

## **SETTLEMENT AGREEMENT**

This settlement agreement (the “Settlement Agreement”) is entered into as of November 16, 2012 by and among Citigroup Inc., Citibank, N.A. (“Citibank”), and Citigroup Global Markets Inc. (“CGMI”) (on their own behalf and on behalf of certain of their affiliates as (i) defendants (the “Citi Defendants”) in *Lehman Brothers, Inc. v. Citibank, N.A. et al.*, Adv. Pro. No. 11-1681 (JMP) in Case No. 08-01420 SIPA (Bankr. S.D.N.Y.) (the “LBI Adversary Proceeding”), (ii) movants (the “Citi Movants”) in a motion for an order authorizing the exercise of certain contractual, common law, and statutory rights, including rights under sections 362, 555, 559, and 560 of the Bankruptcy Code and various provisions of the Securities Investor Protection Act (“SIPA”) and other related relief dated May 26, 2011 [ECF Nos. 4306-4307, Case No. 08-1420] (the “Stay Relief Motion”), and (iii) claimants (the “Citi Claimants”) against the estate of Lehman Brothers, Inc. (“LBI”) all as set forth on Exhibit A hereto (collectively or individually and whether in the capacity as Citi Defendants, Citi Movants and Citi Claimants, as the case may be, “Citi”)) and James W. Giddens, as trustee (the “Trustee”) for the liquidation of the business of Lehman Brothers, Inc. (“LBI”) pursuant to SIPA. Each of Citigroup Inc., Citibank, CGMI, and the Trustee shall constitute a “Party” and together comprise the “Parties” to this Settlement Agreement. Citigroup Inc., Citibank, and CGMI shall be collectively referred to as the “Citi Parties.” The Citi affiliates identified on Exhibit A hereto that are not Parties to this Settlement Agreement shall constitute the “Citi Beneficiaries.”

## **RECITALS**

A. On September 19, 2008, the Honorable Gerard E. Lynch entered an order (the “Liquidation Order”) pursuant to the provisions of SIPA in the case captioned *Securities Investor Protection Corporation v. Lehman Brothers Inc.*, Case No. 08-CIV-8119 (GEL).

Among other things, the Liquidation Order: (i) appointed the Trustee to conduct the liquidation of the business of LBI pursuant to section 78eee(b)(3) of SIPA; (ii) appointed counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and (iii) removed the SIPA liquidation proceeding of LBI to the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) pursuant to section 78eee(b)(4) of SIPA.

B. By order dated November 7, 2008, the Bankruptcy Court established June 1, 2009 as the “Bar Date” for filing claims against the estate of LBI.

C. On or before the Bar Date, each of the Citi Claimants filed its claim(s) against the estate of LBI (including as amended thereafter, the “Citi Claims”).

D. On December 18, 2008, Citi and the Trustee entered into a Stipulation and Order (the “Turnover Stipulation”) authorizing (1) the turnover to the Trustee of \$75,000,000 (the “Turnover Amount”) from certain LBI deposit accounts at Citibank Singapore Branch, Citibank Japan Ltd. and Citibank Korea Inc., (2) the continuation of an administrative hold on certain LBI deposit accounts, and (3) the provisional allowance of superpriority administrative claims in favor of the Citibank affiliates that contributed to the Turnover Amount. The Turnover Stipulation was approved by the Bankruptcy Court by order entered December 31, 2008 [ECF No. 487, Case No. 08-1420], and on March 31, 2009, Citi filed *Citibank’s Request for Allowance of Superpriority Administrative Expense Claim* in the Bankruptcy Court Case No. 08-1420 (Bankr. S.D.N.Y.) (JMP) (SIPA) [ECF No. 916, Case No. 08-1420] (“Citi’s Superpriority Claim”).

E. On March 18, 2011, the Trustee on behalf of LBI filed the complaint [ECF No. 1, Adv. Pro. No. 11-01681] (the “LBI Complaint”) in the LBI Adversary Proceeding against the Citi Defendants. In the Complaint, the Trustee, among other things, (i) challenged, on various

theories, a \$1 billion setoff exercised by Citi on September 19, 2008 of a portion of Citi's claim arising from Citi's provision to LBI of continuous-linked settlement services for LBI foreign exchange transactions ("CLS Services," and such setoff, the "September 19 Setoff") against a \$1 billion deposit obligation otherwise owed by Citi to LBI (the "Citibank, N.A. Deposit Account"); (ii) sought the turnover of various deposits and other payables allegedly owed by Citi to LBI; (iii) claimed a breach of contract by Citi in connection with Citi's provision to LBI of CLS Services and an unrelated Citi indemnification of amounts paid in respect of certain deferred compensation obligations; and (iv) sought the equitable subordination of many of the Citi Claims under section 510(c) of the Bankruptcy Code, as well as the disallowance of any secured Citi Claims under section 506(d) of the Bankruptcy Code and the disallowance of many of the Citi Claims under section 502(d) of the Bankruptcy Code.

F. On May 26, 2011, the Citi Defendants moved to dismiss the LBI Complaint [ECF Nos. 17-19, Adv. Pro. No. 11-1681] (the "Dismissal Motion"). That same day, the Citi Movants also filed the Stay Relief Motion.

G. On August 5, 2011, the Trustee on behalf of LBI filed LBI's opposition to the Dismissal Motion and the Stay Relief Motion. [ECF Nos. 4468-4469, Case No. 08-1420]

H. On September 2, 2011, the Citi Defendants filed a reply in support of the Dismissal Motion [ECF No. 30, Adv. Pro. No. 11-1681] and the Citi Movants filed a reply in support of the Stay Relief Motion. [ECF No. 4530, Case No. 08-1420]

I. On June 8, 2012, Citi and the Trustee entered into a stipulation (the "Transfer Stipulation") providing for, among other things, (1) transfer of certain LBI deposits, (2) liquidation and transfer of proceeds of certain LBI securities, (3) cooperation among Citi and the Trustee to effect conversion of deposits to U.S. dollars, liquidation of securities, and transfer of

deposits and securities liquidation proceeds to a designated LBI account at Citibank (the “Transfer Account”); and (4) preservation of the rights of Citi and the Trustee, if any, in respect of amounts transferred. The Court approved the Transfer Stipulation on June 26, 2012. [ECF No. 5127, Case No. 08-1420]

J. On September 27, 2012 and November 7, 2012, the Trustee issued instructions to Citigroup’s Mexican subsidiary, Banco Nacional de Mexico SA (“Banamex”), requesting the liquidation of cash and securities positions in accounts -9029, -3351, and -9002 and the transfer of the proceeds to the Transfer Account.

K. As of November 14, 2012, the Transfer Account has received deposits and liquidation proceeds, which together with accrued interest total \$312,309,225.40. Additional deposits and liquidation proceeds of approximately \$7,200,000 are expected to be received from Banamex accounts -3351 and -9002 on or about November 28, 2012.

L. After lengthy and extensive good-faith negotiations conducted at arm’s length, the Parties have agreed to resolve the LBI Adversary Proceeding, the Stay Relief Motion and certain other matters pertaining to certain claims held by certain of the Citi Claimants pursuant to the terms and conditions (the “Settlement”) set forth in this Settlement Agreement.

### **AGREEMENT**

NOW, THEREFORE, IT IS HEREBY AGREED, by and among the undersigned Parties as follows:

1. **Effective Date.** The Settlement set forth in this Settlement Agreement shall be effective three (3) business days after the order of the Bankruptcy Court (or such Court other than the Bankruptcy Court with jurisdiction over the Settlement and the Settlement Agreement)

approving the Settlement Agreement (the “Approval Order”) is final and no longer subject to any motion for reconsideration or rehearing or to any stay or appeal (the “Effective Date”).

2. **Aggregate Value to LBI.** The value to LBI of (i) the payments to be made by Citibank as set forth in Paragraph 3(b) and CGMI as set forth in Paragraph 3(c) (such payments collectively, the “Citi Payments”) and (ii) the withdrawal of Citi’s Superpriority Claim as set forth in Paragraph 4 is \$435,000,000.

3. **Payments to LBI.**

(a) Following the receipt in the Transfer Account of approximately \$7,200,000 in additional deposits and securities liquidation proceeds from Banamex as described in Recitals J and K of this Settlement Agreement, within three (3) business days after the Effective Date Citibank will transfer to the Transfer Account an amount sufficient to bring the balance to \$349,548,812.

(b) Within two (2) business days after the payment from Citibank described in Paragraph 3(a), Citibank will transfer \$349,548,812 from the Transfer Account to an account designated by the Trustee in accordance with the instructions provided in Paragraph 32 below.

(c) Within two (2) business days after the payment from Citibank described in Paragraph 3(a), CGMI will transfer \$10,451,188 to an account designated by the Trustee in accordance with the instructions provided in Paragraph 32 below.

4. **Citi Withdrawal of Superpriority Administrative Expense Claim.** As of the Effective Date, Citi will be deemed to have withdrawn with prejudice Citi’s Superpriority Claim and to have released any and all claims in connection with payment of the Turnover Amount.

5. **Citi’s Exercise of Setoffs.** For purposes of this Settlement, the Citi Claims against LBI set forth on Exhibit C shall constitute the “Citi Allowed Secured Claims,” and shall

be deemed allowed pursuant to 11 U.S.C. §§ 502(a) and 502(b) and deemed secured pursuant to 11 U.S.C. §§ 506(a)(1) and 506(b) by the items set forth on Exhibit D (the “Security”).

Effective upon the Trustee’s receipt of the Citi Payments, the Trustee releases any and all rights to, interests in and claims with respect to the Security, and Citi shall set off against the Security to reduce the Citi Allowed Secured Claims by the amount of the Security.

6. **Citi Allowed Unsecured Claims.** After the setoffs described in Paragraph 5, Citibank shall retain allowed general unsecured claims against LBI in the amounts set forth on Exhibit E (the “Citi Allowed Unsecured Claims”). The Citi Allowed Unsecured Claims shall not be subject to any objection, impairment, or adverse claim, including, without limitation, any claim for subordination or recharacterization on any ground. The Trustee shall cause the LBI claims agent to amend the claims registry to reflect the Citi Allowed Unsecured Claims within three (3) business days after receipt by the Trustee of the Citi Payments.

7. **Citi Preserved Proofs of Claim.** The Parties and the Citi Beneficiaries reserve all rights with respect to the Citi proofs of claim listed on Exhibit F to this Settlement Agreement (the “Citi Preserved Proofs of Claim”), provided that the Trustee waives any objection or defense to the Citi Preserved Proofs of Claim based on any ground that was raised in the LBI Adversary Proceeding or Stay Relief Motion or that arises from a common nucleus of operative facts as any claim or defense raised in the LBI Adversary Proceeding or Stay Relief Motion.

8. **LBI Accounts Held at Citi.**

(a) Set forth on Exhibit G are LBI proprietary accounts at Citi that may contain assets that have not been transferred to the Trustee or to the Transfer Account (the “Listed Residual Proprietary Accounts”).

(b) Set forth on Exhibit H are accounts, which are now closed, that LBI opened and/or maintained at Citi (the “Closed Accounts”).

(c) Upon receipt by the Trustee of the Citi Payments, the Trustee shall be deemed to have assigned and transferred to Citibank all rights, interest, title, and beneficial ownership in all Listed Residual Proprietary Accounts and the Transfer Account.

(d) Set forth on Exhibit I are LBI customer accounts at Citi that may contain assets that have not been transferred to the Trustee or to the Transfer Account (the “Listed Customer Accounts”). As of the Effective Date, Citi shall be deemed to have released all claims against the Listed Customer Accounts, other than claims for unpaid account fees and other expenses incurred in connection with the Listed Customer Accounts.

(e) If Citi, LBI or the Trustee identifies any other account at Citi that is not a Listed Residual Proprietary Account, Closed Account, Listed Customer Account, or otherwise identified in the Transfer Stipulation, this Settlement Agreement, or any exhibit to the Transfer Stipulation or this Settlement Agreement, and contains assets believed to be owned by LBI or its customers (any such account, an “Unlisted Residual Account”), they or it shall give prompt notice to the other Parties of the existence of such account. The rights and duties of Citi and the Trustee in respect of any Unlisted Residual Account that is a segregated customer account shall be expressly preserved. With respect to any Unlisted Residual Account that is not a segregated customer account, Citi, on five (5) business days’ notice to LBI and the Trustee, may assert and, in the absence of an objection by the Trustee within that period, may exercise a claim of ownership, setoff, recoupment, or any other legal or equitable interest in such Residual Account, including, without limitation, in respect of any of the Citi Allowed Unsecured Claims and any right to payment (such as account fees, for example), in such order and to such extent as Citi

shall determine in its sole discretion, without need for the execution and delivery of additional documentation or the entry by the Bankruptcy Court of any order other than the Approval Order.

Citi shall advise LBI in writing of each payment to itself under the preceding sentence within five (5) business days after the completion of such payment.

9. **Releases.**

(a) **Citi Parties' Release of the Trustee.** As of the Effective Date, without the need for the execution and delivery of additional documentation or the entry by the Bankruptcy Court of any order other than the Approval Order and except as provided in this Settlement Agreement (including but not limited to Paragraphs 5, 6, 7 and 9(b) hereof), the Citi Parties and the successors and assigns of the Citi Parties and any other person or entity that claims or might claim through, on behalf of, or for the benefit of any of the foregoing (collectively, the "Citi Releasors") shall each be deemed to have irrevocably and unconditionally, fully, finally, and forever waived, released, acquitted, and discharged the Trustee and his representatives and attorneys, successors and assigns (collectively, the "LBI Releasees") from any and all claims, demands, rights, liabilities, or causes of action of any and every kind, character, or nature whatsoever, in law or in equity, known or unknown based on any matter, thing, act, event, or occurrence whatsoever, whether asserted or unasserted, from the beginning of the world to the Effective Date of this Settlement Agreement, which the Citi Releasors, or any of them, or anyone claiming through them, on their behalf or for their benefit, have, had, or may claim to have, now or in the future, against any of the LBI Releasees; provided, however, that this Release does not apply to the Citi Allowed Unsecured Claims listed on Exhibit E and the Citi Preserved Proofs of Claim listed on Exhibit F.



(b) **Limitation of Release of LBI by Citi.** For the avoidance of doubt, nothing contained in Paragraph 9(a) or elsewhere is intended to release, nor shall it have the effect of releasing, the LBI Releasees from: (i) the performance of their obligations in accordance with the Settlement, this Settlement Agreement, and the terms of the Approval Order; (ii) any claim by Citi to account fees in respect of any Listed Customer Account in accordance with Paragraph 8(d); (iii) Citi's right to defend its proposed disposition of any Unlisted Residual Account in accordance with Paragraph 8(e); (iv) Citi's right to defend any proof of claim listed on Exhibit F on any ground; or (v) Citi's right to distributions, if and when made, on the Citi Allowed Unsecured Claims.

(c) **Release of the Citi Parties and Citi Beneficiaries by the Trustee.** Upon receipt by the Trustee of the Citi Payments, without the need for the execution and delivery of additional documentation or the entry of any order of the Bankruptcy Court other than the Approval Order and except as provided in this Settlement Agreement (including but not limited to Paragraph 9(d) hereof), the Trustee and his successors and assigns, and any other person or entity that claims or might claim through, on behalf of, or for the benefit of any of the foregoing (collectively, the "LBI Releasers") shall be deemed to have irrevocably and unconditionally, fully, finally and forever waived, released, acquitted, and discharged (i) the Citi Parties, their respective directors, officers, employees, representatives, and attorneys, and the successors and assigns of any of them (collectively, the "Citi Party Releasees") from any and all claims, demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown based on any matter, thing, act, event, or occurrence whatsoever, whether asserted or unasserted, from the beginning of the world to the Effective Date of this Settlement Agreement, which the LBI Releasers, or any of them, or

anyone claiming through them, on their behalf or for their benefit, have, had, or may claim to have, now or in the future, against any of the Citi Party Releasees, and (ii) the Citi Beneficiaries, past or present parents, subsidiaries, affiliates, and the directors, officers, employees, representatives, and attorneys, and the successors and assigns of any of them (the “Citi Beneficiary Releasees,” and together with the Citi Party Releasees, the “Citi Releasees”) from any and all claims, demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown based on any matter, thing, act, event, or occurrence whatsoever, whether asserted or unasserted, relating to the Transfer Stipulation or to accounts, transactions, property, cash, or securities identified in the Transfer Stipulation, on any exhibit to the Transfer Stipulation, in Recital J of this Settlement Agreement, Exhibit C (Secured Claims), Exhibit D (Security), Exhibit E (Allowed Unsecured Claims), Exhibit G (Listed Residual Proprietary Accounts), Exhibit H (Closed Accounts), or Exhibit J (Proofs of Claim to be Withdrawn), which the LBI Releasers, or any of them, or anyone claiming through them, on their behalf or for their benefit, have, had, or may claim to have, now or in the future, against any of the Citi Beneficiary Releasees.

(d) **Limitation of Release of Citi by the Trustee.** For the avoidance of doubt, nothing contained in Paragraph 9(c) or elsewhere is intended to release, nor shall it have the effect of releasing, the Citi Releasees from: (i) the performance of their obligations in accordance with the Settlement, this Settlement Agreement, and the terms of the Approval Order; (ii) the LBI Releasers’ right to challenge Citi’s proposed disposition of any Listed Customer Account or Unlisted Residual Account in accordance with Paragraph 8(d)-(e); or (iii) the LBI Releasers’ right to object to any proof of claim listed on Exhibit F on any ground other than any ground that was raised in the LBI Adversary Proceeding or Stay Relief Motion or that

arises from a common nucleus of operative facts as any claim or defense raised in the LBI Adversary Proceeding or Stay Relief Motion.

10. **No Effect on Claims or Rights Against Third Parties.** No Party to this Settlement Agreement or Citi Beneficiary is hereby waiving or releasing, or shall be deemed to have waived or released, any claim, security interest, collateral, right of setoff, defense, or other right or remedy of any kind asserted against any person, whether as primary obligor, guarantor, indemnitor, or otherwise, or asserted against the property of any person, other than the Parties hereto, LBI, and the Citi Beneficiaries, and all such claims, rights, remedies, and defenses are expressly reserved.

11. **Withdrawal of Stay Relief Motion and Relief from Stay.** Not later than three (3) business days following the Effective Date, Citi shall cause the Stay Relief Motion to be withdrawn with prejudice pursuant to a stipulation of withdrawal substantially in the form of Exhibit L specifically stating that the withdrawal is intended to have the effect of a final judgment of dismissal and granting stay relief to the extent necessary to effectuate this Settlement.

12. **Notice of Dismissal of the LBI Adversary Proceeding.** Not later than three (3) business days following the Trustee's receipt of the Citi Payments, the Trustee shall cause the LBI Complaint and the LBI Adversary Proceeding to be dismissed with prejudice pursuant to a notice of dismissal substantially in the form of Exhibit M.

13. **Withdrawal of Proofs of Claim.** As of the Effective Date, the proofs of claim listed on Exhibit J shall be deemed satisfied (including as a result of the setoffs taken under Paragraph 5 of this Settlement Agreement) and not later than sixty (60) days following the Effective Date, shall be withdrawn with prejudice, provided that the foregoing shall not impair

Citi's right to recover unpaid account fees and other expenses incurred in connection with the Listed Customer Accounts or any Unlisted Residual Account.

14. **Representations and Warranties of Citi.** For purposes of this Settlement Agreement, the Citi Parties represent, warrant, covenant, and agree that: (a) they are duly organized, validly existing and in good standing under the laws of the jurisdiction of their organization with all requisite power and authority to carry on the business in which they are engaged, to execute this Settlement Agreement and to consummate the settlement and the transactions contemplated hereby; (b) they have full requisite power and authority to execute and deliver and to perform their obligations under this Settlement Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by them in connection herewith (i) have been duly and validly authorized by them and (ii) are not in contravention of their organizational documents or any agreements specifically applicable to them; (c) this Settlement Agreement constitutes the legally and validly binding and enforceable agreement of the Citi Parties in accordance with the terms herein, subject to the Approval Order; (d) no proceeding, litigation, or adversary proceeding before any court, arbitrator, or administrative or governmental body is pending against the Citi Parties which would adversely affect their ability to enter into this Agreement or to perform their obligations hereunder. Each of the representations and warranties made by the Citi Parties in this Paragraph 14 shall be deemed to be repeated on the Effective Date and shall have the same force and effect as though this Settlement Agreement were dated as of the Effective Date.

15. **Representations and Warranties of the Trustee.**

(a) **Authority.** The Trustee hereby represents, warrants, covenants, and agrees that (i) subject to entry of the Approval Order, he has full requisite power and authority to

execute and deliver and to perform his obligations under this Settlement Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by him in connection herewith have been duly and validly authorized by him and by any other entity required to approve such instruments and documents, including without limitation, the Securities Investor Protection Corporation; (ii) this Settlement Agreement constitutes his legally and validly binding and enforceable agreement in accordance with the terms herein, subject to the Approval Order; and (iii) no proceeding, litigation or adversary proceeding before any court, arbitrator, or administrative or governmental body is pending against him which would adversely affect his ability to enter into this Settlement Agreement or to perform his obligations hereunder. The representations and warranties made by the Trustee in this Paragraph 15(a) shall be deemed to be repeated on and shall survive the Effective Date and shall have the same force and effect as though this Settlement Agreement were dated as of the Effective Date.

(b) **Representations of the Trustee as to Claims.** The Trustee hereby represents, warrants, covenants, and agrees that he is not a party to any agreement to assign, sell, participate, grant, convey, or otherwise transfer, and has not entered into any other agreement to assign, sell, participate, grant, or otherwise transfer, in whole or in part, any portion of his right, title or interests in any claims against Citi. Each of the representations and warranties made by the Trustee in this Paragraph 15(b) shall be deemed to be repeated on and shall survive the Effective Date and shall have the same force and effect as though this Settlement Agreement were dated as of the Effective Date.

(c) **Representations of LBI, the Trustee and the LBI Estate as to Property of the LBI Estate.** The Trustee hereby represents, warrants, covenants and agrees

that, as of the date hereof, the accounts, cash, securities, and claims identified in Exhibit K of this Settlement Agreement are property of the LBI estate. This representation shall be deemed to be repeated on and shall survive the Effective Date and shall have the same force and effect as though this Settlement Agreement were dated as of the Effective Date.

16. **Cooperation of the Parties.**

(a) **Cooperation in Obtaining Approvals.** The Parties shall cooperate in taking all actions reasonably necessary to obtain, and shall take no action to impede or preclude, the prompt entry of the Approval Order and thereafter to ensure the enforceability of the Approval Order, including without limitation, the affirmance of the Approval Order on any appeal. Such actions by LBI and the Trustee shall include, but shall not be limited to, (i) filing a motion in a form reviewed by and reasonably satisfactory to Citi in advance of such motion's filing, (ii) seeking (A) approval of the Settlement Agreement pursuant to Fed. R. Bank. P. 9019 and the relevant provisions of the Bankruptcy Code and SIPA and (B) entry of the Approval Order (the "Settlement Approval Motion") and (iii) prosecuting the Settlement Approval Motion at any and all hearing(s) or other proceedings, in a good faith effort to obtain entry as soon as possible of the Approval Order as final and no longer subject to any motion for reconsideration or rehearing or to any stay or appeal.

(b) **Continuing Cooperation to Recover Listed Residual Proprietary Accounts, Listed Customer Accounts, and Unlisted Residual Accounts.** After receipt by the Trustee of the Citi Payments, Citi shall continue to maintain the Transfer Account in LBI's name, without any charge to LBI or the Trustee, for a reasonable period to permit further transfers from other accounts and until such time as Citi shall determine in its sole discretion to close the Transfer Account. Citi and the Trustee shall cooperate as may be required from time to

time to assist each other in the recovery of deposits and securities located in the Listed Residual Proprietary Accounts, Listed Customer Accounts, or Unlisted Residual Accounts, and the closing of such accounts. Such assistance may include, but is not limited to, the issuance of instruction letters by the Trustee or LBI to the relevant Citi depository or custodian requesting the liquidation of cash and securities positions and the transfer of proceeds thereof to the Transfer Account or such other account(s) as Citi may direct or the closing of accounts, the submission of documentation evidencing the Trustee's release of any interest in the Listed Residual Proprietary Accounts, Closed Accounts, or Unlisted Residual Accounts, as applicable, or the provision of any other materials that may be requested by Citi to comply with local law and regulations. Such cooperation shall also include Citi's supplying of any information reasonably requested by the Trustee with respect to LBI Listed Residual Proprietary Accounts, Closed Accounts, Listed Customer Accounts or Unlisted Residual Accounts.

17. **Interpretation.** The Parties have participated jointly in the negotiation and drafting of this Settlement Agreement. If any ambiguity or question of intent or interpretation arises, this Settlement Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party because of the authorship of any provision of this Settlement Agreement.

18. **Headings.** The headings of the sections, paragraphs and subsections of this Settlement Agreement are inserted for convenience only and are not part of this Settlement Agreement and do not in any way limit or modify the terms or provisions of this Settlement Agreement and shall not affect the interpretation hereof.

19. **Amendments.** This Settlement Agreement may not be modified, amended or supplemented except by a written agreement executed by each Party to be affected by such modification, amendment or supplement.

20. **No Admission of Liability.** The execution of this Settlement Agreement is not intended to be, nor shall it be construed as an admission or evidence in any pending or subsequent suit, action, proceeding or dispute, of any liability, wrongdoing, or obligation whatsoever (including as to the merits of any claim or defense) by any Party or Citi Beneficiary to any other party or any other person or entity with respect to any of the matters addressed in this Settlement Agreement. Except as expressly provided herein, this Settlement Agreement, the Settlement, and any act performed or any document executed pursuant to or in furtherance of the Settlement, the transactions contemplated hereby or this Settlement Agreement, may not: (a) be deemed to be or used as an admission or evidence of the validity of any claim or allegation by any person or entity; (b) be deemed to be or used as an admission or evidence of any liability, fault or omission of Citi in any proceeding in any court, administrative agency, or other tribunal; (c) be deemed to be or used as an admission or evidence of any liability, fault, or omission of LBI, the Trustee, or the LBI Estate in any proceeding in any court, administrative agency, or other tribunal; or (d) be admissible in any proceeding for any purposes, except to enforce the terms of this Settlement Agreement.

21. **Good Faith Negotiations.** The Parties recognize and acknowledge that each of the Parties hereto is represented by counsel, and that such Party received independent legal advice with respect to the advisability of entering into the Settlement and this Settlement Agreement. Each of the Parties acknowledges that the negotiations leading up to the Settlement and this Settlement Agreement were conducted regularly and at arm's length; that this



Settlement Agreement is made and executed by and of each Party's own free will; and that he or it has not been improperly influenced or induced to make this Settlement and this Settlement Agreement as a result of any act or action on the part of any Party or employee, agent, attorney, or representative of any Party to this Settlement Agreement. The Parties further acknowledge that they entered into the Settlement and this Settlement Agreement because of, among other things, their desire to avoid the further expense and inconvenience of litigation and other disputes, and with the intent to compromise permanently and settle the claims by and among the Parties hereto and the Citi Beneficiaries with the full force and effect of a final judgment.

22. **Third Party Beneficiaries.** The Citi Beneficiaries identified on Exhibit A hereto are express third party beneficiaries of this Settlement Agreement. Nothing in this Settlement Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person or entity other than the Parties hereto and the Citi Beneficiaries, any right, remedy, or claim under or by reason of this Settlement Agreement or any covenant, condition, or stipulation thereof; and the covenants, stipulations, and agreements contained in this Settlement Agreement are and shall be for the sole and exclusive benefit of the Parties hereto and the Citi Beneficiaries.

23. **Indemnification.** The Citi Parties will indemnify and hold harmless LBI and the Trustee for (a) any payment obligation to any Citi Beneficiary, and (b) any reasonable litigation expenses and/or fees, incurred by the Trustee as a consequence of any claim asserted by a Citi Beneficiary against LBI or the Trustee arising from or relating to the LBI Adversary Proceeding, LBI Stay Relief Motion, and any proof of claim identified on Exhibit J, provided that, for the avoidance of doubt, this indemnity does not extend to claims asserted by a Citi Beneficiary against the Trustee arising under, allowed under, or preserved by this Settlement Agreement, or arising from fees and expenses relating to Listed Customer Accounts or Unlisted Residual

Accounts, or relating to any alleged breach by the LBI Releasors of this Settlement Agreement or their duties hereunder.

24. **Governing Law; Retention of Jurisdiction; Service of Process.**

(a) **Governing Law.** This Settlement Agreement shall be governed by and construed in accordance with (i) the Bankruptcy Code and SIPA, as applied by courts within the Second Circuit and (ii) the internal laws of the State of New York, without giving effect to any principles of conflicts of law.

(b) **Retention of Jurisdiction.** By the execution and delivery of this Settlement Agreement, each of the Parties hereby irrevocably and unconditionally agrees for such Party that any legal action, suit, or proceeding between any or all of the Parties with respect to any matter under or arising out of or in connection with this Settlement Agreement or, to the extent appropriate, for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought in the Bankruptcy Court, or if that Court does not have jurisdiction, in the United States District Court for the Southern District of New York, or in the absence of federal jurisdiction, in the Supreme Court of the State of New York, County of New York, and, by the execution and delivery of this Settlement Agreement, each hereby irrevocably accepts and submits itself to the jurisdiction of each Court, generally and unconditionally, with respect to any such action, suit, or proceeding.

(c) **Service of Process.** If any such action, suit, or proceeding is commenced, the Parties hereby agree and consent that service of process may be made, and personal jurisdiction over any Party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint, and other pleadings required to commence such action, suit, or proceeding upon the Party at the address of such party set forth in Paragraph 31

hereof, unless another address has been designated by such party in a notice given to the other Parties in accordance with Paragraph 31 hereof. For the avoidance of doubt, notwithstanding the foregoing, in the event the Approval Order is not entered and does not become final, nothing in this Paragraph 24(c) shall impair the right of Citi, LBI or the Trustee, in such capacity, to assert any arguments concerning jurisdiction or venue in any legal proceeding.

25. **Jury Trial.** Each of the Parties irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to the Settlement or the Settlement Agreement, including the negotiation, administration, performance, or enforcement thereof.

26. **Specific Performance.** It is understood and agreed by the Parties that money damages would not be a sufficient remedy for any breach of this Settlement Agreement by any Party and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach.

27. **Fees and Expenses.** Except as otherwise provided in Paragraph 5 and Exhibit C of this Settlement Agreement, each Party shall bear its own expenses incurred in connection with the negotiation, execution, and delivery of this Settlement Agreement.

28. **Binding Agreement; Successors and Assigns; Joint and Several Obligations.**  
This Settlement Agreement is intended to bind and inure to the benefit of the Parties, the Citi Beneficiaries and their respective successors, assigns, administrators, constituents, and representatives. Unless otherwise provided, the agreements, representations, covenants, and obligations of the Parties under this Settlement Agreement are several only and not joint in any respect and none shall be responsible for the performance or breach of this Settlement Agreement by another.

29. **Entire Agreement.** This Settlement Agreement constitutes the full and entire agreement among the Parties with regard to the subject hereof, and, except as expressly provided herein, supersedes all prior agreements, negotiations, representations, promises, or warranties (oral or otherwise) made by any Party or Citi Beneficiary with respect to the subject matter hereof. No Party has entered into this Settlement Agreement in reliance on any prior representation, promise or warranty (oral or otherwise) of any other Party or any Citi Beneficiary, except for those that are expressly set forth in this agreement.

30. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Settlement Agreement and all of which, when taken together, shall constitute one and the same Settlement Agreement. Copies of executed counterparts, transmitted by telecopy or other electronic transmission, shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed. The Parties shall act in good faith to provide original signature copies if reasonably requested for purposes of filing with a Court or for any other purpose.

31. **Notices.** Except as may be set forth to the contrary herein, all demands, notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given when (a) if by courier service or messenger, then when personally delivered, (b) if transmitted by facsimile or telecopier with confirmation of receipt, then upon actual receipt (as established by confirmation of receipt or otherwise) during normal business hours, otherwise on the first Business Day thereafter, or (c) if by certified or registered mail, postage prepaid-return receipt requested, then three (3) Business Days after being duly deposited in the mail to the following addresses, or such other addresses as may be furnished hereafter by notice in writing to the following:

If to LBI, the Trustee or the LBI Estate:

James W. Giddens, Trustee  
c/o Hughes Hubbard & Reed LLP  
One Battery Park Plaza  
New York, New York 10004-1482  
Telephone: (212) 837-6000  
Telecopy: (212) 422-4726

with a copy to:

Menaker & Herrmann LLP  
10 East 40th Street  
New York, New York 10016  
Attention: Richard G. Menaker  
Telephone: (212) 545-1900  
Telecopy: (212) 545-1645  
rmenaker@mhjur.com

If to Citi:

Mary Jane Lee  
Director & Associate General Counsel  
Citi  
388 Greenwich Street  
17th Floor  
New York, New York 10013  
Telephone: (212) 816-5755  
Telecopy: (646) 291-5593

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Attention: Claudia L. Hammerman  
Telephone: (212) 373-3321  
Telecopy: (212) 757-3990  
chammerman@paulweiss.com

Attention: Stephen J. Shimshak  
Telephone: (212) 373-3133  
Telecopy: (212) 757-3990  
sshimshak@paulweiss.com

32. **Payment Instructions.** The payments by each of Citibank and CGMI specified in Paragraphs 3(b) and 3(c) of this Settlement Agreement shall be made by wire transfer to such account(s) as the Trustee shall identify in instructions given to each of Citibank and CGMI on or before the Effective Date. Each such wire transfer will be made in an amount that assures that the Trustee will receive the full value of the Citi Payments without reduction for fees associated with the transfer.

33. **Further Assurances.** Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties or Citi Beneficiaries may reasonably request to effectuate the intent and purposes of, and to carry out the terms of, this Settlement Agreement.

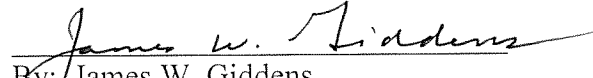
34. **Claims Not Released.** Nothing contained herein or in any documents ancillary hereto shall in any way be deemed to release any Party or Citi Beneficiary from any claim or obligation either arising under, or preserved under, this Settlement Agreement or any document ancillary hereto.

35. **Authority.** The signatories hereto represent that they have full authority on behalf of themselves and/or their respective principals, as applicable, to execute this Settlement Agreement and to make the representations, warranties, covenants, and agreements set forth herein.

*[Remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of  
the Execution Date.

JAMES W. GIDDENS, AS SIPA TRUSTEE FOR  
THE LIQUIDATION OF LEHMAN BROTHERS  
INC.

  
By: James W. Giddens

CITIBANK, N.A.

\_\_\_\_\_  
By:  
Title:

CITIGROUP GLOBAL MARKETS INC.

\_\_\_\_\_  
By:  
Title:

CITIGROUP INC.

\_\_\_\_\_  
By:  
Title:

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed  
as of the Execution Date.

JAMES W. GIDDENS, AS SIPA  
TRUSTEE FOR THE LIQUIDATION OF  
LEHMAN BROTHERS INC.

\_\_\_\_\_  
By: James W. Giddens

CITIBANK, N.A.

*Edward G. Turan*

\_\_\_\_\_  
By: *Edward G. Turan*  
Title: *Assistant Secretary*

CITIGROUP GLOBAL MARKETS INC.

*Edward G. Turan*

\_\_\_\_\_  
By: *Edward G. Turan*  
Title: *Sr. Deputy General Counsel & Assistant Secretary*

CITIGROUP INC.

*Edward G. Turan*

\_\_\_\_\_  
By: *Edward G. Turan*  
Title: *Assistant Secretary*