

From: Kerstein, Daniel [daniel.kerstein@lehman.com].

Sent: 7/11/2008 8:02 PM.

To: Wieseneck, Larry [lwiesene@lehman.com]; Erickson, David [derickso@lehman.com].

Cc:

Bcc:

Subject: FW: Spin execution considerations.

Attached was sent to Brad earlier. Essentially while the cash flows are still being worked through other structural hurdles are achievable. We are also digging for precedent on pre-announcements. Please let me know if you have any questions.

Daniel Kerstein
Lehman Brothers
Global Finance Solutions
ph: (212) 526-0406
fax: (646) 885-9267
daniel.kerstein@lehman.com

>
> _____
> From: Kashdin, Daniel A
> Sent: Friday, July 11, 2008 6:15 PM
> To: Whitman, Brad; Beeson, Lisa E
> Cc: Kerstein, Daniel; Edelman, Hal; Wiegenfeld, Yoav
> Subject: Spin execution considerations
>
> Brad / Lisa,
>
> See attached for first draft of one pager on spin execution
> considerations. Please let us know your thoughts.
>
> Thanks
>
> <<Spin Execution 7.11.08.ppt>>
>
> Daniel Kashdin
> Lehman Brothers
> Global Finance Solutions
> 745 7th Ave., 5th Floor
> New York, NY 10019
> (212) 526 3566 direct
> (646) 758 4715 fax
>
>

Key Execution Considerations for Spin-Off

Execution of a spin-off should be achievable subject to the following considerations

Financing

- ◆ Amount of financing required and terms of securities depends on analysis of underlying assets
 - [How much leverage can the underlying assets support?]
 - [To what extent will the securities need to be PIK or OID?]
 - [Real Estate team to complete]
- ◆ Likely that SpinCo will need at least a portion of third party financing

Timing / Disclosure

- ◆ Several precedents exist whereby the plan to spin was announced well in advance of Form 10 filing / completion of audited financial statements
- ◆ Feasibility of successful execution needs to be confirmed ahead of announcement
 - Will involve senior level discussions between key constituents (Lehman, Treasury, SEC, IRS, Rating Agencies)

Accounting

- ◆ Assets should not be consolidated on Lehman's Balance Sheet as long as the following conditions are met
 - SpinCo is deemed an operating business
 - Seller financing is at arm's length, market terms
 - Third party participation in financing
- ◆ Seller financing would be reflected on Balance Sheet as a Level 2 asset
 - Magnitude and volatility of MTM should be significantly less than equity MTM would be

Tax

- ◆ Transaction likely can be structured as tax-free to shareholders if SpinCo is a C-Corp
 - Weigh importance of tax-free distribution vs. flow through treatment of SpinCo