

## **PROTOCOL REGARDING MISDIRECTED FUNDS LEHMAN BROTHERS INC.**

### **Background**

- Shortly after the appointment of James W. Giddens as Trustee for the liquidation of Lehman Brothers Inc. (the “**Trustee**”), the Trustee began receiving and investigating reports of monies being sent to Lehman Brothers Inc. bank accounts **in error**, including monies intended for the benefit of parties that were previously Lehman Brothers Inc. customers, but whose accounts were transferred after the commencement of the liquidation proceeding (“**Misdirected Funds**”).
- Misdirected Funds have in many cases resulted from the bank or other institution that wired the funds (the “**Sending Bank**”) sending the funds according to outdated wiring instructions because: (1) the party that ordered or authorized the transfer (the “**Ordering Party**”) failed to provide updated wiring instructions; (2) the beneficiary of the funds (the “**Beneficiary**”) failed to provide updated wiring instructions to the Ordering Party; or (3) the Sending Bank failed to follow the updated wiring instructions.
- In the normal course of business, a Sending Bank can recall funds sent in error with relative ease. However, because Lehman Brothers Inc. is in liquidation under the Securities Investor Protection Act, the Trustee must investigate all funds alleged to be Misdirected Funds, and confirm that such funds were in fact sent in error and are not property of Lehman Brothers, Inc. or its estate, before returning any such funds (“**Returns**”). This requires a careful review of all information provided by the person or entity requesting the Return (the “**Requesting Party**”) and independent confirmation that the information provided is accurate.
- Due to the high number of Return requests that the Trustee has received since commencement of the Lehman Brothers Inc. liquidation proceeding, the Trustee has decided to establish this Protocol to enhance the efficiency of the investigation and return process.

### **Protocol for Returns of Misdirected Funds**

- A party alleging that any funds wired to a Lehman Brothers Inc. bank account were sent in error and requesting return of such Misdirected Funds must report it to the Trustee by sending a completed Request Form for the Return of Misdirected Funds (the “**Request Form**”), which is available for download at [www.lehmantrustee.com](http://www.lehmantrustee.com). The Request Form is in PDF format and contains form fields that can be completed electronically. The information in the Request Form is necessary for us to investigate the underlying facts related to the Misdirected Funds, and to verify that the information is accurate. **Failure to accurately provide all of the information in the Request Form will delay our investigation and the return process.**
- Once completed, the Requesting Party must send the Request Form to the intake e-mail address [misdirectedwires@lbitrustee.com](mailto:misdirectedwires@lbitrustee.com) with the subject line “New Request For The Return Of Misdirected Funds.” Upon receipt of the Request Form, the Requesting Party will receive

a return e-mail confirming receipt of the Request Form. We will also contact the Requesting Party if we need additional information and/or once we make a determination on whether to authorize a Return.

- **Request Forms will be processed in the order received. Due to the high volume of Return requests, we estimate that it will take several weeks to investigate and, if appropriate, authorize a Return.**
- **In some cases, a more in-depth review might be necessary or there might be a delay due to various factors.** To the extent that any such issues are within our control, we will attempt to resolve them promptly. **However, due to the volume of requests, we are unable to provide day-to-day updates concerning the status of a particular request.**
- If we authorize a Return, we will prepare the required documentation and send it to the Requesting Party to obtain the relevant parties' signatures.
  - With respect to Returns of up to \$250,000.00, the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) has authorized the Trustee to return those funds without further court order. In most such cases, we will prepare a letter agreement (the “**Letter Agreement**”) that must be signed by the Ordering Party and Beneficiary of the Misdirected Funds.
  - With respect to Returns above \$250,000.00, the Trustee will seek authorization from the Bankruptcy Court to return the Misdirected Funds. We will prepare a court stipulation and order (the “**Stipulation**”) which must be signed by the Ordering Party and the Beneficiary. In some cases, the signature of the Sending Bank or the Requesting Party might be required. The Stipulation will then be filed with the Bankruptcy Court for approval.
  - Parties wishing to receive a Return through this expedited process must acknowledge the accuracy of the representations made to the Trustee in the Request Form and, in connection with receiving a Return, sign a release of claims against the Trustee, the Lehman Brothers Inc. estate and the Securities Investor Protection Corporation with respect to the Misdirected Funds, including any claims for interest, costs and attorneys fees.
- Upon receipt of a duly executed Letter Agreement or entry of an order of the Bankruptcy Court approving a Stipulation, as the case may be, the Trustee will authorize the bank that received the Misdirected Funds from the Sending Bank (the “**Receiving Bank**”) to issue a Return according to the wire instructions provided in the Request Form (or pursuant to such other wire instructions provided to us in writing by the Requesting Party following the submission of the Request Form.) Thereafter, the Receiving Bank should return the funds within a few business days.

### **Other Related Issues**

- **Service Fee Charges Against Returns:** Due to the significant cost and time involved to investigate Misdirected Funds and to authorize Returns, the Trustee has been authorized by the Bankruptcy Court to charge a service fee for effectuating Returns, equal to one percent (1%) of the amount of any Return up to a maximum charge of \$5,000.00 per Return. The service fee will be deducted against the Return. Accordingly, it is strongly advised that all former Lehman Brothers Inc. customers take necessary steps to avoid sending funds into Lehman Brothers Inc. accounts in error, including by providing updated wire instructions to their banks, financial institutions and/or other relevant parties.
- **Setoffs:** The Trustee is also authorized by the Bankruptcy Court to preserve setoff rights of amounts owed to the Lehman Brothers Inc. estate by any party entitled to a Return against the amount of the Return due to any such party who is indebted to the Lehman Brothers Inc. estate. With the consent of such party or upon further order of the Bankruptcy Court (on notice to the Requesting Party and Beneficiary), the Trustee may effectuate such setoff rights.
- **Disallowance of Requests:** The Trustee is authorized by the Bankruptcy Court to disallow requests for the return of Misdirected Funds where the Requesting Party fails to provide requested information or to execute and return required documentation within sixty days after receiving a final written notice from the Trustee requesting such documents or information. In such cases, any funds related to the disallowed request will be treated as property of the Lehman Brothers Inc. estate free and clear of claims and encumbrances of the Requesting Party or Beneficiary.
- **Prepetition Misdirected Wires:** Return requests for Misdirected Funds sent to a Lehman Brothers Inc. bank account on or before September 19, 2008 at 1:29 p.m. ET (the date and time of the filing of the bankruptcy petition of Lehman Brothers Inc.) are generally processed through the claims process, with submissions of any communications about such Misdirected Funds prior to June 1, 2009 being considered timely filed claims. Requests received by the Trustee after June 1, 2009 will not be considered. For more information on the claims process visit [www.lehmantrustee.com](http://www.lehmantrustee.com).
- **Funds Held By Other Lehman Entities:** Please note that the Trustee does not have jurisdiction over bank accounts held by Lehman entities other than Lehman Brothers Inc. and therefore cannot access those accounts to return any Misdirected Funds.

April 2, 2010

## REQUEST FORM FOR THE RETURN OF MISDIRECTED FUNDS LEHMAN BROTHERS INC.

### Instructions

- “*Misdirected Funds*” are monies that have been wired **in error** to an account held by Lehman Brothers Inc., even though in some cases the ultimate beneficiary might have been a former Lehman Brothers Inc. customer. Monies intended to be sent to Lehman Brothers Inc. itself are not Misdirected Funds.
- James W. Giddens, the Trustee for the liquidation of Lehman Brothers Inc., would like to resolve your claims for the return of Misdirected Funds expeditiously. In order to do so, you must complete this Request Form For The Return Of Misdirected Funds (the “*Request Form*”). This Request Form can be completed electronically. Failure to fully and accurately provide the information requested will delay our investigation and the return process.
- Completed Request Forms must be sent by e-mail to [misdirectedwires@lbitrustee.com](mailto:misdirectedwires@lbitrustee.com) with the e-mail subject line “New Request For The Return Of Misdirected Funds.” You will receive a return e-mail confirming receipt of your Request Form.
- Request Forms will be processed in the order received. We estimate that it will take several weeks for us to investigate and, if appropriate, return any Misdirected Funds. Due to the high volume of requests, we are unable to provide day-to-day updates concerning the status of a particular request. We will contact you directly at the e-mail address provided in the event that we need additional information to process the request. We will also contact you once we make a determination on the return of the Misdirected Funds.
- A Requesting Party who fails to provide requested information or to execute and return required documentation to effectuate a Return within sixty days after receiving a final written notice from the Trustee requesting such documents or information will have their Return request disallowed. In such cases, any funds related to the disallowed request will be treated as property of the Lehman Brothers Inc. estate free and clear of claims and encumbrances of the Requesting Party or Beneficiary.
- Due to the significant cost and time involved to investigate Misdirected Funds and to authorize Returns, the Trustee has been authorized by the Bankruptcy Court to charge a service fee for effectuating Returns, equal to one percent (1%) of the amount of any Return up to a maximum charge of \$5,000.00 per Return. The service fee will be deducted against the Return amount. Accordingly, it is strongly advised that all former Lehman Brothers Inc. customers take necessary steps to avoid sending funds into Lehman Brothers Inc. accounts in error, including by providing updated wire instructions to their banks, financial institutions and/or other relevant parties.
- The Trustee is also authorized by the Bankruptcy Court to preserve setoff rights of amounts owed to the Lehman Brothers Inc. estate by any party entitled to a Return against the amount of the Return due to any such party who is indebted to the Lehman Brothers Inc. estate. With

the consent of such party or upon further order of the Bankruptcy Court (on notice to the Requesting Party and Beneficiary), the Trustee may effectuate such setoff rights.

- For more information concerning our procedure for handling requests for the return of misdirected funds, please see the Protocol Regarding Misdirected Funds at [www.lehmantrustee.com](http://www.lehmantrustee.com).

### **Part I**

Please type or print the following information in the spaces below:

1. Full legal name of the entity or person completing this Request Form (the “**Requesting Party**”). Please also provide a brief description of the Requesting Party’s relationship to the Misdirected Funds (e.g. Sending Bank, the Ordering Party, or the Beneficiary (as each such term is defined below)).

Name: \_\_\_\_\_

Requesting Party’s relationship: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Name of the individual to contact for the Requesting Party, e-mail address and telephone number.

Name: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone: \_\_\_\_\_

3. Full legal name of the bank or other institution that wired the funds to a Lehman Brothers Inc. bank account (the “**Sending Bank**”).

\_\_\_\_\_

4. Name of the individual to contact for the Sending Bank, e-mail address and telephone number.

Name: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone: \_\_\_\_\_

5. Full legal name of the entity or person that ordered or authorized the Sending Bank to send the funds to a Lehman Brothers Inc. bank account (the "**Ordering Party**"). If the Ordering Party is the same entity as the Sending Bank then leave this item blank.

\_\_\_\_\_

6. Name of the individual to contact for the Ordering Party, e-mail address and telephone number. If the Ordering Party is the same entity as the Sending Bank then leave this item blank.

Name: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone: \_\_\_\_\_

7. Full legal name of the bank that received the wired funds from the Sending Bank (the "**Receiving Bank**").

\_\_\_\_\_

8. The general Lehman Brothers Inc. bank account number that received the wired funds at the Receiving Bank.

\_\_\_\_\_

9. Full legal name of the beneficiary of the wired funds (the "**Beneficiary**").

\_\_\_\_\_

10. Name of the individual to contact for the Beneficiary, e-mail address and telephone number.

Name: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone: \_\_\_\_\_

11. The sub-account number of the Beneficiary at the Receiving Bank (e.g., the Lehman Brothers Inc. customer account number), if applicable.

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12. The dates that the Sending Bank wired Misdirected Funds to the Receiving Bank, the amount of each wire transaction and the currency type.

<u>Wire Date</u>	<u>Amount</u>	<u>Currency</u>
<b><u>TOTAL:</u></b>		

13. Briefly describe the purpose of the wire transfer (i.e., a description of the underlying transaction and the obligation intended to be paid with such funds).

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14. Briefly describe why the wire was sent in error (e.g., wire sent pursuant to old instructions, instructions were not updated by the Beneficiary, duplicate payment, etc.).

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15. The wire information as to where the funds should be returned:

- a. Bank name: \_\_\_\_\_
- b. ABA No.: \_\_\_\_\_
- c. Account Name: \_\_\_\_\_
- d. Account Number: \_\_\_\_\_
- e. For Further Credit (FFC) Account Name (if applicable): \_\_\_\_\_  
\_\_\_\_\_
- f. FFC Account No. (if applicable): \_\_\_\_\_
- g. Reference (if applicable): \_\_\_\_\_

16. Indicate whether you are aware of whether a claim has been filed in the Lehman Brothers Inc. liquidation for the funds covered by this Request Form, and if yes, provide the claim number and name of the Claimant.

*(Check only one box)*

Yes, a claim has been filed

☐

No claim has been filed

☐

Claim No.: \_\_\_\_\_

Claimant's Name: \_\_\_\_\_

## **Part II**

For each wire transfer listed above in response to item 12 in Part I of this Request Form, you must provide a screenshot or similar document (preferably originated from the system initiating the wire transfer) showing the details of each wire transfer subject to this Misdirected Funds claim. The screenshot or document must be in .PDF, .GIF, .JPG, .BMP, .TIF or similar electronic format and should be sent to [misdirectedwires@lbitrustee.com](mailto:misdirectedwires@lbitrustee.com) in the same e-mail as your completed Request Form. The screenshot must include the following information:

1. The transfer amount;
2. The transfer date;
3. The name of the Sending Bank;
4. The name of the Ordering Party (if different from Sending Bank);
5. The general Lehman Brothers Inc. bank account number;
6. The name of the Beneficiary;
7. The account number for the Beneficiary (i.e., the Beneficiary's Lehman Brothers Inc. customer account number), if applicable; and
8. Confirmation of the executed transfer (e.g., a Fed reference or other confirmation number).