the claimant did not file a petition. Accordingly, the Trustee subsequently expunged this claim, asserted in the amount of \$2.8 million. The reserve previously maintained with respect to this claim will be used to fund the Trustee's proposed sixth interim distribution.

#### **Equity Awards Claims**

(Resolved)

16. Thirty-five of the claims resolved during the Report Period, totaling approximately \$24 million, are related to equity awards (including restricted stock units, contingent stock awards, contingent equity awards, stock options, and other equity-related compensation), of which approximately \$3.6 million was asserted and fully reserved for as secured. The District Court affirmed this Court's order granting the Trustee's request to reclassify these claims to equity interest on September 29, 2016. *See Acerra v. Giddens*, Case No. 15-cv-01819 (AT) (S.D.N.Y. Sept. 29, 2016) (ECF No. 23).

17. On January 25, 2018, the Second Circuit issued a summary order and judgment affirming the District Court and Bankruptcy Court's decisions to reclassify the claims to equity interest. *See Acerra v. Giddens*, 16-3666 (2d Cir.) (ECF No. 92-1). The claimants did not elect to file a petition for certiorari with the Supreme Court, and the Trustee subsequently reclassified these claims. Reserves previously maintained with respect to these claims will be used to fund the Trustee's proposed sixth interim distribution.

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1. The status of all claims is set forth in the body of this Report and in the Liquidation Balance Sheet.



**ACATS Claims**  
(Resolved)

18. Five claims resolved during the Report Period relate to account transfers allegedly requested by former LBI customers immediately before the Filing Date through the Automated Customer Account Transfer Service. On April 19, 2017, this Court issued a bench decision granting the Trustee's objections in full and expunging the five amended claims. The Court entered its order on May 1, 2017. *In re Lehman Bros. Inc.*, Case No. 08-1420 SIPA (Bankr. S.D.N.Y. May 1, 2017) (ECF No. 14247).

19. The claimants appealed this Court's decision to the District Court. On March 22, 2018, the District Court issued an Opinion and Order affirming this Court's order. *See In re Lehman Brothers Inc.*, Case No. 17-3762 (S.D.N.Y.); *In re Lehman Brothers Inc.*, Case No. 17-3785 (S.D.N.Y.). The claimants did not appeal to the Second Circuit, and this Court's and the District Court's orders have become final. Accordingly, these claims are reflected as expunged as of March 31, 2018. Reserves previously maintained with respect to these claims will be used to fund the Trustee's proposed sixth interim distribution.

**ESEP: The Remaining Appellate Proceeding**  
(381 contested claims; approximately \$271 million capped amount)

20. The three hundred and eighty-one contested claims are subject to a single consolidated adversary proceeding. These claims were filed by former employees of LBI or its predecessors seeking deferred compensation pursuant to the Executive and Select Employee Deferred Compensation Plan ("ESEP"). The Trustee seeks to enforce the terms of the ESEP and subordinate the claims, which are capped at approximately \$271 million—of which more than \$260 million is asserted and fully reserved for as secured.

21. On July 13, 2017, this Court rendered a memorandum decision granting the Trustee's motion for summary judgment seeking to subordinate the ESEP claims and denying the claimants' cross-motion for summary judgment. *Giddens v. 344 Individuals*, Case No. 08-1420 SIPA (Bankr. S.D.N.Y. July 13, 2017) (ECF No. 14338). The claimants filed a notice of appeal on July 25, 2017, and an order was subsequently entered by the Court on August 4, 2017 (ECF No. 14365). Appellate briefing before the District Court concluded in January 2018. A date for oral argument has not yet been scheduled by the District Court. *See 344 Individuals v. Giddens*, Case No. 17-cv-6246 (AT) (S.D.N.Y.).

22. On November 12, 2015, this Court granted the Trustee's motions to reclassify those ESEP claims that assert secured or priority status. The claimants' appeal has been fully briefed since February 22, 2016, and is pending before the District Court. *See 344 Individuals v. Giddens*, Case No. 15-cv-09670 (PGG) (S.D.N.Y.).

**Administrative Claims**

23. On February 21, 2018, the Court approved the Trustee's motion to establish April 2, 2018 as the deadline (the "Second Supplemental Administrative

Expense Claim Bar Date”) to assert any second supplemental administrative expense claims against the LBI estate arising for the period of November 1, 2016 through February 28, 2018. (ECF No. 14523.)

24. The Trustee’s professionals received numerous inquiries regarding the Second Supplemental Administrative Expense Claim Bar Date. On March 22, 2018, the Court approved a stipulation and order resolving potential second supplemental administrative expense claims of Barclays Capital Inc. and Barclays Bank PLLC in connection with obligations under prior Court-approved settlements with the Trustee (ECF No. 14535).

25. There were four supplemental administrative expense claims filed prior to the Second Supplemental Administrative Expense Claim Bar Date, and three claims remained as of March 31, 2018 (one claim was promptly withdrawn). (ECF No. 14534.) Reserves with respect to these remaining three claims totaling \$794,629 were added to the SAP Distribution Fund to permit the Trustee to maintain sufficient reserves for these claims should they be deemed allowable.

26. On April 2, 2018, subsequent to the Report Period, one of the administrative expense claims was withdrawn. (ECF No. 14558.) As of the filing date of this Report, two claims remain asserted in the aggregate amount of \$788,392.

#### **IV. THE CUSTOMER ESTATE**

27. Following resolution of the last remaining customer claim, the Trustee—in consultation with SIPC—closed the customer estate in December 2017 pursuant to this Court’s order. (ECF No. 14467.) Prior to closing the customer estate, the Trustee allocated approximately \$69 million in excess customer property from the customer estate to the general estate, bringing total allocations of excess customer property to the general estate in this SIPA proceeding up to \$3.112 billion.

28. The Trustee has completed distributions on all allowed customer claims, distributing more than \$106 billion to over 111,000 customers. This is by far the largest distribution of customer property and among the largest distributions of any kind in history. It includes approximately \$13.471 billion distributed through the customer claim process in full satisfaction of all of the allowed customer claims.

29. The LBI customer estate is now closed.

#### **V. SECURITIES AND ANTITRUST CLAIMS**

30. Since his appointment, the Trustee has filed over 220 claims in securities class action settlements and has recovered approximately \$34 million. The Trustee’s team is monitoring 22 further claims that have been filed but have not yet received a determination or an initial distribution.

31. On March 29, 2018, the Trustee submitted a proof of claim to participate in a \$130 million settlement in the LIBOR-U.S. dollar antitrust litigation. The Trustee

expects to also submit claims to participate in any subsequently finalized settlements with additional defendants, some of which were recently reached. Likewise, the Trustee expects to submit a proof of claim to participate in the \$2.3 billion fund resulting from the settlement of a foreign exchange antitrust class action litigation.

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

33. The Trustee's professionals continue to research LBI's potential claims in securities and antitrust class action litigations and, if appropriate, will file additional proofs of claims.

## **VI. COST CONTROL AND WIND DOWN**

34. During the Report Period, the Trustee took further measures to reduce administrative expenses and wind-down estate administration while continuing to adhere to strict internal controls over the estate.

35. The Trustee and his professionals continued to implement a program to evaluate the pre- and post-Filing Date documents and data maintained by the LBI estate to determine whether such documents and data are necessary to effectuate the remaining estate workstreams.

36. By order dated December 7, 2017 (ECF No. 14465), the Court granted the Trustee's fifth data and document abandonment motion. The order authorized the Trustee to abandon and destroy certain data and documents related to claims litigations that have been fully and finally resolved. The order has been fully effectuated. This abandonment facilitated administrative ease and resulted in additional savings.

37. The Trustee also filed a motion authorizing the abandonment of the contractual right to acquire from Barclays Capital Inc. ("Barclays") over 500 boxes of LBI legacy hard copy records possessed by Barclays in off-site storage. This was transferred to Barclays pursuant to the asset purchase agreement. The Court entered an order approving the Trustee's motion on April 5, 2018. (ECF No. 14557.)

38. The Trustee continued to terminate LBI custodial and vendor agreements, resulting in further cost-savings to the LBI estate. In addition, the Trustee terminated the LBI estate's remaining license with Bloomberg Finance LP. This will result in further cost-savings. Moreover, the Trustee closed certain LBI estate bank accounts no longer necessary to effectuate the wind-down phase of the liquidation.

39. The Trustee also continued to take steps to further reduce expenses wherever possible and streamline remaining workstreams. All special counsel engagements have concluded.

40. At the request of and in consultation with SIPC, nearly all of the professional firms and consultants retained by the Trustee had agreed to a voluntary public interest discount of at least ten percent or more from standard rates and have further agreed not to charge for a number of categories of expenses regularly paid to professionals in large bankruptcy proceedings, including overtime meals and after-hour travel services. In keeping with the SIPA statute, the services and fees of all professionals were closely reviewed by SIPC and the Trustee throughout the Report Period.

41. For first quarter 2018, the estate had incurred administrative expenses of approximately \$4 million. At the same juncture in 2017, the estate had incurred administrative expenditures of approximately \$5.2 million. This nearly 23% reduction in administrative costs reflects the cost-savings efforts described herein.

42. The Trustee has been paying such administrative expenses in accordance with this Court's orders, the Bankruptcy Code, and SIPA. Through March 31, 2018, approximately \$4.35 million in administrative expenses remain accrued, but unpaid. For the period, of October 1, 2017 through March 31, 2018, administrative expenses disbursed total approximately \$6,957,619.

## **VII. TAX MATTERS**

43. The Trustee's professionals continue to (i) monitor federal, state, and local tax audits, assessments, and claims; (ii) respond to tax-related information requests from international, federal, state, and local authorities; and (iii) coordinate all tax reporting requirements with respect to LBI and the Trustee.

44. Deloitte Tax continues to assist the Trustee in complying with LBI's income tax filings, and Deloitte Tax and Epiq Systems continue to assist the Trustee in complying with all required information reporting, including any reporting that may be required with respect to distributions made by the Trustee.

45. During the Report Period, the Trustee received an information document request from the New York State Department of Taxation and Finance ("DTF") with respect to an audit of the net operating losses reported on LBI's 2014 and 2015 New York franchise tax returns. The auditors at the DTF acknowledge that the audit is subject to the supplemental administrative expense bar date order, and the DTF will not audit the amount of taxes paid in 2014 and 2015. The Trustee's professionals have responded to the request and have not received any further correspondence from the DTF.

## **VIII. CONTINUING ADMINISTRATIVE MATTERS**

### **Banking Matters**

46. Except for certain accounts that remain open for administrative or related reasons, the few remaining legacy LBI bank accounts (including accounts in foreign jurisdictions) are in the process of being closed out following the transfer of any cash balances or securities to the Trustee. Remaining balances are not material.

### **Government and Third Party Investigations**

47. The Trustee continues to coordinate regularly with regulators, including in particular with the Securities and Exchange Commission, and to respond to a reduced flow of document requests and subpoenas as necessary. In total, over the course of the liquidation, the Trustee has made over 1,080 document productions in response to approximately 1,937 governmental and civil litigation requests.

### **Internal Controls, Bookkeeping, and Data Management**

48. The Trustee employs administrative professionals who monitor estate assets and who have established daily, monthly, and ad-hoc processes for this purpose. These professionals rely on established controls for the payment and journaling of all expenses, including recording payment instructions and supporting documentation, reviewing time-entry diaries, assessing the reasonableness of rates and bills for services performed, and other accounting functions. For more information on this topic, see the Eighth Interim Report (ECF No. 5394), paragraphs 93-97.

## **IX. CONCLUSION**

The foregoing Report represents a summary of the status of this proceeding and the material events that have occurred from October 1, 2017 through March 31, 2018. It will be supplemented and updated by further reports.

Dated: New York, New York  
May 1, 2018

Respectfully submitted,

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