UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re Lehman Brothers Holdings Inc., *et al.*, Debtors.	Chapter Case No. 08-13555 (SCC)
Moore Macro Fund, LP, *et al.*, Plaintiffs, v. Lehman Brothers Holdings Inc., *et al*., Defendants.	Adv. Pro. No. 14-02021 (SCC)

MOTION OF THE INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC. FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF NEITHER PARTY

The International Swaps and Derivatives Association, Inc. ("ISDA") respectfully moves for leave to file a brief as a*micus curiae* in the above-captioned case, in support of neither party. A copy of the proposed *amicus* filing is attached hereto as Exhibit A.

ISDA submits that consideration of the attached *amicus* brief will assist the Court in this case. While ISDA does not take a position on how the specific dispute between the parties should be resolved, ISDA seeks to submit this *amicus* brief to provide the Court with background on the history and purpose of the Bankruptcy Code's "safe harbor" provisions for swap agreements, and to offer its views on how those provisions should be construed.

However the Court decides this dispute, hearing the perspective of leading industry representatives can only benefit the Court's decision-making process. The narrow construction of the safe-harbor provisions that the defendants urge the Court to adopt would threaten the protections Congress intended to provide the swaps and derivatives markets. Congress has repeatedly recognized the national interest in ensuring the efficient functioning of the swaps and

derivatives markets. It has acted to protect this important and necessary market from the fundamental upheaval that would result if the Bankruptcy Code prevented market participants from enforcing their contractual rights in the event of a counterparty's bankruptcy. It has thus enacted "safe harbor" provisions to insulate the derivatives markets from bankruptcy-law restrictions, including those invalidating or staying the set-off of amounts owed in connection with the termination of swap agreements at issue here. The unduly narrow construction of those provisions advanced by the defendants, if accepted, would threaten to create the very uncertainty in financial markets that Congress has specifically tried to avoid. Because the Bankruptcy Code's safe harbor provisions are of vital importance to the financial industry, ISDA seeks leave to file the attached brief as *amicus curiae* in order to urge the Court to reject the defendants' erroneous construction of those provisions.

ISDA is the global trade association representing leading participants in the derivatives industry. Since its inception, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. ISDA was chartered in 1985, and is comprised of more than 800 member institutions from 64 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. ISDA publishes the ISDA Master Agreement, which serves as the contractual foundation for more than 90% of derivatives transactions globally (including the transactions at issue in this dispute), and

distributes market-specific definitional booklets that supplement the Master Agreement. Information about ISDA and its activities is available on ISDA's web site: www.isda.org.

Because of its role in the development of derivatives markets, ISDA is uniquely well-positioned to evaluate and comment on the interpretation of the Bankruptcy Code's safe harbor provisions for swap agreements. Indeed, ISDA actively participated in the enactment of the 1990 amendments to the Bankruptcy Code that first added the swap safe-harbor provisions. ISDA frequently appears as *amicus curiae* in cases raising issues of importance to the derivatives markets, and courts have often relied on its views. *See, e.g.*, *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co.*, 375 F.3d 168, 173-74 (2d. Cir. 2004); *Aon Fin. Prods. v. Societe Generale*, 476 F.3d 90, 100 n. 9 (2d Cir. 2007) (all citing ISDA *amicus* briefs); *Eternity Global*, 375 F.3d at 181-82 & n.24; *Brookfield Asset Mgmt. v. AIG Fin. Prods. Corp.*, No. 09 Civ. 8285, 2010 WL 3910590, at *6 n.3 (S.D.N.Y. Sept. 29, 2010); *Merrill Lynch Int'l v. XL Capital Assurance Inc.*, 564 F.Supp.2d 298, 300 (S.D.N.Y. 2008); *Fin. One Pub. Co. v. Lehman Brothers Special Fin., Inc.*, 215 F. Supp. 2d 395, 400 (S.D.N.Y. 2002), *aff'd*, 414 F.3d 325 (2d Cir. 2005) (all citing ISDA *User's Guides*). ISDA respectfully submits that, in light of this experience, the Court will be aided by ISDA's views on this matter.

Bankruptcy courts and district courts have permitted the filing of *amicus* briefs in bankruptcy proceedings and have applied Rule 29 of the Federal Rules of Appellate Procedure by analogy to determine the procedures to be followed by parties filing *amicus* briefs. *See In re Hunt*, Adv. No. 06-6235, 2007 WL 7141734, at *1, *7 (Bankr. N.D. Ga. Apr. 3, 2007), *amended in part*, Adv. No. 06-6234, 2007 WL 714807 (Bankr. N.D. Ga. Apr. 3, 2007), *aff'd*, 306 F. App'x 455 (11th Cir. 2008); *Triad Int'l Maint. Corp. v. Southern Air Transp., Inc.*, No. 2:04-CV-

1200, 2005 WL 1917512, at *1 (S.D. Ohio Aug. 10, 2005); *In re Dow Corning Corp*., 255 B.R. 445, 464 (E.D. Mich. 2000), *aff'd*, 280 F.3d 648 (6th Cir. 2002).

ISDA has sought the consent of Moore Macro Fund LP and Lehman Brothers Holdings Inc. for the filing of an *amicus* brief in support of neither party. Moore's counsel indicated that Moore consents. Lehman's counsel indicated that Lehman does not oppose ISDA's request to file an *amicus* brief, provided that the brief is limited (as it is) to addressing the applicability of the bankruptcy safe harbor provisions. ISDA accordingly requests leave to file its proposed *amicus* brief.

WHEREFORE, ISDA respectfully requests that this Court enter an order in the form attached hereto as Exhibit B granting ISDA leave to file the proposed *amicus* brief attached hereto as Exhibit A.

Dated: December 11, 2014

Respectfully submitted,

/s/ Philip D. Anker

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
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BRIEF OF THE INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC. AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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TABLE OF CONTENTS

Pages

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

STATEMENT OF INTEREST OF AMICUS CURIAE 2

STATUTORY BACKGROUND 4

ARGUMENT 13

I. THE BANKRUPTCY CODE'S SAFE HARBOR PROTECTS THE RIGHT OF A SWAP PARTICIPANT TO OFFSET A CLAIM TRANSFERRED TO IT DURING THE PREFERENCE PERIOD 13

II. THE BANKRUPTCY CODE'S SAFE HARBOR PROTECTS THE RIGHT OF A SWAP PARTICIPANT TO OFFSET TERMINATION VALUES FREE FROM THE AUTOMATIC STAY 23

CONCLUSION 24

TABLE OF AUTHORITIES

Page(s)

CASES

Aon Fin. Prods. v. Societe Generale,
476 F.3d 90 (2d Cir. 2007)....3

Brookfield Asset Mgmt. v. AIG Fin. Prods. Corp.,
No. 09 Civ. 8285, 2010 WL 3910590 (S.D.N.Y. Sept. 29, 2010)....3

Calpine Energy Servs. v. Reliant Energy Elec. Solutions (In re Calpine Corp.),
No. 08-1251 (BRL), 2009 WL 1578282 (Bankr. S.D.N.Y. May 7, 2009)....18

Duncan v. Walker,
533 U.S. 167 (2001)....20

Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.,
651 F.3d 329 (2d Cir. 2011)....7, 13, 17, 22, 23

Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co.,
375 F.3d 168 (2d Cir. 2004)....3

Fin. One Pub. Co. v. Lehman Brothers Special Fin., Inc.,
215 F. Supp. 2d 395 (S.D.N.Y. 2002), *aff'd*, 414 F.3d 325 (2d Cir. 2005)....3

Grede v. FCStone, LLC,
746 F.3d 244 (7th Cir. 2014)....22

Hutson v. E.I. du Pont de Nemours & Co. (In re Nat'l Gas Distribs., LLC),
556 F.3d 247 (4th Cir. 2009)....12, 21

In re Assured Fastener Prods. Corp.,
773 F.2d 105 (7th Cir. 1985)....19

In re Lehman Bros. Holdings Inc.,
433 B.R. 101 (Bankr. S.D.N.Y. 2010), *aff'd*, 445 B.R. 130 (S.D.N.Y. 2011)....15

In re New Haven Foundry, Inc.,
285 B.R. 646 (Bankr. E.D. Mich. 2002)....19

In re U.S. Aeroteam, Inc.,
327 B.R. 852 (Bankr. S.D. Ohio 2005)....19

Law v. Siegel,
134 S. Ct. 1188 (2014) 22

Lines v. Bank of Am. Nat'l Trust & Sav. Ass'n,
743 F. Supp. 176 (S.D.N.Y. 1990) 19

Merrill Lynch Int'l v. XL Capital Assurance Inc.,
564 F.Supp.2d 298 (S.D.N.Y. 2008) 3

Official Comm. of Unsecured Creditors of Quebecor World (USA) Inc. v. Am. United Life Ins. Co. (In re Quebecor World (USA) Inc.),
719 F.3d 94 (2d Cir. 2013), *cert. denied*, 134 S. Ct. 1278 (2014) 13, 23

Picard v. Ida Fishman Revocable Trust (In re Bernard L. Madoff Investment Securities LLC,
No. 12-2557, 2014 WL 6863608 (2d Cir. Dec. 8, 2014) 13, 17, 22

Thrifty Oil Co. v. Bank of Am. Nat'l Trust & Sav. Ass'n,
322 F.3d 1039 (9th Cir. 2003) 12

STATUTES, RULES, AND REGULATIONS

11 U.S.C. § 101 .... 6, 11, 14, 15, 16

11 U.S.C. § 102(3) 16

11 U.S.C. § 362 .... *passim*

11 U.S.C. § 546 7

11 U.S.C. § 553 .... *passim*

11 U.S.C. § 555 7

11 U.S.C. § 556 .... 7, 17, 18

11 U.S.C. § 559 7

11 U.S.C. § 560 .... 1, 5, 6, 10, 15, 17

1982 Amendments to Bankruptcy Code, Pub. L. No. 97-222, 96 Stat. 235 7

1984 Amendments to the Bankruptcy Code, Pub. L. No. 98-353, 98 Stat. 333 7

1990 Bankruptcy Amendments,Pub. L. No. 101-311, 104 Stat. 267 10

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005(BAPCPA),
Pub. L. No. 109-8, 199 Stat. 23 (2005) 11

Financial Netting Improvements Act of 2006, Pub. L. No. 109-390, 120 Stat. 2692 (codified at 11 U.S.C. § 362(b)(17)) 12

OTHER AUTHORITIES

128 Cong. Rec. S8 (July 13, 1983) 8

136 Cong. Rec. 13,153 (daily ed. June 6, 1990) 10

H.R. Rep. 109-31 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88 .... 11, 12, 15

H.R. Rep. No. 101-484 (1990), *reprinted in* 1990 U.S.C.C.A.N. 223 .... 5, 8, 9, 10

H.R. Rep. No. 109-648 (2006), *reprinted in* 2006 U.S.C.C.A.N. 1585 12

H.R. Rep. No. 97-420 (1982), *reprinted in* 1982 U.S.C.C.A.N. 583 .... 7, 8

Interest Swap: Hearing on S. 396 Before the Subcomm. on Courts and Administrative Practices of the Senate Comm. on the Judiciary, 101st Cong. 1 (1989) 9

Interest Swap: Hearing on S. 396 Before the Subcommittee on Courts and Administrative Practices of the Senate Comm. on the Judiciary, 101st Cong. 14 (1989) 8

S. Rep. No. 101-285 (1990), *available at* 1990 WL 259288 .... 8, 9, 10

S. Rep. No. 95-989 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787 7

S. Rep. No. 98-65 (1983) 7, 8

PRELIMINARY STATEMENT

The International Swaps and Derivatives Association, Inc. ("ISDA") respectfully submits this amicus brief to offer its perspective on the dispute now before this Court. ISDA makes this filing not for the purpose of taking sides in the dispute between the parties, but to offer this Court ISDA's perspective on the history and purpose of the swap "safe harbor" provisions of the Bankruptcy Code. Regardless of how the Court resolves this particular dispute, ISDA strongly urges the Court to reject the unduly narrow reading of those provisions advanced by Lehman, which would threaten the protections Congress intended to provide the swaps and derivatives markets.

Congress has repeatedly recognized the national interest in ensuring the efficient functioning of the swaps and derivatives markets. Congress has acted to protect this important and necessary market from the fundamental upheaval that would result if the Bankruptcy Code prevented market participants from enforcing their contractual rights in the event of a counterparty's bankruptcy. It has thus enacted "safe harbor" provisions to insulate the derivatives markets from bankruptcy-law restrictions, including those invalidating or staying the set-off of amounts owed in connection with the termination of swap agreements. Specifically, Congress provided, in the broadest possible terms, that the exercise of "any contractual right" to "offset" any "termination values … arising under or in connection with the termination … of one or more swap agreements" "shall not be stayed, avoided, or otherwise limited by operation of any provision" of the Bankruptcy Code. *See* 11 U.S.C. § 560; *see also id.* § 362(b)(17) (exempting from the automatic stay the exercise of any contractual right to "offset … any termination value … arising under or in connection with 1 or more such [swap] agreements"). And it specifically amended section 553 of the Bankruptcy Code in 2005 to make clear that the

safe harbor protects the exercise of such set-off rights, notwithstanding section 553's general invalidation of set-off rights acquired during the preference period. *See id.* § 553(a)(2)(B)(ii).

Notwithstanding the clear statutory language, Lehman urges the Court to read the safe harbors narrowly to exclude the set-off of termination values under swap agreements where those values arise under more than one swap agreement—notwithstanding the safe harbor's express protection for set-offs of "one *or more swap agreements*," *id.* §§ 362(b)(17), 560—and where those claims were transferred to the swap participant during section 553(a)(2)(B)'s preference period—notwithstanding the safe harbor's express exemption of such set-offs from section 553(a)(2)(B)'s limitations. *Id.* § 553(a)(2)(B)(ii). That reading has no basis in the safe harbor's text, purpose or history, and accepting it would threaten to create the very uncertainty in financial markets that Congress has specifically tried to avoid.

ISDA does not address here the parties' separate contract dispute as to whether the Moore entities had a contractual right to assign and exercise the set-offs in question under the terms of the parties' agreements (at issue in Lehman's first counterclaim). For that reason, ISDA takes no position on the ultimate outcome of this dispute. But to the extent that Lehman argues that those set-off rights are invalidated by the Bankruptcy Code and fall outside the scope of the safe harbor provisions for swap agreements (at issue in Lehman's fifth and sixth counterclaims), its argument would undermine the critical protections that Congress intended to afford the financial markets. Accordingly, because the Bankruptcy Code's safe harbor provisions are of vital importance to the financial industry, ISDA files this brief to urge the Court to reject Lehman's erroneous construction of those provisions.

STATEMENT OF INTEREST OF *AMICUS CURIAE*

ISDA is the global trade association representing leading participants in the derivatives industry. Since its inception, ISDA has worked to make the global over-the-counter (OTC)

derivatives markets safer and more efficient. ISDA was chartered in 1985, and is comprised of more than 800 member institutions from 64 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. ISDA publishes the ISDA Master Agreement, which serves as the contractual foundation for more than 90% of derivatives transactions globally (including the transactions at issue in this dispute), and distributes market-specific definitional booklets that supplement the Master Agreement. Information about ISDA and its activities is available on ISDA's web site: www.isda.org.

Because of its role in the development of derivatives markets, ISDA is uniquely well-positioned to evaluate and comment on the interpretation of the Bankruptcy Code's safe harbor provisions for swap agreements. Indeed, ISDA actively participated in the enactment of the 1990 amendments to the Bankruptcy Code that first added the swap safe harbor provisions. ISDA frequently appears as *amicus curiae* in cases raising issues of importance to the derivatives markets, and courts have often relied on its views. *See, e.g.*, *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co.*, 375 F.3d 168, 173-74 (2d Cir. 2004); *Aon Fin. Prods. v. Societe Generale*, 476 F.3d 90, 100 n.9 (2d Cir. 2007) (all citing ISDA *amicus* briefs); *Eternity Global*, 375 F.3d at 181-82 & n.24; *Brookfield Asset Mgmt. v. AIG Fin. Prods. Corp.*, No. 09 Civ. 8285, 2010 WL 3910590, at *6 n.3 (S.D.N.Y. Sept. 29, 2010); *Merrill Lynch Int'l v. XL Capital Assurance Inc.*, 564 F.Supp.2d 298, 300 (S.D.N.Y. 2008); *Fin. One Pub. Co. v. Lehman Brothers Special Fin., Inc.*, 215 F. Supp. 2d 395, 400 (S.D.N.Y. 2002), *aff'd*, 414 F.3d 325 (2d Cir. 2005)

(all citing ISDA *User's Guides*). ISDA respectfully submits that, in light of this experience, the Court will be aided by ISDA's views on this matter.

STATUTORY BACKGROUND

The Bankruptcy Code provides an orderly process for addressing competing claims to the assets of a debtor that is unable to pay those claims in full, and, in Chapter 11, for reorganizing (or liquidating) the debtor's business. To achieve these ends, bankruptcy law modifies in certain ways the rights creditors would otherwise enjoy under applicable law outside of bankruptcy. As relevant here, the automatic stay generally stays creditors from collecting their claims against the debtor or its property, including by setting off pre-petition debts owed to the debtor against such claims. *See* 11 U.S.C. § 362(a). In addition, although the Bankruptcy Code generally preserves (subject to the automatic stay) a creditor's right to offset a mutual debt and claim, *see id.* § 553, the Code invalidates that right in certain circumstances, including where the claim was transferred to the creditor within the 90-day preference period before bankruptcy, while the debtor was insolvent. *Id.* § 553(a)(2)(B).

This general invalidation or stay of set-off rights does not apply, however, with respect to swap agreements. Congress has recognized that the operation of the Bankruptcy Code's provisions could destabilize financial markets if those provisions prevented parties to financial contracts, including swap agreements, from exercising their contractual rights in the event of a counterparty's bankruptcy filing. It has therefore enacted various "safe harbors" in the Bankruptcy Code to exempt the financial markets from these provisions, so that no single bankruptcy disrupts the functioning of the financial markets.

> "U.S. bankruptcy law has long accorded special treatment to transactions involving financial markets, to minimize volatility. Because financial markets can change significantly in a matter of days, or even hours, a non-bankrupt party to ongoing securities and other financial transactions could face heavy losses unless the transactions are resolved promptly and with finality."

H.R. Rep. No. 101-484, at 2 (1990); *reprinted in* 1990 U.S.C.C.A.N. 223, 224. "As new financial instruments have been developed, Congress has amended the 1978 Bankruptcy Code to keep pace in promoting speed and certainty in resolving complex financial transactions." *Id.*

Sections 362(b)(17), 560 and 553(b)(2)(B)(ii) are critical parts of this statutory scheme. These safe harbors permit parties to swap agreements to exercise their contractual rights of set-off in the event of a counterparty's bankruptcy, free from the limitations imposed by the Bankruptcy Code. Section 362(b)(17) thus provides that the automatic stay (§ 362(a)) does not apply to:

> "***the exercise by a swap participant*** … of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or ***of any contractual right*** (as defined in section 560) ***to offset*** or net out ***any termination value***, payment amount, or other transfer obligation ***arising under or in connection with 1 or more such [swap] agreements***, including any master agreement for such agreements."

11 U.S.C. § 362(b)(17) (emphasis added).

"Swap agreement" is defined expansively, in turn, to include both the swap agreements and transactions themselves, as well as any related security arrangements or master agreements:

> "The term 'swap agreement'—(A) means—
>
> ***(i)*** any agreement, including the terms and conditions incorporated by reference in such agreement, which is [a swap falling within 10 specified categories];
>
> ***(ii)*** any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that … is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets. . .
>
> ***(iii)*** any combination of agreements or transactions referred to in this subparagraph;
>
> ***(iv)*** any option to enter into an agreement or transaction referred to in this subparagraph;
>
> ***(v)*** a ***master agreement*** that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement …; or

> ***(vi)*** any ***security agreement or arrangement*** or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v) …."

Id. § 101(53B) (emphasis added).

Section 560 similarly provides a broad exemption from the Bankruptcy Code's automatic stay, avoidance and other provisions for the set-off of termination values or payment amounts arising under or in connection with the termination of swap agreements:

> "***The exercise of any contractual right of any swap participant*** … to cause the liquidation, termination, or acceleration of one or more swap agreements because of a condition of the kind specified in section 365(e)(1) of this title [regarding the debtor's bankruptcy or insolvency] or ***to offset*** or net out ***any termination values*** or payment amounts ***arising under or in connection with the termination, liquidation, or acceleration of one or more swap agreements shall not be stayed, avoided, or otherwise limited by operation of any provision of this title*** or by order of a court or administrative agency in any proceeding under this title."

Id. § 560 (emphasis added).

And section 553 provides a safe harbor from the Bankruptcy Code's general invalidation of set-off rights where the claim was acquired by transfer during the 90-day preference period, exempting from that limitation any set-off of a kind described in the swap safe harbors in sections 362(b)(17) and 560:

> "(a) Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that—
>
> … (2) such claim was transferred, by an entity other than the debtor, to such creditor—
>
> … (B) (i) after 90 days before the date of the filing of the petition; and
>
> (ii) while the debtor was insolvent ***(except for a setoff of a kind described in section … 362(b)(17) … [or] 560 …)***"

Id. § 553(a)(2)(B)(ii) (emphasis added).

The protection of swap set-off rights under these safe harbors reflects a strong and long-standing Congressional policy of safeguarding the financial markets from the disruptive effects of a counterparty's bankruptcy filing.

When Congress originally enacted the Bankruptcy Code in 1978, it included a safe harbor for commodities contracts in order to "protect[] … commodity market stability." S. Rep. No. 95-989, at 8 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5794. Soon thereafter, in 1982, Congress amended the Bankruptcy Code to broaden the scope of the safe harbor, exempting payments in the securities, commodities, and forward-contract trades from the bankruptcy avoidance powers (except in cases of actual fraud) and providing that the "liquidation" of such contracts could not be "stayed, avoided, or otherwise limited by operation of any provision of this title." *See* 1982 Amendments to Bankruptcy Code, Pub. L. No. 97-222, 96 Stat. 235 (now codified, as amended, at 11 U.S.C. §§ 362(b)(6), 546(e), 555, 556); H.R. Rep. No. 97-420 (1982), *reprinted in* 1982 U.S.C.C.A.N. 583. When a judicial decision injected uncertainty into the status of repurchase agreements in bankruptcy, *see* S. Rep. No. 98-65, at 47 (1983), Congress acted again to clarify that the safe harbor provisions applied to repurchase agreements, as well as to expand its protections to financial institutions. *See* 1984 Amendments to the Bankruptcy Code, Pub. L. No. 98-353, 98 Stat. 333 (now codified as amended at 11 U.S.C. §§ 362(b)(7), 546(f), 559); S. Rep. No. 98-65 (1983).

On both occasions, Congress sought to insulate the financial markets from the "ripple effect" that could result if a bankruptcy prevented counterparties to financial contracts from enforcing their rights upon default. *See Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.*, 651 F.3d 329, 334 (2d Cir. 2011) ("Congress enacted § 546(e)'s safe harbor in 1982 as a means of minimi[zing] the displacement caused in the commodities and securities markets in the event

of a major bankruptcy affecting those industries." (internal quotation marks omitted)); H.R. Rep. No. 97-420, at 1 (1982), *reprinted in* 1982 U.S.C.C.A.N. 583, 583 ("[C]ertain protections [were] necessary to prevent the insolvency from one commodity or security firm from spreading to other firms and possible [sic] threatening the collapse of the affected market."); S. Rep. No. 98-65, at 47 (1983) ("A collapse of one institution involved in repo transactions could start a chain reaction ... threatening the solvency of many additional institutions."); 128 Cong. Rec. S8, 132-33 (July 13, 1983) (statement of Sen. Dole) (safe harbor prevents "chain reaction of insolvencies").

In 1990, Congress extended safe harbor protections to swap agreements. Congress recognized that swap agreements were "a rapidly growing and vital risk management tool in world financial markets," allowing financial institutions, businesses, and governments "to minimize exposure to adverse changes in interest and currency exchange rates." S. Rep. No. 101-285 (1990), *available at* 1990 WL 259288, at *2; H.R. Rep. 101-484, at 2-3 (1990), *reprinted in* U.S.C.C.A.N. 223, 224-25. Since then, the swaps and derivatives markets have grown exponentially, from an estimated $1 trillion in outstanding swaps transactions in 1989 to an estimated notional amount of $691 trillion in 2014.[1] In 2009, ISDA conducted a survey of derivatives usage by the Fortune Global 500 and found that 94 percent—471 out of 500 companies—use derivatives to manage business and financial risk.[2]

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[1] *Compare Interest Swap: Hearing on S. 396 Before the Subcommittee on Courts and Administrative Practices of the Senate Comm. on the Judiciary*, 101st Cong. 14 (1989) (statement of Mark C. Brickell, Chairman, ISDA) (ISDA "estimated that in excess of $1trillion in swap transactions [was] currently outstanding" in 1989) *with* Bank for International Settlements, *Statistical Release: OTC derivatives statistics at end-June 2014*, Nov. 2014, at 1 ("BIS semiannual survey of over-the-counter (OTC) derivatives markets: … The notional amount of outstanding contracts totaled $691 trillion at end-June 2014 …."), *available at* http://www.bis.org/publ/otc_hy1411.pdf.

[2] *See* ISDA News Release: *Over 94% of the World's Largest Companies Use Derivatives to Help Manage Their Risks* (Apr. 23, 2009), *available at* http://www2.isda.org/attachment/MTY2MQ==/press042309der.pdf (reporting use of foreign-exchange derivatives by 88% of companies and of interest-rate derivatives by 83% of companies).

Echoing the concerns that drove Congress to act in 1982 and 1984, Congress was concerned about "volatility in the swap agreement markets resulting from the uncertainty over their treatment in the Bankruptcy Code." H.R. Rep. No. 101-484, at 3 (1990), *reprinted in* 1990 U.S.C.C.A.N. 223, 225. As Senator Heflin explained:

> There is concern that if one of the parties to a swap agreement files for bankruptcy under the current Bankruptcy Code, the non-defaulting party is left with a substantial risk and, depending on the size of the swap agreement, could cause a rippling effect which would undermine the stability of the financial markets.

Interest Swap: Hearing on S. 396 Before the Subcomm. on Courts and Administrative Practices of the Senate Comm. on the Judiciary, 101st Cong. 1 (1989).

In particular, "[t]he setoff process, which is at the center of the swap agreement, may be skewed if one of the parties has filed for bankruptcy." H.R. Rep. No. 101-484, at 3 (1990), *reprinted in* 1990 U.S.C.C.A.N. 223, 225. Because swap agreements provide for an exchange of cash flows (such as interest payments under fixed and floating rates), the ability of swap parties to offset their opposing obligations is essential to reducing a swap party's exposure to the risk of loss in a bankruptcy of its counterparty. Congress thus recognized that protecting set-off rights "is particularly important to swap participants since netting is the normal, intended course of dealing in swap transactions[,] unlike ordinary commercial transactions where setoff is an extraordinary remedy." S. Rep. No. 101-285 (1990), *available at* 1990 WL 259288, at *3. It therefore concluded that "setoffs effected under or in connection with [a swap] agreement, including any security arrangements related thereto, must be protected in order to preserve the functioning of the market." *Id.*

Accordingly, Congress enacted the swap safe harbor provisions in 1990 in order "to ensure that the swap and forward contract financial markets are not destabilized by uncertainties regarding the treatment of their financial instruments under the Bankruptcy Code." H.R. Rep.

No. 101-484, at 1 (1990), *reprinted in* 1990 U.S.C.C.A.N. 223, 223; S. Rep. No. 101-285, at 1 (1990) (purpose of bill was to "provide for certainty for swap transactions in the case of a default in bankruptcy"); *see generally* 1990 Bankruptcy Amendments, Pub. L. No. 101-311, 104 Stat. 267. The addition of sections 362(b)(17) and 560 were key elements of this safe harbor protection. Section 362(b)(17) was intended to "provide that a setoff pursuant to a swap agreement … is not automatically stayed," "permit[ting] the swap participant to … offset[] any amounts due against any amounts owed." H.R. Rep. No. 101-484, at 4-5 (1990), *reprinted in* 1990 U.S.C.C.A.N. 223, 226-27. Section 560 was similarly intended "to preserve a swap participant's contractual right to terminate a swap agreement and offset any amounts owed under it in the event that one of the parties to the agreement files a bankruptcy petition." *Id.* at 5, *reprinted in* 1990 U.S.C.C.A.N. at 227. Through enactment of this safe harbor, Congress made clear that "the exercise of any such right shall not be … limited by operation of the Bankruptcy Code." *Id.* In other words, section 560 "means that these contractual rights are not to be interfered with by any court proceeding under the [Bankruptcy] Code." S. Rep. No. 101-285 (1990), *available at* 1990 WL 259288, at *9; *see also* 136 Cong. Rec. 13,153 (daily ed. June 6, 1990) (statement of Sen. DeConcini) ("The effect of the swap provisions will be to provide certainty for swap transactions and thereby stabilize domestic markets by allowing the terms of the swap agreements to apply notwithstanding the bankruptcy filing.").

Congress amended the Bankruptcy Code again in 2005, acting on recommendations of the President's Working Group on Financial Markets (consisting of the principal federal regulators of the financial markets) and the financial industry, to clarify and expand the safe

harbor provisions for swap agreements.[3] *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, § 907, 199 Stat. 23 (2005). Significantly, two amendments are particularly pertinent to the issues before the Court. *First*, Congress significantly expanded the definition of "swap agreement" to include "any security agreement or arrangement or other credit enhancement related to" a swap agreement. *See* 11 U.S.C. § 101(53B)(A)(vi). "An example of a security arrangement is a right of setoff," and "[t]his [amendment] ensures that any such … arrangement … is itself deemed to be a swap agreement, and therefore eligible for treatment as such for purposes of termination, liquidation, acceleration, offset and netting under the Bankruptcy Code." *See* H.R. Rep. No. 109-31, at 129 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 190. *Second*, Congress amended section 553 to add the safe harbor provision at issue in this litigation. *See* 11 U.S.C. § 553(a)(2)(B)(ii). The section 553 safe harbor was intended "to clarify that the acquisition by a creditor of setoff rights in connection with swap agreements … cannot be avoided as a preference." *See* H.R. Rep. 109-31, at 134 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 194.

As with earlier amendments, Congress emphasized that the 2005 amendments were "intended to reduce 'systemic risk' in the banking system and financial marketplace," *i.e.*, "the risk that the failure of a firm or disruption of a market or settlement system will cause widespread difficulties at other firms, in other market segments, or in the financial system as a whole." H.R. Rep. No. 109-31, at 20 & n.78, *reprinted in* 2005 U.S.C.C.A.N. 88, 105-06. "If participants in certain financial activities are unable to enforce their rights to terminate financial contracts with an insolvent entity in a timely manner, or to offset or net their various contractual

[3] *See* H.R. Rep. No. 109-31, at 20 & n.79 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 105. The President's Working Group on Financial Markets included representatives from the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, the Securities and Exchange Commission, and the Department of Treasury, including the Office of the Comptroller of the Currency. *Id.*

obligations, the resulting uncertainty and potential lack of liquidity could increase the risk of an inter-market disruption." *Id.* at 20 n.78. Through enactment of the safe harbors, "it is intended that the normal business practice in the event of a default of a party based on bankruptcy or insolvency is to terminate, liquidate or accelerate . . . swap agreements … with the bankrupt or insolvent party" and to enforce "netting and offset rights," "free from the automatic stay" and the Bankruptcy Code's other provisions. *See* H.R. Rep. No. 109-31, at 109, 132-33 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 192-93.

In 2006, Congress enacted the Financial Netting Improvements Act of 2006, in which it further amended the swap agreement safe harbor in Section 362 to make clear that it "protect[s], free from the automatic stay, . . . self-help foreclosure-on collateral rights, setoff rights, and netting rights." *See* H.R. Rep. No. 109-648 (2006), *reprinted in* 2006 U.S.C.C.A.N. 1585, at 1592; Financial Netting Improvements Act of 2006, Pub. L. No. 109-390, § 5, 120 Stat. 2692, 2697 (codified at 11 U.S.C. § 362(b)(17)). These revisions were intended to "strengthen[] and clarify[] the enforceability of early termination and close-out netting provisions and related collateral arrangements in U.S. insolvency proceedings" in order to "reduce systemic risk in the financial markets." H.R. Rep. No. 109-648 (2006), *reprinted in* 2006 U.S.C.C.A.N. 1585, 1587.

As courts have recognized, the safe harbor provisions thus reflect a strong Congressional policy of safeguarding the financial markets from the disruptive effects of a counterparty's bankruptcy filing. *See, e.g.*, *Hutson v. E.I. du Pont de Nemours & Co. (In re Nat'l Gas Distribs., LLC)*, 556 F.3d 247, 259 (4th Cir. 2009) (swap safe harbors reflect Congress's policy of "protecting financial markets and therefore favoring an entire class of instruments and participants"); *Thrifty Oil Co. v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 322 F.3d 1039, 1050 (9th Cir. 2003) ("The legislative history of the Swap Amendments plainly reveals that Congress

recognized the growing importance of interest rate swaps and sought to immunize the swap market from the legal risks of bankruptcy.").

The Second Circuit has likewise recognized Congress's strong policy of protecting the financial markets in construing the analogous safe harbors for securities transactions. *See Picard v. Ida Fishman Revocable Trust (In re Bernard L. Madoff Investment Securities LLC*, No. 12-2557, 2014 WL 6863608, at *2, *5-6 (2d Cir. Dec. 8, 2014) (rejecting narrow construction of "a very broadly-worded safe-harbor provision" that "risks the very sort of significant market disruption that Congress was concerned with"); *Official Comm. of Unsecured Creditors of Quebecor World (USA) Inc. v. Am. United Life Ins. Co. (In re Quebecor World (USA) Inc.)*, 719 F.3d 94, 100 (2d Cir. 2013) (rejecting narrow construction of securities safe harbor provisions, emphasizing that "a clear safe harbor" is necessary to "further the purpose behind the exemption" of "promot[ing] stability in their respective markets"), *cert. denied*, 134 S. Ct. 1278 (2014); *Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.*, 651 F.3d 329, 336, 339 (2d Cir. 2011) (rejecting narrow construction of securities safe harbor provisions that would "have a substantial and … negative effect on the financial markets" and "result in commercial uncertainty and unpredictability at odds with the safe harbor's purpose and in an area of law where certainty and predictability are at a premium").

ARGUMENT

I. THE BANKRUPTCY CODE'S SAFE HARBOR PROTECTS THE RIGHT OF A SWAP PARTICIPANT TO OFFSET A CLAIM TRANSFERRED TO IT DURING THE PREFERENCE PERIOD

In its fifth counterclaim, Lehman seeks to invalidate the Moore Set-Offs pursuant to section 553 of the Bankruptcy Code, which generally prohibits creditors from exercising set-off rights in bankruptcy where the claim was transferred to the creditor during the 90 days before bankruptcy, while the debtor was insolvent. *See* 11 U.S.C. § 553(a)(2)(B). Assuming the

Assignor Moore entities had valid contractual rights to assign their termination claims against LBSF to the Assignee Moore entities and that those assignments occurred during the 90-day preference period (issues on which ISDA takes no position, but which Lehman properly assumes to be true for purposes of its fifth counterclaim), Lehman's fifth counterclaim should be dismissed. The safe harbor in section 553 expressly protects the right of swap participants to set off transferred claims arising from the termination of swap agreements, free from avoidance as a preference under section 553(a)(2)(B). Lehman's arguments to the contrary cannot be squared with the text or purpose of the safe harbor provisions.

By its terms, section 553(a)(2)(B) prohibits the set-off of claims transferred during the preference period "*except for a setoff of a kind described in section … 362(b)(17) … [or] 560*"—i.e., except for any set-off protected by the swap safe harbor provisions. *See* 11 U.S.C. § 553(a)(2)(B)(ii) (emphasis added). And the set-offs at issue here fall within the plain terms of those safe harbors. Sections 362(b)(17) and 560 each permit (1) a "swap participant" (2) to exercise "any contractual right" (3) "to offset" (4) "any termination values … arising under or in connection with the termination, liquidation, or acceleration of one or more swap agreements." *See* 11 U.S.C. §§ 362(b)(17), 560. Each of those elements is met here. Each Assignee Moore entity was a "swap participant" ("an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor," *id.* § 101(53C)); each exercised a "contractual right" (assumed to be valid for purposes of the fifth counterclaim) of set-off under a swap master agreement; and each of the debts and assigned claims that were "offset" were "termination values" that "ar[ose] under or in connection with the termination … of … swap agreements," namely, the termination payments arising under each of the respective Moore master agreements

in connection with the early termination of those agreements. *See* Lehman Counterclaim ¶¶ 31-34, 46-49.

Accordingly, the plain language of the safe harbor exempts the set-off of swap termination values like those at issue here from section 553(a)(2)(B)'s prohibition. Judge Peck recognized this very point in an earlier proceeding in this case. In the *Swedbank* dispute, the Court explained:

> "Congress in 2005 … amended … section 553 … to ensure that a creditor's acquisition of or exercise of setoff rights in connection with a safe harbored contract during the preference period could not be avoided as a preference. *See* H. Rpt. No. 109-31, Pt. 1, 109th Cong., 1st Sess. 134 (2005) …. [S]ection 553(a)(2)(B) disallows the setoff of a claim … when the claim was transferred to the creditor during the preference period. As amended, this disallowance no longer applies with respect to a creditor's claim arising under a safe harbored contract. *See* 11 U.S.C. § 553(a)(2)(B)(ii)."

In re Lehman Bros. Holdings Inc., 433 B.R. 101, 111 (Bankr. S.D.N.Y. 2010), *aff'd*, 445 B.R. 130 (S.D.N.Y. 2011).

Lehman's arguments to the contrary fail.

1. Lehman argues that the safe harbor does not apply because it purportedly "does not authorize the set-off of *multiple* master agreements against each other," but only the set-off of amounts under one "individual master agreement between a swap participant and a debtor." Def. Opp'n at 19 (emphasis added). That argument is refuted by the Code's text. Section 362(b)(17) and Section 560 each protect the right "to offset or net out any termination values . . . . arising under or in connection with the termination, liquidation or acceleration of *one <u>or more</u> swap agreements*." 11 U.S.C. § 560 (emphasis added); *id.* § 362(b)(17) (protecting right "to offset … any termination value … arising under or in connection with *1 <u>or more</u> such [swap] agreements*" (emphasis added)). And Congress expressly defined "swap agreement" to include a "master agreement." *Id.* § 101(53B)(A)(v). The safe harbor protection for setting off

termination values under "one or more swap agreements" thus includes the right to set-off such amounts arising under "one *or more*" "*master* agreements."

Lehman points to nothing in support of its argument other than the clause at the end of section 362(b)(17), "including any master agreement for such agreements." Def. Opp'n at 19. But that clause merely clarifies what is "include[d]" in the term "1 or more such [swap] agreements"—i.e., it makes clear that those "swap agreements" include any "master agreement." It is not, as Lehman contends, a term of limitation. Not only would that contravene the definition of "swap agreement," which expressly includes a "master agreement," but it is also contrary to the Bankruptcy Code's rules of construction, which provide that the terms "'includes' and 'including' are not limiting." *See* 11 U.S.C. § 102(3). Indeed, Congress amended the Code in 2005 to include a new safe harbor for "master netting agreements," which govern set-off across different types of financial contracts (swap agreements, securities contracts, commodities contracts, etc.), *see id.* § 101(38A), and it provided similar protection from the Code's automatic stay, avoidance and other provisions for the right "to offset … termination values … arising under or in connection with *one or more … master netting agreements*." *See id.* § 561(a)(6) (emphasis added); *see also id.* § 362(b)(27). Moreover, as discussed above, it also amended the definition of "swap agreement" to include any "security arrangement" related to a swap agreement, including a "right of setoff," in order to ensure those rights enjoy the full protection of the safe harbors.

In short, there is nothing in the text or history of the safe harbor provisions that remotely supports the narrow reading Lehman urges this Court to adopt. Accordingly, by netting out amounts arising from the termination of several parallel master agreements, the Moore entities did nothing to take them outside the scope of the safe harbors.

2. Lehman argues next that the Moore set-offs did not "arise under or in connection with" the termination or liquidation of a swap agreement, because the set-offs arose by virtue of the assignment of the termination claims against LBSF to the Assignee Moore entities *after* the swap transactions were terminated. Def. Opp'n Br. at 19. Again, the text contains no such limitation. The phrase "arising under or in connection with" modifies the preceding term—"termination values or payment amounts." *See Enron*, 651 F.3d at 335 (construing securities safe harbor provision in accordance with "the 'rule of last antecedent,'" under which "a limiting clause or phrase … should ordinarily be read as modifying only the noun or phrase that it immediately follows"). And there is no dispute that each of the debts and claims that the Moore entities offset were "termination values" that "ar[ose] under or in connection with the termination … of one or more swap agreements," *i.e.*, the Moore master agreements. In any event, even if the "arising under" language were read to modify the term "setoff," as Lehman argues, the set-offs here were plainly made "under or in connection with the termination" or "liquidation" of the swap agreements, as the assignments and set-offs were effected pursuant to the default provisions of the swap agreements in connection with closing out and settling the terminated swap transactions, resulting in a final net sum due (and paid) by the Moore entities to LBSF. *Cf. Madoff*, 2014 WL 6863608, at *8 (construing the term "in connection with" in analogous securities safe harbor provision to mean "'related to' or 'associated with'" the safe harbored contract, which "sets a low bar for the required relationship").

Lehman's reliance on *Calpine* is misplaced. Def. Opp'n at 19. That case did not construe section 560 or the other swap safe harbor provisions at issue here. It construed a different safe harbor for commodities contracts, section 556, which unlike section 560, does not protect any right to "offset … termination values … arising under or in connection with the

termination" or "liquidation" of a safe harbored contract. *See Calpine Energy Servs. v. Reliant Energy Elec. Solutions (In re Calpine Corp.)*, No. 08-1251 (BRL), 2009 WL 1578282, at *6-7 (Bankr. S.D.N.Y. May 7, 2009). The court thus had no occasion to construe the "arising under" language at issue here on which Lehman relies. Rather, the safe harbor language at issue there concerned the right to "cause the liquidation, termination, or acceleration" of a commodity contract upon the debtor's bankruptcy. *See* 11 U.S.C. § 556. The court held that this language permitted the creditor to terminate the contract, but that it did not allow the creditor to compel the debtor to perform the debtor's own obligations under the contract—an executory contract that the debtor had not assumed—to provide a detailed explanation for disputing calculation of a termination payment within 2 days of receiving the calculation. *Calpine*, 2009 WL 1578282, at *6-7. Here, by contrast, the swap safe harbor expressly permits swap participants to exercise their own contractual rights to offset swap termination values arising under or in connection with the termination of swap agreements.

3. Lehman further argues that the set-offs in this case fall outside the safe harbor because, it claims, they did not concern a mutual claim and debt between Lehman and the assignee Moore entities. Def. Opp'n at 20-24. This argument also fails. Lehman's entire argument is premised on its mischaracterization of the Moore set-offs as something they were not—a triangular set-off. But as Lehman concedes, the claims at issue were *assigned* to the Assignee Moore entities, and those assignments occurred before the petition date (as Lehman assumes in counterclaim five).

Accordingly, when LBSF filed for bankruptcy, the assigned claims were held by the Assignee Moore entities in their own right, as personal claims against Lehman. The Moore entities therefore did not set-off their debts against claims belonging to third parties, but rather

against their own claims that they had acquired, through assignment, against Lehman. The set-offs thus involved mutual debts "in the same right and between the same parties, standing in the same capacity." Def. Opp'n Br. at 21 (quoting *Lines v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 743 F. Supp. 176, 183 (S.D.N.Y. 1990)).

Accordingly, as courts have consistently held, claims acquired through assignment satisfy mutuality under section 553 of the Bankruptcy Code. *See, e.g.*, *In re Assured Fastener Prods. Corp.*, 773 F.2d 105, 106-07 (7th Cir. 1985) (holding that creditors held "mutual debts" and that "§ 553 authorizes the set-off" even though the creditors acquired their claims through assignments from an affiliate five months before the bankruptcy); *In re U.S. Aeroteam, Inc.*, 327 B.R. 852, 864-65 (Bankr. S.D. Ohio 2005) ("courts are in agreement that an assignment of rights can create mutuality for setoff purposes"); *In re New Haven Foundry, Inc.*, 285 B.R. 646, 647-648 (Bankr. E.D. Mich. 2002) (holding that "mutuality requirement is satisfied" under § 553 even though "[debtor]'s debt to [creditor] originated as a debt owed by [debtor] to [a third party]"; "[t]his does not preclude a finding of mutuality" because "[the third party] assigned its [debtor] accounts receivable to [the creditor]").

Lehman's argument to the contrary would render the safe harbor in section 553 meaningless. If an assigned claim were not mutual, on grounds that the claim was originally owed to a third party rather than to the creditor asserting the right of set-off, then Lehman is in effect arguing that a transferred claim can never be set-off. But this argument fails to make sense of Section 553(a)(2), which creates an exception to the general preservation of set-off rights for claims transferred during the preference period. If the transfer of a claim defeated mutuality, then the set-off of assigned claims would be barred by section 553's mutuality requirement alone, without any need to enact any additional prohibition on the set-off of transferred claims in

section 553(a)(2). On Lehman's reading, therefore, section 553(a)(2) would serve no purpose, contrary to the cardinal principle that statutes should not be construed to render any provision "superfluous, void, or insignificant." *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

To the contrary, it is precisely because Congress recognized that the assignment of claims *does* create mutuality that it enacted section 553(a)(2)(B), in order to allow a trustee to recover against a creditor to the extent the creditor improved its position by virtue of the exercise of set-off rights in respect of claims that were acquired on the eve of bankruptcy. And, critically, that is also why Congress enacted the safe harbor exception to section 553(a)(2)(B) at issue here: to protect the right of swap participants to enforce their contractual rights of set-off in the event of a counterparty's bankruptcy, even where those claims are acquired through assignment in the 90 days before bankruptcy. *See* 11 U.S.C. § 553(a)(2)(B)(ii).

4. Lehman's resort to legislative history fares no better than its textual arguments. As shown above, the legislative history does not support the narrow reading of the safe harbor provisions that Lehman advances—in fact, it supports quite the opposite. Lehman cites to a passage in the Background section of the 1990 House Report, which provided an example of netting under a swap agreement, as evidence that Congress wanted to protect "only" netting between a debtor and one creditor under a single swap agreement. Def. Opp'n at 20. But as discussed above, both the text and the legislative history of the safe harbor provisions unequivocally demonstrate that Congress's intentions were much broader. And Lehman's cramped reading conflicts with Congress's stated purpose, expressed consistently throughout its development and expansion of the safe harbors, to reduce systemic risk in the financial marketplace. Congress was obviously (and correctly) concerned about the risk of knock-on financial effects and market destabilization if swap participants were unable to exercise their

contractual set-off rights in the event of a counterparty's bankruptcy, whether those rights involve the netting of the parties' obligations under a single agreement or under multiple agreements, and whether those obligations were acquired originally or through assignment. Because Lehman's interpretation of the legislative history conflicts with Congress's expression of its own goals in enacting the safe harbors, it should be rejected.

5. Finally, insofar as Lehman appeals to the general bankruptcy policy of equal distribution among creditors, *see* Def. Opp'n at 21 ("Moore's actions in this dispute unjustly allowed it to obtain a preference over other creditors" (internal quotation marks omitted)), that is no basis to disregard the plain language of the safe harbors. Equal treatment of creditors is indeed a fundamental policy goal of the Bankruptcy Code. But it is not the only policy animating the Bankruptcy Code, and Congress has frequently balanced that goal against competing policies at stake in bankruptcy proceedings. And here, as discussed above, the safe harbors reflect a strong countervailing Congressional policy of protecting financial markets. To be sure, by permitting set-offs that would otherwise be avoidable under the Bankruptcy Code, the safe harbors enable swap participants to obtain preferential treatment, counter to the normal policy of equal treatment of creditors that would otherwise obtain. But by the same taken, protecting contractual rights of set-off of the sort at issue here also allows swap participants to reduce their exposure upon a counterparty's bankruptcy, thereby minimizing the systemic risk to the broader financial markets that Congress sought to prevent when it enacted the safe harbors.

Thus, "[e]ven though an overarching policy of the Bankruptcy Code is to provide equal distribution among creditors, in enacting [the swap safe harbors], Congress intended to serve a countervailing policy of protecting financial markets and therefore favoring an entire class of instruments and participants." *Nat'l Gas Distribs.*, 556 F.3d at 259 (citations omitted); *see also*

Madoff, 2014 WL 6863608, at *9 ("[I]n enacting the Bankruptcy Code, Congress struck careful balances between the need for an equitable result for the debtor and its creditors, and the need for finality. … [B]y enacting [the securities safe harbor], Congress provided that, for a very broad range of securities-related transfers, the interest in finality is sufficiently important that they cannot be avoided by a bankruptcy trustee at all …. We are obliged to respect the balance Congress struck among these complex competing considerations."); *Enron*, 651 F.3d at 334 ("By restricting a bankruptcy trustee's power to recover payments that are otherwise avoidable under the Bankruptcy Code, the [securities] safe harbor stands at the intersection of two important national legislative policies on a collision course—the policies of bankruptcy and securities law." (internal quotation marks omitted)); *Grede v. FCStone, LLC*, 746 F.3d 244, 253-54 (7th Cir. 2014) ("Congress chose finality over equity" when enacting the securities safe harbors; "[i]n other words, [the safe harbor] reflects a policy judgment by Congress that allowing some otherwise avoidable pre-petition transfers in the securities industry to stand would probably be a lesser evil than the uncertainty and potential lack of liquidity that would be caused by putting every recipient of settlement payments in the past 90 days at risk of having its transactions unwound in bankruptcy courts.").

Accordingly, Lehman's argument invites this Court to engage in the balancing of competing policies in an area where Congress has already acted to do so. But as "[t]he Supreme Court recently reminded us[,] … Congress has balanced many of the difficult choices that must be made in bankruptcy cases, and … courts may not decline to follow those policy choices on equitable grounds." *Grede*, 746 F.3d at 254 (citing *Law v. Siegel*, 134 S. Ct. 1188, 1997-98 (2014)). Rather, courts must respect the congressional judgment about how to balance those competing policies by upholding the statute as Congress intended, in accordance with the plain

language that Congress chose to express that intent. *Quebecor*, 719 F.3d at 99-100; *Enron*, 651 F.3d at 339. And as the history and purpose of the safe harbors confirm, there is no reason to depart from the deliberately broad text that Congress has enacted here.

Accordingly, because the plain language of the safe harbors protects the right of swap participants to set off transferred claims arising from the termination of swap agreements, Lehman's fifth counterclaim should be dismissed.

II. THE BANKRUPTCY CODE'S SAFE HARBOR PROTECTS THE RIGHT OF A SWAP PARTICIPANT TO OFFSET TERMINATION VALUES FREE FROM THE AUTOMATIC STAY

In its sixth counterclaim, Lehman seeks to invalidate the Moore set-offs on grounds that they allegedly violated the automatic stay and are therefore void. But as discussed above, the safe harbor in section 362(b)(17) expressly exempts the set-off of termination values arising under or in connection with the termination of swap agreements from the automatic stay. Lehman's argument that the safe harbor in section 362(b)(17) protects only the set-off of amounts under a "single master agreement" is without merit for the reasons already discussed. Accordingly, to the extent Lehman seeks to void the Moore set-offs pursuant to the Bankruptcy Code's automatic stay, Lehman's sixth counterclaim should be dismissed.

CONCLUSION

For the foregoing reasons, Lehman's erroneous construction of the Bankruptcy Code's safe harbor provisions in sections 362(b)(17), 553(a)(2)(B)(ii) and 560 should be rejected.

Date: December 11, 2014

Respectfully submitted,

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EXHIBIT B

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re Lehman Brothers Holdings Inc., *et al.*, Debtors.	Chapter Case No. 08-13555 (SCC)
Moore Macro Fund, LP, *et al.*, Plaintiffs, v. Lehman Brothers Holdings Inc., *et al*., Defendants.	Adv. Pro. No. 14-02021 (SCC)

ORDER GRANTING MOTION OF THE INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC. FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF NEITHER PARTY

Upon consideration of the Motion of the International Swaps and Derivatives Association, Inc. for leave to file a brief as *amicus curiae* in support of neither party, dated December 11, 2014, and for good cause shown, the motion is hereby GRANTED. The proposed *amicus curiae* brief, attached to the Motion as Exhibit A, shall be deemed FILED.

SO ORDERED.

____

Judge Shelley C. Chapman
United States Bankruptcy Judge