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

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

**OBJECTION OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)
(IN ADMINISTRATION) TO TRUSTEE'S DETERMINATION OF CLAIMS**

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The Joint Administrators¹ of Lehman Brothers International (Europe) (in administration) (“LBIE”), through their undersigned counsel, hereby object to the Determination of LBIE’s House Customer Claim² and that portion of LBIE’s Failed Trades Claim³ relating thereto (together, LBIE’s “House Claim”) by James W. Giddens (the “Trustee”), as trustee for the liquidation of Lehman Brothers Inc. (“LBI”), as that Determination is described in the Notice of Trustee’s Determination of Claim dated September 16, 2010 (the “House Determination Letter”). As and for their Objection, the Joint Administrators respectfully represent and set forth as follows:

PRELIMINARY STATEMENT

1. Despite LBI’s long-standing clearing and custody relationship with LBIE, and in contravention of the clear dictates of 15 U.S.C. §§ 78aaa *et seq.*, the Securities Investor Protection Act of 1970, as amended, (“SIPA”), the Trustee’s House Determination Letter categorically denied LBIE customer status with respect to its entire House Claim. The Trustee’s arbitrary and, until recently, unexplained determination that LBIE is ineligible for customer treatment contravenes both the plain language of SIPA and the undisputed factual evidence to

¹ By orders of the English High Court of Justice, Anthony Victor Lomas, Steven Anthony Pearson, Dan Yoram Schwarzmann, Michael John Andrew Jervis and Derek Anthony Howell were appointed as Joint Administrators of LBIE (collectively, the “Joint Administrators”).

² Claim Numbers 900005784 (filed Jan. 30, 2009), 000006026 (filed May 29, 2009) and 900008198 (filed Sept. 10, 2010). Based on instructions from Epiq, these claims were also submitted by mail, and the first two claims were subsequently assigned alternate claim numbers: 900005952 (filed Feb. 2, 2009) and 000006031 (filed June 1, 2009). Copies of the Claims are in the Trustee’s possession and will be made available on request to the Court and, subject to appropriate confidentiality protections, to other parties in interest.

³ Claim Numbers 900005783 (filed Jan. 30, 2009) and 900008003 (filed May 29, 2009). Based on instructions from Epiq, these claims were also submitted by mail and subsequently assigned alternate claim numbers: 900005951 (filed Feb. 2, 2009) and 000006027 (filed June 1, 2009). LBIE filed its Failed Trades Claim to protect its interests with respect to securities trades that were pending with LBI as of the date that LBIE entered administration in the U.K. and ceased operations. The Trustee also issued a separate determination letter with respect to the Failed Trades Claim, denying the claim “except to the extent that the Failed Trades Claim was expressly allowed or the determination thereof deferred by the Trustee” in the Trustee’s other determination letters, including the House Determination Letter.

which the Trustee has had open access. It is also grossly unfair to LBIE and its many stakeholders⁴ who have already waited for years, and will now have to wait yet longer, to recover the customer property to which SIPA entitles them.

2. Prior to its administration, LBIE was the principal trading company and broker-dealer in Europe within the Lehman group of companies. LBIE had an extensive customer trading relationship with LBI under which LBI served as LBIE's broker-dealer for LBIE's trading in U.S. securities, and LBIE served a similar role for LBI in respect of LBI's trading of European securities. In the ordinary course of its business, LBI received, acquired or held in custody for LBIE substantial quantities of securities and maintained entries in its books and records for LBIE's securities-related cash balances. At the time the Lehman entities failed in mid-September 2008, LBI owed LBIE and its clients billions of dollars in securities and cash as a result of these trading relationships. None of LBIE's house accounts with LBI were included in the Trustee's transfer of \$92 billion in customer accounts during the early stages of this SIPA proceeding,⁵ and LBIE is thus by far and away the largest creditor of LBI.

3. LBIE filed claims under SIPA to recover its property (and its customers' property) or the value thereof. Specifically, LBIE filed an "Omnibus Claim"⁶ (including that portion of the

⁴ Like LBI, LBIE is insolvent. As such, 100% of any recovery on the House Claim (net of fees and expenses) will be distributed to LBIE's customers and other creditors.

⁵ The Trustee transferred approximately \$92 billion of customer accounts to Barclays Capital Inc., Ridge Clearing & Outsourcing Solutions, Inc. as clearing broker for Neuberger Berman LLC, and other solvent broker-dealers. Trustee's Fifth Interim Report for the Period October 27, 2010 through April 22, 2011, Docket No. 4245, at 1 [hereinafter "Trustee's Fifth Interim Report"]; Trustee's Third Interim Report for the Period November 12, 2009 through May 10, 2010, Docket No. 3244, at 5-6. As such, unlike LBIE and its many stakeholders that have been subjected to needless and ongoing delay, many other preferred customers received their customer property years ago.

⁶ Claim numbers 900005782 (filed Jan. 30, 2009), 900007955 (filed May 29, 2009) and 900008199 (filed Sept. 10, 2010). Based on instructions from Epiq, these claims were also submitted by mail, and the first two claims were subsequently assigned alternate claim numbers: 900005953 (filed Feb. 2, 2009) and 900007941 (filed June 1, 2009).

Failed Trades Claim related thereto) to recover \$16.3 billion in customer property associated with certain of its prime brokerage clients. On May 19, 2011, the Trustee allowed \$8.3 billion with respect to this claim, subject to certain significant conditions. The Trustee and LBIE continue to discuss this claim, which is not the subject of this Objection.

4. Importantly, for the purposes of this litigation, LBIE also filed a House Claim that, as amended, sought \$13.9 billion in securities and cash from LBI. LBIE's House Claim seeks customer property associated with trading activity for LBIE's own account, as well as trading activity on behalf of LBIE's "Title" clients—i.e., prime-broker clients that entered into agreements with LBIE under English law pursuant to which title to the clients' securities was transferred to LBIE. LBIE's House Claim also seeks a recovery in respect of customer property associated with the trading activity of other Lehman affiliates for positions settled or transferred into LBI depots.⁷

5. LBIE's \$13.9 billion House Claim will not ultimately duplicate any aspect of the \$16.3 billion Omnibus Claim, even though there were certain items that were included in both claims for protective purposes. LBIE, of course, has always recognized that it can recover only once for any item appearing in both claims and stands ready to reduce its House Claim to account for any portions of the House Claim that will be allowed and paid as a result of the Omnibus Claim. In addition, as part of its ongoing review of the facts and circumstances

⁷ Assets associated with the trading activities of such clients and affiliates were also claimed on a protective and unliquidated basis in the Omnibus Claim lest the Trustee deny a portion of LBIE's claims because of an error in classification. LBIE is continuing to investigate certain of these positions and may adjust its House Claim and/or Omnibus Claim accordingly depending upon the results of its continuing review, which will be aided by the discovery process. Indeed, based on ongoing legal and factual analysis, LBIE may subsequently conclude that certain affiliate-related positions should be removed from both the House Claim and the Omnibus Claim, in which case LBIE will remove such affiliate-related positions from both claims. Needless to say, LBIE does not seek, and has never sought, a double recovery on any part of its claims—this is simply a question of classification.

underlying the claims, LBIE has eliminated certain aspects of its House Claim and thereby reduced the claim by billions of dollars.

6. On September 16, 2010—just prior to the two-year anniversary of LBI’s SIPA filing—the Trustee issued the House Determination Letter categorically denying LBIE’s House Claim customer status. The Trustee rejected a portion of the House Claim outright and reclassified the remainder of LBIE’s House Claim and associated Failed Trades Claim as general unsecured claims, stating without further explanation that these claims “are not ‘customer’ claims under SIPA.”⁸ In so doing, the Trustee also declined to consider LBIE’s most recent amendment to its claims, despite having signed an agreement with LBIE that explicitly contemplated the filing of amended claims. The Trustee provided no explanation for his decisions and, despite LBIE’s repeated requests, refused to engage with LBIE in any discussions concerning the factual or legal basis for his blanket denial of customer status to LBIE. Instead, the Trustee sought additional information from LBIE in an effort, ostensibly, to “reconcile” LBIE’s claims with the Trustee’s view of LBI’s books and records, suggesting that the proper completion of this exercise would allow the Trustee to reassess and potentially revisit his initial denial of LBIE’s House Claim.

7. Given the Trustee’s total rejection of LBIE’s House Claim and his simultaneous refusal to engage in any substantive discussion of legal principles, LBIE could have filed an objection with the Court in October 2010. However, in an effort to exhaust all possibilities before burdening the Court with this dispute, LBIE acceded to the Trustee’s many information requests with the expectation that, at the end of that process, the Trustee would agree to revise his determination and/or otherwise engage in a substantive discussion so that the differences

⁸ House Determination Letter, at 2.

between the parties could be narrowed and possibly even resolved. Over the last year, LBIE and its professionals have devoted tens of thousands of hours in responding to the Trustee's many requests for information with respect to the House Claim and the Omnibus Claim and dealing with the progression of these claims. LBIE has worked diligently with the Trustee's representatives to reconcile the Trustee's view of LBI's books and records with LBIE's claims. LBIE has provided the Trustee with comprehensive data and trade records and engaged in countless discussions with the Trustee and his team. All the while, the Trustee continued to extend LBIE's deadline to object, further suggesting to LBIE that the substantial information-sharing exercise would better enable the Trustee to reconsider his earlier determination.⁹

8. On May 19, 2011, the consensual information-sharing process abruptly ended when the Trustee advised LBIE that the initial denial of the House Claim would remain unchanged because LBIE, as an affiliate of LBI, could *never* be entitled to a customer claim as a matter of law. Leaving aside why the Trustee has waited over two years to reveal his position, the Trustee's decision clearly leaves LBIE with no alternative but to resort to litigation to resolve the question of whether an affiliate such as LBIE could be entitled to a customer claim at all.

9. The Trustee's position defies explanation. After inducing LBIE to spend a tremendous amount of time and money exchanging information over the year following receipt of the House Determination Letter—and forcing LBIE's creditors to stand by while delaying litigation under the guise of information sharing—the Trustee has unveiled a legal position that he could have disclosed the day LBIE filed its House Claim over two years ago. Significant time and value has been wasted by the manner in which the Trustee has administered his estate.

⁹ Throughout this process, LBIE repeatedly asked the Trustee to engage in a substantive discussion of legal principles so that the parties could at least understand their relative positions on key legal issues. The Trustee declined these requests, stating that he needed more "facts" before any such discussion could even begin.

Distributions to creditors of LBI will be delayed further because of the multi-year litigation now commencing. Indeed, LBIE is the largest undisputed customer and creditor of the LBI estate and is deeply interested in the speed, efficiency and accuracy of the claims resolution process and administration of the case.

10. The Trustee is also wrong on the law. The Trustee’s recent assertion that an affiliate of the debtor—such as LBIE—is *per se* ineligible for customer status is unprecedented and unsupportable. Indeed, the statute could not be clearer: SIPA defines “customer” to include “any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting transfer.” 15 U.S.C. § 7811(2). The statute contains no exclusion for affiliates of the debtor, nor can one be found in the case law, and the fact that Congress chose not to incorporate such an exclusion in the broad definition of “customer” demonstrates a clear legislative intent not to exclude affiliates. The Trustee has simply created a purported exclusion out of whole cloth.

11. Notwithstanding the impasse with the Trustee, as detailed below and on the chart on Exhibit A, the Joint Administrators have sought to reduce the total amount of LBIE’s House Claim by undertaking significant factual and legal analysis as to each component of the claim, an undertaking that simply was not possible during the chaotic initial months after LBIE collapsed. As a result of that work, the Joint Administrators have determined unilaterally to reduce the House Claim by the approximately \$2.8 billion in cash corresponding to the portion of the claim labeled “Aristeia.” In addition, two other elements of the claim, labeled “UBS O’Connor” and

“OCC Margin”,¹⁰ were also included in the Omnibus Claim, and approximately \$2.8 billion in gross amount of those elements have been conditionally allowed by the Trustee as part of that claim.¹¹ To the extent that those balances are ultimately accorded unconditional customer status by the Trustee and receive distributions as part of the Omnibus Claim, LBIE no longer asserts such elements as part of the House Claim, which will further reduce the face amount of the claim.¹² As a result of these changes, the total amount of the House Claim for customer status is now approximately \$8.9 billion¹³ in cash and securities, a reduction of over \$5 billion.¹⁴

¹⁰ OCC Margin refers to \$1.26 billion of cash that LBI held for LBIE in respect of LBIE client options cleared by the Options Clearing Corporation (“OCC”).

¹¹ The amount of this \$2.8 billion estimated as attributable to UBS O’Connor (also known as the September 10, 2008 balance owing by LBI to LBIE in respect of prime brokerage cash) is \$1.574 billion. The Trustee did not explicitly identify the amount of cash conditionally allowed in the Omnibus Claim that is attributable to the UBS O’Connor claim. The \$1.574 billion figure is estimated based on a stated claim for UBS O’Connor of \$2.322 billion, less certain deductions and adjustments made by the Trustee (including the estimated value of cash applied by LBI for securities purchases during the week prior to the LBI filing) in arriving at a net amount of approximately \$945 million in non-OCC Margin cash conditionally allowed by the Trustee in the Omnibus Claim. This estimated \$1.574 billion is subject to adjustment in the event that LBIE determines, through its ongoing reconciliation process with the Trustee in respect of the Omnibus Claim or otherwise, that the deductions and adjustments made by the Trustee are inappropriate, and accordingly the estimated value attributed to the UBS O’Connor claim as allowed, is incorrect. To the extent that LBIE determines that the value attributable to the UBS O’Connor claim allowed in the Omnibus Claim is less than \$1.574 billion, the amount objected to in respect of UBS O’Connor in the House Claim is hereby increased dollar-for-dollar by a corresponding amount. Likewise, to the extent that LBIE determines that the value attributable to the UBS O’Connor claim allowed in the Omnibus Claim is greater than \$1.574 billion, the amount objected to in respect of UBS O’Connor in the House Claim is hereby decreased dollar-for-dollar by a corresponding amount. Further, the reduction of the UBS O’Connor claim in the House Claim for purposes of this Objection is subject to the \$1.574 billion, or such other amount that LBIE subsequently determines is attributable to the UBS O’Connor claim in the allowed Omnibus Claim, being unconditionally allowed by the Trustee and distributions being made to LBIE or equivalent value otherwise being provided to LBIE in respect thereof at the same distribution rate as for other customer claimants.

¹² These amounts reflect amounts due from LBI in respect of LBIE customer activity, and as such, LBIE fully expects these claims to be afforded customer treatment as part of LBIE’s Omnibus Claim. LBIE reserves the right to withdraw these elements, or portions thereof, from the Omnibus Claim and reassert them in the House Claim to the extent the Trustee later determines that they do not qualify for customer treatment or does not make distributions in respect of them as part of the Omnibus Claim. In addition, LBIE reserves the right to reclassify any other amounts in the Omnibus Claim to the House Claim. As noted, LBIE does not seek, and has never sought, a double recovery on any part of its claims—this is simply a question of classification.

¹³ This number is approximate and may be subject to adjustment.

¹⁴ To the extent any amount of the House Claim is denied customer status by the Court, it is asserted as a general creditor claim and as a secured claim to the extent secured.

12. LBIE is continuing to review the factual underpinnings of its House Claim and may refine its claim amount further; however, that effort has been hampered by the refusal of LBI to engage in a constructive discussion and exchange of information necessary to that exercise, as further described below. LBIE intends to remedy these deficiencies through the discovery process.

13. That the Trustee has conditionally allowed \$8.3 billion of LBIE's Omnibus Claim has no bearing on the Trustee's determination with respect to LBIE's House Claim. LBIE's Omnibus Claim is brought on behalf of LBIE's Charge and Custody clients,¹⁵ who are not represented in LBIE's House Claim. The two claims are separate (indeed, the Joint Administrators have separate teams and legal counsel for each claim) and benefit two separate creditor constituencies of LBIE.

14. Nor will the inquiry end with the resolution of the customer status of LBIE's House Claim. LBI has asserted (and has recently greatly increased) a multibillion dollar claim against LBIE in connection with LBIE's insolvency proceedings in the U.K.¹⁶ According to LBIE's initial review, much of LBI's claim has been submitted on a gross basis and while LBIE is awaiting further information from LBI to support its claim, LBIE anticipates that its claim will exceed LBI's claim by any legitimate measure. Even after the Court determines (or the parties resolve) LBIE's entitlement to a customer claim, courts both here and abroad will have to grapple with complex issues of setoff as between LBIE and LBI's respective claims against one

¹⁵ Charge clients are LBIE's prime broker clients who granted LBIE a charge, or lien, over the securities that LBIE traded for them. Custody clients are LBIE's clients whose securities were held in safekeeping. The Omnibus Claim also asserts unliquidated claims for certain LBIE Title clients and certain Lehman affiliates, in each case along identified CUSIP lines without stating the nominal positions attributable to each such Title client or Lehman affiliate. As noted above, the same Title client and affiliate positions are included in the House Claim for LBIE in amounts specified on an aggregate basis with LBIE's house positions.

¹⁶ LBI has not been subject to a bar date in the U.K. as to its claims against LBIE.

another. While the broader Lehman estate would undoubtedly have benefited from a consensual resolution of these issues, the Trustee has left LBIE with no choice but to seek judicial intervention.

15. In sum, there is no basis for the Trustee's sweeping denial of customer status with respect to LBIE's House Claim. Despite its good faith negotiations and expenditure of very significant resources, LBIE now has plainly reached an impasse with the Trustee because of his continued refusal to engage with the Joint Administrators on substantive matters to resolve LBIE's House Claim.¹⁷ And, nearly three years into the LBI SIPA proceeding, no distribution has been made, and none appears to be forthcoming.¹⁸ With this Objection to the Trustee's determination of its claims, LBIE respectfully requests relief from the Court.

BACKGROUND

16. Prior to entering into administration, LBIE was the principal trading company and broker-dealer in Europe within the Lehman group of companies. LBIE provided a wide range of financial services to its clients, including trading and brokering equity and debt securities, and dealing in financial derivatives. LBIE's clients include a significant number of U.S.-based financial institutions and investment funds that established a customer relationship with LBIE.

17. LBIE was authorized and regulated by the Financial Services Authority in the U.K. and traded securities in Europe and parts of Asia for its clients and affiliates, such as LBI, and for its own account. LBIE was not a registered broker-dealer in the United States. As a result, when

¹⁷ That said, the progress with the Trustee on the Omnibus Claim has been significantly better. The Trustee has allowed the Joint Administrators until October 31, 2011 to object to the Trustee's May 19 determination letter as to the Omnibus Claim.

¹⁸ The Trustee's only distributions have been by way of (i) the initial transfer of certain LBI customer accounts and associated customer property to Barclays and other broker-dealers, a distribution from which LBIE was excluded, see supra note 5; and (ii) a relatively small amount in SIPA advances (\$15 million). See Trustee's Fifth Interim Report ¶ 32.

LBIE or its clients sought to enter into transactions in securities traded in the U.S. markets, LBIE traded through LBI, just as LBIE entered into and settled trades for LBI and its clients in respect of European securities.

18. LBI principally cleared U.S. equity and debt securities for LBIE, and held those securities on LBIE's behalf in U.S. depots at the Depository Trust Company ("DTC") and elsewhere. LBI performed these functions for LBIE pursuant to a clearing and custody agreement dated April 18, 2005 (the "Clearing and Custody Agreement").

19. LBIE also traded U.S. exchange-traded derivatives, on behalf of its clients and affiliates as well as for its own account, through LBI, which was a member of futures and options clearing houses in the U.S. (as well as other jurisdictions, including Japan, Hong Kong, Singapore and Australia). Each of these types of trades required or generated a substantial amount of cash (e.g., as margin to be posted at clearing houses or as proceeds upon sales), which in the latter case LBI credited to accounts for LBIE and its clients but, to a significant extent as of mid-September 2008, had not paid over to LBIE.

20. On September 15, 2008, LBIE entered into administration in the United Kingdom pursuant to the English Insolvency Act of 1986, and the English High Court of Justice appointed four PricewaterhouseCoopers LLP ("PwC") partners as Joint Administrators.¹⁹ The Joint Administrators are subject to the English High Court's jurisdiction in exercising their duties and are bound by law to pursue the best interests of LBIE's estate in making their decisions.

21. Like the Trustee, the Joint Administrators are overseeing a sizeable estate subject to very large claims flowing from the economic collapse of LBIE's and other Lehman group companies' complex businesses. As of the date of its administration, LBIE had an aggregate

¹⁹ A fifth PwC partner was appointed in November 2009.

estate of more than £43 billion.²⁰ As of March 14, 2011, £13.7 billion of client assets and money was returned to clients.²¹ LBIE's creditors include client-money and client-asset claimants as well as approximately 5,800 potential general creditors.²² These potential creditors include numerous U.S. financial institutions and funds, which themselves have individual clients. Many of LBIE's customers are also customers (direct or otherwise) of LBI.

22. LBIE and LBI utilized many of the same trading and records systems through integrated information technology ("IT") data platforms. Around the time that it entered into administration, LBIE lost access to the shared data, IT systems and resources that it relied upon to monitor and record its and its clients' trading positions. This made it extremely difficult for LBIE to identify its or its clients' interests in U.S. securities that might be held by LBI or by LBI's sub-custodians.

23. In light of these and other obstacles, on January 27, 2009, LBI, SIPC and LBIE entered into an agreement (the "Claims Filing Agreement") concerning the "priority claims" by LBIE and its clients against LBI. The Claims Filing Agreement recited that LBIE intended to file "an estimated omnibus claim . . . on behalf of its clients" and "an estimated claim . . . in respect of its house customer position." (Claims Filing Agreement, at 1.) The Claims Filing Agreement noted that, "notwithstanding LBIE's considerable efforts to retrieve and analyze as much data as possible, LBIE face[d] considerable difficulties in this regard, including missing or

²⁰ Lehman Brothers International (Europe) in Administration, Joint Administrators' Progress Report for the Period 15 March 2010 to 14 September 2010, at 15; Lehman Brothers International (Europe) in Administration, Joint Administrators' Progress Report for the Period 15 September 2010 to 14 March 2011, at 10 [hereinafter the "Joint Administrators' Fifth Progress Report"].

²¹ Joint Administrators' Fifth Progress Report, at 10.

²² Id. at 27.

inaccessible records and IT data that complicate[d] the compilation of claims.” (Id.) To this end, the Claims Filing Agreement provided:

The LBI Trustee and SIPC shall construe LBIE’s right to supplement and amend the LBIE claims as broadly as permitted by applicable law . . . so that such supplements and/or amendments shall relate back to the date of the originally filed claim to the maximum possible extent permitted by applicable law. Such supplements and amendments may, among other things, include amendments to the amount of such claim, the composition of assets underlying each claim, the legal grounds upon which such claim may be asserted or to correct any mistake relating to such claim.

(Id. ¶ 9.)

The Claims Filing Agreement also contemplated that LBI and LBIE would engage in a process to reconcile any differences in their respective records and specified that claim amounts agreed between LBI and LBIE during this reconciliation process “may amend and/or supplement amounts identified in the LBIE Claims.” (Id. ¶ 12.)

LBIE’s House Claim

24. LBIE filed its House Claim on January 30, 2009, and, consistent with the Claims Filing Agreement, amended it thereafter on May 29, 2009 and September 10, 2010. The House Claim, as reduced hereby, asserts a customer claim for cash and securities valued at approximately \$8.9 billion. As discussed below and summarized in the chart on Exhibit A, the House Claim comprises several components, each addressed to a separate aspect of the LBIE-LBI trading relationship.

25. “House Securities” is the single largest component of LBIE’s House Claim—valued at \$5.886 billion²³—and relates to debt and equity securities that LBI cleared and held in custody for LBIE. Pursuant to the Clearing and Custody Agreement, LBI acted as clearing broker for LBIE with respect to the clearance of U.S. securities in connection with LBIE’s proprietary and customer trading. (Clearing and Custody Agreement § 3.3.) In addition, LBI agreed to “act as custodian of [LBIE’s] securities, cash and any other property” (*id.* § 3.1), to keep a separate account on its books for the securities that it received for the account of LBIE (*id.* § 3.2(A)), to keep such assets in “safe custody” (*id.* § 3.3(B)), and to ensure that all of LBIE’s securities were “segregated” from the assets of LBI and LBI’s clients (*id.* § 3.2(B)). LBIE understands that LBI maintained LBIE’s securities in various depots, with equity securities being held predominantly, if not exclusively, at DTC. Through the House Securities component of the House Claim, LBIE seeks the equity and fixed-income securities that LBI held on its behalf, or the value thereof.

26. LBI also functioned as LBIE’s U.S. clearing broker with respect to exchange-traded derivatives. In its September 2010 claim, LBIE asserted a “Futures and Options” claim of approximately \$1.1 billion as to these derivatives, which primarily consisted of options on underlying securities and security indices. In the House Claim, LBIE presented this claim on a net basis, deducting from the gross amount of \$1.69 billion an anticipated \$584 million inbound claim from LBI, resulting in the claimed amount of \$1.1 billion. Approximately \$1.26 billion of the \$1.69 billion represents cash that LBI held for LBIE as a result of the closeout, sale or expiration of LBIE client options cleared by OCC, or the return of margin that LBIE had posted

²³ In the September 2010 amendment, LBIE incorporated only securities positions that were net-long (after deducting any short positions within the same securities line, e.g., CUSIP or ISIN line) in its calculations, but, unlike its prior claims, without first offsetting or deducting other claims that LBI might have against LBIE.

to LBI in support of such OCC options. This OCC-related cash is also claimed in LBIE's Omnibus Claim and has been conditionally allowed there on a gross basis by the Trustee. Once this \$1.26 billion is deducted from the House Claim (if such amounts are ultimately paid as part of the Omnibus Claim), the remaining outbound Futures and Options claim of approximately \$427 million consists of cash proceeds from closeouts of derivatives listed on exchanges other than the OCC. LBIE traded these derivatives largely for its own book and on behalf of its clients and affiliates.²⁴

27. LBIE's "OTC Derivatives" claim of \$35 million represents the net amount owed by LBI to LBIE in connection with over-the-counter equity and foreign exchange derivative transactions into which LBIE had entered with LBI in the ordinary course of its business and the return of collateral that LBIE had deposited with LBI in connection therewith.

28. Sale proceeds and other securities trading-related cash that LBI owed to LBIE flowed through an intercompany account between the two entities. Through the "General Intercompany Account" component of its claim, LBIE claims for the \$413 million net balance payable to LBIE that was outstanding on that account and owed by LBI to LBIE in mid-September 2008. Similarly, through the UBS O'Connor component of its House Claim, which is also included in the Omnibus Claim and approximately \$1.574 billion of which has been conditionally allowed there, LBIE is claiming for the remaining amount (after deducting the \$1.574 billion allowed in the Omnibus Claim²⁵), approximately \$748 million in sale proceeds

²⁴ If LBIE recovers any amounts in respect of the Futures and Options claim from other parties or otherwise determines that any amount of such claim does not lie against LBI, LBIE will adjust the claim accordingly.

²⁵ Subject to the Trustee's unconditional allowance and payment to LBIE of the \$1.574 billion through the Omnibus Claim.

and other customer cash that LBI ordinarily would have transferred to LBIE on September 10, 2008 but failed to transfer on that date.²⁶

29. Finally, LBIE and LBI had entered into a series of repo / reverse repo (“Repo”) and stock loan / borrow (“Securities Lending”) transactions with each other, whereby stock or debt securities were transferred from one to the other in exchange for cash. Under a “Global Master Repurchase Agreement” dated November 1, 1996, as amended and supplemented from time to time, LBI and LBIE entered into thousands of Repo transactions. Under an “Overseas Securities Lender’s Agreement” dated February 27, 1997, as amended and supplemented from time to time, LBI and LBIE entered into thousands of Securities Lending transactions. By separate letters dated September 18, 2008, LBI terminated the Repo and Securities Lending transactions. The agreements provide that in the event of termination, each party’s respective holdings of securities or cash on then-open transactions remain with that party, and they further provide a means of calculating the amounts owed to close out those transactions. LBIE and LBI had a substantial number of Repo and Securities Lending transactions open when LBI terminated the governing agreements. In the House Claim, LBIE seeks approximately \$179 million in respect of the Repo transactions and approximately \$1.17 billion in respect of the Securities Lending transactions, in each case on a basis net of like obligations to LBI. The amount owed to LBIE represents the proceeds of the securities transactions contemplated by the Repo and Securities Lending transactions between LBI and LBIE.²⁷

²⁶ LBIE is also investigating whether any non-securities-related amounts are included in the General Intercompany Account Claim as either positive amounts in the claim or negative amounts that were deducted from the claim in calculating the final number and will adjust the claim for any such amounts not in respect of securities or securities-related cash positions.

²⁷ Although stock loan claims have generally not been accorded customer treatment in prior SIPA liquidations, LBIE believes that its Securities Lending transactions with LBI bear elements that are functionally and economically similar to other customer transactions. While LBIE would be prepared to engage in further analysis to (...continued)

The September 2010 House Determination Letter

30. On September 16, 2010, the Trustee issued his House Determination Letter in respect of the House Claim (attached hereto as Exhibit B). The Trustee and his team denied a portion of LBIE’s claim as “not supported by our review of the books and records of LBI” and reclassified the balance—and vast majority—of LBIE’s customer House Claim as a general creditor claim.²⁸ The Trustee provided no explanation for this reclassification, aside from asserting that LBIE’s House Claim is not a “customer” claim under SIPA and, thus, not eligible to share from LBI’s fund of “customer property.”²⁹ The House Determination Letter noted that “[t]he Trustee has not yet determined whether [LBIE’s September 2010 amendment] is a valid amendment.”³⁰

Efforts by LBIE to Reconcile Its Claims in Cooperation with the Trustee

31. LBIE is the largest claimant of LBI by any measure, holding both the largest allowed and disputed customer claims in this SIPA proceeding. The Joint Administrators and the Trustee both recognize that LBIE’s unresolved claims are among the few “major contingencies” for which the Trustee must continue to reserve and that resolution of LBIE’s outstanding claims is a prerequisite to a final disposition of LBI’s remaining customer property

assess the strength of its customer claim in respect of such transactions if it were provided with data within LBI’s control necessary to determine the value or character of this claim or its interrelationship with other elements of its House or Omnibus claims, LBI has declined to provide such information despite numerous requests. Clearly, if LBI were to engage with LBIE in a substantive discussion of LBIE’s Securities Lending transactions with LBI, this would assist LBIE in refining its claim. Formal discovery may be necessary for LBIE to arrive at a conclusion with respect to this issue.

²⁸ House Determination Letter, at 3. LBIE’s time to object to the Trustee’s determination letter as to the House Claim was ultimately extended to August 1, 2011.

²⁹ See id. at 2.

³⁰ Id.

on allowed claims.³¹ As representatives of LBI’s largest customer, the Joint Administrators’ interests are aligned with the Trustee’s interests in completing the liquidation process and returning cash and securities to LBI’s customers—including LBIE and its clients and creditors—as soon as possible. To that end, the Joint Administrators and the Trustee, together with their respective professionals and advisors, have engaged in extensive factual work in an attempt to reconcile those portions of LBIE’s Claims that the Trustee denied or reclassified in the House Determination Letter.

32. The Joint Administrators have devoted substantial resources to complete the process of reconciling and negotiating the disputed claims. PwC and LBIE have assembled large teams of representatives who are working on the Omnibus and House Claims. These teams have collectively dedicated tens of thousands of hours to this process, which has involved, *inter alia*, reconciling LBIE’s claims, primarily the Omnibus Claim, to approximately 6,000 customer-related securities.³² While much progress has been made reconciling the Omnibus Claim, significant work remains to be done to reconcile the House Claim due to the Trustee’s selective engagement in that process, notwithstanding his voluminous data requests to LBIE regarding the House Claim and LBIE’s responses thereto.

33. Since December 2010, in addition to the extensive behind-the-scenes work that had been and continues to be ongoing, senior representatives of LBIE and PwC have held regular weekly meetings with senior members of the Trustee’s professional advisors. The Trustee himself has previously described the discussions with LBIE and PwC as “extensive and

³¹ Trustee’s Fifth Interim Report, at 3-4.

³² Client Assets Update—SIPC Customer Omnibus Claim, <http://www.pwc.co.uk/eng/issues/lehman-client-asset-21072011.html> (last visited July 28, 2011).

proactive,” led by “dedicated teams” of professionals on both sides.³³ LBIE had hoped that these continued discussions might supply an avenue for resolving many of the extraordinarily complex issues pending between the LBI and LBIE estates.

34. Despite considerable effort on the part of LBIE and its representatives, however, following many months of factual reconciliation work, the Trustee continues to categorically deny LBIE’s House Claim customer status *in its entirety*. The Trustee only recently revealed his position that LBIE, as an affiliate of LBI, cannot ever qualify for customer status no matter how many securities are reconciled. And the Trustee still has not formally communicated his determination regarding LBIE’s Second Amended House Claim, although he has informally indicated that he believes the amendment is untimely, notwithstanding that amendments were plainly contemplated in the Claims Filing Agreement which he signed with LBIE. Furthermore, despite numerous requests from LBIE and the reams of data LBIE has supplied the Trustee’s professionals, the Trustee’s representatives have declined to engage in a meaningful bilateral discussion of the legal principles that apparently underlie the Trustee’s position—and those supporting LBIE’s position—concerning the House Claim.

ARGUMENT

THERE IS NO BASIS FOR THE TRUSTEE’S SWEEPING DENIAL OF CUSTOMER STATUS IN RESPECT OF LBIE’S HOUSE CLAIM

35. LBIE is entitled to customer status under the plain language of SIPA. The Trustee’s categorical attempt to deny LBIE of its statutory rights solely because it is an affiliate of the debtor has no legitimate basis in law. Just like any other claimant, LBIE qualifies as a

³³ State of the Estate Hr’g Tr., Docket No. 4016, at 9, 16 (Oct. 28, 2010).

customer under SIPA to the extent that its claims meet the requirements for customer status set forth in the statute.

36. Fundamental, well-established norms of statutory construction dictate that “when the statute’s language is plain, the sole function of the courts . . . is to enforce it according to its terms.” Dodd v. United States, 545 U.S. 353, 359 (2005) (quoting Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6 (2000)); see also Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 438 (1999) (stating that an inquiry begins with the plain language of a statute and, “where the statutory language provides a clear answer, it ends there as well”).

37. Here, the statute could not be plainer—SIPA defines “customer” to include:

[A]ny person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting transfer.

15 U.S.C. § 78III(2). “Customer” also includes “any person who has a claim against the debtor arising out of sales or conversions of such securities” and “any person who has deposited cash with the debtor for the purpose of purchasing securities.” 15 U.S.C. § 78III(2). Notably, the statute provides no exception whatsoever for affiliates. If an affiliate otherwise meets the statutory definition of customer, then that affiliate should be entitled to the full protections of the statute.

A. The Plain Language of SIPA Dictates that LBIE’s House Claim Be Afforded Customer Status

38. With respect to the specific components of its House Claim, LBIE fits squarely within SIPA’s definition of a “customer” of LBI. Although a detailed discussion of each component of LBIE’s House Claim is beyond the scope of this initial pleading—and will be

provided in the detailed briefing and discovery schedule that has been agreed to by LBI and LBIE—LBIE’s House Claim has all the hallmarks of a valid customer claim under SIPA as set out below.

(1) LBIE’s Claim with Respect to Securities

39. To the extent that LBIE’s House Claim relates to securities (and not cash), the claim, exactly as provided in SIPA, is (a) on account of “securities” that (b) were received, acquired, or held by LBI, (c) in the ordinary course of its business as a broker or dealer, (d) from or for LBIE’s securities accounts, and (e) for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer. See 15 U.S.C. § 78III(2). Thus, the House Claim plainly should be accorded customer status.

40. First, LBIE’s House Claim relates to equity securities, corporate, U.S. governmental and other debt securities, and puts, calls and options on securities or securities indexes. Each of these is a “security” within the plain meaning of SIPA. See 15 U.S.C. § 78III(14).

41. Second, LBI maintained accounts with U.S. clearinghouses and securities depositories, such as the OCC and DTC, and “received, acquired, or held” U.S. securities in accounts at those organizations on LBIE’s behalf. See 15 U.S.C. § 78III(2).

42. Third, LBI cleared and held securities for LBIE in the ordinary course of its business as a broker-dealer. See 15 U.S.C. § 78c(a)(4)(A) (defining “broker” as “any person engaged in the business of effecting transactions in securities for the account of others”).

43. With respect to debt and equity securities, for example, LBI’s custody, clearing and settlement services for LBIE were governed by the Clearing and Custody Agreement. The Clearing and Custody Agreement required LBI to keep separate accounts on its books for the

securities that it received for the account of LBIE, and to ensure that all of LBIE’s securities were “segregated” from the assets of LBI and LBI’s clients. (Clearing and Custody Agreement §§ 3.2(A), 3.2(B)); see also N.Y. U.C.C. § 8-501(a) (defining “securities account” to mean “an account to which a financial asset³⁴ is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset”).

44. Finally, the securities that LBI “received, acquired, or held” for LBIE were securities in LBI’s custody “for safekeeping,” “with a view to sale,” “to cover consummated sales,” “pursuant to purchases” and/or “for purposes of effecting a transfer.” See 15 U.S.C. § 78III(2). Each of these securities was, thus, held by LBI for the very purposes delineated in the statutory definition. See id. Because LBIE used the securities that LBI acquired and held on LBIE’s behalf for trading purposes, moreover, LBIE’s claim to these securities is derived from activity that Congress intended to protect. See, e.g., Schultz v. Omni Mutual, Inc., No. 93 Civ. 3700, 1993 U.S. Dist. LEXIS 18464, at *4 (S.D.N.Y. Dec. 30, 1993) (SIPA “intended to protect those who had entrusted cash or securities to their broker/dealers for the purpose of trading and investing[.]”)

(2) LBIE’s Claim with Respect to Cash

45. To the extent that LBIE’s House Claim relates to cash, such claim is for sale proceeds and other cash that resulted from LBI’s sale, conversion or other trading of securities held for LBIE, dividends or interest on, or principal of, such securities, or cash that LBIE had on deposit with LBI for the purpose of purchasing securities. Accordingly, LBIE’s entitlement to

³⁴ The term “financial asset” is defined in section 8-102(a)(9)(i) to be, *inter alia*, a security.

“customer” status is just as clear for the cash it claims as for the securities in the House Claim. See 15 U.S.C. § 78fff(2).

(3) LBIE’s House Claim Is Ascertainable from LBI’s Books and Records

46. Under SIPA, the Trustee “shall promptly discharge” all customer claims that “are ascertainable from the books and records of the debtor or otherwise established to the satisfaction of the trustee.” 15 U.S.C. § 78fff-2(b). LBIE compiled its House Claim, in large part, based on securities and cash that were recorded on ITS, a shared Lehman trading system that, as the Trustee has suggested, “constitutes part of the books and records of LBI.” (See Trustee’s Second Interim Report for the Period May 30, 2009 through November 11, 2009, Docket No. 2055, ¶ 170 & n.16; see also id. Ex. 6 (listing ITS as one of the trading systems included in LBI’s books and records)). Other securities and cash positions reflected in LBIE’s House Claim were similarly reflected on systems, such as RISC (with respect to the exchange-traded derivatives comprising the Futures and Options Claim), that comprised LBI’s books and records.

47. As such, LBIE’s customer status is well supported in LBI’s books and records. Certainly there was no basis for the Trustee to deny any part of LBIE’s House Claim as “not supported by [the Trustee’s] review of the books and records of LBI.”³⁵

48. In sum, LBIE is entitled to customer status for its House Claim under the plain language of SIPA.

B. The Trustee Has No Legitimate Basis to Deny LBIE Its Unambiguous Statutory Rights Under SIPA

49. Confronted with having to justify his categorical denial of LBIE’s House Claim in the face of unambiguous statutory language mandating allowance, the Trustee attempts to rewrite

³⁵ House Determination Letter, at 3.

SIPA in order to manufacture a statutory exclusion where none exists. Specifically, the Trustee now argues after months of delay that a claimant who is an affiliate of the debtor can *never* qualify as a “customer” under SIPA.

50. In reality, SIPA contains no such exclusion, nor is it appropriate for a litigant to attempt to rewrite a statute that is clear on its face. Rather, it is the statute itself that governs, and “courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” Conn. Nat’l Bank v. Germain, 503 U.S. 249, 253-54 (1992).

51. Further, while it remains to be seen what the Trustee will argue here, the Trustee has asserted in other determination motions that broker-dealers are not entitled to customer status under SIPA and that parties, such as broker-dealers, whose cash and securities are not subject to the reserve and segregation requirements of the Securities Exchange Act Rule 15c3-3 should not be entitled to customer status. Any such argument should fail, because SIPA contains no such exclusion.

52. In describing eligibility for “customer” status, SIPA nowhere distinguishes between broker-dealers or affiliates of the debtor, on the one hand, and non-broker-dealer or unaffiliated claimants, on the other hand. By contrast, the statutory definition of “customer” specifically excludes other categories of persons from the definition, namely any person whose claim “arises out of transactions with a foreign subsidiary of a member of SIPC” and persons with “a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor.” 15 U.S.C. § 7811(2)(A)-(B). To be clear, LBIE is not a subsidiary of LBI. Moreover, unlike some Lehman affiliates, LBIE never entered into any subordination agreement with LBI—to the contrary, its custodial relationship with LBI was governed by the Clearing and Custody

Agreement, which required LBI to keep LBIE’s assets in safe custody—and LBIE had every expectation that its claims would be treated no differently than those of any other customer of LBI. Additionally, by excluding certain entities from the definition of “customer,” under the well-established principle of statutory construction *expressio unius est exclusio alterius*, one must assume that Congress intended not to exclude other entities, such as affiliates or broker-dealers of the debtor, from the “customer” definition. See, e.g., Cordiano v. Metacon Gun Club, Inc., 575 F.3d 199, 221 (2d Cir. 2009) (under the canon of *expressio unius*, “the mention of one thing implies the exclusion of the other”) (citation and internal quotation marks omitted).

53. Moreover, in other parts of the statute, Congress took care to treat broker-dealers differently when it intended to do so. For example, broker-dealers and banks are expressly ineligible for SIPC advances except to the extent that their claims “arose out of transactions for customers of such broker or dealer or bank.”³⁶ 15 U.S.C. § 78fff-3(a)(5). Had Congress intended to similarly exclude broker-dealers or affiliates from SIPA’s definition of “customer” for purposes of asserting a claim against the pool of customer property, it clearly could have, and would have, done so. See SEC v. Packer, Wilbur & Co., 498 F.2d 978, 986 (2d Cir. 1974) (denying broker-dealer claimant recovery of SIPC advance, but noting that the broker-dealer “[p]resumably . . . may (if it has not already done so) assert a claim against” the customer property fund). Indeed, “[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” Rusello v. United States, 464 U.S. 16, 23 (1983); see also Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 62-63 (2006) (explaining that where Congress uses different words, it is presumed that Congress

³⁶ Needless to say, LBIE is not seeking any SIPC advances for its House Claim.

intended the different words to make a legal difference). Accordingly, having failed to exclude broker-dealers from one part of SIPA (“customer” status), and having expressly excluded broker-dealers in another part of the statute (SIPC advances), Congress’ failure to exclude must be deemed intentional and deliberate, and the Trustee should not be permitted to substitute his judgment over that of the Congress.

54. Notwithstanding the clarity of the statute and the Second Circuit’s straightforward interpretation of it in Packer, Wilbur, as noted above, the Trustee has taken the position in motions pending before this Court that broker-dealers are not entitled to customer status under SIPA and that parties, such as broker-dealers, whose cash and securities are not subject to the reserve and segregation requirements of the Securities Exchange Act Rule 15c3-3 should likewise not be entitled to customer status under SIPA.³⁷ The Trustee’s position is incorrect and without any legal basis or precedent. Indeed, the SEC, which has responsibility for adopting rules under SIPA, has stated that “under SIPA, broker-dealers are considered ‘customers’ . . . [and] broker-dealer accountholders may share in the fund of customer property.”³⁸ And SIPC itself has affirmed in public comment to the SEC that “broker-dealers are eligible under SIPA to

³⁷ These positions were taken in relation to the Trustee’s Motion for an Order Upholding the Trustee’s Determination of Certain Claims Regarding Underwriting Fees and Expunging Objections Thereto, Docket No. 2833 (Mar. 16, 2010) [hereinafter “Underwriting Fee Motion”]. Passages in the Trustee’s reply memorandum of law suggest that SIPA may categorically deny “customer” status to claims asserted by broker-dealers acting on their own account. See, e.g., Reply in Further Support of Trustee’s Motion for an Order Upholding the Trustee’s Determination of Certain Claims Regarding Underwriting Fees and Expunging Objections Thereto, Docket No. 3566 (Aug. 16, 2010).

Other passages from the Trustee’s briefing in the Underwriting Fee Motion and another motion imply that “customer” status under SIPA should be coextensive with the definition of “customer” for purposes of the SEC’s Customer Protection Rule, 17 C.F.R. § 240.15c3-3. See Reply in Further Support of Trustee’s Motion for an Order Upholding the Trustee’s Determination of Certain Claims Regarding Underwriting Fees and Expunging Objections Thereto, Docket No. 3566 (Aug. 16, 2010); see also Trustee’s Motion for an Order Confirming the Trustee’s Determination of Claims Related to TBA Contracts, Docket No. 4360, at 36-39 (June 24, 2011).

³⁸ Proposed Amendments to Financial Responsibility Rules for Broker-Dealers, Exch. Act. Rel. No. 34-55431, 72 Fed. Reg. 12862, 12863 (proposed Mar. 9, 2007).

share in any fund of customer property and general estate.”³⁹ In fact, SIPC has even made that legal principle clear in these very proceedings: in its response to the Trustee’s Underwriting Fee Motion, SIPC, taking a position on this point contrary to that of the Trustee in that contested matter, proclaimed that “broker-dealers with a ‘securities account’ at LBI, and a claim for ‘securities’ as defined in SIPA . . . have been, and continue to be, treated as ‘customers.’”⁴⁰

55. Accordingly, the Trustee’s attempt to deny LBIE its statutory rights under SIPA is contrary to the plain meaning of the statute and without legal precedent or support from the prior positions of SIPC or the SEC.

RESERVATION OF RIGHTS

LBIE reserves all of its rights with respect to the House Claim that is the subject matter hereof, including without limitation to seek factual discovery with respect to the issues raised in the House Claim, the Determination Letter or this Objection, and to file an amended Objection and/or reply. As noted above, LBIE intends to file detailed pleadings in the future in connection with a consensual briefing and discovery schedule that has been agreed to with the Trustee and submitted to the Court for approval.⁴¹

³⁹ SIPC Comment Letter to the SEC dated May 17, 2007, at 2; see also SIPC Reply in Support of Underwriting Fees Motion, Docket No. 3557, at 12 (Aug. 16, 2010) (“SIPC does not dispute that broker-dealers can be ‘customers’ under SIPA entitled to share *pro rata* in the fund of ‘customer property.’”).

⁴⁰ SIPC Reply in Support of Underwriting Fees Motion, Docket No. 3557, at 12 (Aug. 16, 2010).

⁴¹ Proposed Initial Scheduling Order and Discovery Plan, Docket No. 4449 (July 29, 2011).

REQUEST FOR RELIEF

WHEREFORE, LBIE objects to the Trustee's determination of its House Claim and respectfully requests that the Court enter an order (i) allowing LBIE's House Claim as a customer claim under SIPA, and (ii) granting such other and further relief as this Court deems just and proper under the circumstances.

Dated: New York, New York
August 1, 2011

Respectfully submitted,

By: /s/ Elliot Moskowitz

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Lehman Brothers International (Europe) (in
administration)*

EXHIBIT A

| Claim Components | Sept 2010 Claim (\$ billion) | Balance Reduction (\$ billion) | Balances Objected (\$ billion) |
|--|---------------------------------|-----------------------------------|-----------------------------------|
| Sum reduced after due diligence⁽¹⁾ | | | |
| Aristeia | 2.803 | (2.803) | 0 |
| Conditional reductions of certain amounts⁽²⁾ | | | |
| UBS O'Connor⁽³⁾ | 2.322 | (1.574) | 0.748 |
| Futures and Options⁽⁴⁾ | 1.687 | (1.260) | 0.427 |
| Other balances subject to objections | | | |
| House Securities | 5.886 | | 5.886 |
| Repo and Securities Lending | 1.349 | | 1.349 |
| OTC Derivatives | 0.035 | | 0.035 |
| General Intercompany | 0.413 | | 0.413 |
| Total | 14.495 | (5.637) | 8.858 |
| Futures and Options - Gross amount owing to LBI | (0.584) | | |
| September 2010 SIPC Claim | 13.911 | | |

Notes

(1) See Objection, ¶ 11.

(2) *Id.*

(3) The Trustee did not explicitly identify the amount of cash conditionally allowed in the Omnibus Claim that is attributable to the UBS O'Connor claim (also known as the September 10, 2008 balance owing by LBI to LBIE in respect of prime brokerage cash). The \$1.574 billion figure is estimated based on a stated claim for UBS O'Connor of \$2.322 billion, less certain deductions and adjustments made by the Trustee (including the estimated value of cash applied by LBI for securities purchases during the week prior to the LBI filing) in arriving at a net amount of approximately \$945 million in non-OCC Margin cash conditionally allowed by the Trustee in the Omnibus Claim. This estimated \$1.574 billion is subject to adjustment in the event that LBIE determines, through its ongoing reconciliation process with the Trustee in respect of the Omnibus Claim or otherwise, that the deductions and adjustments made by the Trustee are inappropriate, and accordingly the estimated value attributed to the UBS O'Connor claim as allowed, is incorrect. To the extent that LBIE determines that the value attributable to the UBS O'Connor claim allowed in the Omnibus Claim is less than \$1.574 billion, the amount objected to in respect of UBS O'Connor in the House Claim is hereby increased dollar-for-dollar by a corresponding amount. Likewise, to the extent that LBIE determines that the value attributable to the UBS O'Connor claim allowed in the Omnibus Claim is greater than \$1.574 billion, the amount objected to in respect of UBS O'Connor in the House Claim is hereby decreased dollar-for-dollar by a corresponding amount. Further, the reduction of the UBS O'Connor claim in the House Claim for purposes of this Objection is subject to the \$1.574 billion, or such other amount that LBIE subsequently determines is attributable to the UBS O'Connor claim in the allowed Omnibus Claim, being unconditionally allowed by the Trustee and distributions being made to LBIE or equivalent value otherwise being provided to LBIE in respect thereof at the same distribution rate as for other customer claimants.

(4) In its September 2010 Claim, LBIE presented its Futures and Options Claim on a net basis (anticipating a \$584 million claim by LBI against LBIE) in an amount of \$1.103 billion. However, the Trustee has allowed \$1.26 billion on a gross basis in the Omnibus Claim subject to conditions. On a gross basis, the \$1.103 billion net claim equates to a \$1.687 billion gross claim, leaving a remaining claim amount (after deducting the \$1.260 billion) equal to \$427 million.

EXHIBIT B
TRUSTEE'S DETERMINATION LETTER

James W. Giddens
Trustee for the SIPA Liquidation of Lehman Brothers Inc.
c/o Epiq Bankruptcy Solutions, LLC
757 Third Avenue, 3rd Floor
New York, New York 10017

In re Lehman Brothers Inc.

Case No. 08-01420 (JMP) SIPA

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM

September 16, 2010

VIA UPS OVERNIGHT

Lehman Brothers International (Europe) (in administration)
25 Canada Square
London E14 5LQ England
Attn: Steven Anthony Pearson

With a copy to:

PricewaterhouseCoopers LLP
Plumtree Court
London EC4A 4HT England
Attn: Steven Anthony Pearson

Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Attn: Robert Mendelson

Re: Lehman Brothers International (Europe) (in administration)
House Claim – Claim Number: 900005784, 900005952
Failed Trades Claim – Claim Number: 900005783, 900005951

Dear Claimant:

PLEASE READ THIS NOTICE CAREFULLY

The liquidation of the business of Lehman Brothers Inc. (“LBI”) is being conducted by James W. Giddens, trustee (the “Trustee”) under the Securities Investor Protection Act of 1970, as amended (“SIPA”), pursuant to an order entered on September 19, 2008 by the United States District Court for the Southern District of New York. On January 30, 2009, Lehman Brothers International (Europe) (in administration) (“LBIE”) submitted the above-

referenced house claim (the “Original Claim”) as a customer claim and the above-referenced failed trades claim (the “January Failed Trades Claim”). On May 29, 2009, LBIE submitted an amendment to the Original Claim (the “Amendment”, and the Original Claim, as amended by the Amendment, the “House Claim”) and an amendment to the January Failed Trades Claim (the January Failed Trades Claim, as amended by such amendment, the “Failed Trades Claim”). This notice is applicable only to the claims identified in the House Claim and, insofar as it relates to transactions for accounts covered by the House Claim, the Failed Trades Claim. Additional notices will be issued with respect to other transactions covered by the Failed Trades Claim and to the extent that LBIE filed other claims. On September 10, 2010, LBIE sent to the Trustee a purported second amendment to the House Claim. The Trustee has not yet determined whether this is a valid amendment.

The Trustee has made the following determinations regarding the House Claim and the Failed Trades Claim:

The House Claim is DENIED as a customer claim and RECLASSIFIED as a general unsecured claim with respect to the “House Assets Claim”, the “Derivatives Claim”, the “Stock Loan Claim”, the “Repo Claim”, the “Settlement Claim”, the “General Intercompany Account Claim”, the “Significant Transactions Claim” relating to Aristeia Capital and the “Exchange Traded Futures and Options Claim” (as such terms are defined in the Amendment). The Failed Trades Claim, insofar as it relates to securities or cash held for accounts covered by the House Claim, is DENIED as a customer claim and RECLASSIFIED as a general unsecured claim.

The foregoing claims are not “customer” claims under SIPA. As such, this portion of the House Claim is not eligible to share from the fund of customer property.

Although the Trustee has denied this portion of the House Claim for customer treatment under SIPA, he is converting it to a general unsecured claim on the LBI’s estate, similar to a claim in an ordinary bankruptcy case. No determination is being made as to the validity or allowed amount of this portion of the House Claim at this time. After the determination of customer claims, the Trustee will address all general unsecured claims and you will receive a further notification as to the Trustee’s determination of your general unsecured claim.

With respect to the determination of this portion of the House Claim as a general unsecured claim, you do not need to take any further action at this time. The Trustee will send you a further notification once he has made a determination of the House Claim as a general unsecured claim.

To the extent that the House Claim is not reclassified as described above, the House Claim is DENIED.

The balance of the House Claim (including the Significant Transactions Claim relating to UBS O'Connor) is denied because it was not supported by our review of the books and records of LBI.

The Trustee expressly reserves all rights with respect to the House Claim, the Failed Trades Claim or any portion of either thereof, including the right to consider other and additional grounds for its determination and to reclassify, subordinate or deny it on other or additional grounds.

No distributions will be made relating to the House Claim and the Failed Trades Claim, to the extent subsequently allowed by the Trustee, until the Trustee receives certain additional information and documentation, including a Declaration, Release and Assignment executed by LBIE. The Trustee will give you written notice of the additional information and documentation that will be required and will provide you with the form of the required Declaration, Release and Assignment subsequently. Distributions with respect to any allowed claim will be made in proportion to a claimant's share of available customer property and will be made based on the Trustee's best estimate of available customer property at the time of distribution, and may in some instances include cash in lieu of securities in accordance with SIPA. Distribution may take place in multiple installments over time and will require coordination with and cooperation from various third party custodians, which may delay some or all transfers. Distribution of customer name securities will be made in accordance with SIPA.

Please note that no determination is being made as to the validity or allowed amount of any amounts LBIE may have claimed for cash and/or securities, if any, received by the Trustee after September 19, 2008. Such property is not part of the claim calculation, and the determination of any such claim will be dealt with separately in the Trustee's continuing administration of the estate. Depending on contractual arrangements with Lehman Brothers Inc. or other Lehman entities, or by operation of law based on those relationships, distributions on allowed claims, if any, with respect to the House Claim and the Failed Trades Claim may be subject to liens or security interests held by another Lehman entity.

PLEASE TAKE NOTICE: Except as may otherwise be agreed in writing between the Trustee and you or your counsel, if you disagree with any portion of this determination and desire a hearing before Bankruptcy Judge James M. Peck, you MUST file a written opposition, setting forth (i) the claim number; (ii) a detailed statement of the reasons for the objection to the Trustee's determination; (iii) copies of any document or other writing upon which you rely; and (iv) mailing, phone, and email contact information, with the United States Bankruptcy Court and the Trustee within THIRTY (30) DAYS of the date of this notice.

PLEASE TAKE FURTHER NOTICE: If you do not properly and timely file a written opposition, the Trustee's determinations with respect to the House Claim and the Failed Trades Claim set forth above will be deemed confirmed by the Court and binding on LBIE.

PLEASE TAKE FURTHER NOTICE: If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determinations with respect to the House Claim and the Failed Trades Claim set forth above being confirmed by the Court and binding on LBIE.

PLEASE TAKE FURTHER NOTICE: You must file your opposition in accordance with the above procedure electronically with the Court on the docket of *In re* Lehman Brothers Inc., Case No. 08-01420 (JMP) SIPA in accordance with General Order M-242 (available at www.nysb.uscourts.gov/orders/orders2.html) by registered users of the Court's case filing system and by all other parties in interest on a 3.5 inch disk, preferably in Portable Document Format (PDF), Microsoft Word or any other Windows-based word processing format.

If you do not have means to file your opposition electronically, you may mail your opposition to:

Clerk of the United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004

PLEASE TAKE FURTHER NOTICE: You must serve your opposition upon the Trustee's counsel by mailing a copy to:

Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, New York 10004
Attn: LBI Hearing Request

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

Very Truly Yours,

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