

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

In re

LEHMAN BROTHERS INC.,

Debtor.

Case No. 08-01420 (JMP) SIPA

**COURT-ORDERED CLAIMS HEARING PROCEDURES
AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES**

The claims hearing procedures (the “Claims Hearing Procedures”) and the alternative dispute resolution procedures (the “ADR Procedures”) described herein have been ordered (the “Order”) by the United States Bankruptcy Court for the Southern District of New York (the “Court”) to apply:

Claims Hearing Procedures

1. Pursuant to the Amended Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures and Related Relief, entered on July 13, 2010 (the “Amended Case Management Order,” ECF No. 3466), the Court established periodic omnibus hearings (the “Omnibus Hearings”) for the SIPA Proceeding. The Trustee shall schedule the return date for claims objections, omnibus or otherwise, for hearing at Omnibus Hearings or other hearings the Trustee may schedule with the Court.
2. The Court may enter an order at the scheduled hearing (i) sustaining an objection to proofs of claim (each, a “Proof of Claim”)¹ with respect to which no response (a “Response”)² is properly filed and served or (ii) approving a resolution in accordance with the Settlement

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1. Nothing herein modifies the Order Approving Form and Manner of Publication and Mailing of Notice of Commencement; Specifying Procedures and Forms for Filing, Determination, and Adjudication of Claims; Fixing a Meeting of Customers and Creditors; and Fixing Interim Reporting Pursuant to SIPA, entered on November 7, 2008 (the “Customer Claims Process Order,” ECF No. 241), which established June 1, 2009 as the claims bar date in the SIPA Proceeding, or applicable law with respect to amending Proofs of Claim.
 2. Any information submitted in connection with a Proof of Claim shall be part of the record with respect to the relevant Claim, and any such information already submitted need not be resubmitted in connection with the Claims Hearing Procedures or ADR Procedures.

Procedures,³ to the extent applicable, of an objection to a Proof of Claim for which a Response is resolved prior to the scheduled hearing.

3. The hearing to consider an objection to Proofs of Claim as to which a Response is properly filed and served or an adversary proceeding seeking disallowance or reclassification of a Claim (each, a “Contested Claim”) shall be set for a contested hearing (each, a “Claims Hearing”) to be scheduled by the Trustee, in his sole discretion, as set forth herein. The Trustee may request that the Court schedule Claims Hearings on the date and/or time of the Omnibus Hearings or at another date and time.
4. The Trustee will provide a copy of these *Claims Hearing Procedures and Alternative Dispute Resolution Procedures* to each Claimant who properly files and serves a Response to the Trustee’s objection to its Proof of Claim.
5. The Trustee shall schedule a Claims Hearing for a Contested Claim as follows:
 - a. Sufficiency Hearing: For a non-evidentiary hearing to address the legal sufficiency of the particular Contested Claim and whether the Contested Claim states a claim against the LBI estate under Bankruptcy Rule 7012 (a “Sufficiency Hearing”), unless the Trustee serves the holder of a Contested Claim (each, a “Claimant”) with (a) a Notice of ADR Procedures or Notice of Consolidated ADR Procedures, or (b) a Notice of Merits Hearing (each as defined herein), a Sufficiency Hearing shall go forward at the return date set in accordance with paragraph 1 of these Claims Hearing Procedures.
 - b. ADR: For an evidentiary hearing on the merits of a Contested Claim (a “Claims Objection Hearing”), the Trustee may, in his sole discretion, (i) serve upon the relevant Claimant and counsel to the Claimant, to the extent such counsel is listed on the relevant Proof of Claim, by U.S. mail, facsimile, or overnight delivery, and (ii) file with the Court, a notice substantially in the form attached to the Order as Exhibit 2 (a “Notice of ADR Procedures”) and a copy of these *Claims Hearing Procedures and Alternative Dispute Resolution Procedures* at least forty-five (45) calendar days before the date of such Claims Objection Hearing. The procedures applicable to a Claims Objection Hearing are set forth below in paragraph 1 of the ADR Procedures.
 - c. Consolidated ADR: If the Trustee determines that multiple Contested Claims involve common issues of law and fact, the Trustee may, in his sole discretion, (i) serve upon each relevant Claimant and counsel to the Claimant, to the extent such counsel is listed on the relevant Proof of Claim, by U.S. mail, facsimile, or overnight delivery, and (ii) file with the Court, a notice substantially in the form attached to the Order as Exhibit 3 (a “Notice of Consolidated ADR Procedures”) and a copy of these *Claims Hearing Procedures and Alternative Dispute Resolution Procedures* at least forty-

3. The Settlement Procedures are defined and fully set forth in the Court’s Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b) for Approval of General Creditor Claim Settlement Procedures, entered on March 11, 2013 (the “Settlement Procedures Order,” ECF No. 5847).

five (45) calendar days before the date of the Claims Objection Hearing scheduled therein.

- d. Merits Hearing Without ADR: For an evidentiary hearing on the merits of a Contested Claim (a “Merits Hearing”)⁴ without going to ADR first, the Trustee may, in his sole discretion, (i) serve upon the relevant Claimant and counsel to Claimant, to the extent such counsel is listed on the relevant Proof of Claim, by U.S. mail, facsimile, or overnight delivery, and (ii) file with the Court, a notice substantially in the form attached to the Order as Exhibit 4 (a “Notice of Merits Hearing”) and a copy of these *Claims Hearing Procedures and Alternative Dispute Resolution Procedures* at least forty-five (45) calendar days prior to the date of such Merits Hearing. Within five (5) business days of service of the Notice of Merits Hearing or as otherwise agreed to by the parties, the Trustee and the Claimant will engage in a meet and confer, which may be held telephonically, in order to mutually agree on a discovery, briefing, and litigation schedule, subject to approval by the Court (the “Claims Litigation Schedule”), for the Merits Hearing; provided, however, that the Court will resolve any disputes related to the Claims Litigation Schedule for the Merits Hearing.⁵
 6. Consistent with the Amended Case Management Order, the Trustee may file and serve a reply (a “Reply”) to a Response no later than 12:00 p.m. (prevailing Eastern Time) on the day that is at least two (2) business days before the date of the applicable hearing.
 7. The Trustee, in his sole discretion, is authorized to further adjourn a hearing scheduled in accordance herewith at any time by providing appropriate notice to the Court and the relevant Claimant.
 8. To the extent that the Court determines upon conclusion of the Sufficiency Hearing that a Contested Claim cannot be disallowed in whole or in part without further proceedings, the Trustee shall provide to the Claimant either (a) a Notice of ADR Procedures or Notice of Consolidated ADR Procedures, or (b) a Notice of Merits Hearing, as applicable, pursuant to the procedures set forth above.
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4. For the avoidance of doubt, a Claims Objection Hearing and a Merits Hearing will be substantively identical hearings, each an evidentiary hearing on the merits of a Contested Claim. However, procedurally, a Claims Objection Hearing will occur when a Mediation (as defined herein) concludes without resolving the Contested Claim, whereas a Merits Hearing will occur when the Trustee designates a Contested Claim to proceed directly to such hearing without first partaking in the ADR Procedures. The date for a Claims Objection Hearing will be set by the Trustee in either a Notice of ADR Procedures or Notice of Consolidated ADR Procedures, whereas the date for a Merits Hearing will be set by the Trustee in a Notice of Merits Hearing.
 5. Nothing in this Order, the Claims Hearing Procedures, or the ADR Procedures shall preclude: (i) the Trustee and a Claimant from mutually agreeing on a Claims Litigation Schedule, subject to approval by the Court, with respect to a Merits Hearing or a Claims Objection Hearing for a particular Contested Claim or (ii) a Claimant from requesting that the Court establish the Claims Litigation Schedule (including the date of the Merits Hearing or Claims Objection Hearing) for such Contested Claim, in the event that the Trustee and the Claimant are not able to agree on a Claims Litigation Schedule with respect to a Merits Hearing or Claims Objection Hearing for such Contested Claim.

9. Temporary Litigation Injunction. Upon service of an objection, omnibus or otherwise, to a Proof of Claim, the Trustee and each Claimant to whom such objection applies shall be enjoined from commencing or continuing any action or proceeding, or engaging in any discovery, in any manner or place, including this Court, seeking to determine, establish, liquidate, collect on, or otherwise enforce any Contested Claims identified in such objection other than through the Claims Hearing Procedures and the ADR Procedures (the “Temporary Litigation Injunction”). The Temporary Litigation Injunction shall expire with respect to a Contested Claim only (i) when that Contested Claim has been resolved by virtue of a settlement between the parties, reached through these ADR Procedures or otherwise, or (ii) upon the parties’ mutual agreement and approval by the Court (or if the parties are unable to agree, entry of a Court order) on a Claims Litigation Schedule for the Merits Hearing or the Claims Objection Hearing, as applicable, for such Contested Claim.⁶ Notwithstanding anything set forth herein to the contrary, the Temporary Litigation Injunction shall not apply to any Claimant with respect to the investigation, prosecution, or defense of any of its claims or rights against any Lehman entity other than LBI.

ADR Procedures

1. To the extent a Contested Claim is adjourned to a Claims Objection Hearing and a Claimant is served a Notice of ADR Procedures or Notice of Consolidated ADR Procedures, such Claims Objection Hearing shall be adjourned until these ADR Procedures, as applicable, are completed with respect to each such Contested Claim. To the extent a Mediation or Consolidation Mediation (as such terms are defined herein) concludes, as provided in paragraph 5(f) of these ADR Procedures, and all or part of the objection to the Contested Claim remains unresolved, the parties shall proceed to a Claims Objection Hearing at least forty-five (45) calendar days from the date of the conclusion of the Mediation or Consolidated Mediation, or as otherwise agreed to by the parties; provided, however, that within five (5) business days of such conclusion of a Mediation or Consolidated Mediation or as otherwise agreed to by the parties, the Trustee and the Claimant will meet and confer, which may be done telephonically, in order to mutually agree on a Claims Litigation Schedule for the Claims Objection Hearing; provided, further, that the Court will resolve any disputes related to the Claims Litigation Schedule for the Claims Objection Hearing.
2. Subject to the final proviso of this paragraph, the confidentiality provisions of Rule 5.0 of the Court’s General Order M-452 (the “General Order”) are incorporated herein. No statements or arguments made or positions taken by the Mediator (as defined herein), the Trustee, SIPC, any Claimant, or any witnesses in the Offer of Settlement (as defined in the Order) or during any part of the ADR Procedures, including the Negotiation (as defined herein), may be disclosed for any purpose by the Mediator or any such parties or witnesses or their attorneys or advisors to the Court or any third party (except by the party, witness, attorney, or advisor making the statement or argument or taking the position) in any subsequent Claims Objection

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6. Nothing in the Claims Hearing Procedures or the ADR Procedures shall preclude settlement of a Contested Claim by mutual consent of the parties at any time or voluntary communication between the parties with respect to such settlement; provided, however, that any such settlement is subject to the Settlement Procedures Order.

Hearing(s). Similarly, all briefs, records, reports, and other documents, including Mediation Briefs and Supporting Information (as defined herein), received or made by the Mediator while serving in such capacity will remain confidential and will not be provided to the Court, unless otherwise admissible and only then by the party from whom the Mediator received them. In addition, the Mediator may not be compelled to disclose such records, reports, or other documents in connection with any hearing held by the Court; provided, however, that the Mediator may report to the Court regarding the status of Mediation efforts but will not disclose the contents thereof. Rule 408 of the Federal Rules of Evidence shall apply to all aspects of the ADR Procedures. Provided however that notwithstanding anything else in this paragraph, the Trustee may (i) provide the confidential information described in this paragraph to SIPC, (ii) may negotiate, in good faith, with any Fiduciary (as defined in the Order) regarding exceptions to the confidentiality provisions described in this paragraph in the event that the Fiduciary, after serving a Notice of Directed Authority (as defined in the Order) and as a result of the Authority (as defined in the Order) obtained from the holders, is required to communicate with holders regarding the ADR Procedures and/or resolution of the Contested Claim, and (iii) may share information in accordance with the Settlement Procedures Order.

3. The Trustee and Claimant may provide documents and/or information to the Mediator that are subject to a privilege or other protection from discovery, including the attorney-client privilege, work-product doctrine, or any other privilege, right, or immunity the parties may be entitled to claim or invoke (the "Privileged Information"). The party producing such documents and/or information (the "Producing Party") to the Mediator must designate such documents and/or information as Privileged Information. By providing the Privileged Information solely to the Mediator and no other party, neither the Trustee nor the Claimant nor their respective professionals intends to, or shall, waive, in whole or in part, the attorney-client privilege, the work-product doctrine, or any other privilege, right or immunity they may be entitled to claim or invoke with respect to any Privileged Information or otherwise. The Mediator shall not provide Privileged Information or disclose the contents thereof to any other party without the consent of the Producing Party. No party is obligated to provide any documents and/or information, including Privileged Information, to the Mediator.
4. Negotiation. The following procedures shall apply to each Negotiation:
 - a. Telephonic Negotiation. If a Contested Claim is scheduled by the Trustee for a Claims Objection Hearing, either the Trustee or the relevant Claimant may request a telephonic negotiation (or in person if the parties agree) (each, a "Negotiation") no later than fourteen (14) calendar days before the date set for a Mediation as provided for in paragraph 5 below. Upon such demand, the Negotiation shall be held no later than seven (7) calendar days before the date set for a Mediation.
 - b. Participation in Negotiation. The following representatives of both the Trustee and the Claimant shall participate in a Negotiation: (i) counsel for each of the parties, except for a Claimant proceeding *pro se*, and (ii) a person possessing authority to reconcile, settle, or otherwise resolve the Contested Claim on behalf of the Trustee and the Claimant, respectively; provided, however, that any settlement reached

through Negotiation remains subject to approval in accordance with the Settlement Procedures Order, to the extent applicable. A principal of each of the parties, and, upon consent of the parties, an expert witness, may participate in a Negotiation.

5. Mandatory Non-Binding Mediation. Unless otherwise agreed to by the parties, no later than sixty (60) calendar days following service of a Notice of ADR Procedures or Notice of Consolidated ADR Procedures, the Trustee and the Claimant(s) shall submit to mandatory non-binding mediation (each, a “Mediation” or “Consolidated Mediation”) in an effort to consensually resolve the Contested Claim(s). The Trustee and the Claimant(s) shall confer as soon as practicable following service of a Notice of ADR Procedures or Notice of Consolidated ADR Procedures to determine a date and time for the Mediation or Consolidated Mediation. Mediation and Consolidated Mediation shall be governed by the General Order except to the extent inconsistent with the following procedures, which shall apply to each Mediation and Consolidated Mediation:

- a. Mediator. Unless the parties agree otherwise, each Mediation or Consolidated Mediation shall be assigned to one of the mediators (each, a “Mediator”) listed by the Trustee on Exhibit 5 attached to the Order (the “List of Mediators”) or listed on the Court’s register of approved Mediators.⁷
- i. If the Trustee serves the Claimant with a Notice of ADR Procedures, no later than seven (7) calendar days after service of a Notice of ADR Procedures, the Trustee shall select no fewer than four (4) Mediators from the List of Mediators or the Court’s register and notice the Claimant of the Trustee’s selections. The Claimant shall be entitled to strike not more than three (3) of the Mediators selected by the Trustee no later than fourteen (14) calendar days after service of a Notice of ADR Procedures, at which time the Trustee shall select a Mediator from those not stricken by the Claimant; provided, however, that, upon mutual consent, the parties may agree to a Mediator not on the List of Mediators or the Court’s register.
- ii. If the Trustee serves the Claimants with a Notice of Consolidated ADR Procedures, no later than seven (7) calendar days after service of a Notice of Consolidated ADR Procedures, the Trustee shall select a Mediator from the List of Mediators or the Court’s register and notify the Claimants of the Trustee’s selection. If no Claimant served with a Notice of Consolidated Mediation objects, the Mediator selected by the Trustee shall be assigned to the Consolidated Mediation. If any Claimant served the notice objects to the Trustee’s selection of a Mediator, no later than fourteen (14) calendar days after service of a Notice of Consolidated ADR Procedures, such Claimant may request that the Trustee and all relevant Claimants meet and confer concerning the Trustee’s selection. If the parties are unable to agree on a Mediator after a meet and confer, the Court will resolve any disputes related to the selection of

7. The Trustee may revise the List of Mediators by filing such revised List of Mediators on the Court’s docket.

a Mediator; provided, however, that any Claimant who did not participate in a meet and confer shall be barred from seeking relief from the Court.

- b. Powers of Mediator. The Mediator shall have the broadest possible discretion consistent with the General Order, including the ability to consolidate Mediations (i) involving the same Claimant upon application by such Claimant and in consultation with the Trustee and (ii) involving multiple Claimants with common issues of fact and law upon application by the Trustee. Notwithstanding section 5(a)(i) or (ii) of the ADR Procedures, if the Trustee seeks to consolidate Mediations involving multiple Claimants with common issues of fact and law, the Trustee, in his sole discretion, shall choose one of the Mediators from the Mediations sought to be consolidated to consider the Trustee's application and participate in any consolidated Mediation.
- c. Mediation Site. The Mediation or Consolidated Mediation shall be held at a location in New York, New York selected by the Trustee; provided, however, that upon consent of the parties and the Mediator, the Mediation or Consolidated Mediation may be held telephonically.
- d. Mediation Briefs and Supporting Information. The Trustee and the Claimant(s) shall each submit mediation briefs (a "Mediation Brief"), unless otherwise agreed upon. Both parties' Mediation Briefs shall be served upon the other party no later than five (5) calendar days before the commencement of the Mediation or Consolidated Mediation. Unless the Mediator directs otherwise, no Mediation Brief shall exceed twenty-five (25) single-sided, double-spaced pages.⁸ No Mediation Brief is to be filed with the Court. Each party may submit supporting documentation and/or information ("Supporting Information") to the Mediator at such party's discretion or upon the Mediator's request. Each party also may provide Supporting Information to the other party at each party's discretion or upon the Mediator's request; provided, however, subject always to the parties' obligations to mediate in good faith, a party may request that another party provide it or the Mediator with Supporting Information but no party is required to provide the other party or the Mediator with Supporting Information.
- e. Appearance at Mediation or Consolidated Mediation. A person possessing ultimate authority to reconcile, settle, or otherwise resolve the Contested Claim on behalf of each of the Trustee and the Claimant(s), respectively, shall attend an in-person Mediation or Consolidated Mediation, or participate in a telephonic Mediation or Consolidated Mediation; provided, however, that the Trustee's counsel will not be precluded from attending and participating in a Mediation or Consolidated Mediation in the event that the Claimant elects not to have its counsel attend or participate in

8. All pleadings or other papers submitted in connection with the ADR Procedures established through the Motion, as set forth herein, must be on 8 ½ inch by 11 inch paper, double-spaced, but quotations of longer than two (2) lines may be indented and single-spaced. Headings and footnotes may be single-spaced and margins must be at least one inch on all four sides. The text of such submissions must be in at least 12-point font, and the text of footnotes must be in at least 10-point font.

such Mediation or Consolidated Mediation; provided, further, that any settlement reached through Mediation or Consolidated Mediation remains subject to approval in accordance with the Settlement Procedures Order, to the extent applicable. A principal of each of the parties, and, upon consent of the parties, an expert witness, may participate in the Mediation or Consolidated Mediation. A representative of SIPC may attend any Mediation or Consolidated Mediation.

- f. Length of Mediation and Consolidated Mediation. The Mediation shall conclude upon request of either party and concurrence by the Mediator; provided, however, that such party may make application to the Court to end the Mediation if the Mediator does not concur. The Consolidated Mediation shall conclude with respect to a particular Claimant upon request of such Claimant and concurrence by the Mediator; provided, however, that such Claimant may make application to the Court to end the Consolidated Mediation with respect to that particular Claimant's Contested Claim if the Mediator does not concur.
 - g. Costs. The Trustee and the Claimant(s) shall each bear their own costs in participating in the Mediation or Consolidated Mediation. The Trustee is hereby authorized to and shall pay the Mediator's fees. The Trustee shall require each such Mediator to accept a public interest discount of 10% from their standard rates. The Trustee is authorized to compensate each Mediator based on sufficient supporting information provided by the Mediator and neither the Trustee nor the Mediator shall be required to make a fee application to the Court or otherwise seek Court approval for the Mediator's fees.
6. Sanctions. The Court will consider appropriate sanctions, including allowance or disallowance of a Contested Claim, if either party does not follow the Claims Hearing Procedures or ADR Procedures or conduct the Negotiation or Mediation in good faith.

BY ORDER OF THE COURT