

Hearing Date and Time: TBA*
Objection Deadline: TBA

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

LEHMAN BROTHERS INC.

Debtor.

Adversary Proceeding

No. 08-01420 (JMP)

**TRUSTEE'S AMENDED MOTION TO AUTHORIZE AND APPROVE EXPEDITED
PROCEDURES FOR THE SALE OR ABANDONMENT OF
LEHMAN BROTHERS INC.'S DE MINIMIS ASSETS**

James W. Giddens, as Trustee (the "Trustee") for the liquidation of the business of
Lehman Brothers Inc. ("Debtor" or "LBI"), by and through his undersigned counsel, respectfully
requests entry of an order authorizing and establishing procedures for the Trustee to sell or

* The Trustee will be moving for an Order to Show Cause scheduling a hearing date and time and objection deadline for the Motion. The Trustee will provide notice of the hearing date and time and objection deadline to the Service Parties, as defined herein, in accordance with any Order to Show Cause entered by the Court.

abandon assets with a de minimus value to the Debtor's estate. The Trustee respectfully states as follows:

JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. Commencing on September 15, 2008 and periodically thereafter, Lehman Brothers Holdings Inc. ("LBHI") and certain of its subsidiaries (collectively, the "Chapter 11 Debtors") commenced voluntary cases (the "Chapter 11 Cases") under chapter 11 of the Bankruptcy Code. The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

3. On September 16, 2008, certain of the Chapter 11 Debtors, LBI, and Barclays Capital Inc. ("Purchaser") entered into an Asset Purchase Agreement (as amended and clarified from time to time, the "Purchase Agreement").

4. On September 19, 2008 (the "Filing Date"), this proceeding was commenced under the Securities Investor Protection Act of 1970 ("SIPA") with respect to the securities broker dealer LBI. The Trustee was appointed under the SIPA to liquidate the business of LBI.

5. On September 20, 2008, the Court entered an order approving the Purchase Agreement and the various transactions contemplated therein. (Chapter 11 Cases Docket No. 258.) On September 20, 2008, the Court entered a concurrent Order Approving, and Incorporating by Reference for the Purposes of this Proceeding, an Order Authorizing the Sale of Purchase Assets and other Relief in the Lehman Brothers, Holdings Inc. Chapter 11 Proceedings

(Docket No. 3) thereby authorizing the Trustee to consummate the sale transaction on behalf of LBI pursuant to the Purchase Agreement.

6. On October 3, 2008, the Court entered the Order Granting the Debtors' Motion to Establish Procedures for the Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases of Personal and Non-Residential Real Property and Abandonment of Related Personal Property (Chapter 11 Cases Docket No. 628) (the "Contract Procedures Order").¹

RELIEF REQUESTED

7. The Trustee, by this Motion, seeks the Court's authority to implement a global expedited procedure: (a) to effectuate asset sales of relatively de minimis assets, not sold to the Purchaser pursuant to the Purchase Agreement or subject to the Contracts Procedure Order, including, but not limited to, LBI's equity interests in certain non-debtor affiliates and other LBI real and personal property assets (the "De Minimis Assets"),² with a selling price of no more than \$10,000,000 in any individual transaction to a single buyer or group of related buyers, whether or not free and clear of all liens, claims, interests and encumbrances (collectively, the "Liens") with such Liens attaching to the sale proceeds in the same validity, extent and priority as immediately prior to the sale; and (b) to abandon De Minimis Assets to the extent a sale

1 On September 29, 2008, the Trustee filed his Motion to Adopt and Incorporate by Reference an Order Establishing Procedures for Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases of Personal and Non-Residential Real Estate Property and Abandonment of Related Personal Property, as Entered in the Chapter 11 Proceedings wherein the Trustee sought to make relief contained in the Contracts Procedure Order applicable to this SIPA liquidation proceeding. (See Docket No. 28.)

2 The procedures set forth herein do not contemplate the sale of any customer securities, customer accounts or customer property held at LBI. SIPA defines customer property to be "all cash and securities . . . at any time received, acquired, or held by or for the account of the debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property lawfully converted." 15 U.S.C. § 7811(4).

thereof cannot be consummated at a value greater than the liquidation expense and therefore making such abandonment in the best interests of the estate.

8. The Trustee has determined, in his sound business judgment, that implementing a process to sell or abandon the De Minimis Assets will save substantial administrative expense and help maximize value and provide the Trustee with necessary flexibility to address sales matters efficiently and expeditiously during the Debtor's liquidation. Accordingly, the Trustee seeks the Court's authority pursuant to Sections 363(b) and 554(a) of the Bankruptcy Code to sell or abandon these De Minimis Assets when appropriate pursuant to the procedures described herein. The Trustee submits that the relief requested herein is in the best interests of LBI's estate, its customers and creditors. SIPC supports the relief requested in this Amended Motion.

Sale of De Minimis Assets

9. The Trustee seeks the Court's authority to sell the De Minimis Assets for the highest and best offer received taking into consideration the exigencies and circumstances. If the relief is granted, the Trustee will abide by the following procedures with respect to such pending sales:

(a) Except as modified by subparagraph (b) below, the Trustee proposes to notify (i) any known affected creditor asserting a Lien on any De Minimis Assets subject to sale; and (ii) the Securities Investor Protection Corporation ("SIPC," together the "Sale Notice Parties") and docket such notice with the Court. Such notice will contain (i) a general description of the De Minimis Assets to be sold, (ii) any commissions to be paid to third parties used to sell or auction the assets, (iii) the proposed purchase price, and (iv) terms of payment (the "Sale Notice Contents").

(b) No notice need be provided for asset sales with a purchase price that does not exceed \$2,000,000; provided however, that the Trustee will furnish to SIPC and docket with the Court a quarterly schedule of all such assets sold.³

(c) For all asset sales with a purchase price greater than \$2,000,000, but less than \$10,000,000, notice will be given in accordance with paragraph (a) above. If none of the Sale Notice Parties receiving the notice objects within five (5) business days of receipt of such notice, then the Trustee may immediately consummate the transaction, including making any disclosed payments to third-party brokers or auctioneers.⁴ If an objection is received within such period that cannot be resolved, such De Minimis Assets will not be sold except upon further order of the Court after notice and a hearing.

Abandonment of De Minimis Assets

10. The Trustee expects to take all reasonable steps to sell De Minimis Assets. In some instances, the costs of the sale and satisfaction of encumbrances may exceed the likely proceeds of such sales. Accordingly, in such circumstances, the abandonment of such De Minimis Assets is in the best interests of the LBI estate and creditors. As a result, the Trustee proposes to abandon certain De Minimis Assets in accordance with the procedures described herein.

3 For example, the Trustee has entered into an agreement in principle with Nomura Holdings Inc. (“Nomura”) whereby the Trustee will (i) sell certain assets located at LBI’s Beijing Representative Office to Nomura for \$900,000; and (ii) allow Nomura the opportunity to hire employees at the Beijing Office in short order for an additional \$300,000. Nomura has stated that failure to obtain expedited approval of the Motion may delay closing this transaction and threatens the transaction itself at these values.

4 Parties shall be deemed to have received notice the day after such notice has been sent by a properly addressed facsimile, email or overnight delivery to a Sale Notice Party or its counsel or designated representative. If such notice is made solely by U.S. mail, the deemed receipt date shall be three (3) days after mailing.

(a) Except as modified by paragraph (b) below, with respect to De Minimis Assets to be abandoned, the Trustee proposes to notify: (i) any known affected creditor asserting a Lien on any De Minimis Asset(s) proposed to be abandoned by the Trustee; and (ii) SIPC (together, the “Abandonment Notice Parties”) and docket such notice with the Court. Such notice will contain a general description of the De Minimis Assets to be abandoned (the “Abandonment Notice Contents”).

(b) If the estimated gross proceeds from a sale of De Minimis Assets to be abandoned is equal to or less than \$2,000,000, only those known affected creditors asserting a Lien on or interest in the relevant De Minimis Assets would be entitled to notice with such notice being given within a reasonable time after such De Minimis Assets are abandoned; provided however, the Trustee will furnish to SIPC and docket with the Court a quarterly schedule of all such assets abandoned.

(c) If the estimated gross proceeds from a sale of De Minimis Assets to be abandoned exceeds \$2,000,000, but is less than or equal to \$10,000,000, the Abandonment Notice Parties will receive notice of such abandonment.⁵ If none of the Abandonment Notice Parties receiving the notice under this paragraph (c) objects to the abandonment within five (5) business days of receipt of such notice, the Debtors may immediately proceed with the abandonment. If an objection is received within such period that cannot be resolved, such De Minimis Asset will not be abandoned except upon further order of the Court after notice and a hearing.

⁵ Determinations as to when receipt of notice has occurred shall be as described in footnote 4 herein.

APPLICABLE AUTHORITY

A. The Proposed Sales are Within the Trustee's Sound Business Judgment.

11. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Whether a sale of assets pursuant to section 363(b) of the Bankruptcy Code should be approved in a particular case is a matter left to the Court’s discretion, giving due consideration to the sound business judgment of the proponent of the sale. See e.g., In re Gucci, 126 F.3d 380, 387 (2d Cir. 1997) (sale outside the ordinary course of business may occur if there is a good business reason to support such sale); In re Ionosphere Clubs, Inc., 184 B.R. 648, 653 (S.D.N.Y. 1995); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); In re Beker Industries Corp., 64 B.R. 900, 905-06 (Bankr. S.D.N.Y. 1986).

12. The Trustee seeks authority to sell the De Minimis Assets, in his sound business judgment, in an expeditious manner to facilitate the Debtor’s liquidation and minimize depreciation of these Assets under current economic conditions.⁶ If the relief requested herein is granted, the Trustee will be able to avoid many of the unnecessary costs associated with maintaining, retaining, storing and liquidating De Minimis Assets that have relatively little commercial value. Moreover, the procedures that the Trustee seeks to implement pursuant to this Motion will also reduce the burden on the Court’s docket while protecting the interests of all

6 The sale to Nomura is an example of a transaction of De Minimis Assets that must be completed quickly in order to maximize a return to the estate. As a result, the Trustee will be seeking the relief contained herein pursuant to a proposed Order to Show Cause.

creditors with an interest in the assets through the opportunity to object and obtain a hearing if necessary.

13. Accordingly, based on the foregoing, the Trustee submits that Bankruptcy Rule 6003 has been satisfied. Furthermore, the Trustee requests a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the stay of the order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

B. The Proposed Sales will Satisfy the Requirements of Bankruptcy Code Section 363(f) for a Sale Free and Clear of Claims.

14. Moreover, pursuant to Section 363(f) of the Bankruptcy Code, the Court may authorize the sale of assets free and clear of existing liens, claims and encumbrances if:

(a) applicable non-bankruptcy law permits the sale of such property free and clear of such interest; (b) the entity holding the lien, claim or encumbrance consents to the proposed sale; (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (d) such interest is in bona fide dispute; or (e) such entity could be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest.

15. Because Section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the De Minimis Assets pursuant to the procedures described above. See Id.; In re Dundee Equity Corp., No. 89-B-10233, 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. 1992) (“[s]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met”); In re Bygraph, Inc., 56 B.R. 596, 608 n.8 (Bankr. S.D.N.Y. 1986) (same); Mich Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code

section 363(f) is written in the disjunctive; holding that court may approve sale “free and clear” provided at least one of subsections of Bankruptcy Code section 363(f) is met).

16. The Trustee believes that the procedures set forth above satisfy the requirements of Section 363(f). If a holder of Liens receives the requisite notice, as one of the Sale Notice Parties, and does not object within the prescribed time period, such holder will be deemed to have consented to the proposed sale and the property then may be sold free and clear of such holder’s Liens.

C. Any Sale of De Minimis Assets by the Trustee will be an Arm’s Length Transaction Entitled to the Protections of Section 363(m) of the Bankruptcy Code.

17. Additionally, Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). While the Bankruptcy Code does not define “good faith,” the Second Circuit Court of Appeals in In re Gucci, held that:

Good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings; where there is a lack of such integrity, a good faith finding may not be made. A purchaser’s good faith is lost by ‘fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.’

126 F.3d at 390 (quoting In re Rock Industries Machinery Corp., 572 F.2d 1195, 1998 (7th Cir. 1978) (interpreting Bankruptcy Rule 805, the precursor of Section 363(m)). The Trustee submits that any agreement reached as a result of a sale of the De Minimus Assets will be an arm’s length transaction entitled to the protections of section 363(m).

D. Section 554(a) of the Bankruptcy Code Authorizes the Trustee's Abandonment of De Minimis Assets.

18. To the extent a sale cannot be consummated at a price greater than liquidation and Lien satisfaction costs, the Trustee seeks authority to abandon such De Minimis Assets pursuant to Section 554(a) of the Bankruptcy Code, which provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a).

19. The right to abandon property is unfettered (except in certain circumstances inapplicable to the present case). See In re Midatlantic Nat’l Bank, 474 U.S. 494, 502 (1986). However, there are certain notice requirements attendant to the abandonment process. See e.g., Fed. R. Bankr. P. 6007(c); Local Bankruptcy Rule 403(a)(12). Given the size and complexity of this Liquidation, the Trustee proposes that the abandonment notice requirements be modified as set forth above.

E. The Relief Requested Herein is Routine in this District.

20. This type of relief has been routinely granted in significant chapter 11 cases in this District. See In re Delphi Corp., Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 27, 2005) (authorizing non-ordinary course sales of real and personal property up to \$10 million in a single transaction or in the aggregate for a related series of transactions); In re Delta Air Lines, Inc., Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Oct. 6, 2005) (approval of procedures governing sales of up to \$10 million in assets in a single transactions); In re Worldcom, Inc., et al., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. October 22, 2002) (allowing for debtor (i) to consummate sales of less than \$1,000,000 without providing further notice and to consummate sales of less than \$10,000,000 by providing notice to sale notice parties; and (ii) to abandon personal property irrespective of its gross value in accordance with certain notice procedures).

NOTICE

21. The Trustee has provided copies of this Motion by overnight delivery or email to (i) all parties that have filed a notice of appearance in this case; (ii) all parties that have filed a notice of appearance in the Chapter 11 cases; (iii) SIPC; (iv) the Securities and Exchange Commission; (v) the Internal Revenue Service; and (vi) the United States Attorney for the Southern District of New York (collectively, the "Service Parties"). In addition, notice of this Motion has been published on the website of the Trustee (www.lehmantrustee.com). The Trustee submits that no other or further notice need be given.

NO PRIOR RELIEF

22. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Trustee respectfully requests that the Court grant the Amended Motion in all respects, enter the proposed order attached hereto as Exhibit A, and grant such other and further relief as it deems just and proper.

Dated: New York, New York
October 6, 2008

HUGHES HUBBARD & REED LLP

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Attorneys for James W. Giddens, Trustee for
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Inc.

Exhibit A

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

LEHMAN BROTHERS INC.

Debtor.

Adversary Proceeding

No. 08-01420 (JMP)

**ORDER PURSUANT TO SECTIONS 363 AND 554 OF THE BANKRUPTCY
CODE APPROVING AND AUTHORIZING EXPEDITED PROCEDURES FOR
THE SALE OR ABANDONMENT OF DEBTOR'S DE MINIMUS ASSETS**

Upon consideration of the amended motion (the "Motion")¹ of James W. Giddens, as Trustee (the "Trustee") for the liquidation of the business of Lehman Brothers Inc. ("Debtor" or "LBI"), seeking entry of an order pursuant to sections 363 and 554 of title 11, United States Code (the "Bankruptcy Code"), approving and authorizing expedited procedures for the sale or abandonment of Debtor's De Minimus Assets; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and it appearing that the relief requested by the Motion is necessary and in the best interests of the estate, its customers, its creditors, and all parties in interest; and due notice of the Motion having been given, and it appearing that no other or further notice need be given; and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted and approved; and it is further

1. Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

ORDERED that the Trustee is authorized, but not required, pursuant to section 363(b) of the Bankruptcy Code to sell De Minimis Assets in accordance with the following procedures:

(a) Except as modified by subparagraph (b) below, the Trustee will notify (i) any known affected creditor asserting a Lien on any De Minimis Assets subject to sale; and (ii) the Securities Investor Protection Corporation (“SIPC,” together, the “Sale Notice Parties”) and docket such notice with the Court. Such notice will contain a general description of the De Minimis Assets to be sold, any commissions to be paid to third parties who would sell or auction such De Minimis Assets, the proposed purchase price and the terms of payment.

(b) No notice need be provided for asset sales with a purchase price not exceeding \$2,000,000; provided however, the Trustee will furnish to SIPC and docket with the Court a quarterly schedule of all such assets.

(c) For all asset sales with a purchase price greater than \$2,000,000, but less than \$10,000,000, notice will be given in accordance with paragraph (a) above. If none of the Sale Notice Parties receiving the notice objects within five (5) business days of receipt of such notice, the Trustee may immediately consummate the transaction, including making any disclosed payments to third-party brokers or auctioneers. If an objection is received within such period that cannot be resolved, such De Minimis Assets will not be sold except upon further order of the Court after notice and a hearing; and it is further

ORDERED that sales of De Minimis Assets are deemed arm’s length transactions entitled to the protections of Section 363(m) of the Bankruptcy Code; and it is further

ORDERED that notwithstanding the notice requirements of Bankruptcy Rule 6007(a) and Local Bankruptcy Rule 403(a)(12), the Trustee is authorized, but not required, pursuant to Section 554(a) of the Bankruptcy Code, to abandon De Minimis Assets in accordance with the following procedures:

(a) Except as modified by paragraph (b) below, with respect to De Minimis Assets to be abandoned, the Trustee is authorized to abandon De Minimis Assets by notifying: (i) any known affected creditor asserting a Lien on any De Minimis Asset(s) proposed to be abandoned by the Trustee; and (ii) SIPC (together, the “Abandonment Notice Parties”) and docket such notice with the Court. Such notice will contain a general description of the De Minimis Assets to be abandoned (the “Abandonment Notice Contents”).

(b) If the estimated gross proceeds from a sale of De Minimis Assets to be abandoned does not exceed \$2,000,000, only those known affected creditors asserting a Lien on or interest in the relevant De Minimis Assets would be entitled to notice with such notice being given within a reasonable time after such De Minimis Assets are abandoned; provided however, that the Trustee will furnish a quarterly schedule to SIPC and docket of all such assets abandoned to SIPC.

(c) If the estimated gross proceeds from a sale of De Minimis Assets to be abandoned exceeds \$2,000,000, but is less than or equal to \$10,000,000, the Abandonment Notice Parties will receive notice of such abandonment. If none of the Abandonment Notice Parties receiving the notice under this paragraph (c) objects to the abandonment within five (5) business days of receipt of such notice, the Trustee may immediately proceed with the abandonment. If an objection is received within such period that cannot be resolved, such De

Minimis Asset will not be abandoned except upon further order of the Court after notice and a hearing; and it is further

ORDERED that notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that Bankruptcy Rule 6003(b) has been satisfied; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: New York, New York
October __, 2008

HONORABLE JAMES M. PECK,
UNITED STATES BANKRUPTCY JUDGE