

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

In re LEHMAN BROTHERS INC.

Debtor.

Case No. 08-01420 (JMP)
SIPA

JAMES W. GIDDENS, as TRUSTEE for the
SIPA LIQUIDATION of LEHMAN
BROTHERS INC.,

Plaintiff,

v.

Adversary No. 09-01732 (JMP)

BARCLAYS CAPITAL INC. and
BARCLAYS BANK PLC,

Defendants.

**ORDER RESOLVING
THE TRUSTEE'S AMENDED ADVERSARY COMPLAINT¹**

WHEREAS, on November 16, 2009, James W. Giddens, as trustee (“Trustee”) for the SIPA liquidation of Lehman Brothers Inc. (“LBI”) filed an Adversary Complaint against Barclays Capital Inc. (“Barclays”) in Adv. Proc. No. 09-01732 (JMP) (“Adversary Complaint,” ECF No. 1);

WHEREAS, on July 15, 2011, pursuant to the parties’ stipulation, so-ordered on July 15, 2011 (attached hereto as Exhibit A), the Trustee filed an amended Adversary Complaint in Adv. Proc. No. 09-01732 (JMP) (“Amended Adversary Complaint,” ECF No. 11);

NOW, THEREFORE, upon the Amended Adversary Complaint and all related pleadings, filings, oral arguments, conferences, submissions and Court rulings; the Court having

1. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Court’s Opinion On Motions Seeking Modification Of The Sale Order Pursuant To Rule 60(b), The Trustee’s Motion For Relief Under The SIPA Sale Order, Barclays’ Cross-Motion To Enforce The Sale Orders And Adjudication Of Related Adversary Proceedings, dated February 22, 2011 (Dkt. 08-01420, ECF No. 4105).

held an evidentiary hearing, and due deliberation having been had, for the reasons stated by the Court in its Opinion On Motions Seeking Modification Of The Sale Order Pursuant To Rule 60(b), The Trustee's Motion For Relief Under The SIPA Sale Order, Barclays' Cross-Motion To Enforce The Sale Orders And Adjudication Of Related Adversary Proceedings, dated February 22, 2011 (the "Court's Opinion," Dkt. 08-01420, ECF No. 4105) and in its bench ruling of June 6, 2011 it is hereby

ORDERED that the following Counts of the Amended Adversary Complaint are dismissed with prejudice: Count I (Declaratory Judgment under 28 U.S.C. § 2201 (DTCC Clearance Box Assets)), Count VI (Avoidance of Transfers and Return of Customer Property under SIPA), Count VIII (Recovery of Approximately \$1.1 Billion in DTCC Clearance Box Securities under § 548 of the Bankruptcy Code), Count IX (Fraudulent Conveyance under § 273 of the New York Debtor & Creditor Law, as made applicable by § 544(b) of the Bankruptcy Code), Count X (Recovery of the Excess of the Repo Securities under §§ 559 and 542 of the Bankruptcy Code), Count XI (Breach of Contract), Count XII (Conversion - Money Had and Received) and Count XIII (Aiding and Abetting Breach of Fiduciary Duty); and it is further

ORDERED that Count II (Declaratory Judgment under 28 U.S.C. § 2201 (OCC Margin and Clearing Funds)) and Count III (Declaratory Judgment under 28 U.S.C. § 2201 (Funds at Other Exchanges)) of the Amended Adversary Complaint are granted; and it is further

ORDERED that Count IV (Declaratory Judgment under 28 U.S.C. § 2201 (\$769 Million In Rule 15c3-3 Securities Or Substantially Similar Securities)) of the Amended Adversary Complaint is granted in part and denied in part. Count IV is granted insofar as it alleges that Barclays has no present and unconditional right to the 15c3-3 Securities. Count IV is denied insofar as it can be read to allege that Barclays has no conditional right to the 15c3-3 Securities.

To the extent there are remaining assets in the estate after the Trustee is able to pay all allowed customer claims in full in accordance with SIPA §§ 8(c), 16(4), 15 U.S.C. §§ 78fff-2(c), 78lll(4), Barclays is entitled to up to \$769 million; and it is further

ORDERED that Count V (Avoidance of Transfers and Recovery of Property under §§ 549 and 550 of the Bankruptcy Code (avoiding transfers after commencement of case)), Count VII (Turnover of Property under § 542 of the Bankruptcy Code) and Count XIV (Disallowance of Claims under § 502 of the Bankruptcy Code) of the Amended Adversary Complaint are granted with respect to the Margin Assets, and denied and dismissed with prejudice with respect to the Clearance Box Assets and the repo collateral; and it is further

ORDERED that, with respect to the Amended Adversary Complaint, the Trustee is granted the relief set forth in the Court's Order Resolving the Trustee's Motion, including prejudgment interest on the value of the Margin Assets in Barclays' possession at the rate of five percent (5%) per annum from September 22, 2008 to the date that judgment is entered and any post-judgment interest that shall accrue at the rate set forth in 28 U.S.C. § 1961; and it is further

ORDERED that the Court shall retain exclusive jurisdiction to enforce this Order; and it is further

ORDERED that this Order is a "final order" for the purposes of Rules 8001 and 8002 of the Federal Rules of Bankruptcy Procedure; the ongoing litigation of a breach of contract claim brought by Lehman Brothers Holdings Inc. ("LBHI") against Barclays is a separate action, but to the extent Rule 54(b) of the Federal Rules of Civil Procedure could be deemed to apply, the Court finds there is no just reason for delaying the finality of this Order pending the resolution of that LBHI claim; and it is further

ORDERED that the Clerk shall enter judgment in accordance with this Order; and it is further

ORDERED that the automatic stay of proceedings to enforce a judgment under Rule 7062 of the Federal Rules of Bankruptcy Procedure shall be extended by an additional 30 days, to allow time for the Court to decide the joint motion of the Trustee and Barclays for approval of an agreement on the terms of a stay and security pending appeal; and it is further

ORDERED, that Barclays Bank PLC (“Barclays Bank”), having consented to be subject to the jurisdiction of this Court, shall be joined as an additional party to these proceedings, in order to reflect the agreement on stay and security matters entered into between the Trustee, Barclays and Barclays Bank, under which Barclays Bank assumes the obligation to satisfy the judgment of the Court with respect to the Margin Assets and any subsequent judgments obtained by the Trustee against Barclays in respect of the Margin Assets, and assumes the right to receive payment from the Trustee with respect to the judgment of the Court on the Clearance Box Assets and any subsequent judgments obtained by Barclays against the Trustee in respect of the Clearance Box Assets; and it is further

ORDERED that the time for filing a notice of appeal shall run from entry of the judgment.

Dated: New York, New York
July 15, 2011

s/ James M. Peck
Honorable James M. Peck
United States Bankruptcy Judge

EXHIBIT A