

Five Year Anniversary of Lehman Brothers Failure Statement from the Office of the Trustee of Lehman Brothers Inc.

Five years after the Lehman bankruptcy, one of our nation's most catastrophic financial events, it is clear that the system to protect customer property, and particularly the Securities Investor Protection Act (SIPA), worked well to alleviate the effects of a financial catastrophe for tens of thousands of customers and the U.S. capital markets.

The SIPA liquidation of Lehman Brothers Inc. (LBI) will result in 100 percent satisfaction of securities customer claims totaling more than \$105 billion. This includes the unprecedented accomplishment of the transfer of 110,000 retail customer accounts within days of the bankruptcy filing, which allowed the continued availability of tens of billions in assets to investors and to the financial system at a time of panic and turmoil.

Success in marshaling assets and reaching settlement agreements with the major Lehman affiliates will also pave the way for future distributions from the general estate to general creditors, including former employees, pension funds, institutions, banks, and Lehman affiliates. The process of analyzing, objecting to, settling, and otherwise resolving the more than 12,000 filed general creditor claims is well advanced.

Investigative Report, Cause of Failure and Recommendations

In August 2010, as part of his statutory duties, the Trustee issued an exhaustive [investigation report](#) on the failure of the Lehman broker-dealer. This report, an in-depth look at how the U.S. broker-dealer operated and interfaced with the rest of the Lehman enterprise and other market participants and regulators, was based on over 200 witness interviews and review of massive volumes of documents and information in physical and electronic form.

Consistent with the findings of the U.S. Securities and Exchange Commission and others, the Trustee determined that there was no evidence of fraud or misconduct that precipitated the failure of Lehman. The real cause of Lehman's demise was its business decision to become highly leveraged and enmeshed in risky real estate transactions, leading to a liquidity crisis and an escalating crisis of confidence on the part of counterparties and sources of funding and clearing and other services.

The investigative report also offered recommendations to avoid a similar situation from happening again and to protect customers in future SIPA liquidations that remain relevant five years removed from the September 2008 bankruptcy, including:

- **Customer Protection Regulations Were Followed But There Is Room for Improvement and Greater Clarity In the Rules and Procedures That Apply to Emergency Liquidations.** The Trustee determined that at least until the eve of bankruptcy when panic and confusion set in, LBI's compliance with the regulatory requirements designed for the protection of customer property was good, and the requirements largely had the effect they were supposed to have. The Trustee nevertheless recommended that further assessment could be made of the rules and policies of clearing organizations and the mechanics of account transfers and recovery of customer property in emergency situations.
- **Better Access to Information and Related Disaster Planning Are Needed.** The Lehman experience underscores the need for better information, better planning, and better

communication. The Trustee also recommends that future SIPA trustees or other liquidators be provided with continuous, unimpeded access to systems that monitor broker-dealer activity, and that transmission of information by clearing banks and depositories be continued without interruption on the same basis as prior to the SIPA proceeding.

- **Greater Harmonization of Rules Internationally.** The insolvency of Lehman has revealed gaps between the protections afforded to customers in the United States and in other countries. Customers would benefit from greater harmonization of rules governing segregation of customer funds, and binding and enforceable international rules that would establish a reliable framework for resolving disputes should be explored.

The Trustee and his staff are grateful to the Securities Investor Protection Corporation and the Securities and Exchange Commission for their assistance, and to Judge James Peck for his continued oversight throughout the liquidation process.