

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re :
LEHMAN BROTHERS HOLDINGS INC., : Chapter 11 Case No.
et al., : 08-13555 (JMP)
Debtors. : (Jointly Administered)
----- x

REPORT OF
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APPENDIX 8: RISK MANAGEMENT ORGANIZATION AND CONTROLS

This Appendix summarizes: Lehman's risk management function, Lehman's most pertinent risk-related controls, who at Lehman was tasked with monitoring and enforcing the firm's risk management metrics and controls and how Lehman's officers described the firm's risk management function to its Board of Directors ("Board")¹, the rating agencies, and regulators.

I. OVERVIEW

Lehman viewed risk management as one of its core competencies.² Lehman maintained an extensive risk management system, which was operated by its Global Risk Management Group ("GRMG"), risk managers embedded in the various business lines, and its Finance Department. The firm allocated "substantial resources" to measuring, analyzing, and managing risk.³ By 2008, Lehman's GRMG had grown to include roughly 450 professionals, with staff in each of the firm's trading centers.⁴

¹ References to the Board of Directors in this Appendix refer to Lehman's outside directors, not to Fuld, who was Lehman's Chief Executive Officer, in addition to serving as Chairman of the Board.

² Lehman, Risk Update Presentation to Lehman Board of Directors (July 18, 2006), at p. 2 [LBEX-DOCID 2125293].

³ Lehman, Quantitative Risk Management Policy Manual (Sept. 2007), at p. 3 [LBEX-DOCID 384020].

⁴ Lehman, Risk Management Update Presentation to Lehman Board of Directors (Apr. 15, 2008), at p. 3 [LBHI_SEC07940_027909]; Madelyn Antoncic, Risk Management Presentation to Standard & Poor's [Draft] (Aug. 17, 2007), at p. 14 [LBEX-DOCID 342851], attached to e-mail from Lisa Rathgeber, Lehman, to Jeffrey Goodman, Lehman, *et al.* (Aug. 15, 2007) [LBEX-DOCID 305205]; Lehman, Risk Update Presentation to Lehman Board of Directors (July 18, 2006), at p. 7 [LBEX-DOCID 2125293].

Within the industry, Lehman's risk management function was widely regarded as among the best.⁵

GRMG's mission was to "protect and enhance the value of the franchise by proactively identifying, evaluating, monitoring and controlling Firm market, credit and operational risks."⁶ In addition to understanding and measuring the risks associated with the firm's business activities, GRMG was responsible for developing various risk-related policies, procedures, models, and limits.⁷

II. RISK MANAGEMENT GROUP DIVISIONS AND DIVISIONAL FUNCTIONS

GRMG was organized into various departments, including: Market Risk Management ("MRM"); Credit Risk Management ("CRM"); Operational Risk Management ("ORM"); Quantitative Risk Management ("QRM"); Sovereign Risk Management ("SRM"); Investment Management Division Risk Management ("IMDRM") and Risk Control and Analysis.⁸ Outside of the United States, GRMG was

⁵ See, e.g., Bill Brodows & Til Schuermann, FRBNY, Primary Dealer Monitoring: Initial Assessment of CSEs (May 12, 2008), at pp. 12-13 [FRBNY to Exam. 000017]; Lehman, Risk Update Presentation to Lehman Board of Directors (July 18, 2006), at p. 9 [LBEX-DOCID 2125293].

⁶ Lehman, Risk Management Update Presentation to Lehman Board of Directors (Apr. 15, 2008), at p. 2 [LBHI_SEC07940_027909].

⁷ SEC Division of Market Regulation, Lehman Brothers - Consolidated Supervised Entity Market and Credit Risk Review (2005), at p. 3 [LBEX-DOCID 2125011], attached to e-mail from Michelle Davis, SEC, to David Oman, Lehman, *et al.* (Apr. 21, 2006) [LBEX-DOCID 2068428].

⁸ Madelyn Antoncic, Risk Management Presentation to Standard & Poor's [Draft] (Aug. 17, 2007), at p. 11 [LBEX-DOCID 342851], attached to e-mail from Lisa Rathgeber, Lehman, to Jeffrey Goodman, Lehman, *et al.* (Aug. 15, 2007) [LBEX-DOCID 305205].

divided further into regional departments.⁹ Each department within GRMG was led by a global or regional head who reported to the firm's top risk manager directly.¹⁰

A. Market Risk Management

Market risk refers to the possibility that "changes in market rates, prices and volatilities" could cause an investment portfolio or financial instrument to lose value.¹¹ Typically, sources of market risk fall into three categories, including movements in: (1) interest rates; (2) equity prices; or (3) foreign exchange rates.¹²

MRM was responsible for measuring, monitoring, reporting, and analyzing the firm's exposure to market risk.¹³ In addition, MRM was charged with ensuring that the market risks associated with the firm's business activities were captured by an appropriate metric¹⁴ and monitoring the business lines' adherence to certain risk limits.¹⁵

⁹ *Id.*

¹⁰ Lehman, Risk Update Presentation to Lehman Board of Directors (July 18, 2006), at p. 4 [LBEX-DOCID 2125293].

¹¹ Lehman, ICAAP Supporting Document: Market Risk Management Overview [Draft] (May 2008), at p. 4 [LBEX-DOCID 383057], attached to e-mail from Paul Shotton, Lehman, to Lisa Rathgeber, Lehman, *et al.* (July 31, 2008) [LBEX-DOCID 258308].

¹² Jared Pedowitz, E&Y, BMRM-Market Risk Management Walkthrough Template (Nov. 30, 2007), at p. 5 [EY-LE-LBHI-KEYPERS 1015089].

¹³ SEC Division of Market Regulation, Lehman Brothers - Consolidated Supervised Entity Market and Credit Risk Review (2005), at p. 8 [LBEX-DOCID 2125011], attached to e-mail from Michelle Davis, SEC, to David Oman, Lehman, *et al.* (Apr. 21, 2006) [LBEX-DOCID 2068428].

¹⁴ Lehman, Risk Update Presentation to Lehman Board of Directors (July 18, 2006), at p. 5 [LBEX-DOCID 2125293].

¹⁵ Jared Pedowitz, E&Y, BMRM-Market Risk Management Walkthrough Template (Nov. 30, 2007), at p. 6 [EY-LE-LBHI-KEYPERS 1015089].

The Global Head of MRM was responsible for maintaining regular contact with each trading area.¹⁶ To encourage the development of a close working relationship between MRM and the businesses, Lehman stationed market risk managers physically on the trading floors that they covered.¹⁷

In May 2004, Paul Shotton became Lehman's Global Head of MRM after Madelyn Antoncic was promoted from that position to Chief Risk Officer ("CRO").¹⁸ In late 2006, Shotton shifted roles to become Lehman's Global Head of Risk Control.¹⁹ Throughout 2007 and 2008, the top MRM position remained vacant.²⁰

B. Credit Risk Management

Credit risk is defined as "the possibility that [a] counterparty or an issuer of securities or other financial instruments . . . will be unable to honour its contractual obligations."²¹ CRM was "responsible for the continuous monitoring of counterparties' internal ratings, credit limits and exposures to ensure they remain[ed] appropriate in light of market events and each counterparty's financial condition."²² Additionally, CRM was charged with "identifying and monitoring concentrations and correlations in

¹⁶ *Id.* at p. 5.

¹⁷ *Id.*

¹⁸ Examiner's Interview of Paul Shotton, June 5, 2009, at p. 4.

¹⁹ *See id.* at pp. 4-5, 24.

²⁰ *Id.* at p. 24.

²¹ Lehman, ICAAP Supporting Document: Credit Risk Management Overview [Draft] (May 2008), at p. 4 [LBEX-DOCID 383061], attached to e-mail from Paul Shotton, Lehman, to Lisa Rathgeber, Lehman, *et al.* (July 31, 2008) [LBEX-DOCID 258308].

²² *Id.* at p. 8.

counterparty credit risk exposures across counterparties, . . . industries, . . . products, and countries.”²³

The Global Head of CRM reported directly to the CRO.²⁴ From August 2006 to June 2007, Lehman’s top CRM post was unoccupied.²⁵ In June 2007, Lehman hired Vincent DiMassimo to fill the Global Head of CRM position within GRMG.²⁶

C. Quantitative Risk Management

QRM was charged with “developing, implementing and maintaining the risk methodologies and systems used [to measure market, credit and operational risks,] . . . as well as validating the pricing and valuation models used by the trading units of the Firm.”²⁷ QRM was comprised of four sub-groups, including: (1) Market Risk Analytics; (2) Credit Risk Analytics; (3) Operational Risk Analytics; and (4) Model Validation.²⁸ The Market, Credit and Operational Risk Analytics sub-groups were “responsible for the development, maintenance and operation of the [firm’s] risk quantification methodologies.”²⁹ The Model Valuation Group was “responsible for independently reviewing and approving the pricing models used across the Firm.”³⁰

²³ *Id.*

²⁴ *Id.* at p. 7.

²⁵ Examiner’s Interview of Paul Shotton, June 5, 2009, at p. 25.

²⁶ Examiner’s Interview of Vincent DiMassimo, Sept. 15, 2009.

²⁷ Lehman, Quantitative Risk Management Policy Manual (Sept. 2007), at p. 3 [LBEX-DOCID 384020].

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

III. RISK METRICS

GRMG's "Three Core Functions" were: (1) "Understanding and identifying all risks;" (2) "Ensuring that appropriate limits [were] in place for all transactions and products;" and (3) "Protecting the Firm against 'catastrophic' loss."³¹ Each of these core functions required GRMG to develop systems to "measure the risk for all products."³² Because "[n]o single measure [could] capture[] all dimensions of risk," GRMG "measure[d] risk from multiple perspectives, using varying methodologies."³³

Lehman's risk management system included several central risk-related controls. Some of these controls were merely monitored or measured, while others included limits that were intended to be enforced.

These key risk-related controls were: (1) risk limits (Value-at-Risk ("VaR") and risk appetite); (2) stress or scenario tests; (3) equity adequacy or liquidity controls (of which Lehman had several); (4) single transaction limits; and (5) balance sheet limits. Although each risk-related control was different, they reinforced one another, providing multiple layers of controls and multiple signals as to whether Lehman was potentially taking too much risk.

³¹ Lehman, Risk Update Presentation to Lehman Board of Directors, (July 18, 2006), at p. 15 [LBEX-WGM 986315].

³² *Id.*

³³ Lehman, Risk Management Update Presentation to Lehman Board of Directors (Apr. 15, 2008) at p. 4 [LBHI_SEC07940_027909].

A. Risk Limits

1. VaR

VaR is a measure of market risk, which is expressed as the “maximum amount that can be expected to be lost with a certain degree of certainty over a given time horizon.”³⁴ More generally, VaR reflects the maximum amount that a firm’s liquid trading positions could decline in value “due to normal market movements” over a fixed period of time, calculated to a particular degree of certainty.³⁵ Lehman maintained two distinct VaR calculations to measure its market risk exposure for internal and external reporting purposes.

Lehman defined its internal VaR metric as “an estimate of the potential decline in value of the Firm’s trading positions due to normal market movements over a one-day holding horizon [calculated] at a 95% confidence level.”³⁶ Thus, Lehman’s internal VaR was an expression of the firm’s maximum potential one-day loss on its trading positions under normal market conditions in any one of 19 trading days over a 20 trading day period.

a) Regulatory Reporting Requirements

Under Item 305 of Regulation S-K of the Federal Securities Laws, Lehman and its banking industry competitors were required to make certain quantitative and

³⁴ SEC Division of Market Regulation, *Lehman Brothers - Consolidated Supervised Entity Market and Credit Risk Review* (2005), at pp. 10-11 [LBEX-DOCID 2125011], attached to e-mail from Michelle Davis, SEC, to David Oman, Lehman, *et al.* (Apr. 21, 2006) [LBEX-DOCID 2068428].

³⁵ Jared Pedowitz, E&Y, *BMRM-Market Risk Management Walkthrough Template* (Nov. 30, 2007), at p. 6 [EY-LE-LBHI-KEYPERS 1015089].

³⁶ Lehman, *Global Risk Management Second Quarter 2008 Report* (July 21, 2008), at p. 26 [LBEX-DOCID 738522].

qualitative disclosures regarding market risk.³⁷ Specifically, financial institutions were required to make disclosures regarding their exposure to market risk in one of three ways, one of which was publicly reporting VaR.³⁸ Like many of its competitors, Lehman chose to disclose information regarding its exposure to market risk by publicly reporting VaR.³⁹

For regulatory purposes, Lehman calculated VaR at a 99% confidence level.⁴⁰ Thus, whereas Lehman's internal VaR was an expression of the firm's maximum potential one day loss on its trading positions under normal market conditions in any one of 19 trading days over a 20 trading day period, its regulatory VaR calculation was an expression of the firm's maximum potential one day loss on its trading positions under normal market conditions in any one of 99 trading days over a 100 trading day period.

b) Limits

Lehman maintained VaR limits. Under Lehman's MRM VaR limit policy, the firm set VaR limits for the business at the firm-wide, divisional, business line, and regional levels.⁴¹ These limits represented the maximum amount that Lehman was willing to lose under normal market conditions in any one of 19 trading days over a 20

³⁷ 17 C.F.R. § 229.305(a) (2007).

³⁸ 17 C.F.R. § 229.305(a)(1).

³⁹ *See, e.g.*, Lehman Brothers Holdings Inc., Quarterly Report as of Aug. 31, 2007 (Form 10-Q) (filed on Oct. 10, 2007), at p. 78 ("LBHI 10-Q (filed Oct. 10, 2007)").

⁴⁰ Lehman, Market Risk Management: VaR Back-Testing Procedures (Mar. 2008), at p. 2 [LBEX-DOCID 382975].

⁴¹ Lehman, Global Risk Management, Second Quarter 2008 Report (July 21, 2008), at p. 29 [LBEX-DOCID 738522].

trading day period, calculated at both the firm-wide level and each divisional, business line, and regional level within the firm. In large part, Lehman's VaR limit policy mirrored the firm's risk appetite limit policy. Because one element of Lehman's risk appetite usage calculation was essentially an annualized computation of the firm's VaR, and because Lehman placed more emphasis on risk appetite than VaR, the Examiner focused on risk appetite more heavily than VaR in his investigation of Lehman's risk management practices.

2. Risk Appetite

In both its internal and external communications, Lehman consistently described its risk appetite framework as the firm's primary expression of its overall "risk tolerance."⁴² Whereas VaR measured the firm's exposure to market risks only, risk appetite was an integrated measurement of the firm's market, counterparty credit, and event risk.⁴³

Lehman's risk appetite limit was designed to describe the maximum amount of risk that Lehman could take, and still return an acceptable profit, even if the firm suffered a loss in the 95th percentile of severity. Lehman defined risk appetite as "the amount of money that the Firm [was] 'prepared to lose' over one year due to market,

⁴² See, e.g., Lehman, Global Risk Management Second Quarter 2008 Report (July 21, 2008), at p. 22 [LBEX-DOCID 738522]; see also Madelyn Antoncic, Risk Management Presentation to Standard & Poor's [Draft] (Aug. 17, 2007), at p. 21 [LBEX-DOCID 342851], attached to e-mail from Lisa Rathgeber, Lehman, to Jeffrey Goodman, Lehman, *et al.* (Aug. 15, 2007) [LBEX-DOCID 305205].

⁴³ Lehman, Risk Update Presentation to Lehman Board of Directors (July 18, 2006), at pp. 16-19 [LBEX-WGM 986315]; Lehman, Risk Management Update Presentation to the Lehman Board of Directors (Apr. 15, 2008) at pp. 5-7 [LBHI_SEC07940_027909].

event and counterparty credit risk.”⁴⁴ The metric was designed “to maintain a minimally acceptable [return to its investors] and compensation adequacy including maintaining sufficient headcount to protect the franchise for the long-term.”⁴⁵ Thus, risk appetite was a numerical expression of “the largest reduction in revenue [that] Lehman [could] tolerate without suffering larger adverse consequences . . . such as compensation inadequacy, ratings downgrades, or loss of confidence in the Firm.”⁴⁶

In both internal communications and statements to its external constituents, Lehman consistently identified risk appetite as the “center” of the firm’s “approach to risk.”⁴⁷ Between 2006 and 2008, Lehman’s management discussed the firm’s risk appetite figures with members of the Board at every meeting of the Finance and Risk Committee⁴⁸ and reviewed its risk appetite calculations with members of the Securities

⁴⁴ Lehman, ICAAP Supporting Document: Market Risk Management Overview [Draft] (May 2008), at p. 4 [LBEX-DOCID 383057], attached to e-mail from Paul Shotton, Lehman, to Lisa Rathgeber, Lehman, *et al.* (July 31, 2008) [LBEX-DOCID 258308].

⁴⁵ Lehman, ICAAP Supporting Document: Operational Risk Management Overview [Draft] (May 2008), at p. 10 [LBEX-DOCID 384019], attached to e-mail from Paul Shotton, Lehman, to Lisa Rathgeber, Lehman, *et al.* (July 31, 2008) [LBEX-DOCID 258308].

⁴⁶ Jared Pedowitz, E&Y, BMRM-Market Risk Management Walkthrough Template (Nov. 30, 2007), at p. 9 [EY-LE-LBHI-KEYPERS 1015089]; *see also* Lehman, Risk Update Presentation to Lehman Board of Directors (July 18, 2006), at p. 16 [LBEX-DOCID 1362012].

⁴⁷ *See, e.g.*, Jared Pedowitz, E&Y, BMRM-Market Risk Management Walkthrough Template (Nov. 30, 2007), at p. 9 [EY-LE-LBHI-KEYPERS 1015089]; Madelyn Antoncic, Risk Management Presentation to Standard & Poor’s [Draft] (Aug. 17, 2007), at p. 23 [LBEX-DOCID 342851], attached to e-mail from Lisa Rathgeber, Lehman, to Jeffrey Goodman, Lehman, *et al.* (Aug. 15, 2007) [LBEX-DOCID 305205].

⁴⁸ *See, e.g.*, Lehman Brothers Holdings Inc., Minutes of Meeting of Finance and Risk Committee of Lehman Board of Directors (Jan. 30, 2007), at pp. 1-3 [LBEX-AM 067014]; Lehman Brothers Holding Inc., Minutes of the Finance and Risk Committee of Lehman Board of Directors (Jan. 29, 2008), at p. 3 [LBEX-AM 067022]; Lehman Brothers Holdings Inc., Minutes of Finance and Risk Committee of Lehman Board of Directors (Mar. 25, 2008) at p. 3 [LBEX-AM 003592].

and Exchange Commission (“SEC”) on a monthly basis.⁴⁹ Risk appetite was the first item listed on numerous internal periodic reports, many of which were circulated to the firm’s senior management.⁵⁰

In presentations to regulators, rating agencies, and clients, Lehman represented risk appetite as a fundamental aspect of its risk management function.⁵¹ Moody’s believed risk appetite was a critical “constrain[t on the firm’s] risk-taking at the portfolio level”⁵² and stated that the firm-wide risk appetite limit “determin[ed] the most appropriate overall level of risk the Firm should be taking.”⁵³ The SEC believed Lehman’s risk management function to be uniquely comprehensive because “unlike . . . its peer firms, [Lehman was able to manage its] market and credit risk . . . in an

⁴⁹ See Lehman, Risk Update Presentation to Lehman Board of Directors (July 18, 2006), at p. 12 [LBEX-DOCID 1362012] (“Representatives of Finance and Risk meet monthly with the SEC (division of Market Regulation) to discuss the Firm’s risk metrics . . .”).

⁵⁰ See, e.g., Lehman, Firm-Wide Risk Drivers Report (Apr. 30, 2007) [LBEX-DOCID 149714], attached to e-mail from Rui Li, Lehman, to David Goldfarb, Lehman, *et al.* (May 1, 2007) [LBEX-DOCID 152003]; Lehman, Firm-Wide Risk Drivers Report (Oct. 22, 2007), at p. 1 [LBEX-DOCID 163741], attached to e-mail from Beate Geness, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (Oct. 22, 2007) [LBEX-DOCID 177381].

⁵¹ See, e.g., Madelyn Antoncic, Risk Management Presentation to Standard & Poor’s [Draft] (Aug. 17, 2007), at p. 23 [LBEX-DOCID 342851], attached to e-mail from Lisa Rathgeber, Lehman, to Jeffrey Goodman, Lehman, *et al.* (Aug. 15, 2007) [LBEX-DOCID 305205] (referring to risk appetite as the “center of [the firm’s] approach to risk” in presentation to rating agency); Lehman, Risk Management: An Integrated Framework [Draft], at p. 9 [LBEX-DOCID 264161] (describing risk appetite as “the center of [the firm’s] approach to risk”), attached to e-mail from Paul Shotton, Lehman, to Lisa Rathgeber, Lehman (May 19, 2008) [LBEX-DOCID 383304] (indicating that this presentation was intended to be a starting point in making presentations to clients); SEC, Lehman Monthly Risk Review Meeting Notes (Oct. 19, 2007), at pp. 5-6 [LBEX-SEC 007438] (indicating that risk appetite was extensively discussed at meeting); SEC Division of Market Regulation, Lehman Brothers - Consolidated Supervised Entity Market and Credit Risk Review (2005), at pp. 4-6 [LBEX-DOCID 2125011] (illustrating the importance of the risk appetite limit to the SEC, derived from Lehman’s representations about the metric) attached to e-mail from Michelle Davis, SEC, to David Oman, Lehman, *et al.* (Apr. 21, 2006) [LBEX-DOCID 2068428].

⁵² Moody’s, Risk Management Assessment of Lehman Brothers Holdings, Inc. [Draft] (Apr. 4, 2006), at p. 4 [LBEX-DOCID 1362015].

⁵³ Lehman, Development of the Franchise Presentation to Moody’s [Draft] (May 31, 2006), at p. 44 [LBEX-DOCID 1342436].

integrated fashion, through their aggregation into a single measure called risk appetite.”⁵⁴ Similarly, Moody’s believed that Lehman’s risk appetite metric was a “more formalized and more holistic [risk measuring framework] than [those of] most others in the industry.”⁵⁵ The rating agencies relied on Lehman’s representations regarding its risk appetite metric to support the positive ratings that they assigned to the Lehman franchise.⁵⁶

a) Limit Policy

According to Lehman’s Market Risk Management Limit Policy (“Limit Policy”), the “establishment and maintenance of a sound system of integrated market risk limits” was “fundamental” to Lehman’s risk management function.⁵⁷ Lehman’s Limit Policy defined limits as “the level at which intervention [was] required from more Senior Management.”⁵⁸ One of GRMG’s primary responsibilities was “[e]nsuring that appropriate limits [were] in place” for the business.⁵⁹ GRMG was charged with setting various risk limits for the business, tracking the firm’s actual risk against those limits and “[a]dministering limits and management action triggers” for the business.⁶⁰

⁵⁴ SEC Division of Market Regulation, *Lehman Brothers - Consolidated Supervised Entity Market and Credit Risk Review* (2005), at p. 1 [LBEX-DOCID 2125011].

⁵⁵ Moody’s, *Risk Management Assessment of Lehman Brothers Holdings, Inc.* [Draft] (Apr. 4, 2006), at p. 4 [LBEX-DOCID 1362015].

⁵⁶ *See, e.g.,* Moody’s, *Risk Management Assessment of Lehman Brothers Holdings, Inc.* [Draft] (Apr. 4, 2006), at pp. 1, 4 [LBEX-DOCID 1362015].

⁵⁷ Lehman, *Market Risk Management Limit Policy Manual* (Oct. 2006), at p. 1 [LBHI_SEC07940_767665].

⁵⁸ *Id.*

⁵⁹ Lehman, *Risk Update Presentation to Lehman Board of Directors* (July 18, 2006), at p. 15 [LBEX-DOCID 1362012].

⁶⁰ Lehman, *Global Risk Management - Second Quarter 2008 Report* (July 21, 2008), at p. 14 [LBEX-DOCID 738522].

Lehman's risk appetite limits were "set at a Firm-wide level, and cascaded down to the Divisions and Lines of Business within each Division on a global and regional basis."⁶¹ The Limit Policy contained several discrete sets of policies and procedures, which were specific to each tier of limits (*e.g.*, firm-wide, divisional, and business line).

Lehman's Limit Policy expressed Lehman's "'zero tolerance' approach to the intentional breaching of limits."⁶² Under the Limit Policy, individuals who were responsible for "intentionally and flagrantly" breaching limits were subject to reprimand and faced possible termination, "depending on the circumstances."⁶³

(1) Business Line and Regional Limits

Lehman's lowest level of risk appetite limits were its business line and regional limits. Because these were relatively low-level limits, Lehman's officers had more flexibility to adjust or exceed these limits than the higher-level limits discussed below.

Under the Limit Policy, Lehman's risk appetite limits set within a Division, both regionally and by Line of Business, were set by MRM in conjunction with the Division Heads.⁶⁴ MRM allocated the firm-wide limit across the firm's business lines and regions based on: (1) "the performance expectations of each business and their risk/return profiles;" (2) considerations regarding the amount of risk-taking capacity needed to

⁶¹ Lehman, Market Risk Management Limit Policy Manual (Oct. 2006), at p. 1 [LBHI_SEC07940_767665].

⁶² Compare Lehman, Market Risk Management Limit Policy Manual (Mar. 31, 2005), at p. 1 [LBEX-DOCID 363433], and Lehman, Market Risk Management Limit Policy Manual (Oct. 2006), at p. 1 [LBHI_SEC07940_767665], and Lehman, Global Risk Management, Second Quarter 2008 Report (July 21, 2008), at p. 28 [LBEX-DOCID 738522], with Lehman, Market Risk Management Policy [Draft] (Mar. 2008), at pp. 1-2 [LBHI_SEC07940_767662] (removing "zero tolerance" language).

⁶³ Lehman, Market Risk Management Limit Policy Manual (Mar. 31, 2005), at p. 1 [LBEX-DOCID 363433].

⁶⁴ Lehman, Market Risk Management Limit Policy Manual (Oct. 2006), at p. 1 [LBHI_SEC07940_767665].

support “the overall product suite” that the firm’s clients desired and expected; and (3) the firm’s business model and any adjustments that were planned regarding changes in the firm’s “business mix.”⁶⁵

According to the Limit Policy, when a business line’s or region’s risk appetite limit was approached or exceeded, the division head was to determine “the appropriate course of action, taking into account the advice of [Market Risk Management].”⁶⁶ “Provided that the limit for the Division h[ad] not been breached,” the division head could “re-allocate [the] intra-Divisional limits, subject to the advice of MRM” so as to bring the business line or geographic usage back under the applicable limit.⁶⁷ Alternatively, “the CRO [was] empowered to grant a temporary waiver of an intra-Divisional limit excess” at the end of which “the limit [would] revert to the previous level.”⁶⁸

In cases in which intra-divisional excesses occurred frequently, GRMG and the business were required to either: (1) take action to lower the risk within the business line or geographic region; (2) convene a meeting to review the cause of the limit excesses; (3) review the applicable risk measuring methodology; and/or (4) adjust the allocated risk limit of the business line or geographic region.⁶⁹ When a business line’s risk appetite limit excess caused a divisional limit to be exceeded, the firm was required

⁶⁵ Lehman, Global Risk Management Second Quarter 2008 Report (July 21, 2008), at p. 22 [LBEX-DOCID 738522].

⁶⁶ Lehman, Market Risk Management Limit Policy Manual (Mar. 31, 2005), at p. 2 [LBEX-DOCID 363433].

⁶⁷ Lehman, Market Risk Management Limit Policy Manual (Oct. 2006), at p. 2 [LBHI_SEC07940_767665].

⁶⁸ *Id.*

⁶⁹ *Id.*

to resolve the issue in accordance with the Limit Policy's applicable divisional excess policies and procedures.

(2) Divisional Limits

Divisional limits were considered somewhat harder than the business line and regional limits discussed above. When a divisional limit was "approached" or seemed "likely to be exceeded," the Limit Policy required the issue to be "escalated both within [Market Risk Management] and the Division . . . as appropriate."⁷⁰ In such situations, the division head and GHRM had to take one of three courses of action to resolve the issue.⁷¹ These three options included: (1) "[A]llow the excess to remain for an agreed period of time;" (2) [A]gree, in some circumstances, to revise the limits if, for example, there h[ad] been a change in the business which [would] warrant[] such a change; or (3) decide to "reduce the risk profile [of the division] back within the limit." The Executive Committee, however, was required to approve MRM's allocation of the divisional limits.⁷²

(3) Overall Firm-Wide Limit

The firm-wide risk appetite limit was at the top of Lehman's risk limit structure. In some respects, this limit was the hardest of Lehman's risk appetite limits.

Finance set the firm-wide risk appetite limit,⁷³ and the Executive Committee (prior to 2008) or the Risk Committee (2008) approved the limit and any changes to the

⁷⁰ Lehman, Market Risk Management Limit Policy (Mar. 2008), at p. 2 [LBEX-DOCID 363560].

⁷¹ *Id.*

⁷² Lehman, Market Risk Management Limit Policy Manual (Oct. 2006), at p. 1 [LBHI_SEC07940_767665].

⁷³ Examiner's Interview of Robert Azerad, Sept. 23, 2009, at p. 3.

limit.⁷⁴ Whereas some witnesses said that the Executive Committee needed the Board's approval to change the firm-wide risk appetite limit,⁷⁵ others stated that the Executive Committee needed only to inform the Board of any decision it made regarding changes to the firm-wide limit.⁷⁶ Although various communications to external constituents reflect that the Board was required to approve Lehman's firm-wide risk appetite limit on an annual basis,⁷⁷ nothing on the face of the Limit Policy required the Executive Committee to obtain the Board's approval before amending the firm-wide risk appetite limit.⁷⁸

The Limit Policy stated that "any . . . breaches of, [the firm-wide] limit require approval of the Executive Committee."⁷⁹ The Limit Policy, however, was silent with respect to the course of action that the Executive Committee should take in response to a firm-wide risk appetite limit excess.⁸⁰

The SEC's 2005 review of Lehman's MRM and CRM functions, which was sent to Lehman for its review and approval, says that the SEC understood the firm-wide risk appetite limit to be "a binding constraint on risk-taking," which was "not meant to be

⁷⁴ Compare Lehman, Market Risk Management Limit Policy (Oct. 2006), at p. 1 [LBHI_SEC07940_767665] with Lehman, Market Risk Management Limit Policy [Draft] (Mar. 2008), at p. 1 [LBHI_SEC07940_767662].

⁷⁵ Examiner's Interview of David Goldfarb, Sept. 21, 2009, at pp. 7-8.

⁷⁶ Examiner's Interview of Henry Kaufman, May 19, 2009, at p. 7.

⁷⁷ Lehman, Moody's: Development of the Franchise (May 31, 2006), at p. 44 [LBEX-DOCID 1342436].

⁷⁸ See Lehman, Market Risk Management Limit Policy Manual (Oct. 2006) [LBHI_SEC07940_767665].

⁷⁹ *Id.* at p. 1.

⁸⁰ See *id.*

exceeded under any conditions.”⁸¹ Several witnesses agreed that the firm-wide risk appetite limit was a binding constraint on the business that was not to be exceeded for any significant period of time, for any reason.⁸² Additionally, Lehman’s executives told the firm’s external constituents repeatedly that the firm-wide risk appetite limit represented a stringent control.⁸³

On the other hand, several witnesses stated that the firm-wide risk appetite limit was set below the firm’s true risk-taking “capacity.”⁸⁴ Still others were of the view that the reason for the limit excess needed to be considered in evaluating whether the excess needed to be cured immediately.⁸⁵ Others said that the risk appetite limit was a guideline, which was not intended to constrain the business’ risk-taking activities at

⁸¹ SEC Division of Market Regulation, *Lehman Brothers - Consolidated Supervised Entity Market and Credit Risk Review* (2005), at p. 5 [LBEX-DOCID 2125011].

⁸² For example, Lehman’s former Head of Fixed Income Strategy, Kentaro Umezaki, said that the business had no discretion to do anything in response to breaches of the firm-wide risk appetite limit, other than bring its risk exposure down immediately. Examiner’s Interview of Kentaro Umezaki, June 25, 2009, at p. 5. Similarly, Paul Shotton said that the firm-wide risk appetite limit was “obviously” a “hard” limit, meaning that breaches needed to be cured immediately. Examiner’s Interview of Paul Shotton, June 5, 2009, at p. 10. In July 2007, both Jeffrey Goodman, Senior Risk Manager for the Fixed Income Division, and Antoncic told members of the SEC that risk appetite represented a “hard” limit on the business’ risk-taking activities. SEC, *Lehman Monthly Risk Review Meeting Notes* (July 19, 2007), at p. 5 [LBEX-SEC 007363-70] (“Jeff [Goodman] told us that . . . VaR is just one measure that Lehman uses, and is more of a speed bump/warning sign that a true, hard limit -- that role falls to[risk appetite]. . . . He said that Madelyn [Antoncic], Dave [Goldfarb], and the executive committee tend to look more at [risk appetite]. As an aside, Madelyn came in after Jeff’s explanation and gave virtually the same speech.”).

⁸³ See, e.g., Madelyn Antoncic, *Risk Management Presentation to Standard & Poor’s [Draft]* (Aug. 17, 2007), at p. 21 [LBEX-DOCID 342851] (“The overall philosophy of our Firm is that we have a zero tolerance level for ignoring limits and internal processes.”), attached to e-mail from Lisa Rathgeber, Lehman, to Jeffrey Goodman, Lehman, *et al.* (Aug. 15, 2007) [LBEX-DOCID 305205]; see also SEC Division of Market Regulation, *Lehman Brothers - Consolidated Supervised Entity Market and Credit Risk Review* (2005), at p. 5 [LBEX-DOCID 2125011] (reflecting SEC’s understanding that the risk appetite limit was a hard limit not to be exceeded under any circumstances).

⁸⁴ Examiner’s Interview of Jeffrey Goodman, Aug. 28, 2009; Examiner’s Interview of Christopher M. O’Meara, Aug. 14, 2009, at pp. 10-11.

⁸⁵ Examiner’s Interview of Madelyn Antoncic, Oct. 6, 2009, at p. 7.

all.⁸⁶ Although Antoncic stated that the risk appetite limit defined the boundaries of the firm's acceptable risk profile, she also said that the limit was not "written in stone" and that excesses caused by increases in volatility were allowable.⁸⁷

In interviews with the Examiner, representatives of the SEC said that after Lehman's officers informed them that Lehman was in excess of its risk limits, the SEC's primary concern was ensuring that the limit excesses were properly escalated and resolved within Lehman according to Lehman's procedures.⁸⁸ The SEC did not believe that its role was to substitute its judgment for the business judgment of Lehman's management.⁸⁹

(4) Calculation and Allocation of Limits

The Limit Policy was silent as to the methodology by which the firm-wide risk appetite limit was to be calculated. In practice, Lehman's Finance Department calculated the firm-wide risk appetite limit with some input from GRMG.⁹⁰ To calculate the firm-wide risk appetite limit, the Finance Department began with "base revenue projections and then deduct[ed] an estimate of the potential loss of revenues from non-risk-taking activities due to a downturn in customer flow and origination."⁹¹ The

⁸⁶ For example, Joe Li and Thomas Cruikshank described the firm-wide risk appetite limit as a guideline or guidepost for management. Examiner's Interview with Thomas Cruikshank, Oct. 8, 2009, at p. 3; Examiner's Interview with Joe Li, Oct. 5, 2009.

⁸⁷ Examiner's Interview of Madelyn Antoncic, Oct. 6, 2009, at p. 7.

⁸⁸ Examiner's Interview of the Securities and Exchange Commission, Aug. 24, 2009, at pp. 2, 8.

⁸⁹ *Id.* at p. 5.

⁹⁰ Examiner's Interview of Christopher M. O'Meara, Aug. 14, 2009, at pp. 12-13; Examiner's Interview of Robert Azerad, Sept. 23, 2009, at p. 3; Examiner's Interview of Madelyn Antoncic, Oct. 6, 2009, at pp. 4-7.

⁹¹ Jared Pedowitz, E&Y, BMRM-Market Risk Management Walkthrough Template (Nov. 30, 2007), at p. 9 [EY-LE-LBHI-KEYPERS 1015089]; *see also* SEC Division of Market Regulation, Lehman Brothers -

Finance Department then calculated the additional amount that the firm could afford to lose without compromising the firm's compensation adequacy or jeopardizing what the firm considered a minimally acceptable return to investors.⁹² The difference between those amounts equaled the firm-wide risk appetite limit.⁹³

The calculation process "require[d] significant amounts of judgment. For instance, in coming up with the firm-wide [risk appetite] limit, subjective determinations [had to] be made regarding revenues in a down year, compensation adequacy, and minimally-acceptable [return to investors]."⁹⁴

b) Reporting Requirements and Practices

(1) Internal Reporting

Under Lehman's internal policies and procedures, the firm disclosed information regarding risk appetite to personnel within GRMG and to senior management. GRMG created a weekly "Firm Wide Risk Snapshot" report, which contained "Risk Appetite limits and usage by business unit" and summarized "VaR by business unit and Top Market Risk positions."⁹⁵ In addition, Lehman circulated a "Daily Risk Appetite and VaR Report" to GRMG personnel, business heads, and upper management, which

Consolidated Supervised Entity Market and Credit Risk Review (2005), at pp. 4-5 [LBEX-DOCID 2125011].

⁹² Jared Pedowitz, E&Y, BMRM-Market Risk Management Walkthrough Template (Nov. 30, 2007), at p. 9 [EY-LE-LBHI-KEYPERS 1015089]; SEC Division of Market Regulation, Lehman Brothers - Consolidated Supervised Entity Market and Credit Risk Review (2005), at pp. 4-5 [LBEX-DOCID 2125011].

⁹³ SEC Division of Market Regulation, Lehman Brothers - Consolidated Supervised Entity Market and Credit Risk Review (2005), at p. 5 [LBEX-DOCID 2125011].

⁹⁴ *Id.* at p. 61.

⁹⁵ Lehman, Credit Risk Reporting Manual Version 1.0 (Nov. 13, 2007), at p. 9 [LBEX-DOCID 688141].

included a cover e-mail with various spreadsheets attached.⁹⁶ The cover e-mail included the firm's overall daily risk appetite and VaR usage figures and the day-over-day change in those figures versus the limit.⁹⁷ The report also included divisional risk usage and limits.⁹⁸ The spreadsheets attached to the report included detailed global and divisional risk appetite and VaR information.⁹⁹

Another report that was circulated to the Risk Committee and/or Executive Committee was the "Firm-wide Risk Drivers" report.¹⁰⁰ This one-page summary contained detailed information regarding the firm's aggregated risks, which reflected firm-wide risk appetite and VaR usage data, and explanations regarding week-over-week changes in the data.¹⁰¹ The "Firm-wide Risk Drivers" report did not include information regarding the firm's risk appetite limits.¹⁰²

⁹⁶ See, e.g., Lehman, Daily Risk Appetite Report spreadsheet (Oct. 12, 2007) [LBEX-DOCID 150128] , attached to e-mail from Jenny Peng, Lehman, to David Goldfarb, Lehman, *et al.* (Oct. 12, 2007) [LBEX-DOCID 152049].

⁹⁷ See, e.g., e-mail from Jenny Peng, Lehman, to David Goldfarb, Lehman, *et al.* (Oct. 12, 2007) [LBEX-DOCID 152049].

⁹⁸ *Id.*

⁹⁹ See, e.g., Lehman, Daily Risk Appetite Report spreadsheet (Oct. 12, 2007) [LBEX-DOCID 150128] attached to e-mail from Jenny Peng, Lehman, to David Goldfarb, Lehman, *et al.* (Oct. 12, 2007) [LBEX-DOCID 152049].

¹⁰⁰ See, e.g., Lehman, Firm-Wide Risk Drivers: October 22, 2007 (Oct. 22, 2007) [LBEX-DOCID 163741], attached to e-mail from Beate Geness, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (Oct. 22, 2007) [LBEX-DOCID 177381].

¹⁰¹ *Id.*

¹⁰² *Id.*

(2) Board of Directors

Lehman delivered regular presentations to the Board and its committees regarding risk appetite.¹⁰³ At each regularly scheduled Board meeting, Lehman provided the Board with an update regarding the firm's financial results for the previous month or quarter, which included a discussion of the firm's risk appetite usage and limits.¹⁰⁴ In addition, from 2006 to 2008, both the Board and the Board's Finance and Risk Committee met and discussed the firm's annual financial plan, which included a discussion of the firm's past risk appetite usage figures and a "propose[d]" limit for the upcoming year.¹⁰⁵

c) Regulatory Agencies and Entities

In 2003 and 2004, the SEC began developing a set of rules to govern the oversight of U.S. securities firms and their affiliates on a consolidated basis.¹⁰⁶ The effort was a response to the European Union's ("EU") Financial Conglomerates Directive, which required financial conglomerates that operated within the EU to be supervised under

¹⁰³ See Lehman, Counterparty Risk Management Policy Group, Containing Systemic Risk: The Road to Reform, at p. 1 [LBEX-WGM 969713] ("Discussion and review of the Risk Appetite limit and its usage is conducted quarterly with the Board of Directors. . .").

¹⁰⁴ See, e.g., Lehman, Second Quarter 2007 Financial Information Presentation to Lehman Board of Directors (June 19, 2007), at p. 6 [LBHI_SEC07940_026226]; Lehman, October 2007 Financial Information Presentation to Lehman Board of Directors with Welikson's handwritten notes (Nov. 8, 2007), at p. 6 [WGM_LBEX_00664]; Lehman, December 2007 Financial Information Presentation to Lehman Board of Directors (Jan. 29, 2008), at p. 6 [LBHI_SEC07940_027331]; Lehman, Estimated April 2008 Financial Information Presentation to Lehman Board of Directors (May 7, 2008), at p. 6 [LBHI_SEC07940_028014].

¹⁰⁵ See Lehman, 2007 Financial Plan Presentation to the Finance and Risk Committee of Lehman Board of Directors (Jan. 30, 2007) at pp. 21-24 [LBEX-AM 067099]; Lehman, 2007 Financial Plan Summary Presentation to Lehman Board of Directors (Jan. 31, 2007) at p. 11 [LBHI_SEC07940_025712]; Lehman, 2008 Financial Plan Presentation to Finance and Risk Committee of Lehman Board of Director (Jan. 29, 2008), at p. 17 [LBHI_SEC07940_068559]; Lehman, 2008 Financial Plan Summary Presentation to Lehman Board of Directors (Jan. 29, 2008), at p. 11 [LBHI_SEC07940_027374].

¹⁰⁶ Examiner's Interview of Securities and Exchange Commission, Aug. 24, 2009, at pp. 3-4.

the EU's financial regulations or, internationally, under a set of substantially equivalent rules.¹⁰⁷ With comments from the investment banks, the SEC constructed guidelines that met the Financial Conglomerates Directive and formed the basis of the SEC's Consolidated Supervised Entities ("CSE") Program.¹⁰⁸

Firms that did not wish to be supervised under the Financial Services Authority ("FSA") protocols could choose to voluntarily participate in the CSE program instead.¹⁰⁹ Five registered broker-dealers, including Goldman Sachs, Morgan Stanley, Bear Stearns, Merrill Lynch, and Lehman, opted into the CSE program.¹¹⁰ By opting into the CSE program, Lehman voluntarily subjected itself to a host of regulatory reporting requirements.

The SEC had broad authority to access information from the CSEs about their operations and businesses. Under the Code of Federal Regulations, the CSEs were required to "[m]ake available to the [Securities and Exchange] Commission information about the ultimate holding company or any of its material affiliates that the Commission finds is necessary to evaluate the financial and operational risk within the ultimate holding company and its material affiliates."¹¹¹ The CSEs were also required to provide additional information about the financial condition of their holding companies

¹⁰⁷ *Id.* at p. 3 & n.2.

¹⁰⁸ *Id.* at p. 3.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at pp. 3-4.

¹¹¹ 17 C.F.R. § 240.15c3-1E(a)(1)(viii)(G) (2007).

and affiliates, including all relevant capital requirement computations and any other agreed-upon financial information.¹¹²

The SEC's authority entitled it to monitor, evaluate, and assess Lehman's risk reporting policies and procedures, risk appetite and equity framework, and limit monitoring and escalation processes.¹¹³ Thus, Lehman provided information to the SEC regarding its risk appetite usage, limits, and limit excesses.¹¹⁴ In accordance with such requests, Lehman submitted intermittent daily, weekly, and monthly risk appetite reports to the SEC, which showed the firm's risk appetite usage against its limits.¹¹⁵

The SEC relied on Lehman to provide the SEC with the information it used to assess the efficacy and accuracy of Lehman's risk measurements and risk management function.¹¹⁶ Under the CSE program, Lehman was required to "implement and maintain a consolidated internal risk management control system and procedures to monitor and manage group-wide risk, including market, credit, funding, operational,

¹¹² Summary for SEC 17 C.F.R. Parts 200 and 240 [Release No. 34-49830; File No. S7-21-03] (RIN 3235-A196).

¹¹³ See Lehman, Corporate Audit Report: Consolidated Supervised Entity (2006), at pp. 1-3 [LBEX-AM 066214].

¹¹⁴ See 17 C.F.R. 240.15c3-1E(a)(2)(xii) (2007).

¹¹⁵ See Lehman, Monthly SEC Finance and Risk Review Agenda (Aug. 11, 2008) [LBEX-WGM 000294]; Lehman, Risk Update Presentation to Lehman Board of Directors (July 18, 2006), at p. 12 [LBEX-DOCID 1362012] ("Representatives of Finance and Risk meet monthly with the SEC (division of Market Regulation) to discuss the Firm's risk metrics . . ."); Examiner's Interview of Securities and Exchange Commission, Aug. 24, 2009, at p. 7; Examiner's Interview of Paul Shotton, June 5, 2009, at pp. 20-21 (Shotton believed that Lehman reported only VaR to the SEC, and not risk appetite, but he is the only witness who expressed this position to the Examiner.).

¹¹⁶ Examiner's Interview of the Securities and Exchange Commission, Aug. 24, 2009, at p. 6.

and legal risks, and make and maintain certain books and records.”¹¹⁷ The SEC’s monitoring team did not perform independent audits of Lehman’s risk calculations, or perform independent audits of Lehman’s risk metrics.¹¹⁸ However, the SEC did require Lehman to perform certain internal audits and relied on information from those audits to assess the efficacy and accuracy of Lehman’s risk measurements and risk management function.¹¹⁹

The SEC had the authority to regulate Lehman’s business in certain substantive ways. For example, the SEC could strip certain capital relief entitlements from CSEs that failed to provide “information about the financial condition of the ultimate holding company.”¹²⁰

The SEC believed that its role was to oversee Lehman’s risk management controls, make certain that those risk controls functioned effectively, and ensure that certain risk-related issues were communicated to Lehman’s senior management.¹²¹ Although the SEC did escalate particularly concerning risk-related issues to Matthew Eichner, the head of the CSE risk management monitoring team, it did not believe that its role was to question Lehman’s management’s business judgments or decisions regarding the firm’s risk-taking activities.¹²²

¹¹⁷ Summary for SEC 17 C.F.R. Parts 200 and 240 [Release No. 34-49830; File No. S7-21-03] (RIN 3235-A196).

¹¹⁸ Examiner’s Interview of Securities and Exchange Commission, Aug. 24, 2009, at p. 6.

¹¹⁹ *Id.*

¹²⁰ 17 C.F.R. §240.15c3-1E(a)(1)(viii)G),(I) (2007).

¹²¹ Examiner’s Interview of Securities and Exchange Commission, Aug. 24, 2009, at p. 6.

¹²² *Id.*

(1) Public Filings

Although Lehman was required under federal law to publicly report certain information regarding its market risk exposures (*see* Sections III.A.1.a and III.A.2.c), Lehman was not required to disclose information regarding risk appetite in its public filings. Risk appetite is not referenced in Regulation S-K of the Federal Securities Laws and no other federal law required Lehman to comprehensively disclose the entirety of its risk-related information, metrics, or calculations.¹²³ Until August 2007, however, Lehman publicly disclosed the fact that it monitored its risk appetite in a section of its public filings titled, “Other Measure of Risk.”¹²⁴ Although Lehman did not disclose the existence of its internal risk appetite limits or any information concerning the enforcement of those limits in its public filings, Lehman did voluntarily disclose information regarding its risk appetite.¹²⁵

Starting with Lehman’s 2007 10-K and continuing with Lehman’s First and Second Quarter 2008 10-Qs, Lehman removed the “Other Measures of Risk” section, which described Lehman’s risk appetite metric, from its filings; no other section of those

¹²³ *See, e.g.*, 17 C.F.R. §229.305 (Item 305 of Regulation S-K) (with no reference to risk appetite).

¹²⁴ *Compare* Lehman Brothers Holdings Inc., Annual Report for 2006 as of Nov. 30, 2006 (Form 10-K) (filed on Feb. 13, 2007), at p. 60 (“LBHI 2006 10-K”) *and* Lehman Brothers Holdings Inc., Quarterly Report as of Feb. 28, 2007 (Form 10-Q) (filed on Apr. 9, 2007), at p. 71 (“LBHI 10-Q (filed Apr. 9, 2007)”) *and* Lehman Brothers Holdings Inc., Quarterly Report as of May 31, 2007 (Form 10-Q) (filed on July 7, 2007), at p. 75 (“LBHI 10-Q (filed July 7, 2007)”) *and* Lehman Brothers Holdings Inc., Quarterly Report as of Aug. 31, 2007 (Form 10-Q) (filed on Oct. 10, 2007) at p. 78 (“LBHI 10-Q (filed Oct. 10, 2007)”) *with* Lehman Brothers Holdings Inc., Annual Report for 2006 as of Nov. 30, 2006 (filed on Feb. 13, 2007) (Form 10-K) at pp. 69-76 (“LBHI 2006 10-K”).

¹²⁵ *See, e.g.*, LBHI 2006 10-K at pp. 60-61; LBHI 10-Q (filed on Feb. 28, 2007), at p. 82.

reports disclosed information on Lehman's risk appetite.¹²⁶ No documentary evidence has identified who made the decision to omit the "Other Measures of Risk" section from those filings, nor is it clear when or why that decision was made.¹²⁷ Neither Mark Weber, a risk manager at Lehman from July 2006 to September 2008, who was involved with drafting the "Risk Management" portion of Lehman's 2007 first quarter 10-Q, nor Goodman, Antoncic, or Christopher M. O'Meara, Lehman's Chief Financial Officer ("CFO") from 2004 to 2007 and then Lehman's CRO, recalled who made the decision to remove the risk appetite language from Lehman's filings or when or why that decision was made.¹²⁸ Shotton told the Examiner that Ryan Traversari, Lehman's Senior Vice President of External Reporting, was responsible for the removal, and that he did so because he believed Lehman's public filings were "disjointed."¹²⁹ In his interview with

¹²⁶ See LBHI 2007 10-K, at pp. 135-149 (evidencing that the "Risk Management" section no longer contains an "Other Measures of Risk" portion); Lehman Brothers Holdings Inc., Quarterly Report as of Feb. 29, 2008 (Form 10-Q) (filed on Apr. 4, 2008), at pp. 158-73 ("LBHI 10-Q (filed on Apr. 4, 2008)"); Lehman Brothers Holdings Inc., Quarterly Report as of May 31, 2008 (Form 10-Q) (filed on July 10, 2008), at pp. 159-74 ("LBHI 10-Q (filed on July 10, 2008)").

¹²⁷ See Lehman, Form 10-K Draft A (Dec. 21, 2007) [LBEX-DOCID 1410826], attached to e-mail from Jonathan Cohen, Lehman, to Kenny Lin, Lehman, *et al.* (Dec. 21, 2007) [LBEX-DOCID 1437379]; Lehman, Form 10-K Draft B (Dec. 28, 2007) [LBEX-DOCID 1410829], attached to e-mail from Jonathan Cohen, Lehman, to Nancy Huie, Lehman (Jan. 2, 2008) [LBEX-DOCID 1486755]; Lehman, Form 10-K Draft C (Jan. 4, 2007) [LBEX-DOCID 98327], attached to e-mail from Ryan Traversari, Lehman, to Eric R. Addington, Lehman, *et al.* (Jan. 4, 2007) [LBEX-DOCID 112558]; Lehman, Form 10-K Draft D (Jan. 11, 2007) [LBEX-DOCID 98325] attached to e-mail from Ryan Traversari, Lehman, to Erin Callan, Lehman, *et al.* (Jan. 11, 2008) [LBEX-DOCID 112557].

¹²⁸ Examiner's Interview of Mark Weber, Aug. 11, 2009, at p. 11; Examiner's Interview of Christopher M. O'Meara, Aug. 14, 2009, at pp. 19-20; Examiner's Interview of Jeffrey Goodman, Aug. 28, 2009; Examiner's Interview of Madelyn Antoncic, Oct. 6, 2009, at p. 13.

¹²⁹ Examiner's Interview of Paul Shotton, June 6, 2009, at p. 22; Examiner's Interview of Ryan Traversari, Sept. 24, 2009, at p. 3.

the Examiner, Traversari said that he did not recall ever having discussed the removal, who did it, or why.¹³⁰

Because Lehman had not previously disclosed that it had specific risk appetite limits, or that those limits were enforced (let alone how strictly they were enforced), the Examiner did not find a colorable claim that the removal of the “Other Measures of Risk” section from the 2007 10-K rendered that filing false or misleading.

(2) Rating Agencies

The rating agencies viewed Lehman’s risk appetite metric as the center of Lehman’s approach to risk management and a critical “constrain[t on the firm’s] risk-taking at the portfolio level.”¹³¹ In numerous presentations to rating agencies, Lehman described its firm-wide risk appetite limit as a key indicator that “determin[ed] the most appropriate overall level of risk the Firm should be taking.”¹³² In addition, Lehman told the rating agencies that the Board and Executive Committee were responsible for approving the overall risk appetite limit annually.¹³³ The rating agencies relied on

¹³⁰ Examiner’s Interview of Ryan Traversari, Sept. 24, 2009, at pp. 3-4.

¹³¹ Moody’s, Risk Management Assessment of Lehman Brothers Holdings, Inc. [Draft] (Apr. 4, 2006), at p. 4 [LBEX-DOCID 1362015]; *see also* Lehman, Lehman Brothers Risk Management: An Integrated Framework [Draft], at p. 9 [LBEX-DOCID 264161] (stating that the risk appetite metric was at the “Center of [Lehman’s] Approach to Risk”), attached to e-mail from Paul Shotton, Lehman, to Lisa Rathgeber, Lehman (May 28, 2008) [LBEX-DOCID 375356].

¹³² Lehman, Moody’s: Development of the Franchise (May 31, 2006), at p. 44 [LBEX-DOCID 1342436]; *accord* Lehman, Risk Management Presentation to Fitch (Apr. 7, 2006), at p. 20 [LBEX-DOCID 691768].

¹³³ *Id.*

Lehman's representations regarding its risk appetite metric to support their positive ratings of the Lehman franchise.¹³⁴

B. Stress Tests

Lehman's risk appetite and VaR limit structure was supplemented by a second risk control, its stress testing. "Stress testing is a procedure for evaluating the potential loss of a portfolio due to shocks to its underlying risk factors over a wide range of scenarios, however unlikely the probability of occurrence may be."¹³⁵ Whereas Lehman used VaR and risk appetite to "address the question of how much . . . a portfolio [could] lose over a given time-horizon and with a given degree of confidence,"¹³⁶ the firm used stress tests to address the question of "how much . . . the firm [could] lose in a plausible, if unlikely, worst case scenario."¹³⁷ "Stress testing [was] used to capture 'tail' and 'outlier' events in the market" that were not captured by VaR and risk appetite.¹³⁸

Under the CSE Program, Lehman was required to develop and maintain a market-based stress testing program,¹³⁹ under which the firm's portfolio would be

¹³⁴ See, e.g., Moody's, Risk Management Assessment of Lehman Brothers Holdings, Inc. [Draft] (Apr. 4, 2006), at pp. 1, 4 [LBEX-DOCID 1362015]; see also Lehman, Credit Ratings Strategy Presentation (Mar. 1, 2007), at p. 11 [LBEX-DOCID 249324] ("For Lehman, high profitability, strong risk management and liquidity are the common strengths cited by the Rating Agencies.").

¹³⁵ Jared Pedowitz, E&Y, Market Risk Management Walkthrough Template (Nov. 30, 2007), at p. 6 (EY-LE-LBHI-KEYPERS 1015089).

¹³⁶ Lehman, Market Risk Management: Stress Testing Policy and Procedures Manual (Apr. 21, 2005), at p. 1 [LBEX-DOCID 385132], attached to e-mail from Melda Elagoz, Lehman, to Paul Shotton, Lehman, *et al.* (July 18, 2007) [LBEX-DOCID 385135].

¹³⁷ *Id.*

¹³⁸ Jared Pedowitz, E&Y, Market Risk Management Walkthrough Template (Nov. 30, 2007), at p. 6 [EY-LE-LBHI-KEYPERS 1015089].

¹³⁹ Examiner's Interview of the Securities and Exchange Commission, Aug. 24, 2009, at p. 12.

tested against both hypothetical and historical stress scenarios.¹⁴⁰ The SEC required Lehman to report the results of the market-based stress tests on a monthly basis.¹⁴¹ Additionally, Lehman was required to perform both funding and liquidity stress tests at least once per quarter.¹⁴²

“[A]lthough the nature, form and frequency of the analysis [was] not prescribed,” Lehman was also required to perform stress testing as a supplement to VaR under Basel Accord and Basel II.¹⁴³ In addition, the FSA required Lehman to perform two specific stress scenarios. First, the FSA required Lehman to stress tests its “capital requirements during a recessionary period such as might be experienced ‘once in 25 years’; during which time [one] might expect to see counterparty ratings downgrades and weakening of real estate, private equity and loan portfolios.”¹⁴⁴ Second, the FSA required that firms run a scenario, designed to simulate the effects of a default by a major market counterparty.¹⁴⁵

¹⁴⁰ SEC, *Lehman Brothers - Consolidated Supervised Entity Market and Credit Risk Review* (2005), at p. 63 [LBEX-DOCID 2125011], attached to e-mail from Michelle Danis, SEC, to David Oman, Lehman, *et al.* (Apr. 21, 2006) [LBEX-DOCID 2068428].

¹⁴¹ Examiner’s Interview of the Securities and Exchange Commission, Aug. 24, 2009, at p. 12.

¹⁴² 17 C.F.R. § 240.15c3-1g(c)(1) (2007).

¹⁴³ Lehman, *Stress Testing: Policy and Procedures Manual* (Oct. 2006), at p. 2 [LBEX-DOCID 2909526], attached to e-mail from Stephen Hancock, Lehman, to Stuart Tarling, Lehman, *et al.* (May 24, 2007) [LBEX-DOCID 2909525]; *see also* Lehman, *Stress Scenario Analysis* (Sept. 2007) [LBEX-DOCID 687914], attached to e-mail from Paul Shotton, Lehman, to Mynor Gonzalez, Lehman, *et al.* (May 16, 2008) [LBEX-DOCID 725042].

¹⁴⁴ Lehman, *Stress Scenario Analysis* (Sept. 2007), at p. 5 [LBEX-DOCID 687914], attached to e-mail from Paul Shotton, Lehman, to Mynor Gonzalez, Lehman, *et al.* (May 16, 2008) [LBEX-DOCID 725042].

¹⁴⁵ *Id.* at pp. 7-8.

Lehman's stress testing did not include the application of limits.¹⁴⁶ Thus, the stress loss amounts that Lehman generated were not measured against any predetermined standard.¹⁴⁷

Lehman employed a variety of market stress tests to measure risk.¹⁴⁸ Lehman's stress tests were designed to measure the firm's vulnerability to macro-economic events which could affect the firm's entire portfolio as well as localized stress scenarios that were "designed to explore the specific vulnerabilities of each line of business and region."¹⁴⁹ For example, Lehman conducted stress tests based on historical market events such as the October 1987 market crash and the 1998 Russian financial crisis.¹⁵⁰ In addition, Lehman's risk managers developed and conducted other stress tests that were based on hypothetical market scenarios such as the impact of a potential "[l]iquidity [c]runch due to central banks globally raising rates," jumps in oil prices caused by supply disruptions and "[m]ajor shifts in yield and spread curves such as steepening or flattening, or parallel shifts up or down."¹⁵¹ Lehman ran stress tests based on 13 or 14 different scenarios.¹⁵²

¹⁴⁶ Examiner's Interview of Jeffrey Goodman, Aug. 28, 2009.

¹⁴⁷ *Id.*

¹⁴⁸ See Lehman, Stress Testing: Policy and Procedures Manual (Apr. 21, 2005), at pp. 3-5 [LBEX-DOCID 385132], attached to e-mail from Melda Elagoz, Lehman, to Paul Shotton, Lehman, *et al.* (July 18, 2007) [LBEX-DOCID 385135].

¹⁴⁹ *Id.* at pp. 3-4.

¹⁵⁰ Lehman, Risk Management Presentation to Fitch (Apr. 7, 2006), at p. 47 [LBEX-DOCID 691768], attached to e-mail from Jeffrey Goodman, Lehman, to Donald E. Petrow, Lehman (July 2, 2007) [LBEX-DOCID 671711].

¹⁵¹ Lehman, Risk, Liquidity, Capital and Balance Sheet Update Presentation to Finance and Risk Committee of Lehman Board of Directors (Sept. 11, 2007), at p. 28 [LBEX-AM 067167]; Lehman, Risk

The firm's macro-economic stress tests were designed to test the effects of a stress event that "could not be mitigated [for] two weeks."¹⁵³ The firm's localized stress tests assumed "horizons" or time periods, which were deemed "appropriate, given the liquidity of the instruments" or affected positions.¹⁵⁴

C. Equity, Liquidity, and Funding Adequacy Controls

Lehman defined equity sufficiency as the cushion that it needed to absorb potential economic losses, stemming from specific counterparties, illiquid positions, and general operating business and legal risks.¹⁵⁵ The firm employed various metrics to gauge its equity sufficiency, including: (1) the CSE Total Capital Ratio; (2) risk equity; and (3) the Equity Adequacy Framework ("EAF").¹⁵⁶ The CSE Framework was a regulatory requirement imposed by the SEC. Risk equity and EAF were internal

Management Presentation to Fitch (Apr. 7, 2006), at p. 47 [LBEX-DOCID 691768], attached to e-mail from Jeffrey Goodman, Lehman, to Donald E. Petrow, Lehman (July 2, 2007) [LBEX-DOCID 671711].

¹⁵² See, e.g., Lehman, Stress Test Report for March 31, 2006 (Apr. 23, 2006) [LBEX-DOCID 2078161], attached to e-mail from Sandeep Garg, Lehman, to Paul Shotton, Lehman, *et al.* (Apr. 24, 2006) [LBEX-DOCID 2118206]; Stress Test Report for February 28, 2007 [LBEX-DOCID 632363], attached to e-mail from Melda Elagoz, Lehman, to Paul Shotton, Lehman, *et al.* (Mar. 9, 2007) [LBEX-DOCID 630356]; Lehman, Stress Test Report for October 31, 2007 (Dec. 19, 2007) [LBEX-DOCID 632432], attached to e-mail from Jeffrey Goodman, Lehman, to Cherie Gooley, Lehman (Dec. 19, 2007) [LBEX-DOCID 665513]; Lehman, Stress Test Report for April 30, 2008 (May 28, 2008) [LBEX-DOCID 3296803], attached to e-mail from Mark Weber, Lehman, to Cherie Gooley, Lehman, *et al.* (May 28, 2008) [LBEX-DOCID 3302270].

¹⁵³ Lehman, Stress Testing: Policy and Procedures Manual (Apr. 21, 2005), at p. 5 [LBEX-DOCID 385132], attached to e-mail from Melda Elagoz, Lehman, to Paul Shotton, Lehman, *et al.* (July 18, 2007) [LBEX-DOCID 385135].

¹⁵⁴ Lehman, Stress Testing: Policy and Procedures Manual (Apr. 21, 2005), at p. 5 [LBEX-DOCID 385132], attached to e-mail from Melda Elagoz, Lehman, to Paul Shotton, Lehman, *et al.* (July 18, 2007) [LBEX-DOCID 385135].

¹⁵⁵ Lehman, Risk Management: Risk Equity and Risk Appetite Models (May 17, 2005), at pp. 3-4 [LBEX-SEC 009046].

¹⁵⁶ Lehman, Risk Management Update Presentation to Lehman Board of Directors (Apr. 15, 2008), at p. 8 [LBHI_SEC027909].

measures that the firm employed to determine its equity needs.¹⁵⁷ In addition, the firm used the Cash Capital Model to measure its liquidity and long-term ability to fund illiquid positions.¹⁵⁸

Under the CSE Program, Lehman was required to maintain minimum capital. Specifically, the SEC required Lehman to maintain a total capital ratio of 10%.¹⁵⁹ The Tier 1 capital ratio was a measure that was similar to the total capital ratio, except that certain types of debt and hybrid securities were excluded from the calculation.¹⁶⁰

In addition, Lehman used the “Risk Equity Model to determine the equity to be allocated to each of [its] businesses.”¹⁶¹ Risk Equity was a numerical expression of each business’ market risk, event risk, counterparty credit risk, operating risk, and legal risk, plus certain other equity that the firm needed to allocate to the businesses, such as buildings and other tangible operating assets.¹⁶²

¹⁵⁷ *Id.*

¹⁵⁸ E-mail from Enrico Corsalini, Lehman, to Paolo Tonucci, Lehman, *et al.* (June 26, 2008) [LBHI_SEC07940_522785].

¹⁵⁹ Anna Yu and Eric Spahr, Lehman, CSE Overview Presentation to Lehman Tokyo Town Hall (Aug. 8, 2007), at p. 6 [LBEX-DOCID 382979], attached to e-mail from Paul Shotton, Lehman, to Ying Lin, Lehman (Apr. 3, 2008) [LBEX-DOCID 375347]. The 10% Total Capital Ratio requirement worked in tandem with a Tier 1 Capital minimum of 6%.

¹⁶⁰ *Id.* at 13.

¹⁶¹ Lehman, Risk Equity Framework Presentation to Lehman Board of Directors [Draft] (Apr. 7, 2008), at p. 4 [LBEX-DOCID 687943], attached to e-mail from Ying Lin, Lehman, to Paul Shotton, Lehman (Apr. 8, 2008) [LBEX-DOCID 725313].

¹⁶² *Id.* at 4.

In mid-2007, Lehman developed EAF as a shadow risk equity tool and supplement to Risk Equity.¹⁶³ EAF “calculate[d] the equity required to enable restructuring in a crisis” outside of bankruptcy without access to unsecured debt.¹⁶⁴ The metric was designed to ensure that Lehman had “sufficient time . . . to arrange for the disposition of assets or restructuring of liabilities”¹⁶⁵ and “assess[] [the firm’s] equity adequacy in a potential Lehman-specific crisis to ensure that the Firm would have sufficient equity capital to absorb any potential losses and funding impairments caused by the . . . crisis.”¹⁶⁶ Lehman viewed the EAF as the best measure of equity sufficiency because, unlike Lehman’s other models, it “fully [met] the needs of effective capital management, e.g., transparency, practicality, and timeliness.”¹⁶⁷ According to various

¹⁶³ Lehman, Equity Adequacy Framework Presentation to Standard & Poor’s (Aug. 17, 2007), at p. 2 [LBEX-DOCID 505934], attached to e-mail from Albert Pulido, Lehman, to Christopher M. O’Meara, Lehman, *et al.* (Aug. 16, 2007) [LBEX-DOCID 552499].

¹⁶⁴ Lehman, Q2 2008 Update Presentation (June 4, 2008), at p. 11 [LBHI_SEC07940_514735], attached to e-mail from Paolo Tonucci, Lehman, to Piers Murray, JP Morgan, *et al.* (June 5, 2008) [LBHI_SEC07940_514732]; *see also* Lehman, Risk, Liquidity, Capital and Balance Sheet Update Presentation to Finance and Risk Committee of Lehman Board of Directors (Sept. 11, 2007), at pp. 51-52 [LBEX-AM 067167].

¹⁶⁵ Lehman, Equity Adequacy Framework Presentation to Standard & Poor’s (Aug. 17, 2007), at p. 3 [LBEX-DOCID 505934], attached to e-mail from Albert Pulido, Lehman, to Christopher M. O’Meara, Lehman, *et al.* (Aug. 16, 2007) [LBEX-DOCID 552499].

¹⁶⁶ Lehman, Risk Equity Framework Presentation to Lehman Board of Directors [Draft] (Apr. 7, 2008), at p. 9 [LBEX-DOCID 687943], attached to e-mail from Ying Lin, Lehman, to Paul Shotton, Lehman (Apr. 8, 2008) [LBEX-DOCID 725313].

¹⁶⁷ Lehman, SP&A - Equity Adequacy and Equity Allocation Presentation [Draft] (Sept. 12, 2007), at p. 1 [LBEX-DOCID 1695588], attached to e-mail from Ari Axelrod, Lehman, to Kristin Pepper, Lehman, *et al.* (Sept. 13, 2007) [LBEX-DOCID 1645820].

presentation materials that Lehman distributed to its external constituents, EAF was one of “the Firm’s primary economic capital model[s].”¹⁶⁸

In addition, Lehman employed the Cash Capital Model (“Cash Capital”) to measure its liquidity and long-term ability to fund illiquid positions.¹⁶⁹ In a liquidity event, the firm assumed that it would not be able to access the unsecured debt market and secured funding would be limited.¹⁷⁰ Thus, all illiquid assets had to be funded with cash capital.¹⁷¹ Sources of cash capital included equity, long-term debt and evergreen facilities with a term of twelve months or longer.¹⁷²

D. Single Transaction Limits

In 2000, Lehman began developing a single transaction limit framework,¹⁷³ which was designed to curtail the firm’s head-line risk.¹⁷⁴ Head-line risk refers to the risk associated with large exposures to individual issuers, which carry potential losses that are significant enough to receive “[s]crutiny from rating agencies, investors and

¹⁶⁸ See, e.g., Lehman, Equity Adequacy Framework Presentation (May 19, 2008), at p. 2 [LBEX-DOCID 12353], attached to e-mail from Paolo Tonucci, Lehman, to Christopher M. O’Meara, Lehman, *et al.* (May 21, 2008) [LBEX-DOCID 66852].

¹⁶⁹ Paolo Tonucci, Lehman, Liquidity Funding Overview Presentation to Standard and Poor’s (Aug. 17, 2007), at p. 48 [LBEX-DOCID 2031705], attached to e-mail from Shaun K. Butler, Lehman, to Elizabeth R. Besen, Lehman, *et al.* (Aug. 28, 2007) [LBEX-DOCID 2374876].

¹⁷⁰ Lehman, untitled Funding Framework Presentation (Aug. 6, 2007), at pp. 3-5 [LBEX-DOCID 601791], attached to e-mail from Angelo Bello, Lehman, to Kentaro Umezaki, Lehman (Aug. 6, 2007) [LBEX-DOCID 720559].

¹⁷¹ *Id.*

¹⁷² *Id.* at 2-3.

¹⁷³ Examiner’s Interview of Madelyn Antoncic, Oct. 6, 2009, at p. 12.

¹⁷⁴ E-mail from Joe Li, Lehman, to Jeffrey L. Weiss, Lehman, *et al.* (Feb. 2, 2007) [LBEX-DOCID 383248].

creditors of the Firm.”¹⁷⁵ Thus, Lehman’s single transaction limits were intended to limit the firm’s large positions, which its aggregate risk limits might not otherwise constrain.¹⁷⁶ To its outside constituents, Lehman represented its single transaction limit framework to be part of a “rigorous” system of “checks and balances,” which ensured that all transactions were accommodated within the limits.¹⁷⁷

Lehman’s single transaction limits applied only to the firm’s leveraged loan originations.¹⁷⁸ Although GRMG urged the Global Real Estate Group (“GREG”) to

¹⁷⁵ Lehman, Single Transaction Limit Framework Report [Draft] (Jan. 2005), at p. 1 [LBEX-DOCID 245375], attached to e-mail from Joe Li, Lehman, to Jeffrey L. Weiss, Lehman, *et al.* (Feb. 2, 2007) [LBEX-DOCID 383248].

¹⁷⁶ Lehman, SEC Risk Appetite, Risk Equity Review for CSE (May 24, 2005), at p. 60 [LBEX-DOCID 271652], attached to e-mail from Laura M. Vecchio, Lehman, to Mark Weber, Lehman (Oct. 29, 2007) [LBEX-DOCID 408046].

¹⁷⁷ See Madelyn Antoncic, Lehman, Lehman Brothers Risk Management: An Integrated Framework (Feb. 20, 2008), at p. 20 [LBEX-DOCID 194031], attached to e-mail from Paul Shotton, Lehman, to Christopher M. O’Meara, Lehman (Feb. 20, 2008) [LBEX-DOCID 214223]; Lehman, Current Market Background Information Talking Points [Draft] (Aug. 16, 2007), at p. 3 [LBEX-DOCID 506009], attached to e-mail from Christopher M. O’Meara, Lehman, to Ian T. Lowitt, Lehman (Aug. 19, 2007) [LBEX-DOCID 572320]; Examiner’s Interviews of Steven Berkenfeld, Oct. 5 and 7, 2009, at p. 11; *see also* SEC, Lehman Brothers Consolidated Supervised Entity Market and Credit Risk Review (June 2005), at pp. 6-7 [LBEX-DOCID 2125011], attached to e-mail from Michelle Danis, SEC, to David Oman, Lehman, *et al.* (Apr. 21, 2006) [LBEX-DOCID 2068428]; Lehman, SEC Risk Appetite, Risk Equity Review for CSE (May 24, 2005), at pp. 60-61 [LBEX-DOCID 271652], attached to e-mail from Laura M. Vecchio, Lehman, to Mark Weber, Lehman (Oct. 29, 2007) [LBEX-DOCID 408046]; Madelyn Antoncic, 2006 Bondholder Meeting: Risk Management Presentation (Oct. 17, 2006), at p. 25 [LBEX-DOCID 541394], attached to e-mail from Elizabeth R. Besen, Lehman, to Christopher M. O’Meara, Lehman (Aug. 2, 2007) [LBEX-DOCID 559489].

¹⁷⁸ Examiner’s Interview of Madelyn Antoncic, Oct. 6, 2009, at p. 12; Examiner’s Interview of Joe Li, Oct. 5, 2009; *see* e-mail from Nachiketa Das, Lehman, to Steven Simonte, Lehman, *et al.* (Feb. 9, 2007) [LBEX-DOCID 388631]; Lehman, Single Transaction Limit Framework [Draft] (Oct. 2005), at pp. 2-3 [LBEX-DOCID 2072632], attached to e-mail from Joe Li, Lehman, to David Oman, Lehman, *et al.* (July 7, 2006) [LBEX-DOCID 2170674].

consider the firm's single transaction limits when entering into new deals,¹⁷⁹ the single transaction limits did not apply in the commercial real estate space.¹⁸⁰

Lehman's single transaction limit was originally set at a loss threshold of \$150 million, measured by analyzing the potential loss from the transaction in question at a 99.5% confidence level.¹⁸¹ In February 2007, because the firm's capital base and revenues had grown, GRMG revised the loss threshold to \$250 million and adopted a tandem, but separate, notional limit of \$1.8 billion per unsecured and \$3 billion per secured transaction.¹⁸²

Although Lehman was not a regulated commercial bank and therefore was not required to institute notional transaction limits, Lehman entered into an informal agreement with the rating agencies to abide by essentially the same notional limits that applied to commercial banks; while commercial banks maintained a notional limit of 15% of tangible equity, Lehman maintained a notional limit of 15% of Tier 1 and 2

¹⁷⁹ E-mail from Jeffrey Goodman, Lehman, to Zev Klasewitz, Lehman (Jan. 17, 2007) [LBEX-DOCID 794864]; e-mail from Jeffrey Goodman, Lehman, to Zev Klasewitz, Lehman (Feb. 12, 2007) [LBEX-DOCID 794879].

¹⁸⁰ Examiner's Interview of Madelyn Antoncic, Oct. 6, 2009, at p. 12.

¹⁸¹ Lehman, Ambac: Due Diligence Request [Draft] (Feb. 2007), at p. 32 [LBEX-DOCID 719123], attached to e-mail from Blair Sieff, Lehman, to Raymond Kahn, Lehman, *et al.* (Feb. 5, 2007) [LBEX-DOCID 739860]; Lehman, Single Transaction Limit Framework Report [Draft] (Jan. 2005), at pp. 2-3 [LBEX-DOCID 245375], attached to e-mail from Paul Shotton, Lehman, to Ping Feng, Lehman (Feb. 2, 2007) [LBEX-DOCID 383248] (Shotton's e-mail notes the change to a \$250 million threshold.).

¹⁸² Lehman, Ambac: Draft Due Diligence Request (Feb. 2007), at p. 32 [LBEX-DOCID 719123], attached to e-mail from Blair Sieff, Lehman, to Raymond Kahn, Lehman, *et al.* (Feb. 5, 2007) [LBEX-DOCID 739860]; Lehman, Single Transaction Limit Framework Report [Draft] (Jan. 2005), at pp. 2-3 [LBEX-DOCID 245375], attached to e-mail from Paul Shotton, Lehman, to Ping Feng, Lehman (Feb. 2, 2007) [LBEX-DOCID 383248] (Shotton's e-mail notes the change to a \$250 million threshold.).

capital.¹⁸³ The agreement was a shift from Lehman's prior policy, under which Lehman maintained a notional limit of 15% of tangible common equity, plus preferred shares.¹⁸⁴ In contrast to tangible equity, Tier 1 capital yielded a higher notional limit because it did not include tax deferred assets.¹⁸⁵

The rating agencies provided external control, as the agencies would immediately contact Lehman when a deal violated the single transaction limit.¹⁸⁶ Lowitt and O'Meara would call the rating agencies and alleviate their concerns when Lehman expected a large deal to breach the limit.¹⁸⁷

Executive Committee approval was required when a potential deal exceeded the single transaction limit.¹⁸⁸ In other words, a deal could not get done without the blessing of the Executive Committee.¹⁸⁹ Such deals came before the Executive Committee because the sheer size of the transactions required the Committee's

¹⁸³ Lehman, Risk Limits Presentation (Sept. 2006), at pp. 1-2 [LBEX-DOCID 1343779], attached to e-mail from Paolo Tonucci, Lehman, to Christopher M. O'Meara, Lehman, *et al.* (Sept. 28, 2006) [LBEX-DOCID 1354049]. David Goldfarb and Steve Berkenfeld both opined that no more than 15% of tangible equity should ever have been outstanding on any one deal. Examiner's Interview of David Goldfarb, Sept. 21, 2009, at p. 12; Examiner's Interviews of Steven Berkenfeld, Oct. 5 and 7, 2009, at p. 11.

¹⁸⁴ *Id.*

¹⁸⁵ Lehman, Risk Limits Presentation (Sept. 2006), at pp. 1-2 & nn.1-2 [LBEX-DOCID 1343779], attached to e-mail from Paolo Tonucci, Lehman, to Christopher M. O'Meara, Lehman, *et al.* (Sept. 28, 2006) [LBEX-DOCID 1354049].

¹⁸⁶ Examiner's Interview of David Goldfarb, Sept. 21, 2009, at p. 12; Examiner's Interviews of Steven Berkenfeld, Oct. 5 and 7, 2009, at p. 11.

¹⁸⁷ Examiner's Interviews of Steven Berkenfeld, Oct. 5 and 7, 2009, at p. 11.

¹⁸⁸ Lehman, SEC Risk Appetite, Risk Equity Review for CSE (May 24, 2005), at p. 60 [LBEX-DOCID 271652], attached to e-mail from Laura M. Vecchio, Lehman, to Mark Weber, Lehman (Oct. 29, 2007) [LBEX-DOCID 408046].

¹⁸⁹ Examiner's Interview of Fred S. Orlan, Sept. 21, 2007, at p. 8; Examiner's Interviews of Steven Berkenfeld, Oct. 5 and 7, 2009, at p. 7; Examiner's Interview of Jeremy Isaacs, Oct. 1, 2009, at p. 6.

approval separate and apart from the approval of any lower-level committees.¹⁹⁰ Lehman's standard risk management presentation clarifies that Executive Committee approval would allow Lehman to commit to a large deal in "rare circumstances," rather than as a matter of routine practice.¹⁹¹

In the third quarter of 2006 and the fourth quarter of 2007, Lehman adjusted its notional single transaction limit from \$2.1 billion to \$3.6 billion and then from \$3.6 billion to \$4.5 billion, respectively.¹⁹² In the second quarter of 2007, Lehman's quarterly loss threshold stood at \$250 million, which it intended to raise to \$400 million at year's end.¹⁹³

Lehman applied the loss thresholds and notional limits only to the leveraged loan amounts that Lehman expected to retain for itself, not to the often larger amounts that the firm committed to fund in preliminary papers before syndication or sale.¹⁹⁴

¹⁹⁰ Examiner's Interview of Jeremy Isaacs, Oct. 1, 2009, at p. 6.

¹⁹¹ Madelyn Antoncic, Lehman, "Standard" Risk Management Presentation, at p. 21 [LBEX-DOCID 194031], attached to e-mail from Paul Shotton, Lehman, to Christopher M. O'Meara, Lehman (Feb. 20, 2008) [LBEX-DOCID 214223].

¹⁹² Lehman, Risk Limits Presentation (Sept. 2006), at pp. 1-2 & nn.1-2 [LBEX-DOCID 1343779], attached to e-mail from Paolo Tonucci, Lehman, to Christopher M. O'Meara, Lehman, *et al.* (Sept. 28, 2006) [LBEX-DOCID 1354049] (noting \$3.6 billion limit); Lehman, Leveraged Finance Risk Presentation to Executive Committee (Oct. 16, 2007), at p. 32 [LBEX-DOCID 506095], attached to e-mail from Blair Sieff, Lehman, to Steven Berkenfeld, Lehman, *et al.* (Oct. 4, 2007) [LBEX-DOCID 569902] (noting increase to \$4.5 billion).

¹⁹³ See e-mail from Paul Shotton, Lehman, to Ping Feng, Lehman (Feb. 2, 2007) [LBEX-DOCID 383248] (noting threshold being then at \$250 million); Lehman, Leveraged Finance Risk Presentation to Executive Committee (Oct. 16, 2007), at p. 11 [LBEX-DOCID 506095], attached to e-mail from Blair Sieff, Lehman, to Steven Berkenfeld, Lehman, *et al.* (Oct. 4, 2007) [LBEX-DOCID 569902] (proposing increase to \$400 million).

¹⁹⁴ Lehman, Leveraged Finance Risk Presentation to Executive Committee (Oct. 16, 2007), at p. 11 [LBEX-DOCID 506095], attached to e-mail from Blair Sieff, Lehman, to Steven Berkenfeld, Lehman, *et al.* (Oct. 4, 2007) [LBEX-DOCID 569902] ("Notional value subject to STL is expected commitment, not amount for which the firm originally signs.").

Some leveraged loans contained a material adverse change clause and a flexible interest rate provision, which made it easier for Lehman to syndicate the exposure to other financial institutions.¹⁹⁵ On these deals, the single transaction limit's loss thresholds and notional limits could be doubled, because those protections were thought to mitigate roughly 50% of the associated risk.¹⁹⁶

E. Balance Sheet Limits

Lehman's balance sheet limit was another risk-related control that Lehman employed to allocate its resources efficiently, ensure that the business was adequately capitalized, and guarantee adequate returns on assets.¹⁹⁷ The balance sheet limit is intended to restrict the amount of assets that a division or a specific business line can originate in any given quarter.¹⁹⁸ A specific business or region would be able to obtain a higher balance sheet limit if the additional balance sheet capacity was supported by higher returns on assets.¹⁹⁹ The firm set a minimum rate of return at 3% and increments

¹⁹⁵ Lehman, Single Transaction Limit Framework Report [Draft] (Jan. 2005), at p. 3 [LBEX-DOCID 245375], attached to e-mail from Paul Shotton, Lehman, to Ping Feng, Lehman (Feb. 2, 2007) [LBEX-DOCID 383248].

¹⁹⁶ *Id.*

¹⁹⁷ Examiner's Interview of Kentaro Umezaki, June 25, 2009, at p. 8.

¹⁹⁸ *See generally* Lehman, FID Balance Sheet Management Policy Presentation (Sept. 20, 2007) [LBEX-DOCID 253145], attached to e-mail from Kentaro Umezaki, Lehman, to Andrew J. Morton, Lehman, *et al.* (Oct. 17, 2007) [LBEX-DOCID 301274]; *see also* Lehman, FID Balance Sheet Management Presentation (Apr. 2007) at p. 3 [LBEX-DOCID 787297], attached to e-mail from Kieron Keating, Lehman, to David N. Sherr, Lehman, *et al.* (June 6, 2007) [LBEX-DOCID 808850].

¹⁹⁹ Lehman, FID Balance Sheet Management Presentation (Apr. 2007), at p. 3 [LBEX-DOCID 787297], attached to e-mail from Kieron Keating, Lehman, to David N. Sherr, Lehman, *et al.* (June 6, 2007) [LBEX-DOCID 808850].

in the balance sheet would not be granted when a division fell below the minimum threshold.²⁰⁰ The balance sheet limits rolled up into a firm-wide balance sheet target.²⁰¹

Balance sheet limit breaches became an issue at Lehman as early as 2005.²⁰² By February 2007, the firm had a “serious balance sheet issue.”²⁰³ FID businesses consistently exceeded their limits even though returns on assets and earnings were decreasing.²⁰⁴ FID breached its balance sheet limit in every quarter of 2007 and in the first quarter of 2008.²⁰⁵ Balance sheet limit breaches were heavily concentrated in securitized products and real estate.²⁰⁶ The division breached the balance sheet limit for the third quarter of 2007 by a substantial margin and ended the fourth quarter of the year with usage exceeding the limit by approximately \$13 billion dollars.²⁰⁷ At the end of the first quarter of 2008, Lehman had exceeded its balance sheet limit by \$18 billion.²⁰⁸

²⁰⁰ *Id.*

²⁰¹ Examiner’s Interview of Kentaro Umezaki, June 25, 2009, at pp. 8-9.

²⁰² *Id.*

²⁰³ Email from Joseph Gentile, Lehman, to Michael Gelband, Lehman, *et al.* (Feb. 21, 2007) [LBEX-DOCID 810934].

²⁰⁴ Lehman, FID Balance Sheet Management Presentation (Apr. 2007), at p. 2 [LBEX-DOCID 787297], attached to e-mail from Kieron Keating, Lehman, to David N. Sherr, Lehman, *et al.* (June 6, 2007) [LBEX-DOCID 808850].

²⁰⁵ *See* Lehman, Balance Sheet Trend Presentation (Apr. 2007), at pp. 4-6 [LBEX-DOCID 251418], attached to e-mail from Kentaro Umezaki, Lehman, to Rebecca Miller, Lehman (May 3, 2007) [LBEX-DOCID 346520]; Lehman, 2007 Balance Sheet Targets and Usage - Global Spreadsheet (Oct. 17, 2007) [LBEX-DOCID 278229], attached to e-mail from Kentaro Umezaki, Lehman, to Andrew J. Morton, Lehman, *et al.* (Oct. 17, 2007) [LBEX-DOCID 301274]; e-mail from Clement Bernard, Lehman, to Roger Nagioff, Lehman, *et al.* (Nov. 20, 2007) [LBEX-DOCID 272199]; Andrew J. Morton, Lehman, Notes: First 60 Days Presentation (Apr. 7, 2008), at p. 4 [LBEX-DOCID 1734462], attached to e-mail from Gary Mandelblatt, Lehman, to Andrew J. Morton, Lehman, *et al.* (Apr. 7, 2008) [LBEX-DOCID 1834937] (showing first quarter 2008 limit breaches).

²⁰⁶ Lehman, Balance Sheet Trend Presentation (Apr. 2007), at pp. 4-6 [LBEX-DOCID 251418], attached to e-mail from Kentaro Umezaki, Lehman, to Rebecca Miller, Lehman (May 3, 2007) [LBEX-DOCID 346520].

²⁰⁷ Lehman, 2007 Balance Sheet Targets and Usage - Global Spreadsheet (Oct. 17, 2007) [LBEX-DOCID 278229], attached to e-mail from Kentaro Umezaki, Lehman, to Andrew J. Morton, Lehman, *et al.* (Oct. 17,

Senior managers in FID reacted to the limit breaches by lobbying the firm to raise the limit or give additional balance sheet capacity to businesses that were substantially over the limit.²⁰⁹ Illustratively, Lehman was over the balance sheet limit for the third quarter of 2007 by \$3 billion dollars at the end of June.²¹⁰ At that time, Lehman's managers expected FID's demand for balance sheet capacity to be \$18 billion dollars higher than the limit.²¹¹ Umezaki and Nagioff met with O'Meara "to lobby for more."²¹² Umezaki succeeded in procuring an \$8 billion dollar raise from the firm.²¹³ In the same vein, Umezaki told Reilly that FID needed additional balance sheet capacity for the fourth quarter of 2007 because of the high yield funding pipeline and the slow down in real estate syndications.²¹⁴ As a result, the FID's balance sheet limit for the fourth quarter of 2007 was \$10 billion dollars higher than the previous quarter.²¹⁵

2007) [LBEX-DOCID 301274]; e-mail from Clement Bernard, Lehman, to Roger Nagioff, Lehman, *et al.* (Nov. 20, 2007) [LBEX-DOCID 272199].

²⁰⁸ Andrew J. Morton, Lehman, Notes: First 60 Days Presentation (Apr. 7, 2008), at p. 5 [LBEX-DOCID 1734462], attached to e-mail from Gary Mandelblatt, Lehman, to Andrew J. Morton, Lehman, *et al.* (Apr. 7, 2008) [LBEX-DOCID 1834937].

²⁰⁹ E-mail from Kentaro Umezaki, Lehman, to Gerard Reilly, Lehman, *et al.* (July 23, 2007) [LBEX-DOCID 375604]; e-mail from Gerard Reilly, Lehman, to Christopher M. O'Meara, Lehman (Sept. 7, 2007) [LBEX-DOCID 1357177]; e-mail from Ian T. Lowitt, Lehman, to Gerard Reilly, Lehman, *et al.* (Sept. 7, 2007) [LBEX-DOCID 1357178]; e-mail from Gerard Reilly, Lehman, to Kentaro Umezaki, Lehman, *et al.* (Sept. 7, 2007) [LBEX-DOCID 1357179]; e-mail from Kentaro Umezaki, Lehman, to Alex Kirk, Lehman, *et al.* (Sept. 17, 2007) [LBEX-DOCID 375610].

²¹⁰ Email from Kentaro Umezaki, Lehman, to Andrew J. Morton, Lehman (June 28, 2007) [LBEX-DOCID 250701].

²¹¹ *Id.*

²¹² *Id.*

²¹³ Email from Kentaro Umezaki, Lehman, to Alex Kirk, Lehman, *et al.* (Sep. 17, 2007) [LBEX-DOCID 375610].

²¹⁴ Email from Kentaro Umezaki, Lehman, to Gerard Reilly, Lehman, *et al.* (Sep. 7, 2007) [LBEX-DOCID 1357177].

²¹⁵ Email from Satu Parik, Lehman, to Kentaro Umezaki, Lehman, *et al.* (Oct. 10, 2007) [LBEX-DOCID 251253].

In theory, businesses that exceeded their balance sheet limits faced penalties, which could include the diminution of their compensation pool.²¹⁶ Within FID, balance sheet limits were considered to be “harder than VaR” limits because, unlike businesses that exceeded their VaR limits, businesses that exceeded their balance sheet limits faced real penalties and consequences.²¹⁷ Penalties for overages were set at \$5 million for every billion dollars that a business was over the balance sheet limit.²¹⁸ At the end of 2007, the penalties were revised to \$2.5 million and incentives were re-set at \$1.25 million.²¹⁹ Charges were assessed in \$500 million dollar increments.²²⁰ The business heads were unhappy with the penalties and some of them thought that the charges would make it harder for the businesses to function globally.²²¹ However, penalties for balance sheet overages had never been imposed before Roger Nagioff became the head of FID.²²² Nagioff said that the limits were ultimately imposed in either the third quarter or the fourth quarter of 2007.²²³

²¹⁶ Examiner’s Interview of Kentaro Umezaki, June 25, 2009, at pp. 8-9; Lehman, Global Consolidated Balance Sheet (May 31, 2007) [LBEX-DOCID 276740], attached to e-mail from Kentaro Umezaki, Lehman, to Lesley Ormas-Scala, Lehman (Aug. 23, 2007) [LBEX-DOCID 375605]; e-mail from Kentaro Umezaki, Lehman, to Kaushik Amin, Lehman, *et al.* (July 10, 2007) [LBEX-DOCID 252873].

²¹⁷ Examiner’s Interview of Kentaro Umezaki, June 25, 2009, at p. 8.

²¹⁸ Lehman, FID Balance Sheet Management Presentation (Apr. 2007), at p. 3 [LBEX-DOCID 787297], attached to e-mail from Kieron Keating, Lehman, to David N. Sherr, Lehman, *et al.* (June 6, 2007) [LBEX-DOCID 808850].

²¹⁹ E-mail from Kentaro Umezaki, Lehman, to Kaushik Amin, Lehman, *et al.* (July 10, 2007) [LBEX-DOCID 252873].

²²⁰ Lehman, FID Balance Sheet Management Policy Presentation (Sept. 2007), at p. 2 [LBEX-DOCID 253145], attached to e-mail from Kentaro Umezaki, Lehman, to Andrew J. Morton, Lehman, *et al.* (Oct. 17, 2007) [LBEX-DOCID 301274].

²²¹ Examiner’s Interview of Roger Nagioff, Sept. 30, 2009, at p. 18; e-mail from Kentaro Umezaki, Lehman, to Gregory Eikenbush, Lehman (July 12, 2007) [LBEX-DOCID 253135].

²²² Examiner’s Interview of Roger Nagioff, Sept. 30, 2009, at p. 18.

²²³ Examiner’s Interview of Roger Nagioff, Sept. 30, 2009, at p. 18.

IV. RISK COMMITTEE

Another feature of Lehman's risk management was the firm's Risk Committee. Lehman described the Risk Committee as a weekly "forum for the senior management of the Firm to review all material risk exposures."²²⁴ According to its mandate, the Risk Committee's responsibilities included the "discussion and analysis of the Firm's significant credit, market and other risks, including operational risk."²²⁵ The "key focuses" of the Risk Committee included the firm's: (1) risk appetite;²²⁶ (2) VaR; (3) counterparty credit risk; (4) large exposures; (5) commitments; and (6) "other topics of interest as identified by the Chief Risk Officer."²²⁷

Until 2008, the Risk Committee was nominally comprised of the Executive Committee, the CRO and the CFO.²²⁸ In 2008, Lehman expanded the nominal membership of the Risk Committee to include the heads of various business lines as well.²²⁹ As described more fully below, it appears that Lehman's fully constituted Risk Committee met irregularly if at all after early 2007.

²²⁴ Lehman, ICAAP Supporting Document: Operational Risk Management Overview [Draft] (July 30, 2008), at p. 6 [LBEX-DOCID 384019], attached to e-mail from Paul Shotton, Lehman, to Lisa Rathgeber, Lehman, *et al.* (July 31, 2008) [LBEX-DOCID 258308].

²²⁵ *Id.*

²²⁶ See Sections III.A.1.b and III.A.1.c of this Report which discuss the importance risk appetite in greater detail.

²²⁷ Lehman, ICAAP Supporting Document: Operational Risk Management Overview [Draft] (July 30, 2008), at p. 6 [LBEX-DOCID 384019], attached to e-mail from Paul Shotton, Lehman, to Lisa Rathgeber, Lehman, *et al.* (July 31, 2008) [LBEX-DOCID 258308].

²²⁸ Lehman, Risk Committee Charter (Jan. 5, 2007), at p. 1 [LBEX-DOCID 719070], attached to e-mail from Robert Bing, Lehman, to Laura M. Vecchio, Lehman, *et al.* (June 11, 2007) [LBEX-DOCID 719765]; *but see* Lehman, Risk Committee Charter (Dec. 20, 2007), at p. 1 [LBEX-AM 065737] (stating that the members of the Risk Committee were the Executive Committee, the CRO and the Co-Chief Administrative Officer).

²²⁹ Examiner's Interview of Satu Parikh, Aug. 26, 2009, at p. 6; Examiner's Interview of Kaushik Amin, Apr. 14, 2009, at p. 7; *contra* Examiner's Interview of David N. Sherr, May 6, 2009, at p. 10 (recalling that

Recollections of the form and substance of Lehman's Risk Committee meetings varied. Several members did not recall having served on the committee, or even that such a committee existed.²³⁰ Others had varying memories of what occurred at the meetings.²³¹ Antoncic stated that the Risk Committee met on Wednesdays, but said that these meetings were often cancelled and that she could not attend all of them.²³² She also stated that the package given to Risk Committee members for their meetings was substantial until 2007, when Gregory changed the structure so that only the one page Firm Wide Risk Drivers sheet was provided and "made it clear" that the businesses would make risk decisions going forward.²³³

V. CHIEF RISK OFFICER CHANGE

From 2004 to September 2007, Madelyn Antoncic, a widely respected technician who had a PhD in economics, served as the firm's CRO. In her capacity as CRO,

the Risk Committee was expanded to include the heads of various business lines as early as 2006); Lehman, ICAAP Supporting Document: Operational Risk Management Overview [Draft] (July 30, 2008), at p. 6 [LBEX-DOCID 384019] (stating that the Risk Committee members included members of the Executive Committee, the CRO, at the CFO), attached to e-mail from Paul Shotton, Lehman, to Lisa Rathgeber, Lehman, *et al.* (July 31, 2008) [LBEX-DOCID 25308].

²³⁰ Examiner's Interview of George H. Walker IV, Nov. 20, 2009, at pp. 2, 5; Examiner's Interview of Hugh E. McGee III, Aug. 12, 2009, at pp. 14-15; Examiner's Interview of Andrew J. Morton, Sept. 21, 2009, at p. 13.

²³¹ Examiner's Interview of David Goldfarb, Sept. 21, 2009, at pp. 4-5 (Goldfarb stated that everyone on the Executive Committee was very involved in the Risk Committee but no minutes were kept because it was an active dialogue rather than a decision making meeting); Examiner's Interview of Satu Parikh, Aug. 26, 2009, at p. 6 (Parikh recalled the Risk Committee as a 40 to 50 member committee in 2008 combining top management and business heads, but without Fuld at the helm); Examiner's Interview of Kaushik Amin, April 14, 2009, at p. 7 (Amin remembered the Risk Committee as a Monday morning meeting without any formal documents that discussed various risks based on businesses' presentations); Examiner's Interviews of Steven Berkenfeld, Oct. 5 and 7, 2009, at p. 11 (Berkenfeld viewed Risk Committee discussions of deals as "broad sound bites" that had no bearing on whether a particular deal could be approved); Examiner's Interview of Christopher M. O'Meara, Sept. 23, 2009 at pp. 10, 13-14 (O'Meara, the Chief Risk Officer in 2008, stated that the Risk Committee met on Mondays with formal agendas).

²³² Examiner's Interview of Madelyn Antoncic, Feb. 25, 2009, at p. 4.

²³³ Examiner's Interview of Madelyn Antoncic, Oct. 6, 2009, at pp. 3, 12.

Antonovic reported directly to the Head of Strategic Partnerships, Principal Investing and Risk, David Goldfarb, who reported directly to the Chairman and CEO, Richard Fuld.²³⁴ In September 2007, Lehman announced that effective December 1, 2007, Christopher O'Meara, who was then the CFO would replace Antonovic as Lehman's top risk manager.²³⁵

In his capacity as Global Head of Risk Management ("GHRM"), O'Meara was "responsible for all aspects of [Lehman's] risk profile, including oversight of risk management policies, procedures, analytics and metrics; and, in conjunction with [Lehman's] Executive Committee, monitoring Firmwide risk appetite"²³⁶ O'Meara reported directly to Fuld as well as the firm's Co-CAO, Ian Lowitt, and its President, Joe Gregory (and then McDade).²³⁷

Prior to this transition, O'Meara had served as Lehman's CFO from 2004 until 2007, and from 1994 to 2004, he had filled a number of other roles at Lehman that were unrelated to risk monitoring.²³⁸ Antonovic moved to the newly created position of Global

²³⁴ Madelyn Antonovic, Risk Management Presentation to Standard & Poor's (Aug. 17, 2007), at p. 11 [LBEX-DOCID 3285232], attached to e-mail from Manhua Leng, Lehman, to Mark Weber, Lehman, *et al.* (Sept. 5, 2007) [LBEX-DOCID 3320640].

²³⁵ *Lehman Brothers names new CFO*, Marketwatch, Sept. 21, 2007.

²³⁶ Lehman Brothers Holdings Inc., Press Release: Lehman Brothers Announces New Appointments (Sept. 20, 2007), at p. 1 [LBEX-DOCID 533362], attached to e-mail from Brian Finnegan, Lehman, to Christopher M. O'Meara, Lehman, *et al.* (Sept. 20, 2007) [LBEX-DOCID 575413].

²³⁷ Lehman, Risk Management Update Presentation to Lehman Board of Directors (Apr. 15, 2008) at p. 3 [LBHI_SEC07940_027909].

²³⁸ Lehman Brothers Holdings Inc., Press Release: Lehman Brothers Announces New Appointments (Sept. 20, 2007), at p. 1 [LBEX-DOCID 533362], attached to e-mail from Brian Finnegan, Lehman, to Christopher M. O'Meara, Lehman, *et al.* (Sept. 20, 2007) [LBEX-DOCID 575413].

Head of Financial Market Policy Relations.²³⁹ Although O'Meara did not officially become CRO until December 2007, he began the transition from CFO to CRO shortly after the September 2007 press release.²⁴⁰

Several witnesses believed that O'Meara did not have the risk management experience that they would have expected in a CRO.²⁴¹ O'Meara did not have a background directly in risk management, and he did not have technical proficiency in risk concepts.²⁴²

Notwithstanding O'Meara's atypical background, Lehman's Board and regulators were confident that O'Meara could assume the top risk management role. They believed that he had good managerial skills and would be able to work with the risk managers below him.²⁴³ Additionally, the majority of Lehman employees

²³⁹ *Id.*

²⁴⁰ Examiner's Interview of Christopher M. O'Meara, Aug. 14, 2009, at pp. 7-9.

²⁴¹ Examiner's Interview of Madelyn Antoncic, Feb. 25, 2009 at p. 7 (Antoncic said that because O'Meara's background was heavily in accounting, neither she nor the members of her risk management team believed that O'Meara was capable of "challenging" management in the way that Antoncic did, and speculated that perhaps that was why O'Meara was chosen.); Examiner's Interview of Kentaro Umezaki, June 25, 2009, at p. 8 (Umezaki said that O'Meara had better organizational skills than Antoncic, but that his lack of risk management experience was a significant drawback.); Examiner's Interview of Andrew J. Morton, Sept. 21, 2009, at pp. 13-14 (Morton said that O'Meara did not have time to put a qualified risk management team in place before Lehman's bankruptcy.); Examiner's Interview of Roger Nagioff, Sept. 30, 2009, at p. 17 (Nagioff was against the O'Meara risk appointment, saying that while O'Meara was capable, he was not well cast for risk management, as the subject matter was new for him and he had no instinct for it.); *see also* e-mail from Jeffrey Goodman, Lehman, to Mark Weber, Lehman, *et al.* (Oct. 22, 2007) [LBEX-DOCID 318367] (saying that O'Meara wanted to talk to the "exec" about getting risk down, but that he needed the e-mail recipients to decide where specific risk cuts needed to be made).

²⁴² Examiner's Interview of Christopher M. O'Meara, Aug. 14, 2009, at p. 8.

²⁴³ Examiner's Interview of John F. Akers, Apr. 22, 2009, at p. 8 (Akers said that he had a great deal of confidence in O'Meara.); Examiner's Interview of Roger Berlind, May 8, 2009, at p. 8 (Berlind explained that he felt positive about O'Meara's move to CRO because he was impressed with O'Meara.); Examiner's Interview of Henry Kaufman, May 19, 2009, at p. 19 (Kaufman believed that O'Meara had a more comprehensive knowledge of Lehman's operation than Antoncic in a management and analytical sense,

interviewed felt that at the very least O'Meara was qualified, and Fuld defended the appointment by stating that O'Meara was a better risk manager and more practical than Antoncic.²⁴⁴

In her interview, Antoncic said that in early 2007, long before O'Meara replaced her, she believed she was being marginalized and did not fully participate in some of the risk decisions made from that point forward (particularly Archstone).²⁴⁵ These events occurred after Antoncic expressed her opposition to the large increase in the 2007 risk appetite limit and to the firm's bridge equity and leveraged loan business.²⁴⁶

and that the replacement of Antoncic strengthened Lehman because O'Meara had real world experience that Antoncic lacked.); Examiner's Interview of the Securities Exchange Commission, Aug. 24, 2009, at p. 7 (The SEC told the Examiner that it received more information from O'Meara than it had under Antoncic, and its opinion was that due to O'Meara's better management skills and the fact that Antoncic remained with the firm in another capacity, the firm lost little with respect to its Risk Management function even though he did not possess a risk management background.); Examiner's Interview of Jerry A. Grundhofer, Sept. 16, 2009, at p. 10 (Grundhofer described O'Meara as a "first rate manager."); Examiner's Interview of Michael L. Ainslie, Sept. 22, 2007, at p. 5 (Ainslie said that Lehman's Board felt O'Meara was smart and knowledgeable about Lehman's business, and had been told that O'Meara's knowledge of Lehman would allow him to integrate into the risk business easily.); Examiner's Interview of Thomas Cruikshank, Oct. 8, 2009, at pp. 5-6 (Cruikshank explained that he had no doubts about O'Meara's ability to lead Risk Management.).

²⁴⁴ Examiner's Interview of Kaushik Amin, Apr. 14, 2009, at p. 10 (According to Amin, O'Meara was qualified for the top Risk Management Group post because as CFO he had been responsible for computing profit and loss data, and that O'Meara was familiar with the risks associated with the various businesses because his ground-level experience had taught him which types of investments were susceptible to failure.); Examiner's Interview of Mark Weber, Aug. 11, 2009, at p. 13 (Weber said that O'Meara was generally able to understand the function of being CRO.); Examiner's Interview of Richard S. Fuld, Jr., Sept. 25, 2009, at p. 20 (Fuld thought that O'Meara was a better risk manager and more practical than Antoncic.); Examiner's Interview of Roger Nagioff, Sept. 30, 2009, at p. 17 (Nagioff was against the O'Meara appointment, but thought O'Meara was capable and declined to criticize O'Meara's performance in the role.); Examiner's Interview of Ian T. Lowitt, Oct. 28, 2009, at pp. 8-9 (Lowitt said that O'Meara and Callan were qualified for their new positions.); Examiner's Interview of George H. Walker IV, Nov. 20, 2009, at p. 6 (Walker described O'Meara as "an engaged risk manager.").

²⁴⁵ Examiner's Interview of Madelyn Antoncic, Oct. 6, 2009, at pp. 8-9, 11-12; Examiner's Interview of Madelyn Antoncic, Mar. 27, 2009, at pp. 13-14; Examiner's Interview of Madelyn Antoncic, Feb. 25, 2009, at pp. 4-6.

²⁴⁶ Examiner's Interview of Madelyn Antoncic, Oct. 6, 2009, at pp. 8-12; Examiner's Interview of Madelyn Antoncic, Mar. 27, 2009, at pp. 8-14; Examiner's Interview of Madelyn Antoncic, Feb. 25, 2009, at pp. 2-7.

Antonovic's personnel file indicates that she was on good standing with the business heads who were asked to review her until 2007, at which point some Lehman managers started to evaluate her performance more critically, partially because she was more risk averse than some of her reviewers.²⁴⁷ In their interviews with the Examiner, Fuld and Gregory denied that they had marginalized Antonovic.²⁴⁸

When O'Meara became Lehman's CRO, Callan replaced him as acting CFO.²⁴⁹ As with O'Meara, some former Lehman managers believed that Callan was not qualified for the CFO position.²⁵⁰ Because Callan did not have the typical background of a CFO, O'Meara's attention was split between adjusting to his new role as CRO and helping Callan become CFO.²⁵¹ As O'Meara himself put it, from September to December 2007, he was "wearing two hats."²⁵²

Shotton also said that because of O'Meara's divided attention, Lehman effectively had no chief risk manager during the crucial period in 2007 that coincided

²⁴⁷ Antonovic's personnel file (the Examiner was permitted to review but not copy the file).

²⁴⁸ Examiner's Interview of Richard S. Fuld Jr., Sept. 25, 2009, at pp. 20-21; Examiner's Interview of Joseph Gregory, Nov. 5, 2009.

²⁴⁹ Lehman Brothers Holdings Inc., Press Release: Lehman Brothers Announces New Appointments (Sept. 20, 2007), at p. 1 [LBEX-DOCID 533362], attached to e-mail from Brian Finnegan, Lehman, to Christopher M. O'Meara, Lehman, *et al.* (Sept. 20, 2007) [LBEX-DOCID 575413].

²⁵⁰ Examiner's Interview of Madelyn Antonovic, Oct. 6, 2009, at p. 9; Examiner's Interview of David Goldfarb, Sept. 21, 2009, at p. 10 (declining to comment on her expertise, but saying that she had a different skill set than most CFOs); Examiner's Interview of Paul Shotton, June 5, 2009, at p. 3.

²⁵¹ Examiner's Interview of Erin Callan, Oct. 23, 2009, at pp. 21, 24; Examiner's Interview of Christopher M. O'Meara, Aug. 14, 2009, at p. 8; Examiner's Interview of Paul Shotton, June 6, 2009, at pp. 24-25; e-mail from Christopher M. O'Meara, Lehman, to Erin Callan, Lehman (June 4, 2008) [LBEX-DOCID 215709]; e-mail from Christopher M. O'Meara, Lehman, to Richard S. Fuld, Jr., Lehman, *et al.* (Feb. 29, 2008) [LBEX-DOCID 186993]; e-mail from Stuart M. Blount, Lehman, to Christopher M. O'Meara, Lehman, *et al.* (Oct. 18, 2007) [LBEX-DOCID 1356258].

²⁵² Examiner's Interview of Christopher O'Meara, Aug. 14, 2009, at p. 8; *see also* e-mail from Christopher M. O'Meara, Lehman, to Erin M. Callan, Lehman (June 4, 2008) [LBEX-DOCID 215709] (giving Callan suggested talking points for a presentation to potential investors).

with O'Meara's transition.²⁵³ Although the SEC was comfortable with O'Meara assuming Antoncic's role, it similarly noted in written materials that it was concerned with the fact that Lehman was exceeding its risk appetite limits during a period that the CRO position was in transition.²⁵⁴

²⁵³ Examiner's Interview of Paul Shotton, June 6, 2009, at pp. 3, 23-25.

²⁵⁴ SEC, Notes from Lehman's Monthly Risk Review meeting (Oct. 11, 2007), at p. 6 [LBEX-SEC 007438].

APPENDIX 9: RISK APPETITE AND VaR USAGE VERSUS LIMITS CHARTS

This Appendix compiles data gathered by the Examiner's financial advisors regarding Lehman's internal risk limits excesses. The first chart in this appendix is a compilation of data, showing Lehman's firm-wide risk appetite and VaR usage versus its limits during the period from December 2006 through September 15, 2008. The following charts illustrate similar data with respect to Lehman's Fixed Income Division, High Yield business, and Global Real Estate Group.

Total Firm - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
12/1/06	3300	2383		2521	85	62		63	
12/4/06	3300	2389		2521	85	58		63	
12/5/06	3300	2398		2521	85	60		63	
12/6/06	3300	2409		2521	85	64		63	
12/7/06	3300	2431		2521	85	60		63	
12/8/06	3300	2386		2521	85	57		63	
12/11/06	3300	2504		2521	85	63		63	
12/12/06	3300	2475		2521	85	60		63	
12/13/06	3300	2527		2521	85	63		63	
12/14/06	3300	2641		2521	85	72		63	
12/15/06	3300	2645		2521	85	73		63	
12/18/06	3300	2481		2521	85	66		63	
12/19/06	3300	2438		2521	85	62		63	
12/20/06	3300	2692		2521	85	67		63	
12/21/06	3300	2642		2521	85	66		63	
12/22/06	3300	2625		2521	85	63		63	
12/25/06	-	-	-	2521	-	-	-	63	
12/26/06	3300	2609		2521	85	64		63	
12/27/06	3300	2578		2521	85	61		63	
12/28/06	3300	2637		2521	85	66		63	
12/29/06	3300	2535		2521	85	63		63	
1/1/07	-	-	-	2384	-	-	-	56	
1/2/07	3300	2549		2384	85	64		56	
1/3/07	3300	2506		2384	85	64		56	
1/4/07	3300	2585		2384	85	70		56	
1/5/07	3300	2566		2384	85	66		56	
1/8/07	3300	2546		2384	85	65		56	
1/9/07	3300	2434		2384	85	57		56	
1/10/07	3300	2455		2384	85	59		56	
1/11/07	3300	2374		2384	85	53		56	
1/12/07	-	-	-	2384	-	-	-	56	
1/15/07	3300	2295		2384	85	56		56	2 FairPoint Communications original commitment: \$832 Mm
1/16/07	3300	2209		2384	85	52		56	
1/17/07	3300	2142		2384	85	46		56	
1/18/07	3300	2248		2384	85	52		56	
1/19/07	3300	2287		2384	85	53		56	
1/22/07	3300	2371		2384	85	57		56	
1/23/07	3300	2332		2384	85	54		56	
1/24/07	3300	2305		2384	85	50		56	
1/25/07	3300	2393		2384	85	57		56	
1/26/07	3300	2417		2384	85	58		56	
1/29/07	3300	2397		2384	85	56		56	
1/30/07	3300	2283		2384	85	46		56	
1/31/07	3300	2377		2384	85	50		56	
2/1/07	3300	2389		2524	85	54		63	
2/2/07	3300	2486		2524	85	58		63	
2/5/07	3300	2425		2524	85	56		63	
2/6/07	3300	2556		2524	85	65		63	
2/7/07	3300	2518		2524	85	62		63	
2/8/07	3300	2562		2524	85	64		63	

Total Firm - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
2/9/07	3300	2465		2524	85	62		63	
2/12/07	3300	2371		2524	85	57		63	
2/13/07	3300	2427		2524	85	59		63	
2/14/07	3300	2491		2524	85	66		63	
2/15/07	3300	2643		2524	85	73		63	
2/16/07	-	-		2524	-	-		63	
2/19/07	3300	2609		2524	85	70		63	
2/20/07	3300	2546		2524	85	70		63	
2/21/07	3300	2446		2524	85	62		63	
2/22/07	3300	2520		2524	85	66		63	
2/23/07	3300	2546		2524	85	66		63	
2/26/07	3300	2543		2524	85	65		63	2
2/27/07	3300	2725		2524	85	62		63	3
2/28/07	3300	2687		2524	85	59		63	
3/1/07	3300	2512		2513	85	54		68	
3/2/07	3300	2641		2513	85	54		68	
3/5/07	3300	2345		2513	85	57		68	
3/6/07	3300	2273		2513	85	60		68	
3/7/07	3300	2415		2513	85	63		68	3
3/8/07	3300	2339		2513	85	56		68	
3/9/07	3300	2414		2513	85	64		68	
3/12/07	3300	2523		2513	85	67		68	
3/13/07	3300	2517		2513	85	67		68	
3/14/07	3300	2525		2513	85	73		68	
3/15/07	3300	2486		2513	85	70		68	
3/16/07	3300	2559		2513	85	75		68	
3/19/07	3300	2561		2513	85	75		68	
3/20/07	3300	2724		2513	85	82		68	
3/21/07	3300	2647		2513	85	78		68	
3/22/07	3300	2751		2513	85	78		68	
3/23/07	3300	2675		2513	85	76		68	
3/26/07	3300	2630		2513	85	77		68	
3/27/07	3300	2461		2513	85	67		68	
3/28/07	3300	2466		2513	85	70		68	
3/29/07	3300	2465		2513	85	72		68	
3/30/07	3300	2361		2513	85	65		68	3
4/2/07	3300	2426		2548	85	68		74	2
4/3/07	3300	2436		2548	85	66		74	
4/4/07	3300	2435		2548	85	64		74	
4/5/07	-	-		2548	-	-		74	
4/6/07	3300	2459		2548	85	66		74	
4/9/07	3300	2456		2548	85	68		74	
4/10/07	3300	2401		2548	85	65		74	
4/11/07	3300	2515		2548	85	72		74	
4/12/07	3300	2502		2548	85	73		74	
4/13/07	3300	2478		2548	85	69		74	
4/16/07	3300	2580		2548	85	81		74	2
4/17/07	3300	2575		2548	85	76		74	
4/18/07	3300	2600		2548	85	79		74	
4/19/07	3300	2495		2548	85	77		74	

Total Firm - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
4/20/07	3300	2568		2548	85	78		74	
4/23/07	3300	2616		2548	85	81		74	
4/24/07	3300	2593		2548	85	77		74	
4/25/07	3300	2725		2548	85	87	2	74	
4/26/07	3300	2670		2548	85	80		74	
4/27/07	3300	2668		2548	85	76		74	2 Local Insight Media original commitment: \$422 Mm
4/30/07	3300	2789		2548	85	83		74	
5/1/07	3300	2763		2773	85	83		81	
5/2/07	3300	2633		2773	85	78		81	
5/3/07	3300	2737		2773	85	83		81	
5/4/07	3300	2686		2773	85	79		81	
5/7/07	3300	2904		2773	85	92	7	81	Bettinger to Shotton, Vecchio: IMD PIPE now included in internal VaR but not regulatory VaR, request clarification of which businesses (i.e. RE) show up in VaR's snapshot, but not VaR based capital
5/8/07	3300	2704		2773	85	78		81	
5/9/07	3300	2755		2773	85	83		81	
5/10/07	3300	2819		2773	85	89	4	81	3 Shotton proposes to Van Buren, Lang: shifting risk from VaR to Event. LB-UBS CoMm Mortgage Trust 2007-C2 Close. Issued: \$3.6 Bn
5/11/07	3300	2772		2773	85	86	1	81	2 Endeavor/Goldman Sachs original commitment: \$633 Mm
5/14/07	3300	2699		2773	85	77		81	
5/15/07	3300	2602		2773	85	66		81	1 237 Park Avenue Close. Total exposure: \$1.35 Bn
5/16/07	3300	2626		2773	85	71		81	
5/17/07	3300	2738		2773	85	77		81	1 Beacon Fund III Close. Funding share: \$2.04 Bn
5/18/07	3300	2717		2773	85	79		81	2 Advent International - Lloyds TSB Close. Commitment: £264 Mm
5/21/07	3300	2767		2773	85	81		81	
5/22/07	3300	2864		2773	85	86	1	81	
5/23/07	3300	2938		2773	85	84		81	
5/24/07	3300	2880		2773	85	83		81	
5/25/07	-	-	-	2773	-	-	-	81	
5/28/07	3300	2791		2773	85	78		81	
5/29/07	3300	2854		2773	85	81		81	2 CDW original commitment: \$1,960 Mm
5/30/07	3300	2853		2773	85	82		81	3 Fannie Mae REMIC Trust 2007-54 Close. Issued: \$2.5 Bn
5/31/07	3300	2894		2773	85	82		81	2 Debitel original commitment: €250 Mm
6/1/07	3300	3238		3336	85	85	0	86	
6/4/07	3300	3281		3336	85	86	1	86	1 Archstone Commitment of \$10.9 Bn entered into LR. Closed: 10/5/07
6/5/07	3300	3289		3336	85	86	1	86	1 EOP Austin Portfolio Close. Funding share: \$1.13 Bn. Event on 6/4/07.
6/6/07	3300	3291		3336	85	84		86	
6/7/07	3300	3446	146	3336	85	95	10	86	2 ARINC Incorporated original commitment: \$825 Mm
6/8/07	3300	3297		3336	85	86	1	86	
6/11/07	3300	3207		3336	85	83		86	2 Icopel A/S original commitment: €850 Mm
6/12/07	3300	3359	59	3336	85	90	5	86	
6/13/07	3300	3186		3336	85	81		86	
6/14/07	3300	3481	181	3336	85	102	17	86	
6/15/07	3300	3538	238	3336	85	103	18	86	
6/18/07	3300	3551	251	3336	85	99	14	86	
6/19/07	3300	3538	238	3336	85	97	12	86	2 Sequa Corp original commitment: \$2,050 Mm
6/20/07	3300	3317	17	3336	85	82		86	2 Home Depot Supply original commitment: \$2,400 Mm
6/21/07	3300	3173		3336	85	74		86	
6/22/07	3300	3199		3336	85	73		86	2 PQ Corp original commitment: \$488 Mm
6/25/07	3300	3207		3336	85	75		86	
6/26/07	3300	3139		3336	85	75		86	
6/27/07	3300	3372	72	3336	85	82		86	
6/28/07	3300	3453	153	3336	85	87	2	86	

Total Firm - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event	
6/29/07	3300	3496	186	3336	85	91	6	86		
7/2/07	3300	3478	178	3301	85	90	5	91		
7/3/07	-	-	-	3301	-	-	-	91	2	Endemol/Goldman Sachs Close. (Commitment at close uncertain)
7/4/07	3300	3546	246	3301	85	92	7	91		
7/5/07	3300	3306	6	3301	85	86	1	91		
7/6/07	3300	3377	77	3301	85	95	10	91		
7/9/07	3300	3367	67	3301	85	95	10	91		
7/10/07	3300	3278		3301	85	90	5	91		
7/11/07	3300	3154		3301	85	85		91	1	Dermody Close. Funding share: \$1.54 Bn
7/12/07	3300	3288		3301	85	92	7	91		
7/13/07	3300	3297		3301	85	95	10	91	2	Events on 7/16/07
7/16/07	3300	3427	127	3301	85	101	16	91	2	Houghton Mifflin original commitment: \$2,398 Mm
7/17/07	3300	3498	198	3301	85	105	20	91	1	Applebees/HOP original commitment: \$2,139 Mm
7/18/07	3300	3343	43	3301	85	99	14	91		Coeur Defense Close. Funding share: \$2,117 Bn
7/19/07	3300	3416	116	3301	85	95	10	91		
7/20/07	3300	3574	274	3301	85	107	22	91		
7/23/07	3300	3541	241	3301	125	105		91		
7/24/07	3300	3449	149	3301	125	99		91		
7/25/07	3300	3267		3301	125	85		91		
7/26/07	3300	2960		3301	125	72		91	2	Debitel Close. Commitment: €250 Mm
7/27/07	3300	2890		3301	125	70		91	3	LB CoMm Mortgage Trust 2007-C3 Close. Issued: \$3.2 Bn
7/30/07	3300	3022		3301	125	80		91	2	PQ Corp Close. Commitment: \$488 Mm
7/31/07	3300	2855		3301	125	70		91		Events on 7/31/07:
8/1/07	3300	2743		3265	125	60		92	2	Local A/S Close. Commitment: €255 Mm
8/2/07	3300	2676		3265	125	55		92	3	LB XS Trust Mort. Pass-Through Certs., Ser. 2007-15N. Issued: \$2.8 Bn
8/3/07	3300	2840		3265	125	58		92		
8/6/07	3300	2855		3265	125	62		92		
8/7/07	3300	3030		3265	125	67		92		
8/8/07	3300	3388	88	3265	125	98		92		
8/9/07	3300	3262		3265	125	93		92		
8/10/07	3300	3502	202	3265	125	111		92		
8/13/07	3300	3457	157	3265	125	108		92	1	Archstone and Dermody commitments initially included in RA in LR
8/14/07	3300	3329	29	3265	125	97		92		
8/15/07	3300	3166		3265	125	87		92		
8/16/07	3300	3408	108	3265	125	100		92		
8/17/07	3300	3304	4	3265	125	103		92		
8/20/07	3300	3150		3265	125	93		92		
8/21/07	3300	3327	27	3265	125	102		92		
8/22/07	3300	3289		3265	125	94		92		
8/23/07	3300	3440	140	3265	125	104		92	3	LB Floating Rate CoMm. Mort. Trust 2007-LLFA Close. Issued: \$2.4 Bn
8/24/07	3300	3662	362	3265	125	119		92		
8/27/07	3300	3651	351	3265	125	117		92		
8/28/07	3300	3482	182	3265	125	107		92		
8/29/07	3300	3380	80	3265	125	94		92		
8/30/07	3300	3358	58	3265	125	91		92	2	Home Depot Supply Close. Commitment: \$1,333 Mm
8/31/07	3300	3438	138	3265	125	91		92	3	Fannie Mae Tru12007-95 Close. Issued: \$2.8 Bn
9/3/07	3500	3400		3656	135	85		110		
9/4/07	3500	3641	141	3656	135	106		110		
9/5/07	3500	3553	53	3656	135	104		110		
9/6/07	3500	3622	122	3656	135	107		110		RA and VaR restatement: incorrect HY data related to HD on 8/31-9/4

Total Firm - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
9/7/07	3500	3732	232	3656	135	119		110	
9/10/07	3500	3578	78	3656	135	107		110	Limit increase backdating: authorized 9/10/07, effective 9/1/07.
9/11/07	3500	3597	97	3656	135	108		110	
9/12/07	3500	3536	36	3656	135	104		110	
9/13/07	3500	3543	43	3656	135	105		110	
9/14/07	3500	3682	182	3656	135	110		110	
9/17/07	3500	3566	66	3656	135	103		110	
9/18/07	3500	3562	62	3656	135	104		110	
9/19/07	3500	3467		3656	135	98		110	
9/20/07	3500	3480		3656	135	99		110	
9/21/07	3500	3727	227	3656	135	118		110	
9/24/07	3500	3675	175	3656	135	117		110	
9/25/07	3500	3849	349	3656	135	133		110	2 First Data Close. Commitment: \$3,120 Mm
9/26/07	3500	3963	463	3656	135	129		110	DRA Report change: GPS and GTS merged, added DPI - created PIP
9/27/07	3500	3970	470	3656	135	131		110	Shotton to O'Mera, et. al. Increased VaR limit to discentive event risk
9/28/07	3500	3994	494	3656	135	123		110	
10/1/07	3500	4053	553	3910	135	124		132	
10/2/07	3500	3895	395	3910	135	120		132	
10/3/07	3500	3800	300	3910	135	119		132	
10/4/07	3500	4136	636	3910	135	136	1	132	
10/5/07	3500	3671	171	3910	135	115		132	1 Archstone Close. Funding share: \$5.42 Bn
10/8/07	3500	3831	331	3910	135	130		132	
10/9/07	3500	4061	561	3910	135	140	5	132	
10/10/07	3500	4049	549	3910	135	141	6	132	2 Energy Future Holdings (TXU) Close. Commitment: \$4,737 Mm
10/11/07	3500	4289	789	3910	135	158	23	132	
10/12/07	3500	4128	628	3910	135	143	8	132	2 CDW Close. Commitment: \$1,494 Mm
10/15/07	3500	4180	680	3910	135	146	11	132	1 Carlyle Close. Funding share: €638 Mm
10/16/07	3500	4116	616	3910	135	144	9	132	
10/17/07	3500	4089	589	3910	135	148	13	132	
10/18/07	3500	4209	709	3910	135	164	29	132	
10/19/07	3500	3867	367	3910	135	132		132	
10/22/07	3500	3712	212	3910	135	127		132	
10/23/07	3500	3776	276	3910	135	135		132	1 Events on 10/24/07
10/24/07	3500	3733	233	3910	135	124		132	Gospel/Diversity Close. Funding: \$2.63 Bn (Date Uncertain)
10/25/07	3500	3730	230	3910	135	127		132	1 Hilton - Project Murphy Close. Funding share: \$1.54 Bn
10/26/07	3500	3605	105	3910	135	113		132	2 ARINC Incorporated Close. Commitment: \$385 Mm
10/29/07	3500	3648	148	3910	135	120		132	
10/30/07	3500	3578	78	3910	135	113		132	
10/31/07	3500	3793	293	3910	135	125		132	
11/1/07	3500	3675	175	3572	135	117		128	
11/2/07	3500	3703	203	3572	135	131		128	
11/5/07	3500	3600	100	3572	135	124		128	
11/6/07	3500	3677	177	3572	135	131		128	
11/7/07	3500	3601	101	3572	135	124		128	
11/8/07	3500	3389		3572	135	109		128	
11/9/07	3500	3449		3572	135	117		128	
11/12/07	3500	3621	121	3572	135	128		128	
11/13/07	3500	3544	44	3572	135	131		128	
11/14/07	3500	3653	153	3572	135	143	8	128	
11/15/07	3500	3611	111	3572	135	132		128	

Total Firm - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
11/16/07	3500	3605	105	3572	135	131		128	
11/19/07	3500	3559	59	3572	135	126		128	
11/20/07	3500	3670	170	3572	135	138	3	128	
11/21/07	-	-	-	3572	-	-	-	128	
11/22/07	3500	3469		3572	135	126		128	
11/23/07	3500	3529	29	3572	135	133		128	
11/26/07	3500	3614	114	3572	135	139	4	128	
11/27/07	3500	3393		3572	135	118		128	
11/28/07	3500	3472		3572	135	132		128	
11/29/07	3500	3642	142	3572	135	130		128	2
11/30/07	3500	3559	59	3572	135	123		128	2
12/3/07	4000	3678		3713	150	135		135	2
12/4/07	4000	3623		3713	150	131		135	2
12/5/07	4000	3791		3713	150	143		135	2
12/6/07	4000	3821		3713	150	143		135	
12/7/07	4000	3861		3713	150	147		135	
12/10/07	4000	3712		3713	150	134		135	
12/11/07	4000	3679		3713	150	133		135	2
12/12/07	4000	3674		3713	150	132		135	2
12/13/07	4000	3716		3713	150	134		135	
12/14/07	4000	3690		3713	150	136		135	
12/17/07	4000	3510		3713	150	124		135	
12/18/07	4000	3551		3713	150	123		135	
12/19/07	4000	3729		3713	150	133		135	
12/20/07	4000	3851		3713	150	141		135	
12/21/07	4000	3507		3713	150	121		135	
12/24/07	4000	3756		3713	150	135		135	
12/25/07	-	-	-	3713	-	-	-	135	
12/26/07	4000	3813		3713	150	142		135	
12/27/07	4000	3719		3713	150	131		135	
12/28/07	4000	3817		3713	150	138		135	
12/31/07	4000	3776		3713	150	135		135	
1/1/08	-	-	-	3663	-	-	-	139	
1/2/08	4000	3883		3663	150	141		139	
1/3/08	4000	3658		3663	150	132		139	
1/4/08	4000	3706		3663	150	132		139	
1/7/08	4000	3540		3663	150	127		139	
1/8/08	4000	3555		3663	150	134		139	
1/9/08	4000	3564		3663	150	132		139	
1/10/08	4000	3667		3663	150	145		139	
1/11/08	4000	3696		3663	150	154	4	139	
1/14/08	4000	3762		3663	150	149		139	
1/15/08	4000	3450		3663	150	127		139	
1/16/08	4000	3508		3663	150	130		139	
1/17/08	4000	3582		3663	150	137		139	
1/18/08	-	-	-	3663	-	-	-	139	
1/21/08	4000	3407		3663	150	125		139	
1/22/08	4000	3458		3663	150	128		139	
1/23/08	4000	3834		3663	150	155	5	139	
1/24/08	4000	3701		3663	150	143		139	

Applebees/HOP Close. (Commitment at close uncertain)
 Reporting change: The 2007 10-K and 2008 10-Qs stop mentioning RA
 Sequa Corp Close. Commitment: \$820 Mm. Funded: \$280 Mm
 Local Insight Media Close. Commitment: \$455 Mm. Funded: \$302 Mm

Captive Plastics original commitment: \$130 Mm
 Houghton Mifflin Riverdeep Close. Commitment: ~\$2400 Mm

Limit increase backdating: authorized 1/7/08, effective 12/3/07

Events on 1/14/08:
 Request for plan to resolve excessive breaches: HY Loans, and RE
 Request for limit adjustment: positions moved from IMD to PIP
 DRA Report change: added Global Opportunity Group to PIP

Total Firm - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
1/25/08	4000	3755		3663	150	145		139	
1/28/08	4000	3830		3663	150	151	1	139	
1/29/08	4000	3824		3663	150	150		139	
1/30/08	4000	3791		3663	150	145		139	
1/31/08	4000	3747		3663	150	130		139	
2/1/08	4000	3776		3588	150	140		116	
2/4/08	4000	3771		3588	150	139		116	
2/5/08	4000	3843		3588	150	136		116	
2/6/08	4000	3701		3588	150	129		116	2 Captive Plastics Close. Commitment: (Commitment at close uncertain)
2/7/08	4000	3500		3588	150	116		116	
2/8/08	4000	3492		3588	150	116		116	
2/11/08	4000	3636		3588	150	121		116	
2/12/08	4000	3500		3588	150	107		116	
2/13/08	4000	3560		3588	150	108		116	
2/14/08	4000	3554		3588	150	107		116	
2/15/08	-	-		3588	-	-		116	
2/18/08	4000	3506		3588	150	108		116	
2/19/08	4000	3533		3588	150	101		116	
2/20/08	4000	3412		3588	150	94		116	
2/21/08	4000	3718		3588	150	115		116	
2/22/08	4000	3708		3588	150	116		116	
2/25/08	4000	3592		3588	150	114		116	
2/26/08	4000	3520		3588	150	113		116	
2/27/08	4000	3499		3588	150	108		116	
2/28/08	4000	3470		3588	150	113		116	
2/29/08	4000	3460		3588	150	123		116	
3/3/08	4000	3565		3676	150	123		133	
3/4/08	4000	3580		3676	150	138		133	
3/5/08	4000	3455		3676	150	120		133	
3/6/08	4000	3572		3676	150	125		133	
3/7/08	4000	3532		3676	150	127		133	
3/10/08	4000	3653		3676	150	124		133	
3/11/08	4000	3783		3676	150	144		133	
3/12/08	4000	3703		3676	150	140		133	
3/13/08	4000	3694		3676	150	129		133	
3/14/08	4000	3824		3676	150	134		133	
3/17/08	4000	3834		3676	150	146		133	
3/18/08	4000	3830		3676	150	147		133	
3/19/08	4000	3679		3676	150	137		133	
3/20/08	-	-		3676	-	-		133	3 Freedom CCS Close. Issued: \$2.8 Bn
3/21/08	4000	3813		3676	150	148		133	
3/24/08	4000	3623		3676	150	134		133	
3/25/08	4000	2607		3676	150	138		133	
3/26/08	4000	3655		3676	150	131		133	
3/27/08	4000	3727		3676	150	138		133	
3/28/08	4000	3705		3676	150	118		133	
3/31/08	4000	3676		3676	150	124		133	2 FairPoint Communications Close. Commitment: ~ \$624 Mm
4/1/08	4000	3698		3676	150	114		123	
4/2/08	4000	3731		3676	150	123		123	
4/3/08	4000	3836		3676	150	130		123	

Total Firm - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
4/4/08	4000	3711		3676	150	127		123	
4/7/08	4000	3654		3676	150	128		123	
4/8/08	4000	3651		3676	150	125		123	
4/9/08	4000	3672		3676	150	127		123	
4/10/08	4000	3644		3676	150	126		123	
4/11/08	4000	3620		3676	150	121		123	
4/14/08	4000	3673		3676	150	125		123	
4/15/08	4000	3587		3676	150	116		123	
4/16/08	4000	3535		3676	150	112		123	
4/17/08	4000	3572		3676	150	117		123	
4/18/08	4000	3771		3676	150	127		123	
4/21/08	4000	3909		3676	150	138		123	
4/22/08	4000	3663		3676	150	120		123	
4/23/08	4000	3618		3676	150	118		123	
4/24/08	4000	3511		3676	150	112		123	
4/25/08	4000	3553		3676	150	113		123	
4/28/08	4000	3567		3676	150	114		123	3 Spruce CCS Close. Issued: \$1.9 Bn
4/29/08	4000	3784		3676	150	133		123	
4/30/08	4000	3924		3676	150	139		123	
5/1/08	4000	3743		3644	150	128		123	
5/2/08	4000	3748		3644	150	128		123	
5/5/08	4000	3827		3644	150	136		123	
5/6/08	4000	3735		3644	150	128		123	
5/7/08	4000	3830		3644	150	134		123	
5/8/08	4000	3772		3644	150	134		123	
5/9/08	4000	3887		3644	150	142		123	
5/12/08	4000	3762		3644	150	130		123	
5/13/08	4000	3675		3644	150	122		123	
5/14/08	4000	3707		3644	150	127		123	Proposal for amortizing limits for FID and IMD
5/15/08	4000	3694		3644	150	128		123	
5/16/08	4000	3624		3644	150	121		123	
5/19/08	4000	3716		3644	150	130		123	
5/20/08	4000	3516		3644	150	116		123	
5/21/08	4000	3589		3644	150	120		123	
5/22/08	4000	3563		3644	150	117		123	3 SASCO 2008-C2 Close. Issued: \$3.4 Bn
5/23/08	-	-	-	3644	-	-	-	123	3 Excalibur Funding No. 1 Close. Issued: €2.9 Bn
5/26/08	4000	3499		3644	150	115		123	
5/27/08	4000	3496		3644	150	111		123	
5/28/08	4000	3435		3644	150	109		123	
5/29/08	4000	3332		3644	150	104		123	3 Pine CCS Close. Issued: \$1.9 Bn
5/30/08	4000	3400		3644	150	106		123	
6/2/08	4000	3400		3512	150	105		111	
6/3/08	4000	3400		3512	150	105		111	
6/4/08	4000	3391		3512	150	103		111	
6/5/08	4000	3404		3512	150	106		111	
6/6/08	4000	3446		3512	150	107		111	
6/9/08	4000	3436		3512	150	105		111	
6/10/08	4000	3518		3512	150	109		111	
6/11/08	4000	3688		3512	150	116		111	
6/12/08	4000	3521		3512	150	112		111	

Total Firm - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
6/13/08	4000	3545		3512	150	110		111	
6/16/08	4000	3567		3512	150	112		111	
6/17/08	4000	3604		3512	150	117		111	
6/18/08	4000	3545		3512	150	112		111	
6/19/08	4000	3436		3512	150	103		111	
6/20/08	4000	3555		3512	150	113		111	
6/23/08	4000	3517		3512	150	110		111	
6/24/08	4000	3467		3512	150	111		111	
6/25/08	4000	3560		3512	150	118		111	
6/26/08	4000	3576		3512	150	120		111	
6/27/08	4000	3611		3512	150	124		111	
6/30/08	4000	3592		3512	150	120		111	
7/1/08	4000	3561		3494	150	117		112	
7/2/08	4000	3417		3494	150	111		112	
7/3/08	-	-	-	3494	-	-	-	112	
7/4/08	4000	3502		3494	150	114		112	
7/7/08	4000	3453		3494	150	110		112	
7/8/08	4000	3448		3494	150	109		112	
7/9/08	4000	3371		3494	150	104		112	
7/10/08	4000	3369		3494	150	103		112	
7/11/08	4000	3403		3494	150	105		112	
7/14/08	4000	3765		3494	150	130		112	
7/15/08	4000	3685		3494	150	124		112	
7/16/08	4000	3708		3494	150	127		112	
7/17/08	4000	3519		3494	150	113		112	
7/18/08	4000	3542		3494	150	115		112	
7/21/08	4000	3496		3494	150	112		112	
7/22/08	4000	3432		3494	150	107		112	
7/23/08	4000	3459		3494	150	109		112	
7/24/08	4000	3409		3494	150	106		112	
7/25/08	4000	3485		3494	150	111		112	3
7/28/08	4000	3487		3494	150	111		112	Verano CCS Close. Issued: \$1.8 Bn
7/29/08	4000	3486		3494	150	110		112	
7/30/08	4000	3489		3494	150	109		112	
7/31/08	4000	3402		3494	150	104		112	
8/1/08	4000	3470		3463	150	109		109	
8/4/08	4000	3515		3463	150	113		109	
8/5/08	4000	3596		3463	150	119		109	3
8/6/08	4000	3531		3463	150	115		109	Leoforos B. V. Close. Issued: €1.6 Bn
8/7/08	4000	3533		3463	150	114		109	
8/8/08	4000	3461		3463	150	109		109	
8/11/08	4000	3398		3463	150	105		109	
8/12/08	4000	3377		3463	150	104		109	
8/13/08	4000	3440		3463	150	108		109	
8/14/08	4000	3360		3463	150	102		109	
8/15/08	4000	3344		3463	150	101		109	
8/16/08	4000	3341		3463	150	99		109	
8/19/08	4000	3423		3463	150	105		109	
8/20/08	4000	3462		3463	150	108		109	
8/21/08	4000	3475		3463	150	109		109	

Total Firm - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
8/22/08	4000	3472		3463	150	108		109	
8/25/08	4000	3436		3463	150	106		109	
8/26/08	4000	3533		3463	150	113		109	
8/27/08	4000	3530		3463	150	113		109	
8/28/08	4000	3514		3463	150	112		109	
8/29/08	4000	3518		3463	150	111		109	
8/30/08	-	-	-	3463	-	-	-	109	
9/1/08	-	-	-	3766	-	-	-	127	
9/2/08	4000	3645		3766	150	121		127	
9/3/08	4000	3750		3766	150	126		127	
9/4/08	4000	3732		3766	150	124		127	
9/5/08	4000	3727		3766	150	123		127	
9/8/08	4000	3880		3766	150	132		127	
9/9/08	4000	3788		3766	150	126		127	
9/10/08	4000	3755		3766	150	125		127	
9/11/08	4000	3900		3766	150	135		127	
9/12/08	4000	3823		3766	150	131		127	
9/15/08	4000	3678		3766	150	122		127	

Sources:

Lehman Risk ("LR")

Notes:

* Breach is equal to the excess of usage over limit. A blank indicates no breach occurred. "-" Indicates no data is available.

** Monthly Average refers to each month's average usage. Days for which no data is provided are not counted as part of the average.

"DRA" is Daily Risk Appetite

1. Indicates Commercial Real Estate related deals.

2. Indicates Leveraged Loans related deals.

3. Indicates Securitization related deals.

Fixed Income Division - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
12/1/06	2200	1658		1716	75	47		41	
12/4/06	2200	1654		1716	75	44		41	
12/5/06	2200	1644		1716	75	43		41	
12/6/06	2200	1644		1716	75	47		41	
12/7/06	2200	1698		1716	75	45		41	
12/8/06	2200	1682		1716	75	43		41	
12/11/06	2200	1702		1716	75	42		41	
12/12/06	2200	1713		1716	75	41		41	
12/13/06	2200	1727		1716	75	40		41	
12/14/06	2200	1783		1716	75	44		41	
12/15/06	2200	1771		1716	75	44		41	
12/18/06	2200	1655		1716	75	40		41	
12/19/06	2200	1687		1716	75	41		41	
12/20/06	2200	1843		1716	75	41		41	
12/21/06	2200	1797		1716	75	40		41	
12/22/06	2200	1778		1716	75	39		41	
12/25/06	-	-		1716	-	-		41	
12/26/06	2200	1784		1716	75	41		41	
12/27/06	2200	1751		1716	75	37		41	
12/28/06	2200	1708		1716	75	35		41	
12/29/06	2200	1649		1716	75	35		41	
1/1/07	-	-		1535	-	-		36	
1/2/07	2200	1685		1535	75	39		36	
1/3/07	2200	1636		1535	75	38		36	
1/4/07	2200	1651		1535	75	39		36	
1/5/07	2200	1609		1535	75	38		36	
1/8/07	2200	1602		1535	75	38		36	
1/9/07	2200	1571		1535	75	35		36	
1/10/07	2200	1623		1535	75	38		36	
1/11/07	2200	1537		1535	75	35		36	
1/12/07	-	-		1535	-	-		36	
1/15/07	2200	1458		1535	75	35		36	2 FairPoint Communications original commitment: \$832 Mm
1/16/07	2200	1417		1535	75	34		36	
1/17/07	2200	1393		1535	75	32		36	
1/18/07	2200	1421		1535	75	33		36	
1/19/07	2200	1505		1535	75	35		36	
1/22/07	2200	1524		1535	75	38		36	
1/23/07	2200	1451		1535	75	35		36	
1/24/07	2200	1480		1535	75	35		36	
1/25/07	2200	1541		1535	75	37		36	
1/26/07	2200	1500		1535	75	34		36	
1/29/07	2200	1499		1535	75	34		36	
1/30/07	2200	1502		1535	75	31		36	
1/31/07	2200	1624		1535	75	40		36	
2/1/07	2200	1573		1594	75	37		43	
2/2/07	2200	1676		1594	75	46		43	
2/5/07	2200	1629		1594	75	46		43	
2/6/07	2200	1672		1594	75	45		43	
2/7/07	2200	1693		1594	75	46		43	
2/8/07	2200	1708		1594	75	47		43	
2/9/07	2200	1521		1594	75	39		43	

Fixed Income Division - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
2/12/07	2200	1525		1594	75	40		43	
2/13/07	2200	1539		1594	75	41		43	
2/14/07	2200	1487		1594	75	39		43	
2/15/07	2200	1589		1594	75	42		43	
2/16/07	-	-		1594	-	-		43	
2/19/07	2200	1574		1594	75	43		43	
2/20/07	2200	1513		1594	75	40		43	
2/21/07	2200	1529		1594	75	40		43	
2/22/07	2200	1488		1594	75	39		43	
2/23/07	2200	1563		1594	75	40		43	
2/26/07	2200	1640		1594	75	48		43	2
2/27/07	2200	1675		1594	75	49		43	3
2/28/07	2200	1689		1594	75	50		43	
3/1/07	2200	1664		1627	75	42		45	
3/2/07	2200	1714		1627	75	44		45	
3/5/07	2200	1571		1627	75	40		45	
3/6/07	2200	1535		1627	75	39		45	3
3/7/07	2200	1630		1627	75	43		45	
3/8/07	2200	1599		1627	75	40		45	
3/9/07	2200	1669		1627	75	42		45	
3/12/07	2200	1657		1627	75	47		45	
3/13/07	2200	1704		1627	75	47		45	
3/14/07	2200	1662		1627	75	50		45	
3/15/07	2200	1657		1627	75	49		45	
3/16/07	2200	1656		1627	75	49		45	
3/19/07	2200	1631		1627	75	48		45	
3/20/07	2200	1722		1627	75	50		45	
3/21/07	2200	1656		1627	75	52		45	
3/22/07	2200	1688		1627	75	47		45	
3/23/07	2200	1760		1627	75	50		45	
3/26/07	2200	1657		1627	75	48		45	
3/27/07	2200	1543		1627	75	41		45	
3/28/07	2200	1462		1627	75	39		45	
3/29/07	2200	1470		1627	75	41		45	
3/30/07	2200	1484		1627	75	40		45	3
4/2/07	2200	1506		1556	75	41		42	2
4/3/07	2200	1474		1556	75	36		42	
4/4/07	2200	1554		1556	75	42		42	
4/5/07	-	-		1556	-	-		42	
4/6/07	2200	1576		1556	75	42		42	
4/9/07	2200	1574		1556	75	41		42	
4/10/07	2200	1482		1556	75	38		42	
4/11/07	2200	1515		1556	75	40		42	
4/12/07	2200	1511		1556	75	38		42	
4/13/07	2200	1516		1556	75	39		42	
4/16/07	2200	1557		1556	75	42		42	2
4/17/07	2200	1603		1556	75	44		42	
4/18/07	2200	1612		1556	75	47		42	
4/19/07	2200	1622		1556	75	45		42	
4/20/07	2200	1583		1556	75	44		42	
4/23/07	2200	1561		1556	75	45		42	

Fixed Income Division - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
4/24/07	2200	1514		1556	75	43		42	
4/25/07	2200	1552		1556	75	46		42	
4/26/07	2200	1565		1556	75	46		42	2
4/27/07	2200	1624		1556	75	45		42	Local Insight Media original commitment: \$422 Mm
4/30/07	2200	1620		1556	75	43		42	
5/1/07	2200	1680		1628	75	48		44	
5/2/07	2200	1581		1628	75	43		44	
5/3/07	2200	1616		1628	75	45		44	
5/4/07	2200	1565		1628	75	42		44	
5/7/07	2200	1592		1628	75	45		44	
5/8/07	2200	1562		1628	75	42		44	
5/9/07	2200	1577		1628	75	44		44	3
5/10/07	2200	1550		1628	75	45		44	LB-UBS CoMm Mortgage Trust 2007-C2 Close. Issued: \$3.6 Bn
5/11/07	2200	1454		1628	75	42		44	2
5/14/07	2200	1579		1628	75	40		44	Endemo/Goldman Sachs original commitment: \$633 Mm
5/15/07	2200	1603		1628	75	39		44	1
5/16/07	2200	1619		1628	75	42		44	237 Park Avenue Close. Total exposure: \$1.35 Bn
5/17/07	2200	1609		1628	75	42		44	
5/18/07	2200	1629		1628	75	44		44	1
5/21/07	2200	1609		1628	75	41		44	2
5/22/07	2200	1613		1628	75	43		44	Beacon Fund III Close. Funding share: \$2.04 Bn
5/23/07	2200	1692		1628	75	44		44	Advent International - Lloyds TSB Close. Commitment: £264 Mm
5/24/07	2200	1784		1628	75	47		44	
5/25/07	-	-	-	1628	-	-	-	44	
5/28/07	2200	1769		1628	75	46		44	
5/29/07	2200	1733		1628	75	47		44	2
5/30/07	2200	1695		1628	75	42		44	CDW original commitment \$1,960 Mm
5/31/07	2200	1715		1628	75	44		44	3
6/1/07	2200	2124		2260	75	46		52	Fannie Mae REMIC Trust 2007-54 Close. Issued: \$2.5 Bn
6/4/07	2200	2156		2260	75	48		52	2
6/5/07	2200	2135		2260	75	47		52	Debits original commitment: €250 Mm
6/6/07	2200	2153		2260	75	44		52	1
6/7/07	2200	2221	21	2260	75	48		52	Archstone Commitment of \$10.9 Bn entered into LR. Closed: 10/5/07
6/8/07	2200	2148		2260	75	48		52	1
6/11/07	2200	2124		2260	75	48		52	EOP Austin Portfolio Close. Funding share: \$ 1.13 Bn
6/12/07	2200	2153		2260	75	45		52	Event on 6/4/07:
6/13/07	2200	2131		2260	75	48		52	ARINC Incorporated original commitment: \$825 Mm
6/14/07	2200	2234	34	2260	75	54		52	
6/15/07	2200	2341	141	2260	75	61		52	2
6/18/07	2200	2312	112	2260	75	56		52	Scopa A/S original commitment: €850 Mm
6/19/07	2200	2316	116	2260	75	55		52	Temporary limit increase: by \$200m to avoid breach - Alex Kirk
6/20/07	2200	2394	194	2260	75	60		52	
6/21/07	2200	2270	70	2260	75	52		52	
6/22/07	2200	2357	157	2260	75	56		52	2
6/23/07	2200	2345	145	2260	75	57		52	PQ Corp original commitment: \$488 Mm
6/26/07	2200	2303	103	2260	75	53		52	
6/27/07	2200	2452	252	2260	75	62		52	
6/28/07	2200	2375	175	2260	75	53		52	
6/29/07	2200	2410	210	2260	75	56		52	
7/2/07	2200	2470	270	2374	75	59		63	
7/3/07	-	-	-	2374	-	-	-	63	2
									Endemo/Goldman Sachs Close. (Commitment at close uncertain)

Fixed Income Division - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
7/4/07	2200	2401	201	2374	75	55		63	
7/5/07	2200	2339	139	2374	75	53		63	
7/6/07	2200	2274	74	2374	75	57		63	
7/9/07	2200	2277	77	2374	75	57		63	
7/10/07	2200	2372	172	2374	75	63		63	
7/11/07	2200	2298	98	2374	75	59		63	1 Dermody Close. Funding share: \$1.54 Bn
7/12/07	2200	2224	24	2374	75	57		63	Events on 7/16/07
7/13/07	2200	2201	1	2374	75	58		63	2 Houghton Mifflin original commitment: \$2,396 Mm
7/16/07	2200	2384	184	2374	75	70		63	2 Applebees/HOP original commitment: \$2,139 Mm
7/17/07	2200	2434	234	2374	75	71		63	1 Coeur Defense Close. Funding share: \$2,117 Bn
7/18/07	2200	2390	190	2374	75	69		63	
7/19/07	2200	2404	204	2374	75	64		63	
7/20/07	2200	2614	414	2374	75	78	3	63	
7/23/07	2200	2662	462	2374	75	81	6	63	
7/24/07	2200	2620	420	2374	75	80	5	63	
7/25/07	2200	2351	151	2374	75	62		63	
7/26/07	2200	2314	114	2374	75	62		63	2
7/27/07	2200	2269	69	2374	75	59		63	3
7/30/07	2200	2308	108	2374	75	58		63	2
7/31/07	2200	2244	44	2374	75	56		63	Events on 7/31/07:
8/1/07	2200	2114		2337	75	47		62	2
8/2/07	2200	2019		2337	75	39		62	3
8/3/07	2200	2114		2337	75	44		62	
8/6/07	2200	2176		2337	75	49		62	
8/7/07	2200	2317	117	2337	75	57		62	
8/8/07	2200	2332	132	2337	75	56		62	
8/9/07	2200	2394	194	2337	75	61		62	
8/10/07	2200	2577	377	2337	75	76	1	62	
8/13/07	2200	2421	221	2337	75	64		62	1
8/14/07	2200	2357	157	2337	75	65		62	Archstone and Dermody commitments initially included in RA in LR
8/15/07	2200	2360	160	2337	75	61		62	
8/16/07	2200	2373	173	2337	75	66		62	
8/17/07	2200	2248	48	2337	75	64		62	
8/20/07	2200	2191		2337	75	56		62	
8/21/07	2200	2285	85	2337	75	62		62	
8/22/07	2200	2274	74	2337	75	62		62	
8/23/07	2200	2406	206	2337	75	68		62	3
8/24/07	2200	2514	314	2337	75	80	5	62	LB Floating Rate CoMm Mort. Trust 2007-LLFAClose. Issued: \$2.4 Bn
8/27/07	2200	2453	253	2337	75	77	2	62	
8/28/07	2200	2403	203	2337	75	75		62	
8/29/07	2200	2437	237	2337	75	67		62	
8/30/07	2200	2446	246	2337	75	68		62	2
8/31/07	2200	2531	331	2337	75	72		62	3
9/3/07	2500	2501	1	2528	75	68		70	
9/4/07	2500	2519	19	2528	75	69		70	
9/5/07	2500	2513	13	2528	75	70		70	
9/6/07	2500	2611	111	2528	75	76	1	70	RA and VaR Restatement: incorrect HY data related to HD on 8/31/9/4
9/7/07	2500	2580	80	2528	75	79	4	70	
9/10/07	2500	2637	137	2528	75	78	3	70	Limit increase backdating: authorized 9/10, effective 9/1
9/11/07	2500	2550	50	2528	75	73		70	
9/12/07	2500	2501	1	2528	75	70		70	

Fixed Income Division - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
9/13/07	2500	2426		2528	75	64		70	
9/14/07	2500	2385		2528	75	65		70	
9/17/07	2500	2352		2528	75	60		70	
9/18/07	2500	2427		2528	75	64		70	
9/19/07	2500	2447		2528	75	67		70	
9/20/07	2500	2423		2528	75	65		70	
9/21/07	2500	2474		2528	75	67		70	
9/24/07	2500	2523	23	2528	75	72		70	
9/25/07	2500	2540	40	2528	75	72		70	2
9/26/07	2500	2610	110	2528	75	66		70	First Data Close. Commitment: \$3,120 Mm
9/27/07	2500	2699	199	2528	75	75		70	
9/28/07	2500	2840	340	2528	75	73		70	
10/1/07	2500	2843	343	2636	75	75		78	
10/2/07	2500	2861	361	2636	75	73		78	
10/3/07	2500	2818	318	2636	75	76	1	78	
10/4/07	2500	2792	292	2636	75	79	4	78	
10/5/07	2500	2553	53	2636	75	73		78	1
10/8/07	2500	2479		2636	75	68		78	Archstone Close. Funding share: \$5.42 Bn
10/9/07	2500	2531	31	2636	75	76	1	78	
10/10/07	2500	2611	111	2636	75	77	2	78	2
10/11/07	2500	2653	153	2636	75	76	1	78	Energy Future Holdings (TXU) Close. Commitment: \$4,737 Mm
10/12/07	2500	2649	149	2636	75	76	1	78	2
10/15/07	2500	2569	69	2636	75	76	1	78	1
10/16/07	2500	2590	90	2636	75	77	2	78	CDW Close. Commitment \$1,494 Mm
10/17/07	2500	2658	158	2636	75	81	6	78	1
10/18/07	2500	2643	143	2636	75	85	10	78	Carlyle Close. Funding share: €638 Mm
10/19/07	2500	2706	206	2636	75	90	15	78	Request for limit increase: RE and HY Loans
10/22/07	2500	2582	82	2636	75	78	3	78	Request for limit removal: VaR on America's Commodities
10/23/07	2500	2667	167	2636	75	85	10	78	1
10/24/07	2500	2675	175	2636	75	83	8	78	Events on 10/24/07:
10/25/07	2500	2615	115	2636	75	83	8	78	1
10/26/07	2500	2577	77	2636	75	77	2	78	2
10/29/07	2500	2519	19	2636	75	77	2	78	Gospe/Diversity Close. Funding: \$2.63 Bn (Date Uncertain)
10/30/07	2500	2554	54	2636	75	80	5	78	Hilton - Project Murphy Close. Funding share: \$1.54 Bn
10/31/07	2500	2483		2636	75	78	3	78	ARINC Incorporated Close. Commitment: \$385 Mm
11/1/07	2500	2736	236	2586	75	93	18	98	
11/2/07	2500	2768	268	2586	75	107	32	98	
11/5/07	2500	2743	243	2586	75	98	23	98	Request for limit increase: VaR on HG Loans
11/6/07	2500	2565	65	2586	75	96	21	98	
11/7/07	2500	2518	18	2586	75	96	21	98	
11/8/07	2500	2429		2586	75	88	13	98	
11/9/07	2500	2547	47	2586	75	94	19	98	
11/12/07	2500	2501	1	2586	75	93	18	98	
11/13/07	2500	2425		2586	75	89	14	98	
11/14/07	2500	2461		2586	75	89	14	98	
11/15/07	2500	2486		2586	75	91	16	98	
11/16/07	2500	2493		2586	75	94	19	98	
11/19/07	2500	2785	285	2586	75	114	39	98	
11/20/07	2500	2590	90	2586	75	102	27	98	
11/21/07	-	-	-	2586	-	-	-	98	
11/22/07	2500	2787	287	2586	75	114	39	98	

Fixed Income Division - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
11/23/07	2500	2768	268	2586	75	112	37	98	
11/26/07	2500	2607	107	2586	75	107	32	98	
11/27/07	2500	2453		2586	75	99	24	98	
11/28/07	2500	2640	140	2586	75	99	24	98	
11/29/07	2500	2666	166	2586	75	103	28	98	
11/30/07	2500	2343		2586	75	88	13	98	2 Applebees/HOPC lose. (Commitment at close uncertain)
12/3/07	2500	2670	170	2579	75	107	32	101	2
12/4/07	2500	2730	230	2579	75	110	35	101	2
12/5/07	2500	2758	258	2579	75	112	37	101	
12/6/07	2500	2662	162	2579	75	109	34	101	
12/7/07	2500	2670	170	2579	75	112	37	101	
12/10/07	2500	2480		2579	75	94	19	101	
12/11/07	2500	2349		2579	75	86	11	101	
12/12/07	2500	2425		2579	75	90	15	101	2
12/13/07	2500	2499		2579	75	91	16	101	2
12/14/07	2500	2492		2579	75	107	32	101	
12/17/07	2500	2546	46	2579	75	102	27	101	
12/18/07	2500	2638	138	2579	75	107	32	101	
12/19/07	2500	2693	193	2579	75	110	35	101	
12/20/07	2500	2701	201	2579	75	107	32	101	
12/21/07	2500	2583	83	2579	75	101	26	101	
12/24/07	2500	2535	35	2579	75	97	22	101	
12/25/07	-	-	-	2579	-	-	-	101	
12/26/07	2500	2561	61	2579	75	95	20	101	
12/27/07	2500	2500	0	2579	75	92	17	101	
12/28/07	2500	2550	50	2579	75	93	18	101	
12/31/07	2500	2534	34	2579	75	92	17	101	
1/1/08	-	-	-	2590	-	-	-	105	
1/2/08	2500	2548	48	2590	75	94	19	105	
1/3/08	2500	2436		2590	75	92	17	105	
1/4/08	2500	2535	35	2590	75	95	20	105	
1/7/08	2500	2422		2590	75	90	15	105	
1/8/08	2500	2592	92	2590	75	103	28	105	
1/9/08	2500	2640	140	2590	75	109	34	105	
1/10/08	2500	2705	205	2590	75	117	42	105	
1/11/08	2500	2755	255	2590	75	117	42	105	
1/14/08	2500	2678	178	2590	75	119	44	105	
1/15/08	2500	2766	266	2590	75	119	44	105	
1/16/08	2500	2712	212	2590	75	117	42	105	
1/17/08	2500	2632	132	2590	75	108	33	105	
1/18/08	-	-	-	2590	-	-	-	105	
1/21/08	2500	2483		2590	75	99	24	105	
1/22/08	2500	2506	6	2590	75	105	30	105	
1/23/08	2500	2691	191	2590	75	114	39	105	
1/24/08	2500	2564	64	2590	75	99	24	105	
1/25/08	2500	2567	67	2590	75	103	28	105	
1/28/08	2500	2611	111	2590	75	103	28	105	
1/29/08	2500	2486		2590	75	97	22	105	
1/30/08	2500	2525	25	2590	75	100	25	105	
1/31/08	2500	2543	43	2590	75	93	18	105	
2/1/08	2500	2480		2543	75	96	21	88	

Fixed Income Division - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
2/4/08	2500	2527	27	2543	75	92	17	88	
2/5/08	2500	2566	66	2543	75	94	19	88	2 Captive Plastics Close. Commitment: (Commitment at close uncertain)
2/6/08	2500	2553	53	2543	75	94	19	88	
2/7/08	2500	2430		2543	75	87	12	88	
2/8/08	2500	2402		2543	75	85	10	88	
2/11/08	2500	2535	35	2543	75	84	9	88	
2/12/08	2500	2599	99	2543	75	88	13	88	
2/13/08	2500	2521	21	2543	75	83	8	88	
2/14/08	2500	2500	0	2543	75	74		88	
2/15/08	-	-	-	2543	-	-	-	88	
2/18/08	2500	2556	56	2543	75	82	7	88	
2/19/08	2500	2563	63	2543	75	78	3	88	
2/20/08	2500	2588	88	2543	75	79	4	88	
2/21/08	2500	2679	179	2543	75	89	14	88	
2/22/08	2500	2659	159	2543	75	88	13	88	
2/25/08	2500	2547	47	2543	75	94	19	88	
2/26/08	2500	2550	50	2543	75	87	12	88	
2/27/08	2500	2531	31	2543	75	90	15	88	
2/28/08	2500	2533	33	2543	75	95	20	88	
2/29/08	2500	2533	33	2543	75	93	18	88	
3/3/08	2500	2515	15	2820	75	95	20	113	
3/4/08	2500	2757	257	2820	75	108	33	113	
3/5/08	2500	2614	114	2820	75	102	27	113	
3/6/08	2500	2660	160	2820	75	111	36	113	
3/7/08	2500	2643	143	2820	75	109	34	113	
3/10/08	2500	2871	371	2820	75	107	32	113	
3/11/08	2500	2738	238	2820	75	110	35	113	
3/12/08	2500	2613	113	2820	75	100	25	113	
3/13/08	2500	2782	282	2820	75	116	41	113	
3/14/08	2500	2858	358	2820	75	115	40	113	
3/17/08	2500	2919	419	2820	75	118	43	113	
3/18/08	2500	2819	319	2820	75	122	47	113	
3/19/08	2500	2896	396	2820	75	116	41	113	
3/20/08	-	-	-	2820	-	-	-	113	3 Freedom CCSClose. Issued: \$2.8 Bn
3/21/08	2500	2906	406	2820	75	124	49	113	
3/24/08	2500	3028	528	2820	75	121	46	113	
3/25/08	2500	2918	418	2820	75	116	41	113	
3/26/08	2500	3003	503	2820	75	121	46	113	
3/27/08	2500	2937	437	2820	75	119	44	113	
3/28/08	2500	2999	499	2820	75	114	39	113	
3/31/08	2500	2916	416	2820	75	112	37	113	2 FairPoint Communications Close. Commitment: ~\$624 Mm
4/1/08	2500	2877	377	2932	75	105	30	110	
4/2/08	2500	2923	423	2932	75	106	31	110	
4/3/08	2500	2954	454	2932	75	111	36	110	
4/4/08	2500	2926	426	2932	75	110	35	110	
4/7/08	2500	2960	460	2932	75	119	44	110	
4/8/08	2500	2949	449	2932	75	115	40	110	
4/9/08	2500	2984	484	2932	75	117	42	110	
4/10/08	2500	2883	383	2932	75	109	34	110	
4/11/08	2500	2911	411	2932	75	109	34	110	
4/14/08	2500	2928	428	2932	75	109	34	110	

Fixed Income Division - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
4/15/08	2500	2875	375	2932	75	104	29	110	
4/16/08	2500	2864	364	2932	75	104	29	110	
4/17/08	2500	2719	219	2932	75	98	23	110	
4/18/08	2500	3022	522	2932	75	117	42	110	
4/21/08	2500	3073	573	2932	75	121	46	110	
4/22/08	2500	2995	495	2932	75	115	40	110	
4/23/08	2500	3049	549	2932	75	117	42	110	
4/24/08	2500	2973	473	2932	75	113	38	110	
4/25/08	2500	2822	322	2932	75	107	32	110	
4/28/08	2500	2898	398	2932	75	104	29	110	
4/29/08	2500	2983	483	2932	75	107	32	110	3 Spruce CCS Close. Issued: \$1.9 Bn
4/30/08	2500	2941	441	2932	75	110	35	110	
5/1/08	2500	2962	462	2791	75	111	36	100	
5/2/08	2500	2831	331	2791	75	104	29	100	
5/5/08	2500	2759	259	2791	75	99	24	100	
5/6/08	2500	2818	318	2791	75	102	27	100	
5/7/08	2500	2916	416	2791	75	105	30	100	
5/8/08	2500	2811	311	2791	75	105	30	100	
5/9/08	2500	3025	525	2791	75	114	39	100	
5/12/08	2500	2882	382	2791	75	109	34	100	
5/13/08	2500	2815	315	2791	75	97	22	100	
5/14/08	2500	2878	378	2791	75	103	28	100	
5/15/08	3000	2841		2791	125	104		100	Proposal for amortizing limits: \$3025m to \$2500m
5/16/08	3000	2735		2791	125	99		100	Request for limit increase: European Commodities
5/19/08	3000	2773		2791	125	102		100	
5/20/08	3000	2754		2791	125	101		100	
5/21/08	3000	2788		2791	125	100		100	
5/22/08	3000	2619		2791	125	90		100	
5/23/08	-	-	-	2791	-	-	-	100	3 SASCO 2008 C2 Close. Issued: \$3.4 Bn
5/26/08	3000	2735		2791	125	98		100	3 Excalibur Funding No. 1 Close. Issued: €2.9 Bn
5/27/08	3000	2696		2791	125	94		100	
5/28/08	3000	2672		2791	125	91		100	
5/29/08	3000	2630		2791	125	91		100	3 Pine CCS Close. Issued: \$1.9 Bn
5/30/08	3000	2684		2791	125	92		100	
6/2/08	3000	2632		2933	125	89		104	
6/3/08	3000	2682		2933	125	89		104	
6/4/08	3000	2704		2933	125	91		104	
6/5/08	3000	2667		2933	125	88		104	
6/6/08	3000	2744		2933	125	94		104	
6/9/08	3000	2790		2933	125	95		104	
6/10/08	3000	2960		2933	125	105		104	
6/11/08	3000	3068	68	2933	125	109		104	
6/12/08	3000	3002	2	2933	125	107		104	
6/13/08	3000	2928		2933	125	98		104	
6/16/08	3000	2957		2933	125	101		104	
6/17/08	3000	3073	73	2933	125	111		104	
6/18/08	3000	2948		2933	125	102		104	
6/19/08	3000	3069	69	2933	125	110		104	
6/20/08	3000	3049	49	2933	125	109		104	
6/23/08	3000	3096	96	2933	125	112		104	
6/24/08	3000	3065	65	2933	125	115		104	

Fixed Income Division - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
6/25/08	3000	3155	155	2933	125	121		104	
6/26/08	3000	3047	47	2933	125	117		104	
6/27/08	3000	3036	36	2933	125	118		104	
6/30/08	3000	2915		2933	125	106		104	
7/1/08	3000	3013	13	2947	125	113		108	
7/2/08	3000	2911		2947	125	111		108	
7/3/08	-	-	-	2947	-	-	-	108	
7/4/08	3000	2971		2947	125	110		108	
7/7/08	3000	2904		2947	125	106		108	
7/8/08	3000	2825		2947	125	100		108	
7/9/08	3000	2869		2947	125	103		108	
7/10/08	3000	2799		2947	125	98		108	
7/11/08	3000	2945		2947	125	107		108	
7/14/08	3000	3073	73	2947	125	115		108	
7/15/08	3000	2968		2947	125	108		108	
7/16/08	3000	2988		2947	125	110		108	
7/17/08	3000	2815		2947	125	98		108	
7/18/08	3000	2881		2947	125	103		108	
7/21/08	3000	2927		2947	125	106		108	
7/22/08	3000	3062	62	2947	125	115		108	
7/23/08	3000	3075	75	2947	125	116		108	
7/24/08	3000	3021	21	2947	125	113		108	
7/25/08	3000	3054	54	2947	125	115		108	
7/28/08	3000	3008	8	2947	125	110		108	3
7/29/08	3000	2999		2947	125	109		108	
7/30/08	3000	2879		2947	125	101		108	
7/31/08	3000	2848		2947	125	99		108	
8/1/08	3000	2952		2856	125	107		100	
8/4/08	3000	2987		2856	125	110		100	
8/5/08	3000	2997		2856	125	111		100	3
8/6/08	3000	2878		2856	125	102		100	
8/7/08	3000	2938		2856	125	106		100	
8/8/08	3000	2905		2856	125	104		100	
8/11/08	3000	2831		2856	125	99		100	
8/12/08	3000	2861		2856	125	102		100	
8/13/08	3000	2977		2856	125	110		100	
8/14/08	3000	2886		2856	125	103		100	
8/15/08	3000	2800		2856	125	97		100	
8/18/08	3000	2906		2856	125	103		100	
8/19/08	3000	2780		2856	125	95		100	
8/20/08	3000	2743		2856	125	92		100	
8/21/08	3000	2715		2856	125	90		100	
8/22/08	3000	2762		2856	125	93		100	
8/25/08	3000	2723		2856	125	90		100	
8/26/08	3000	2856		2856	125	99		100	
8/27/08	3000	2844		2856	125	99		100	
8/28/08	3000	2844		2856	125	99		100	
8/29/08	3000	2786		2856	125	94		100	
8/30/08	-	-	-	2856	-	-	-	100	
9/1/08	-	-	-	2990	-	-	-	105	
9/2/08	3000	2905		2990	125	104		105	

Fixed Income Division - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
9/3/08	3000	2954		2990	125	104		105	
9/4/08	3000	2927		2990	125	102		105	
9/5/08	3000	2909		2990	125	100		105	
9/8/08	3000	3090	90	2990	125	111		105	
9/9/08	3000	3058	58	2990	125	108		105	
9/10/08	3000	3098	98	2990	125	111		105	
9/11/08	3000	3043	43	2990	125	108		105	
9/12/08	3000	3084	84	2990	125	111		105	
9/15/08	3000	2833		2990	125	95		105	

Sources:

Lehman Risk ("LR")

Notes:

* Breach is equal to the excess of usage over limit. A blank indicates no breach occurred. "-" indicates no data is available.

** Monthly Average refers to each month's average usage. Days for which no data is provided are not counted as part of the average.

"DRA" is Daily Risk Appetite

1. Indicates Commercial Real Estate related deals.

2. Indicates Leveraged Loans related deals.

3. Indicates Securitization related deals.

High Yield Total - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
12/1/06	755	518		602	25	14		15	
12/4/06	755	546		602	25	14		15	
12/5/06	755	552		602	25	15		15	
12/6/06	755	558		602	25	15		15	
12/7/06	755	587		602	25	16		15	
12/8/06	755	599		602	25	15		15	
12/11/06	755	600		602	25	16		15	
12/12/06	755	562		602	25	14		15	
12/13/06	755	619		602	25	16		15	
12/14/06	755	623		602	25	16		15	
12/15/06	755	637		602	25	16		15	
12/18/06	755	625		602	25	16		15	
12/19/06	755	648		602	25	16		15	
12/20/06	755	682		602	25	17		15	
12/21/06	755	639		602	25	15		15	
12/22/06	755	626		602	25	15		15	
12/25/06	-	-		602	-	-		15	
12/26/06	755	620		602	25	15		15	
12/27/06	755	615		602	25	15		15	
12/28/06	755	596		602	25	15		15	
12/29/06	755	591		602	25	15		15	
1/1/07	-	-		559	-	-		13	
1/2/07	755	588		559	25	15		13	
1/3/07	755	596		559	25	14		13	
1/4/07	755	601		559	25	15		13	
1/5/07	755	581		559	25	14		13	
1/8/07	755	578		559	25	14		13	
1/9/07	755	587		559	25	14		13	
1/10/07	755	597		559	25	15		13	
1/11/07	755	565		559	25	14		13	
1/12/07	-	-		559	-	-		13	
1/15/07	755	555		559	25	14		13	2
1/16/07	755	528		559	25	13		13	FairPoint Communications original commitment: \$832 Mm
1/17/07	755	530		559	25	13		13	
1/18/07	755	526		559	25	12		13	
1/19/07	755	524		559	25	12		13	
1/22/07	755	532		559	25	12		13	
1/23/07	755	527		559	25	11		13	
1/24/07	755	527		559	25	11		13	
1/25/07	755	543		559	25	11		13	
1/26/07	755	532		559	25	11		13	
1/29/07	755	557		559	25	12		13	
1/30/07	755	561		559	25	12		13	
1/31/07	755	599		559	25	12		13	
2/1/07	755	603		600	25	13		13	
2/2/07	755	605		600	25	13		13	
2/5/07	755	590		600	25	13		13	
2/6/07	755	604		600	25	13		13	
2/7/07	755	616		600	25	14		13	
2/8/07	755	618		600	25	14		13	
2/9/07	755	609		600	25	14		13	

High Yield Total - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
2/12/07	755	602		600	25	14		13	
2/13/07	755	626		600	25	14		13	
2/14/07	755	594		600	25	14		13	
2/15/07	755	591		600	25	14		13	
2/16/07	-	-		600	-	-		13	
2/19/07	755	583		600	25	13		13	
2/20/07	755	554		600	25	12		13	
2/21/07	755	581		600	25	12		13	
2/22/07	755	588		600	25	12		13	
2/23/07	755	611		600	25	13		13	
2/26/07	755	611		600	25	12		13	2
2/27/07	755	590		600	25	12		13	3
2/28/07	755	634		600	25	14		13	Energy Future Holdings (TXU) original commitment: \$4.737 Bn LB-UBS CoMm Mortgage Trust 2007-C1 Close. Issued: \$3.7 Bn
3/1/07	755	599		651	25	13		14	
3/2/07	755	682		651	25	15		14	
3/5/07	755	655		651	25	13		14	
3/6/07	755	563		651	25	11		14	3
3/7/07	755	597		651	25	12		14	Pyxis ABS CDO 2007-1 Close. Issued: \$1.5 Bn
3/8/07	755	615		651	25	12		14	
3/9/07	755	606		651	25	12		14	
3/12/07	755	624		651	25	12		14	
3/13/07	755	677		651	25	16		14	
3/14/07	755	678		651	25	17		14	
3/15/07	755	676		651	25	17		14	
3/16/07	755	670		651	25	16		14	
3/19/07	755	652		651	25	15		14	
3/20/07	755	698		651	25	16		14	
3/21/07	755	706		651	25	15		14	
3/22/07	755	707		651	25	14		14	
3/23/07	755	707		651	25	14		14	
3/26/07	755	647		651	25	14		14	
3/27/07	755	613		651	25	13		14	
3/28/07	755	654		651	25	14		14	
3/29/07	755	666		651	25	16		14	
3/30/07	755	638		651	25	15		14	3
4/2/07	755	652		701	25	16		16	2
4/3/07	755	648		701	25	16		16	Fis1 Data original commitment: \$3.120 Bn
4/4/07	755	680		701	25	16		16	
4/5/07	-	-		701	-	-		16	
4/6/07	755	660		701	25	16		16	
4/9/07	755	664		701	25	16		16	
4/10/07	755	647		701	25	15		16	
4/11/07	755	657		701	25	15		16	
4/12/07	755	660		701	25	15		16	
4/13/07	755	665		701	25	15		16	
4/16/07	755	670		701	25	15		16	2
4/17/07	755	701		701	25	16		16	Advent International - Lloyds TSB original commitment: £ 281 Mm
4/18/07	755	691		701	25	16		16	
4/19/07	755	684		701	25	16		16	
4/20/07	755	697		701	25	15		16	
4/23/07	755	679		701	25	15		16	

High Yield Total - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
4/24/07	755	687		701	25	15		16	
4/25/07	860	720		701	28	16		16	
4/26/07	860	735		701	28	16		16	2
4/27/07	860	906	46	701	28	16		16	Local Insight Media original commitment: \$422 Mm
4/30/07	860	914	54	701	28	17		16	
5/1/07	860	899	39	770	28	16		17	
5/2/07	860	848		770	28	18		17	
5/3/07	860	837		770	28	18		17	
5/4/07	860	816		770	28	17		17	
5/7/07	860	804		770	28	17		17	
5/8/07	860	786		770	28	17		17	
5/9/07	860	758		770	28	16		17	3
5/10/07	860	740		770	28	15		17	LB-UBS CoMm Mortgage Trust 2007-C2 Close. Issued: \$3.6 Bn
5/11/07	860	728		770	28	15		17	2
5/14/07	860	747		770	28	15		17	Endemo/Goldman Sachs original commitment: \$633 Mm
5/15/07	860	788		770	28	17		17	1
5/16/07	860	719		770	28	17		17	237 Park Avenue Close. Total exposure: \$1.35 Bn
5/17/07	860	715		770	28	17		17	1
5/18/07	860	717		770	28	17		17	2
5/21/07	860	695		770	28	17		17	Beacon Fund III Close. Funding share: \$2.04 Bn
5/22/07	860	710		770	28	17		17	Advent International - Lloyds TSB Close. Commitment: £264 Mm
5/23/07	860	763		770	28	17		17	
5/24/07	860	794		770	28	18		17	
5/25/07	-	-	-	770	-	-	-	17	
5/28/07	860	789		770	28	18		17	
5/29/07	860	768		770	28	17		17	2
5/30/07	860	758		770	28	17		17	CDW original commitment \$1,960 Mm
5/31/07	860	771		770	28	18		17	Fannie Mae REMIC Trust 2007-54 Close. Issued: \$2.5 Bn
6/1/07	860	767		822	28	18		22	2
6/4/07	860	766		822	28	17		22	1
6/5/07	860	765		822	28	17		22	Archstone Commitment of \$10.9 Bn entered into LR. Closed: 10/5/07
6/6/07	860	747		822	28	17		22	1
6/7/07	860	827		822	28	22		22	EOP Austin Portfolio Close. Funding share: \$ 1.13 Bn
6/8/07	860	765		822	28	21		22	2
6/11/07	860	728		822	28	20		22	ARINC Incorporated original commitment: \$825 Mm
6/12/07	860	783		822	28	22		22	2
6/13/07	860	754		822	28	20		22	Local A/S original commitment: €850 Mm
6/14/07	860	787		822	28	23		22	
6/15/07	860	817		822	28	25		22	
6/18/07	850	812		822	27	24		22	2
6/19/07	850	807		822	27	24		22	Sequa Corp original commitment: \$2,050 Mm
6/20/07	850	918	68	822	27	27	0	22	2
6/21/07	850	857	7	822	27	23		22	Home Depot Supply original commitment: \$2,400 Mm
6/22/07	850	840		822	27	22		22	2
6/23/07	850	856	6	822	27	22		22	PQ Corp original commitment: \$488 Mm
6/26/07	850	831		822	27	21		22	
6/27/07	850	947	97	822	27	24		22	
6/28/07	850	932	82	822	27	24		22	
6/29/07	850	960	110	822	27	26		22	
7/2/07	850	978	128	891	27	27	0	28	
7/3/07	-	-	-	891	-	-	-	28	2

High Yield Total - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
7/4/07	850	975	125	891	27	27	0	28	
7/5/07	850	820		891	27	27	0	28	
7/6/07	850	830		891	27	28	1	28	
7/9/07	850	832		891	27	29	2	28	
7/10/07	850	805		891	27	27		28	
7/11/07	850	794		891	27	26		28	1 Dermody Close. Funding share: \$1.54 Bn
7/12/07	850	749		891	27	23		28	Events on 7/16/07
7/13/07	850	738		891	27	22		28	2 Houghton Mifflin original commitment: \$2,396 Mm
7/16/07	850	786		891	27	25		28	2 Applebees/HOP original commitment: \$2,139 Mm
7/17/07	850	801		891	27	26		28	1 Coeur Defense Close. Funding share: \$2,117 Bn
7/18/07	850	781		891	27	25		28	
7/19/07	850	930	80	891	27	25		28	
7/20/07	850	1011	161	891	27	31	4	28	
7/23/07	850	1015	165	891	27	31	4	28	
7/24/07	850	1015	165	891	27	31	4	28	
7/25/07	850	954	104	891	27	28	1	28	
7/26/07	850	985	135	891	27	34	7	28	
7/27/07	850	984	134	891	27	35	8	28	2 Debitel Close. Commitment: €250 Mm
7/30/07	850	1020	170	891	27	38	11	28	3 LB CoMm Mortgage Trust 2007-C3 Close. Issued: \$3.2 Bn
7/31/07	850	904	54	891	27	30	3	28	2 PQ Corp Close. Commitment: \$488 Mm
8/1/07	850	817		912	27	24		30	Events on 7/31/07:
8/2/07	850	777		912	27	22		30	2 Icopal A/S Close. Commitment: €255 Mm
8/3/07	850	763		912	27	21		30	3 LB XS Trust Mort. Pass-Through Certs, Ser. 2007-15N. Issued: \$2.8 Bn
8/6/07	850	781		912	27	22		30	
8/7/07	850	880	30	912	27	25		30	
8/8/07	850	834		912	27	25		30	
8/9/07	850	865	15	912	27	27	0	30	
8/10/07	850	865	15	912	27	27	0	30	
8/13/07	850	881	31	912	27	28	1	30	1 Archstone and Dermody commitments initially included in RA in LR
8/14/07	850	887	37	912	27	29	2	30	
8/15/07	850	884	34	912	27	30	3	30	
8/16/07	850	896	46	912	27	30	3	30	
8/17/07	850	902	52	912	27	31	4	30	
8/20/07	850	940	90	912	27	34	7	30	
8/21/07	850	936	86	912	27	33	6	30	
8/22/07	850	943	93	912	27	34	7	30	
8/23/07	850	934	84	912	27	36	9	30	
8/24/07	850	956	106	912	27	37	10	30	3 LB Floating Rate CoMm Mort. Trust 2007-LLFA Close. Issued: \$2.4 Bn
8/27/07	850	965	115	912	27	37	10	30	
8/28/07	850	939	89	912	27	36	9	30	
8/29/07	850	961	111	912	27	36	9	30	
8/30/07	850	921	71	912	27	32	5	30	
8/31/07	850	1453	603	912	27	44	17	30	2 Home Depot Supply Close. Commitment: \$1,333 Mm
9/3/07	850	1452	602	1458	27	44	17	41	3 Fannie Mae Trust 2007-95 Close. Issued: \$2.8 Bn
9/4/07	850	1476	626	1458	27	45	18	41	
9/5/07	850	1438	588	1458	27	42	15	41	
9/6/07	850	1417	567	1458	27	41	14	41	RA and VaR Restatement: incorrect HY data related to HD on 8/31 9/4
9/7/07	850	1414	564	1458	27	41	14	41	
9/10/07	850	1483	633	1458	27	42	15	41	Limit increase backdating: authorized 9/10, effective 9/1
9/11/07	850	1488	638	1458	27	43	16	41	
9/12/07	850	1446	596	1458	27	41	14	41	

High Yield Total - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
9/13/07	850	1456	606	1458	27	41	14	41	
9/14/07	850	1402	552	1458	27	36	9	41	
9/17/07	850	1424	574	1458	27	36	9	41	
9/18/07	850	1440	590	1458	27	38	11	41	
9/19/07	850	1438	588	1458	27	39	12	41	
9/20/07	850	1444	594	1458	27	40	13	41	
9/21/07	850	1415	565	1458	27	38	11	41	
9/24/07	850	1441	591	1458	27	38	11	41	
9/25/07	850	1441	591	1458	27	38	11	41	2
9/26/07	850	1469	619	1458	27	40	13	41	First Data Close. Commitment \$3,120 Mm
9/27/07	850	1476	626	1458	27	41	14	41	
9/28/07	850	1708	858	1458	27	48	21	41	
10/1/07	850	1747	897	1520	27	50	23	52	
10/2/07	850	1717	867	1520	27	47	20	52	
10/3/07	850	1652	802	1520	27	49	22	52	
10/4/07	850	1565	715	1520	27	46	19	52	
10/5/07	850	1501	651	1520	27	47	20	52	1
10/8/07	850	1493	643	1520	27	46	19	52	Archstone Close. Funding share: \$5.42 Bn
10/9/07	850	1493	643	1520	27	46	19	52	
10/10/07	850	1516	666	1520	27	49	22	52	2
10/11/07	850	1504	654	1520	27	48	21	52	Energy Future Holdings (TXU) Close. Commitment: \$4,737 Mm
10/12/07	850	1475	625	1520	27	47	20	52	2
10/15/07	850	1468	618	1520	27	48	21	52	1
10/16/07	850	1488	638	1520	27	51	24	52	CDW Close. Commitment \$1,494 Mm
10/17/07	850	1487	637	1520	27	52	25	52	1
10/18/07	850	1521	671	1520	27	55	28	52	Carlyle Close. Funding share: €638 Mm
10/19/07	850	1557	707	1520	27	58	31	52	Request for limit increase: RE and HY Loans
10/22/07	850	1557	707	1520	27	58	31	52	
10/23/07	850	1550	700	1520	27	59	32	52	1
10/24/07	850	1573	723	1520	27	59	32	52	1
10/25/07	850	1542	692	1520	27	58	31	52	2
10/26/07	850	1543	693	1520	27	57	30	52	Events on 10/24/07:
10/29/07	850	1379	529	1520	27	57	30	52	Gosnell/Diversity Close. Funding: \$2.63 Bn (Date Uncertain)
10/30/07	850	1326	476	1520	27	54	27	52	Hilton - Project Murphy Close. Funding share: \$1.54 Bn
10/31/07	850	1297	447	1520	27	53	26	52	2
11/1/07	850	1296	446	1358	27	53	26	62	ARINC Incorporated Close. Commitment: \$385 Mm
11/2/07	850	1440	590	1358	27	65	38	62	
11/5/07	850	1384	534	1358	27	61	34	62	
11/6/07	850	1351	501	1358	27	59	32	62	
11/7/07	850	1345	495	1358	27	58	31	62	
11/8/07	850	1377	527	1358	27	61	34	62	
11/9/07	850	1382	532	1358	27	63	36	62	
11/12/07	850	1394	544	1358	27	64	37	62	
11/13/07	850	1338	488	1358	27	60	33	62	
11/14/07	850	1302	452	1358	27	58	31	62	
11/15/07	850	1285	435	1358	27	57	30	62	
11/16/07	850	1332	482	1358	27	60	33	62	
11/19/07	850	1342	492	1358	27	61	34	62	
11/20/07	850	1340	490	1358	27	62	35	62	
11/21/07	-	-	-	1358	-	-	-	62	
11/22/07	850	1377	527	1358	27	64	37	62	

High Yield Total - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
11/23/07	850	1389	539	1358	27	65	38	62	
11/26/07	850	1416	566	1358	27	67	40	62	
11/27/07	850	1401	551	1358	27	66	39	62	
11/28/07	850	1364	514	1358	27	64	37	62	
11/29/07	850	1375	525	1358	27	64	37	62	
11/30/07	850	1286	436	1358	27	59	32	62	
12/3/07	850	1323	473	1412	27	61	34	68	
12/4/07	850	1337	487	1412	27	61	34	68	
12/5/07	850	1408	568	1412	27	67	40	68	
12/6/07	850	1390	540	1412	27	65	38	68	
12/7/07	850	1390	540	1412	27	65	38	68	
12/10/07	850	1384	534	1412	27	65	38	68	
12/11/07	850	1369	519	1412	27	64	37	68	
12/12/07	850	1335	485	1412	27	62	35	68	
12/13/07	850	1404	554	1412	27	66	39	68	
12/14/07	850	1436	586	1412	27	69	42	68	
12/17/07	850	1436	586	1412	27	69	42	68	
12/18/07	850	1502	652	1412	27	74	47	68	
12/19/07	850	1533	683	1412	27	77	50	68	
12/20/07	850	1469	619	1412	27	74	47	68	
12/21/07	850	1422	572	1412	27	71	44	68	
12/24/07	850	1418	568	1412	27	70	43	68	
12/25/07	-	-	-	1412	-	-	-	68	
12/26/07	850	1427	577	1412	27	71	44	68	
12/27/07	850	1411	561	1412	27	70	43	68	
12/28/07	850	1448	598	1412	27	72	45	68	
12/31/07	850	1394	544	1412	27	68	41	68	
1/1/08	-	-	-	1558	-	-	-	79	
1/2/08	850	1409	559	1558	27	69	42	79	
1/3/08	850	1357	507	1558	27	66	39	79	
1/4/08	850	1376	526	1558	27	67	40	79	
1/7/08	850	1384	534	1558	27	69	42	79	
1/8/08	850	1402	552	1558	27	70	43	79	
1/9/08	850	1461	611	1558	27	75	48	79	
1/10/08	850	1560	710	1558	27	82	55	79	
1/11/08	850	1577	727	1558	27	82	55	79	
1/14/08	850	1616	766	1558	27	85	58	79	
1/15/08	850	1687	837	1558	27	90	63	79	
1/16/08	850	1648	798	1558	27	88	61	79	
1/17/08	850	1624	774	1558	27	87	60	79	
1/18/08	-	-	-	1558	-	-	-	79	
1/21/08	850	1606	756	1558	27	86	59	79	
1/22/08	850	1565	715	1558	27	84	57	79	
1/23/08	850	1715	865	1558	27	88	61	79	
1/24/08	850	1614	764	1558	27	81	54	79	
1/25/08	850	1639	789	1558	27	81	54	79	
1/28/08	850	1662	812	1558	27	83	56	79	
1/29/08	850	1613	763	1558	27	80	53	79	
1/30/08	850	1612	762	1558	27	80	53	79	
1/31/08	850	1590	740	1558	27	73	46	79	
2/1/08	850	1441	591	1428	27	68	41	69	
									Applebees/HOPC lose. (Commitment at close uncertain)
									Sequa Corp Close. Commitment: \$820 Mm. Funded: \$280 Mm
									Local Insight Media Close. Commitment: \$455 Mm. Funded \$302 Mm
									Change in methodology: HY carving out pipeline components/origination, previously included in trading/global
									Captive Plastics original commitment: \$130 Mm
									Houghton Mifflin Riverdeep Close. Commitment: ~\$2,400 Mm
									Request for plan to resolve excessive breaches: HY Loans, and RE

High Yield Total - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
2/4/08	850	1502	652	1428	27	70	43	69	
2/5/08	850	1531	681	1428	27	73	46	69	2
2/6/08	850	1531	681	1428	27	73	46	69	Captive Plastics Close. Commitment: (Commitment at close uncertain)
2/7/08	850	1506	656	1428	27	73	46	69	
2/8/08	850	1440	590	1428	27	70	43	69	
2/11/08	850	1459	609	1428	27	72	45	69	
2/12/08	850	1539	689	1428	27	78	51	69	
2/13/08	850	1514	664	1428	27	77	50	69	
2/14/08	850	1515	665	1428	27	76	49	69	
2/15/08	-	-	-	1428	-	-	-	69	
2/18/08	850	1460	610	1428	27	71	44	69	
2/19/08	850	1433	583	1428	27	70	43	69	
2/20/08	850	1422	572	1428	27	70	43	69	
2/21/08	850	1434	584	1428	27	70	43	69	
2/22/08	850	1475	625	1428	27	74	47	69	
2/25/08	850	1349	499	1428	27	65	38	69	
2/26/08	850	1274	424	1428	27	60	33	69	
2/27/08	850	1268	418	1428	27	59	32	69	
2/28/08	850	1246	396	1428	27	59	32	69	
2/29/08	850	1226	376	1428	27	57	30	69	
3/3/08	850	1211	361	1104	27	57	30	51	
3/4/08	850	1230	380	1104	27	60	33	51	
3/5/08	850	1157	307	1104	27	54	27	51	
3/6/08	850	1136	286	1104	27	52	25	51	
3/7/08	850	1136	286	1104	27	53	26	51	
3/10/08	850	1165	315	1104	27	55	28	51	
3/11/08	850	1150	300	1104	27	54	27	51	
3/12/08	850	1113	263	1104	27	51	24	51	
3/13/08	850	1137	287	1104	27	52	25	51	
3/14/08	850	1109	259	1104	27	51	24	51	
3/17/08	850	1116	266	1104	27	50	23	51	
3/18/08	850	1156	306	1104	27	56	29	51	
3/19/08	850	1091	241	1104	27	50	23	51	
3/20/08	-	-	-	1104	-	-	-	51	3
3/21/08	850	1091	241	1104	27	50	23	51	Freedom CCSClose. Issued: \$2.8 Bn
3/24/08	850	1025	175	1104	27	46	19	51	
3/25/08	850	1024	174	1104	27	46	19	51	
3/26/08	850	1021	171	1104	27	46	19	51	
3/27/08	850	1003	153	1104	27	44	17	51	
3/28/08	850	1026	176	1104	27	46	19	51	
3/31/08	850	986	136	1104	27	43	16	51	2
4/1/08	850	955	105	956	27	41	14	42	FairPoint Communications Close. Commitment: ~\$624 Mm
4/2/08	850	911	61	956	27	38	11	42	
4/3/08	850	928	78	956	27	38	11	42	
4/4/08	850	899	49	956	27	34	7	42	
4/7/08	850	955	105	956	27	38	11	42	
4/8/08	850	1002	152	956	27	41	14	42	
4/9/08	850	864	14	956	27	37	10	42	
4/10/08	850	864	14	956	27	37	10	42	
4/11/08	850	953	103	956	27	42	15	42	
4/14/08	850	975	125	956	27	43	16	42	

High Yield Total - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
4/15/08	850	960	110	956	27	43	16	42	
4/16/08	850	982	132	956	27	44	17	42	
4/17/08	850	987	137	956	27	45	18	42	
4/18/08	850	1028	178	956	27	47	20	42	
4/21/08	850	1006	156	956	27	47	20	42	
4/22/08	850	998	148	956	27	46	19	42	
4/23/08	850	1008	158	956	27	47	20	42	
4/24/08	850	949	99	956	27	43	16	42	
4/25/08	850	949	99	956	27	43	16	42	
4/28/08	850	948	98	956	27	43	16	42	3
4/29/08	850	945	95	956	27	43	16	42	Spruce CCS Close. Issued: \$1.9 Bn
4/30/08	850	977	127	956	27	44	17	42	
5/1/08	850	960	110	664	27	45	18	36	
5/2/08	850	753		664	27	45	18	36	
5/5/08	850	837		664	27	44	17	36	
5/6/08	850	836		664	27	44	17	36	
5/7/08	850	852	2	664	27	45	18	36	
5/8/08	850	835		664	27	45	18	36	
5/9/08	850	791		664	27	44	17	36	
5/12/08	850	744		664	27	40	13	36	
5/13/08	850	743		664	27	40	13	36	
5/14/08	850	794		664	27	43	16	36	
5/15/08	850	790		664	27	43	16	36	
5/16/08	850	437		664	27	26		36	
5/19/08	850	620		664	27	33	6	36	
5/20/08	850	438		664	27	24		36	
5/21/08	850	464		664	27	24		36	
5/22/08	850	499		664	27	26		36	3
5/23/08	-	-	-	664	-	-	-	36	3
5/26/08	850	512		664	27	27	0	36	
5/27/08	850	521		664	27	28	1	36	
5/28/08	850	538		664	27	29	2	36	3
5/29/08	850	462		664	27	27	0	36	
5/30/08	850	507		664	27	27	0	36	
6/2/08	850	501		506	27	27		27	
6/3/08	850	521		506	27	28	1	27	
6/4/08	850	511		506	27	27	0	27	
6/5/08	850	511		506	27	27	0	27	
6/6/08	850	495		506	27	27		27	
6/9/08	850	491		506	27	27		27	
6/10/08	850	490		506	27	27		27	
6/11/08	850	534		506	27	28	1	27	
6/12/08	850	517		506	27	27	0	27	
6/13/08	850	494		506	27	26		27	
6/16/08	850	484		506	27	25		27	
6/17/08	850	480		506	27	25		27	
6/18/08	850	498		506	27	26		27	
6/19/08	850	502		506	27	26		27	
6/20/08	850	516		506	27	27		27	
6/23/08	850	516		506	27	27		27	
6/24/08	850	484		506	27	25		27	

High Yield Total - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
6/25/08	850	517		506	27	27		27	
6/26/08	850	520		506	27	27	0	27	
6/27/08	850	515		506	27	28	1	27	
6/30/08	850	528		506	27	28	1	27	
7/1/08	850	532		588	27	28	1	31	
7/2/08	850	522		588	27	28	1	31	
7/3/08	-	-		588	-	-	-	31	
7/4/08	850	529		588	27	28	1	31	
7/7/08	850	528		588	27	28	1	31	
7/8/08	850	518		588	27	27	0	31	
7/9/08	850	552		588	27	29	2	31	
7/10/08	850	564		588	27	31	4	31	
7/11/08	850	647		588	27	35	8	31	
7/14/08	850	761		588	27	42	15	31	
7/15/08	850	793		588	27	44	17	31	
7/16/08	850	731		588	27	40	13	31	
7/17/08	850	675		588	27	38	11	31	
7/18/08	850	698		588	27	38	11	31	
7/21/08	850	730		588	27	40	13	31	
7/22/08	850	566		588	27	30	3	31	
7/23/08	850	509		588	27	27		31	
7/24/08	850	486		588	27	26		31	
7/25/08	850	511		588	27	26		31	3
7/28/08	850	533		588	27	26		31	Verano CCSC bse. Issued: \$1.8 Bn
7/29/08	850	528		588	27	26		31	
7/30/08	850	505		588	27	25		31	
7/31/08	850	515		588	27	25		31	
8/1/08	850	527		627	27	26		31	
8/4/08	850	548		627	27	26		31	
8/5/08	850	565		627	27	27		31	3
8/6/08	850	585		627	27	28	1	31	Leoforos B. V. Close. Issued: €1.6 Bn
8/7/08	850	613		627	27	29	2	31	
8/8/08	850	593		627	27	28	1	31	
8/11/08	850	569		627	27	27		31	
8/12/08	850	575		627	27	28	1	31	
8/13/08	850	669		627	27	34	7	31	
8/14/08	850	697		627	27	36	9	31	
8/15/08	850	680		627	27	35	8	31	
8/18/08	850	672		627	27	34	7	31	
8/19/08	850	637		627	27	32	5	31	
8/20/08	850	637		627	27	32	5	31	
8/21/08	850	637		627	27	32	5	31	
8/22/08	850	633		627	27	32	5	31	
8/25/08	850	650		627	27	33	6	31	
8/26/08	850	680		627	27	35	8	31	
8/27/08	850	681		627	27	35	8	31	
8/28/08	850	669		627	27	34	7	31	
8/29/08	850	647		627	27	33	6	31	
8/30/08	-	-		627	-	-	-	31	
9/1/08	-	-		628	-	-	-	32	
9/2/08	850	652		628	27	34	7	32	

Real Estate - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
12/1/06	720	615		601	7	5		3	
12/4/06	720	609		601	7	4		3	
12/5/06	720	606		601	7	4		3	
12/6/06	720	600		601	7	3		3	
12/7/06	720	597		601	7	3		3	
12/8/06	720	597		601	7	3		3	
12/11/06	720	600		601	7	3		3	
12/12/06	720	602		601	7	3		3	
12/13/06	720	602		601	7	3		3	
12/14/06	720	598		601	7	3		3	
12/15/06	720	598		601	7	3		3	
12/18/06	720	600		601	7	3		3	
12/19/06	720	600		601	7	3		3	
12/20/06	720	603		601	7	4		3	
12/21/06	720	600		601	7	3		3	
12/22/06	720	601		601	7	4		3	
12/25/06	-	-		601	-	-		3	
12/26/06	720	597		601	7	3		3	
12/27/06	720	597		601	7	3		3	
12/28/06	720	596		601	7	3		3	
12/29/06	720	597		601	7	3		3	
1/1/07	-	-		518	-	-		3	
1/2/07	720	600		518	7	3		3	
1/3/07	720	598		518	7	4		3	
1/4/07	720	601		518	7	4		3	
1/5/07	720	594		518	7	3		3	
1/8/07	720	594		518	7	3		3	
1/9/07	720	593		518	7	3		3	
1/10/07	720	593		518	7	3		3	
1/11/07	720	593		518	7	3		3	
1/12/07	-	-		518	-	-		3	
1/15/07	720	471		518	7	3		3	2
1/16/07	720	471		518	7	3		3	FairPoint Communications original commitment: \$832 Mm
1/17/07	720	471		518	7	3		3	
1/18/07	720	469		518	7	3		3	
1/19/07	720	469		518	7	3		3	
1/22/07	720	469		518	7	3		3	
1/23/07	720	471		518	7	3		3	
1/24/07	720	471		518	7	3		3	
1/25/07	720	470		518	7	3		3	
1/26/07	720	470		518	7	3		3	
1/29/07	720	470		518	7	3		3	
1/30/07	720	469		518	7	3		3	
1/31/07	720	472		518	7	3		3	
2/1/07	720	471		497	7	3		4	
2/2/07	720	474		497	7	3		4	
2/5/07	720	475		497	7	4		4	
2/6/07	720	473		497	7	3		4	
2/7/07	720	476		497	7	4		4	
2/8/07	720	477		497	7	4		4	
2/9/07	720	477		497	7	4		4	

Real Estate - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
2/12/07	720	477		497	7	4		4	
2/13/07	720	477		497	7	4		4	
2/14/07	720	477		497	7	4		4	
2/15/07	720	521		497	7	4		4	
2/16/07	-	-		497	-	-		4	
2/19/07	720	521		497	7	4		4	
2/20/07	720	521		497	7	4		4	
2/21/07	720	521		497	7	4		4	
2/22/07	720	524		497	7	4		4	
2/23/07	720	522		497	7	4		4	
2/26/07	720	521		497	7	4		4	2
2/27/07	720	522		497	7	4		4	3
2/28/07	720	525		497	7	4		4	
3/1/07	720	525		524	7	4		5	
3/2/07	720	529		524	7	5		5	
3/5/07	720	529		524	7	5		5	
3/6/07	720	532		524	7	5		5	3
3/7/07	720	532		524	7	5		5	
3/8/07	720	526		524	7	5		5	
3/9/07	720	524		524	7	4		5	
3/12/07	720	522		524	7	4		5	
3/13/07	720	525		524	7	5		5	
3/14/07	720	528		524	7	5		5	
3/15/07	720	527		524	7	5		5	
3/16/07	720	525		524	7	5		5	
3/19/07	720	525		524	7	5		5	
3/20/07	720	520		524	7	4		5	
3/21/07	720	519		524	7	4		5	
3/22/07	720	519		524	7	4		5	
3/23/07	720	518		524	7	4		5	
3/26/07	720	520		524	7	5		5	
3/27/07	720	521		524	7	5		5	
3/28/07	720	525		524	7	5		5	
3/29/07	720	514		524	7	4		5	
3/30/07	720	518		524	7	4		5	3
4/2/07	720	514		520	7	4		4	2
4/3/07	720	515		520	7	4		4	
4/4/07	720	514		520	7	4		4	
4/5/07	-	-		520	-	-		4	
4/6/07	720	514		520	7	4		4	
4/9/07	720	515		520	7	4		4	
4/10/07	720	515		520	7	4		4	
4/11/07	720	514		520	7	4		4	
4/12/07	720	514		520	7	4		4	
4/13/07	720	514		520	7	4		4	
4/16/07	720	514		520	7	4		4	2
4/17/07	720	517		520	7	4		4	
4/18/07	720	517		520	7	4		4	
4/19/07	720	531		520	7	6		4	
4/20/07	720	528		520	7	5		4	
4/23/07	720	529		520	7	5		4	

Real Estate - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
7/4/07	720	1233	513	1232	7	5		5	
7/5/07	720	1233	513	1232	7	5		5	
7/6/07	720	1235	515	1232	7	5		5	
7/9/07	720	1233	513	1232	7	5		5	
7/10/07	720	1236	516	1232	7	5		5	
7/11/07	720	1232	512	1232	7	5		5	1 Dermody Close. Funding share: \$1.54 Bn
7/12/07	720	1231	511	1232	7	5		5	Events on 7/16/07
7/13/07	720	1231	511	1232	7	5		5	2 Houghbn Mifflin original commitment: \$2,396 Mm
7/16/07	720	1232	512	1232	7	5		5	2 Applebees/HOP original commitment: \$2,139 Mm
7/17/07	720	1232	512	1232	7	5		5	1 Coeur Defense Close. Funding share: \$2,117 Bn
7/18/07	720	1231	511	1232	7	5		5	
7/19/07	720	1231	511	1232	7	5		5	
7/20/07	720	1230	510	1232	7	5		5	
7/23/07	720	1230	510	1232	7	5		5	
7/24/07	720	1230	510	1232	7	5		5	
7/25/07	720	1230	510	1232	7	4		5	
7/26/07	720	1229	509	1232	7	4		5	2
7/27/07	720	1231	511	1232	7	4		5	3
7/30/07	720	1231	511	1232	7	4		5	2
7/31/07	720	1228	508	1232	7	5		5	Events on 7/31/07:
8/1/07	720	1230	510	1237	7	5		6	2
8/2/07	720	1236	516	1237	7	6		6	3
8/3/07	720	1236	516	1237	7	6		6	LB XS Trust Mort. Pass-Through Certs, Ser. 2007-15N. Issued: \$2.8 Bn
8/6/07	720	1237	517	1237	7	6		6	
8/7/07	720	1233	513	1237	7	5		6	
8/8/07	720	1232	512	1237	7	5		6	
8/9/07	720	1230	510	1237	7	5		6	
8/10/07	720	1232	512	1237	7	5		6	
8/13/07	720	1232	512	1237	7	6		6	1 Archstone and Dermody commitments initially included in RA in LR
8/14/07	720	1236	516	1237	7	6		6	
8/15/07	720	1230	510	1237	7	5		6	
8/16/07	720	1230	510	1237	7	5		6	
8/17/07	720	1234	514	1237	7	6		6	
8/20/07	720	1247	527	1237	7	8	1	6	
8/21/07	720	1247	527	1237	7	8	1	6	
8/22/07	720	1252	532	1237	7	8	1	6	
8/23/07	720	1240	520	1237	7	7		6	3
8/24/07	720	1240	520	1237	7	7		6	LB Floating Rate CoMm Mort. Trust 2007-LLFA Close. Issued: \$2.4 Bn
8/27/07	720	1241	521	1237	7	7		6	
8/28/07	720	1232	512	1237	7	5		6	
8/29/07	720	1231	511	1237	7	5		6	
8/30/07	720	1250	530	1237	7	6		6	2
8/31/07	720	1249	529	1237	7	6		6	3
9/3/07	720	1249	529	1252	7	6		7	
9/4/07	720	1251	531	1252	7	7		7	
9/5/07	720	1255	535	1252	7	7	0	7	
9/6/07	720	1255	535	1252	7	7	0	7	
9/7/07	720	1253	533	1252	7	7		7	
9/10/07	720	1253	533	1252	7	7	0	7	
9/11/07	720	1258	538	1252	7	8	1	7	
9/12/07	720	1258	538	1252	7	8	1	7	

Real Estate - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
9/13/07	720	1257	537	1252	7	8	1	7	
9/14/07	720	1257	537	1252	7	8	1	7	
9/17/07	720	1252	532	1252	7	7	0	7	
9/18/07	720	1252	532	1252	7	7	0	7	
9/19/07	720	1247	527	1252	7	7	0	7	
9/20/07	720	1247	527	1252	7	7	0	7	
9/21/07	720	1249	529	1252	7	7	0	7	
9/24/07	720	1250	530	1252	7	7	0	7	
9/25/07	720	1252	532	1252	7	7	0	7	2
9/26/07	720	1252	532	1252	7	7	0	7	First Data Close. Commitment \$3,120 Mm
9/27/07	720	1251	531	1252	7	7	0	7	
9/28/07	720	1250	530	1252	7	7	0	7	
10/1/07	720	1249	529	1264	7	7	0	9	
10/2/07	720	1250	530	1264	7	7	0	9	
10/3/07	720	1253	533	1264	7	8	1	9	
10/4/07	720	1251	531	1264	7	8	1	9	
10/5/07	720	1254	534	1264	7	8	1	9	1
10/8/07	720	1263	543	1264	7	8	1	9	Archstone Close. Funding share: \$5.42 Bn
10/9/07	720	1264	544	1264	7	8	1	9	
10/10/07	720	1260	540	1264	7	8	1	9	2
10/11/07	720	1259	539	1264	7	8	1	9	Energy Future Holdings (TXU) Close. Commitment: \$4,737 Mm
10/12/07	720	1279	559	1264	7	10	3	9	2
10/15/07	720	1273	553	1264	7	10	3	9	CDW Close. Commitment \$1,494 Mm
10/16/07	720	1270	550	1264	7	9	2	9	1
10/17/07	720	1269	549	1264	7	9	2	9	Carlyle Close. Funding share: €638 Mm
10/18/07	720	1271	551	1264	7	10	3	9	Request for limit increase: RE and HY Loans
10/19/07	720	1271	551	1264	7	10	3	9	
10/22/07	720	1275	555	1264	7	10	3	9	
10/23/07	720	1267	547	1264	7	9	2	9	1
10/24/07	720	1264	544	1264	7	9	2	9	1
10/25/07	720	1260	540	1264	7	8	1	9	2
10/26/07	720	1260	540	1264	7	8	1	9	Events on 10/24/07:
10/29/07	720	1270	550	1264	7	9	2	9	Gosnell/Diversity Close. Funding: \$2.63 Bn (Date Uncertain)
10/30/07	720	1268	548	1264	7	9	2	9	Hilton - Project Murphy Close. Funding share: \$1.54 Bn
10/31/07	720	1264	544	1264	7	9	2	9	ARINC Incorporated Close. Commitment: \$385 Mm
11/1/07	720	1267	547	1154	7	9	2	9	
11/2/07	720	1266	546	1154	7	9	2	9	
11/5/07	720	1267	547	1154	7	9	2	9	
11/6/07	720	1137	417	1154	7	9	2	9	
11/7/07	720	1133	413	1154	7	9	2	9	
11/8/07	720	1124	404	1154	7	8	1	9	
11/9/07	720	1123	403	1154	7	8	1	9	
11/12/07	720	1126	406	1154	7	8	1	9	
11/13/07	720	1125	405	1154	7	8	1	9	
11/14/07	720	1124	404	1154	7	8	1	9	
11/15/07	720	1126	406	1154	7	8	1	9	
11/16/07	720	1143	423	1154	7	9	2	9	
11/19/07	720	1132	412	1154	7	9	2	9	
11/20/07	720	1138	418	1154	7	9	2	9	
11/21/07	-	-	-	1154	-	-	-	9	
11/22/07	720	1138	418	1154	7	9	2	9	

Real Estate - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
11/23/07	720	1138	418	1154	7	10	3	9	
11/26/07	720	1143	423	1154	7	11	4	9	
11/27/07	720	1144	424	1154	7	9	2	9	
11/28/07	720	1141	421	1154	7	10	3	9	
11/29/07	720	1141	421	1154	7	9	2	9	
11/30/07	720	1152	432	1154	7	10	3	9	2 Applebees/HOPC lose. (Commitment at close uncertain)
12/3/07	720	1155	435	1174	7	11	4	13	2
12/4/07	720	1142	422	1174	7	9	2	13	2
12/5/07	720	1147	427	1174	7	10	3	13	Local Insight Media Close. Commitment: \$455 Mm. Funded \$302 Mm
12/6/07	720	1152	432	1174	7	12	5	13	
12/7/07	720	1171	451	1174	7	14	7	13	
12/10/07	720	1177	457	1174	7	14	7	13	
12/11/07	720	1177	457	1174	7	14	7	13	2
12/12/07	720	1176	456	1174	7	14	7	13	2
12/13/07	720	1176	456	1174	7	14	7	13	
12/14/07	720	1179	459	1174	7	14	7	13	
12/17/07	720	1175	455	1174	7	13	6	13	
12/18/07	720	1180	460	1174	7	14	7	13	
12/19/07	720	1178	458	1174	7	14	7	13	
12/20/07	720	1181	461	1174	7	14	7	13	
12/21/07	720	1187	467	1174	7	15	8	13	
12/24/07	720	1198	478	1174	7	16	9	13	
12/25/07	-	-	-	1174	-	-	-	13	
12/26/07	720	1191	471	1174	7	15	8	13	
12/27/07	720	1176	456	1174	7	13	6	13	
12/28/07	720	1176	456	1174	7	13	6	13	
12/31/07	720	1177	457	1174	7	13	6	13	
1/1/08	-	-	-	1154	-	-	-	17	
1/2/08	720	1186	466	1154	7	13	6	17	
1/3/08	720	1190	470	1154	7	13	6	17	
1/4/08	720	1195	475	1154	7	14	7	17	
1/7/08	720	1191	471	1154	7	13	6	17	
1/8/08	720	1123	403	1154	7	13	6	17	
1/9/08	720	1113	393	1154	7	13	6	17	
1/10/08	720	1112	392	1154	7	13	6	17	
1/11/08	720	1106	386	1154	7	13	6	17	
1/14/08	720	1095	375	1154	7	13	6	17	
1/15/08	720	1090	370	1154	7	12	5	17	
1/16/08	720	1103	383	1154	7	14	7	17	
1/17/08	720	1087	367	1154	7	12	5	17	
1/18/08	-	-	-	1154	-	-	-	17	
1/21/08	720	1102	382	1154	7	14	7	17	
1/22/08	720	1101	381	1154	7	14	7	17	
1/23/08	720	1165	445	1154	7	22	15	17	
1/24/08	720	1165	445	1154	7	22	15	17	
1/25/08	720	1234	514	1154	7	28	21	17	
1/28/08	720	1234	514	1154	7	28	21	17	
1/29/08	720	1225	505	1154	7	27	20	17	
1/30/08	720	1224	504	1154	7	27	20	17	
1/31/08	720	1189	469	1154	7	23	16	17	
2/1/08	720	1195	475	1350	7	23	16	24	Request for plan to resolve excessive breaches: HY Loans, and RE

Real Estate - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
2/4/08	720	1192	472	1350	7	22	15	24	
2/5/08	720	1196	476	1350	7	22	15	24	2 Captive Plastics C lose. Commitment: (Commitment at close uncertain)
2/6/08	720	1194	474	1350	7	22	15	24	
2/7/08	720	1204	484	1350	7	23	16	24	
2/8/08	720	1214	494	1350	7	23	16	24	
2/11/08	720	1368	648	1350	7	24	17	24	
2/12/08	720	1413	693	1350	7	23	16	24	
2/13/08	720	1416	696	1350	7	23	16	24	
2/14/08	720	1420	700	1350	7	22	15	24	
2/15/08	-	-	-	1350	-	-	-	24	
2/18/08	720	1455	735	1350	7	26	19	24	
2/19/08	720	1471	751	1350	7	26	19	24	
2/20/08	720	1465	745	1350	7	26	19	24	
2/21/08	720	1417	697	1350	7	22	15	24	
2/22/08	720	1417	697	1350	7	22	15	24	
2/25/08	720	1402	682	1350	7	24	17	24	
2/26/08	720	1402	682	1350	7	24	17	24	
2/27/08	720	1414	694	1350	7	25	18	24	
2/28/08	720	1367	647	1350	7	25	18	24	
2/29/08	720	1377	657	1350	7	25	18	24	
3/3/08	720	1371	651	1385	7	25	18	26	
3/4/08	720	1373	653	1385	7	26	19	26	
3/5/08	720	1374	654	1385	7	26	19	26	
3/6/08	720	1382	662	1385	7	27	20	26	
3/7/08	720	1380	660	1385	7	27	20	26	
3/10/08	720	1366	646	1385	7	26	19	26	
3/11/08	720	1372	652	1385	7	27	20	26	
3/12/08	720	1364	644	1385	7	27	20	26	
3/13/08	720	1386	666	1385	7	25	18	26	
3/14/08	720	1386	666	1385	7	25	18	26	
3/17/08	720	1380	660	1385	7	25	18	26	
3/18/08	720	1385	665	1385	7	25	18	26	
3/19/08	720	1381	661	1385	7	24	17	26	
3/20/08	-	-	-	1385	-	-	-	26	3 Freedom CCSC lose. Issued: \$2.8 Bn
3/21/08	720	1391	671	1385	7	24	17	26	
3/24/08	720	1368	648	1385	7	24	17	26	
3/25/08	720	1363	643	1385	7	23	16	26	
3/26/08	720	1375	655	1385	7	24	17	26	
3/27/08	720	1383	663	1385	7	26	19	26	
3/28/08	720	1454	734	1385	7	26	19	26	
3/31/08	720	1455	735	1385	7	27	20	26	2 FairPoint Communications C lose. Commitment: ~\$624 Mm
4/1/08	720	1445	725	1382	7	27	20	26	
4/2/08	720	1435	715	1382	7	26	19	26	
4/3/08	720	1436	716	1382	7	26	19	26	
4/4/08	720	1354	634	1382	7	26	19	26	
4/7/08	720	1359	639	1382	7	26	19	26	
4/8/08	720	1358	638	1382	7	26	19	26	
4/9/08	720	1356	636	1382	7	26	19	26	
4/10/08	720	1349	629	1382	7	25	18	26	
4/11/08	720	1349	629	1382	7	25	18	26	
4/14/08	720	1349	629	1382	7	25	18	26	

Real Estate - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
4/15/08	720	1352	632	1382	7	25	18	26	
4/16/08	720	1351	631	1382	7	25	18	26	
4/17/08	720	1358	638	1382	7	26	19	26	
4/18/08	720	1396	676	1382	7	29	22	26	
4/21/08	720	1407	687	1382	7	30	23	26	
4/22/08	720	1397	677	1382	7	29	22	26	
4/23/08	720	1370	650	1382	7	27	20	26	
4/24/08	720	1362	642	1382	7	26	19	26	
4/25/08	720	1365	645	1382	7	26	19	26	
4/28/08	720	1421	701	1382	7	27	20	26	3
4/29/08	720	1421	701	1382	7	27	20	26	Spruce CCS Close. Issued: \$1.9 Bn
4/30/08	720	1418	698	1382	7	26	19	26	
5/1/08	720	1418	698	1518	7	26	19	35	
5/2/08	720	1416	696	1518	7	26	19	35	
5/5/08	720	1420	700	1518	7	26	19	35	
5/6/08	720	1420	700	1518	7	26	19	35	
5/7/08	720	1409	689	1518	7	25	18	35	
5/8/08	720	1422	702	1518	7	27	20	35	
5/9/08	720	1423	703	1518	7	27	20	35	
5/12/08	720	1439	719	1518	7	28	21	35	
5/13/08	720	1453	733	1518	7	30	23	35	
5/14/08	720	1451	731	1518	7	29	22	35	
5/15/08	720	1535	815	1518	7	37	30	35	
5/16/08	720	1642	922	1518	7	46	39	35	
5/19/08	720	1645	925	1518	7	46	39	35	
5/20/08	720	1595	875	1518	7	42	35	35	
5/21/08	720	1593	873	1518	7	42	35	35	
5/22/08	720	1601	881	1518	7	42	35	35	3
5/23/08	-	-	-	1518	-	-	-	35	3
5/26/08	720	1596	876	1518	7	42	35	35	
5/27/08	720	1581	861	1518	7	41	34	35	
5/28/08	720	1576	856	1518	7	40	33	35	3
5/29/08	720	1590	870	1518	7	42	35	35	
5/30/08	720	1651	931	1518	7	40	33	35	
6/2/08	720	1630	910	1564	7	38	31	35	
6/3/08	720	1619	899	1564	7	37	30	35	
6/4/08	720	1599	879	1564	7	36	29	35	
6/5/08	720	1583	863	1564	7	34	27	35	
6/6/08	720	1587	867	1564	7	35	28	35	
6/9/08	720	1589	869	1564	7	35	28	35	
6/10/08	720	1590	870	1564	7	35	28	35	
6/11/08	720	1579	859	1564	7	34	27	35	
6/12/08	720	1575	855	1564	7	33	26	35	
6/13/08	720	1574	854	1564	7	33	26	35	
6/16/08	720	1562	842	1564	7	32	25	35	
6/17/08	720	1567	847	1564	7	33	26	35	
6/18/08	720	1560	840	1564	7	32	25	35	
6/19/08	720	1581	861	1564	7	34	27	35	
6/20/08	720	1583	863	1564	7	34	27	35	
6/23/08	720	1598	878	1564	7	36	29	35	
6/24/08	720	1498	778	1564	7	35	28	35	
									SASCO 2008 C2 Close. Issued: \$3.4 Bn Excalibur Funding No. 1 Close. Issued: €2.9 Bn
									Pine CCS Close. Issued: \$1.9 Bn

Real Estate - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
6/25/08	720	1501	781	1564	7	36	29	35	
6/26/08	720	1495	775	1564	7	35	28	35	
6/27/08	720	1492	772	1564	7	35	28	35	
6/30/08	720	1488	768	1564	7	34	27	35	
7/1/08	720	1492	772	1475	7	35	28	33	
7/2/08	720	1486	766	1475	7	34	27	33	
7/3/08	-	-	-	1475	-	-	-	33	
7/4/08	720	1482	762	1475	7	34	27	33	
7/7/08	720	1477	757	1475	7	34	27	33	
7/8/08	720	1475	755	1475	7	33	26	33	
7/9/08	720	1487	767	1475	7	34	27	33	
7/10/08	720	1474	754	1475	7	33	26	33	
7/11/08	720	1473	753	1475	7	33	26	33	
7/14/08	720	1471	751	1475	7	33	26	33	
7/15/08	720	1468	748	1475	7	33	26	33	
7/16/08	720	1476	756	1475	7	33	26	33	
7/17/08	720	1471	751	1475	7	33	26	33	
7/18/08	720	1474	754	1475	7	33	26	33	
7/21/08	720	1470	750	1475	7	33	26	33	
7/22/08	720	1470	750	1475	7	33	26	33	
7/23/08	720	1479	759	1475	7	34	27	33	
7/24/08	720	1476	756	1475	7	33	26	33	
7/25/08	720	1476	756	1475	7	33	26	33	3
7/28/08	720	1477	757	1475	7	34	27	33	Verano CCSCbse. Issued: \$1.8 Bn
7/29/08	720	1474	754	1475	7	33	26	33	
7/30/08	720	1467	747	1475	7	33	26	33	
7/31/08	720	1462	742	1475	7	32	25	33	
8/1/08	720	1460	740	1417	7	32	25	31	
8/4/08	720	1422	702	1417	7	32	25	31	
8/5/08	720	1421	701	1417	7	32	25	31	3
8/6/08	720	1418	698	1417	7	32	25	31	Leoforos B. V. Clove. Issued: €1.6 Bn
8/7/08	720	1415	695	1417	7	31	24	31	
8/8/08	720	1421	701	1417	7	32	25	31	
8/11/08	720	1417	697	1417	7	32	25	31	
8/12/08	720	1417	697	1417	7	31	24	31	
8/13/08	720	1429	709	1417	7	33	26	31	
8/14/08	720	1420	700	1417	7	32	25	31	
8/15/08	720	1427	707	1417	7	32	25	31	
8/18/08	720	1418	698	1417	7	32	25	31	
8/19/08	720	1410	690	1417	7	31	24	31	
8/20/08	720	1410	690	1417	7	31	24	31	
8/21/08	720	1433	713	1417	7	33	26	31	
8/22/08	720	1407	687	1417	7	31	24	31	
8/25/08	720	1403	683	1417	7	30	23	31	
8/26/08	720	1415	695	1417	7	31	24	31	
8/27/08	720	1405	685	1417	7	30	23	31	
8/28/08	720	1381	661	1417	7	28	21	31	
8/29/08	720	1399	679	1417	7	30	23	31	
8/30/08	-	-	-	1417	-	-	-	31	
9/1/08	-	-	-	1386	-	-	-	29	
9/2/08	720	1387	667	1386	7	29	22	29	

Real Estate - Usage versus Limits

Risk Appetite (RA) and Value-at-Risk (VaR) Usage versus Limits

Time period presented: December 1, 2006 to September 15, 2008

(\$ in Millions)

Date	RA Limit	RA Usage	RA Breach *	Monthly Average**	VaR Limit	VaR Usage	VaR Breach *	Monthly Average**	Key Event
9/3/08	720	1390	670	1386	7	29	22	29	
9/4/08	720	1389	669	1386	7	29	22	29	
9/5/08	720	1389	669	1386	7	29	22	29	
9/8/08	720	1377	657	1386	7	28	21	29	
9/9/08	720	1386	666	1386	7	29	22	29	
9/10/08	720	1386	666	1386	7	29	22	29	
9/11/08	720	1385	665	1386	7	29	22	29	
9/12/08	720	1384	664	1386	7	29	22	29	
9/15/08	720	1384	664	1386	7	29	22	29	

Sources:

Lehman Risk ("LR")

Notes:

* Breach is equal to the excess of usage over limit. A blank indicates no breach occurred. "-" indicates no data is available.

** Monthly Average refers to each month's average usage. Days for which no data is provided are not counted as part of the average.

"DRA" is Daily Risk Appetite

1. Indicates Commercial Real Estate related deals.

2. Indicates Leveraged Loans related deals.

3. Indicates Securitization related deals.

APPENDIX 10: CALCULATION OF CERTAIN INCREASES IN RISK APPETITE LIMITS

To: Lehman Examiner
From: Duff & Phelps
Subject: Increase in Risk Appetite Limits from 2006 to 2007 and from 2007 to 2008
Date: February 1, 2010

This Appendix describes the ways in which Lehman's methodology for calculating the Risk Appetite ("RA") limits changed from 2006 to 2007 and from 2007 to 2008. It analyzes the quantitative impact of those changes on the final limit amounts.

I. Setting the 2007 RA limit

- a) Lehman performed numerous calculations of potential RA limits for 2007. Despite using various methodologies, it recommended approximately the same \$3.3 billion limit each time.**

A November 20, 2006 proposal considered four potential 2007 RA limits, recommending a \$3.3 billion limit, "The risk appetite limit for 2007 could be set as high as \$3.9 billion. However, in view of historically low volatility levels ... we recommend setting the limit 15% lower – i.e., at \$3.3 billion." (i p.5) Two days later, a November 22, 2006 proposal considered a different methodology for calculating the RA limit and concluded, "We recommend setting the Risk Appetite limit at \$3.2 billion for 2007." (ii p.2)

On January 11, 2007 another round of revisions in the 2007 RA limit calculation methodology was performed by Robert Azerad at Antoncic's request. He prepared two calculations using different methodologies, one reaching a \$3.793 billion limit, and another reaching a \$2.973 billion limit. (iii p.3; iv p. 3) The \$2.973 billion limit was actually the same calculation as used for the final limit of \$3.273 billion, however it contained a proposed \$300 million haircut for market conditions and principal investments, which was not used for the final limit.

Ultimately, a final limit was presented to the board of directors: the January 30, 2007 Financial Plan stated, “We propose to establish a 2007 risk appetite limit of \$3.3 billion ... the minimum performance hurdle is set at a 10.0% ROE.” The limit is based on a calculation that differed from all the computations seen in prior drafts of the 2007 limit calculation. (v p.21; vi p.2-5)

b) Review of the impact of various methodologies and assumptions considered in calculation of the 2007 RA Limit:

- Applying a maximum cap of 10% on the haircuts on the underwriting and client revenues in a stress scenario. By limiting the haircuts to only 10%, a higher RA limit is achieved. (i p.2) The final RA limit calculation on January 30, 2007 does not use this 10% cap on haircuts. (vi p.5)
- Revisions of haircuts on revenues in a stress scenario. The haircuts applied to budgeted divisional revenues in a stress scenario varied across presentations. The November 20, 2006, November 22, 2006 and the final RA limit calculation of January 30, 2007 all assumed different haircuts in a stress scenario. (i p.4; ii p.6; v p.21) These different haircuts are analyzed, despite an October 10, 2007 email from Azerad that includes wording that implies that haircuts in a stress scenario are determined using historical modeling, i.e., they should have been consistent across analyses performed on the same or nearby dates. (vii p.1)
- Applying a haircut to the Principal and Proprietary revenues in a stress scenario. Both the November 20, 2006 and November 22, 2006 presentations discuss the exclusion of Principal and Proprietary revenues from the stress scenario. (i p.1; ii p.1) The removal of the haircuts on Principal and Proprietary revenues would result in higher projected total revenues in a stress scenario, which would lead to a higher RA limit. The final RA limit calculation on January 30, 2007 does not apply haircuts to the Principal and Proprietary revenues, with the justification that the budgeted revenues would be achievable even in a downturn scenario. (vi p.5)
- Using ROE as a performance metric versus a C&B ratio. Two different metrics are discussed to determine the minimum level of revenues that would be required in a downturn scenario. The C&B ratio (an abbreviation for Compensation and Bonus, or Compensation and Benefits) is the total compensation expense as a percentage of revenues, in a stress scenario. The C&B ratio target methodology was considered to determine the minimum revenues required to be able to compensate and retain personnel, even during a downturn

in the market. The alternative methodology initially used a predetermined desired ROTE (return on tangible equity) as the target, and calculated the minimum amount of revenues that would be required to achieve this return in a downturn. The targets considered for the 2007 methodology were a 55% C&B ratio, or a 10% ROTE. Of the two, the 55% C&B ratio yielded a substantially lower RA limit. The 55% C&B ratio was not used, and the resulting limit calculations are stamped “unacceptable result.” (i p.2, 8, 10) Further, the ROTE target ultimately was not used. Instead the final January 30, 2007 RA limit calculation used a 10% ROE target, the impact of which was a lower RA limit than a 10% ROTE target, and a higher RA limit than a 55% C&B target. (vi p.4)

- Applying a 15% buffer to the RA limit. Both the November 20, 2006 and November 22, 2006 presentations suggested adding a 15% reduction to the calculated RA limit as an extra precaution, in view of historically low volatility levels observed in capital markets in 2006. (i p.5; ii p.2) The final RA limit calculation of January 30, 2007 did not include this 15% buffer, resulting in a higher limit. (v p.22)
 - Applying a \$300 million buffer to the RA limit. Similar to the 15% buffer discussed above, two different reductions to the total limit were suggested in the January 11, 2007 RA limit calculation. One was a \$150 million “Market Environment Haircut,” and the other was a \$150 million haircut “Earmarked for Additional Principal/Strategic Investments.” (iv p.3) The final RA limit calculation on January 30, 2007 does not include either of these haircuts. (v p.22)
- c) **The Final 2007 RA limit was higher than the 2006 RA Limit, partly as a result of applying a more aggressive methodology than that which was used to calculate the RA limit for 2006. Two major differences were the move to a 10% ROE performance target for 2007 and the apparent elimination of any haircuts to the Principal and Proprietary revenues for 2007.**

II. Setting the 2008 RA limit

- a) **The final 2008 Risk Appetite limit used methodologies and assumptions different from those used in calculating the 2007 limit, which in aggregate resulted in a higher RA limit than for 2007.**
- The 2008 RA limit used 10% ROTE as the performance standard (viii p.17) as opposed to the 10% ROE performance standard used for the 2007 RA limit calculation. Achieving a 10% of ROTE instead of 10% ROE requires a lower net

income, as tangible equity is a subset of total equity. To achieve a lower net income, less revenue is required. This allows for a lower minimum revenue level to achieve target performance, which leads to a higher RA limit. (ix p.3,4 please note that this is an excel file prepared by Lehman to calculate the 2008 RA limit.) If 10% ROE had been used as the performance standard, the 2008 RA limit might have been ~\$649 million lower (x, p.2,4 please note that the impact of this change is dependent on the impact of other changes, and may be calculated differently depending on the order of other adjustments.)

- The 2008 RA limit used, overall, lower haircuts on budgeted revenues in a stress scenario than the 2007 RA limit. (vi p.5; ix p.5 column J) The most significant reduction was from a 20% to a 15% haircut on the client revenues, which accounted for \$12.8 billion of the \$21.0 billion in the 2008 budget. If the 2007 haircuts had been used, the 2008 RA limit would have been ~\$676 million lower. (xi, p.2,5)
- The 2008 RA limit used a modified calculation to calculate the fixed and variable compensation expense in a downturn scenario. The 2007 RA calculation assumed that the fixed compensation expense in a stress scenario would be reduced by 6% versus budgeted fixed compensation expense, and that the variable compensation expense would be discounted by 40%. (vi p.4) The 2008 RA calculation assumed instead that the fixed expense would be the same in a stress scenario, but the budgeted variable compensation expense was discounted by 58.33% (35% divided by .6). (ix p.4 cell H8) If the 2007 compensation expense calculation had been used, the 2008 RA limit would have been ~\$603 million lower. (xii p.2,4)
- The 2008 RA limit used a modified calculation to calculate the fixed non-personnel expense in a downturn scenario. Fixed non-personnel expense, in a stressed scenario, was reduced by 17% from the budgeted amount in the 2007 limit calculation. (vi p.4) The 2008 RA calculation discounted fixed non-personnel expense by 10%. (ix p.4 cell H11) If the 2007 fixed non-personnel discount had been used, the RA limit would have been ~\$236 million higher. (xiii p.2,4)
- The 2008 RA limit used very high revenue projections for the coming year.
 - Lehman's 2008 revenue budget of \$21 billion contrasted with analyst estimates. Reuters' consensus revenue report shows a median 2008 revenue estimate (for 13 analysts) of \$19.1 billion for Lehman in December

2008. (xv p.1) While numerous analyst reports cited Lehman earnings calls, two reports specifically cited meetings with Lehman's then-CFO Erin Callan as a basis for their estimates of 2008 revenues, ranging from \$19.0 to \$19.2 billion (xvi p.5; xvii p.1 – the two analyst reports that cite meetings with Callan). Also, see Section III of this report, "Analyst Earnings Estimates."

b) No apparent compensating measures were taken

Despite the changes to a more aggressive calculation described above, more conservative compensating methodologies which had been discussed in 2007, but not applied in the final 2007 RA calculation, were also not applied in 2008:

- The 55% C&B ratio was not used as a performance standard. Instead the C&B ratio for the final RA calculation was 58.2%. (ix p.4 cell H24) If a 55% C&B ratio had been used, instead of the 10% ROTE target, the 2008 RA limit would have been ~\$818 million lower. (xviii p.2,4)
- The budgeted Principal and Proprietary revenues were not haircut in the stress scenario. If the Principal and Proprietary revenues had been discounted by 100%, as was apparently the case in 2006, the 2008 RA limit would have been ~\$1,955 million lower. Alternatively, any haircut assumed would have a dollar for dollar impact on the RA limit. For example, if a 10% haircut had been used (the lowest of all haircuts suggested in the in the 2008 RA calculation spreadsheet, see ix p.5), the RA limit would have been ~\$196 million lower.
- Neither the 15% buffer, nor the \$300 million dollar haircuts were used. (ix p.2) If the 15% "volatility" buffer had been applied, the 2008 RA limit would have been ~\$600 million lower (\$4 billion x 15%). If the \$300 million dollar haircut (\$150 million for "Market Environment Haircut" and \$150 million for "Earmarked for Additional Principal/Strategic Investments") had been applied, the limit would have been that much lower.

c) Recalculation of the 2008 RA limit using the 2007 methodology results in a lower RA limit.

We recalculated the 2008 RA limit, using the exact methodology used for the calculation in 2007, and arrived at a limit of \$2.457 billion. This is in contrast to the \$4 billion limit actually used in 2008. The methodological changes that contributed to the ~\$1.5 billion reduction in the limit as we have recalculated,

were (as described above): a change from ROTE (2008) back to ROE (2007), increases in stress haircuts in a downturn scenario (higher haircuts were used in 2007), and adjustments to the compensation and non personnel expense calculations in a downturn scenario (2007 used more conservative assumptions in aggregate). Please note that many of the calculations work in tandem, and the impacts of each change in isolation are not simply additive. (xx p.2,4,5)

d) What changed between 2007 and 2008 that impacted the RA limit, outside the methodology changes?

As stated above, if Lehman had maintained a consistent methodology between 2007 and 2008, the RA limit for 2008 would have actually been lowered to \$2.457 billion. This number would have been lower than the limit of \$3.3 billion which was in place throughout 2007. This decrease was the result of the following factors.

- Budgeted revenue increased. The increase in budgeted revenue, from \$19.65 billion in 2007 to \$21 billion in 2008, in isolation, would have allowed for a higher RA limit by \$1.35 billion.
- Revenue loss in a downturn scenario increased. Because budgeted revenue was increased, and revenue loss in a stress scenario is calculated as a percentage of budgeted revenue broken out by type, the revenue loss in the downturn scenario (using 2007 haircuts) also increased. The higher the expected revenue loss, the lower the limit.
- Expected average common equity increased. The 2007 calculation assumed common equity of \$17.413 billion, while the 2008 calculation assumed \$20.795 billion. As the RA limit was based off of 10% return on equity, the increased equity led to higher required revenues, and lower limits.
- Increase in budgeted compensation expense. Budgeted compensation expense increased from \$9.6 billion in 2007 to \$10.9 billion in 2008. The increased expense required higher revenues to achieve the performance target (i.e. 10% ROE), which resulted in a lower limit. The distribution of fixed vs. variable compensation expense also changed from 56% fixed in 2007 to 54% fixed in 2008. The variable expense is discounted at a higher rate for the stress scenario, which leads to a higher RA limit.

- Increase in budgeted non personnel expense. Budgeted non personnel expense increased from \$3.4 billion in 2007 to \$4.2 billion in 2008, leading to a decrease in the RA limit.
- Decrease in tax rates assumed in a stress scenario. The tax rates used in a stress scenario decreased from 30% in 2007 to 26% in 2008. A lower tax expense led to a higher RA limit.
- Decrease in dividends. Dividends in stress scenario were lowered from \$66 million in 2007 to \$49 million in 2008, leading to a higher RA limit.

Overall, the reason why the \$2.457 billion 2008 limit we have projected (using 2008 financial projections and the actual 2007 methodology) would have been lower than the 2007 limit of \$3.3 billion is that projections for overhead and equity grew between 2007 and 2008, overriding the growth in projected revenues.

III. Analyst Earnings Estimates

Analyst	Date	2008 Projected Revenue (\$mm)	Reason for issuing Equity Report	Source
CIBC	12/13/2007	\$ 18,953.0	following an earnings call and "Outlook 2008: Crunch Time"	Meredith Whitney; Kaimon Chung, CFA "4Q07 Results Highlight Difficult Credit Market Conditions" CIBC World Markets (December 13, 2007)
Credit Suisse	12/13/2007	18,972.0	following earnings call	Susan Katzke; Ross Seiden "Lehman Brothers Earnings First Impressions" Credit Suisse (December 13, 2007)
Wachovia	12/13/2007	19,159.0	following earnings call	Douglas Sipkin, CFA; Warren Gardiner "LEH: Survive.....And Thrive Later, Solid All Things Considered" Wachovia Capital Markets, LLC (December 13, 2007)
JPM	12/13/2008	18,186.0	following earnings call	Kenneth Worthington, CFA; Funda Akarsu "Lehman Delivers, but Earnings Quality Remains Key Concern" JPMorgan (December 13, 2007)
Buckingham Research	12/14/2007	21,850.0	following earnings call	James Mitchell; John Grassano "Solid Results in Tough Environment; Undervalued Franchise" The Bunkingham Research Group (December 14, 2007)
HSBC	1/3/2008	19,757.0	Based on sharper than assumed economic slow-down	Matthew Czepliwicz "A relative winner...in subdued credit markets" HSBC Global Research (January 3, 2008)
Credit Suisse	1/11/2008	18,980.0	Based on achievement of this forecast relies on healthy global GDP growth and a recovery in the capital markets	Susan Katzke; Ross Seiden "Lehman Brothers Company Update Establishig 2009E" Credit Suisse (January 11, 2008)
Wachovia	1/15/2008	19,159.0	Based on recently held client meeting with Erin Callan, overall tone was cautious given the challenging operating environment. Still believe LEH is well positioned	Douglas Sipkin, CFA; Herman Chan; Warren Gardiner "LEH: Tough Year Ahead--Sowing Seeds For Share Gains" Wachovia Capital Markets, LLC (January 15, 2008)
Oppenheimer	1/28/2008	18,953.0	Based on first meeting with Erin Callan, leaving estimates as is	Meredith Whitney; Kaimon Chung, CFA "Take-aways From Meeting With LEH's New CFO Erin Callan" Oppenheimer (January 28, 2008)

Sources:

- i. "2007 Risk Appetite Limit Revised Proposal," November 20, 2006. LBEX-DOCID 2125724
- ii. "2007 Risk Appetite Limit," November 22, 2006. LBEX-DOCID 2125734
- iii. 2007 \$3.8 billion RA Limit Calculation. LBEX-DOCID 145687
- iv. 2007 \$3.0 billion RA Limit Calculation. LBEX-DOCID 145663
- v. "2007 Financial Plan," January 30, 2007. LBH_SEC07940_752429
- vi. "2007 Risk Appetite Limit," January 7, 2007. LBEX-DOCID 159838
- vii. "FW: Revised Risk Appetite Limit," January 4, 2008. LBEX-WGM 1056629
- viii. "2008 Financial Plan," January 29, 2008. LBHI_SEC07940_068559
- ix. 2008 \$4 billion RA Limit Calculation. LBEX-DOCID 1305768
- x. Impact on RA limit of change from ROTE to ROE – analysis performed by D&P.
- xi. Impact on RA limit of change in Stress Haircuts – analysis performed by D&P.
- xii. Impact on RA limit of change in Compensation Expense – analysis performed by D&P.
- xiii. Impact on RA limit of change in NPE – analysis performed by D&P.
- xiv. "2008 Budget" October 4, 2007. EC000042
- xv. Reuters Estimates: Custom Consensus Report for Lehman Brothers Inc.
- xvi. Oppenheimer Rating, January 28, 2008.
- xvii. Wachovia Rating, January 15, 2008.
- xviii. Impact on RA limit of change from 55% C&B Ratio – analysis performed by D&P.
- xix. "2008 Financial Plan, Draft" January 29, 2008. LBHI_SEC07940_045973
- xx. 2008 \$2.4 billion RA Limit Calculation – analysis performed by D&P.

APPENDIX 11: COMPENSATION

To determine, as the Examiner was directed to do, whether the officers and directors of Lehman breached their fiduciary duties, the Examiner investigated whether Lehman's compensation practices may have improperly motivated conduct, as discussed more fully in Section III.A.1 of this Report.

I. EXECUTIVE SUMMARY

Specifically, the Examiner reviewed: (1) how Lehman determined the amount of overall compensation and divided that compensation pool among divisions, business lines and employees; (2) the extent to which risk was considered in Lehman's assessment of performance for compensation purposes; and (3) Lehman's policies and practices in comparison to those of peer firms.

Lehman allocated compensation based primarily on net revenue. Revenue not yet recognized but recorded based on mark-to-market valuations was included in net revenue and, therefore, impacted compensation decisions. This inclusion naturally created incentives to value investments highly, avoid writedowns and otherwise seek to maximize short-term profits so as to generate higher net revenue leading to higher compensation. The Examiner has not found evidence that Lehman personnel deliberately engaged in misconduct designed to exploit these incentives.

Although risk-based metrics and similar criteria did play some role in compensation decisions, it was a minor, not central, role. Compensation decisions were driven largely by net revenue, market comparisons and employee attrition concerns.

Lehman's compensation practices were similar to those of its Wall Street peers. While Lehman's vesting and delivery periods for its stock awards were notably longer than its peer firms, Lehman's compensation practices were similar to those used by the other major investment banks.¹

II. THE COMPENSATION AND BENEFITS COMMITTEE OF THE BOARD

The first step of Lehman's annual compensation process began with meetings of the Compensation and Benefits Committee ("Compensation Committee") of the Board of Directors, which in 2007 and 2008 consisted of John F. Akers, Marsha "Marty" Johnson Evans, Sir Christopher Gent and John D. Macomber. Tracy Binkley, Lehman's Head of Human Resources, served as Secretary for meetings, while Richard S. Fuld, Jr., Lehman's Chief Executive Officer and Chairman of the Board, and others (Joseph M. Gregory, President and Chief Operating Officer ("COO"), Anthony J. Collerton, COO of Human

¹ The Examiner did not examine or reach a conclusion regarding whether the compensation practices of the industry as a whole during the period leading up to Lehman's collapse were in hindsight reasonable; that issue has been the subject of much public debate, and is beyond the scope of this examination.

Relations, and Thomas A. Russo, Chief Legal Officer, among others) regularly attended Compensation Committee meetings by invitation.² These meetings generally took place on a monthly or near-monthly basis.³

The Compensation Committee's primary role was to set the firm's compensation ratio (defined below) and to supervise the allocation of available compensation derived from the ratio into compensation pools for each division.⁴ In addition, the Compensation Committee determined the mix of cash compensation and equity compensation (awarded as restricted stock units

² Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Jan. 30, 2007), at p. 1 [LBHI_SEC07940_025526]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Apr. 11, 2007), at p. 1 [LBHI_SEC07940_025940]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Oct. 15, 2007), at p. 1 [LBHI_SEC07940_026503]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Dec. 7, 2007), at p. 1 [LBHI_SEC07940_027100]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Jan. 28, 2008), at p. 1 [LBHI_SEC07940_027212]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Mar. 4, 2008), at p. 1 [LBEX-AM 003552]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Mar. 12, 2008), at p. 1 [LBEX-AM 003580]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Apr. 14, 2008), at p. 1 [LBEX-AM 003646]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (June 19, 2008), at p. 1 [LBEX-AM 003769]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (July 1, 2008), at p. 1 [LBEX-AM 003812]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Sep. 3, 2008), at p. 1 [LBEX-AM 003902]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Sep. 12, 2008), at p. 1 [LBEX-AM 003922].

³ *Id.*

⁴ Examiner's Interview of Anthony J. Collerton, May 14, 2009 at pp. 2-3; Examiner's Interview of Mary Pat Archer, Aug. 20, 2009, at p. 2; Examiner's Interview of Marsha Johnson Evans, May 22, 2009, at p. 6.

("RSUs") or options), as well as set the deferred component of total compensation.⁵

A. Determining Lehman's Compensation Ratio

Each year, the Compensation Committee determined Lehman's aggregate compensation expense (consisting of both fixed compensation expenses and discretionary, performance-based bonus expenses) by calculating a ratio of total compensation and benefits expense to net revenue (the "compensation ratio").⁶

In addition to net revenue, the Compensation Committee considered factors such as: the need to maximize returns to shareholders; investments of the firm in

⁵ Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Jan. 30, 2007), at p. 1 [LBHI_SEC07940_025526]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Apr. 11, 2007), at pp. 1-11 [LBHI_SEC07940_025940]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Oct. 15, 2007), at pp. 1-4 [LBHI_SEC07940_026503]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Dec. 7, 2007), at pp. 1-10 [LBHI_SEC07940_027100]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Jan. 28, 2008), at pp. 1-7 [LBHI_SEC07940_027212]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Mar. 4, 2008), at p. 1-5 [LBEX-AM 003552]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Mar. 12, 2008), at p. 1 [LBEX-AM 003580]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Apr. 14, 2008), at pp. 1-5 [LBEX-AM 003646]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (June 19, 2008), at p. 1 [LBEX-AM 003769]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (July 1, 2008), at p. 1 [LBEX-AM 003812]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Sep. 3, 2008), at pp. 1-6 [LBEX-AM 003902]; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (Sep. 12, 2008), at pp. 1-3 [LBEX-AM 003922].

⁶ Examiner's Interview of Anthony J. Collerton, May 14, 2009 at p. 2; Examiner's Interview of Marsha Johnson Evans, May 22, 2009, at p. 6; Lehman, Compensation Overview (July 30, 2008), at p. 3 [LBEX-WGM 727244].

strategic hiring; and rewarding performance in a competitive manner in light of current market conditions.⁷ Throughout the year, the Compensation Committee consulted quarterly revenue projections and real-time results provided by the Finance Department to estimate and forecast the firm's compensation ratio.⁸

The quarterly revenue projections included analysis of the impact of slightly different compensation ratio levels on pre-tax margin, return on equity ("ROE"), earnings per share ("EPS"), discretionary bonuses and total compensation for non-guaranteed non-new hire ("NGNNH") employees.⁹

The "compensation pool" was finalized in the fourth quarter of each Lehman fiscal year (September through November), when Lehman was able to accurately predict its annual net revenues based on Finance Department accruals and to compare its compensation estimates to the estimates of its competitors.¹⁰ As Lehman's fiscal year-end approached, the compensation ratio fluctuated based on what Lehman learned from outside consultants regarding the

⁷ Lehman, Compensation Overview (July 30, 2008), at p. 3 [LBEX-WGM 727244]; Examiner's Interview of Marsha Johnson Evans, May 22, 2009, at p. 6.

⁸ Examiner's Interview of Anthony J. Collerton, May 14, 2009, at pp. 2-3; Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (March 12, 2008), at p. 1 [LBEX-AM 003580].

⁹ Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee of Lehman Board of Directors (March 12, 2008), at p. 1 [LBEX-AM 003580].

¹⁰ Examiner's Interview of Anthony J. Collerton, May 14, 2009, at p. 3.

compensation ratios used by competitors such as Goldman Sachs, Bear Stearns, Morgan Stanley and Merrill Lynch.¹¹

Lehman's compensation ratio typically ranged between 48% and 50% of net revenue, and was 49.3% of net revenue in each of fiscal years 2005, 2006 and 2007.¹² The chart below demonstrates Lehman's compensation ratio as compared to four competitors between 2003 and 2007:¹³

¹¹ Lehman, Presentation to the Compensation Committee of the Board of Directors (Jan. 23, 2008), at p. 2 [LBHI_SEC07940_027204].

¹² Examiner's Interview of Anthony J. Collerton, May 14, 2009, at p. 2; Lehman, Presentation to Compensation and Benefits Committee of Lehman Board of Directors (Jan. 23, 2008), at p. 5 [LBHI_SEC07940_027204].

¹³ Lehman Brothers Holdings Inc., Annual Report for 2005 as of Nov. 30, 2005 (Form 10-K) (filed on Feb. 13, 2006), at p. 26 ("LBHI 2005 10-K"); Lehman Brothers Holdings Inc., Annual Report for 2006 as of Nov. 30, 2006 (Form 10-K) (filed on Feb. 13, 2007), at p. 28 ("LBHI 2006 10-K"); Lehman Brothers Holdings Inc., Annual Report for 2007 as of Nov. 30, 2007 (Form 10-K) (filed on Jan. 29, 2008), at p. 29 ("LBHI 2007 10-K"); The Bear Stearns Companies Inc., Annual Report for 2005 as of Nov. 30, 2005 (Form 10-K) (filed on Feb. 13, 2006), at p. 49 ("Bears Stearns 2005 10-K"); The Bear Stearns Companies Inc., Annual Report for 2006 as of Nov. 30, 2006 (Form 10-K) (filed on Feb. 13, 2007), at p. 50 ("Bears Stearns 2006 10-K"); The Bear Stearns Companies Inc., Annual Report for 2007 as of Nov. 30, 2007 (Form 10-K) (filed on Jan. 29, 2008), at p. 81 ("Bears Stearns 2007 10-K"); The Goldman Sachs Group Inc., Annual Report for 2005 as of Nov. 25, 2005 (Form 10-K) (filed on Feb. 7, 2006), at p. 152 ("Goldman Sachs 2005 10-K"); The Goldman Sachs Group Inc., Annual Report for 2006 as of Nov. 24, 2006 (Form 10-K) (filed on Feb. 5, 2007), at p. 166 ("Goldman Sachs 2006 10-K"); The Goldman Sachs Group Inc., Annual Report for 2007 as of Nov. 30, 2007 (Form 10-K) (filed on Jan. 28, 2008), at p. 174 ("Goldman Sachs 2007 10-K"); Morgan Stanley, Annual Report for 2007 as of Nov. 30, 2007 (Form 10-K) (filed on Jan. 29, 2008), at p. 28 ("Morgan Stanley 2007 10-K"); Merrill Lynch & Co., Inc., Annual Report for 2007 as of Dec. 28, 2007 (Form 10-K) (filed on Feb. 25, 2008), at p. 32 ("Merrill Lynch 2007 10-K").

(\$000,000)	2007	2006	2005	2004	2003
Lehman Brothers					
Net Revenue	\$19,257	\$17,583	\$14,630	\$11,576	\$8,647
Compensation & Benefits Expense	9,494	8,669	7,213	5,730	4,318
<i>Compensation Ratio</i>	49.3%	49.3%	49.3%	49.5%	49.9%
Bear Stearns					
Net Revenue	5,945	9,227	7,411	6,813	5,994
Compensation & Benefits Expense	3,425	4,343	3,553	3,254	2,881
<i>Compensation Ratio</i>	57.6%	47.1%	47.9%	47.8%	48.1%
Goldman Sachs					
Net Revenue	45,987	37,665	25,238	20,951	16,012
Compensation & Benefits Expense	20,190	16,457	11,758	9,681	7,515
<i>Compensation Ratio</i>	43.9%	43.7%	46.6%	46.2%	46.9%
Morgan Stanley					
Net Revenue	28,026	29,839	23,525	20,319	17,621
Compensation & Benefits Expense	16,552	13,986	10,749	9,320	7,892
<i>Compensation Ratio</i>	59.1%	46.9%	45.7%	45.9%	44.8%
Merrill Lynch					
Net Revenue	11,250	33,781	25,277	22,059	19,900
Compensation & Benefits Expense	15,903	16,867	12,314	10,663	9,886
<i>Compensation Ratio</i>	141.4% ¹⁴	49.9%	48.7%	48.3%	49.7%

Excluding Merrill Lynch, the 2007 average of competitors' compensation ratios was 53.5%;¹⁵ the 2006 average of competitors' compensation ratios was 46.9%.¹⁶ Lehman attempted to maintain or reduce its compensation ratio on a year-to-year basis as a signal to the market that it was committed to controlling

¹⁴ In 2007, Merrill reported a net loss from continuing operations of \$8.6 billion, resulting in compensation expenses exceeding net revenue, and a compensation ratio of 141.4%. Merrill Lynch 2007 10-K, at pp. 10, 69.

¹⁵ If Merrill was included, the ratio would be 70.35.

¹⁶ LBHI 2005 10-K at p. 26; LBHI 2006 10-K at p. 28; LBHI 2007 10-K at p. 29; Bear Stearns 2005 10-K at p. 49; Bear Stearns 2006 10-K at p. 50; Bear Stearns 2007 10-K at p. 81; Goldman Sachs 2005

compensation expenses – while salaries of individual employees and executives might increase, Lehman was maintaining and/or decreasing its compensation expenses as an overall percentage of firm expenses.¹⁷

Early in 2008, Lehman projected declining revenue due to market conditions.¹⁸ To maintain total compensation at a dollar level comparable to past levels despite declining revenues, and thus avoid potential employee exodus to competitors, Lehman projected an increase in the firm’s compensation ratio during the first quarter of 2008.¹⁹ The chart below demonstrates that trend:

	2007				2008
(\$000,000)	Q1	Q2	Q3	Q4	Q1
Net Revenue	5,047	5,512	4,308	4,390	3,507
Compensation	2,488	2,718	2,124	2,164	1,841
% of Revenue	49.30%	49.31%	49.30%	49.29%	52.50%

At a March 12, 2008 Compensation Committee meeting, Fuld recommended, and the Board adopted, an increased compensation ratio of 52.5% for the first quarter of 2008.²⁰ First quarter 2008 net revenue decreased by

10-K at p. 152; Goldman Sachs 2006 10-K at p. 166; Goldman Sachs 2007 10-K at p. 174; Morgan Stanley 2007 10-K at p. 28; Merrill Lynch 2007 10-K at p. 32.

¹⁷ Examiner’s Interview of Sir Christopher Gent, Oct. 21, 2009, at pp. 2, 8-11; Examiner’s Interview of James Emmert, Oct. 9, 2009, at p. 2.

¹⁸ Lehman, Presentation to Compensation and Benefits Committee of Lehman Board of Directors (Jan. 23, 2008), at p. 1 [LBHI_SEC07940_027204].

¹⁹ *Id.* at p. 2.

²⁰ Lehman Brothers Holdings Inc., Compensation and Benefits Committee Meeting Minutes of Lehman Board of Directors (Mar. 12, 2008), at p. 1 [LBEX-AM 003580].

approximately 30.5% from first quarter 2007 net revenue and approximately 20.1% from fourth quarter 2007 net revenue.²¹

Beginning second quarter 2008, the compensation ratio method of determining total compensation was no longer viable, as firm-wide net revenue was negative \$668 million.²² Despite having firm-wide negative net revenue for second quarter 2008, certain Lehman divisions, *i.e.*, Investment Management and Investment Banking, had performed well during that period.²³ Consequently, Lehman management determined that employees in those better performing divisions should be paid compensation commensurate with compensation paid to employees in similar divisions at Lehman's peer firms, in order to protect the Lehman franchise.²⁴ Preliminary market indications following second quarter 2008 suggested that pay for the lead investment banks was likely to be down approximately 25% to 30% overall from 2007.²⁵ Consistent with these indications, the Compensation Committee also planned to target a 30% reduction in pay for

²¹ Lehman Brothers Holdings Inc., Quarterly Report as of Feb. 28, 2007 (Form 10-Q) (filed on Apr. 9, 2007), at p. 3 ("LBHI 10-Q (filed Apr. 9, 2007)"); Lehman Brothers Holdings Inc., Quarterly Report as of May 31, 2007 (Form 10-Q) (filed on July 10, 2007), at p. 3 ("LBHI 10-Q (filed July 10, 2007)"); Lehman Brothers Holdings Inc., Quarterly Report as of Aug. 31, 2007 (Form 10-Q), at p. 3 (filed on Oct. 10, 2007) ("LBHI 10-Q (filed Oct. 10, 2007)"); LBHI 2007 10-K at p. 29; Lehman Brothers Holdings Inc., Quarterly Report as of Feb. 29, 2008 (Form 10-Q) (filed on Apr. 9, 2008), at p. 4 ("LBHI 10-Q (filed Apr. 9, 2008)"); Lehman Brothers Holdings Inc., Quarterly Report as of May 31, 2008 (Form 10-Q) (filed on July 10, 2008), at p. 4 ("LBHI 10-Q (filed July 10, 2008)").

²²LBHI 10-Q (filed July 10, 2008).

²³ Lehman, Second Quarter 2008 Compensation Expense Presentation to Compensation and Benefits Committee of Lehman Board of Directors (July 11, 2008), at p. 1 [LBHI_SEC07940_851433].

²⁴ *Id.*

NGNNH employees for 2008; the Compensation Committee determined it would be difficult to both maintain the franchise and initiate any pay cuts of over 30%.²⁶ In addition, beginning in January 2008, the Compensation Committee began exploring alternative long-term compensation models, including changes to its equity award plan, which would lower overall compensation costs.²⁷

B. Cash-Equity Mix of Compensation and Vesting

In addition to setting the firm's compensation ratio, the Compensation Committee also determined the cash-equity mix (the percentage of compensation paid in cash versus that portion paid in equity) and the deferred component of total compensation for all Lehman employees.²⁸ As an individual's total compensation increased, the deferred component increased correspondingly.²⁹ In Lehman's view, individuals with significant portions of their total compensation in the form of deferred compensation had an incentive to promote the firm's long-term success.³⁰

²⁵ *Id.* at p. 3.

²⁶ *Id.*

²⁷ Lehman, Presentation to Compensation and Benefits Committee of Lehman Board of Directors (Jan. 23, 2008), at p. 2 [LBHI_SEC07940_027204]; Lehman, Compensation Overview (July 30, 2008), at pp. 1-32 [LBEX-WGM 727244].

²⁸ Lehman, Compensation Overview (July 30, 2008), at pp. 15-19 [LBEX-WGM 727244].

²⁹ *Id.*

³⁰ *Id.*

The chart below shows the amount of total compensation comprised of equity-based awards in 2008:³¹

<u>2008 Total Compensation Range</u>	<u>Amount of Total Compensation in Equity-Based Awards</u>
\$0 - \$74,999	1% of 2008 TC
75,000 - 99,999	2% of 2008 TC
100,000 - 299,999	\$2,000 plus 14% of 2008 TC above \$100,000
300,000 - 499,999	\$30,000 plus 35% of 2008 TC above \$300,000
500,000 - 749,999	\$100,000 plus 35% of 2008 TC above \$500,000
750,000 - 999,999	\$187,500 plus 65% of 2008 TC above \$750,000
1,000,000 - 1,499,999	\$350,000 plus 65% of 2008 TC above \$1,000,000
1,500,000 - 1,999,999	\$675,000 plus 85% of 2008 TC above \$1,500,000
2,000,000 - 2,499,999	\$1,100,000 plus 80% of 2008 TC above \$2,000,000
2,500,000 and above	\$1,500,000 plus 90% of 2008 TC above \$2,500,000 up to a maximum of 65% of 2008 TC

Thus, employees receiving compensation greater than \$750,000 received a significant portion of their total compensation (65%) in equity.

The firm's cash-equity mix of compensation in 2007 was 32% cash to 68% equity.³² Lehman's mix was consistent with that of its peer group, which ranged from a low of 11% cash compensation at Goldman Sachs to a high of 39% cash compensation at Bear Stearns, as detailed in the following chart:³³

	Compensation Mix	
	<u>Equity</u>	<u>Cash</u>
Lehman Brothers	68.00%	32.00%
Bear Stearns	61.00%	39.00%
Goldman Sachs	89.00%	11.00%
JP Morgan Chase	69.00%	31.00%

³¹ *Id.* at p. 26.

³² Lehman, Annual Compensation Review Presentation to Compensation and Benefits Committee of Lehman Board of Directors (Apr. 14, 2008), at p. 5 [LBHI_SEC07940_027870].

³³ *Id.*

Merrill Lynch	71.00%	29.00%
Morgan Stanley	72.00%	28.00%
2007 Average	<u>73.00%</u>	<u>27.00%</u>

Since 2005, Lehman's equity compensation component consisted exclusively of RSUs, and each RSU grant entitled an employee to one share of Lehman stock after a period of years.³⁴ The following chart depicts Lehman's equity vesting and delivery schedule.³⁵ The vesting schedule refers to the time period before an employee received his or her RSUs. The delivery schedule refers to the time period before the RSUs converted into unrestricted stock.

³⁴ Lehman, Compensation Overview (July 30, 2008), at p. 14 [LBEX-WGM 727244].

³⁵ *Id.* at p. 27.

Firm	Discount	Vesting Schedule						Delivery Schedule					
		at grant	year 1	year 2	year 3	year 4	year 5	at grant	year 1	year 2	year 3	year 4	year 5
Citigroup ¹ Credit	25.00%		25.00%	25.00%	25.00%	25.00%		25.00%	25.00%	25.00%	25.00%		
Suisse ² ISUs (in lieu of discount)	n/a		33.00%	33.00%	33.00%			33.00%	33.00%	33.00%			
Deutsche Bank	9.00%			50.00%	25.00%	25.00%			50.00%	25.00%	25.00%		
Goldman Sachs	0.00%	40.00%			60.00%						100.00%		
JP Morgan Merrill Lynch	0.00%		25.00%	25.00%	25.00%	25.00%		25.00%	25.00%	25.00%	25.00%		
Morgan Stanley	0.00%			50.00%	50.00%				50.00%	50.00%			
UBS	0.00%		33.00%	33.00%	33.00%			33.00%	33.00%	33.00%			
Lehman Brothers													
2007 MD	Principal				50.00%			50.00%					100.00%
	Discount	30.00%						100.00%					100.00%
2007 SVP and below	Principal			100.00%									100.00%
	Discount	25.00%						100.00%					100.00%
2008 Proposed	0.00%		33.00%	33.00%	33.00%						100.00%		

¹ Discount provided on deferral levels up to \$500k in bonus only. Discretionary supplemental awards in 2007.

² Equity discounts replaced in 2006 by a new performance-based Incentive Stock Unit ("ISU") program; ISUs were communicated as equivalent to RSUs with a 20% discount. Deferral % of 100% above \$4 million in bonus.

In 2007, as in all prior years, RSUs were issued to employees at a discount to market price.³⁶ Therefore, the total value of the RSUs an employee received consisted of two components: a portion of the value was attributable to his or her actual RSU award (principal portion), and a portion was attributable to the

³⁶ *Id.*

discount to market price (discount portion).³⁷ Managing directors received RSUs at a discount of 30% to market price, and Senior Vice Presidents and other lower-ranking employees received RSUs at a discount of 25% to market price.³⁸ In 2007, 50% of a Managing director's principal portion RSUs vested after three years, and the remaining 50% vested after five years. The discount portion of RSUs granted to a Managing director also vested after five years.³⁹ Similarly, the principal portion of the RSUs granted to Senior Vice Presidents and lower-ranking employees vested after two years, and the discount portion of the RSUs vested after five years.⁴⁰

Lehman's RSU vesting and delivery schedules were longer than those of its peer firms. Lehman Managing directors experienced equity vesting after as long as five years (50% of the principal portion, and 100% of the discount portion), and Lehman postponed share delivery until after five years,⁴¹ whereas the vesting and delivery periods of Lehman's peer firms concluded after three or four years.⁴²

Annual limits were imposed on Executive Committee members, limiting the amount of equity they were permitted to liquidate based on the market value

³⁷ *Id.*

³⁸ *Id.* at p. 15.

³⁹ *Id.* at p. 27.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

of their equity holdings at the beginning of each year.⁴³ For 2008, the annual liquidation limit was 20%, which was calculated using a pre-tax equity value that included RSUs, option gains and the pre-tax equivalent of shares owned.⁴⁴

According to Lehman witnesses, longer vesting and delivery, as well as restrictions on the amount of equity Executive Committee members could liquidate annually, helped to align executive interests with the long-term goals of the firm and its shareholders.⁴⁵ A forthcoming article in the *Yale Journal on Regulation* by Harvard Law School Professors Lucian A. Bebchuk, Alma Cohen and Holger Spamman calls that assumption into question, noting that the top five executives at Lehman received cash bonuses and proceeds from stock sales totaling \$1 billion between 2000 and 2008 and that Lehman top executives had regular short-term incentives to attempt to increase the stock price on the shares that they were selling as they became vested and delivered.⁴⁶ Indeed, although Lehman's vesting and delivery schedules were longer than peers' vesting and delivery schedules, Lehman's schedules were still focused on short-term firm performance (five years or less).

⁴³ *Id.* at p. 21.

⁴⁴ *Id.* at p. 21.

⁴⁵ Examiner's Interview of Sir Christopher Gent, Oct. 21, 2009, at pp. 2, 8-11; Examiner's Interview of Anthony J. Barsanti, Oct. 15, 2009, at p. 17.

⁴⁶ Lucian A. Bebchuk, *et al.*, *The Wages of Failure: Executive Compensation at Bear Stearns and Lehman 2000-2008* (Yale J. on Reg., Working Draft, Nov. 22, 2009), <http://www.law.harvard.edu/faculty/bebchuk/pdfs/BCS-Wages-of-Failure-Nov09.pdf> (last visited Jan. 27, 2010), at pp. 2,9.

Lehman's extended vesting schedule also had an impact on employee severance. Firm policies and procedures addressed the manner in which non-vested shares would be treated for departing employees who had achieved full-career status at Lehman.⁴⁷ For departing employees who had yet to achieve full-career status, the Compensation Committee and/or the Executive Committee had discretion to award severance packages and to determine how non-vested shares would be treated; Fuld would generally make recommendations, which the Compensation Committee would, for the most part, approve.⁴⁸

C. Dividing Compensation Between Lehman Divisions

After determining the firm's compensation ratio and the cash-equity mix, the Compensation Committee turned to the next step in the annual compensation process – dividing the compensation pool among Lehman's divisions.⁴⁹ Once the Compensation Committee finalized the total firm-wide compensation pool in the fourth quarter of each fiscal year and Lehman could accurately predict annual revenues based on Finance Department estimates, and after Lehman compared its predicted compensation to the compensation

⁴⁷ Lehman, Summary of Select Material Terms for the 2007 Equity Award Program for Bonus-Eligible and Production-Based Employees (2007), at p. 1 [LW 00896].

⁴⁸ Lehman, Jeremy M. Isaacs Separation Plan (Sep. 8, 2009) [LBEX-DOCID 827786], attached to e-mail from Hilary McNamara, Lehman, to Tracy A. Binkley, Lehman, *et al.* (Sept. 8, 2008) [LBEX-DOCID 962552].

⁴⁹ Lehman, Compensation Overview (July 30, 2008), at pp. 5-8 [LBEX-WGM 727244].

estimates of its Wall Street competitors, the Compensation Committee divided the compensation pool among Lehman divisions.⁵⁰

A portion of the firm's total compensation pool was fixed, representing compensation or benefit obligations that the firm had committed to honor, such as compensation agreements or contracted-for salaries for current and former employees, health care costs, retirement benefits, contractual severance packages and amortization of equity awards that had been given to employees in past years (normally amortized over five years).⁵¹ These fixed obligations were satisfied first, with all remaining funds in the compensation pool then allocated to divisions for employee bonuses.⁵²

Rather than applying the firm's compensation ratio to determine divisional compensation allocations, the Committee employed a discretionary process that analyzed a number of factors.⁵³ The compensation ratio for Investment Banking was greater than the firm-wide compensation ratio of 49.3%, while the compensation ratio for Capital Markets was lower than the firm-wide compensation ratio.⁵⁴ The compensation ratio for Investment Management

⁵⁰ Examiner's Interview of Anthony J. Collerton, May 14, 2009 at p. 3.

⁵¹ *Id.* at pp. 2-3.

⁵² *Id.* at p. 3.

⁵³ Lehman, Compensation Overview (July 30, 2008), at pp. 5-7 [LBEX-WGM 727244].

⁵⁴ Lehman, Q1 2008 Final Greenbook Detailed Version (Mar. 12, 2008), at p. 14 [LBHI_SEC07940_042145]; Lehman, Q2 2008 Greenbook Final Version (June 12, 2008), at pp. 9-10 [LBHI_SEC07940_042474]; Lehman, Q3 2008 Greenbook (Sept. 11, 2008), at pp. 2-3 [LBHI_SEC07940_042656].

fluctuated above and below the firm-wide compensation ratio.⁵⁵ The chart below demonstrates this variation, showing segment revenue and compensation for the Investment Banking, Capital Markets and Investment Management divisions for the third, second, and first quarters of 2008 and the fourth, second, and first quarters of 2007:

(\$000,000)	Investment Banking						Capital Markets						Investment Management					
	2008			2007			2008			2007			2008			2007		
	Q3	Q2	Q1	Q4	Q2	Q1	Q3	Q2	Q1	Q4	Q2	Q1	Q3	Q2	Q1	Q4	Q2	Q1
Segment Revenue	266	858	867	831	1,150	850	(4,321)	(2,374)	1,672	2,727	3,594	3,502	76	848	968	832	768	695
Compensation Expense	313	352	217	442	529	367	819	834	536	821	1,129	970	304	339	307	357	393	381
Compensation Allocation	71	83	97	112	105	95	521	594	630	617	848	578	(43)	91	26	(27)	(81)	(56)
Segment Expense Adjustments		64	228	(31)	44	82		(23)	(460)	(173)	(340)	1		(35)	260	47	90	72
Total Compensation	384	500	542	523	679	543	1,341	1,406	706	1,266	1,638	1,550	261	395	593	377	402	397
Compensation Ratio	144.4%	58.2%	62.5%	62.9%	59.0%	63.9%	-31.0%	-59.2%	42.3%	46.4%	45.6%	44.3%	344.4%	46.6%	61.2%	45.3%	52.3%	57.2%

The Compensation Committee apportioned draft pools of compensation to each division based primarily on each division’s net revenue and the prevailing practices in the market.⁵⁶ This process had a stated rationale “to provide a level of transparency in the determination of compensation at the divisional level in order to more clearly demonstrate the tie between financial performance and compensation, providing strong incentives for divisional performance,” and “to encourage revenue maximization” and “aggressive management of non-personnel expenses.”⁵⁷

⁵⁵ *Id.*

⁵⁶ Lehman, Compensation Overview (July 30, 2008), at pp. 5-7 [LBEX-WGM 727244].

⁵⁷ *Id.* at p. 5.

The Compensation Committee used performance-based metrics as well as more subjective criteria to allocate pools of compensation to each division. From the revenue projections provided by the Finance Department, Lehman would calculate pre-compensation profits before taxes (“PCPBT”), and then input that figure into the compensation model.⁵⁸ Beginning in 2003, Lehman supplemented its PCPBT-based compensation model by also considering an Economic Value Added (“EVA”) metric, which included a risk component based on a “use of equity” charge.⁵⁹ Lehman viewed its PCPBT-based compensation model as a competitive advantage because it aligned pay with performance, provided more accountability and allowed management to take steps to optimize performance.⁶⁰

The Compensation Control Group within the Finance Department provided the Compensation Committee, Chief Financial Officer and Chief Accounting Officer with a presentation of data on six or seven performance statistics for each division in any given year versus the division’s previous year’s performance.⁶¹ These included: net revenues, changes in headcount, PCPBT, EVA and ROE.⁶² The Compensation Committee also received a presentation during the fourth quarter detailing compensation expenses (expressed in terms

⁵⁸ *Id.* at pp. 5-8.

⁵⁹ *Id.* at p. 6; Examiner’s Interview of James Emmert, Oct. 9, 2009, at p. 2.

⁶⁰ Lehman, 2008 Compensation Update (July 2008), at p. 4 [LBHI_SEC07940_741779].

⁶¹ Examiner’s Interview of James Emmert, Oct. 9, 2009, at p. 2.

⁶² *Id.*

of NGNNH compensation), and the Compensation Committee was presented with alternatives for distributing compensation to divisions.⁶³ The Compensation Committee used outside consultants (including Johnson & Associates, Inc. and MGMC, Inc.), to analyze competitive gaps and market indicators.⁶⁴

The Compensation Committee used these performance results as a baseline for allocating compensation to each Lehman division, followed by a review of subjective criteria to determine divisional compensation allocations.

These criteria and considerations included:

- New businesses that were in early stages of their growth that had not yet generated sufficient compensation to pay employees competitively;
- Significant market pressures in business sectors, reflecting market premiums paid by new entrants into that sector;
- Lehman's decision to grow a business sector in accordance with the firm's long term strategic plan;
- Franchise preservation issues driven by the market cycle, where Lehman paid a division/business at higher levels in order to protect its investment in key employees; and
- Reward for "One Firm" behaviors such as cross selling or client management activities where the revenue benefit accrued to another business unit.⁶⁵

No formal or written guidelines existed as to the weight assigned to either the divisional performance results or the subjective criteria.⁶⁶ The compensation

⁶³ *Id.*

⁶⁴ *Id.*

pool for a division did not increase or decrease in a directly proportional manner to that division's net revenue performance.⁶⁷ Divisions that Lehman wanted to grow, for example, were generally allocated compensation pools larger than their net revenue performance might have dictated.⁶⁸ Similarly, a higher share of compensation was paid out to divisions such as Investment Banking, which did not pose a significant risk to Lehman's balance sheet assets, than to riskier businesses such as Real Estate, which exposed Lehman's balance sheet to potential losses.⁶⁹

In fiscal year 2007, for example, Lehman's Fixed Income Division ("FID") generated \$3.4 billion less PCPBT as compared to fiscal year 2006, but nevertheless, FID employees received similar compensation to what they had received in 2006.⁷⁰ Specifically, while the compensation model indicated that for 2007 FID compensation should be reduced by \$888 million from 2006 compensation, senior management and the Compensation Committee reduced FID compensation by only \$80 million.⁷¹ Similarly, in 2007, model results indicated that the Equities Division should have received a \$477 million increase

⁶⁵ Lehman, Compensation Overview (July 30, 2008), at p. 7 [LBEX-WGM 727244].

⁶⁶ Examiner's Interview of Mary Pat Archer, August 20, 2009, at p. 4.

⁶⁷ *Id.*; e-mail from Kentaro Umezaki, Lehman, to Roger Nagioff, Lehman, *et al.* (Nov. 8, 2007) [LBEX-DOCID 175489].

⁶⁸ Lehman, Compensation Overview (July 30, 2008), at p. 7 [LBEX-WGM 727244].

⁶⁹ Lehman, 2007 Year-End Comp Process Model Pre Round 2 NGNNH Adjustor (Nov. 28, 2007) [LBEX DOCID 147440]; Examiner's Interview of Roger Nagioff, Sept. 30, 2009, at p. 19.

⁷⁰ Lehman, Compensation Overview (July 30, 2008), at pp. 6-8 [LBEX-WGM 727244].

in compensation from 2006, based on an approximately \$1.8 billion increase in PCPBT and improved profitability. However, following senior management and Compensation Committee adjustments, the division received an increase of only \$229 million.⁷²

The Compensation Committee applied a similar process to determine compensation allocations to individual business lines within divisions. For example, within FID's Rates and Products subdivision, the Commodities segment's 2006 net revenues and compensation ratio were \$27.8 million and 195%, respectively.⁷³ The segment's 2007 net revenue and compensation ratio were \$231 million and 48.9%, respectively.⁷⁴ These ratios are consistent with witness interviews stating that the segment was a start-up in 2006 from which Lehman did not expect high net revenues, yet determined that it was appropriate to compensate employees commensurate with their market peers in order to attract and retain them to further grow the business.⁷⁵ The segment saw substantial growth by 2007, and therefore, the 2007 segment ratio was more

⁷¹ *Id.*

⁷² *Id.*

⁷³ Lehman, 2007 Year-End Comp Process Model Pre Round 2 NGNNH Adjustor (Nov. 28, 2007) [LBEX DOCID 147440].

⁷⁴ *Id.*

⁷⁵ Examiner's Interview of Mary Pat Archer, Aug. 20, 2009, at p. 4; Examiner's Interview of Roger Nagioff, Sep. 30, 2009, at p. 20.

consistent with the firm's overall compensation ratio.⁷⁶ Finally, compensation decisions made by Lehman's competitors in regard to their comparative divisions played a role in Lehman's allocations, as Lehman attempted to prevent attrition by matching the compensation of its competitors.⁷⁷ There is also some indication that the Compensation Committee retained a "holdback" pool of compensation that could be paid to certain divisions for adjustment purposes.⁷⁸

III. DETERMINING INDIVIDUAL EMPLOYEE COMPENSATION

After divisional and business line compensation was allocated, each division head would allocate the pool of compensation to be received by its executives and employees. Division heads had autonomy regarding individual compensation decisions, and the specific performance metrics they relied upon to apportion compensation to their executives and employees varied based on market practices in each division's business line.⁷⁹ Compensation decisions for individual employees depended on that specific employee's functions, but all

⁷⁶ Lehman, 2007 Year-End Comp Process Model Pre Round 2 NGNNH Adjustor (Nov. 28, 2007) [LBEX DOCID 147440]; Examiner's Interview of Mary Pat Archer, Aug. 20, 2009, at p. 4.

⁷⁷ E-mail from Kentaro Umezaki, Lehman, to Roger Nagioff, Lehman, *et al.* (Nov. 8, 2007) [LBEX-DOCID 175489]; Lehman Brothers Holdings Inc., Compensation Overview (July 30, 2008), at pp. 3, 5, 8 [LBEX-WGM 727244].

⁷⁸ E-mail from Roger Nagioff, Lehman, to Mary Pat Archer, Lehman (Dec. 4, 2007) [LBEX-DOCID 175004].

⁷⁹ Lehman, Compensation Overview (July 30, 2008), at p. 11 [LBEX-WGM 727244]; Examiner's Interview of Mary Pat Archer, Aug. 20, 2009, at pp. 2-4; Examiner's Interview of Michael Gelband, Aug. 12, 2009, at pp. 22-24; Examiner's Interview of Anthony J. Collerton, May 14, 2009, at p. 3.

performance indicators were net-revenue-based.⁸⁰ Lehman's Compensation and Control Group met monthly with each division's Chief Administrative Officer ("CAO") to review the division's compensation models.⁸¹

While each division and business unit had autonomy and discretion over its own compensation process, each division reported its compensation allocation results (including its list of top compensated employees) to the Executive Committee.⁸² An illustrative example of how FID carried out the compensation process in 2007 was described as follows:⁸³

Once FID received the bonus pool package from the Finance Department in early November 2007,⁸⁴ a "round one" meeting followed involving a large, representative group of FID Managing Directors, including Mary Pat Archer, Roger Nagioff, Thomas Humphrey, Alex Kirk, Andrew J. Morton, Kentaro Umezaki and Ravi Mattu.⁸⁵ Nagioff, with assistance from Archer, outlined for the group the firm-wide approach for that year's compensation.⁸⁶ Nagioff explained the process and made recommendations on how round one would

⁸⁰ Lehman, Compensation Overview (July 30, 2008), at p. 11 [LBEX-WGM 727244].

⁸¹ Lehman, 2008 Compensation Update (July 2008), at p. 6 [LBHI_SEC07940_741779].

⁸² Examiner's Interview of Michael Gelband, Aug. 12, 2009, at pp. 22-23; Examiner's Interview of Anthony J. Collerton, May 14, 2009, at p. 3; Lehman, Compensation Overview (July 30, 2008), at p. 11 [LBEX-WGM 727244].

⁸³ Examiner's Interview of Mary Pat Archer, Aug. 20, 2009, at p. 2.

⁸⁴ Archer stated that Andrew J. Morton and Alex Kirk spent time prior to the first cut or round one meeting trying to create a preliminary split based on the prior year's final compensation decisions. Examiner's Interview of Mary Pat Archer, Aug. 20, 2009, at p. 2.

⁸⁵ *Id.*

work in terms of dividing compensation between business units and employees.⁸⁷ Additionally, he would set targets for FID in terms of fitting the division's total compensation decisions within Lehman's overall annual targets (expressed as a percentage change from the previous year in terms of NGNNH compensation).⁸⁸ The group reviewed relative performance, historic compensation, efficiencies with regard to headcount, headcount and performance of the business on a year-over-year basis. The group then made a preliminary allocation of divisional compensation pool funds among its business units following a bottom-up review (ensuring everyone in the division received the bonus they deserved to retain key employees) and a top-down review (ensuring guarantees for new hires were paid).⁸⁹ Nagioff was the final decision-maker if conflicts within the group could not be resolved.⁹⁰

Following round one, the heads of each business unit had another week to allocate compensation to employees using an online bonus system.⁹¹ Individual employee compensation allocation was a discretionary process and decisions

⁸⁶ E-mail from Kentaro Umezaki, Lehman, to Roger Nagioff, Lehman, *et al.* (Nov. 6, 2007) [LBEX-DOCID 175483].

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Examiner's Interview of Mary Pat Archer, Aug. 20, 2009, at p. 2; e-mail from Mary Pat Archer, Lehman, to Roger Nagioff, Lehman (Sept. 10, 2007) [LBEX-DOCID 175480]; e-mail from Kentaro Umezaki, Lehman, to Roger Nagioff, Lehman, *et al.* (Nov. 6, 2007) [LBEX-DOCID 175483].

⁹⁰ E-mail from Kentaro Umezaki, Lehman, to Roger Nagioff, Lehman, *et al.* (Nov. 6, 2007) [LBEX-DOCID 175483].

⁹¹ Examiner's Interview of Mary Pat Archer, Aug. 20, 2009, at p. 2.

appear to have been made primarily by a series of performance criteria that varied by class of professional rather than by division. FID business unit heads ranked their employees in quartiles, designating the top 25% of performers as “1”s on down to the bottom 25% of employees (who performed below expectations) as “4”s; while the 1-4 ranking was not strictly determinative of compensation, the expectation was that employees at higher levels (1-2) would receive higher bonus compensation than those at lower levels (3-4).⁹² After making preliminary allocations to employees, the business heads reported to Nagioff, Archer and the larger group on how they had allocated bonuses within their business unit, and they prepared rosters listing each employee’s compensation from high to low that year, as well as, a history of each employee’s compensation from previous years.⁹³ Some adjustments would be made at this time to conform compensation within the division amongst employee groups (so that, for example, administrative assistants in one business unit were not disproportionately compensated compared to administrative assistants in another business unit).⁹⁴ These adjustments concluded round one.

⁹² E-mail from Kentaro Umezaki, Lehman, to Roger Nagioff, Lehman, *et al.* (Nov. 8, 2007) [LBEX-DOCID 175489]; Lehman, Rules of Engagement - Bonus Workbook Quick Guide [LBEX-DOCID 282667].

⁹³ Examiner’s Interview of Mary Pat Archer, Aug. 20, 2009, at pp. 2-3.

⁹⁴ *Id.* at p. 3.

Nagioff then met with Gregory so that compensation decisions could be reviewed by the Compensation Committee. The Compensation Committee reviewed the details of the top 200 to 250 earners in each division as well as of any employees whose compensation had drastically increased or decreased from the previous year.⁹⁵ Once the Compensation Committee had finalized the firm-wide net revenues at the end of November, round two would begin whereby FID would reallocate compensation as necessary based on any increase or decrease in its final compensation pool from the Compensation Committee.⁹⁶ FID occasionally would retain a small pool of compensation in a reserve for adjustments or to fix any misallocations from the previous rounds.⁹⁷

Once round two was over, the direct managers of each business line would communicate the bonuses to their employees as part of the employees' performance reviews, normally finishing that part of the process by late December.⁹⁸

Final approval of all compensation decisions was vested in the Compensation Committee.⁹⁹ Indeed, on one occasion, management was reprimanded for awarding a compensation package without prior Board

⁹⁵ *Id.*

⁹⁶ *Id.*; e-mail from Kentaro Umezaki, Lehman, to Mary Pat Archer, Lehman (July 10, 2007) [LBEX-DOCID 1677802];

⁹⁷ Examiner's Interview of Mary Pat Archer, Aug. 20, 2009, at p. 3.

⁹⁸ *Id.*; e-mail from Kentaro Umezaki, Lehman, to Mary Pat Archer, Lehman (July 10, 2007) [LBEX-DOCID 1677802].

approval.¹⁰⁰ While the Board ultimately approved the package, it informed Fuld and management that all such decisions were required to be approved by the Board.¹⁰¹

IV. CONSIDERATION OF RISK IN LEHMAN'S COMPENSATION PRACTICES

While Lehman's compensation practices were predominately driven by net revenue-based metrics, risk did play some role in compensation decisions. For example, at the firm-wide level, although the EVA compensation metric was net revenue-based, the metric also considered balance sheet risk necessary to achieve net revenues.¹⁰² Additionally, Lehman divisions with fee-based net revenues (such as Investment Banking) generally received higher compensation allocations on a percentage-of-net-revenue basis than divisions that undertook significant balance sheet risk, such as real estate.¹⁰³

Risk also played a role in compensation through balance sheet limits. Businesses that exceeded balance sheet limits theoretically faced penalties that

⁹⁹ Examiner's Interview of Anthony J. Collerton, May 14, 2009, at p. 3.

¹⁰⁰ Examiner's Interview of John F. Akers, Apr. 22, 2009, at p. 7.

¹⁰¹ *Id.*

¹⁰² Examiner's Interview of James Emmert, Oct. 9, 2009, at p. 2; Examiner's Interview of Roger Nagioff, Sept. 30, 2009, at pp. 4, 19-20.

¹⁰³ Examiner's Interview of Roger Nagioff, Sept. 30, 2009, at pp. 4, 19-20; Examiner's Interview of James Emmert, Oct. 9, 2009, at p. 2; Examiner's Interview of Andrew J. Morton, Sept. 21, 2009, at p. 4.

could include the diminution of their compensation pool.¹⁰⁴ As Umezaki noted, balance sheet usage and limit breaches triggered penalties in the net-revenue metrics used by Lehman, thereby affecting divisional compensation in a negative manner.¹⁰⁵

As recently as 2004, FID used a “Compensation Scorecard” that included risk-weighted metrics such as “return on risk equity” and “return on net balance sheet” to determine business unit compensation pool allocations.¹⁰⁶ Similarly, divisional compensation metrics, year-over-year divisional performance data and internal divisional performance tracking documents submitted to the Compensation Committee by the Compensation Control Group assessed divisional performance relative to Value at Risk (“VaR”), balance sheet usage and risk appetite.¹⁰⁷ The Compensation Committee’s review of these documents indicates at least some consideration of risk in making compensation decisions.¹⁰⁸

Beginning in the first quarter of 2008, Lehman adopted a new competency measure for the Equities Sales force that addressed risk appreciation.¹⁰⁹ This competency measure consisted of four criteria: (1) awareness (the employee’s

¹⁰⁴ Examiner’s Interview of Kentaro Umezaki, June 25, 2009, at pp. 8-9; Lehman, Global Consolidated Balance Sheet (May 31, 2007) [LBEX-DOCID 276740]; e-mail from Kentaro Umezaki, Lehman, to Kaushik Amin, Lehman, *et al.* (July 10, 2007) [LBEX-DOCID 252873].

¹⁰⁵ Examiner’s Interview of Kentaro Umezaki, June 25, 2009, at pp. 8-9.

¹⁰⁶ Lehman, 2004 Fixed Income Division Compensation Scorecard [LBEX-DOCID 1748807].

¹⁰⁷ Lehman, COMPMETRICS Excel Spreadsheet, at pp. 1-9 [LBEX-LL 1054327]; Lehman, 2007 FID Forecast Budget Support Excel Spreadsheet, at pp. 1-11 [LBEX-BARCMP 0000001].

¹⁰⁸ *Id.*

understanding of the risks inherent in the market and transactions); (2) communication (the employee's ability to share and highlight key risks to partners in trading and control areas); (3) client skills (negotiating transaction terms for optimum risk-reward profile); and (4) shareholder/manager behavior (deploying capital efficiently and in consideration of clients' historical trading impact with awareness of ownership of the risks and rewards of transactions).¹¹⁰

Witnesses offered differing opinions concerning the weight given to risk factors in making compensation decisions. Archer, FID Chief Accounting Officer, did not recall any discussion of VaR during FID's 2007 bonus pool meetings.¹¹¹ Archer noted that while business heads were responsible for the risk component of FID, if a risky trade had been made successfully, then the trade would have been completed and the risk aspect would not have been discussed as part of the group's assessment of an employee for compensation purposes.¹¹²

Umezaki, Global Head of FID - Business Strategy in 2007, expressed concern regarding the weight (or lack thereof) that risk factors were given in regard to compensation decision-making. Specifically, in an April 19, 2007 e-mail, Umezaki offered feedback on balance sheet issues, and noted:

¹⁰⁹ Lehman, LB Equities Risk Appreciation Overview (June 2, 2009), at pp. 1-4 [LBEX-LL 605596].

¹¹⁰ *Id.*

¹¹¹ Examiner's Interview of Mary Pat Archer, Aug. 20, 2009, at p. 4.

¹¹² *Id.*

Incentives and motivation: the majority of the trading businesses focus is on revenues, with balance sheet, risk limit, capital or cost implications being a secondary concern. The fact that [traders] haven't heard that those items matter [in] public forums from senior management recently reinforces this revenue oriented behavior implicitly. In my opinion, this group is not behaving "badly": they are just getting conflicting messages that go unreconciled ("grow revenues" from FID; "manage balance sheet" from Finance, if you will). We also don't have a strong enough mechanism to reinforce "better" behavior around these non-revenue metrics, as comp is tied to revenues at the divisional level. Tough problem to solve given the way we incent today. We've been debating this for a good decade now....¹¹³

Gelband, former head of FID, indicated that he made an effort to adjust compensation decisions to reflect the amount of risk that the business unit or that the individual had taken.¹¹⁴ Nagioff similarly stated that risk-based metrics were considered in dividing FID's compensation pool to FID's business lines, but not in any specific mathematical way.¹¹⁵

According to Gregory, the focus of the Executive Committee in making adjustments to divisional compensation was less on the amount of risk a division had taken, and more on general fairness and equity, with the Executive Committee considering the full interests of the firm when considering how much balance sheet certain divisions used as compared to others.¹¹⁶ Gregory disagreed with other witnesses in this regard, stating that employees in risk-taking

¹¹³ E-mail from Kentaro Umezaki, Lehman, to Scott J Freidheim, Lehman, *et al.* (Apr. 19, 2007) [LBEX-DOCID 318475].

¹¹⁴ Examiner's Interview of Michael Gelband, Aug. 12, 2009, at pp. 3, 22-24.

businesses could be paid compensation based on a similar or even larger share of their revenues than employees in fee-based businesses.¹¹⁷ Gregory provided the example of Investment Banking, where he stated that the business and employees received a larger share of compensation than their revenues would otherwise indicate because Investment Banking created substantial ancillary profits through other revenue streams.¹¹⁸

Finally, Lehman witnesses noted that product controllers' compensation was not tied to the division or to the performance of the product, and therefore, there was no compensation-based incentive for these employees to mis-mark positions or avoid write-downs.¹¹⁹

V. COMPENSATION BASED ON UNREALIZED MARK-TO-MARKET PROFITS

In calculating net revenue, Lehman included revenue not yet recognized but recorded based on mark-to-market positions, and such revenue was considered in determining divisional and employee net revenue contributions for compensation purposes.¹²⁰ The compensation pool would, therefore, have increased or decreased (and a division's and/or individual's compensation

¹¹⁵ Examiner's Interview of Roger Nagioff, Sept. 30, 2009, at p. 20.

¹¹⁶ Examiner's Interview of Joseph M. Gregory, Nov. 5 & 13, 2009, at pp. 12-13.

¹¹⁷ *Id.* at p. 13.

¹¹⁸ *Id.*

¹¹⁹ Examiner's Interview of Herbert H. McDade, III, Sept. 16, 2009, at p. 5.

¹²⁰ Examiner's Interview of John D. Macomber, Sept. 25, 2009, at pp. 5, 22; Examiner's Interview of James Emmert, Oct. 9, 2009, at pp. 2-3.

would have been affected) by the amount of unrealized mark-to-market gain or loss. With the exception of the compensation process for proprietary traders,¹²¹ no mechanism existed by which Lehman could “claw-back” compensation paid to employees based on mark-to-market revenues that were recorded but never realized.¹²²

In discussing the proper approach for paying compensation on the KSK Energy transaction, for which the firm booked a large mark-to-market profit, Henry Klein, Chris O’Meara, and David Goldfarb engaged in an e-mail exchange and noted that booking the transaction as an unrealized gain and paying compensation based on that methodology “is not different” from how Lehman’s Global Trading Strategies (“GTS”) group was compensated on other deals:

GTS is paid on the basis of the market value of its portfolio at year end as reflected on Lehman’s books. The Firm is always at risk that we have a very profitable year, it pays out a lot of compensation, and then we lose money and never make profits again. Any compensation paid by Lehman to GTS employees is based on the assumption that GTS continues to exist and continues to be profitable over time (there is no clawback). . . . KSK is mark to fair market value defined as the value that we believe we could sell the position for. Last year, the mark was included in GTS P&L for compensation purposes, last year and this year it is included in the P&L of the Firm and is also included in the P&L for the leveraged partnership. Choosing to exclude the mark for compensation

¹²¹ Proprietary traders could have up to 25% of their compensation withheld until the following year, thereby allowing Lehman to factor in and subtract eventual losses on investments before remitting the remaining compensation to the trader. Examiner’s Interview of James Emmert, Sept. 25, 2009, at p. 2.

¹²² Examiner’s Interview of James Emmert, Oct. 9, 2009, at p. 2.

purposes when it is included for every other purpose seems arbitrary to me.¹²³

This e-mail suggests that for Lehman's GTS group, Lehman's practice was to include unrealized mark-to-market profits in net revenue and compensation decisions and that there was concern, given the size of the KSK transaction, that the policy should possibly be reconsidered with respect to the particular transaction.¹²⁴

Given that compensation was impacted by mark-to-market valuations, incentives existed for traders and business units to value investments highly so as to generate higher net revenues and thus higher compensation. Similarly, given that the net revenue-based compensation model was employed firm-wide, write-downs on positions also had a negative effect on compensation, creating incentive for employees and divisions to avoid such writedowns, and/or retain unprofitable investments solely to avoid revenue decreasing (and thus compensation-decreasing) write-downs.¹²⁵

The Examiner reviewed thousands of electronic and hard copy materials authored by Lehman employees which related to compensation decisions, and also conducted dozens of interviews of personnel involved in the compensation

¹²³ E-mail from Henry Klein, Lehman, to David Goldfarb, Lehman (Apr. 20, 2008) [LBHI_SEC07940_770016].

¹²⁴ Lehman commenced bankruptcy proceedings before a compensation decision was made with respect to this transaction.

¹²⁵ Examiner's Interview of Eileen Sullivan, July 24, 2009, at pp. 2-3.

process. The Examiner found no evidence that Lehman personnel deliberately engaged in misconduct designed to exploit Lehman's compensation system. However, Lehman's net revenue-driven compensation structure – a structure used by most of Lehman's peers, and which structure is the subject of an ongoing national debate – naturally created incentives for the maximization of short-term profits.

APPENDIX 12: VALUATION - ARCHSTONE

This Appendix has been prepared by Duff & Phelps, the Examiner's financial advisor, in connection with the Examiner's analysis of the reasonableness of Lehman's valuations of its Archstone positions, set forth in Section III.A.2.f of the Report. This Appendix has three parts — Illustrative Example of a DCF/IRR Analysis, Archstone Purchase Price Allocation, and Archstone Cost of Going Private.

I. ILLUSTRATIVE EXAMPLE OF A DCF/IRR ANALYSIS

A DCF valuation uses a discount rate to convert future expected cash flows to a present value.¹ This concept has been summarized succinctly as: "When you discount [a] project's expected cash flows at its opportunity cost of capital, the resulting present value is the amount investors would be willing to pay for the project."²

An illustrative example is instructive to demonstrate how a DCF valuation is calculated. Assume Lehman owned an investment that was expected to receive cash flows of \$100 at the end of Year 1, \$100 at the end of Year 2, and \$100 at the end of Year 3. In this example, Lehman would expect to receive \$300 over the course of three years. The fair value of this investment is not \$300, however. Rather, the \$300 in future expected cash flows must be converted into present value in order to arrive at the value of the investment as of today. A discount rate converts future expected cash flows to their present value, because the time value of money and risk associated with the

¹ Shannon Pratt & Roger Grabowski, *Cost of Capital: Applications and Examples* 10 (3d ed. 2008).

² *Id.*; Franklin Allen, Richard Brealey, & Stewart Myers, *Principles of Corporate Finance* 20 (8th ed. 2006).

investment means that a dollar that is expected to be received in the future is worth less than a dollar as of today.³ In this example, assume the discount rate is 10%. The application of a 10% discount rate converts the \$300 of future expected cash flows into a present value of \$249 today. The table below sets forth the calculations used in this illustrative example.

Present Value Formula Used for DCF Analysis

Step 1	$\frac{\text{Net Cash Flow in Year 1}}{(1 + \text{Discount Rate})^1}$	+	$\frac{\text{Net Cash Flow in Year 2}}{(1 + \text{Discount Rate})^2}$	+	$\frac{\text{Net Cash Flow in Year 3}}{(1 + \text{Discount Rate})^3}$	= Present Value
Step 2	$\frac{100}{(1 + 10\%)^1}$	+	$\frac{100}{(1 + 10\%)^2}$	+	$\frac{100}{(1 + 10\%)^3}$	= Present Value
Step 3	$\frac{100}{1.1}$	+	$\frac{100}{1.21}$	+	$\frac{100}{1.331}$	= Present Value
Step 4	91	+	83	+	75	= 249

As shown in the table above, while the net cash flow is the same for each year (\$100), the present value decreases over time (i.e., \$91 in Year 1, \$82 in Year 2, and \$75 in Year 3). The present value of the investment is equal to the sum of the present value of cash flows in Years 1 through 3, which is \$249.

Lehman’s Archstone DCF analysis followed a similar approach as described above with one difference — Lehman solved for the discount rate instead of present value. That is, Lehman’s DCF analysis stipulated a present value, made determinations regarding future expected cash flows, and then used the formula in the table above to

³ Shannon Pratt & Roger Grabowski, *Cost of Capital: Applications and Examples* 39 (3d ed. 2008).

solve for the discount rate.⁴ Lehman referred to this as an Internal Rate of Return (“IRR”) analysis.⁵ As shown in the table below, use of the same formulas and determinations (i.e., \$100 cash flows in Years 1 through 3 and a present value of \$249) results in the same discount rate (10%).⁶

Present Value Formula Used for IRR Analysis

Step 1	$\frac{\text{Net Cash Flow in Year 1}}{(1 + \text{Discount Rate})^1}$	+	$\frac{\text{Net Cash Flow in Year 2}}{(1 + \text{Discount Rate})^2}$	+	$\frac{\text{Net Cash Flow in Year 3}}{(1 + \text{Discount Rate})^3}$	=	Present Value
Step 2	$\frac{100}{(1 + \text{Discount Rate})^1}$	+	$\frac{100}{(1 + \text{Discount Rate})^2}$	+	$\frac{100}{(1 + \text{Discount Rate})^3}$	=	249
Step 3	$\frac{100}{(1 + 10\%)^1}$	+	$\frac{100}{(1 + 10\%)^2}$	+	$\frac{100}{(1 + 10\%)^3}$	=	249
Step 4	91	+	83	+	75	=	249

In this manner, the DCF and IRR analyses result in the same valuation when they are based on the same determinations for future expected cash flows and discount rate.

II. ARCHSTONE PURCHASE PRICE ALLOCATION

This Section provides additional background regarding Lehman’s analysis of the appropriate allocation of the Archstone purchase price to Archstone’s individual assets.

⁴ Lehman, Project Easy Living: Tishman Speyer - Archstone-Smith Multifamily JV, LP (spreadsheet) (Mar. 17, 2008), at Tab “Discounting Sens” [LBEX-DOCID 1626080]; Lehman, Easy Living Q2 Model Risk (June 15, 2008), at Tab “Intro” [LBEX-DOCID 4456413].

⁵ Memorandum from Keith Cyrus, Lehman, *et al.*, to Donald E. Petrow, Lehman, *et al.*, Archstone Update (May 16, 2008), at p. 3 [LBEX-DOCID 1416761].

⁶ In practice, IRR analysis is performed by assuming the present value (in this case \$249) is a cash outflow and the future expected cash flows are cash inflows. As shown above, the sum of the cash inflows is greater than cash outflow. The discount rate is computed by reducing the cash inflows to the value of the cash outflow, which results in a combined value of zero.

The value of Archstone's assets in the aggregate based on the acquisition price is relatively easy to calculate: the value of assets is equal to the value of consideration paid in order to obtain the assets. The consideration paid for the assets in the aggregate can be calculated by adding the value of the shares acquired (number of shares multiplied by \$60.75 per share), the value of liabilities assumed (*e.g.*, mortgage debt) and the value of expenses that were incurred as a result of the transaction (*e.g.*, advisor fees). While it is a relatively simple matter to calculate the aggregate value of the assets, it is considerably more difficult to impute the value of the individual assets, as there is no standardized method for directly observing what is implicit in the valuation of the assets as a whole.⁷ For financial reporting purposes, the value of the assets in the aggregate must be allocated to the underlying individual tangible and intangible assets in accordance with Statement of Financial Accounting Standards No. 141, "Business Combinations."⁸

Keith Cyrus, a vice president in the Bridge Equity unit, explained the ramifications of Lehman's decisions regarding Archstone's purchase price allocation. In an e-mail sent to multiple colleagues on December 14, 2007, Cyrus wrote:

The relevance of this analysis comes in to play as we evaluate asset sales bids. If [Tishman Speyer] allocates \$500 million to platform value, but the market clearing sales price implies a \$1.0 billion platform value and we draw the sale / no sale line at allocated [budgeted] value, then assuming pro forma allocation, we would never sell anything. The real time

⁷ FASB, SFAS No. 141, *Business Combinations* (June 2001), ¶ 7.

⁸ *Id.* at ¶ 35.

examples are Monterrey Grove: We are holding out for \$58 million – the allocated purchase price. The high bid is \$56 million (re-traded from \$58 million) and CBRE’s spot value is \$53.8 million. Should we be holding out?..Fox Plaza – current high bid is \$103.5 million. We are holding out for \$110 – CBRE value is \$86 million, allocated PP [purchase price] is \$108 million.⁹

Cyrus’s analysis compared the “CBRE broker spot values prepared in May to the preliminary purchase price allocations.”¹⁰ He wrote that “[w]e all agree, that the broker values are to some degree ‘low balled’ to give the brokers room to execute.”¹¹ Cyrus attached a sensitivity analysis (which is produced in its entirety in the chart below)¹² “of the overall value variance and implied platform value given various assumptions of this low-ball factor, ranging from 0% to the full 11.6%. For instance, if you believe the brokers underestimated true value by 5%, the platform value allocation would need to be \$1.76 billion for the allocated purchase price to equal market value; 10% = \$810 million. Assuming the broker variance is not extrapolated to the rest of the portfolio, the corresponding platform values would be \$1.416 billion and \$725 million.”¹³ In this manner, Cyrus is explaining that based on broker values for Archstone’s underlying tangible assets, either 1) Lehman and its partners overpaid for Archstone’s tangible

⁹ E-mail from Keith Cyrus, Lehman, to Paul A. Hughson, Lehman, *et al.* (Dec. 13, 2007) [LBEX-DOC ID 1861553].

¹⁰ *Id.*

¹¹ *Id.*

¹² Lehman, CBRE Broker Spot Values vs. Allocated Purchase Price (spreadsheet) (Dec. 13, 2007), at Tab “Summary” [LBEX-DOCID 1971263], attached to e-mail from Keith Cyrus, Lehman, to Coburn J. Packard, Lehman, *et al.* (Dec. 14, 2007) [LBEX-DOCID 1861543].

¹³ E-mail from Keith Cyrus, Lehman, to Paul A. Hughson, Lehman, *et al.* (Dec. 13, 2007) [LBEX-DOC ID 1861553].

assets or 2) Lehman and its partners acquired an intangible asset (the platform) that wasn't valued by the brokers.

Assumes Variance is Extrapolated to Non-Broker Valued Assets

	Allocated Purchase Price	Assumed Broker "Lowball" Factor					
		0.0%	2.5%	5.0%	7.5%	10.0%	11.6%
165 Broker Valued Assets	\$15,424	\$13,817	\$14,163	\$14,508	\$14,853	\$15,199	\$15,424
38 Remaining Core Assets	3,089	2,768	2,837	2,906	2,975	3,044	3,089
Development & Other Assets	2,724	2,441	2,502	2,563	2,624	2,685	2,724
Total Real Estate	\$21,238	\$19,025	\$19,501	\$19,977	\$20,452	\$20,928	\$21,238
Variance to Broker Values:							
165 Broker Valued Assets		\$1,607	\$1,261	\$916	\$570	\$225	\$0
38 Remaining Core Assets		322	253	183	114	45	-
Development & Other Assets		284	223	162	101	40	-
Total Real Estate		\$2,212	\$1,737	\$1,261	\$785	\$310	\$0
Current Platform Value		500	500	500	500	500	500
Total Implied Platform Value		\$2,712	\$2,237	\$1,761	\$1,285	\$810	\$500

Assumes No Variance on Non-Broker Valued Assets

	Allocated Purchase Price	Assumed Broker "Lowball" Factor					
		0.0%	2.5%	5.0%	7.5%	10.0%	11.6%
165 Broker Valued Assets	\$15,424	\$13,817	\$14,163	\$14,508	\$14,853	\$15,199	\$15,424
38 Remaining Core Assets	3,089	3,089	3,089	3,089	3,089	3,089	3,089
Development & Other Assets	2,724	2,724	2,724	2,724	2,724	2,724	2,724
Total Real Estate	\$21,238	\$19,631	\$19,976	\$20,322	\$20,667	\$21,013	\$21,238
Variance to Broker Values:							
165 Broker Valued Assets		\$1,607	\$1,261	\$916	\$570	\$225	\$0
38 Remaining Core Assets		-	-	-	-	-	-
Development & Other Assets		-	-	-	-	-	-
Total Real Estate		\$1,607	\$1,261	\$916	\$570	\$225	\$0
Current Platform Value		500	500	500	500	500	500
Total Implied Platform Value		\$2,107	\$1,761	\$1,416	\$1,070	\$725	\$500

Cyrus sent an updated e-mail on December 19, 2007: "TS [Tishman Speyer] reallocated purchase price resulting in \$1.0 billion of platform value. This implies a 7.65% variance (\$1.06 billion on assets valued, \$1.47 billion if extrapolated) to the CBRE

broker spot values.”¹⁴ See the chart below for the revised analysis that was attached to Cyrus’ e-mail.¹⁵

CBRE Broker Spot Values vs. Allocated Purchase Price

Assumes Variance is Extrapolated to Non-Broker Valued Assets							
	Allocated Purchase Price	Assumed Broker "Lowball" Factor					
		0.0%	2.5%	5.0%	7.65%	10.0%	12.8%
165 Broker Valued Assets	\$14,874	\$13,817	\$14,163	\$14,508	\$14,874	\$15,199	\$15,591
38 Remaining Core Assets	3,082	2,863	2,935	3,007	3,082	3,150	3,231
Development & Other Assets	2,782	2,584	2,649	2,713	2,782	2,842	2,916
Total Real Estate	\$20,738	\$19,265	\$19,746	\$20,228	\$20,738	\$21,191	\$21,738
Variance to Broker Values:							
165 Broker Valued Assets		\$1,057	\$711	\$366	\$0	(\$325)	(\$717)
38 Remaining Core Assets		219	147	76	-	(67)	(149)
Development & Other Assets		198	133	68	-	(61)	(134)
Total Real Estate		\$1,473	\$992	\$510	\$0	(\$453)	(\$1,000)
Current Platform Value		1,000	1,000	1,000	1,000	1,000	1,000
Total Implied Platform Value		\$2,473	\$1,992	\$1,510	\$1,000	\$547	(\$0)

Assumes No Variance on Non-Broker Valued Assets							
	Allocated Purchase Price	Assumed Broker "Lowball" Factor					
		0.0%	2.5%	5.0%	7.65%	10.0%	14.9%
165 Broker Valued Assets	\$14,874	\$13,817	\$14,163	\$14,508	\$14,874	\$15,199	\$15,874
38 Remaining Core Assets	3,082	3,082	3,082	3,082	3,082	3,082	3,082
Development & Other Assets	2,782	2,782	2,782	2,782	2,782	2,782	2,782
Total Real Estate	\$20,738	\$19,681	\$20,027	\$20,372	\$20,738	\$21,063	\$21,738
Variance to Broker Values:							
165 Broker Valued Assets		\$1,057	\$711	\$366	\$0	(\$325)	(\$1,000)
38 Remaining Core Assets		-	-	-	-	-	-
Development & Other Assets		-	-	-	-	-	-
Total Real Estate		\$1,057	\$711	\$366	\$0	(\$325)	(\$1,000)
Current Platform Value		1,000	1,000	1,000	1,000	1,000	1,000
Total Implied Platform Value		\$2,057	\$1,711	\$1,366	\$1,000	\$675	(\$0)

III. ARCHSTONE’S COST OF GOING PRIVATE

Archstone’s acquisition price of \$60.75 per share included a premium above Archstone’s publicly traded stock price. Morgan Stanley, Archstone’s financial advisor

¹⁴ Id.

¹⁵ Lehman, Spreadsheet titled "CBRE Broker Spot Values vs. Allocated Purchase Price" (Dec. 19, 2007), at Summary tab [LBEX-DOCID 1971359], attached to e-mail from Keith Cyrus, Lehman, to Paul A. Hughson, Lehman, *et al.* (Dec. 19, 2007) [LBEX-DOCID 1861553]. Highlighted columns were in the original.

for the acquisition, provided an analysis of the premium in percentage terms that was disclosed in an Archstone 8-K.¹⁶ The Archstone 8-K stated as follows:

Historical Share Price Analysis

Morgan Stanley performed a historical share price analysis to provide background and perspective in comparison to the price per share of our common shares to be received pursuant to the merger agreement. Morgan Stanley reviewed the historical price performance and average closing prices of our common shares for various periods ending on May 25, 2007. Morgan Stanley observed the following:

	<u>Price</u>	<u>Implied Premium</u>
Closing Price on 5/25/07	\$ 55.23	10.0%
Pre-Market Rumor Price (last trade prior to published reports regarding a potential transaction)	\$ 49.51	22.7%
Unaffected Share Price (average closing price during the ten trading-day period from May 8-21, 2007)	\$ 52.45	15.8%
30-Days Prior Trading Average	\$ 52.64	15.4%
Twelve Months Prior Trading Average	\$ 55.06	10.3%
52-Week Intra-day High / All-Time Intra-day High	\$ 64.77	(6.2)%
52-Week Intra-day Low	\$ 45.63	33.1%

Based upon the foregoing, Morgan Stanley noted a trading range for the 12 month period preceding May 25, 2007 for our common shares of \$45.63 to \$64.77 per share.

As this table set forth the implied premium on a percentage basis, the Examiner's financial advisor computed the dollar value of the premium based on Morgan Stanley's analysis. The Examiner's financial advisor did this by multiplying the premium per share by the number of shares outstanding, as set forth in the table below. These calculations demonstrate, employing the Morgan Stanley analysis, that the premium was over \$2 billion applying the Pre-Market Rumor Price, Unaffected Share Price and 30-Day Prior Trading Average.

¹⁶ Archstone, Exhibit 99.1 Proxy Statement Supplement, p. 17, attached to Archstone, Current Report as of Aug. 17, 2007 (Form 8-K) (filed on Aug. 20, 2007) ("Archstone 8-K (Aug. 17, 2007)").

Premium Paid to Acquire Archstone

	Purchase Price per Share	-	Observation	=	Premium per Share	X	Share Outstanding (millions)	=	\$ Value (in millions) of Premium
Closing Price 5/25/2007	60.75	-	55.23	=	5.52	X	257	=	1419
Pre-Market Rumor Price	60.75	-	49.51	=	11.24	X	257	=	2889
Unaffected Share Price	60.75	-	52.45	=	8.30	X	257	=	2133
30-Days Prior Trading Average	60.75	-	52.64	=	8.11	X	257	=	2084
Twelve Month Prior Trading Average	60.75	-	55.06	=	5.69	X	257	=	1462
52 Week Intra-Day High/All-Time Intra-day High	60.75	-	64.77	=	(4.02)	X	257	=	(1033)
52-Week Intra-Day Low	60.75	-	45.63	=	15.12	X	257	=	3886

Transaction costs for the Archstone acquisition were \$1.1 billion.¹⁷ The Examiner’s financial advisors added the \$1.1 billion in transaction costs to the dollar value of the premium to compute the total costs incurred to take Archstone private. Pursuant to this analysis, the Examiner’s financial advisor determined that the cost of taking Archstone private exceeded \$3 billion applying the Pre-Market Rumor Price, Unaffected Share Price and 30-Day Prior Trading Average, as set forth in the following table:

¹⁷ Lehman, Project Easy Living: Tishman Speyer - Archstone-Smith Multifamily JV, LP (spreadsheet) (Mar. 17, 2008), at Tab “S&U” [LBEX-DOCID 1626080] (the Q1 model).

Total Cost of Going Private

	\$ in millions			
	Premium	+	Transaction Expenses	= Cost of Taking Archstone Private
Closing Price 5/25/2007	1,419	+	1,134	= 2,553
Pre-Market Rumor Price	2,889	+	1,134	= 4,023
Unaffected Share Price	2,133	+	1,134	= 3,267
30-Days Prior Trading Average	2,084	+	1,134	= 3,218
Twelve Month Prior Trading Average	1,462	+	1,134	= 2,596
52 Week Intra-Day High/All-Time Intra-day High	(1,033)	+	1,134	= 101
52-Week Intra-Day Low	3,886	+	1,134	= 5,020

The Examiner's financial advisor compared the calculated cost of taking Archstone private to the \$5.1 billion equity investment in connection with the Archstone acquisition, and such comparison is set forth in the table below:

Cost of Going Private Relative to Equity Investment

	\$ in millions			=	% of Equity Investment
	Cost of Taking Archstone Private	/	Equity Investment		
Closing Price 5/25/2007	2,553	/	5,100	=	50%
Pre-Market Rumor Price	4,023	/	5,100	=	79%
Unaffected Share Price	3,267	/	5,100	=	64%
30-Days Prior Trading Average	3,218	/	5,100	=	63%
Twelve Month Prior Trading Average	2,596	/	5,100	=	51%
52 Week Intra-Day High/All-Time Intra-day High	101	/	5,100	=	2%
52-Week Intra-Day Low	5,020	/	5,100	=	98%

APPENDIX 13: SURVIVAL STRATEGIES SUPPLEMENT

Appendix 13 includes additional background and detail with respect to six separate topics discussed in Report § III.A.3. Each of the subsections of this Appendix addresses one of those topics.

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I. RATING AGENCIES

A. Background

Rating agencies, including the three major agencies, Moody's, Fitch and Standard & Poor's, rated Lehman's debt and securities, as they did for all major investment banks.¹ Those agencies provide long-term debt ratings, which reflect each agency's estimation of the probability that the debtor will default on its debt, and accordingly the likelihood investors in that debt will receive payment when due. The three major agencies all rated Lehman's long-term debt over a time horizon of two to three years or longer.²

In assessing the likelihood of default, rating agencies consider all aspects of a company's financial condition, including its liquidity, capital, risk assumption, diversity of product lines, equity, credit default swap prices, return on equity, return on assets, less liquid and illiquid commercial real estate positions and market share.³ In addition

¹ See Lehman, *Credit Ratings Strategy* (Mar. 1, 2007), at pp. 1-5 [LBEX-DOCID 618355] (summarizing Lehman credit ratings since the mid-1990s, in comparison with credit ratings of Goldman Sachs, Merrill Lynch, JPMorgan, and Bear Stearns), attached to e-mail from Kentaro Umezaki, Lehman, to Gary Mandleblatt, Lehman, *et al.* (Mar. 6, 2007) [LBEX-DOCID 740168].

² Examiner's Interview of Eileen A. Fahey, Sept. 17, 2009, at p. 2; Examiner's Interview of Diane Hinton, Sept. 22, 2009, at p. 2; see also Carol Ann Frost, *Credit Rating Agencies in Capital Markets: A Review of Research Evidence on Selected Criticisms of the Agencies*, 22 J. ACCT., AUDITING & FIN, 469, 474 (Summer 2007) (explaining that ratings are an agency's assessment of the credit quality of a debt issuer based on the relative probability of default); Amadou N.R. Sy, *The Systemic Regulation of Credit Rating Agencies and Rated Markets*, Int'l Monetary Fund, Working Paper (2009), at p. 9 (noting that broker-dealers often obtain ratings as issuers of long-term debt),

³ Examiner's Interview with Eileen A. Fahey, Sept. 17, 2009, at pp. 2-3; Examiner's Interview of Diane Hinton, Sept. 22, 2009, at p. 7; see also Richard Cantor & Frank Packer, *The Credit Rating Industry*, FRBNY QUARTERLY REVIEW, at p. 5 (Summer-Fall 1994) (noting that rating agencies base their ratings on an assessment of the qualitative and quantitative aspects of a company's borrowing condition); Carol Ann

to issuing, changing or affirming a company's rating, a rating agency also may revise a company's credit rating "outlook" in anticipation of a possible future ratings upgrade or downgrade.⁴

A downgrade in an issuer's credit rating has a significant negative impact on the financial position of a company like Lehman.⁵ Although a credit rating relates directly to the issuer's debt, a lower rating impacts the attractiveness of an issuer's equity, or stock, as well.⁶ Moreover, counterparties may respond to a downgrade by demanding that the issuer post additional cash collateral to secure its obligation.⁷ Some of Lehman's derivative contracts had built-in "triggers" permitting counterparties to require additional cash collateral in the event of a downgrade.⁸ Lehman's Chief

Frost, *Credit Rating Agencies in Capital Markets: A Review of Research Evidence on Selected Criticisms of the Agencies*, 22 J. ACCT. AUDITING & FIN., 469, 476 (Summer 2007) (explaining that the rating process involves analysis of both business risk and financial risk).

⁴ See Carol Ann Frost, *Credit Rating Agencies in Capital Markets: A Review of Research Evidence on Selected Criticisms of the Agencies*, 22 J. ACCT., AUDITING & FIN., 469, 475 (Summer 2007) (noting that a credit rating may consist of both a letter rating and commentary, which can include a "credit watch" or "credit outlook" modifier).

⁵ See, e.g., e-mail from Ian T. Lowitt, Lehman, to Herbert H. McDade, III, Lehman (June 30, 2008) [LBHI_SEC07940_643543] ("One notch downgrade requires 1.7 bn; and 2 notch requires 3.4 bn of additional margin posting.").

⁶ See Dror Parnes, *Why Do Bond and Stock Prices and Trading Volumes Change around Credit Rating Announcements*, 9 J. BEHAV. FIN. 224, 224-26 (2008); Lars A. Norden, *Information Efficiency of Credit Default Swaps and Stock Markets: The Impact of Credit Rating Announcements*, 28 J. BANKING & FIN. 2845, 2845-46 (Nov. 2004).

⁷ See Amadou N.R. Sy, *The Systemic Regulation of Credit Rating Agencies and Rated Markets*, Int'l Monetary Fund, Working Paper (2009) at pp. 8-9 (noting that broker-dealers may use credit ratings to determine acceptable counterparties, as well as collateral levels for outstanding credit exposure); e-mail from Ian T. Lowitt, Lehman, to Eric Felder, Lehman (July 5, 2008) [LBEX-DOCID 071263] (stating that a downgrade "will affect lines and willingness of counterparties to fund secured.").

⁸ Lehman Brothers Holdings Inc., Quarterly Report as of May 31, 2008 (Form 10-Q) (filed on July 10, 2008) ("LBHI 10-Q (July 10, 2008)"); see also Lehman, *Global Treasury Downgrade Effect on Cash Capital*

Executive Officer (“CEO”), Richard S. Fuld, Jr., told the Examiner that one of the motivations behind his desire to reduce net leverage was the rating agencies’ focus on that number.⁹ That concern about net leverage related directly to Lehman’s use of Repo 105 transactions.¹⁰ Lehman’s Board understood the general impact a rating downgrade would have on Lehman.¹¹

B. March and April 2008 Outlook Revisions

On March 17, 2008, Moody’s revised its outlook on Lehman’s long-term senior debt rating from “positive” to “stable,” explaining, “the firm’s current exposure to commercial and residential real estate, and to a lesser degree leveraged loans, will likely pose a not-insignificant burden on profitability for at least the next several quarters.”¹² On March 22, 2008, Standard & Poor’s revised its outlook on Lehman’s senior debt rating from “stable” to “negative.”¹³

At the beginning of April 2008, Fitch also revised Lehman’s outlook to “negative,” stating that the action was due to “increased earnings pressure and leverage as inventory expanded in residential and commercial real estate related securities and

Facilities 3-Jun-08 (June 2008) [LBHI_SEC07940_513314], attached to e-mail from Amberish Ratanghayra, Lehman, to Paolo R. Tonucci, Lehman, *et al.* (June 3, 2008) [LBHI_SEC07940_513312].

⁹ Examiner’s Interview of Richard S. Fuld, Jr., Sept. 25, 2009, at p. 8.

¹⁰ See Section III.A.4.d and e of the Report, which discusses Repo 105 in greater detail.

¹¹ Examiner’s Interview of Jerry A. Grundhofer, Sept. 16, 2009, at p. 15.

¹² Moody’s, Press Release, *Moody’s affirms Lehman’s A1 rating; outlook now stable* (Mar. 17, 2008), at p. 1 [LBEX-DOCID 187704].

¹³ Jed Horowitz, *Credit Crisis: S&P Red Flags Goldman, Lehman*, Wall. St. J., Mar. 22, 2008.

loans and corporate loans and commitments.”¹⁴ Fitch noted that Lehman “has managed its liquidity particularly well” and “manages its market risk well.”¹⁵ In an April 3, 2008 ratings summary, Standard & Poor’s explained its new negative outlook.¹⁶ Standard & Poor’s stated that while Lehman’s “excess liquidity position is among the largest proportionately of the U.S. broker-dealers . . . we cannot ignore the possibility that the firm could suffer severely if there is an adverse change in market perception, however ill-founded.”¹⁷

Lehman paid significant attention to its credit rating.¹⁸ In an April 2008 internal strategy document, Lehman concluded that its ability to avert a rating downgrade depended on maintaining the rating agencies’ positive view of Lehman’s risk management and avoiding “catastrophic asset writedowns.”¹⁹ Lehman identified two key dangers to its credit rating: further write-downs and liquidity issues.²⁰ Continuing write-downs were a “sore spot” for rating agencies, in part because of a perception that Lehman was “hiding something.”²¹ Lehman recognized that even “incremental

¹⁴ Fitch Ratings, Press Release, *Fitch Revises Outlook On Lehman Brothers to Negative; Affirms ‘AA-/F1+’ IDRs*, Business Wire (Apr. 1, 2008).

¹⁵ *Id.*

¹⁶ Standard & Poor’s, Standard & Poor’s RatingsDirect Summary: LBHI (Apr. 3, 2008), at p. 2 [S&P-Examiner 000894].

¹⁷ *Id.*

¹⁸ *See, e.g.*, Lehman, LEH Ratings Strategy in ‘08: Ratings Advisory Group Discussion (Apr. 29, 2008), at p. 1 [LBHI_SEC07940_490429], attached to e-mail from Kevin Thatcher, Lehman, to Paolo R. Tonucci, Lehman, *et al.* (Apr. 29, 2008) [LBHI_SEC07940_490428].

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

concerns” about Lehman’s liquidity would trigger a downgrade.²² Foreshadowing Lehman’s later survival strategies, including efforts to seek a strategic partner as well as SpinCo, the internal strategy document recommends that Lehman could ameliorate those threats to its ratings via a strategic transaction with a “strong deposit-based franchise,” coupled with a restructuring transaction that would transfer the risk of Lehman’s “troubled” assets to another entity.²³

C. June 2008 Warnings

On June 2, 2008, Standard & Poor’s downgraded Lehman from an A+ rating to A.²⁴ Following the Standard & Poor’s downgrade, press reports noted that “[a]nother downgrade . . . for Lehman” could force Lehman to post \$5.2 billion in additional collateral.²⁵ Moody’s privately informed Lehman that its concern was “how much worse can it get, even if Lehman raises common equity.”²⁶

On June 9, 2008, the day of Lehman’s pre-announcement of its second quarter earnings, Fitch downgraded Lehman from AA- to A+.²⁷ Fitch’s press release noted that “Fitch is concerned that [sales of riskier real estate assets] may remove the most attractive assets, leaving a concentrated level of least desirable or more problematic

²² *Id.*

²³ *Id.* at p. 2.

²⁴ Sarah O’Connor, *S&P Cuts Its Ratings for Merrill, Morgan Stanley and Lehman*, *Financial Times*, June 4, 2008, at p. 31.

²⁵ *Id.*

²⁶ E-mail from Blaine A. Frantz, Moody’s, to Paolo R. Tonucci, Lehman (June 5, 2008) [MOODY’S 1171].

²⁷ Fitch, Press Release, *Fitch Downgrades Lehman Brothers’ L-T & S-T IDRs to ‘A+/F1;’ Outlook Negative*, *Business Wire*, June 9, 2008.

assets on the balance sheet,” and that “maximum equity credit of [hybrid-preferred equity] has been reached in Fitch calculated leverage ratios.”²⁸ Lehman asked Fitch to reconsider the downgrade, citing Lehman’s successful June 12, 2008 closing of a \$6 billion capital raise, reductions in its commercial real estate exposure, and improving market conditions.²⁹ Lehman also asserted that it was holding its “best” assets in expectation of a market recovery.³⁰ Notwithstanding those arguments and an effort by Fuld to intervene personally, Lehman’s appeal to Fitch was unsuccessful.³¹

On June 10, 2008, Moody’s lowered its rating outlook for Lehman from “stable” to “negative.”³² Moody’s explained its lowered rating by stating that “[t]he rating action . . . reflects Moody’s concerns over risk management decisions that resulted in elevated real estate exposures and the subsequent ineffectiveness of hedges to mitigate these exposures in the recent quarter.”³³ On Friday, June 13, 2008, Moody’s announced that it was placing the long-term credit rating of Lehman and its subsidiaries on review for possible downgrade, citing Lehman’s June 12, 2008, senior management upheaval as potentially “exacerbat[ing] erosion in investor confidence” and “increas[ing] the risk of

²⁸ *Id.*

²⁹ Lehman, Presentation to Fitch Ratings - Rating Appeal (June 9, 2008), at p. 1 [LBHI_SEC07940_339202], attached to e-mail from Paolo R. Tonucci, Lehman, to Ian T. Lowitt, Lehman (June 9, 2008) [LBHI_SEC07940_339201].

³⁰ *Id.*

³¹ See e-mail from Paolo R. Tonucci, Lehman, to Eileen A. Fahey, Fitch, *et al.* (June 9, 2008) [FITCH-LEH BK 00002457].

³² *Moody’s Changes Lehman’s Rating Outlook to Negative*, Financial Times, June 10, 2008.

³³ *Id.*

franchise impairment.”³⁴ Prior to the announcement, Lehman senior managers called Moody’s, seeking to “soften” Moody’s “extreme” press release. During the call, they asked Moody’s to delete, among other things, a reference stating that ongoing losses would raise “serious concerns about the effectiveness of Lehman’s risk management.”³⁵

Just over a month later, on July 17, 2008, Moody’s lowered its rating of Lehman’s long-term senior debt to A2 from A1, with its rating outlook remaining negative.³⁶ Moody’s press release cited “expectations for additional mark-to-market losses on Lehman’s residential and commercial mortgage portfolios, which continue to pose a significant challenge,” and observed that “Lehman has very limited capacity for additional preferred securities in its capital structure, and the difficult market environment for Lehman in raising common equity capital . . . limits its ability to respond to further unexpected losses.”³⁷

Following the June and July downgrades, Lehman’s management discussed the impact of ratings on collateral requirements in materials prepared for Lehman’s July 22,

³⁴ Moody’s, Press Release [Draft], *Moody’s places Lehman A1 rating on review for downgrade* (June 13, 2008), at p. 2 [LBHI_SEC07940_659482], attached to e-mail from Blaine A. Frantz, Moody’s, to Paolo R. Tonucci, Lehman, *et al.* (June 13, 2008) [LBHI_SEC07940_659481].

³⁵ *Compare* Lehman, Moody’s Press Release [Draft], *Moody’s places Lehman’s A1 rating on review for downgrade* (June 12, 2008), at p. 2 [LBHI_SEC07940_339759], attached to e-mail from Paolo R. Tonucci, Lehman, to Blaine A. Frantz, Moody’s, *et al.* (June 12, 2008) [LBHI_SEC07940_339758] *with* Moody’s, Press Release [Draft] (June 12, 2008), at p. 2 [LBHI_SEC07940_339751], attached to e-mail from Blaine A. Frantz, Moody’s, to Paolo R. Tonucci, Lehman, *et al.* (June 12, 2008) [LBHI_SEC7940_339750]; *see also* e-mail from Paolo R. Tonucci, Lehman, to Blaine A. Frantz, Moody’s (June 12, 2008) [MOODY’S 1547] (requesting appeal of what Lehman viewed as “extreme” press release).

³⁶ E-mail from Paolo R. Tonucci, Lehman, to Christian Wait, Lehman (July 17, 2008) [LBHI_SEC07940_529261] (quoting Moody’s Press Release).

³⁷ *Id.*

2008 Board Meeting.³⁸ The Board presentation calculated the impact of further downgrades of one and two notches on the amount of collateral that Lehman would have to post to secure its margin accounts, estimating the additional requirement to be between \$1.1 billion and \$3.9 billion.³⁹

D. September 2008 Warnings

On September 9, 2008, both Standard & Poor's and Fitch placed Lehman's rating on a negative watch.⁴⁰ Standard & Poor's cited Lehman's intent to raise capital and the "precipitous" decline in Lehman's share price.⁴¹ Fitch's action was triggered by Lehman's decision to move up the date of its third quarter earnings call to announce SpinCo as well as Lehman's intent to raise capital at the same time.⁴² Fitch believed the capital raise would not be possible and wanted to convey that message to the market.⁴³

On the late afternoon of September 10, 2008, Moody's announced that it had placed Lehman's A2 rating on review with "direction uncertain."⁴⁴ Moody's Senior Vice President, Blaine A. Frantz, issued a statement stating: "A key ratings factor will be Lehman's ability to turn around market sentiment. . . . A strategic transaction with a

³⁸ Lehman, Presentation to the Board of Directors, Liquidity Update (July 22, 2008), at p. 18 [LBHI_SEC07940_028503].

³⁹ *Id.*

⁴⁰ E-mail from Stephen Lax, Lehman, to Kevin Thatcher, Lehman, *et al.* (Sept. 9, 2008) [LBHI_SEC07940_557829] (quoting Fitch, Press Release, *Fitch Places Lehman Brothers on Rating Watch Negative* (Sept. 9, 2008)); *S&P Places Lehman on Negative Ratings Watch*, Associated Press, Sept. 9, 2008.

⁴¹ *S&P Places Lehman on Negative Ratings Watch*, Associated Press, Sept. 9, 2008.

⁴² Examiner's Interview of Eileen A. Fahey, Sept. 17, 2009, at p. 7.

⁴³ *Id.*

⁴⁴ E-mail from Paolo R. Tonucci, Lehman, to Carlo Pellerani, Lehman (Sept. 10, 2008) [LBHI_SEC07940_558653] (forwarding Moody's, Press Release, *Moody's Places Lehman's A2 Rating On Review With Direction Uncertain*) (Sept. 10, 2008)).

stronger financial partner would likely add support to the ratings and result in a positive rating action.”⁴⁵

Thomas A. Russo, Lehman’s Chief Legal Officer, told the Examiner that Moody’s announcement, which he believed arrived before the market had time to digest Lehman’s earnings pre-announcement, represented the final turning point when Lehman’s situation began to deteriorate.⁴⁶ Lehman’s management perceived Moody’s statement that Lehman needed to reach a strategic transaction with a stronger partner as an ultimatum that cast doubt on Lehman’s ability to raise additional capital and thus “put [Lehman] in a very tight box for possible next steps.”⁴⁷ Fuld told the Examiner that Lehman’s Chief Financial Officer (“CFO”) Ian T. Lowitt told him that the rating agencies expected Lehman to reach a deal within the next week or face a likely downgrade.⁴⁸ Lehman began to revise its “Gameplan” for an impending downgrade and the consequent loss of Lehman’s ability to issue long-term debt.⁴⁹

⁴⁵ *Id.*

⁴⁶ Examiner’s Interview of Thomas A. Russo, May 11, 2009, at pp. 7-8.

⁴⁷ E-mail from Jeffrey Goodman, Lehman, to Vincent DiMassimo, Lehman (Sept. 10, 2008) [LBEX-DOCID 618607]; *see* e-mail from Larry Wieseneck, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (Sept. 10, 2008) [LBEX-DOCID 349235].

⁴⁸ Examiner’s Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 6.

⁴⁹ Lehman, The Gameplan - Downgrade Scenario (Sept. 11, 2008) [LBEX-DOCID 2727669] attached to e-mail from Matthew Blake, Lehman, to Ian T. Lowitt, Lehman, *et al.* (Sept. 11, 2008) [LBEX-DOCID 2744462].

II. BANK HOLDING COMPANY PROPOSAL

During the spring of 2008, Lehman began to consider applying to the FRBNY to become a bank holding company.⁵⁰ In July 2008, Lehman first raised that idea with the FRBNY.⁵¹ Lehman's proposal to the FRBNY did not reach the level of a formal submission, but senior representatives of Lehman and the FRBNY, including Fuld and FRBNY President Timothy F. Geithner, had discussions regarding the proposal.⁵² Geithner told the Examiner that he had considered Lehman's bank holding company proposal to be "gimmicky."⁵³ The FRBNY expressed concern that the move would be perceived negatively in the marketplace and trigger a run on the bank.⁵⁴ Thomas C. Baxter, Jr., General Counsel to the FRBNY, told the Examiner that Lehman eventually came around to the FRBNY's view and decided not to go forward with the proposal.⁵⁵ However, Russo told the Examiner that the proposal never fully came off the table as an option for Lehman, although the proposal was not a priority during the final weeks.⁵⁶

During the same period, Lehman also pursued an exemption to Section 23A of the Federal Reserve Act with the FRBNY and FDIC.⁵⁷ Section 23A of the Federal

⁵⁰ Examiner's Interview of Thomas A. Russo, May 11, 2009, at p. 8.

⁵¹ Examiner's Interview of William L. Rutledge, Aug. 27, 2009, at p. 4.

⁵² Examiner's Interview of Thomas C. Baxter, Jr., May 20, 2009, at p. 8; Examiner's Interview of Thomas A. Russo, May 11, 2009, at p. 8; Examiner's Interview of William L. Rutledge, Aug. 27, 2009, at pp. 3-4.

⁵³ Examiner's Interview of Timothy F. Geithner, Nov. 24, 2009, at p. 6.

⁵⁴ Examiner's Interview of Thomas C. Baxter, Jr., May 20, 2009, at p. 8

⁵⁵ *Id.*

⁵⁶ Examiner's Interview of Thomas A. Russo, May 11, 2009, at p. 9.

⁵⁷ Examiner's Interview of William L. Rutledge, Aug. 27, 2009, at p. 2; *see also* e-mail from Arthur G. Angulo, FRBNY, to Jan Voigts, FRBNY, *et al.* (July 14, 2008) [FRBNY to Exam. 026357].

Reserve Act limits the transactions that a bank may engage in with its affiliates, including its parent company.⁵⁸ If the FRBNY had granted a Section 23A exemption, Lehman would have been able to transfer assets to one of its Industrial Loan Company (“ILC”) subsidiaries so that Lehman could access funds from Lehman Brothers Commercial Bank.⁵⁹ Industrial loan companies are financial institutions that may be owned by non-financial institutions and are subject to Section 23A of the Federal Reserve Act.⁶⁰

Although the FRBNY had the legal authority to approve Lehman’s request on its own, the FDIC had *de facto* veto power because the FDIC would be the primary federal supervisor of the bank.⁶¹ Lehman submitted a series of term sheets to the FRBNY detailing the assets that would be transferred to the ILC.⁶² At the request of the FRBNY,

⁵⁸ 12 U.S.C. § 371(c) (2009).

⁵⁹ Examiner’s Interview of William L. Rutledge, Aug. 27, 2009, at p. 2.

⁶⁰ Federal Deposit Insurance Corporation, Supervisory Insights: The FDIC's Supervision of Industrial Loan Companies: A Historical Perspective, *available at* http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum04/industrial_loans.html.

⁶¹ *Id.*

⁶² Sullivan & Cromwell, Term Sheet for 23A Exemption for Lehman Brothers Commercial Bank (“Bank”) [Draft], (July 13, 2008) [LBEX-DOCID 018382], attached to e-mail from Andrew S. Baer, Sullivan & Cromwell, to William L. Rutledge, FRBNY, *et al.* (July 14, 2008) [LBEX-DOCID 071857]; Sullivan & Cromwell, Term Sheet for 23A Exemption for Lehman Brothers Commercial Bank (“Bank”) [Draft], (July 15, 2008) [LBEX-DOCID 018385], attached to e-mail from Andrew S. Baer, Sullivan & Cromwell, to William L. Rutledge, FRBNY, *et al.* (July 15, 2008) [LBEX-DOCID 071859]; Sullivan & Cromwell, Term Sheet for 23A Exemption for Lehman Brothers Commercial Bank (“Bank”) [Draft], (July 20, 2008) [LBEX-DOCID 1013221], attached to e-mail from Jackie Frommer, Lehman, to William L. Rutledge, FRBNY, *et al.* (July 21, 2008) [LBEX-DOCID 1063411].

Lehman removed several categories of assets from its proposal, including those with low ratings as well as some land loans.⁶³

During early August, the FRBNY told Lehman that it had received sufficient information, and the process then moved into the hands of the FDIC.⁶⁴ In middle to late August, Lehman representatives had a series of conversations and a meeting with FDIC officials. They responded negatively to the proposal, in part because the FDIC had concerns that the transaction would negatively affect the bank.⁶⁵ Lehman then attempted to convince the FRBNY to persuade the FDIC to grant the exemption.⁶⁶

On September 21, 2008, following Lehman's bankruptcy, the FRBNY granted applications by Goldman Sachs and Morgan Stanley to become bank holding companies.⁶⁷ Public reports at the time indicated that Goldman Sachs and Morgan Stanley were motivated to convert to bank holding companies in order to increase

⁶³ Sullivan & Cromwell, Term Sheet for 23A Exemption for Lehman Brothers Commercial Bank ("Bank") [Draft], (July 20, 2008) [LBEX-DOCID 1013221], attached to e-mail from Jackie Frommer, Lehman, to William L. Rutledge, FRBNY, *et al.* (July 21, 2008) [LBEX-DOCID 1063411]. *Accord* Examiner's Interview of William L. Rutledge, Aug. 27, 2009, at p. 3.

⁶⁴ Examiner's Interview of William L. Rutledge, Aug. 27, 2009, at p. 3.

⁶⁵ *Id.*; see e-mail from Timothy F. Geithner, FRBNY, to William L. Rutledge, FRBNY (Aug. 19, 2008) [FRBNY to Exam. 033361]; e-mail from William L. Rutledge, FRBNY, to Timothy F. Geithner, FRBNY, *et al.* (Aug. 29, 2008) [FRBNY to Exam. 032939]. *Accord* Examiner's Interview of Thomas A. Russo, May 11, 2009, at p. 9.

⁶⁶ Richard S. Fuld, Jr., Lehman, Call Logs (Aug. 27, 2008) [LBHI_SEC07940_016973]; Examiner's Interview of Thomas A. Russo, May 11, 2009, at p. 9.

⁶⁷ Federal Reserve System, Orders Approving Formation of Bank Holding Companies (Sept. 21, 2008), *available at*

<http://www.federalreserve.gov/newsevents/press/orders/orders20080922a1.pdf>;

<http://www.federalreserve.gov/newsevents/press/orders/orders20080922a2.pdf>.

confidence in their strength and access to funding.⁶⁸ Baxter told the Examiner that Goldman and Morgan Stanley “decided to hold hands and jump together” into bank holding company status, as the last two independent banks remaining.⁶⁹ They hoped that by taking the same action at the same time, they might avoid incurring any stigma or negative perceptions from the conversion.⁷⁰ Baxter said that one of the reasons the Government opposed Lehman’s application was the Government’s concern that converting to bank holding company status would create negative perceptions about Lehman’s funding strength.⁷¹

III. JUNE 12, 2008

On June 12, 2008, Lehman took two important but very different steps: (1) replacing two senior officers; and (2) closing a major equity offering.

A. Replacement of Officers

On the morning of June 12, 2008, Lehman publicly announced the replacement of two of its officers. Herbert H. McDade, III replaced President Joseph M. Gregory and

⁶⁸ See Michael J. de la Merced, *et al.*, *As Goldman and Morgan Shift, a Wall St. Era Ends*, N.Y. Times, Sept. 21, 2008.

⁶⁹ Examiner’s Interview of Thomas C. Baxter, Jr., May 20, 2009, at p. 8.

⁷⁰ *Id.*

⁷¹ *Id.*

Ian T. Lowitt replaced CFO Erin M. Callan.⁷² On the evening of June 11, 2008, Fuld had previewed the executive shake-up to the Board during a telephonic meeting.⁷³

Several of Lehman's directors attributed the replacement of Gregory and Callan to a loss of confidence in them.⁷⁴ On June 9, 2008, Lehman's second quarter pre-announcement of earnings reported Lehman's first loss as a public company. That same day, Callan offered to Fuld to resign.⁷⁵ She acknowledged to Fuld that she had lost credibility with the public as a result of Lehman's poor performance.⁷⁶ That was especially true in light of upbeat statements during the second quarter.⁷⁷ Callan told the Examiner that she thought it would be hard for her to continue to "tell Lehman's story."⁷⁸ Although Fuld initially rejected her resignation, on June 12, 2008, Fuld accepted it and informed the Executive Committee of her replacement.⁷⁹

Some of Lehman's executives had lost confidence in Gregory by the spring, when complaints regarding Gregory percolated up to at least one director.⁸⁰ Following Lehman's announcement of second quarter losses, the Head of Lehman's Investment

⁷² See David Ellis, *Shakeup at Lehman Brothers*, CNNMoney.com, June 12, 2008, available at http://money.cnn.com/2008/06/12/news/companies/lehman_brothers/index.htm?postversion=2008061213.

⁷³ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (June 11, 2008), at p. 1 [LBEX-AM 003755].

⁷⁴ Examiner's Interview of Jerry A. Grundhofer, Sept. 16, 2009, at p. 9; Examiner's Interview of Sir Christopher C. Gent, Oct. 21, 2009, at pp. 17-18; Examiner's Interview of John F. Akers, Apr. 22, 2009, at p. 8; Examiner's Interview of Thomas H. Cruikshank, Oct. 8, 2009, at p. 6. See Section III.A.3.c. of the Report, which discusses Callan's public fight with David Einhorn in greater detail.

⁷⁵ Examiner's Interview of Erin M. Callan, Oct. 23, 2009, at p. 8.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at pp. 8-9.

⁸⁰ Examiner's Interview of Sir Christopher Gent, Oct. 21, 2009, at pp. 17-18.

Banking Division, Hugh “Skip” E. McGee III, privately told Fuld that a change in senior management was necessary and that Gregory had to go.⁸¹ McGee told the Examiner that Fuld responded by asking him to state his view to the Executive Committee.⁸² Gregory told the Examiner that the possibility of his departure arose in early June 2008 as a result of media pressure for “heads to roll.”⁸³ Gregory said that after McGee raised the issue, Gregory told the Executive Committee that he should be the one to leave, not Fuld, as Gregory’s job was “to protect the office of the Chairman.”⁸⁴

Lehman intended the shake-up to signal to the market that Lehman was taking proactive steps to repair market confidence. Nonetheless, Lehman’s stock lost 7.4% of its value on June 12 and closed at \$22.70.⁸⁵ The Secretary of the Treasury, Henry M. Paulson, Jr., told the Examiner that Fuld told him that Fuld believed firing Callan would bolster market confidence.⁸⁶ However, Paulson thought that the markets might view Callan’s replacement as more alarming, not less.⁸⁷

By the afternoon of June 12, 2008, one of Lehman’s clearing banks, Citibank, received a number of novation requests, from trading partners such as Putnam, GSAM, Bank of America, King Street, Elliot and Citadel indicating a lack of confidence in

⁸¹ Examiner’s Interview of Hugh E. McGee, III, Aug. 12, 2009, at p. 26.

⁸² *Id.*

⁸³ Examiner’s Interview of Joseph M. Gregory, Nov. 13, 2009, at p. 13.

⁸⁴ *Id.*

⁸⁵ See Yahoo! Finance, LEH stock chart, June 12, 2008, available at <http://finance.yahoo.com/q?s=LEHMQ.PK> (last visited Jan. 20, 2010).

⁸⁶ Examiner’s Interview of Henry M. Paulson, Jr., June 25, 2009, at p. 14.

⁸⁷ *Id.*

Lehman.⁸⁸ According to an internal Citibank e-mail, the “[m]arket is saying Lehman can not make it alone. Loss of confidence here is huge at the moment.”⁸⁹ That same day, in connection with the novation requests and its earnings loss, Lehman posted a \$2 billion deposit to Citibank to induce Citibank to continue its clearing activities for Lehman.⁹⁰ Lehman informed the FRBNY of the deposit as part of daily reports Lehman made to the FRBNY.⁹¹

B. Lehman Closes a \$6 Billion Offering

On June 12, 2008, Lehman closed its \$6 billion equity offering.⁹² On June 6, 2008, Lehman’s management had presented the stock offering to its Board, and the Board authorized the offering.⁹³ On June 12, 2008, LBHI sold 2 million shares of convertible preferred stock for \$2 billion.⁹⁴ That same day, LBHI sold 143 million shares of common stock at a price of \$28 per share, totaling \$4 billion.⁹⁵

⁸⁸ See e-mail from Thomas Fontana, Citibank, to Brian Leach, Citibank, *et al.* (June 16, 2008) [CITI-LBHI-EXAM 00113017] (relating the counterparties that requested novations the previous week.)

⁸⁹ E-mail from Thomas Fontana, Citibank, to Christopher M. Foskett, Citibank, *et al.* (June 12, 2008) [CITI-LBHI-EXAM 00081606].

⁹⁰ See e-mail from Daniel J. Fleming, Lehman, to Ian T. Lowitt, Lehman, *et al.* (June 12, 2008) [LBEX-AM 008608].

⁹¹ FRBNY, Lehman IB Update (June 25, 2008), at pp. 10-11 [FRBNY to Exam. 008224] (data produced on June 19, 2008). See Section III.A.5.c. of the Report, which discusses the novation requests and deposit in greater detail.

⁹² Lehman Brothers Holdings Inc., Current Report as of June 9, 2008 (Form 8-K) (filed on June 12, 2008) (“LBHI 8-K (June 12, 2008)”).

⁹³ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (June 6, 2008), at p. 3 [LBEX-AM 003709].

⁹⁴ LBHI 8-K (June 12, 2008).

⁹⁵ *Id.*

However, even with the injection of additional equity, the Federal Reserve remained skeptical.⁹⁶ In the weeks prior to Lehman's June 12 offering, Lehman had met with the Federal Reserve and sketched out an "Apocalypse Now" liquidity scenario, which was intended to reflect circumstances that were far more severe than what Lehman thought could happen.⁹⁷ By mid-June 2008, however, the FRBNY was aware of the novation requests and their potential impact on Lehman's liquidity.⁹⁸

On the evening of June 12, 2008, the Vice Chairman of the Federal Reserve, Donald L. Kohn, wrote Chairman of the Federal Reserve Ben S. Bernanke regarding Kohn's concern that Lehman's \$6 billion capital infusion may not cure Lehman's problems.⁹⁹ Kohn thought that the "possibility" existed that "this is Thursday of [Bear Stearns] weekend, and equity holders could wake up Monday morning with no value."¹⁰⁰ According to Kohn's e-mail, "[Fuld] really [had] no alternative plan at this point. Lining up [sovereign wealth fund] investors is a slow process and there is nobody is [sic] interested in buying them."¹⁰¹ Kohn went on to discuss what would

⁹⁶ See e-mail from Donald L. Kohn, Federal Reserve, to Ben S. Bernanke, Federal Reserve, *et al.* (June 12, 2008) [FRB to LEH Examiner 000073].

⁹⁷ See Lehman, Presentation to the Federal Reserve, Update on Capital Leverage & Liquidity (May 28, 2008) [LBEX-WGM 718569]. *Accord* Examiner's Interview of Robert Azerad, Apr. 20, 2009, at p. 3.

⁹⁸ See FRBNY, Lehman IB Update (June 25, 2008), at pp. 10-11 [FRBNY to Exam. 008224] (data produced on June 19, 2008).

⁹⁹ E-mail from Donald L. Kohn, Federal Reserve, to Ben S. Bernanke, Federal Reserve (June 13, 2008) [FRB to LEH Examiner 000073].

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

become Lehman's strategic alternatives.¹⁰² He stated that while "[p]rivate equity partners are a possibility," Lehman's proposed bank or financial holding company "with Fed consolidated regulation would take time to get regulatory approvals and provide uncertain relief unless they acquired a lot of deposits very fast."¹⁰³ Kohn also previewed what would become SpinCo, suggesting that Lehman might "creat[e] a bad bank, on the UBS model, [but] with the lousy mortgages they hold [, it] would require interest from equity investors to buy into the bad bank."¹⁰⁴ Finally, Kohn noted that "using our balance sheet to facilitate an orderly wind down with the discount window or by assuming the liabilities a la JPM is hard because we don't have the authorities of the fdic (as well as for policy reasons)."¹⁰⁵ Early the next morning, Kohn concluded the e-mail exchange with Bernanke by telling Bernanke that institutional investors believed that it was not a question of whether Lehman would fail, but when the failure would occur.¹⁰⁶

Halfway across the world, in Hong Kong, a rumor circulated that Lehman would be gone that night, taken out by the Federal Reserve.¹⁰⁷

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ E-mail from Donald L. Kohn, Federal Reserve, to Ben S. Bernanke, Federal Reserve (June 13, 2008) [FRB to LEH Examiner 000781].

¹⁰⁷ See Bloomberg chat from James Archibald, ABN AMRO Asia Ltd., to Ben Suttie, ABN AMRO Australia, *et al.* (June 12, 2008), at pp. 1-2 [ABN AMRO 000002].

IV. LAZARD'S CVS PROPOSAL

During the summer of 2008, Lehman worked with Lazard, Frères & Co. (“Lazard”) as a strategic advisor.¹⁰⁸ Lehman formally engaged Lazard in September 2008.¹⁰⁹ Gary Parr, the engagement partner for Lazard, told the Examiner that the scope of Lazard’s work for Lehman was to be available for a fairness opinion.¹¹⁰ Parr said that Fuld asked Lazard to “tell us if we’re missing anything.”¹¹¹ Lazard addressed and evaluated an array of options provided by Lehman.¹¹² Beyond that, Lazard proposed an alternative to SpinCo, which was known as contingent value stock (“CVS”).

Lazard’s CVS alternative would have meant segregating Lehman’s commercial real estate assets on the balance sheet and tracking those assets’ value using a contingent value stock.¹¹³ The CVS concept was intended to permit Lehman to achieve a “segmentation of risk” similar to SpinCo, while enabling Lehman to finance the commercial real estate assets by raising money at the “cleaner” parent company level, rather than trying to raise money for an entity composed entirely of bad assets.¹¹⁴ Parr told the Examiner that there was a “pretty good chance” that he was the person who came up with the CVS concept.¹¹⁵

¹⁰⁸ Examiner’s Interview of Gary Parr, Sept. 14, 2009, at p. 6.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at p. 7.

¹¹³ *Id.* at pp. 10-11.

¹¹⁴ *Id.* at p. 11.

¹¹⁵ *Id.*

On July 28, 2008, Lazard prepared a presentation that explained the CVS proposal and compared it to SpinCo.¹¹⁶ The presentation described CVS as a new class of Lehman stock, qualifying as Tier 1 capital and rating agency equity capital.¹¹⁷ Each share of CVS would represent a participation in the economics of the commercial real estate portfolio, where each dollar of loss attributed to commercial real estate would result in a reduction of the face value of the share of CVS.¹¹⁸ Lazard anticipated that the CVS would be registered and tradable, to the extent there was a market for the shares.¹¹⁹

Lazard's CVS proposal also involved a capital raise.¹²⁰ The Lazard presentation described the potential recapitalization through the creation of CVS as a four-step process.¹²¹ First, LBHI would create a new share class.¹²² Second, LBHI would distribute the new shares to Lehman shareholders in a tax-free manner.¹²³ Third, LBHI would issue \$4 billion in common equity.¹²⁴ Finally, LBHI would issue new restricted stock to Lehman's employees.¹²⁵

Lazard described the CVS proposal as advantageous to Lehman.¹²⁶ Lazard listed what it saw as several advantages of the CVS proposal, including: separate reporting of

¹¹⁶ Lazard, Project Green Discussion Materials [Draft] (July 28, 2008) [LAZ-A-00000131].

¹¹⁷ *Id.* at p. 1.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at p. 2.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

Lehman's results and the commercial real estate portfolio's results; no change in the consolidated financials of Lehman as a result of the CVS issuance; the ability to maintain the equity associated with the commercial real estate portfolio; separation of the commercial real estate exposure into a different security might allow for an additional LBHI equity raise; and the option to redeem CVS for cash or LBHI common equity.¹²⁷

Lazard's CVS proposal was not without flaws. First, the issuance of CVS would not remove any assets from Lehman's balance sheet.¹²⁸ Second, there would be an execution delay due to the time required to register the CVS, publish the required financial statements and proxy and receive the results of the required shareholder vote.¹²⁹ Finally, Lazard noted that it was unclear how the CVS would trade.¹³⁰

On Saturday, August 9, 2008, Lehman senior management, including Fuld, Russo, Jeffrey L. Weiss (Lehman's co-Head of Global Finance), Larry Wieseneck (Lehman's Global Head of Finance) and Les Gorman (Lehman Managing Director) held a "Project Green" meeting and conference call at Fuld's home in Connecticut.¹³¹ Parr also attended a portion of the meeting, and he listed the alternatives then under review: SpinCo; the CVS proposal; a sale of 100% of IMD; sale of 51% or 49% of IMD; or, a going

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Examiner's Interview of Gary Parr, Sept. 14, 2009, at p. 12.

private transaction.¹³² The Lazard presentation rated the CVS proposal as more desirable for Lehman's balance sheet than SpinCo, even while acknowledging that the CVS would not reduce the balance sheet.¹³³

Wieseneck summarized the meeting for McGee, who was unable to attend. Wieseneck reported that Parr pushed the CVS idea as "better than spin co" but Lehman managers rejected the idea.¹³⁴

After discussing the economic benefits (tax shield at corporate) and potential timing, it was the consensus that the firm does not have enough credibility to have the CVS or tracker as the answer[.] If we can't do spin co it would be a fall back but that we would be accused of financial engineering if we rolled out tracker now. Dick ended by saying go full speed ahead on Spin Co with an attempt to ring fence real estate now until spin. Real issue is how much equity do we need to sell by Sept. 15 and do we need some mezz pre-placed so that equity buyers believe we can get spin co done.¹³⁵

Weiss added that "Parr was pushing his agenda. People saw through it."¹³⁶

Parr's summary of the meeting noted that the "[c]onclusion [was] to continue focused on spin with capital raise. Primary concern with cvs is perception. Meeting [was] not too confrontational. Dick liked our work and the full discussion. [There is] [n]othing

¹³² Lazard, Project Green Discussion Materials [Draft] (Aug. 7, 2008), at p. 1 [LBHI_SEC07940_647930], attached to e-mail from Angela Judd, Lehman, to Hugh E. McGee, III, Lehman, *et al.* (Aug. 8, 2008) [LBHI_SEC07940_647929].

¹³³ *Id.* at 5.

¹³⁴ E-mail from Larry Wieseneck, Lehman, to Hugh E. McGee, III, Lehman, *et al.* (Aug. 9, 2008) [LBHI_SEC07940_406661].

¹³⁵ *Id.*

¹³⁶ *Id.*

else to do for now.”¹³⁷ Parr told the Examiner that he did not push any single idea as the best idea.¹³⁸

Lehman did not pursue the CVS proposal further.

V. THE CHRONOLOGICAL DEVELOPMENT OF SPINCO

A. March-April 2008: Early Versions of SpinCo

Lehman’s officers began to contemplate shifting Lehman’s troubled and illiquid real estate assets to an off-balance sheet entity in early March 2008.¹³⁹ Callan sent an e-mail to Mark A. Walsh, the Head of Lehman’s Global Real Estate Group, suggesting the possibility of putting some of Lehman’s commercial mortgage assets into a new real estate investment trust and “spinning” it (*i.e.*, transferring equity ownership of the new entity) to Lehman’s shareholders.¹⁴⁰ Walsh brought Steve R. Hash, Lehman’s Global Head of Real Estate Investment Banking, into the discussion.¹⁴¹ In those initial discussions, Lehman’s management identified major obstacles to executing the spinoff, including the need to fund the new company’s assets and the need to attract third-party investors.¹⁴²

During April 2008, some of Lehman’s senior management (including Callan, Walsh, Hash, Larry Wieseneck, Kenneth Cohen, Head of U.S. Originations, Paul A.

¹³⁷ E-mail from Gary Parr, Lazard, to Di Wu, Lazard, *et al.* (Aug. 9, 2008) [LAZ-C-00020061].

¹³⁸ Examiner’s Interview of Gary Parr, Sept. 14, 2009, at p. 11.

¹³⁹ *See* e-mail from Erin M. Callan, Lehman, to Mark A. Walsh, Lehman (Mar. 12, 2008) [LBHI_SEC07940_116854].

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

Hughson, Head of Credit Distribution, Daniel Kerstein, Head of Global Finance Solutions, Paolo R. Tonucci, Global Treasurer and David Goldfarb, Global Head of Strategic Partnership) continued to discuss variations on a mortgage asset spin-off.¹⁴³ Those discussions coalesced around the idea of spinning most or all of Lehman's commercial real estate holdings into a separate entity that would be owned by Lehman's shareholders.¹⁴⁴ They believed that the spin-off eventually could be sold publicly, while in the meantime it would remove the risk of commercial real estate mark-downs from Lehman's balance sheet.¹⁴⁵ Lehman executives referred to the spin-off entity as "SpinCo."¹⁴⁶

Lehman's senior management recognized that critical challenges might make the SpinCo plan impractical.¹⁴⁷ In particular, Lehman's management acknowledged the difficulty of finding independent financing for SpinCo, and also acknowledged that the

¹⁴³ See e-mail from Steven R. Hash, Lehman, to Daniel Kerstein, Lehman, *et al.* (Apr. 11, 2008) [LBHI_SEC07940_089122]; e-mail from Erin M. Callan, Lehman, to Steven R. Hash, Lehman, *et al.* (Apr. 17, 2008) [LBHI_SEC07940_274912]; Lehman, Managing to a "Bad Asset" Solution (Apr. 23, 2008) [LBEX-DOCID 1400312], attached to e-mail from David Baron, Lehman, to David Goldfarb, Lehman, *et al.* (Apr. 23, 2008) [LBEX-DOCID 1558959].

¹⁴⁴ *Id.*

¹⁴⁵ See, e.g., Lehman, Managing to a "Bad Asset" Solution (Apr. 23, 2008), at p. 2 [LBEX-DOCID 1400312] (identifying "pros" of REIT spin-off as, *inter alia*, "Segregate the bad assets" and "Equity upside participation").

¹⁴⁶ *Id.*

¹⁴⁷ E-mail from Erin M. Callan, Lehman, to Steven R. Hash, Lehman, *et al.* (Apr. 17, 2008) [LBHI_SEC07940_274912].

new entity would require a large infusion of equity from Lehman, leaving a hole in Lehman's capital structure.¹⁴⁸

B. June-July 2008: SpinCo as Survival Strategy

As the market for commercial real estate assets continued to deteriorate in mid-2008,¹⁴⁹ Lehman's shareholders, creditors, and the market "expressed increasing concern about the size and concentration of [Lehman's] positions and their impact on overall creditworthiness, and they have put increasing pressure on the firm to reduce exposure[.]"¹⁵⁰ Although Lehman managed to sell more than \$6 billion in commercial real estate assets during the second and third quarters of 2008 at prices within 60 basis points of those assets' marks, Lehman faced further write-downs of its remaining real estate assets.¹⁵¹ At the same time, Lehman hoped to avoid the need for a massive sell-off of its more liquid commercial real estate assets, which Lehman saw as a "fire sale for the

¹⁴⁸ See *id.* ("I thought we had decided the [mortgage REIT] structure would not work because independent financing is not available. There were other issues but this seemed the biggest."); e-mail from Daniel Kerstein, Lehman, to Steven R. Hash, Lehman, *et al.* (Apr. 11, 2008) [LBHI_SEC07940_089122] ("[E]quity comes from either us or IPO equity investors"); Lehman, Managing to a "Bad Asset" Solution (Apr. 23, 2008) [LBEX-DOCID 1400312] ("Bad Asset Solution" slides describes "cons" of REIT spin-off as "Material reduction in Parent equity" and "Financing required at SpinCo").

¹⁴⁹ See e-mail from Steven R. Hash, Lehman, to David Erickson, Lehman, *et al.* (June 10, 2008) [LBEX-DOCID 1475677] ("[T]here is really no independent financing for [CRE] assets in the market today."). Accord Examiner's Interview of Hugh E. McGee, III, Aug. 12, 2009, at pp. 22-23; Examiner's Interview of Thomas A. Russo, Dec. 1, 2009, at pp. 14-15.

¹⁵⁰ Lehman, The Gameplan (Sept. 2008) [LBEX-DOCID 2727665]; see also memorandum from Timothy Lyons, Lehman, to David Goldfarb, Lehman, re: Strategic Imperatives for the Firm (July 3, 2008), at p. 1 [LBEX-DOCID 1377945] ("We have a large overhang of illiquid, devaluing assets which are dragging down our earnings, threatening our capital base and undermining the confidence of investors, counterparties and employees.").

¹⁵¹ Examiner's Interview of Richard S. Fuld, Jr., May 6, 2009, at p. 6; see also Examiner's Interview of Mark A. Walsh, Oct. 21, 2009, at pp. 11, 14; Examiner's Interview of Paul A. Hughson, Oct. 28, 2008, at p. 5; Examiner's Interview of Kenneth Cohen, Oct. 20, 2009, at p. 12.

vultures.”¹⁵² Lehman recognized that it needed to find a remedy for its “outsized” exposure to commercial real estate assets before they “[took] down the mother ship.”¹⁵³

In early June 2008, McGee revisited the CRE spin-off idea, suggesting to a group of Lehman investment bankers: “[W]e create a vehicle (trust) to dump a bunch of this [real estate exposure] into and give it to our shareholders. They get upside and we get out of the ‘are we marked’ correctly game. A bit like good bank/ bad bank.”¹⁵⁴ Recalling discussions of a similar idea in March and April 2008, McGee’s investment banking team initially voiced reservations about the spin-off idea,¹⁵⁵ but McGee pushed ahead, forming an investment banking “team” to explore the idea.¹⁵⁶

Despite the initial doubts, at McGee’s instigation the SpinCo plan soon became a critical component of Lehman’s post-Bear Stearns survival strategy.¹⁵⁷ In preliminary planning documents from early July 2008, Project Green included other possible

¹⁵² *Id.*

¹⁵³ Lehman, Lehman Commercial Mortgage Exposure is Outsized Relative to Peers (June 10, 2008) [LBHI_SEC07940_339455], attached to e-mail from Kevin Thatcher, Lehman, to Ian T. Lowitt, Lehman, *et al.* (June 10, 2008) [LBHI_SEC07940_339451]; e-mail from Hugh E. McGee, III, Lehman, to Mark A. Walsh, Lehman (June 13, 2008) [LBHI_SEC07940_123660].

¹⁵⁴ E-mail from Hugh E. McGee, III, Lehman, to Larry Wieseneck, Lehman, *et al.* (June 11, 2008) [LBHI_SEC07940_398653].

¹⁵⁵ See e-mail from Larry Wieseneck, Lehman, to Hugh E. McGee, III, Lehman (June 11, 2008) [LBHI_SEC07940_398653] (“Kerstein proposed this 3 months ago. Combo of Goldfarb and parts of RE rejected it. . . . I believe because it required too much equity beneath it”); see also e-mail from Steven R. Hash, Lehman, to David Erickson, Lehman, *et al.* (June 10, 2008) [LBEX-DOCID 1475677] (“[P]roblem is financing and the assets that greg owns. [T]here is really no independent financing for these assets in the market today. No financing means no actual business plan. And just dumping problem assets to shareholders is a bad idea, in my humble opinion.”).

¹⁵⁶ See e-mail from Hugh E. McGee, III, Lehman, to Mark A. Walsh, Lehman (June 13, 2008) [LBHI_SEC07940_123660] (“I have a team of bankers looking at ‘enterprise solutions’ for real estate-i.e. how to separate out most or all of it so that it doesn’t take down the mother ship.”).

¹⁵⁷ See, e.g., Lehman, Project Green Acres Preliminary Game Plan (July 4, 2008) [LBHI_SEC07940_124809].

alternatives for disposing of Lehman's commercial real estate assets, such as strategic asset sales or a joint venture.¹⁵⁸ However, Lehman viewed the SpinCo plan as "unique," in part because SpinCo's planners believed it could be developed *without* third party assistance.¹⁵⁹ Another perceived advantage of the spin-off plan was that Lehman could announce it well in advance of actual distribution — contemporaneous planning documents targeted the third quarter 2008 earnings announcement for the plan's announcement.¹⁶⁰ McGee continued to take the lead on "Project Green Acres," Lehman's code name for the branch of Lehman's survival plan focused on the strategic imperative of solving Lehman's commercial real estate "overhang."¹⁶¹

SpinCo became a centerpiece of Lehman's survival strategy.¹⁶² A July 11, 2008 Lehman internal accounting analysis concluded that Lehman could accomplish the

¹⁵⁸ *Id.*; e-mail from Brad Whitman, Lehman, to Richard S. Fuld, Jr., Lehman, *et al.* (July 9, 2008) [LBHI_SEC07940_212942].

¹⁵⁹ Lehman, Project Green Acres Preliminary Game Plan (July 4, 2008) [LBHI_SEC07940_124809] ("Understand that spin-off is unique in that [it can] be executed without third party involvement"); e-mail from Larry Wieseneck, Lehman, to Brad Whitman, Lehman (July 5, 2008) [LBHI_SEC07940_401266] ("[CRE spin-off] does not require negotiations with someone who will feel they have leverage against us and demand a lower price."); *but see* Lehman, Green Acres - Summary of Structural Alternatives (July 3, 2008), at p. 1 [LBHI_SEC07940_008342] ("Spin-Off . . . [p]ossibly with third party sponsor"), attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman, *et al.* (July 3, 2008) [LBHI_SEC07940_008341]; Lehman, Key Execution Considerations for Spin-Off [Draft] (July 11, 2008) [LBHI_SEC07940_401591] ("Likely that SpinCo will need at least a portion of third party financing.").

¹⁶⁰ *See* Lehman, Project Green Acres Preliminary Game Plan (July 4, 2008) [LBHI_SEC07940_124809] ("If spin-off checks out, focus on making announcement regarding plan to spin with 3Q earning."); e-mail from Brad Whitman, Lehman, to Richard S. Fuld, Jr., Lehman, *et al.* (July 9, 2008) [LBHI_SEC07940_212942].

¹⁶¹ Lehman Green Acres - Working Group (July 23, 2008) [LBHI_SEC07940_125904] (showing McGee as head); memorandum from Timothy Lyons, Lehman, to David Goldfarb, Lehman, re: Strategic Imperatives for the Firm (July 3, 2008), at p. 1 [LBEX-DOCID 1377945].

¹⁶² E-mail from Richard S. Fuld, Jr., Lehman, to David Goldfarb, Lehman (July 19, 2008) [LBHI_SEC07940_213011] ("The key to our success is the viability of the spinco.").

spin-off and achieve a complete divestiture of the spun-off assets, so long as Lehman's seller-financing for SpinCo was on market terms and Lehman found some third-party financing.¹⁶³ Lehman also believed that it could structure SpinCo to achieve tax-free status for the distribution to its shareholders, which Lehman regarded as a "key consideration" in deciding whether to adopt the plan.¹⁶⁴ Lehman also began preparing detailed cash flow summaries of its commercial real estate assets, and looking at which assets it would contribute to SpinCo, including Lehman's Archstone assets.¹⁶⁵ Goldfarb met with Parr to discuss "SpinCo financing ideas," which included possibly getting Lehman's seller-financing loan to SpinCo "wrapped" by Berkshire Hathaway.¹⁶⁶

During July 2008, Lehman's managers involved in the project were aware that launching SpinCo would require a significant transfer of equity capital from Lehman to the new entity.¹⁶⁷ To establish SpinCo as a viable independent entity and to avoid

¹⁶³ E-mail from Daniel Kashdin, Lehman, to Daniel Kerstein, Lehman, *et al.* (July 11, 2008) [LBHI_SEC07940_401374].

¹⁶⁴ *See* Lehman, Key Execution Considerations for Spin-Off [Draft] (July 11, 2008) [LBHI_SEC07940_401591]; *see also* Lehman, Discussion Materials for the Board of Directors [Draft] (July 19, 2008), at p. 10 [LBHI_SEC07940_404357].

¹⁶⁵ Lehman, Commercial Real Estate Portfolio - Cash Flow Projections [Draft] (July 15, 2008) [LBEX-DOCID 1400411], attached to e-mail from David O'Reilly, Lehman, to Steven R. Hash, Lehman, *et al.* (July 14, 2008) [LBEX-DOCID 1400234]; e-mail from Daniel Kerstein, Lehman, to Brad Whitman, Lehman, *et al.* (July 16, 2008) [LBHI_SEC07940_403931]; e-mail from Timothy Sullivan, Lehman, to Larry Wieseneck, Lehman, *et al.* (July 18, 2008) [LBHI_SEC07940_404086].

¹⁶⁶ E-mail from Hugh E. McGee, III, Lehman, to Jeffrey L. Weiss, Lehman (July 18, 2008) [LBEX-DOCID 741841]; e-mail from Lee Einbinder, Lehman, to Larry Wieseneck, Lehman, *et al.* (July 18, 2008) [LBHI_SEC07940_404298].

¹⁶⁷ *See, e.g.,* e-mail from Daniel Kashdin, Lehman, to Daniel Kerstein, Lehman, *et al.* (July 11, 2008) [LBHI_SEC07940_401374] ("To preclude consolidation, there will need to be a substantial amount of equity in the deal."); e-mail from David Goldfarb, Lehman, to Richard S. Fuld, Jr., Lehman (July 21, 2008) [LBEX-DOCID 1224222] ("There is a minimum of capital needed to de-consolidate which is approx \$6

consolidation with Lehman, Lehman's management believed it would have to capitalize SpinCo with sufficient equity — at least 20 to 25% of SpinCo's net asset value.¹⁶⁸ In mid-July 2008, Lehman estimated that capitalizing \$35 billion of SpinCo assets would require a minimum of \$6 billion in equity, and possibly as much as \$14 billion.¹⁶⁹ Some of Lehman's management concluded that SpinCo was not a viable plan because it would have left Lehman with too little capital to survive,¹⁷⁰ especially because Lehman's capital already had been depleted by write-downs and losses.¹⁷¹

a) Sale of IMD

In the summer of 2008, Lehman also began developing plans to sell all or part of its "crown jewel" asset, the Investment Management Division ("IMD"), and in particular IMD's private asset management arm, Neuberger Berman ("NB").¹⁷² Lehman senior management had contemplated the possibility of selling all or part of IMD since

billion and obviously we would like to raise much more to reduce our ongoing financing of Spinco.".)
Accord Examiner's Interview of Hugh E. McGee, III, Aug. 12, 2009, at p. 23.

¹⁶⁸ *Id.*; Examiner's Interview of Richard S. Fuld, Jr., May 6, 2009, at p. 7.

¹⁶⁹ E-mail from David Goldfarb, Lehman, to Richard S. Fuld, Jr., Lehman (July 21, 2008) [LBEX-DOCID 1224222]; e-mail from Gerard Reilly, Lehman, to Martin Kelly, Lehman (July 19, 2008) [LBEX-DOCID 2117905].

¹⁷⁰ *See, e.g.*, e-mail from Daniel Kerstein, Lehman, to Larry Wieseneck, Lehman (July 22, 2008) [LBHI_SEC07940_404505]; e-mail from Timothy Lyons, Lehman, to Alex Kirk, Lehman (July 22, 2008) [LBHI_SEC07940_174554] ("Given your views on the likelihood of spinco, I think we need to move hard down the path of Plan B."); e-mail from Eric Felder, Lehman, to Paolo R. Tonucci, Lehman (Aug. 10, 2008) [LBEX-DOCID 1297372].

¹⁷¹ *See, e.g.*, e-mail from Paolo R. Tonucci, Lehman, to Christian Wait, Lehman (July 17, 2008) [LBHI_SEC07940_529261] (forwarding Moody's Investors Service, Press Release, *Moody's lowers Lehman Brothers rating to A2; outlook negative* (July 17, 2008)); Lehman, Discussion Materials for the Board of Directors (July 19, 2008) [LBHI_SEC07940_404357].

¹⁷² Examiner's Interviews of Steven Berkenfeld, Oct. 5 and 7, 2009, at p. 18; Examiner's Interview of Richard S. Fuld, Jr., May 6, 2009, at pp. 9-11; Examiner's Interview of Hugh E. McGee, III, Aug. 12, 2009, at pp. 23-24; Examiner's Interview of Gary Parr, Sept. 14, 2009, at pp. 9-10.

2007.¹⁷³ By mid-July 2008, Lehman's management linked the idea of selling IMD with the SpinCo concept.¹⁷⁴ They believed that proceeds from the sale of IMD could be used to fill the "equity hole" left by SpinCo.¹⁷⁵

Although some of Lehman's management were concerned that a sale of IMD combined with a significant asset spin-off could reduce Lehman's capital levels enough to trigger a rating downgrade,¹⁷⁶ Lehman senior management pushed ahead with the two-pronged plan. In materials prepared for the July 21, 2008 meeting of the Executive Committee, SpinCo and a sale of IMD were central components of Lehman's survival plans, which also included significant asset sales and write-downs, headcount reductions, and a \$4 billion capital raise by the fourth quarter of 2008.¹⁷⁷

¹⁷³ David S. Erickson, Project Hercules (May 18, 2007) [LBEX-DOCID 727278], attached to e-mail from Carol Welter, Lehman, to Angela Judd, Lehman, *et al.* (May 29, 2007) [LBEX-DOCID 760067]; memorandum from Hugh E. McGee, III, Lehman, to Richard S. Fuld, Jr., Lehman, *et al.*, re: Project Hercules (May 29, 2007) [LBEX-DOCID 711211], attached to e-mail from Carol Welter, Lehman, to Angela Judd, Lehman, *et al.* (May 29, 2007) [LBEX-DOCID 760067].

¹⁷⁴ See e-mail from Herbert H. McDade, III, Lehman, to George H. Walker, Lehman (July 9, 2008) [LBHI_SEC07940_644297]; e-mail from Brad Whitman, Lehman, to Jeffrey L. Weiss, Lehman, *et al.* (July 17, 2008) [LBHI_SEC07940_403935].

¹⁷⁵ E-mail from Brad Whitman, Lehman, to Jeffrey L. Weiss, Lehman, *et al.* (July 17, 2008) [LBHI_SEC07940_403935] ("Spin-off CRE w/ plan to fill equity hole would be optimal. . . . Fill with proceeds from sale of IMD, which means either . . . [s]ell all of IMD for cash [or sell] large stake in IMD for cash. . . . Note that if CRE spin is not implemented, IMD does not need to be sold to fill capital hole.").

¹⁷⁶ See e-mail from Lee Einbinder, Lehman, to Jason Trock, Lehman, *et al.* (July 20, 2008) [LBHI_SEC07940_404396] ("Need to think about rating agency implications of CRE spin, NB carveout, writeoffs-if some combination of this results in downgrade to BBB+, does the plan hold together?").

¹⁷⁷ Lehman, Game Plan - Preliminary Draft for Discussion (July 20, 2008) [LBEX-DOCID 767208], attached to e-mail from Hugh E. McGee, III, Lehman, to Jeffrey L. Weiss, Lehman, *et al.* (July 21, 2008) [LBEX-DOCID 741717] (noting that presentation was "for tomorrow's Executive Committee meeting"). Presentation outlines plans for spinning off \$36 billion of commercial real estate assets along with \$11 billion equity, and for selling nearly 100% of IMD for up to \$7 billion, to generate \$3.2 billion after-tax gain (including reduced goodwill). *Id.*

b) July 22, 2008 Board Meeting

At the July 22, 2008 Board of Directors meeting, McGee presented SpinCo and the sale of IMD together as key “strategic alternatives.”¹⁷⁸ McGee explained that the plan was to “distribute the commercial real estate business to stockholders as a special dividend,” and stated that “the proposed spin-off, as currently contemplated, would be tax-free to the Firm and its stockholders.”¹⁷⁹ McGee then described the “potential sale of all or part of IMD” and provided an overview of the business.¹⁸⁰ At the same meeting, Parr told the Board that SpinCo was “a great idea” that Lehman should pursue “aggressively.”¹⁸¹

Also on July 22, Lehman’s management internally circulated a Lazard presentation analyzing valuation issues and monetization alternatives for IMD.¹⁸² That evening, Goldfarb reported to McDade that the cash flows and other accounting projections for SpinCo looked better than expected.¹⁸³ On July 31, 2008, Fuld reported to the Board that Lehman management was pursuing a “three-part transaction” involving

¹⁷⁸ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (July 22, 2008), at p. 6 [LBEX-AM 003866].

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Lazard, Project Green - Discussion Materials [Draft] (July 2008) [LBEX-DOCID 767209], attached to e-mail from Kelsey Surbaugh, Lehman, to Hugh E. McGee, III, Lehman, *et al.* (July 22, 2008) [LBEX-DOCID 717004].

¹⁸³ E-mail from David Goldfarb, Lehman, to Herbert H. McDade, III, Lehman (July 22, 2008) [LBHI_SEC07940_645762].

the spin-out of commercial real estate assets, a sale of IMD and raising additional capital.”¹⁸⁴

While Lehman senior management continued to develop a plan to sell IMD to fill the SpinCo “equity hole,” management was aware that the need for SpinCo to be adequately financed was another major obstacle to the SpinCo plan.¹⁸⁵ In order to gain accounting recognition as a separate entity from Lehman, SpinCo would have to show that it would not entirely rely entirely on Lehman.¹⁸⁶ Lehman senior management believed that the plan would work if Lehman could sell \$2 to 6 billion of the highest-risk, highest-return “mezzanine” tranches of SpinCo debt, and then syndicate part of the senior debt financing at two to three percent above LIBOR.¹⁸⁷ In addition, Lehman management hoped that syndicating at least some of the SpinCo debt structure would provide market confirmation on the interest rate spreads for that debt, enabling Lehman

¹⁸⁴ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (July 31, 2008), at p. 2 [LBEX-AM 003875].

¹⁸⁵ See, e.g., e-mail from Erin M. Callan, Lehman, to Mark A. Walsh, Lehman (Mar. 12, 2008) [LBHI_SEC07940_116854] (“[C]learly have to address financing of the assets which we would primarily have to provide to Newco from outset.”); e-mail from Steven R. Hash, Lehman, to Erin M. Callan, Lehman, *et al.* (Apr. 14, 2008) [LBHI_SEC07940_274912] (“I thought we had decided the structure would not work because independent financing is not available.”); e-mail from Steven R. Hash, Lehman, to David Erickson, Lehman, *et al.* (June 10, 2008) [LBEX-DOCID 1475677].

¹⁸⁶ See, e.g., e-mail from Daniel Kashdin, Lehman, to Daniel Kerstein, Lehman, *et al.* (July 11, 2008) [LBHI_SEC07940_401374]; e-mail from Richard S. Fuld, Jr., Lehman, to David Goldfarb, Lehman (July 19, 2008) [LBHI_SEC07940_213011] (“We need to get others to finance [SpinCo] so it doesn’t sit on our balance sheet.”).

¹⁸⁷ E-mail from Martin Kelly, Lehman, to David Goldfarb, Lehman, *et al.* (July 16, 2008) [LBHI_SEC07940_213013]; e-mail from David Goldfarb, Lehman, to Martin Kelly, Lehman, *et al.* (July 21, 2008) [LBEX-DOCID 2997880]. *Accord* Examiner’s Interview of Richard S. Fuld, Jr., May 6, 2009, at pp. 6-7.

to classify the SpinCo notes as Level II assets rather than Level III.¹⁸⁸ Unless Lehman could attract third-party financing for SpinCo, there would be no meaningful separation of risk.¹⁸⁹

C. August 2008: Steps to SpinCo's Execution

In early August 2008, the "Green Acres Working Group," headed by McGee,¹⁹⁰ focused on addressing SpinCo's central challenges: the "equity hole" and the need to attract outside financing for SpinCo.¹⁹¹ The Green Acres "teams" met daily in the first weeks of August.¹⁹² Lehman also continued to explore alternative spin-off scenarios, including "Project Greenland" (a spin-off of commercial and residential real estate assets with up to \$20 billion in outside funding) and "Green Acres Light" (a smaller version of SpinCo involving roughly \$15 billion in commercial real estate assets,

¹⁸⁸ See e-mail from Ian T. Lowitt, Lehman, to David Goldfarb, Lehman, *et al.* (July 22, 2008) [LBEX-DOCID 2997880]. Gerard Reilly, Lehman, replies: "On L3 issue for [senior debt], selling mezz certainly helps as it supports validity of capital structure. If we can find other [senior] debt in market and gain some comfort on our spread then we could call it L2. Placing some S[enior debt] is best." *Id.*

¹⁸⁹ E-mail from Christopher M. O'Meara, Lehman, to David Goldfarb, Lehman (July 16, 2008) [LBEX-DOCID 213344]; e-mail from Larry Wieseneck, Lehman, to Brad Whitman, Lehman, *et al.* (July 21, 2008) [LBHI_SEC07940_404451].

¹⁹⁰ See Lehman, Green Acres - Working Group (July 23, 2008) [LBHI_SEC07940_125904] (showing McGee as head); e-mail from Hugh E. McGee, III, Lehman, to Richard S. Fuld, Jr., Lehman (Aug. 3, 2008) [LBHI_SEC07940_213093] (McGee sends Fuld a Project Green "status report").

¹⁹¹ See, e.g., e-mail from Hugh E. McGee, III, Lehman, to Larry Wieseneck, Lehman (Aug. 5, 2008); e-mail from Hugh E. McGee, III, Lehman, to Brad Whitman, Lehman (Aug. 10, 2008) [LBHI_SEC07940_538200] ("We have already raised a lot of capital. Can we use some of what we already raised to bridge us here. Then we raise capital at time of diversion of equity to spinco.").

¹⁹² See, e.g., Lehman, Project Green Acres - Daily Update (Aug. 7, 2008) [LBEX-DOCID 2253476]; Lehman, Project Green Acres - Daily Update (Aug. 8, 2008) [LBEX-DOCID 2253477].

including Archstone).¹⁹³ The “Green Acres” team reached out to selected investors, mostly private equity groups, about SpinCo’s mezzanine debt.¹⁹⁴ Lehman hoped to attract potential investors by bundling SpinCo mezzanine securities with options to purchase a significant stake in post-spin Lehman.¹⁹⁵

1. “Full Speed Ahead”

On August 9, 2008, Lehman’s senior management held a “Project Green” meeting at Fuld’s home in Connecticut.¹⁹⁶ Parr attended the meeting and presented alternatives to the SpinCo/IMD sale plan.¹⁹⁷ One of those alternatives involved issuing a contingent value stock (“CVS”) that would track the value of Lehman’s commercial real estate assets separately from Lehman’s share value, without actually removing those assets from Lehman’s balance sheet.¹⁹⁸ Lehman’s senior management rejected Parr’s

¹⁹³ Lehman, Project Greenland [Draft] (Aug. 2008) [LBEX-DOCID 249386], and Lehman, Green Acres - ‘Light’ Alternative (Aug. 2, 2008) [LBEX-DOCID 363594], attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman (Aug. 3, 2008) [LBEX-DOCID 306887].

¹⁹⁴ See Lehman, Project Green Acres - Daily Update (Aug. 8, 2008) [LBEX-DOCID 2253477]; e-mail from Alex Kirk, Lehman, to Mark A. Walsh, Lehman, *et al.* (Aug. 9, 2008) [LBEX-DOCID 544666] (listing potential investors including Apollo, Blackstone, Cerberus, Colony, Fortress, J.E. Roberts, Lone Star, Och-Ziff, Vornado, and Walton Street).

¹⁹⁵ Lehman, Project Green - Talking Points for Potential Investors (Aug. 6, 2008) [LBEX-DOCID 363782], attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman, *et al.* (Aug. 6, 2008) [LBEX-DOCID 388296].

¹⁹⁶ E-mail from Jeffrey L. Weiss, Lehman, to Larry Wieseneck, Lehman, *et al.* (Aug. 9, 2008) [LBHI_SEC07940_406657]; Examiner’s Interview of Gary Parr, Sept. 14, 2009, at p. 12.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*; see also Lazard, Project Green - Discussion Materials [Draft] (Aug. 9, 2008) [LBHI_SEC07940_126975]; Lazard, Project Green - Supplementary Materials [Draft] (Aug. 9, 2008) [LBHI_SEC07940_126983]. See *infra* Appendix 13 § IV to the Report, which discusses Lazard’s CVS proposal in greater detail.

CVS proposal as less feasible than the spin-off in the current market environment.¹⁹⁹

Fuld ended the meeting by saying “go full speed ahead on SpinCo.”²⁰⁰

Concurrently with SpinCo planning in early August 2009, Lehman’s management continued to implement the plan to sell all or part of IMD.²⁰¹ In late July 2009, Lehman had begun initial discussions with potential buyers, mostly private equity firms.²⁰² Rumors began to circulate in the marketplace that Lehman might be looking to sell some part of IMD.²⁰³ At the same time, Lehman’s management began exploring alternative scenarios for IMD, including an initial public offering for Neuberger Berman or a portion of IMD, or a carve-out of IMD shares into a separate entity modeled on a private equity fund.²⁰⁴ In mid-August, Lehman received initial bids for all or part of

¹⁹⁹ E-mail from Jeffrey L. Weiss, Lehman, to Larry Wieseneck, Lehman, *et al.* (Aug. 9, 2008) [LBHI_SEC07940_406657]; Examiner’s Interview of Gary Parr, Sept. 14, 2009, at p. 12.

²⁰⁰ E-mail from Larry Wieseneck, Lehman, to Hugh E. McGee, III, Lehman, *et al.* (Aug. 9, 2008) [LBHI_SEC07940_406657].

²⁰¹ Lehman, Project Hercules - Project Status Summary (July 27, 2008) [LBEX-DOCID 460035], attached to e-mail from Brian Reilly, Lehman, to Hugh E. McGee, III, Lehman, *et al.* [LBEX-DOCID 456422]; Lehman, Lehman Brothers Investment Management (July 30, 2008) [LBEX-DOCID 317782], attached to e-mail from Brian Reilly, Lehman, to Hugh E. McGee, III, Lehman, *et al.* (July 30, 2008) [LBEX-DOCID 364820] (describing IMD presentation for strategic investors as “Hercules Overview”).

²⁰² *Id.*; e-mail from George H. Walker, Lehman, to Mark G. Shafir, Lehman, *et al.* (July 24, 2008) [LBEX-DOCID 296276].

²⁰³ See e-mail from Wai Lee, Lehman, to Kentaro Umezaki, Lehman (Aug. 6, 2008) [LBEX-DOCID 387080].

²⁰⁴ See, e.g., e-mail from Daniel Kerstein, Lehman, to David Erickson, Lehman, *et al.* (Aug. 7, 2008) [LBHI_SEC07940_406415]; Lehman, LBPE vs. NYSE IPO Announcement (Aug. 11, 2008) [LBHI_SEC07940_648035], attached to e-mail from George H. Walker, Lehman, to Richard S. Fuld, Jr., Lehman, *et al.* (Aug. 11, 2008) [LBHI_SEC07940_648034]; e-mail from Kentaro Umezaki, Lehman, to Heather Zuckerman, Lehman, *et al.* (Aug. 13, 2008) [LBEX-DOCID 295904]; Lehman, Project Hercules (Aug. 2008) [LBHI_SEC07940_649454], attached to e-mail from George H. Walker, Lehman, to Herbert H. McDade, III, Lehman (Aug. 19, 2008) [LBHI_SEC07940_649453].

IMD from nine firms, including Blackstone, Hellman & Friedman and Bain Capital.²⁰⁵ Those bids reflected a valuation range of \$7 to \$8 billion for all of IMD, including Neuberger Berman.²⁰⁶

2. Presentations to Rating Agencies

During the second week of August 2008, Lehman presented its SpinCo plan to Fitch, Moody's and Standard & Poor's.²⁰⁷ Lehman told the agencies that spinning off Lehman's commercial real estate assets would eliminate the need for a fire sale at distressed prices and preserve the intrinsic value of those assets for its shareholders.²⁰⁸ Meanwhile, post-spin "clean" Lehman would be in a better position to avoid future write-downs, stabilize its earnings and raise capital.²⁰⁹ None of Lehman's presentations to the rating agencies discussed Lehman's plans to sell all or part of IMD in order to fill the "equity hole."²¹⁰

²⁰⁵ E-mail from Mark G. Shafir, Lehman, to Brian Reilly, Lehman, *et al.* (Aug. 14, 2008) [LBEX-DOCID 350609]; Lehman, Project Hercules - Discussion Materials (Aug. 15, 2008) [LBEX-DOCID 616611], attached to e-mail from Hugh E. McGee, III, Lehman, to Carol Welter, Lehman (Aug. 15, 2008) [LBEX-DOCID 741172].

²⁰⁶ *Id.*

²⁰⁷ Lehman, Fitch Ratings - Discussion of Spin-Off of CRE Portfolio (Aug. 12, 2008) [LBEX-DOCID 011904]; Lehman, Moody's Investors Service - Discussion of Spin-Off of CRE Portfolio (Aug. 13, 2008) [LBHI_SEC07940_406813]; Lehman, Standard & Poor's - Discussion of Spin-Off of CRE Portfolio (Aug. 13, 2008) [LBHI_SEC07940_406905].

²⁰⁸ *Id.* at p. 1.

²⁰⁹ *Id.* at p. 2.

²¹⁰ *Id.*

After meeting with the rating agencies, Tonucci reported that the agencies expressed concern about the impact of the spin-off on Lehman's equity levels.²¹¹ On August 20, 2008, Standard & Poor's contacted Lowitt and Tonucci regarding "rumors" of a planned sale of IMD.²¹² Standard & Poor's warned that such a sale would be "an unmitigated negative for credit."²¹³

During the meetings, the rating agencies also stressed the importance to Lehman of syndicating some of SpinCo's senior debt.²¹⁴ Eileen A. Fahey, managing director of Fitch, told the Examiner that her preliminary conclusion from those meetings was that Lehman would be left financing SpinCo's assets and would still "be on the hook" for any SpinCo losses.²¹⁵ Lehman's senior management recognized that convincing the rating agencies and potential funders of SpinCo's viability was critical²¹⁶ and Lehman continued to pursue potential mezzanine and equity investors throughout August

²¹¹ E-mail from Paolo R. Tonucci, Lehman, to Stephen Lax, Lehman, *et al.* (Aug. 12, 2008) [LBHI_SEC07940_406811]; *see also* e-mail from Ian T. Lowitt, Lehman, to Hugh E. McGee, III, Lehman (Aug. 13, 2008) [LBHI_SEC07940_364012]; e-mail from Paolo R. Tonucci, Lehman, to Larry Wieseneck, Lehman, *et al.* (Aug. 18, 2008) [LBHI_SEC07940_305707] (forwarding e-mail from Blaine A. Frantz, Moody's (Aug. 15, 2008): "[A] key concern of the transaction is equity, and Lehman's need to replace any equity deficit created by allocating capital to the spinco, and how exactly you will raise the capital, when and how much.").

²¹² E-mail from Hugh E. McGee, III, Lehman, to Herbert H. McDade, III, Lehman (Aug. 20, 2008) [LBHI_SEC07940_649823].

²¹³ *Id.*

²¹⁴ *See, e.g.,* e-mail from Paolo R. Tonucci, Lehman, to Stephen Lax, Lehman, *et al.* (Aug. 12, 2008) [LBHI_SEC07940_406811] ("[S]elling the senior debt - ability to do so seemed important in [Fitch's] assessment of what had been accomplished."); e-mail from Ian T. Lowitt, Lehman, to Hugh E. McGee, III, Lehman (Aug. 13, 2008) [LBHI_SEC07940_364012].

²¹⁵ Examiner's Interview of Eileen A. Fahey, Sept. 17, 2009, at p. 6.

²¹⁶ E-mail from Ian T. Lowitt, Lehman, to Hugh E. McGee, III, Lehman (Aug. 13, 2008) [LBHI_SEC07940_364012].

2008.²¹⁷ Some potential capital providers told Lehman that they were enticed by the prospect of 20 to 25% returns but were not willing to risk significant amounts of cash up front.²¹⁸ Others could not meet Lehman's timing needs, as they demanded 4 to 6 weeks of additional due diligence.²¹⁹

During August 2008, Lehman used the SpinCo plan as part of its efforts to attract three major strategic investors. In early August 2008, Lehman presented the SpinCo plan to Korea Development Bank ("KDB").²²⁰ During negotiations with Lehman, KDB stated that it was interested in Lehman only if Lehman first purged itself of its real estate and high yield assets.²²¹ Lehman presented the SpinCo plan as part of an opportunity for KDB to invest in "Clean" Lehman post-spin, while avoiding exposure to future write-downs of Lehman's real estate assets.²²² Second, in mid-August, Lehman presented the SpinCo idea to MetLife, as part of an effort to interest MetLife in an investment in Lehman either pre- or post-spin.²²³ Third, in late August and early September 2008, both the SpinCo plan and a possible acquisition of a share in IMD

²¹⁷ See Lehman, Summary of Conversations with Potential Capital Providers (Aug. 27, 2008) [LBEX-DOCID 947915], attached to e-mail from Alex Kirk, Lehman, to Michael Gelband, Lehman (Aug. 27, 2008) [LBEX-DOCID 961894]. List of potential investors includes Apollo, Blackstone, Carlyle, Cerberus, Colony, Fortress, J.E. Roberts, Lone Star, Lubert Adler, Och-Ziff, Vornado and Walton Street. *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ See e-mail from Herbert H. McDade, III, Lehman, to Hugh E. McGee, III, Lehman (Aug. 7, 2008) [LBHI_SEC07940_647910].

²²¹ *Id.*

²²² E-mail from Hugh E. McGee, III, Lehman, to Brad Whitman, Lehman, *et al.* (Aug. 13, 2008) [LBHI_SEC07940_406804] (forwarding e-mail from Gary S. Barancik, Perella Weinberg Partners (Aug. 9, 2008)).

²²³ See e-mail from Mark Wilsmann, MetLife, to Paul A. Hughson, Lehman, *et al.* (Aug. 15, 2008) [LBHI_SEC07940_305703].

featured prominently in Lehman's negotiations with the Investment Corporation of Dubai ("ICD").²²⁴

3. Negotiations with the SEC

Lehman's senior management was aware that Lehman would need SEC approval for SpinCo's accounting treatment.²²⁵ After consulting with outside accountants and legal counsel, Lehman decided in early August 2008 to contact the SEC to seek pre-clearance for the accounting treatment that was part of the SpinCo plan.²²⁶

Lehman planned to seek a waiver of the requirement that Lehman provide three years of audited financial statements for SpinCo, as reflected in "SEC talking points" documents from early August 2008.²²⁷ Lehman's accountants told the SEC that unified historical financial data for SpinCo's diverse assets was not available.²²⁸ They felt that such data would not be helpful to potential investors because SpinCo would be

²²⁴ See e-mail from Hugh E. McGee, III, Lehman, to Jeffrey L. Weiss, Lehman (Sept. 4, 2008) [LBHI_SEC07940_2222166]. See Section III.A.c.4 of the Report, which discuss the role of SpinCo in Lehman's potential transactions with KDB, MetLife, and ICD in greater detail.

²²⁵ E-mail from Daniel Kashdin, Lehman, to Daniel Kerstein, Lehman, *et al.* (July 11, 2008) [LBHI_SEC07940_401374]; Examiner's Interview of Thomas A. Russo, May 11, 2009, at p. 9.

²²⁶ E-mail from Martin Kelly, Lehman, to David Goldfarb, Lehman, *et al.* (July 17, 2008) [LBEX-DOCID 560179]; Lehman Spinco Talking Points for SEC [Draft] (Aug. 6, 2008) [LBEX-DOCID 1295521], attached to e-mail from Daniel Kerstein, Lehman, to Steven Berkenfeld, Lehman (Aug. 6, 2008) [LBEX-DOCID 1297492].

²²⁷ Lehman, Spinco Talking Points for SEC [Draft] (Aug. 6, 2008) [LBEX-DOCID 1295521]; Lehman, SEC Talking Points [Draft] (Aug. 8, 2008) [LBEX-DOCID 851411], attached to e-mail from Michael J. Langer, Lehman, to Thomas A. Russo, Lehman, *et al.* (Aug. 8, 2008) [LBEX-DOCID 965295].

²²⁸ *Id.*; letter from John T. Bostelman, Sullivan & Cromwell, to John White, SEC, re: SpinCo - Proposed Term Sheet (Aug. 19, 2008), at p. 3 [EY-LE-LBHI-KEYPERS 3670025], attached to e-mail from John T. Bostelman, Sullivan & Cromwell, to Larry Wieseneck, Lehman, *et al.* (Aug. 19, 2008) [EY-LE-LBHI-KEYPERS 3670023].

managing those assets to maximize long-term value, not for short-term earnings.²²⁹ Rather than provide three years of audited historical financial statements for SpinCo, Lehman offered to provide an audited opening balance sheet and up to three years of *prospective* financial statements, with additional information about the underlying properties and their cash flows.²³⁰

After an initial meeting with the SEC on August 12, 2008, Lowitt was “cautiously optimistic.”²³¹ Wieseneck believed that the SEC was ready to be “helpful” in connection with the need for the required waiver.²³² The next day, McGee reported to the Board that it would be “easier” for the SEC to grant the waiver if Lehman made SpinCo “a liquidating entity, not an ongoing operating business.”²³³ The waiver also would permit Lehman to announce the spin-off transaction at the same time it made public its third quarter 2008 earnings.²³⁴ However, making SpinCo a liquidating entity had adverse

²²⁹ Letter from John T. Bostelman, Sullivan & Cromwell, to John White, SEC, re: SpinCo - Proposed Term Sheet (Aug. 19, 2008), at pp. 3-4 [EY-LE-LBHI-KEYPERS 3670025], attached to e-mail from John T. Bostelman, Sullivan & Cromwell, to Larry Wieseneck, Lehman, *et al.* (Aug. 19, 2008) [EY-LE-LBHI-KEYPERS 3670023].

²³⁰ *Id.* at p. 3.

²³¹ E-mail from Ian T. Lowitt, Lehman, to Paolo R. Tonucci, Lehman (Aug. 12, 2008) [LBEX-DOCID 2642438].

²³² E-mail from Larry Wieseneck, Lehman, to Daniel Kerstein, Lehman, *et al.* (Aug. 12, 2008) [LBEX-DOCID 2642438].

²³³ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Aug. 13, 2008), at p. 3 [LBEX-AM 003879].

²³⁴ *Id.*

consequences, including making the spin-off taxable to shareholders.²³⁵ Lehman hoped to avoid making SpinCo taxable.²³⁶

Lehman submitted a SpinCo “Proposed Term Sheet” to the SEC on August 19, 2008, seeking a formal waiver of the financial statement requirement of Reg. S-X Rule 3-14.²³⁷ According to the proposed term sheet: “[Lehman] believes that, in light of the diverse characteristics of Spinco’s holdings, presenting property-specific financial statements for select operating real estate assets would not convey meaningful information regarding Spinco.”²³⁸ Lehman proposed to present additional tabular data for operating real estate assets, in addition to three years of forecasts “without auditors’ report.”²³⁹ The proposed term sheet contained no reference to SpinCo as a “liquidating entity.”²⁴⁰ It states that SpinCo’s assets “will be managed to maximize long-term value for Spinco shareholders.”²⁴¹

Lehman also sought permission not to use mark-to-market accounting for SpinCo.²⁴² On August 20, 2008, Fuld reported to the Board of Directors that Lehman

²³⁵ *Id.*

²³⁶ *See, e.g.,* Lehman, Discussion Materials for the Board of Directors [Draft] (July 19, 2008), at p. 10 [LBHI_SEC07940_404357] (“SpinCo will need to be deemed a viable stand-alone operating business for ‘40 Act, accounting purposes and to effect a tax-free distribution.”).

²³⁷ Letter from John T. Bostelman, Sullivan & Cromwell, to John White, SEC, re: SpinCo - Proposed Term Sheet (Aug. 19, 2008), at p. 2 [EY-LE-LBHI-KEYPERS 3670025], attached to e-mail from John T. Bostelman, Sullivan & Cromwell, to Larry Wieseneck, Lehman, *et al.* (Aug. 19, 2008) [EY-LE-LBHI-KEYPERS 3670023].

²³⁸ *Id.* at p. 3.

²³⁹ *Id.* at p. 2.

²⁴⁰ *Id.* at pp. 1-5.

²⁴¹ *Id.* at pp. 3-4.

²⁴² Examiner’s Interview of Richard S. Fuld, Jr., May 6, 2008, at pp. 6-8.

and the SEC had “resolved” all of SpinCo’s accounting problems except for the mark-to-market accounting requirement, which remained an “open item.”²⁴³ Specifically, Lehman hoped to avoid using “fair value” accounting (*i.e.*, mark-to-market accounting under SFAS 157 and 159) in reporting the value of SpinCo’s real estate loan assets,²⁴⁴ and to use “hold to maturity” accounting for SpinCo’s debt securities.²⁴⁵ Lehman senior officers believed that avoiding mark-to-market accounting for SpinCo’s assets was critical to SpinCo’s feasibility,²⁴⁶ but it would require Lehman to be a pioneer in obtaining the SEC’s agreement to allow that accounting treatment.²⁴⁷

²⁴³ See Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Aug. 20, 2008), at p. 2 [LBEX-AM 003891].

²⁴⁴ *Id.*; Letter from Martin Kelly, Lehman, to Wayne Carnall, SEC, re: request to describe why Spinco does not represent the sale of a business and is not required to apply fair value accounting after the initial transfer of assets (Aug. 21, 2008), at p. 1 [LBEX-DOCID 1298065], attached to e-mail from Robert W. Downes, Sullivan & Cromwell, to Larry Wieseneck, Lehman, *et al.* (Aug. 21, 2008) [LBEX DOCID 1297924]; see also Fair Value Measurements, Statement of Fin. Accounting Standards No. 157 (Fin. Accounting Standards Bd. 2008); The Fair Value Option for Financial Assets and Financial Liabilities, Statement of Fin. Accounting Standards No. 159 (Fin. Accounting Standards Bd. 2008).

²⁴⁵ While the “hold to maturity” issue applied specifically to debt securities, which was only 10% of SpinCo’s assets, Lehman also argued that it should not be required to use “fair value” accounting for the bulk of the loans, which was almost 70% of SpinCo’s assets. Lehman wanted to account for the loans “at amortized cost with amortization of discount or premium under the effective yield method and subject to reserve for loan losses,” or essentially the same method Lehman wanted to use for debt securities. See letter from Martin Kelly, Lehman, to Wayne Carnall, SEC, re: why SpinCo is not required to apply fair value accounting (Aug. 21, 2008), at p. 10 [LBEX-DOCID 1298065].

²⁴⁶ E-mail from David Goldfarb, Lehman, to Martin Kelly, Lehman, *et al.* (Aug. 27, 2008) [LBEX-SIPA 007017].

²⁴⁷ See Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (July 22, 2008), at p. 6 [LBEX-AM 003866]. Accord Examiner’s Interview of David O’Reilly, Oct. 26, 2009, at p. 4; Examiner’s Interview of Thomas A. Russo, May 11, 2009, at p. 9; Examiner’s Interview of Paul A. Hughson, Oct. 28, 2009, at pp. 9-10; Examiner’s Interview of Thomas H. Cruikshank, Oct. 8, 2009, at p. 9.

Lehman made a written request for SpinCo's accounting treatment in a confidential letter to the SEC on August 21, 2008.²⁴⁸ Lehman requested that the SEC not require SpinCo to provide audited historical financial statements.²⁴⁹ It contended that the transfer of assets from Lehman to SpinCo was not an acquisition of a business under S-X Rule 3-05 and Rule 11-01(d), nor were those assets an operating real estate business under S-X Rule 3-14.²⁵⁰ Lehman further explained that avoiding mark-to-market accounting was essential:

[It is] critical to Spinco's asset management philosophy, as well as investors in Spinco, that the accounting framework of Spinco reflect fundamental asset valuations realizable over longer time horizons, as opposed to valuations reflective of current market liquidity. This is the foundation of Spinco and the key to its success. . . . If Spinco were subject to fair value accounting, we believe that it would be at a competitive disadvantage to its peers and would not be able to manage the assets in a fundamentally different manner than how Lehman must manage the assets now and therefore would not be able to maximize value for its shareholders.²⁵¹

Lehman's letter stated that under U.S. GAAP an entity that can demonstrate the intent and ability to hold debt securities to maturity is entitled to use "hold to maturity" accounting for those assets.²⁵² In SpinCo's case, that meant valuing the bulk of its assets "at amortized cost with amortization of discount or premium under the effective yield

²⁴⁸ Letter from Martin Kelly, Lehman, to Wayne Carnall, SEC, re: why SpinCo is not required to apply fair value accounting (Aug. 21, 2008) [LBEX-DOCID 1298065], attached to e-mail from Robert W. Downes, Sullivan & Cromwell, to Larry Wieseneck, Lehman, *et al.* (Aug. 21, 2008) [LBEX-DOCID 1297924].

²⁴⁹ *Id.* at pp. 3-7.

²⁵⁰ *Id.* at pp. 3-4.

²⁵¹ *Id.* at p. 2.

²⁵² *Id.* at pp. 8-9.

method and recognition of any other-than-temporary declines in value in earnings.”²⁵³ However, Lehman’s formal request letter also emphasized that SpinCo would use “hold to maturity” accounting only for its post-spin financial reporting.²⁵⁴ Initially, SpinCo would record the assets on its balance sheet “at their fair value at the date of transfer,” and its ongoing quarterly and annual filings would include “fair value-related information in footnotes and supplemental disclosures.”²⁵⁵ The letter stressed that SpinCo would not resemble a liquidating trust.²⁵⁶

On August 27, 2008, the SEC responded, telling Lehman that the SEC “[had] not seen a spin off which is not a business (therefore requiring 3 yrs of audited historical financial statements) but are willing to give on this.”²⁵⁷ While the SEC basically conceded the issue of historical financials in Lehman’s favor, Lehman’s management believed that the SEC was seeking to engage in “horse trading” over the issues.²⁵⁸ Citing “investor protection” concerns, the SEC offered to grant Lehman waivers of other requirements (*e.g.*, three years’ historical financials, auditor-reviewed financial projections and updated projections and financial statements) in exchange for Lehman

²⁵³ *Id.* at p. 10.

²⁵⁴ *Id.* at p. 15.

²⁵⁵ *Id.*

²⁵⁶ *Id.* at p. 13 (“We view the profile of [SpinCo’s] Initial Assets and the actions necessary to monetize them to be inconsistent with the basic principles of a liquidating trust, for which fair value accounting would be required.”).

²⁵⁷ E-mail from Martin Kelly, Lehman, to Thomas A. Russo, Lehman, *et al.* (Aug. 27, 2008) [LBEX-SIPA 007017].

²⁵⁸ E-mail from David Goldfarb, Lehman, to Martin Kelly, Lehman, *et al.* (Aug. 27, 2008) [LBEX-SIPA 007017].

agreeing to apply fair value accounting to SpinCo's assets through SFAS 159.²⁵⁹ Lehman resisted those trade-offs, arguing that not using fair value accounting was both "critical" to SpinCo's success and typical for entities of its type.²⁶⁰ Lehman insisted that its proposed accounting treatment was the "right answer."²⁶¹ Lehman also asked its accountants, Ernst & Young, to contact the SEC on Lehman's behalf.²⁶²

On August 28, 2008, Lehman resolved the open issues with the SEC.²⁶³ The agreement permitted SpinCo to avoid fair value accounting in exchange for an agreement to provide updated financial projections for three years.²⁶⁴ Lehman agreed that SpinCo would use "hold to maturity" accounting for its debt securities (with provisions for expected loan losses) and would not have to use mark-to-market

²⁵⁹ E-mail from Martin Kelly, Lehman, to Thomas A. Russo, Lehman, *et al.* (Aug. 27, 2008) [LBEX-SIPA 007017].

²⁶⁰ E-mail from David Goldfarb, Lehman, to Martin Kelly, Lehman, *et al.* (Aug. 27, 2008) [LBEX-SIPA 007017].

²⁶¹ *Id.*

²⁶² *Id.*; e-mail from David Goldfarb, Lehman, to William J. Schlich, Ernst & Young (Aug. 28, 2008) [LBEX-DOCID 2997901].

²⁶³ See e-mail from Martin Kelly, Lehman, to Larry Wieseneck, Lehman, *et al.* (Aug. 28, 2008) [EY-LE-LBHI-KEYPERS 0907577] ("I spoke with Wayne Carnall [SEC] to accept their offer. Specific agreement for the record is as follows: Initial 3 yr PFI [Projected Financial Information] prepared on a GAAP basis with no audit attestation. Annually updated PFI through initial 3 yrs with fixed end date and no audit attestation. Non-fair value accounting basis as outlined in our letter of August 21. Waiver on Rule 3-14 with no separate F/S [Financial Statement] required for significant properties subject to exposures being consistent with those outlined in our letter of August 21. No historical F/S. Initial opening audited BS [Balance Sheet] at fair value. Other portfolio stratification information as outlined in the term sheet."); e-mail from William J. Schlich, Ernst & Young, to Janet E. Truncale, Ernst & Young, *et al.* (Aug 29, 2008) [EY-LE-LBHI-KEYPERS 0162146]; see also e-mail from David Goldfarb, Lehman, to Beth Rudofker, Lehman (Aug. 29, 2008) [LBEX-DOCID 1609099] ("We did get agreement from Securities Exchange Commiss yesterday for non-fair value acct'g. We agreed to update projections for 2 years, in lieu. Great answer for us and logical since historical cost acct'g is reflective of business plan.").

²⁶⁴ *Id.*

accounting for its real estate loan assets.²⁶⁵ However, SpinCo would continue to value its equity securities at fair value, and SpinCo's initial balance sheet would be at fair value.²⁶⁶ The SEC also agreed not to require SpinCo to file three years of audited historical financial statements.²⁶⁷ Goldfarb lauded the result as a "Great answer for us."²⁶⁸

By the end of August 2008, Lehman still had not decided whether SpinCo would be organized as a C-corp or a partnership.²⁶⁹ Accordingly, Lehman could not resolve whether it would be possible to claim tax-free status for the distribution of SpinCo's assets to Lehman's shareholders.²⁷⁰

²⁶⁵ E-mail from Martin Kelly, Lehman, to Larry Wieseneck, Lehman, *et al.* (Aug. 28, 2008) [EY-LE-LBHI-KEYPERS 0907577]; *see also* e-mail from David Goldfarb, Lehman, to Beth Rudofker, Lehman, *et al.* (Aug. 30, 2008) [LBHI_SEC07940_015928]; e-mail from Martin Kelly, Lehman, to Daniel Kerstein, Lehman, *et al.* (Sept. 10, 2008) [LBHI_SEC07940_916922].

²⁶⁶ E-mail from Martin Kelly, Lehman, to Larry Wieseneck, Lehman, *et al.* (Aug. 28, 2008) [EY-LE-LBHI-KEYPERS 0907577].

²⁶⁷ *Id.*

²⁶⁸ E-mail from David Goldfarb, Lehman, to Beth Rudofker, Lehman (Aug. 29, 2008) [LBEX-DOCID 1609099].

²⁶⁹ Letter from John T. Bostelman, Sullivan & Cromwell, to John White, SEC, re: SpinCo - Proposed Term Sheet (Aug. 19, 2008), at p. 1 [EY-LE-LBHI-KEYPERS 3670025], attached to e-mail from John T. Bostelman, Sullivan & Cromwell, to Larry Wieseneck, Lehman, *et al.* (Aug. 19, 2008) [EY-LE-LBHI-KEYPERS 3670023]; e-mail from Ian T. Lowitt, Lehman, to Daniel Kerstein, Lehman, *et al.* (Aug. 30, 2008) [LBEX-SIPA 003759] ("At the risk of stating the extremely obvious, [a] key issue [in deciding between C-Corp or partnership] is not upsetting our SEC agreement." Earlier in the same e-mail chain, Yoav Wiegenfeld, Lehman, states to Larry Wieseneck, *et al.*: "If we want to do a tax free spin for shareholders the entity will have to be a c-corp."); Lehman, The Gameplan (Sept. 2008), at p. 3 [LBHI_SEC07940_653637] ("[SpinCo] [l]ikely to be treated as a C-Corp.").

²⁷⁰ *See, e.g.*, e-mail from Larry Wieseneck, Lehman, to Shaun K. Butler, Lehman, *et al.* (Aug. 29, 2008) [LBHI_SEC07940_651788] ("[W]e can not refer to Spinco as a Liquidating Trust. It can never be discussed as akin to one not that it is one. It neither is liquidating nor is it a trust. I want to highlight this because it is currently referenced as such in the document and this is a huge accounting issue. If it were a Liq Trust, we would end up in a very bad place accounting wise."); e-mail from Yoav Wiegenfeld, Lehman, to Larry Wieseneck, Lehman, *et al.* (Aug. 30, 2008) [LBEX-SIPA 003759] ("We need to determine whether we can do a tax free spin, which depends on . . . identifying a qualifying active trade or business (we discussed

On September 3, 2008, Fuld reported to the Board that Lehman had received confirmation from the SEC that Lehman had “resolved with the SEC the major points that were required to be addressed for the proposed transaction to proceed,” and indeed, that SpinCo was “proceeding nicely.”²⁷¹

D. Early September 2008: Preparing to Announce “REI Global”

In late August 2008, Lehman began to develop a strategy to announce SpinCo to the public during its third quarter earnings call.²⁷² At the beginning of September 2008, Lehman confirmed to the news media that it was planning to spin off its troubled real estate assets into a separate company; one report called it a “‘bad Lehman’ spinoff.”²⁷³ On September 4, 2008, Lehman learned that Bloomberg was preparing to run a story reporting that Lehman would contribute \$5 billion of equity to SpinCo, with “\$3 billion

Aurora) We are in the process of vetting Aurora as a qualifying business and once we are comfortable it meets the tax requirements we expect to immediately go to the SEC.”). *Accord* Examiner’s Interview of Richard S. Fuld, Jr., May 6, 2009, at pp. 7-8 (Fuld recalled that SpinCo had to be a non-operating entity to avoid mark-to-market treatment, but as a result, the spin-off was no longer tax-free. Fuld said that Lehman never resolved that issue.).

²⁷¹ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 3, 2008), at pp. 1-2 [LBEX-AM 003899].

²⁷² See e-mail from Larry Wieseneck, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (Aug. 27, 2008) [LBHI_SEC07940_1237670]; e-mail from Larry Wieseneck, Lehman, to Shaun K. Butler, Lehman, *et al.* (Aug. 29, 2008) [LBHI_SEC07940_651788] (forwarding e-mail draft “Earnings Speech - RSF Remarks,” announcing formation of “Lehman Commercial Real Estate Partnership”); e-mail from David Goldfarb, Lehman, to Beth Rudofker, Lehman, *et al.* (Aug. 30, 2008) [LBHI_SEC07940_015933].

²⁷³ Peter Eavis, *Lehman’s Sticky Situation - Real Estate Assets Pose Problems Even In Possible Spinoff*, Wall St. J., Sept. 2, 2008, at p. C10.

provided by outside investors (possibly KDB).²⁷⁴ McGee worried that the story may raise false expectations about the SpinCo announcement.²⁷⁵

That same day, Lehman gave SpinCo an official name: “Real Estate Investments (REI) Global” (“REI Global”).²⁷⁶ In Lehman internal “Q&A” presentations, as well as “Gameplan” presentations for investors and rating agencies, Lehman announced that the creation of REI Global would “remove substantially all of our commercial real estate (CRE) exposures,” by “transferring the large majority of our commercial real estate-related assets to an appropriately capitalized new entity.”²⁷⁷ Lehman described REI Global as nearly ready to “launch.”²⁷⁸ SEC approvals for the new entity were in place, cash flow forecasts were complete, draft balance sheets were being prepared, and the process of determining the required consents and transferring assets to REI Global was underway.²⁷⁹ The Gameplan presentation discussed Lehman’s decision to sell 55% of IMD, and the need to raise \$3 billion in the fourth quarter of 2008, in advance of the

²⁷⁴ E-mail from Monique Wise, Lehman, to Hugh E. McGee, III, Lehman, *et al.* (Sept. 4, 2008) [LBHI_SEC07940_408952].

²⁷⁵ E-mail from Hugh E. McGee, III, Lehman, to Monique Wise, Lehman, *et al.* (Sept. 4, 2008) [LBHI_SEC07940_408952] (“If we have a story that says we have outside investors for both equity and debt and then show up with no outside investors, it could create issues where we have none. Spinco is a big positive and we need it to be considered as such.”).

²⁷⁶ E-mail from Beth Anisman, Lehman, to Beth Rudofker, Lehman (Sept. 4, 2008) [LBEX-DOCID 1606873].

²⁷⁷ Lehman, The Gameplan (September 2008), at p. 2 [LBEX-DOCID 2727667]; Lehman, Q3 Firmwide Q&A - Summary (no date), at p. 45 [LBHI_SEC07940_750660].

²⁷⁸ Lehman, The Gameplan (September 2008), at p. 6 [LBEX-DOCID 2727667]; Lehman, Q3 Firmwide Q&A - Summary (no date), at p. 49 [LBHI_SEC07940_750660].

²⁷⁹ *Id.*

spin.²⁸⁰ The internal presentation links the IMD sale to the impact of the spin on Lehman's equity capital: "We continue to strengthen our capital position through the sale of [a] majority stake in IMD and through continuing discussions with strategic partners following the planned spin-out of REI Global."²⁸¹

Lehman publicly introduced REI Global as part of its earnings preannouncement on September 10, 2008.²⁸²

VI. DISCUSSIONS WITH POTENTIAL STRATEGIC PARTNERS

This Section supplements the discussion in Section III.A.3.c of the Report by providing details on Lehman's discussions with additional potential strategic partners following the near collapse of Bear Stearns.

A. AIG

Lehman held discussions with AIG about a potential transaction starting in 2006 and continuing until after March 2008. In 2006, Fuld had multiple conversations with Maurice "Hank" R. Greenberg, then Chairman and CEO of AIG, about AIG buying Lehman.²⁸³ When Greenberg was replaced as AIG's Chairman, those conversations continued with Greenberg's successor, Martin Sullivan.²⁸⁴

²⁸⁰ Lehman, The Gameplan (September 2008), at pp. 2, 25, 32 [LBEX-DOCID 2727667].

²⁸¹ Lehman, Q3 Firmwide Q&A - Summary (no date), at pp. 3-4, 53-54 [LBHI_SEC07940_750660].

²⁸² Final Transcript of Lehman Brothers Holdings Inc. Third Quarter 2008 Preliminary Earnings Call (Sept. 10, 2008), at p. 4 [LBHI_SEC07940_3466969]. See Section III.A.3.c of the Report, which discusses the Sept. 10 earnings call in greater detail.

²⁸³ Examiner's Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 21.

²⁸⁴ *Id.*

In 2008, Fuld continued conversations about AIG buying Lehman with Sullivan, and Frank Zarb, a former member of AIG's board and the former acting-Chairman of AIG.²⁸⁵ In March 2008, Lehman drafted a presentation analyzing a potential merger with AIG, under which AIG would have obtained a 20% stake in Lehman at \$50 per share.²⁸⁶ The presentation described the \$50 share price, which was a 25% premium to Lehman's book value, as a "con" of the deal.²⁸⁷ At some point, Sullivan or Zarb told Fuld that AIG had huge positions of its own to address, and that AIG would not be able to deal with Lehman.²⁸⁸

B. UBS

As early as 2006 or 2007, Fuld met with Marcel Ospel, Chairman of the Board of UBS, to discuss a potential merger.²⁸⁹ Fuld suggested that Lehman merge with Warburg, UBS's investment banking unit, and that UBS finance the merger, and Lehman run the combined firm.²⁹⁰ Fuld and Ospel met in Switzerland and New York City in connection with that potential deal.²⁹¹ Fuld thought that a possible Lehman merger with UBS remained a real possibility.²⁹² In February 2008, Lehman drafted an

²⁸⁵ Richard S. Fuld, Jr., Lehman, Call Logs (various dates) [LBEX-WGM 674311; LBHI_SEC07940_016911]; Yalman Onaran & John Helyar, *Fuld Sought Buffett Offer He Refused as Lehman Sank (Update 1)*, Bloomberg, Nov. 10, 2008; Examiner's Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 21.

²⁸⁶ Lehman, AIG (March 2008), at p.1 [LBEX-WGM 694967].

²⁸⁷ *Id.* at p. 2.

²⁸⁸ Examiner's Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 21.

²⁸⁹ *Id.* at pp. 21-22.

²⁹⁰ *Id.* at p. 22.

²⁹¹ *Id.*

²⁹² Examiner's Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 22.

analysis regarding a merger with UBS.²⁹³ That analysis noted that UBS took significantly larger than expected write-downs in the fourth quarter of 2007, and that UBS also disclosed significant exposure to high risk assets.²⁹⁴ However, on April 2, 2008, Ospel was replaced as Chairman of UBS because of its large subprime losses, and subsequently the deal faded away.²⁹⁵ Over the course of April and May 2008, there were passing references to potential transactions with UBS by Jeremy M. Isaacs, CEO of LBIE, Jeffrey L. Weiss, Co-Head of Global Finance, and David Goldfarb, Lehman's Global Head of Strategic Partnerships, in e-mails to Fuld, but there were no serious discussions with UBS at that time.²⁹⁶

C. GE

In late March 2008, Fuld reached out to Jeffrey Immelt, Chairman and CEO of General Electric.²⁹⁷ Fuld and Immelt discussed a "deal [f]or 20%" of a strategic stake in Lehman.²⁹⁸ According to Paulson, in spring 2008, Fuld had touted GE as a potential investor at the same time that Fuld told Paulson about the potential Buffett

²⁹³ Lehman, Presentation, Project Tiger (Feb. 21, 2008) [LBHI_SEC07940_755446], attached to e-mail from Timothy G. Lyons, Lehman, to Christopher M. O'Meara, Lehman (Feb. 27, 2008) [LBHI_SEC07940_755445].

²⁹⁴ *Id.* at p. 3.

²⁹⁵ Examiner's Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 22.

²⁹⁶ *See, e.g.*, e-mail from Jeffrey L. Weiss, Lehman, to Richard S. Fuld, Jr., Lehman (Apr. 3, 2008) [LBHI_SEC07940_033729]; e-mail from Jeremy M. Isaacs, Lehman, to Richard S. Fuld, Jr., Lehman (May 26, 2008) [LBHI_SEC07940_034982]; e-mail from David Goldfarb, Lehman, to Richard S. Fuld, Jr., Lehman (May 29, 2008) [LBHI_SEC07940_035043].

²⁹⁷ Richard S. Fuld, Jr., Lehman, Call Logs (Mar. 27 - Apr. 1, 2008) [LBHI_SEC07940_016916].

²⁹⁸ *Id.*; Examiner's Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 13.

investment.²⁹⁹ Paulson told the Examiner that he thought the idea of GE investing in Lehman was “absurd.”³⁰⁰ On March 30, 2008, Callan e-mailed Immelt a term sheet for proposed convertible stock.³⁰¹ GE declined to take a strategic stake in Lehman.³⁰²

In early August 2008, Fuld briefly discussed with Immelt a joint venture with GE to spin off some of the commercial real estate held by Lehman and GE.³⁰³ Fuld could not recall the details of those discussions, but Fuld assumed that he had received enough “bad vibes” that he did not press the issue³⁰⁴ and it never went forward.³⁰⁵

D. Carlos Slim

On or about June 23, 2008, Steven M. Lessing, Lehman’s Head of Client Relationship Management, suggested that Lehman reach out to Carlos Slim, a Mexican telecommunications billionaire and one of the richest men in the world.³⁰⁶ In early July 2008, Lehman requested that Jeb Bush, who was a Lehman advisor, discuss “Project Verde” with Slim.³⁰⁷ Jeb Bush had joined Lehman in August 2007 as an advisor in the

²⁹⁹ Examiner’s Interview of Henry M. Paulson, Jr., June 25, 2009, at p. 12.

³⁰⁰ *Id.*

³⁰¹ Lehman, Term Sheet, Summary Terms of the Proposed Convertible Preferred Stock (Mar. 20, 2008) [LBEX-DOCID 1103972], attached to e-mail from Erin M. Callan, Lehman, to Jeffrey Immelt, General Electric, *et al.* (Mar. 20, 2008) [LBEX-DOCID 1165875].

³⁰² Examiner’s Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 13.

³⁰³ *Id.*; Richard S. Fuld, Jr., Lehman, Call Logs (Aug. 4-5, 2008) [LBHI_SEC07940_016969].

³⁰⁴ Examiner’s Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 13.

³⁰⁵ *Id.*

³⁰⁶ See e-mail from Stephen M. Lessing, Lehman, to Richard S. Fuld, Jr., Lehman (June 23, 2008) [LBHI_SEC07940_035822]. Accord Examiner’s Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 27.

³⁰⁷ E-mail from Stephen M. Lessing, Lehman, to Richard S. Fuld, Jr., Lehman (June 23, 2008) [LBHI_SEC07940_035822]; e-mail from Jeb Bush, Lehman, to Matt Casner, Lehman (July 5, 2008) [LBHI_SEC07940_212905].

Private Equity Group.³⁰⁸ On July 5, 2008, Bush reported that the meeting had been unsuccessful because Slim “did not express interest in jv or stock purchase. he did say he would be interested in looking at assets for sale.”³⁰⁹ Lehman did not further pursue a strategic partnership with Slim.³¹⁰

E. Morgan Stanley

On July 11, 2008, Fuld reached out to John Mack, CEO of Morgan Stanley, regarding a potential merger between Lehman and Morgan Stanley.³¹¹ Fuld knew that a merger with Morgan Stanley would be challenging because of the overlap between the firms’ businesses and their different cultures.³¹² Nonetheless, Fuld requested a meeting with Mack, which took place at Mack’s house in Rye, New York on July 12, 2008.³¹³

At that meeting, Fuld and Mack, along with other Lehman and Morgan Stanley executives, discussed a potential merger between Lehman and Morgan Stanley.³¹⁴ Fuld

³⁰⁸ Dan Wilchins, *Lehman Hires Jeb Bush as Private Equity Advisor*, Reuters, Aug. 30, 2007, available at <http://www.reuters.com/article/idUSN3046902620070830>.

³⁰⁹ E-mail from Jeb Bush, Lehman, to Matt Casner, Lehman (July 5, 2008) [LBHI_SEC07940_212905].

³¹⁰ Examiner’s Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 27. Fuld characterized the discussions about a deal with Slim as an informal “conversation in the hallway.” *Id.*

³¹¹ Richard S. Fuld, Jr., Lehman, Call Logs (July 11, 2008) [LBHI_SEC07940_016962]; Examiner’s Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at pp. 27-28.

³¹² E-mail from David Goldfarb, Lehman, to Richard S. Fuld, Jr., Lehman (July 11, 2008) [LBHI_SEC07940_036500]; Examiner’s Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 28.

³¹³ Examiner’s Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at pp. 27-28.

³¹⁴ In his interview with the Examiner, Fuld declined to say one side specifically proposed combining the firms, although the discussion did focus on the impact of such a combination. Examiner’s Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 28.

and Mack both concluded that there was too much overlap between the two firms for there to be much to gain from a merger.³¹⁵

Fuld and Mack had another conversation some time after that meeting in which Fuld urged that combining Lehman and Morgan Stanley would create a very strong firm.³¹⁶ Mack subsequently called Fuld to express concern about who would run that merged company. Fuld responded by telling Mack that he was perfectly willing to step aside for Mack.³¹⁷ Ultimately, Mack declined to continue discussions because there was too much overlap between Lehman and Morgan Stanley, and Morgan Stanley could not handle a merger at that time.³¹⁸

On September 9, 2008, Fuld updated the Board on discussions with two unspecified “potential domestic partners.”³¹⁹ One of those potential partners, which was not named in the Board minutes, was described as having concerns about the degree of overlap between Lehman and its own business.³²⁰

On September 11, 2008, Fuld told the Board that Fuld had recently contacted Mack about a potential merger, but Mack was not interested because he felt there was

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 9, 2008), at p. 3 [LBEX-AM 003910].

³²⁰ *Id.*

too much overlap between the firms, and not enough time for Morgan Stanley to announce a deal by September 14, 2008.³²¹

Fuld reached out to Mack again on Sunday, September 14, 2008, because Lehman was in a “tough spot.”³²² Mack said there was too much going on for Morgan Stanley to consider a deal with Lehman.³²³

F. CITIC

In late July and early August 2008, Lehman discussed a potential transaction with CITIC Securities Company Limited (“CITIC”), a Chinese securities firm.³²⁴ By mid-July 2008, Fuld was aware of and welcomed contacts with CITIC about a potential transaction³²⁵ and had discussed them with AIG’s Greenberg.³²⁶

On August 2, 2008, Lehman created materials for an upcoming meeting with CITIC.³²⁷ Those materials included a PowerPoint presentation proposing that the

³²¹ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 11, 2008), at p. 2 [LBEX-AM 003918].

³²² Examiner’s Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 28.

³²³ *Id.*

³²⁴ *Id.*; Examiner’s Interview of Richard S. Fuld, Jr., Nov. 19, 2009, at p. 18; Examiner’s Interview of Hugh E. McGee, III, Aug. 12, 2009, at p. 25 (McGee told the Examiner that Gary Parr of Lazard brought CITIC to Lehman as a potential investor). During his interview with the Examiner, Parr could not recall who “C” might have been when shown a document referencing CITIC as C. Examiner’s Interview of Gary Parr, Sept. 14, 2009, at p. 13.

³²⁵ See e-mail from Hugh E. McGee, III, Lehman, to Richard S. Fuld, Jr., Lehman (July 19, 2008) [LBHI_SEC07940_213012]; e-mail from Richard S. Fuld, Jr., Lehman, to Herbert H. McDade, III, Lehman (July 20, 2008) [LBHI_SEC07940_036638]; Examiner’s Interview of Richard S. Fuld, Jr., Sept 30, 2009, at p. 30.

³²⁶ Lehman, Richard S. Fuld, Jr., Call Logs (July 25, 28, 2008) [LBHI_SEC07940_016968].

³²⁷ Lehman, Cheat-Sheet - CITIC Securities Strategic Partnership (July 25, 2008) [LBEX-DOCID 492732]; Lehman, Strategic Partnership Discussion Paper (July 25, 2008) [LBEX-DOCID 492750], attached to e-mail from Marisa Forte, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (Aug. 2, 2008) [LBEX-DOCID 556085]; Lehman, Breakfast Meeting outline (Aug. 2, 2008) [LBEX-DOCID 543493], attached to e-mail

parties' transaction should involve Lehman issuing new stock to CITIC, CITIC buying on the market additional Lehman shares totaling 5%, and CITIC issuing new shares to Lehman, representing 5% of CITIC's total shares on the market.³²⁸ Lehman further proposed that CITIC would receive 33% of Lehman's Asia franchise, and Lehman would receive 33% of CITIC's investment banking in China and 49% of CITIC's fund management in China.³²⁹ In addition, the proposal called for CITIC to make a net payment to Lehman of between \$1.25 billion (based on Lehman's June 23, 2008 share price of \$21.10) and \$4.66 billion (based on a consensus December 2008 target price of \$38.11).³³⁰

On August 4 and 5, 2008, Fuld and McDade met with CITIC Securities' Chairman and CEO Wang Dong Ming and CITIC securities advisor Donald Tang to discuss a potential transaction.³³¹ Prior to the meetings, Fuld had told Geithner that he was in contact with CITIC about a potential transaction.³³² Geithner advised Fuld that any deal would be welcome, so long as it was not the sort of deal where CITIC invested

from Marisa Forte, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (Aug. 2, 2008) [LBEX-DOCID 556085].

³²⁸ Lehman, Strategic Partnership Discussion Paper (July 25, 2008), at p. 1 [LBEX-DOCID 492750], attached to e-mail from Marisa Forte, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (Aug. 2, 2008) [LBEX-DOCID 556085].

³²⁹ *Id.*

³³⁰ *Id.* at p. 2.

³³¹ Lehman, Richard S. Fuld, Jr., Call Logs (Aug. 4-5, 2008) [LBHI_SEC07940_016969]; e-mail from Zhizhong Yang, Lehman, to Jasjit Bhattal, Lehman (Sept. 1, 2008) [LBEX-DOCID 2830954]; Examiner's Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 30.

³³² Examiner's Interview of Richard S. Fuld, Jr., Nov. 19, 2009, at p. 18.

\$1 billion in Lehman and Lehman invested \$1 billion in CITIC.³³³ In subsequent meetings with CITIC, Fuld learned that was exactly the kind of deal CITIC was seeking. Fuld felt that the deal CITIC sought called for CITIC's investment in Lehman to be on much more favorable terms than Lehman's investment in CITIC.³³⁴ Fuld told the Examiner that he left the meetings without a good feeling for the prospect of a possible deal with CITIC.³³⁵ Lehman did not have any further significant contacts with CITIC.³³⁶

G. Sumitomo Mitsui Banking Corporation

In mid-January 2008, Masayuki Oku, the CEO of Sumitomo Mitsui Banking Corporation ("SMBC"), a Japanese bank, confirmed interest in establishing a strong relationship with Lehman.³³⁷ In order to achieve that end, SMBC wanted quietly to accumulate shares during February and work on partnering ideas.³³⁸ SMBC wanted a brief opportunity to perform due diligence prior to investing.³³⁹ Fuld was scheduled to meet with Oku at the end of February 2008.³⁴⁰ There is no evidence to suggest that anything came of those discussions.

³³³ *Id.*

³³⁴ *Id.*

³³⁵ Examiner's Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 30.

³³⁶ *Id.*

³³⁷ E-mail from Akio Katsuragi, Lehman, to Jasjit Bhattal, Lehman, *et al.* (Jan. 17, 2008) [LBEX-DOCID 2376060].

³³⁸ *Id.*

³³⁹ E-mail from Akio Katsuragi, Lehman, to David Goldfarb, Lehman, *et al.* (Jan. 18, 2008) [LBEX-DOCID 2376060].

³⁴⁰ E-mail from Akio Katsuragi, Lehman, to Jasjit Bhattal, Lehman, *et al.* (Jan. 17, 2008) [LBEX-DOCID 2376060].

In late March 2008, Goldfarb suggested reaching out to SMBC to solicit interest in Lehman's April capital raise.³⁴¹ On March 30, 2008, Jasjit "Jesse" Bhattal, CEO of Lehman Asia-Pacific, spoke with SMBC and learned that although SMBC wanted to participate, timing was an obstacle, given the planned April 1, 2008 announcement of the offering.³⁴² In late April 2008, Fuld and Goldfarb learned that SMBC was interested in buying \$1 billion of Lehman's convertible preferred shares, with the goal being a strategic partnership where SMBC could invest in up to 20% of Lehman.³⁴³ Goldfarb responded that Lehman already had issued convertible preferred and would be interested only if SMBC wanted to buy "real equity."³⁴⁴ Fuld agreed.³⁴⁵

On September 4, 2008, Bhattal informed McDade and McGee that senior executives of SMBC recently told him SMBC that was interested in investing up to \$1 billion in "Clean" Lehman.³⁴⁶ Later that day, Lehman sent a nondisclosure agreement to SMBC.³⁴⁷ However, on September 5, Lehman learned that SMBC had decided not to

³⁴¹ E-mail from David Goldfarb, Lehman, to Jasjit Bhattal, Lehman, *et al.* (Mar. 29, 2008) [LBHI_SEC07940_212271].

³⁴² E-mail from Larry Wieseneck, Lehman, to Matt Johnson, Lehman, *et al.* (Mar. 30, 2008) [LBHI_SEC07940_084494].

³⁴³ E-mail from Akio Katsuragi, Lehman, to Jasjit Bhattal, Lehman, *et al.* (Apr. 22, 2008) [LBHI_SEC07940_034265]; e-mail from David Goldfarb, Lehman, to Akio Katsuragi, Lehman, *et al.* (Apr. 23, 2008) [LBHI_SEC07940_034265].

³⁴⁴ E-mail from David Goldfarb, Lehman, to Akio Katsuragi, Lehman, *et al.* (Apr. 22, 2008) [LBHI_SEC07940_034265].

³⁴⁵ E-mail from Richard S. Fuld, Jr., Lehman, to David Goldfarb, Lehman, *et al.* (Apr. 23, 2008) [LBHI_SEC07940_034265].

³⁴⁶ E-mail from Jasjit Bhattal, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (Sept. 4, 2008) [LBHI_SEC07940_653470].

³⁴⁷ Lehman, Non-disclosure Agreement [Draft] (Sept. 4, 2008) [LBEX-DOCID 2862475], attached to e-mail from Brad Whitman, Lehman, to Akio Katsuragi, Lehman, *et al.* (Sept. 4, 2008) [LBEX-DOCID 3056954]; e-

sign the confidentiality agreement because SMBC did not think it could make an investment decision by the end of the next week.³⁴⁸ On September 10, SMBC confirmed that it still wanted several more days before deciding whether to sign the confidentiality agreement.³⁴⁹ By September 14, Lazard listed SMBC as a party that had no interest in a sale or strategic investment in Lehman.³⁵⁰

H. Standard Chartered Bank

In mid-April 2008, Lehman's Chief Risk Officer, Christopher M. O'Meara, considered the possibility of a combination with Standard Chartered, but he concluded that Lehman's Executive Committee would not support such a deal.³⁵¹

On July 15, 2008, McDade informed McGee and Fuld that Lehman was in the process of reaching out to Standard Chartered.³⁵² In a September 14, 2008 presentation

mail from Akio Katsuragi, Lehman, to Jasjit Bhattal, Lehman, *et al.* (Sept. 5, 2008) [LBHI_SEC07940_653927].

³⁴⁸ E-mail from Akio Katsuragi, Lehman, to Jasjit Bhattal, Lehman, *et al.* (Sept. 5, 2008) [LBHI_SEC07940_653927].

³⁴⁹ E-mail from Akio Katsuragi, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (Sept. 10, 2008) [LBHI_SEC07940_409803].

³⁵⁰ Lazard, Project Green Situation Overview [Draft] (Sept. 14, 2008), at p. 6 [LBHI_SEC07940_410298], attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman (Sept. 14, 2008) [LBHI_SEC07940_410297].

³⁵¹ E-mail from Christopher M. O'Meara, Lehman, to Enrico Corsalini, Lehman (Apr. 14, 2008) [LBEX-DOCID 184119].

³⁵² E-mail from Hugh E. McGee, III, Lehman, to Herbert H. McDade, III, *et al.* (July 15, 2008) [LBHI_SEC07940_036551].

for Lehman, Lazard listed Standard Chartered as a party that had no interest in a sale or strategic investment in Lehman.³⁵³

I. HSBC

In May and July 2008, Lehman executives made several brief e-mail references to a potential deal with HSBC,³⁵⁴ but no deal moved beyond the theoretical stage.³⁵⁵ Fuld said that he went to London to discuss a strategic partnership with Stephen Green, Group Chairman of HSBC, and that the two had conversations in mid-July 2008, but that those talks were not about a merger or selling Lehman to HSBC.³⁵⁶ On September 14, 2008, Lazard listed HSBC as a party that had no interest in a sale or strategic investment in Lehman.³⁵⁷

J. BNP Paribas

On July 15, 2008, McDade informed McGee and Fuld that Lehman was reaching out to BNP Paribas (“BNPP”), a global banking group headquartered in France.³⁵⁸ However, BNPP told Lehman that BNPP was concerned about several issues related to

³⁵³ Lazard, Project Green Situation Overview [Draft] (Sept. 14, 2008), at p. 6 [LBHI_SEC07940_410298], attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman (Sept. 14, 2008) [LBHI_SEC07940_410297].

³⁵⁴ See e-mail from Richard S. Fuld, Jr., Lehman, to David Goldfarb, Lehman (May 16, 2008) [LBHI_SEC07940_034773]; e-mail from David Goldfarb, Lehman, to Richard S. Fuld, Jr., Lehman (May 29, 2008) [LBHI_SEC07940_035043]; e-mail from David Goldfarb, Lehman, to Richard S. Fuld, Jr., Lehman (July 12, 2008) [LBHI_SEC07940_036502].

³⁵⁵ Examiner’s Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 29.

³⁵⁶ Lehman, Richard S. Fuld, Jr., Call Logs (July 11, 14, 2008) [LBHI_SEC07940_016962]; Examiner’s Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 29.

³⁵⁷ Lazard, Project Green Situation Overview [Draft] (Sept. 14, 2008), at p. 6 [LBHI_SEC07940_410298], attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman (Sept. 14, 2008) [LBHI_SEC07940_410297].

³⁵⁸ E-mail from Hugh E. McGee, III, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (July 15, 2008) [LBHI_SEC07940_036551].

Lehman.³⁵⁹ Those concerns included the U.S. markets, problems with a European firm running a Wall Street firm and BNPP's preference for a deal with Société Générale.³⁶⁰ Lehman concluded that BNPP was unlikely to be interested in a deal.³⁶¹ By September 14, 2008, Lazard listed BNPP as a party that had no interest in a sale or strategic investment in Lehman.³⁶²

K. Royal Bank of Canada

On July 15, 2008, McDade informed McGee and Fuld that Lehman was reaching out to Royal Bank of Canada.³⁶³ However, Lazard's September 14, 2008 presentation listed Royal Bank of Canada as a party that had no interest in a sale or strategic investment in Lehman.³⁶⁴

L. Société Générale

On July 15, 2008, McDade told McGee and Fuld that Lehman was exploring Société Générale as a potential partner.³⁶⁵ However, the September 14, 2008 Lazard

³⁵⁹ E-mail from Antonio Villalon, Lehman, to Jeffrey L. Weiss, Lehman (July 17, 2008) [LBHI_SEC07940_644715].

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² Lazard, Project Green Situation Overview [Draft] (Sept. 14, 2008), at p. 6 [LBHI_SEC07940_410298], attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman (Sept. 14, 2008) [LBHI_SEC07940_410297].

³⁶³ E-mail from Hugh E. McGee, III, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (July 15, 2008) [LBHI_SEC07940_036551].

³⁶⁴ Lazard, Project Green Situation Overview [Draft] (Sept. 14, 2008), at p. 6 [LBHI_SEC07940_410298], attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman (Sept. 14, 2008) [LBHI_SEC07940_410297].

³⁶⁵ E-mail from Hugh E. McGee, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (July 15, 2008) [LBHI_SEC07940_036551].

presentation listed Société Générale as a party that had no interest in a sale or strategic investment in Lehman.³⁶⁶

M. Lloyds

On July 15, 2008, McDade described Lloyds as a party to whom Lehman might reach out.³⁶⁷ The July 22, 2008 Discussion Materials for the Board presentation lists Lloyds as a party that had not been contacted.³⁶⁸ The Examiner's investigation did not uncover any evidence that Lehman contacted Lloyds about a partnership.

N. Mitsubishi UFJ Financial Group

In September 2008, the *Times Online U.K.* reported rumors that Mitsubishi UFJ Financial Group ("Mitsubishi"), a Japanese bank, would invest in Lehman.³⁶⁹ On September 4, a Mitsubishi company spokesperson confirmed that Mitsubishi would not invest in Lehman.³⁷⁰ On September 14, Lazard listed Mitsubishi a party that had no interest in a sale or strategic investment in Lehman.³⁷¹

³⁶⁶ Lazard, Project Green Situation Overview [Draft] (Sept. 14, 2008), at p. 6 [LBHI_SEC07940_410298], attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman (Sept. 14, 2008) [LBHI_SEC07940_410297].

³⁶⁷ E-mail from Hugh E. McGee, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (July 15, 2008) [LBHI_SEC07940_036551].

³⁶⁸ Lehman, Discussion Materials for the Board of Directors (July 22, 2008), at p. 7 [LBHI_SEC07940_028484].

³⁶⁹ Leo Lewis, *Tokyo Mitsubishi Joins Queue of Suitors for Lehman Brothers*, Times Online, Sept. 4, 2008, available at http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article4670213.ece; e-mail from Mark Lane, Lehman, to Scott J. Freidheim, Lehman, *et al.* (Sept. 3, 2008) [LBEX-DOCID 2882961] (forwarding article from The Times).

³⁷⁰ E-mail from Ted Holzman, Sandler O'Neill, to Jeffrey Harte, Sandler O'Neill (Sept. 4, 2008) [LBEX-SON 016361] (forwarding article from Dow Jones).

³⁷¹ Lazard, Project Green Situation Overview [Draft] (Sept. 14, 2008), at p. 6 [LBHI_SEC07940_410298], attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman (Sept. 14, 2008) [LBHI_SEC07940_410297].

O. Nomura Securities

On September 10, 2008, Nomura Securities met with Lehman's representatives and said it was interested in a strategic partnership with Lehman.³⁷² Nomura said that it would closely analyze Lehman's third quarter numbers.³⁷³ On September 12, 2008, Bhattal had a meeting at Nomura, which he described as "very interesting."³⁷⁴ On September 14, 2008, Lazard noted that Lehman had "recent inbound inquiries" from Nomura.³⁷⁵

On September 22, 2008, Nomura bid successfully for Lehman's Asian operations, beating out Standard Chartered, Barclays, CITIC, and Samsung Securities.³⁷⁶

P. Potential Partners Approached by Lehman

By September 14, 2008, Lehman had contacted more than 30 potential strategic partners.³⁷⁷ In addition to the parties discussed above, Lehman contacted numerous other entities.

³⁷² See e-mail from Akio Katsuragi, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (Sept. 10, 2008) [LBHI_SEC07940_409803].

³⁷³ *Id.*

³⁷⁴ E-mail from Jasjit Bhattal, Lehman, to Herbert H. McDade, III, Lehman, *et al.* (Sept. 12, 2008) [LBHI_SEC07940_656143].

³⁷⁵ Lazard, Project Green Situation Overview [Draft] (Sept. 14, 2008), at p. 5 [LBHI_SEC07940_410298], attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman (Sept. 14, 2008) [LBHI_SEC07940_410297].

³⁷⁶ Vivian Wai-yin Kwok, *Nomura Wins The Lehman Asian Stakes*, Forbes.com, Sept. 22, 2008, available at http://www.forbes.com/2008/09/22/nomura-lehman-deal-markets-equity-cx_vk_0922markets03.html.

³⁷⁷ Lazard, Project Green Situation Overview [Draft] (Sept. 14, 2008), at p. 5 [LBHI_SEC07940_410298], attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman (Sept. 14, 2008) [LBHI_SEC07940_410297].

Lehman approached Banco Bilbao Vizcaya Argentaria (“BBVA”) during July 2008.³⁷⁸ Although BBVA met with Lehman, BBVA was focused on retail banking and not interested in Lehman.³⁷⁹

Kohlberg, Kravis & Roberts performed due diligence, but by September 14, 2008, was not interested in a potential transaction with Lehman.³⁸⁰

Lehman had exploratory discussions with Texas Pacific Group and Warburg Pincus but neither party expressed interest in a transaction with Lehman.³⁸¹

By September 14, 2008, Lehman also had approached Bank of China, Deutsche Bank, Abu Dhabi Investment Authority, The Carlyle Group, Chinese Investment Corp., Kuwait Investment Authority, Kuwait Industries, Mubadala Development Company and Qatar Investment Authority, but none of these parties were interested in even having discussions regarding a potential transaction.³⁸²

³⁷⁸ Lehman, Discussion Materials for the Board of Directors (July 22, 2008), at p. 7 [LBHI_SEC07940_028484].

³⁷⁹ *Id.*

³⁸⁰ Lazard, Project Green Situation Overview [Draft] (Sept. 14, 2008), at p. 5 [LBHI_SEC07940_410298], attached to e-mail from Brad Whitman, Lehman, to Hugh E. McGee, III, Lehman (Sept. 14, 2008) [LBHI_SEC07940_410297].

³⁸¹ *Id.*

³⁸² *Id.* at p. 6.

APPENDIX 14: VALUATION - CDO

Appendix 14 provides the Examiner's model prices for the Collateralized Debt Obligation ("CDO") securities tested and the assumptions used in performing this valuation. These model prices are discussed in Sections III.A.2.i(2)(a) & (3) of the Report. This analysis was performed by Duff & Phelps, the Examiner's financial advisor.

CDO Positions, Examiner's Model Price as of May 31, 2008

A total of \$544.5 million of CDO assets were tested by the Examiner's financial advisor as of May 31, 2008. The Examiner's financial advisor's marks are summarized below:

Name	Cusip	Asset Composition	Original Rating: Moody's/S&P/Fitch	May 2008 Rating: Moody's/S&P/Fitch	Price
CEAGO 2007-1A A1	14984XAA6	RMBS - Midprime and Subprime	Aaa/AAA/NA	Baa2/BB/NA	65.1
CEAGO 2007-1A A2	14984XAC2	RMBS - Midprime and Subprime	Aaa/AAA/NA	B2/CCC+/NA	26.3
CEAGO 2007-1A B	14984XAD0	RMBS - Midprime and Subprime	Aa2/AA/NA	B3/CCC/AA+	16.6
CEAGO 2007-1A C	14984XAE8	RMBS - Midprime and Subprime	A2/A/NA	Ca/CCC-/NA	0.9
CEAGO 2007-1A D	14984XAF5	RMBS - Midprime and Subprime	Baa2/BBB+/NA	C/A/A	1.1
CEAGO 2007-1A S	14984XAB4	RMBS - Midprime and Subprime	Aaa/AAA/NA	A1/A/NA	84.2
CBRE 2007-1A D	1248MLAL7	50% CMBS; 16% CMBS - Credit Tenanat Lease; 26% REIT	A2/A/A	A2/A/A	50.4
CBRE 2007-1A E	1248MLAN3	50% CMBS; 16% CMBS - Credit Tenanat Lease; 26% REIT	A3/A-/A-	A3/A-/A-	50.7
ACCDO 5A B	00388EAB7	Mostly RMBS - Prime	NA/AA/AA	NA/AA/AA+	40.3
NEWCA 2005-7A 3	651065AE4	50% CMBS Conduit; 20% RMBS; 10% CMBS Large Loans	A3/A/A	A3/A/A	50.7

As discussed above, the assumptions used in estimating the prices for each CUSIP are as follows:

Name	Cusip	Discount Margin (DM)	Default Rate (CDR)	Conditional Prepayment Rate (CPR)	Loss Severity	Forecasted Collateral Loss
CEAGO 2007-1A A1	14984XAA6	659 bps	Default Rate Curve	1.0%	55%	27.5%
CEAGO 2007-1A A2	14984XAC2	1747 bps	Default Rate Curve	1.0%	55%	27.5%
CEAGO 2007-1A B	14984XAD0	4009 bps	Default Rate Curve	1.0%	55%	27.5%
CEAGO 2007-1A C	14984XAE8	4249 bps	Default Rate Curve	1.0%	55%	27.5%
CEAGO 2007-1A D	14984XAF5	4250 bps	Default Rate Curve	1.0%	55%	27.5%
CEAGO 2007-1A S	14984XAB4	659 bps	Default Rate Curve	1.0%	55%	27.5%
CBRE 2007-1A D	1248MLAL7	1003 bps	0.1%	0.0%	68%	5.8%
CBRE 2007-1A E	1248MLAN3	1003 bps	0.1%	0.0%	68%	5.8%
ACCDO 5A B	00388EAB7	1747 bps	Default Rate Curve	8.0%	55%	13.0%
NEWCA 2005-7A 3	651065AE4	1003 bps	3.0%	1.0%	68%	12.0%

A monthly default curve was used for Ceago and ACCDO, which are CDOs backed by RMBS. The default curve construction was done at the RMBS level by converting ABX indices prices to representative default rates. The default rate curve changed between May 2008 and August 2008 because of changes in the ABX indices values. NEWCA and CBRE are CDOs backed primarily by CMBS and conduit loans, which typically do not require complex default rate modeling; therefore, a constant default rate was assumed for these CDOs.

The constant default rates for May 2008 and August 2008 were obtained from Moody's research reports. In order to estimate prepayment rates, the Examiner's financial advisor analyzed the recent amortization history of the underlying collateral securities. The Examiner's financial advisor estimated the recovery rates by computing the weighted average recoveries of each collateral security, as reported by the three rating agencies, S&P, Moody's and Fitch. The discount margins were obtained from

JPMorgan Structured Finance research reports for May 2008 and August 2008 based on the ratings of the CDO tranches.

CDO Positions, Examiner's Model Price as of August 31, 2008

A total of \$415.5 million of CDO assets were tested by the Examiner's financial advisor as of August 31, 2008. The Examiner's financial advisor's marks are summarized below:

Name	Cusip	Asset Composition	Original Rating: Moody's/S&P/Fitch	August 2008 Rating: Moody's/S&P/Fitch	Price
CEAGO 2007-1A A1	14984XAA6	RMBS - Midprime and Subprime	Aaa/AAA/NA	Baa2/BB/NA	59.9
CEAGO 2007-1A A2	14984XAC2	RMBS - Midprime and Subprime	Aaa/AAA/NA	B2/CCC+/NA	21.0
CEAGO 2007-1A B	14984XAD0	RMBS - Midprime and Subprime	Aa2/AA/NA	B3/CCC/AA+	12.3
CEAGO 2007-1A C	14984XAE8	RMBS - Midprime and Subprime	A2/A/NA	Ca/CCC-/NA	1.0
CEAGO 2007-1A D	14984XAF5	RMBS - Midprime and Subprime	Baa2/BBB+/NA	C/A/A	1.2
CEAGO 2007-1A S	14984XAB4	RMBS - Midprime and Subprime	Aaa/AAA/NA	A1/A/NA	80.1
CBRE 2007-1A D	1248MLAL7	50% CMBS; 16% CMBS - Credit Tenanat Lease; 26% REIT	A2/A/A	A2/A/A	42.5
CBRE 2007-1A E	1248MLAN3	50% CMBS; 16% CMBS - Credit Tenanat Lease; 26% REIT	A3/A-/A-	A3/A-/A-	42.7
ACCDO 5A B	00388EAB7	Mostly RMBS - Prime	NA/AA/AA	NA/AA/AA+	31.6
NEWCA 2005-7A 3	651065AE4	50% CMBS Conduit; 20% RMBS; 10% CMBS Large Loans	A3/A/A	A3/A/A	39.0

As discussed above, the assumptions used in estimating the prices for CUSIP are

as follows:

Name	Cusip	Discount Margin (DM)	Default Rate (CDR)	Conditional Prepayment Rate (CPR)	Loss Severity	Forecasted Collateral Loss	
CEAGO 2007-1A A1	14984XAA6	873 bps	Default Rate Curve		1.0%	55%	32.0%
CEAGO 2007-1A A2	14984XAC2	2317 bps	Default Rate Curve		1.0%	55%	32.0%
CEAGO 2007-1A B	14984XAD0	5398 bps	Default Rate Curve		1.0%	55%	32.0%
CEAGO 2007-1A C	14984XAE8	5629 bps	Default Rate Curve		1.0%	55%	32.0%
CEAGO 2007-1A D	14984XAF5	5629 bps	Default Rate Curve		1.0%	55%	32.0%
CEAGO 2007-1A S	14984XAB4	873 bps	Default Rate Curve		1.0%	55%	32.0%
CBRE 2007-1A D	1248MLAL7	1406 bps	2.3%	0.0%	64%	3.0%	
CBRE 2007-1A E	1248MLAN3	1406 bps	2.3%	0.0%	64%	3.0%	
ACCDO 5A B	00388EAB7	2317 bps	Default Rate Curve		8.0%	55%	19.0%
NEWCA 2005-7A 3	651065AE4	1406 bps	3.7%	1.0%	82%	18.0%	

APPENDIX 15: NARRATIVE OF SEPTEMBER 4 THROUGH 15, 2008

Appendix 15 discusses the events between September 4, 2008 and September 15, 2008 in chronological order, as a reference in support of the text of Sections III.A.3 and 5, and III.C.6 of the Report.¹ A chart of Lehman’s stock price by the hour leads the discussion of each day.

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¹ Order Directing Appointment of an Examiner Pursuant to Section 1104(c)(2) of the Bankruptcy Code, at p. 4, Dkt. No. 2569, *In re Lehman Brothers Holdings Inc.*, No. 08-13555 (Bankr. S.D.N.Y. Jan. 16, 2009).

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I. SEPTEMBER 4, 2008

During the day on Thursday, September 4, 2008, JPMorgan met with Lehman to discuss Lehman’s anticipated third quarter results.² That same day, Lehman presented the SpinCo plan to David L. Sokol, the President of MidAmerican Energy Holdings Co., a company majority-owned by Berkshire Hathaway, as part of Lehman’s efforts to attract outside financing.³

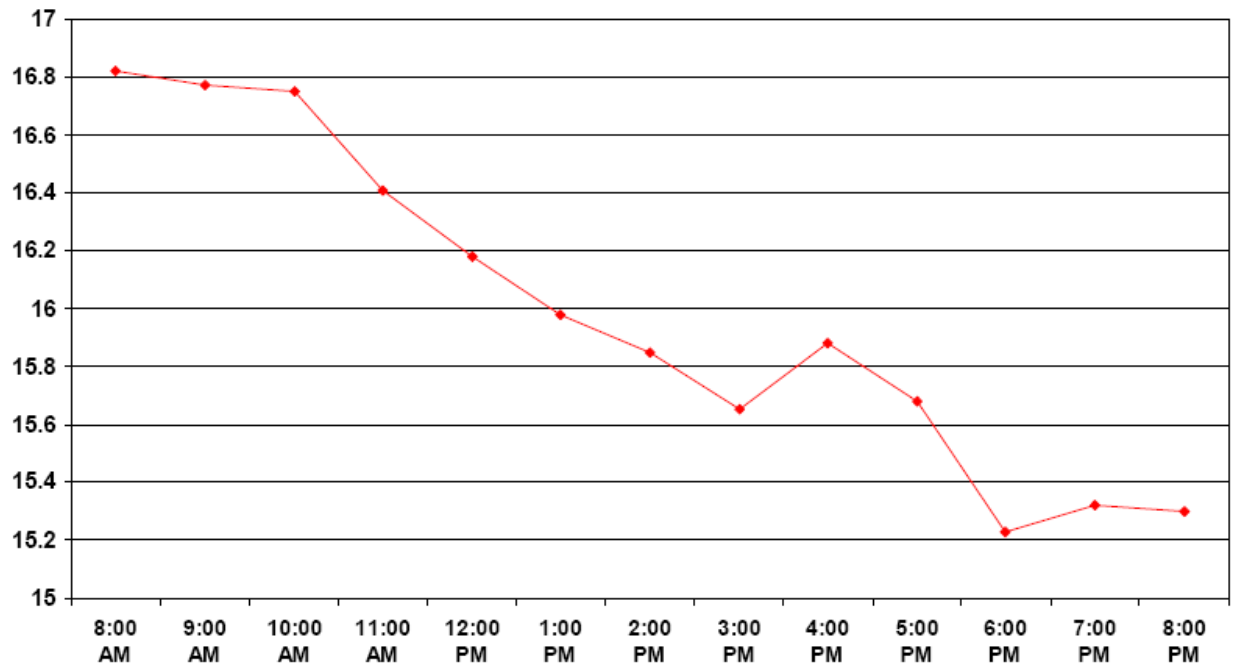
That day, Lehman’s stock opened at \$16.73, down from the previous day’s close at \$16.94. At that point, Lehman’s stock had lost over 60% of its value since March 14, 2008, which was the last trading day prior to the near collapse of Bear Stearns.⁴

² JPMorgan, Lehman Brothers Holdings Inc. Briefing Memorandum (Sept. 4, 2008), at p. 1 [JPM-2004 0006171], attached to e-mail from Mark G. Doctoroff, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 3, 2008) [JPM-2004 0006170]; *see also* Lehman, JPMorgan Agenda (Sept. 4, 2008) [LBEX-DOCID 445367], attached to e-mail from Emil Cornejo, Lehman, to Emil Cornejo, Lehman (Sept. 3, 2008) [LBEX-DOCID 458321].

³ Lehman, The Gameplan (Sept. 2008) [LBHI_SEC07940_653681], attached to e-mail from Hugh E. McGee, III, Lehman, to David L. Sokol, MidAmerican Energy Holdings Co., *et al.* (Sept. 4, 2008) [LBHI_SEC07940_653680]. *Accord* Examiner’s Interview of Hugh E. McGee, III, Aug. 12, 2009, at p. 17; Examiner’s Interview of David L. Sokol, Sept. 22, 2009, at p. 4.

⁴ *See* Yahoo! Finance, Historical LEH stock prices, *available at* <http://finance.yahoo.com/q?s=LEHMQ.PK>.

LBHI Stock Price: Sept. 4, 2008



A. JPMorgan Met with Lehman

On Thursday, September 4, 2008, Barry L. Zubrow, JPMorgan’s Chief Risk Officer, and a group of JPMorgan executives met with Lehman’s Chief Financial Officer, Ian T. Lowitt, Global Treasurer, Paolo R. Tonucci and Chief Risk Officer, Christopher M. O’Meara, to discuss Lehman’s third quarter results, which were scheduled to be released on September 18, 2008.⁵ In preparation for the meeting, JPMorgan prepared a briefing memorandum about, and its executives discussed, Lehman’s “strategy and challenges.” These issues included Lehman’s anticipated additional write-downs on

⁵ See JPMorgan, Lehman Brothers Holdings Inc. Briefing Memorandum (Sept. 4, 2008), at p. 1 [JPM-2004 0006171, attached to e-mail from Mark G. Doctoroff, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 3, 2008) [JMP-2004 0006170]; see also Lehman, JPMorgan Agenda (Sept. 4, 2008) [LBEX-DOCID 445367], attached to e-mail from Emil Cornejo, Lehman, to Emil Cornejo, Lehman (Sept. 3, 2008) [LBEX-DOCID 458321].

real estate assets, a potential capital injection from KDB, the sale of all or part of the Investment Management Division (“IMD”) and SpinCo.⁶ The meeting was an opportunity for Lowitt to update JPMorgan on Lehman’s third quarter earnings and the status of SpinCo.⁷

The meeting focused on SpinCo, but the companies’ executives also discussed issues concerning valuations of Lehman’s collateral, triparty repo and Lehman’s posted collateral.⁸ Lehman told JPMorgan that it believed JPMorgan was overcollateralized against Lehman’s intraday risk.⁹ In its briefing memorandum, JPMorgan recognized that Lehman disagreed with JPMorgan’s collateral valuations and JPMorgan also felt that collateral substitutions might be necessary.¹⁰ The memorandum noted that

⁶ JPMorgan, Lehman Brothers Holdings Inc. Briefing Memorandum (Sept. 4, 2008), at p. 1 [JPM-2004 0006171], attached to e-mail from Mark G. Doctoroff, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 3, 2008) [JMP-2004 0006170] (“There is a strong desire at [Lehman] to have open and frank dialogue with JPM at all levels of our organizations. . . . As [Lehman]’s primary operating services provider, [Lehman] management want to ensure that we are fully briefed on their strategy and challenges as they need our support to operate their business.”).

⁷ Examiner’s Interview of Paolo R. Tonucci, Sept. 16, 2009, at pp. 10-11.

⁸ *See* JPMorgan, Lehman Brothers Holdings Inc. Briefing Memorandum (Sept. 4, 2008), at p. 2 [JPM-2004 0006171], attached to e-mail from Mark G. Doctoroff, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 3, 2008) [JMP-2004 0006170]. *Accord* Examiner’s Interview of Barry L. Zubrow, Sept. 16, 2009, at p. 7; Examiner’s Interview of Paolo R. Tonucci, Sept. 16, 2009, at p. 11; Examiner’s Interview of Ian T. Lowitt, Oct. 28, 2009, at p. 17. *See* Section III.A.5.b of the Report, which discusses the September 4, 2008 meeting between Lehman and JPMorgan in greater detail.

⁹ *Id.*

¹⁰ JPMorgan, Lehman Brothers Holdings Inc. Briefing Memorandum (Sept. 4, 2008), at p. 2 [JPM-2004 0006171], attached to e-mail from Mark G. Doctoroff, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 3, 2008) [JMP-2004 0006170].

Lehman's collateral postings were "part of [its] liquidity pool . . . despite their less than cash liquidity profile."¹¹

Lehman presented its SpinCo plan at the meeting; however, JPMorgan left the meeting with doubts about the plan's viability.¹² Zubrow did not understand how Lehman could infuse enough money into SpinCo to cover the exposure of SpinCo's real estate loans.¹³ Zubrow told Lowitt that Lehman needed to provide more clarity on SpinCo because without that clarity, Lehman would "spook" the market with a SpinCo announcement.¹⁴ Tonucci confirmed that JPMorgan expressed doubts about SpinCo's viability when Lehman first presented the idea to JPMorgan on September 4.¹⁵

JPMorgan offered to assist Lehman by providing feedback on Lehman's draft presentations on SpinCo prior to Lehman's upcoming meetings with rating agencies.¹⁶ On the evening of September 4, Tonucci sent JPMorgan a draft version of a presentation Lehman intended for rating agencies, seeking JPMorgan's comments.¹⁷

B. Lehman Approached David L. Sokol About SpinCo Financing

On September 4, 2008, Hugh "Skip" E. McGee, III, head of Lehman's Investment Banking Division, sent Sokol, a copy of the "The Gameplan," which outlined Lehman's

¹¹ *Id.*

¹² Examiner's Interview of Mark G. Doctoroff, Apr. 29, 2009, at p. 15.

¹³ Examiner's Interview of Barry L. Zubrow, Sept. 16, 2009, at p. 7.

¹⁴ *Id.*

¹⁵ Examiner's Interview of Paolo R. Tonucci, Sept. 16, 2009, at p. 11.

¹⁶ Examiner's Interview of Barry L. Zubrow, Sept. 16, 2009, at p. 7.

¹⁷ E-mail from Paolo R. Tonucci, Lehman, to Mark G. Doctoroff, JPMorgan, *et al.* (Sept. 4, 2008) [JPM-2004 0006300].

survival plans focusing on SpinCo.¹⁸ Lehman's President and Chief Operating Officer, Herbert "Bart" H. McDade, III, and McGee also had a telephone call with Sokol, during which they explained a "good bank/ bad bank" plan (*i.e.*, SpinCo) and that Lehman would need an investor to execute the plan.¹⁹ Sokol was not interested in investing in SpinCo. Sokol relayed the idea to Berkshire Hathaway's Chief Executive Officer ("CEO"), Warren E. Buffett,²⁰ but Sokol did not give Buffett "The Gameplan."²¹ During that discussion, Buffett dismissed the idea as unrealistic.²²

II. SEPTEMBER 5, 2008

On Friday, September 5, 2008, JPMorgan provided Lehman feedback from the September 4, 2008 meeting.²³ That same day, Zubrow called Lowitt to warn him that JPMorgan might request an additional \$5 billion in collateral to protect against an adverse market reaction to Lehman's plans.²⁴ JPMorgan learned from Korea Development Bank ("KDB") that Lehman's negotiations with KDB were not

¹⁸ See Lehman, The Gameplan (Sept. 2008) [LBHI_SEC07940_653681], attached to e-mail from Hugh E. McGee, III, Lehman, to David L. Sokol, MidAmerican Energy Holdings Co., *et al.* (Sept. 4, 2008) [LBHI_SEC07940_653680]. Accord Examiner's Interview of Hugh E. McGee, III, Aug. 12, 2009, at p. 17; Examiner's Interview of David L. Sokol, Sept. 22, 2009, at p. 4.

¹⁹ Examiner's Interview of David L. Sokol, Sept. 22, 2009, at p. 4.

²⁰ Berkshire Hathaway owned a majority of MidAmerican Energy Holdings Co.

²¹ *Id.* Sokol does not recall specifically whether he communicated Lehman's SpinCo plan to Buffett. *Id.* at p. 3. However, Buffett recalled Sokol briefing him on the basic contours of the plan – or at least, a "thing they tossed out" about a CRE spin. Examiner's Interview of Warren E. Buffett, Sept. 22, 2009, at p. 4.

²² Examiner's Interview of Warren E. Buffett, Sept. 22, 2009, at p. 4.

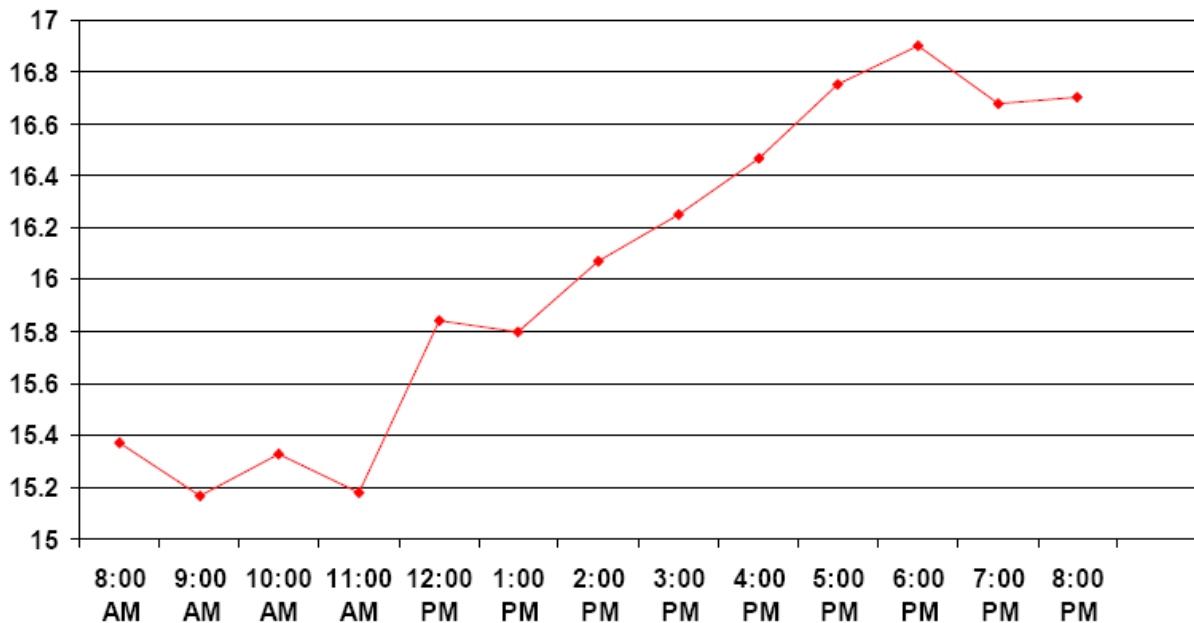
²³ E-mail from Mark G. Doctoroff, JPMorgan, to Paolo R. Tonucci, Lehman (Sept. 5, 2008) [LBHI_SEC07940_556179].

²⁴ Examiner's Interview of Barry L. Zubrow, Sept. 16, 2009, at p. 10.

advancing.²⁵ On September 5, 2008, Citigroup internally downgraded Lehman's creditworthiness.²⁶

That Friday, Lehman's stock opened at \$14.71, down from Thursday's close at \$15.17. Over the course of the day, Lehman's stock climbed upward to close at \$16.20.²⁷

LBHI Stock Price: Sept. 5, 2008



²⁵ E-mail from Steven Lim, JPMorgan, to Jamie L. Dimon, JPMorgan, *et al.* (Sept. 5, 2008) [JPM-2004 0006258].

²⁶ See e-mail from Melissa J. Torres, Citigroup, to John J. Foley, Citigroup, *et al.* (Sept. 6, 2008) [CITI-LBHI-EXAM 00088683] (noting this change was made on Friday, September 5, 2008); see also e-mail from Gregory Frenzel, Citigroup, to NA IRM Weekly Updates group, Citigroup (Sept. 7, 2008) [CITI-LBHI-EXAM 00107376] (Frenzel's weekly update from September 5, 2008); e-mail from Michael Mauerstein, Citigroup, to Katherine Lukas, Citigroup, *et al.* (Sept. 8, 2008) [CITI-LBHI-EXAM 00051890] (noting that the classification "is strictly an internal Citi matter," they have not communicated anything to Lehman about the change in its internal classification of Lehman, nor has Citi changed its operations with Lehman due to the classification change).

²⁷ See Yahoo! Finance, Historical LEH stock prices, available at <http://finance.yahoo.com/q?s=LEHMQ.PK>.

A. JPMorgan Considered Lehman's Condition and Prospects

1. JPMorgan's Feedback on Rating Agency Presentation

On Friday, September 5, Mark G. Doctoroff, an executive director at JPMorgan, sent an e-mail to Tonucci conveying the compiled JPMorgan feedback on Lehman's rating agencies presentation, which Tonucci had sent to JPMorgan the previous day.²⁸ Among other concerns, JPMorgan flagged several areas where it felt Lehman needed to provide more specific information, including: an operations timeline with specific dates and information, more aggressive expense reduction and other items such as management changes.²⁹ JPMorgan executives also suggested more of a focus on liquidity, especially over the 12 to 18 months ahead.³⁰ JPMorgan further suggested that Lehman's Chief Executive Officer, Richard S. Fuld, Jr., participate in future rating agency meetings.³¹ Tonucci agreed with JPMorgan's feedback and said that he would push Fuld to participate in future meetings with the agencies.³²

2. JPMorgan Warned Lehman that Additional Collateral May Be Required

At a September 5, 2008 JPMorgan Investment Bank Risk Committee ("IBRC") meeting, IBRC members discussed investment banks, trading, markets and the

²⁸ See e-mail from Mark G. Doctoroff, JPMorgan, to Paolo R. Tonucci, Lehman (Sept. 5, 2008) [LBHI_SEC07940_556179].

²⁹ See *id.*

³⁰ *Id.*

³¹ *Id.*

³² E-mail from Mark G. Doctoroff, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 5, 2008) [JPM-2004 0006304].

skittishness of hedge funds regarding novations.³³ JPMorgan also discussed the risk of runs on the banks, with particular concerns about Lehman and Merrill Lynch.³⁴ JPMorgan shared information discussed in IBRC meetings with the FRBNY.³⁵

Late in the day on September 5, 2008, Zubrow called Lowitt to tell him that JPMorgan might need an additional \$5 billion in collateral due to its concerns about an adverse market reaction to Lehman's plans.³⁶ Zubrow characterized the call as a "place-marker" in case JPMorgan followed through with a collateral request.³⁷ According to Zubrow, Lowitt said that although he hoped that JPMorgan would not make the request, he understood the nature of the situation.³⁸ Lowitt told the Examiner that he recalled speaking with Zubrow on September 5, but only vaguely recalled Zubrow suggesting that JPMorgan might need more collateral.³⁹ According to Lowitt, the focus of the conversation was the draft rating agency presentation.⁴⁰

³³ Examiner's Interview of Donna Dellosso, Oct. 6, 2009, at p. 6. Lehman was aware by the end of July 2008 that novation requests were increasing, and some banks besides JPMorgan were declining novation requests from Lehman counterparties. See e-mail from Eric Felder, Lehman, to Ian T. Lowitt, Lehman, *et al.* (July 28, 2008) [LBEX-DOCID 028924].

³⁴ Examiner's Interview of Donna Dellosso, Oct. 6, 2009, at p. 6.

³⁵ *Id.* at p. 11; see e-mail from Arthur G. Angulo, FRBNY, to Timothy F. Geithner, FRBNY, *et al.* (Sept. 10, 2008) [FRBNY to Exam. 014605] (attaching September 7, 2008 JPMorgan "Lehman Brothers Exposure Overview"). See Section III.A.5.b of the Report, which discusses the details of this meeting in greater detail.

³⁶ Examiner's Interview of Barry L. Zubrow, Sept. 16, 2009, at p. 10.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Examiner's Interview of Ian T. Lowitt, Oct. 28, 2009, at p. 18.

⁴⁰ *Id.* See Section III.A.5.b of the Report, which discusses JPMorgan's analysis and basis for requiring additional collateral in greater detail.

3. JPMorgan Talked to KDB

On September 5, 2008, Steven Lim, JPMorgan's Senior Country Officer and Managing Director in Investment Banking for Korea, sent an internal e-mail to James "Jamie" L. Dimon, CEO of JPMorgan, Steven D. Black, Co-CEO of JPMorgan and other JPMorgan executives about a draft letter pitching JPMorgan as KDB's investment banker for its deal with Lehman.⁴¹ Lim's e-mail noted that KDB previously worked with Perella Weinberg Partners in connection with its negotiations with Lehman, but also reported that KDB had said that JPMorgan was the only investment bank with which KDB spoke.⁴² In his e-mail, Lim stated that he did not believe Lehman would be able to get a deal done with KDB by Lehman's September 10, 2008 deadline.⁴³

During an internal meeting that same day, JPMorgan observed that a deal between Lehman and KDB did not seem to be moving forward.⁴⁴ JPMorgan considered the status of Lehman's negotiations with KDB to be another sign of Lehman's deteriorating market position.⁴⁵

⁴¹ E-mail from Steven Lim, JPMorgan, to Jamie L. Dimon, JPMorgan, *et al.* (Sept. 5, 2008) [JPM-2004 0006258].

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at p. 2.

⁴⁵ See Section III.A.5.b of the Report, which discusses JPMorgan's consideration of its need for additional collateral from Lehman in greater detail.

B. Citi Internally Downgraded Lehman's Creditworthiness

On September 5, 2008, Citi decided to downgrade its internal classification of Lehman's creditworthiness.⁴⁶ According to Thomas Fontana, Citi's Global Financial Institutions Risk Management Officer, Citi took this step because Lehman had "clearly defined problems,"⁴⁷ whereas Citi only previously saw that Lehman had "potential weakness."⁴⁸ When Citi internally downgraded Lehman's creditworthiness on September 5, "the credit engine [system] automatically suspended all trading lines," which did not mean that Citi stopped the trading lines, but that it more carefully monitored Lehman's trading activities.⁴⁹ Citi also instituted a requirement for internal approvals for trades with Lehman that were larger, longer in tenor, or riskier than usual.⁵⁰

III. SEPTEMBER 7, 2008

On Sunday, September 7, 2008, Henry M. Paulson, Jr., the Secretary of the Treasury, announced that the Government was taking over Fannie Mae and Freddie

⁴⁶ See e-mail from Melissa J. Torres, Citigroup, to John J. Foley, Citigroup, *et al.* (Sept. 6, 2008) [CITI-LBHI-EXAM 00088683] (noting this change was made on Friday, September 5, 2008); *see also* e-mail from Gregory Frenzel, Citigroup, to NA IRM Weekly Updates group, Citigroup (Sept. 7, 2008) [CITI-LBHI-EXAM 00107376] (Frenzel's weekly update from September 5, 2008); e-mail from Michael Mauerstein, Citigroup, to Katherine Lukas, Citigroup, *et al.* (Sept. 8, 2008) [CITI-LBHI-EXAM 00051890] (noting that the classification "is strictly an internal Citi matter," and they had not communicated anything to Lehman about the change in its internal classification of Lehman, nor had Citi changed its operations with Lehman due to the classification change).

⁴⁷ Handwritten notes of Thomas Fontana, Citigroup (Sept. 5, 2008), at p. 168 [CITI-LBHI-EXAM 00099649].

⁴⁸ *Id.* at p. 191.

⁴⁹ Email from Kathy El Ong, Citigroup, to Thomas Fontana, Citigroup, *et al.* (Sept. 11, 2008) [CITI-LBHI-EXAM 00012823].

⁵⁰ *Id.*

Mac and that the Treasury Department had agreed to provide those entities with \$200 billion in loans.⁵¹ The Federal Housing Finance Agency placed Freddie and Fannie into conservatorship pursuant to the Housing and Economic Recovery Act of 2008.⁵² Paulson's statement on September 7, 2008 included the assessment that "Fannie Mae and Freddie Mac are so large and so interwoven in our financial system that a failure of either of them would cause great turmoil in our financial markets here at home and around the globe. . . . And a failure would be harmful to economic growth and job creation."⁵³

IV. SEPTEMBER 8, 2008

On Monday, September 8, 2008, after initial discussions earlier in the summer and renewed talks in August 2008, Bank of America ("BofA") agreed to begin due

⁵¹ United States Treasury, Press Release: Statement by Secretary Henry M. Paulson, Jr., on Treasury and Federal Housing Finance Agency Action to Protect Financial Markets and Taxpayers (Sept. 7, 2008), *available at* <http://www.ustreas.gov/press/releases/hp1129.htm> (last visited Jan. 31, 2010); Mark Jickling, Congressional Research Service, CRE Report for Congress: Fannie Mae and Freddie Mac in Conservatorship (Sept. 7, 2008), *available at* <http://fpc.state.gov/documents/organization/110097.pdf>.

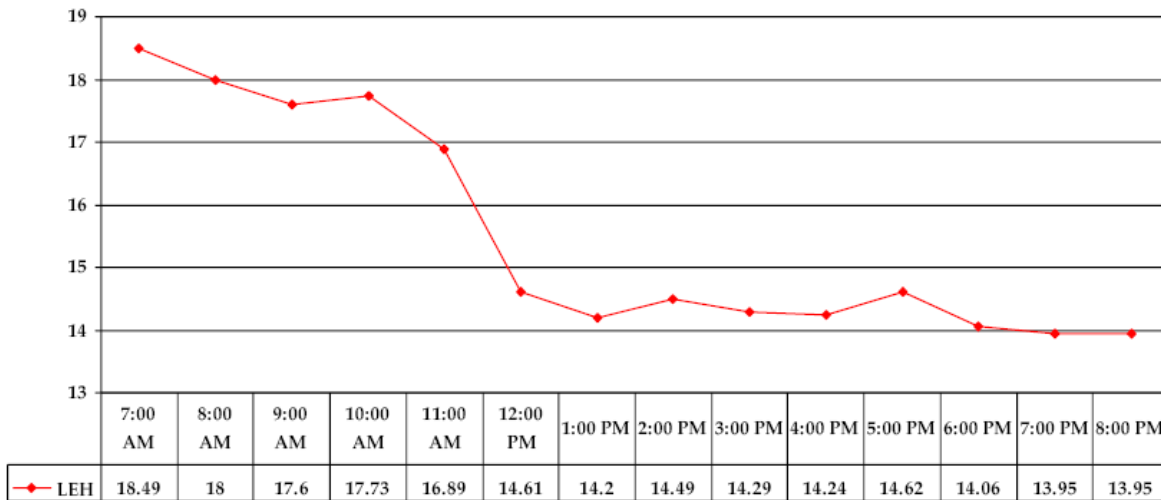
⁵² Mark Jickling, Congressional Research Service, CRE Report for Congress: Fannie Mae and Freddie Mac in Conservatorship (Sept. 7, 2008), at p. 2, *available at* <http://fpc.state.gov/documents/organization/110097.pdf>.

⁵³ United States Treasury, Press Release: Statement by Secretary Henry M. Paulson, Jr., on Treasury and Federal Housing Finance Agency Action to Protect Financial Markets and Taxpayers (Sept. 7, 2008), *available at* <http://www.ustreas.gov/press/releases/hp1129.htm> (last visited Jan. 31, 2010).

diligence in support of a potential transaction with Lehman.⁵⁴ That same day, Lehman previewed its third quarter earnings for Citi.⁵⁵

Following the previous day's announcement that the Government was placing Fannie and Freddie in conservatorship, Lehman's stock opened at \$17.62, over \$1 higher than its previous close.⁵⁶ Over the course of the day, Lehman's stock traded down in high volume.⁵⁷

LBHI Stock Price: Sept. 8, 2008



A. BofA Agreed to Begin Due Diligence

On September 8, 2008, Gregory L. Curl, BofA's Global Strategic Development and Planning Officer, contacted H. Rodgin Cohen, the Chairman of the law firm

⁵⁴ Examiner's Interview of Gregory L. Curl, Sept. 17, 2009, at p. 7. Curl stated that on September 8 or 9, Bank of America agreed to begin diligence. *Id.* By noon on September 9, Fuld reported to the Board that he was awaiting a return phone call from a "potential domestic partner[]." Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 9, 2008), at p. 2 [LBEX-AM 003910].

⁵⁵ See e-mail from Christopher M. Foskett, Citigroup, to Ian T. Lowitt, Lehman (Sept. 8, 2008) [LBEX-DOCID 070422].

⁵⁶ See Yahoo! Finance, Historical LEH stock prices, available at <http://finance.yahoo.com/q?s=LEHMQ.PK>.

⁵⁷ *Id.*

Sullivan & Cromwell, LLP.⁵⁸ Cohen previously had served as the intermediary in negotiations between BofA and Lehman.⁵⁹ Curl contacted Cohen to begin the process of looking into Lehman.⁶⁰ In late August 2008, Fuld met with Kenneth D. Lewis, CEO of BofA.⁶¹ Sometime after September 1, 2008, Henry M. Paulson, Jr., contacted Curl, expressing concern about Lehman.⁶² Paulson asked Curl to look into whether BofA could help.⁶³ BofA remained reluctant to look into Lehman until Curl called Cohen on September 8.⁶⁴

B. Lehman Previewed Its Third Quarter 2008 Results to Citi

On September 8, 2008, Lehman presented its expected results for third quarter 2008, as well as its game plan for going forward, to Citi.⁶⁵ Citi's managing director Christopher M. Foskett thought that Lehman's plan made sense, but that executing the

⁵⁸ Examiner's Interview of Gregory L. Curl, Sept. 17, 2009, at p. 7. Curl stated that on September 8 or 9, Bank of America agreed to begin diligence. *Id.* By noon on September 9, Fuld reported to the Board that he was awaiting a return phone call from a "potential domestic partner[]." Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 9, 2008), at p. 2 [LBEX-AM 003910].

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Fuld was uncertain of the date of this conversation but his call logs indicate that he had a telephone call with Lewis accompanied by the description "proposed deal." Richard S. Fuld, Jr., Lehman, Call Logs (Aug. 26, 2008) [LBHI_SEC07940_016973]. *Accord* Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 5; Examiner's Interview of Kenneth D. Lewis, Sept. 24, 2009, at p. 4.

⁶² Examiner's Interview of Gregory L. Curl, Sept. 17, 2009, at p. 7.

⁶³ *Id.* Paulson described his "job" during this time period as, among other things, working with Timothy F. Geithner to finalize a deal to sell Lehman to Bank of America or Barclays. Examiner's Interview of Henry M. Paulson, Jr., June 25, 2009, at p. 17.

⁶⁴ Examiner's Interview of Gregory L. Curl, Sept. 17, 2009, at p. 7.

⁶⁵ *See* e-mail from Christopher M. Foskett, Citi, to Ian T. Lowitt, Lehman (Sept. 8, 2008) [LBEX-DOCID 070422].

plan was going to be challenging.⁶⁶ Foskett commented that Lehman was “the most open amongst the brokers about [third quarter 2008] results and plans to address the stress and strain of the current environment.”⁶⁷

V. SEPTEMBER 9, 2008

On Tuesday, September 9, 2008, a South Korean government official announced the end of KDB’s negotiations with Lehman, citing concerns over the United States markets, among other reasons.⁶⁸ KDB also informed JPMorgan that KDB was ending its negotiations with Lehman.⁶⁹ The press reported the South Korean official’s statement later that day.⁷⁰

That same day, Fitch and Standard and Poor’s placed Lehman’s rating on a negative watch.⁷¹ On Tuesday, Black called Fuld to request an additional \$5 billion in collateral; Fuld agreed to post \$3 billion immediately.⁷² Later that evening, JPMorgan requested that Lehman execute new Security and Guaranty Agreements and an

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Jin-Young Yook, *Korea FSC: KDB, Lehman Investment Talks Have Ended*, Dow Jones International News (Sept. 9, 2008) [LBEX-DOCID 131058]; Steve Goldstein, *Korean regulator says KDB talks with Lehman ended*, MarketWatch, Sept. 9, 2008 [LBEX-DOCID 131059]; Evan Ramstad & Jin-Young Yook, *Talks Between KDB, Lehman On Possible Investment End*, Wall St. J. Online, Sept. 9, 2009 [LBEX-DOCID 224552].

⁶⁹ E-mail from Steven Lim, JPMorgan, to Jamie L. Dimon, JPMorgan, *et al.* (Sept. 9, 2008) [JPM-2004 0006320].

⁷⁰ See e-mail from Catherine Jones, Lehman, to Hugh E. McGee, III, Lehman, *et al.* (Sept. 9, 2008) [LBEX-DOCID 131058]; e-mail from Timothy Sullivan, Lehman, to Mark G. Shafir, Lehman, *et al.* (Sept. 9, 2008) [LBEX-DOCID 131059]; e-mail from Hugh E. McGee, III, Lehman, to Jasjit Bhattal, Lehman, *et al.* (Sept. 9, 2008) [LBEX-DOCID 224552].

⁷¹ E-mail from Stephen Lax, Lehman, to Rajiv Muthyala, Lehman, *et al.* (Sept. 9, 2008) [LBHI_SEC07940_557829] (forwarding Fitch press release, *Fitch Places Lehman Brothers on Rating Watch Negative*); *S&P places Lehman on negative ratings watch*, Associated Press (Sept. 9, 2008).

⁷² Examiner’s Interview of Steven D. Black, Sept. 23, 2009, at p. 6.

amendment to the Clearance Agreement.⁷³ Lehman also executed a cash deed with HSBC, encumbering nearly \$1 billion that Lehman had posted the previous week to ensure HSBC's continued clearing services.⁷⁴

On Tuesday morning, Lehman's stock opened down, at \$12.92, over the prior day's close.⁷⁵ After the day's public announcements (from the South Korean government official and the rating agencies), Lehman's stock had lost nearly half of its value, closing at \$7.79.⁷⁶ The trading volume was more than triple the prior day's volume.⁷⁷ After watching Lehman's share price collapse, another of Lehman's remaining potential strategic partners, ICD, said it needed a "time out" in negotiations with Lehman.⁷⁸

LBHI Stock Price: Sept. 9, 2008

⁷³ See *infra* Section V.F of this Appendix and Section III.A.5.b of the Report, which discusses the September agreements in greater detail.

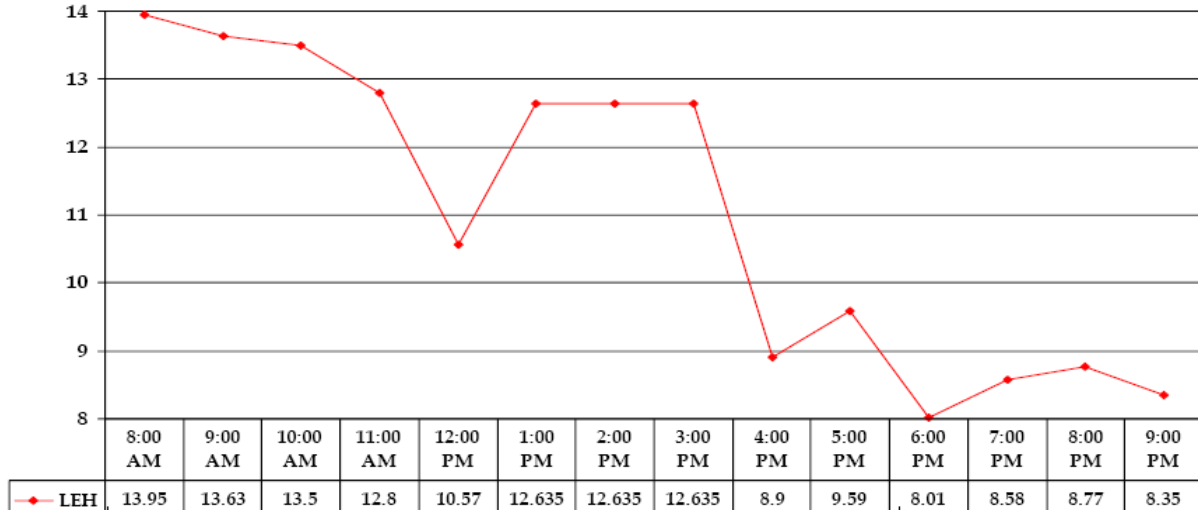
⁷⁴ HSBC, Cash Deed between HSBC and LBIE (Sept. 9, 2008) [HBUS00001180]; HSBC, Cash Deed between HSBC and LBHI (U.K.) (Sept. 9, 2008) [HBUS00001190].

⁷⁵ See Yahoo! Finance, Historical LEH stock prices, *available at* <http://finance.yahoo.com/q?s=LEHMQ.PK>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Examiner's Interview of Hugh E. McGee, III, Aug. 12, 2009, at p. 22.



A. KDB's Announcement

On the morning of September 9, 2008, Lim e-mailed Dimon, Black and others at JPMorgan to inform the group that KDB's Governor Euoo-Sung Min had called Lim that day to confirm that KDB had ended negotiations with Lehman due to execution and timing concerns.⁷⁹

Several hours later, the Chairman of South Korea's Financial Services Commission, Jun Kwang-woo, made a public statement, confirmed by another South Korean government official, that talks between KDB and Lehman were over.⁸⁰ KDB, on the other hand, declined to comment.⁸¹ After Chairman Kwang-woo's announcement,

⁷⁹ E-mail from Steven Lim, JPMorgan, to Jamie L. Dimon, JPMorgan, *et al.* (Sept. 9, 2008) [JPM-2004 0006320].

⁸⁰ Jin-Young Yook, *Korea FSC: KDB, Lehman Investment Talks Have Ended*, Dow Jones International News (Sept. 9, 2008) [LBEX-DOCID 131058]; Steve Goldstein, *Korean regulator says KDB talks with Lehman ended*, MarketWatch, Sept. 9, 2008 [LBEX-DOCID 131059]; Evan Ramstad & Jin-Young Yook, *Talks Between KDB, Lehman On Possible Investment End*, Wall St. J. Online, Sept. 9, 2009 [LBEX-DOCID 224552].

⁸¹ *Id.*

the cost of insuring Lehman's debt surged by almost 200 basis points, some of Lehman's hedge fund clients pulled out and short-term creditors cut lending lines.⁸²

On September 9, 2008, Fuld called Lewis to tell him that Lehman was going to pre-announce its third quarter results because of the public statement about the end of KDB negotiations and because the rating agencies "were making noise" about taking action related to Lehman's rating.⁸³ Lewis told Fuld to keep him apprised of any developments going forward.⁸⁴

B. Rating Agencies Reaction

During the afternoon of September 9, Fitch and Standard and Poor's placed Lehman's ratings on a negative watch.⁸⁵ Fitch's rating action was triggered by Lehman's decision to move up the date of its earnings call to announce SpinCo and Lehman's intent to raise capital.⁸⁶ Lehman had told Fitch just five days earlier that Lehman would announce SpinCo and the earnings report separately, with the former to occur first.⁸⁷ Fitch believed Lehman would have difficulty raising capital in the third

⁸² Yalman Onaran & John Helyar, *Fuld Sought Buffett Offer He Refused as Lehman Sank (Update 1)*, Bloomberg, Nov. 10, 2009, available at <http://www.bloomberg.com/apps/news?sid=aZ1syPZH.RzY&pid=20601109>.

⁸³ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 5.

⁸⁴ *Id.*

⁸⁵ E-mail from Stephen Lax, Lehman, to Rajiv Muthyala, Lehman, *et al.* (Sept. 9, 2008) [LBHI_SEC07940_557829] (forwarding Fitch, Press Release, *Fitch Places Lehman Brothers on Rating Watch Negative* (Sept. 9, 2008)); *S&P places Lehman on negative ratings watch*, Associated Press, Sept. 9, 2008.

⁸⁶ Examiner's Interview of Eileen A. Fahey, Sept. 17, 2009, at p. 7.

⁸⁷ *Id.*

quarter and wanted to convey that message to the market.⁸⁸ Standard and Poor's September 9 negative watch statement also cited Lehman's intent to raise capital and the "precipitous" decline in Lehman's share price.⁸⁹

C. Lehman Updated Its Board

At noon on September 9, 2008, Lehman held a regularly noticed Board meeting.⁹⁰ At the meeting, Lehman's management warned the Board that the meeting would "be abbreviated in light of the morning's events," and that Lowitt was unavailable to present his usual Financial Update because he "was preparing for a possible earnings pre-announcement."⁹¹

Fuld updated the Board on discussions with two "potential domestic partners," including BofA.⁹² The other potential partner is not named in the Board minutes but is described as having concerns about the degree of overlap between Lehman and its own business.⁹³ John Mack, Morgan Stanley's CEO, had expressed that concern about a potential Lehman and Morgan Stanley merger in July 2008, when Fuld first suggested combining Lehman and Morgan Stanley.⁹⁴

⁸⁸ *Id.*

⁸⁹ *S&P places Lehman on negative ratings watch*, Associated Press (Sept. 9, 2008).

⁹⁰ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 9, 2008), at p. 1 [LBEX-AM 003910].

⁹¹ *Id.* at pp. 1-2.

⁹² *Id.* at p. 3.

⁹³ *Id.*

⁹⁴ Examiner's Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 28.

D. Lehman Executed Cash Deeds with HSBC

On September 9, 2008, LBHI (“U.K.”) and LBIE executed “Cash Deeds” to encumber the nearly \$1 billion it posted to HSBC during late August and early September 2008.⁹⁵ Both Cash Deeds required deposits to cover intraday exposure. One of the Cash Deeds required LBHI (U.K.) and LBIE to maintain a deposit in the amount that HSBC estimated, in its good faith, to cover aggregate intraday exposures on specified accounts held by certain Lehman entities.⁹⁶ The deposit would be available to Lehman only if HSBC were satisfied that none of the Lehman entities covered by the Cash Deeds owed any outstanding debt to HSBC.⁹⁷ HSBC had the right to setoff the deposit against Lehman’s clearing obligations.⁹⁸ The Cash Deed formally recognized that any extension of credit by HSBC to parties to the Cash Deed was left to HSBC’s discretion.⁹⁹

On September 9, 2008, Lowitt executed a Guaranty Amendment between Citi and LBHI.¹⁰⁰ The Amendment added nine Lehman subsidiaries to the parent guaranty and expanded the guaranty to custody agreements.¹⁰¹

⁹⁵ See Section III.A.5.d of the Report, which discusses the HSBC Cash Deeds in greater detail.

⁹⁶ HSBC, Cash Deed between HSBC and LBIE (Sept. 9, 2008), ¶ 5 [HBUS00001180]; HSBC, Cash Deed between HSBC and LBHI (U.K.) (Sept. 9, 2008), ¶ 5 [HBUS00001190].

⁹⁷ HSBC, Cash Deed between HSBC and LBIE (Sept. 9, 2008), ¶ 4 [HBUS00001180]; HSBC, Cash Deed between HSBC and LBHI (U.K.) (Sept. 9, 2008), ¶ 6 [HBUS00001190]. “Debt” is used in the narrow sense contained in the Cash Deed. *Id.*

⁹⁸ HSBC, Cash Deed between HSBC and LBIE (Sept. 9, 2008), ¶ 5 [HBUS00001180]; HSBC, Cash Deed between HSBC and LBHI (U.K.) (Sept. 9, 2008), ¶ 4 [HBUS00001190].

⁹⁹ HSBC, Cash Deed between HSBC and LBHI (U.K.) (Sept. 9, 2008), ¶ 10 [HBUS00001190].

¹⁰⁰ See Section III.A.5.c of the Report, which discusses the Cit Guaranty Amendment in greater detail.

E. JPMorgan Requested an Additional \$5 Billion in Collateral

On September 9, 2009, JPMorgan's Black called Fuld to request \$5 billion in additional collateral.¹⁰² Black explained to Fuld that the requested collateral was intended to cover JPMorgan's exposure to Lehman in its entirety, and was not limited to triparty-repo exposure.¹⁰³ According to Black, Lehman offered to post \$3 billion immediately and post an additional \$2 billion at a later time.¹⁰⁴ Lehman pledged \$1 billion in cash and approximately \$1.7 billion of money market funds to JPMorgan that day.¹⁰⁵

¹⁰¹ *Id.*

¹⁰² Examiner's Interview of Steven D. Black, Sept. 23, 2009, at p. 6; Examiner's Interview of Barry L. Zubrow, Sept. 16, 2009, at p. 10; Examiner's Interview of Jane Buyers-Russo, Sept. 25, 2009, at p. 7. Deciphering a contemporaneous note, Buyers-Russo recalled that JPMorgan would ask for \$5 billion, but accept \$3 billion from Lehman. Examiner's Interview of Jane Buyers-Russo, Sept. 25, 2009, at p. 9; Jane Buyers-Russo, Unpublished Notes (Sept. 9, 2008), at p. 1 [JPM-EXAMINER00006052]. In a later contemporaneous note on September 9, Buyers-Russo wrote, "Black called Dick[,] asked for \$3B – said ok." Examiner's Interview of Jane Buyers-Russo, Sept. 25, 2009, at p. 10; Jane Buyers-Russo, Unpublished Notes (Sept. 9, 2008), at p. 3 [JPM-EXAMINER00006052].

¹⁰³ Examiner's Interview of Steven D. Black, Sept. 23, 2009, at p. 7.

¹⁰⁴ Examiner's Interview of Steven D. Black, Sept. 23, 2009, at pp. 6, 9; *see also* JPMorgan, JPMorgan's Responses to Examiner's First Set of Questions re Lehman/JPM Accounts & Collateral dated Sept. 3, 2009, at p. 17. Black's communications did not occur in a single telephone call with Lehman that day, but in multiple calls. Examiner's Interview of Steven D. Black, Sept. 23, 2009, at pp. 6-9. Lehman's acceptance of the \$3 billion request is consistent with the September Guaranty, which specifically invoked that figure in establishing maximum liability. Guaranty (Sept. 9, 2008), at p. 2 [JPM-2004 0005813] ("The Guarantor's maximum liability under this Guaranty shall be THREE BILLION DOLLARS (\$3,000,000,000) or such greater amount that the Bank has requested from time to time as further security in support of this Guaranty."). There is evidence that Lehman agreed to post only \$4 billion in response to JPMorgan's Sept. 9 request. *See* e-mail from Donna Delloso, JPMorgan, to Steven D. Black, JPMorgan, *et al.* (Sept. 10, 2008) [JPM-2004 0006377] ("[Lehman] will maintain collateral of \$4bln to cover intra-day exposure."); e-mail from Daniel J. Fleming, Lehman, to Mark G. Doctoroff, JPMorgan (Sept. 12, 2008) [LBEX-DOCID 405652] ("JPM now has a total of 4.6bn, 600mm more then agreed.").

¹⁰⁵ JPMorgan, JPMorgan's Responses to Examiner's Second Set of Questions re Lehman/JPM Accounts & Collateral (Oct. 13, 2009) at p. 9; Lehman, Collateral Pledged to JPM for Intraday As of 9/12/2008 COB [LBEX-AM 042364]; *see also* e-mail from Mark G. Doctoroff, JPMorgan, to Jane Buyers-Russo, JPMorgan, *et al.* (Sept. 9, 2008) [JPM-2004 0032520]; e-mail from Daniel Fleming, Lehman, to Paolo R. Tonucci, Lehman

F. The JPMorgan Security Agreement, Guaranty, and Amendment to the Clearance agreement

On September 9, 2008, at 9:00 p.m.,¹⁰⁶ JPMorgan sent draft Security and Guaranty Agreements to Andrew Yeung, one of Lehman's in-house lawyers.¹⁰⁷ Later that evening, JPMorgan sent a draft amendment to the Clearance Agreement.¹⁰⁸ Yeung spoke with Gail Inaba, an in-house lawyer at JPMorgan, about the agreements.¹⁰⁹ She told him that the terms of the agreements had already been agreed to by senior management.¹¹⁰ Inaba told Yeung that the agreements had to be executed prior to Lehman's accelerated earnings announcement scheduled for the next morning.¹¹¹ Fuld did not recall any conversation with Black on the topic and otherwise was unaware of these agreements at the time of Inaba's statement to Yeung.¹¹²

(Sept. 9, 2008) [LBEX-DOCID 073380]. Lehman posted \$300 million more – for a total of \$3 billion – on Sept. 10. JPMorgan Second Written Response at p. 9.

¹⁰⁶ All times refer to Eastern Time, unless otherwise specified.

¹⁰⁷ E-mail from Jeffrey Aronson, JPMorgan, to Andrew Yeung, Lehman, *et al.* (Sept. 9, 2008) [JPM-2004 0005594]; Examiner's Interview of Andrew Yeung, Mar. 13, 2009, at p. 4.

¹⁰⁸ E-mail from Jeffrey Aronson, JPMorgan, to Andrew Yeung, Lehman, *et al.* (Sept. 9, 2008) [JPM-2004 0005039]. A draft Aurora Guaranty and draft Control Agreement were sent with the draft Amendment to the Clearance Agreement as well. *See id.*

¹⁰⁹ Examiner's Interview of Andrew Yeung, Mar. 13, 2009, at p. 3.

¹¹⁰ *Id.* at p. 4. According to Yeung, when he expressed his concern over the expanded scope of the collateral pledge, Inaba said "if you have concerns about this we will contact Dick Fuld." *Id.* Although she did not remember Yeung calling her, Inaba stated to the Examiner that she told Yeung and Paul Hespel that an agreement had been reached by very senior management at both firms, though not necessarily that Fuld and Black had reached agreement. Examiner's Interview of Gail Inaba, Apr. 28, 2009, at p. 7.

¹¹¹ Examiner's Interview of Andrew Yeung, Mar. 13, 2009, at p. 4; Examiner's Interview of Gail Inaba, Apr. 28, 2009, at p. 8.

¹¹² Examiner's Interview of Richard S. Fuld, Jr., May 6, 2009, at p. 15.

The agreements were negotiated through the night by Lehman counsel and executed by Tonucci on the morning of September 10, 2008.¹¹³ The agreements expanded JPMorgan's lien on Lehman accounts and extended LBHI's liability, guaranteeing all obligations — rather than only those related to clearing activities — for all of LBHI's subsidiaries.¹¹⁴

VI. SEPTEMBER 10, 2008

In light of the events of September 9, Lehman accelerated its earnings call eight days to Wednesday, September 10, 2008.¹¹⁵ During the earnings call, Fuld and Lowitt explained Lehman's planned restructuring and announced Lehman's third quarter losses.¹¹⁶ Rating analysts on the call reacted negatively to Lehman's efforts to restructure through SpinCo.¹¹⁷ By Wednesday afternoon, Moody's placed Lehman on negative watch for a downgrade, if Lehman failed to consummate a transaction by Monday, September 15, 2008.¹¹⁸ During the day, Barclays advised the Financial Services Authority ("FSA") that it was considering a deal with Lehman.¹¹⁹

¹¹³ Email from Andrew Yeung, Lehman, to Gail Inaba, JPMorgan, *et al.* (Sept. 10, 2008) [JPM-2004 0005218].

¹¹⁴ See Section III.A.5.b of the Report, which discusses the September Agreements in greater detail.

¹¹⁵ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 5; Examiner's Interview of Thomas A. Russo, May 11, 2009, at p. 7.

¹¹⁶ Final Transcript of Lehman Brothers Holdings Inc. Third Quarter 2008 Preliminary Earnings Call (Sept. 10, 2008) [LBHI_SEC07940_612771].

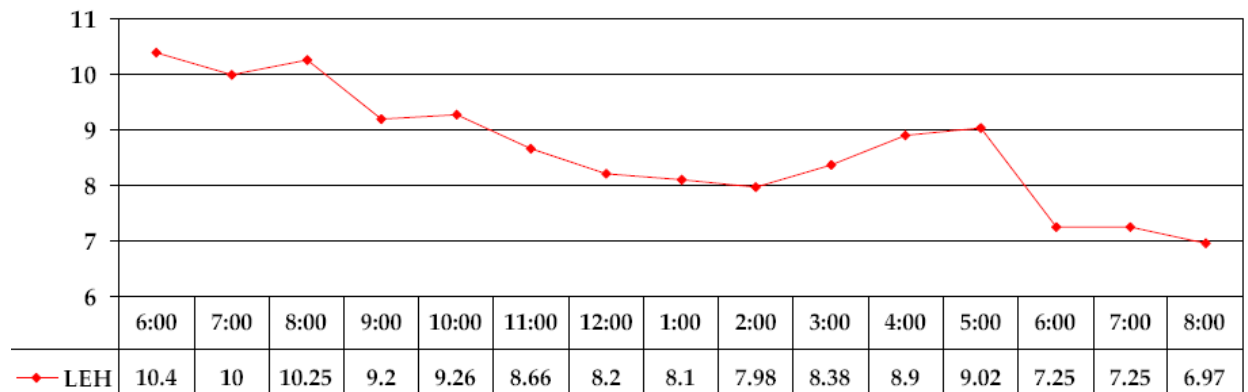
¹¹⁷ See, e.g., e-mail from Robert Ferguson, Barclays Capital, to Mike Keegan, Barclays Capital (Sept. 10, 2008) [BCI-EX-(S)-00035195]; e-mail from Vincent Curotto, Sanford Bernstein, to Stuart Schwadron, Sanford Bernstein (Sept. 11, 2008) [SB-SEC 048150].

¹¹⁸ E-mail from Paolo R. Tonucci, Lehman, to Carlo Pellerani, Lehman (Sept. 10, 2008) [LBHI_SEC07940_558653] (forwarding Moody's Investor Service, Press Release, *Moody's Places Lehman's*

On September 10, Lehman also took the first steps toward planning for a bankruptcy filing.¹²⁰ Meanwhile, an internal FRBNY agenda suggested that federal assistance to Lehman was a possibility.¹²¹ That agenda did not necessarily reflect the views of senior FRBNY management; indeed it was not circulated to Geithner.¹²²

On Wednesday, Lehman’s stock opened up, at \$9.15, over the previous day’s close at \$7.79.¹²³ Over the course of the day, Lehman’s stock lost value, officially closing Wednesday, September 10, at \$7.25.¹²⁴

LBHI Stock Price: Sept. 10, 2008



A. Lehman’s Pre-announcement Earnings Conference Call

On Wednesday, September 10, 2008, at 8:00 a.m., Lehman conducted its preliminary third quarter earnings call.¹²⁵ Lehman was represented on the call by Fuld,

A2 Rating On Review With Direction Uncertain (Sept. 10, 2008)); Examiner’s Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 6.

¹¹⁹ FSA, Statement of the FSA (Jan. 20, 2010), ¶ 7.

¹²⁰ See Weil, Gotshal & Manges LLP, Time Records (Sept. 10, 2008) [LBEX-WGM 1146447]. Accord Examiner’s Interviews of Steven Berkenfeld, Oct. 5 and 7, 2009, at p. 21.

¹²¹ FRBNY, Liquidation Consortium (Sept. 10, 2008) [FRBNY to Exam. 003517], attached to e-mail from Michael Nelson, FRBNY, to Christine Cumming, FRBNY, *et al.* (Sept. 10, 2008) [FRBNY to Exam. 003516].

¹²² *Id.*

¹²³ See Yahoo! Finance, Historical LEH stock prices, available at <http://finance.yahoo.com/q?s=LEHMQ.PK>.

¹²⁴ *Id.*

Lowitt, McDade and Shaun Butler, its Director of Investor Relations. Several analysts participated in the call as well, including: Glen Schorr (UBS), Michael Hecht (Banc of America Securities), Mike Mayo (Deutsche Bank), Douglas Sipkin (Wachovia), William Tanona (Goldman Sachs) and Guy Moszkowski (Merrill Lynch).¹²⁶

Fuld began his remarks by saying that the call was conducted on “clearly short notice” and that the company was announcing “several important financial and operating changes that amount to a significant repositioning of the firm, including aggressively reducing [its] exposure to both commercial real estate and residential real estate assets.”¹²⁷ He then turned to the quarter’s losses, which he blamed “mostly” on “the sales and write-downs of our residential and commercial real estate assets” and the “credit markets.”¹²⁸

Next, Fuld introduced Lehman’s plan to address its commercial real estate assets.¹²⁹ He explained that a majority of the commercial real estate assets would be separated from the company’s “core business by spinning off those assets to our shareholders and to an independent publicly traded entity which will be adequately

¹²⁵ Final Transcript of Lehman Brothers Holdings Inc. Third Quarter 2008 Preliminary Earnings Call (Sept. 10, 2008) [LBHI_SEC07940_612771].

¹²⁶ *Id.*

¹²⁷ *Id.* at p. 2.

¹²⁸ *Id.*

¹²⁹ *Id.* at p. 3.

capitalized,"¹³⁰ *i.e.* SpinCo. He further stated that the company would sell a majority stake in its IMD business.¹³¹

When the call was opened for analyst questions, the analysts asked about the sale of IMD and the SpinCo plan, mark-to-market accounting, valuations of Lehman's assets before the spin-off and the source of financing for the SpinCo transaction, among other issues.¹³²

B. Moody's Placed Lehman's Rating on Review

On the late afternoon of September 10, 2008, Moody's announced that it placed Lehman's A2 rating on review with "direction uncertain."¹³³ Blaine Frantz of Moody's issued a statement that "[a] key ratings factor will be Lehman's ability to turn around market sentiment. . . . A strategic transaction with a stronger financial partner would likely add support to the ratings and result in a positive rating action."¹³⁴

Lehman's Chief Legal Officer, Thomas A. Russo, told the Examiner that the Moody's announcement was the event that represented the final turning point when

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at pp. 12-25. See Section III.A.3.c.4 of the Report, which discusses the SpinCo plan in greater detail.

¹³³ E-mail from Paolo R. Tonucci, Lehman, to Carlo Pellerani, Lehman (Sept. 10, 2008) [LBHI_SEC07940_558653] (forwarding Moody's Investor Service, Press Release, *Moody's Places Lehman's A2 Rating On Review With Direction Uncertain* (Sept. 10, 2008)).

¹³⁴ *Id.*

Lehman's situation began to deteriorate.¹³⁵ Russo feels that the Moody's announcement came before the market had time to digest Lehman's earnings announcement.¹³⁶

Lowitt told Fuld that the rating agencies expected Lehman to reach a deal with a strategic partner within the next week or else Lehman would face a likely downgrade.¹³⁷ Lehman began to plan for an impending downgrade and the consequent loss of Lehman's ability to issue long-term debt.¹³⁸

C. Citi Told Lehman It Cut Trading Lines

On September 10, Citi personnel mistakenly informed Lehman that Citi had cut the trading lines.¹³⁹ That was not the case.¹⁴⁰ Citi thereafter reminded its employees to be extra vigilant so that misinformation would not be communicated to Lehman or the marketplace.¹⁴¹

D. Lehman Began Initial Bankruptcy Planning

On September 10, 2008, Steven Berkenfeld, Lehman's Head of Legal, Compliance and Audit, called Stephen J. Dannhauser, the Chairman of the law firm Weil, Gotshal &

¹³⁵ Examiner's Interview of Thomas A. Russo, May 11, 2009, at p. 8.

¹³⁶ *Id.*

¹³⁷ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 6.

¹³⁸ See Lehman, The Gameplan - Downgrade Scenario (September 2008) [LBEX-DOCID 2727669], attached to e-mail from Matthew Blake, Lehman, to Ian T. Lowitt, Lehman, *et al.*, (Sept. 11, 2008) [LBEX-DOCID 2744462].

¹³⁹ E-mail from Kathy El Ong, Citi, to Ajaypal S. Bunga, Citi, *et al.* (Sept. 11, 2008) [CITI-LBHI-EXAM 00012823].

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

Manges LLP (“Weil”), to begin working on a possible bankruptcy filing for Lehman.¹⁴² Berkenfeld had not obtained any internal authorization to make that call.¹⁴³ Russo did not know that Berkenfeld made the call until later.¹⁴⁴ Harvey R. Miller, the Chair of Weil’s bankruptcy department, first billed time to preparing for a Lehman bankruptcy on September 10, 2008.¹⁴⁵

E. The FRBNY’s Agenda for Meetings Regarding Lehman

On September 10, 2008, the FRBNY staff internally circulated an outline, the “Revised Consortium Gameplan,” for the FRBNY’s upcoming meeting with industry leaders.¹⁴⁶ The “Revised Consortium Gameplan” detailed a plan to hold meetings with industry participants to fund Lehman’s bad assets.¹⁴⁷ According to the outline, the FRBNY expected to decide before the meetings began on a maximum amount of capital that it was willing to finance, but did not intend to disclose that amount to industry participants.¹⁴⁸

¹⁴² See Weil, Gotshal & Manges LLP, Time Records (Sept. 10, 2008), at p. 1 [LBEX-WGM 1146447]. *Accord* Examiner’s Interviews of Steven Berkenfeld, Oct. 5 and 7, 2009, at p. 21.

¹⁴³ Examiner’s Interviews of Steven Berkenfeld, Oct. 5 and 7, 2009, at p. 21.

¹⁴⁴ Examiner’s Interview of Thomas A. Russo, May 11, 2009, at p. 8.

¹⁴⁵ Weil, Gotshal & Manges LLP, Time Records (Sept. 10, 2008), at p. 1 [LBEX-WGM 1146447] (noting Miller’s first time billed to Lehman as “T/Cs SJD 5x”).

¹⁴⁶ FRBNY, Liquidation Consortium (Sept. 10, 2008) [FRBNY to Exam. 003517], attached to e-mail from Michael Nelson, FRBNY, to Christine Cumming, FRBNY, *et al.* (Sept. 10, 2008) [FRBNY to Exam. 003516]. This document was not seen or approved by Geithner. *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at p. 2

F. Barclays Contacted the FSA

During the day on September 10, John Varley, Group CEO of Barclays, contacted Hector Sants, CEO of the FSA, to advise Sants that Barclays was considering bidding for Lehman.¹⁴⁹ Sants did not object to the idea, but told Varley that the FSA would need to be kept closely informed of the development and the deal's details.¹⁵⁰

VII. SEPTEMBER 11, 2008

On Thursday, September 11, 2008, at the FRBNY's suggestion, Lehman entered into initial talks with Barclays, and began due diligence with BofA.¹⁵¹ Fuld resigned from the FRBNY's Board that afternoon.¹⁵² He did so at the suggestion of Thomas C. Baxter, Jr., General Counsel to the FRBNY, and FRBNY President Timothy F. Geithner, , because they told him to resign, "in case [they had] to do something [for or with Lehman] that weekend."¹⁵³ Before the end of the day, JPMorgan called Lehman, seeking yet another \$5 billion in new collateral.¹⁵⁴

¹⁴⁹ FSA, Statement of the FSA (Jan. 20, 2010), ¶ 7.

¹⁵⁰ *Id.*

¹⁵¹ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 11, 2008) [LBEX-AM 003918].

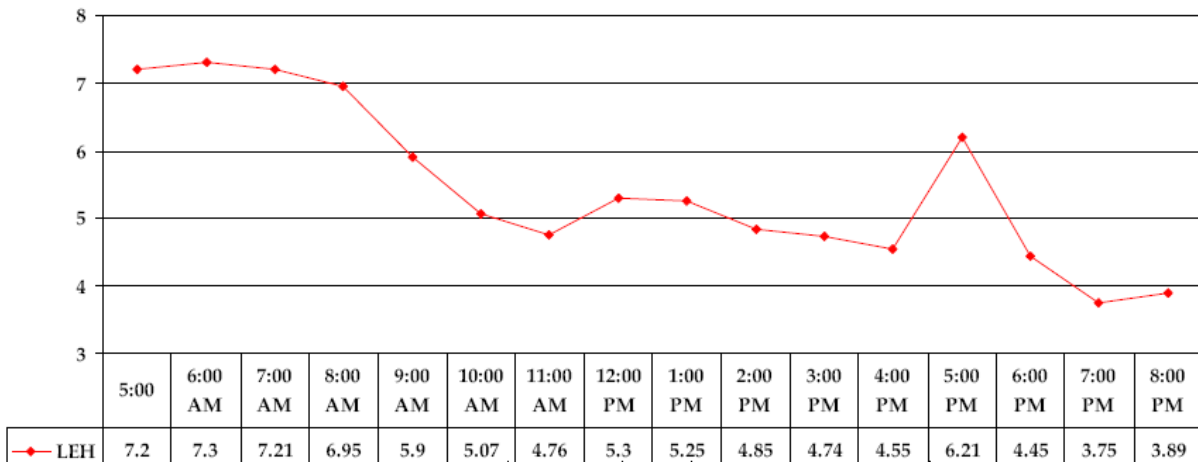
¹⁵² Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 11.

¹⁵³ *Id.*

¹⁵⁴ Examiner's Interview of Richard S. Fuld, Jr., May 6, 2009, at p. 13; Examiner's Interview of Jamie L. Dimon, Sept. 29, 2009, at pp. 9-10; Examiner's Interview of Steven D. Black, Sept. 23, 2009, at p. 12; Examiner's Interview of Ian T. Lowitt, Oct. 28, 2009, at p. 21.

Between Wednesday's official close of \$7.25 and Thursday's opening at \$4.47, Lehman's stock lost almost 40% of its value.¹⁵⁵ On Thursday, Lehman's stock traded in its highest volume for the entire week to close down at \$3.79.¹⁵⁶

LBHI Stock Price: Sept. 11, 2008



A. Fuld Resigned from the FRBNY Board

On Thursday, September 11, Baxter called Russo and suggested that Fuld step down from the Board of the FRBNY.¹⁵⁷ After Russo told Fuld about the conversation, Fuld called Geithner.¹⁵⁸ During that call, Geithner asked Fuld to step down from the Board "in case we have to do something for you or with you this weekend."¹⁵⁹ Fuld said his conversation with Geithner left Fuld with the feeling that, if it came down to it, the FRBNY and Geithner would be there to provide assistance to Lehman.¹⁶⁰ Geithner

¹⁵⁵ See Yahoo! Finance, Historical LEH stock prices, available at <http://finance.yahoo.com/q?s=LEHMQ.PK>.

¹⁵⁶ *Id.*

¹⁵⁷ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 11; Examiner's Interview of Thomas Baxter, Jr., Aug. 31, 2009, at p. 9.

¹⁵⁸ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 11.

¹⁵⁹ *Id.* Accord Examiner's Interview of Thomas C. Baxter, Jr., Aug. 31, 2009, at p. 9.

¹⁶⁰ Examiner's Interview of Richard S. Fuld, Jr. Apr. 28, 2009, at p. 11.

told the Examiner that he does not recall making the statement, but he was certain he was careful not to imply that Lehman could expect the FRBNY's support.¹⁶¹ A FRBNY meeting agenda dated September 10, 2008 suggests that at least one FRBNY representative contemplated providing public funds to Lehman at that time.¹⁶²

B. BofA Began Due Diligence

BofA began due diligence on a potential deal with Lehman on September 11, 2008.¹⁶³ Fuld called Lewis on September 11, 2008 to inform him that the rating agencies were comforted when they heard that Lehman was negotiating with a major bank.¹⁶⁴ Fuld told the Examiner that during their conversation, he remarked to Lewis, "You know we're going to do this deal, don't you, Ken?" to which Lewis responded, "Yes, I do, Dick."¹⁶⁵ According to Lewis, he never indicated to Fuld that a deal would get done, but rather he was noncommittal in his answer.¹⁶⁶

¹⁶¹ Examiner's Interview of Timothy F. Geithner, Nov. 24, 2009, at p. 9.

¹⁶² See FRBNY, Liquidation Consortium presentation (Sept. 10, 2008) [FRBNY to Exam. 003517], attached to e-mail from Michael Nelson, FRBNY, to Christine Cumming, FRBNY, *et al.* (Sept. 10, 2008) [FRBNY to Exam. 003516]. *Accord* Examiner's Interview of William Brodows, Aug. 20, 2009, at p. 6; Examiner's Interview of Jan H. Voigts, Aug. 25, 2008.

¹⁶³ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 5. Curl told Examiner that Bank of America began its due diligence of Lehman on Sept. 9 or 10, 2008. Examiner's Interview of Gregory L. Curl, Sept. 17, 2009, at p. 7.

¹⁶⁴ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 5.

¹⁶⁵ *Id.*

¹⁶⁶ Examiner's Interview of Kenneth D. Lewis, Sept. 24, 2009, at p. 5.

C. Barclays Expressed Interest in Lehman

On Thursday, September 11, 2008, Fuld informed the Board that he had “not heard from Barclays directly, but that he had been advised of its potential interest by the Firm’s regulators.”¹⁶⁷

Also on September 11, Varley informed the FSA that the Barclays Board would meet that day to consider whether Barclays should approach Lehman.¹⁶⁸ Varley told Sants that a bid for Lehman would be put together if three conditions were met: (1) there was a high degree of confidence that a deal can be completed “with the necessary support from the Federal Reserve to ensure this;” (2) there was liquidity support from the Federal Reserve; and (3) there was a discount on Lehman’s net asset values.¹⁶⁹ Sants responded that the FSA’s review would focus on the impact any transaction structure would have on Barclays’ liquidity and capital, warning that the FSA would not approve any core Tier 1 number below the minimum requirement.¹⁷⁰ Later that day, Callum McCarthy, the Chairman of the FSA, contacted Geithner to discuss Lehman.¹⁷¹

¹⁶⁷ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 11, 2008), at p. 2 [LBEX-AM 003918]. Fuld told the Examiner that, prior to September 11, 2008, he had at least two conversations with Diamond. Each time, Diamond told Fuld there was too much overlap to do a deal. Also, some time early in the week of September 8, 2008, Checki of the FRBNY told Fuld that Barclays was interested in Lehman, but when Fuld called Diamond he was again told that there was too much overlap. Examiner’s Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 7.

¹⁶⁸ FSA, Statement of the FSA (Jan. 20, 2010), ¶ 8.

¹⁶⁹ *Id.* ¶ 8.

¹⁷⁰ *Id.* ¶ 9.

¹⁷¹ *Id.* ¶ 10.

According to the FSA, during that conversation, according to the FSA, Geithner left open the possibility of Government assistance for Lehman.¹⁷²

D. JPMorgan Requested Additional Collateral

On September 11, 2008, Lehman posted an additional \$600 million in cash to JPMorgan.¹⁷³ That same day, JPMorgan executives met to discuss valuation issues they had identified with the securities that Lehman had posted as collateral over the summer.¹⁷⁴ JPMorgan had concluded that the securities posted as collateral were not worth nearly what Lehman claimed.¹⁷⁵ JPMorgan decided to request that Lehman provide \$5 billion in cash collateral that day.¹⁷⁶ Dimon and Black called Lowitt, who was joined on the call by Fuld.¹⁷⁷ Zubrow and Tonucci recall participating in the conversation as well.¹⁷⁸ On that call, Black and Dimon requested a \$5 billion cash collateral deposit by the next morning.¹⁷⁹ According to Black, there was no discussion of

¹⁷² *Id.*

¹⁷³ Examiner's Interview of Steven D. Black, Sept. 23, 2009, at p. 12; e-mail from Mark G. Doctoroff, JPMorgan, to Henry E. Steuart, JPMorgan, *et al.* (Sept. 11, 2008) [JPM-2004 0062065]; JPMorgan Second Written Responses, at p. 3.

¹⁷⁴ Examiner's Interview of Steven D. Black, Sept. 23, 2009, at p. 12.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*; e-mail from Paolo R. Tonucci, Lehman, to Daniel J. Fleming, Lehman, *et al.* (Sept. 12, 2008) [LBEX-DOCID 073346] ("[JPM] want[s] \$5bn tomorrow first thing").

¹⁷⁷ Examiner's Interview of Richard S. Fuld, Jr., May 6, 2009, at p. 13; Examiner's Interview of Jamie L. Dimon, Sept. 29, 2009, at pp. 9-10; Examiner's Interview of Steven D. Black, Sept. 23, 2009, at p. 12; Examiner's Interview of Ian T. Lowitt, Oct. 28, 2009, at p. 21.

¹⁷⁸ Examiner's Interview of Barry L. Zubrow, Oct. 20, 2009, at p. 6; Examiner's Interview of Paolo R. Tonucci, Sept. 16, 2009, at p. 16.

¹⁷⁹ *Id.*

how the request for \$5 billion related to the \$1.4 billion that Lehman putatively still owed in response to JPMorgan's September 9 collateral request for \$5 billion.¹⁸⁰

That same day, Jane Buyers-Russo, head of JPMorgan's broker-dealer unit, forwarded Tonucci a written notice of the \$5 billion collateral call "as discussed between senior management."¹⁸¹ Pursuant to that notice, if JPMorgan did not receive the \$5 billion in collateral by the opening of business on September 12, 2008, JPMorgan would "exercise [its] right to decline to extend credit to [Lehman] under the [Clearance] Agreement."¹⁸²

E. Weil Gotshal Continued to Prepare for Lehman Bankruptcy

On September 11, 2008, Shai Waisman, a partner in Weil's bankruptcy department, billed time to Lehman described as "filing preparation."¹⁸³ Also on September 11, a Weil attorney prepared a draft first day affidavit in support of a

¹⁸⁰ Examiner's Interview of Steven D. Black, Sept. 23, 2009, at pp. 12-13. There is evidence that Lehman agreed only to post \$4 billion in response to JPMorgan's Sept. 9 request. See e-mail from Donna Dellosso, JPMorgan, to Steven D. Black, JPMorgan, *et al.* (Sept. 10, 2008) [JPM-2004 0006377] ("[Lehman] will maintain collateral of \$4bln to cover intra-day exposure."); e-mail from Daniel J. Fleming, Lehman, to Mark G. Doctoroff, JPMorgan (Sept. 12, 2008) [LBEX-DOCID 405652] ("JPM now has a total of 4.6bn, 600mm more than agreed.").

¹⁸¹ E-mail from Jane Buyers-Russo, JPMorgan, to Paolo R. Tonucci, Lehman (Sept. 11, 2008) [JPM-2004 0005411].

¹⁸² *Id.* at p. 2. At the same time, JPMorgan revised credit lines for some Lehman entities. E-mail from David A. Weisbrod, JPMorgan, to Kelly A. Mathieson, JPMorgan (Sept. 12, 2008) [JPM-2004 0050026] (revised LBIE credit line to \$1.4 billion); Examiner's Interview of Kelly A. Mathieson, Oct. 7, 2009, at p. 16. See § III.A.7 of the Report which discusses JPMorgan's collateral request on September 11, 2008 in greater detail.

¹⁸³ Weil, Gotshal & Manges LLP, Time Records (Sept. 11, 2008), at p. 6 [LBEX-WGM 1146447].

potential filing.¹⁸⁴ Other Weil attorneys assisted in preparing the Chapter 11 petition.¹⁸⁵

Weil also drafted Board resolutions approving a bankruptcy filing.¹⁸⁶

F. Lehman's Management Updated the Board

On September 11, 2008, the Board held a telephonic meeting.¹⁸⁷ Fuld updated the Board on several issues.¹⁸⁸ First, he advised the Board that Lehman believed that it had the funding necessary to conduct its business on Friday, September 12, 2008.¹⁸⁹ Fuld also noted that "liquidity is forecasted to decrease to \$30 billion that day as a result of providing collateral."¹⁹⁰ Fuld informed the Board that if Lehman could not complete a transaction over the weekend, "the funding situation and rating agency situation would be very difficult" because counterparties did not want to accept even high grade collateral from Lehman.¹⁹¹ Fuld advised the Board that Lehman was working with the FRBNY and the SEC on an orderly liquidation of assets supported by credit from the FRBNY, if Lehman could not arrange a transaction.¹⁹²

¹⁸⁴ *Id.* at p. 7.

¹⁸⁵ *Id.* at pp. 10, 17, 19.

¹⁸⁶ *Id.* at p. 19.

¹⁸⁷ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 11, 2008), at p. 1 [LBEX-AM 003918].

¹⁸⁸ *Id.* at pp. 1-2.

¹⁸⁹ *Id.* at p. 1.

¹⁹⁰ *Id.* at p. 2.

¹⁹¹ *Id.*

¹⁹² *Id.*

Second, Fuld informed the Board that Lehman had begun due diligence with BofA in connection with a possible deal.¹⁹³ Fuld stated that the goal was to announce a transaction by the evening of Sunday, September 14, 2008.¹⁹⁴ McDade told the Board about BofA's ongoing due diligence.¹⁹⁵

Third, Fuld stated that he "had been advised of [Barclays'] potential interest by the Firm's regulators," although he had not heard this from Barclays directly.¹⁹⁶ Fuld was referring to a conversation with Terrence J. Checki, an executive vice president at the FRBNY, who told Fuld that Barclays was interested in Lehman.¹⁹⁷ Fuld had called Diamond, who told Fuld there was too much overlap to do a deal.¹⁹⁸ Nonetheless, Fuld recalled that he met with Diamond on September 11 or 12.¹⁹⁹ At that meeting, Fuld told Diamond that Fuld was willing to step down as CEO upon completion of a deal.²⁰⁰ On September 11, Barclays began assembling its due diligence team and requested due diligence information, but Lehman was not able to begin delivering the bulk of the information until the next day.²⁰¹

¹⁹³ *Id.* at p. 1.

¹⁹⁴ *Id.* at pp. 1-2.

¹⁹⁵ *Id.* at p. 2.

¹⁹⁶ *Id.*

¹⁹⁷ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009 at p. 7.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* See Tom Junod, *The Deal of the Century*, Esquire Magazine, October 2009, p. 157 (stating the meeting took place on Friday, September 12, 2008).

²⁰⁰ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at pp. 7-8.

²⁰¹ See, e.g., e-mail from Gerard LaRocca, Barclays, to James Walker, Barclays (Sept. 11, 2008) [BCI-EX-(S)-00033903]; e-mail from James Walker, Barclays, to Patrick Clackson, Barclays (Sept. 11, 2008) [BCI-EX-(S)-00021957]; e-mail from Gerard LaRocca, Barclays, to Richard Ricci, Barclays (Sept. 11, 2008) [BCI-EX-

Fourth, Fuld told the Board that he had recently contacted John Mack, Morgan Stanley's CEO, about a potential merger with Morgan Stanley.²⁰² Mack had told Fuld that there was too much overlap between the firms.²⁰³ Mack also felt there was not enough time for Morgan Stanley to conduct due diligence and announce a deal by Sunday night.²⁰⁴

VIII. SEPTEMBER 12, 2008

On Friday, September 12, 2008, as BofA continued its due diligence, Barclays began its own due diligence in connection with a possible deal.²⁰⁵ In response to JPMorgan's request the previous day, Lehman posted \$5 billion cash collateral.²⁰⁶ Citi amended its Clearing Agreement with Lehman, strengthening its lien on Lehman's assets.²⁰⁷ That evening, the CEOs of twelve Wall Street firms convened at the FRBNY at

00078752]; e-mail from Gerard LaRocca, Barclays, to Richard Ricci, Barclays (Sept. 11, 2008) [BCI-EX-00078770]; email from Gerard Reilly, Lehman, to Gerard LaRocca, Barclays, *et al.* (Sept. 11, 2008) [BARCLAYS-LB 00023388].

²⁰² Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 11, 2008), at p. 2 [LBEX-AM 003918].

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 12, 2008), at pp. 1-2 [LBEX-AM 003920].

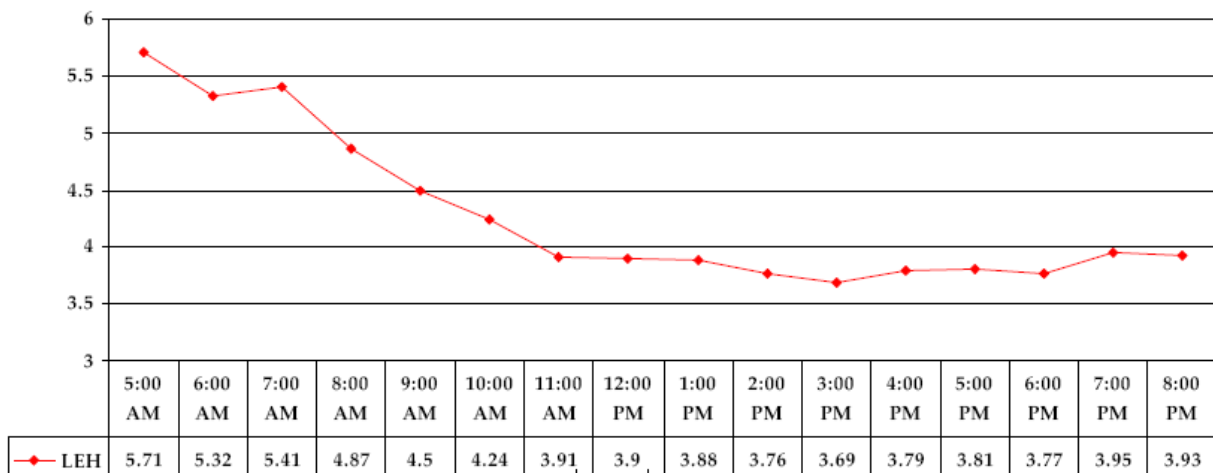
²⁰⁶ *See* e-mail from Christopher D. Carlin, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 12, 2008) [JPM-2004 0033002] ("At 1130 EDT current balance in the Lehman Holding Co account is 4 billion 450 million vs the target 5 billion."); e-mail from Christopher D. Carlin, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 12, 2008) [JPM-2004 0050902] ("Last 550 million received from Citi at 1:26PM NY time . . . balance in the Lehman Holding co account is now at 5 billion . . ."); *see also* e-mail from Paolo R. Tonucci, Lehman, to Ian T. Lowitt, Lehman (Sept. 12, 2008) [LBEX-DOCID 4050567] ("JP should have their \$5 bn.").

²⁰⁷ Citibank, Direct Custodial Services Agreement Deed (Sept. 12, 2008) [CITI-LBHI-EXAM 00005903].

the Government’s request to discuss Lehman’s situation and possible remedies.²⁰⁸ At the close of business on Friday, Lehman calculated its liquidity pool to contain \$2 billion of easily monetized liquidity.²⁰⁹

Lehman’s stock officially opened Friday at \$3.84 and traded in high volume throughout the day.²¹⁰ By Friday’s official close, Lehman’s stock was trading at \$3.65.²¹¹

LBHI Stock Price: Sept. 12, 2008



A. Lehman Began Discussions with Barclays

On Friday, September 12, 2008, at 9:00 a.m., the board of directors of Barclays authorized its management to undertake due diligence to determine whether there was an opportunity for a transaction with Lehman.²¹² Barclays’ management had presented

²⁰⁸ Examiner’s Interview of Thomas C. Baxter, Jr., May 20, 2009, at p. 9.

²⁰⁹ Lehman, Ability to Monetize Chart (Sept. 12, 2008) [LBEX-WGM 784607].

²¹⁰ See Yahoo! Finance, Historical LEH stock prices, available at <http://finance.yahoo.com/q?s=LEHMQ.PK>.

²¹¹ *Id.*

²¹² Transcript of deposition testimony of Robert E. Diamond, *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y., Sept. 11, 2009), at pp. 24-25.

its board with two possible acquisition scenarios and both involved transactions that valued Lehman's stock at \$5 per share.²¹³

Varley informed Paulson that Barclays' board was prepared to consider a possible bid for Lehman.²¹⁴ Paulson also spoke to Alistair Darling, the United Kingdom's Chancellor of the Exchequer, during the day.²¹⁵ During that conversation, according to the FSA, Paulson told Darling that the FRBNY might provide Barclays with regulatory assistance to support a transaction.²¹⁶ Paulson told the Examiner that during the conversation, Chancellor Darling did not mention the need for a guaranty of Lehman's debts, but Darling did say that the FSA would not reject or approve the deal.²¹⁷ Paulson described Chancellor Darling's statement as a particularly British way of saying no.²¹⁸

The September 12 discussions between the FSA and Barclays focused on quantifying the size and nature of Lehman's assets and their impact on Barclays' capital ratios.²¹⁹ Barclays advised the FSA that Barclays continued to seek unlimited access to

²¹³ See Barclays, Long Island Transaction Overview (Sept. 12, 2008), at p. 3 [BCI-EX-(S)-00053306_000001].

²¹⁴ FSA, Statement of the FSA (Jan. 20, 2010), ¶ 12.

²¹⁵ *Id.* ¶ 23.

²¹⁶ Examiner's Interview of Henry M. Paulson, Jr., June 25, 2008, at p. 20.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ FSA, Statement of the FSA (Jan. 20, 2010), ¶ 27.

the FRBNY discount window although there remained debate within the Treasury as to who should provide the funding.²²⁰

Following the meeting of Barclays' Board, Diamond met with Fuld to discuss Barclays' interest.²²¹ According to Diamond, he told Fuld that there could be "no deal at a market price, the current market price, because of the risk and because of the overlap,"²²² and that Barclays' interest was only as a "rescue situation, meaning if this is a very, very distressed price."²²³ According to Diamond, Barclays had two areas of concern about any potential deal with Lehman: long term funding and certain risk assets.²²⁴ Barclays anticipated that the FSA would share those concerns.²²⁵

Sometime between 5:10 p.m. and 6:00 p.m. on September 12, Varley and Diamond had a call with Paulson and Geithner to discuss the potential deal.²²⁶

During a 4:00 p.m. Board meeting, Fuld informed Lehman's directors that Barclays had started due diligence, although he noted that there had not yet been any discussion "regarding transaction structure or price."²²⁷ Fuld also told the Board that

²²⁰ *Id.*

²²¹ Transcript of deposition testimony of Robert E. Diamond, *In re Lehman Brothers Holdings Inc., et al.*, Case No. 08-13555 (Bankr. S.D.N.Y., Sept. 11, 2009), at pp. 25-26.

²²² *Id.* at pp. 26-27.

²²³ *Id.* at p. 32.

²²⁴ E-mail from John Varley, Barclays, to Robert E. Diamond, Barclays, *et al.* (Sept. 12, 2008) [BCI-EX-00078748].

²²⁵ *Id.*

²²⁶ See Henry M. Paulson Jr., Call Logs (Sept. 2008), available at <http://www.scribd.com/doc/21221123/Too-Big-To-Fail-Paulson-Call-Logs-and-Calendar-Sept-2008>.

²²⁷ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 12, 2008), at p. 1 [LBEX-AM 003920].

Barclays “would need approval from its stockholders for a transaction” and that “Barclays had only recently started its due diligence process.”²²⁸

By Friday evening, Lehman’s Global Co-Head of Capital Markets, Michael Gelband, and Lehman’s Global Head of Principal Business, Alex Kirk, told McDade that they were encouraged by the dialogue between Lehman and Barclays.²²⁹ Gelband and Kirk encouraged McDade to leave the BofA negotiations and join the Barclays discussions.²³⁰ McDade promptly met with Diamond.²³¹ During that meeting, Diamond “walk[ed] through what his intentions and needs were if he was going to do a deal over the weekend and . . . tr[ie]d to get a basic understanding . . . of what the core of the businesses were and how [McDade and Diamond] felt an integration would or would not work of the collective set of businesses.”²³² According to McDade, “it was very clear that . . . at this point [Diamond] was contemplating the purchase of the whole firm.”²³³

B. Lehman’s Negotiations with BofA

As Friday, came to a close, BofA was winding down its due diligence.²³⁴ Based on that due diligence, BofA believed that Lehman’s valuations of its own commercial

²²⁸ *Id.*

²²⁹ Transcript of deposition testimony of Herbert H. McDade, III, *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y., Sept. 2, 2009), at p. 11.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.* at p. 12.

²³³ *Id.* at pp. 13-14; Transcript of deposition testimony of Richard Ricci, *In re Lehman Brothers Holdings Inc.*, No. 08-13555 (Bankr. S.D.N.Y., Sept. 8, 2009), at p. 13. See § III.C of the Report which discusses Barclays’ due diligence and Lehman’s negotiations with Barclays in greater detail.

²³⁴ See e-mail from David M. Belk, Bank of America, to Walter J. Muller, Bank of America, *et al.* (Sept. 12, 2008) [BofA-SEC-00003515].

real estate positions were too high.²³⁵ BofA's due diligence team also identified approximately \$65 to \$67 billion worth of Lehman assets that BofA would not have wanted at any price.²³⁶ Consequently, Lewis believed that no deal with Lehman could work for BofA unless the Government would provide assistance to offset the undesirable assets.²³⁷

Fuld tried to call Lewis several times on Friday evening but Lewis did not answer any of those phone calls.²³⁸ Despite that, Fuld did not yet suspect anything was awry with the potential BofA deal.²³⁹

C. Meetings at the FRBNY

On the evening of September 12, the Government summoned the CEOs of twelve major investment banks to the FRBNY's offices.²⁴⁰ No one from Lehman was invited or attended.²⁴¹ Baxter said that representatives from BofA and Barclays were not present because those firms were negotiating potential deals to acquire Lehman.²⁴² Curl told the Examiner that he thought a BofA representative had been present at the meeting.²⁴³

²³⁵ See, e.g., e-mail from Don Benningfield, Bank of America, to Rochelle Dobbs, Bank of America, *et al.* (Sept. 12, 2008) [BofA-SEC-00002774].

²³⁶ Examiner's Interview of Kenneth D. Lewis, Sept. 24, 2009, at p. 5; Examiner's Interview of Gregory L. Curl, Sept. 17, 2009, at p. 9.

²³⁷ *Id.*

²³⁸ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 6; Examiner's Interview of Kenneth D. Lewis, Sept. 24, 2009, at p. 6.

²³⁹ *Id.*

²⁴⁰ Examiner's Interview of Thomas C. Baxter, Jr., May 20, 2009, at p. 9.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Examiner's Interview of Gregory L. Curl, Oct. 19, 2009, at p. 10.

Paulson began the meeting by noting the absence of Lehman representatives. He explained that the meeting was convened to discuss Lehman,²⁴⁴ and that federal money would not be provided to rescue Lehman.²⁴⁵ As a result, Paulson said, the banking industry needed to find a solution, because Lehman's failure would impact the entire industry.²⁴⁶

D. Management Disclosed Bankruptcy Planning to the Board

Weil's billing records reflect work relating to a potential Lehman bankruptcy on September 12, 2008.²⁴⁷ The head of Lehman's restructuring and finance group, Mark J. Shapiro, approached Russo about establishing a bankruptcy-remote trust for employee medical costs and taxes.²⁴⁸ At Russo's direction, Weil prepared motions to protect certain Lehman benefit programs.²⁴⁹

Lehman's Board invited Miller to make a presentation at its telephonic September 12, 2008 Board meeting.²⁵⁰ Lehman's Board minutes from that meeting indicate that Miller advised the Board that "bankruptcy would be a very bad option"

²⁴⁴ Examiner's Interview of Thomas Baxter Jr., May 20, 2009, at p. 9.

²⁴⁵ *Id.*; Examiner's Interview of Henry M. Paulson, Jr., June 25, 2009, at p. 16.

²⁴⁶ *Id.* See Section III.A.6. of the Report, which discusses the FRBNY meetings in greater detail.

²⁴⁷ See Weil Gotshal & Manges LLP, Time Records (Sept. 12, 2008) [LBEX-WGM 1146477].

²⁴⁸ Examiner's Interview of Thomas A. Russo, May 22, 2009, at p. 10.

²⁴⁹ *Id.*

²⁵⁰ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 12, 2008) [LBEX-AM 003920]. Miller does not recall being physically present at a Board meeting until Sunday, September 14, 2008. *Accord* Examiner's Interview of Harvey R. Miller, Apr. 23, 2009, at p. 5.

under the circumstances.²⁵¹ At the same meeting, Russo reported to the Board that “the Federal Reserve is interested in helping to facilitate an orderly wind-down and avoid a bankruptcy.”²⁵²

Miller told the Examiner that Weil did not begin bankruptcy preparations by Friday, other than to begin to collect public information regarding Lehman.²⁵³ That evening, Miller had received a call from James L. Bromley, a partner at the law firm Cleary Gottlieb Steen & Hamilton (“Cleary Gottlieb”), on behalf of the FRBNY, requesting a meeting. Bromley expressed no urgency to meet that night.²⁵⁴

E. Lehman’s Compensation Committee Met

On September 12, 2008, at 5:00 p.m., Lehman’s Compensation Committee held a telephonic meeting.²⁵⁵ The purpose of the meeting was to discuss how benefits to Jeremy M. Isaacs, CEO of LBIE, Andrew J. Morton, Lehman’s Global Head of Fixed Income, and Benoit Savoret, Chief Operating Officer of LBIE, would be handled in the event of Lehman’s sale or bankruptcy.²⁵⁶ The Committee authorized separation agreements with those three employees.²⁵⁷ The Committee also approved minimum compensation for Gerald Domini, who was the new global head of Equities, and

²⁵¹ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 12, 2008), at p. 2 [LBEX-AM 003920].

²⁵² *Id.*

²⁵³ Examiner’s Interview of Harvey R. Miller, Apr. 23, 2009, at p. 5.

²⁵⁴ *Id.*

²⁵⁵ Lehman Brothers Holdings Inc., Minutes of the Compensation and Benefits Committee (Sept. 9, 2008), at p. 1 [LBEX-AM 003922].

²⁵⁶ *Id.*

²⁵⁷ *Id.* at p. 2.

discussed the compensation package for Eric Felder, who was the new head of Lehman's Fixed Income Division.²⁵⁸ Sir Christopher Gent, a Lehman director, told the Examiner that the point of the meeting was to clarify for those individuals what would happen if Lehman was sold or filed bankruptcy, even if the approved plans never would be executed.²⁵⁹

F. Citi Amended its Clearing Agreement

On September 12, 2008, Citi and Lehman agreed to an amendment to their Clearing Agreement, which strengthened Citi's lien over LBI's property at Citi.²⁶⁰

G. Lehman Posted \$5 Billion in Cash to JPMorgan

Following JPMorgan's request the previous day, Lehman delivered the full \$5 billion cash collateral to JPMorgan on Friday, September 12, 2008.²⁶¹

H. Liquidity Pool

By the end of the day on September 12, 2008, Lehman calculated that it had less than \$2 billion remaining of easily monetized liquid assets.²⁶²

²⁵⁸ *Id.* at pp. 2-3.

²⁵⁹ Examiner's Interview of Sir Christopher Gent, Oct. 21, 2009, at p. 27.

²⁶⁰ Citibank, Direct Custodial Services Agreement Deed (Sept. 12, 2008) [CITI-LBHI-EXAM 00005903].

²⁶¹ See e-mail from Christopher D. Carlin, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 12, 2008) [JPM-2004 0033002] ("At 1130 EDT current balance in the Lehman Holding Co account is 4 billion 450 million vs the target 5 billion."); e-mail from Christopher D. Carlin, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 12, 2008) [JPM-2004 0050902] ("Last 550 million received from Citi at 1:26PM NY time . . . balance in the Lehman Holding co account is now at 5 billion . . ."); see also e-mail from Paolo R. Tonucci, Lehman, to Ian T. Lowitt, Lehman (Sept. 12, 2008) [LBEX-DOCID 4050567] ("JP should have their \$5 bn.").

²⁶² Lehman, Ability to Monetize Chart (Sept. 12, 2008) [LBEX-WGM 784607].

IX. SEPTEMBER 13, 2008

At the noon Board of Directors meeting on Saturday, September 13, 2008, Russo told the Board that “the Federal Reserve believes that any bankruptcy filing by the Firm would be extremely disruptive.²⁶³ By early afternoon that day, BofA ended negotiations with Lehman and began talks with Merrill Lynch.²⁶⁴ Lehman continued negotiations with Barclays focused on a post-SpinCo transaction.²⁶⁵ During the day on Saturday, the FRBNY asked Barclays to guarantee Lehman’s obligations leading up to the close of the transaction. The requirement of the guaranty would have required Barclays’ shareholders to approve the transaction.²⁶⁶ Nonetheless, on Saturday night Fuld believed that Lehman had a deal with Barclays.²⁶⁷

A. Negotiations with BofA Failed

On the morning of Saturday, September 13, 2008, Lewis heard that Paulson had said that the Government would be unwilling to intervene to save Lehman.²⁶⁸ Lewis contacted Paulson to make it clear that without sufficient Government assistance to balance out the unwanted Lehman assets, BofA would not do a deal.²⁶⁹ Paulson told

²⁶³ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 13, 2008), at p. 2 [LBEX-AM 003927].

²⁶⁴ Examiner’s Interview of Kenneth D. Lewis, Sept. 24, 2009, at p. 7; Examiner’s Interview of Henry M. Paulson, Jr., June 25, 2009, at p. 19; Examiner’s Interview of Gregory L. Curl, Sept. 17, 2009, at p. 11-12.

²⁶⁵ Examiner’s Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 8.

²⁶⁶ FSA, Statement of the FSA (Jan. 20, 2010), ¶ 39.

²⁶⁷ Examiner’s Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 9.

²⁶⁸ Examiner’s Interview of Kenneth D. Lewis, Sept. 24, 2009, at p. 6.

²⁶⁹ *Id.*

Lewis that the Government would not provide taxpayer money, but he also said that he wanted to reconvene with BofA later in the day to discuss other options.²⁷⁰

On Saturday afternoon, without informing anyone at Lehman, BofA began talks with Merrill Lynch about a potential merger.²⁷¹ Lewis told the Examiner that the deal between BofA and Merrill did not interfere with any potential BofA deal with Lehman,²⁷² because by the time Merrill Lynch approached BofA, BofA had concluded that a deal with Lehman was unlikely.²⁷³ BofA already had brought its due diligence team home.²⁷⁴

Fuld continued to call Lewis throughout the day on Saturday without getting a response.²⁷⁵ At some point later in the day, Lewis' wife answered and told Fuld that if her husband wanted to talk to Fuld, Lewis would return the call.²⁷⁶ Lewis told the Examiner that he did not take Fuld's calls because Lewis did not think Fuld was in a position to help move the transaction forward.²⁷⁷

B. Barclays Discussions Continued

On Saturday, September 13, 2008, Lehman and Barclays discussed a potential deal that Fuld described as "life after SpinCo" because the contemplated deal did not

²⁷⁰ *Id.*; Examiner's Interview of Gregory L. Curl, Sept. 17, 2009, at p. 11.

²⁷¹ Examiner's Interview of Kenneth D. Lewis, Sept. 24, 2009, at p. 7.

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ Examiner's Interview of Richard S. Fuld, Jr. Apr. 28, 2009, at p. 7.

²⁷⁶ *Id.*

²⁷⁷ Examiner's Interview of Kenneth D. Lewis, Sept. 24, 2009, at p. 6.

include a purchase by Barclays of commercial real estate assets.²⁷⁸ During the day, Barclays advised the FSA that the FRBNY had asked Barclays to guarantee Lehman's obligations leading up to the close of the transaction.²⁷⁹ That guaranty would survive even if the transaction failed and it would make Barclays responsible for Lehman's existing and new business up until the time the transaction failed.²⁸⁰ Late in the day in the United Kingdom, Varley advised Sants that because of the guaranty, it was unlikely that a deal structure could be found that would satisfy Barclays' board.²⁸¹

On Saturday in New York, McDade, Kirk and Cohen told Fuld that the approval of the FSA would not be an issue.²⁸² Fuld reported to the Board on Saturday afternoon that Barclays had offered to purchase the operating subsidiaries of Lehman for \$3 billion and that Barclays would guarantee Lehman's debt.²⁸³ Under the proposal, Lehman would receive the cash and would retain its commercial real estate assets, minority investments in hedge fund managers and limited partnership interests in Lehman-sponsored private equity funds.²⁸⁴

²⁷⁸ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 8.

²⁷⁹ FSA, Statement of the FSA (Jan. 20, 2010), ¶ 39.

²⁸⁰ *Id.*

²⁸¹ *Id.* ¶ 40.

²⁸² Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 9.

²⁸³ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 13, 2008), at p. 1 [LBEX-AM 003929].

²⁸⁴ *Id.*

Also on Saturday, Barclays reached out to Buffett to ask whether Buffett would guarantee Lehman's operations until a Lehman-Barclays deal closed.²⁸⁵ Barclays and Buffett discussed a scenario in which Buffett would provide a guaranty in support of the deal.²⁸⁶ Buffett expressed interest in that possibility, but Barclays were not able to reach Buffett to further pursue that possibility.²⁸⁷

C. FRBNY Informed That Bankruptcy Planning Was Skeletal

On Saturday, September 13, 2008, Weil's Miller told Cleary Gottlieb's Bromley and six or seven senior people from the FRBNY that Weil had not undertaken any serious bankruptcy preparation because the Lehman financial people were consumed with potential deals and therefore unavailable to the law firm.²⁸⁸ Weil's billing records from Saturday related to bankruptcy work reflect numerous phone conferences with Lehman employees in "preparation for bankruptcy filings."²⁸⁹ According to Miller, Weil prepared skeletal template documents, and Weil was "on watch" just as they had been with Bear Stearns.²⁹⁰

²⁸⁵ Examiner's Interview of Warren E. Buffett, Sept. 22, 2009, at pp. 4-5.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ Examiner's Interview of Harvey R. Miller, Apr. 23, 2009, at p. 6.

²⁸⁹ *See* Weil Gotshal & Manges, LLP, Time Records (Sept. 13, 2008), at p. 2 [LBEX-WGM 1146447].

²⁹⁰ Examiner's Interview of Harvey R. Miller, Apr. 23, 2009, at p. 6.

X. SEPTEMBER 14, 2008

On Sunday, September 14, 2008, the FSA refused to waive the shareholder approval requirement for the Barclays deal, effectively ending the negotiations.²⁹¹ Fuld reached out to Morgan Stanley to no avail.²⁹² During the afternoon, Fuld learned about what he described as the “rule of insolvency” in the United Kingdom, which Fuld understood to make operating a business while insolvent illegal.²⁹³ During the day, the FRBNY expanded access to its Primary Dealer Credit Facility (“PDCF”) window but Lehman was told it was ineligible for the window.²⁹⁴ Representatives of the FRBNY told Lehman representatives that Lehman needed to declare bankruptcy.²⁹⁵ During a Board meeting that evening, SEC Chairman Christopher Cox and other Government representatives again pressed Lehman to file a bankruptcy petition.²⁹⁶ After that discussion, the Board resolved to declare bankruptcy.²⁹⁷

²⁹¹ FSA, Statement of the FSA (Jan. 20, 2010), ¶ 43.

²⁹² Examiner’s Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 28.

²⁹³ Examiner’s Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 12. *Accord* Insolvency Act 1986, c. 45 § 214 (U.K.) (directors of a company may be personally liable to make a contribution in such amount “as the court thinks proper” under statute barring wrongful trading, if the directors “knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation.”).

²⁹⁴ Examiner’s Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 13.

²⁹⁵ Examiner’s Interview of Harvey R. Miller, Apr. 23, 2009, at p. 7.

²⁹⁶ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 14, 2008), at p. 5 [LBEX-AM 003932].

²⁹⁷ *Id.*

A. The FSA Refused To Waive the Shareholder Approval Requirement for the Barclays Deal

On Sunday morning in the United Kingdom, the FSA and Barclays discussed the FRBNY's requirement that Barclays guarantee Lehman's obligations.²⁹⁸ The FSA acknowledged theoretically that it could waive the shareholder approval requirement.²⁹⁹ However, the FSA concluded granting a waiver would "represent a compromise of one of the fundamental principles of the FSA's Listing Regime" because no precedent existed.³⁰⁰ During the early afternoon in the United Kingdom, Geithner spoke with FSA Chairman McCarthy, reiterating the FRBNY's requirement of a guaranty and suggesting that the urgency of the situation required a waiver of the shareholder approval requirement.³⁰¹ Later that afternoon, Cox contacted McCarthy to discuss waiving the shareholder approval requirement.³⁰² McCarthy cited the lack of precedent for such a waiver and noted that Barclays had yet to submit a formal proposal for the FSA's review of the deal.³⁰³ By 4:00 p.m. in the United Kingdom, Varley informed the FSA that discussions had ceased.³⁰⁴

Lehman's management had scheduled a Board meeting for noon on September 14, 2008, but delayed the meeting until 5:00 p.m. in order to try to come to some

²⁹⁸ FSA, Statement of the FSA (Jan. 20, 2010), ¶ 43.

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.* ¶¶ 46-47.

³⁰² *Id.* ¶ 54.

³⁰³ *Id.*

³⁰⁴ *Id.* ¶ 56.

resolution at the FRBNY meetings.³⁰⁵ At some point on Sunday, Paulson told Fuld that the FSA would not waive the requirement that a guaranty of Lehman's obligations required the approval of Barclays' shareholders, and therefore the FSA would not approve the Barclays deal.³⁰⁶ Fuld asked Paulson to call Prime Minister Gordon Brown, but Paulson said he could not.³⁰⁷ Fuld asked Paulson to ask President Bush to call Prime Minister Brown, but Paulson said he was working on other ideas.³⁰⁸ Fuld brainstormed about other means to contact and convince the FSA to permit the deal, including having Jeb Bush, who was an advisor to Lehman at the time, ask President Bush to call Prime Minister Brown.³⁰⁹

B. Lehman Reached Out to Morgan Stanley

Fuld again reached out to Morgan Stanley's Mack on Sunday, September 14, 2008, because Lehman was in a "tough spot."³¹⁰ Mack said there was too much going on for Morgan Stanley to consider a deal with Lehman.³¹¹

C. Fuld Learned About the United Kingdom's "Rule of Insolvency"

Sometime during the afternoon on September 14, 2008, Fuld learned about what he described as the "rule of insolvency" in the United Kingdom which Fuld understood to make operating a business while insolvent illegal.³¹²

³⁰⁵ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 9.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.* at p. 10.

³¹⁰ Examiner's Interview of Richard S. Fuld, Jr., Sept. 30, 2009, at p. 28.

³¹¹ *Id.*

D. FRBNY

1. Wall Street Consortium Agreed to Provide \$20 Billion to Facilitate Barclays' Acquisition of Lehman

On Sunday, September 14, 2008, the consortium of banks assembled at the FRBNY agreed to provide at least \$20 billion in private financing to liquidate Lehman's bad assets in order to assist Barclays' purchase of Lehman.³¹³

2. Lehman Developed a Plan for an Orderly Liquidation

On September 14, the FRBNY made clear that, with the potential Barclays deal dead, it would no longer keep funding Lehman.³¹⁴ James P. Seery, Jr., Lehman's Global Head of Fixed Income - Loan Business, and others at Lehman then started working on an "orderly" liquidation plan for Lehman.³¹⁵ The plan contemplated that it would take six months to effect an orderly unwinding of Lehman's positions.³¹⁶ During that time, Lehman would have to continue to employ a substantial number of people, and pay bonuses to keep them.³¹⁷ The plan also assumed that the FRBNY would provide financing support through the wind-down process.³¹⁸ All work on the liquidation plan

³¹² Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 12. *Accord* Insolvency Act 1986, c. 12, § 214 (U.K.) (directors of a company may be personally liable to make a contribution in such amount "as the court thinks proper" under statute barring wrongful trading, if the directors "knew, or ought to have concluded that there was no reasonable prospect would avoid going into insolvent liquidation).

³¹³ Examiner's Interview of Henry M. Paulson, Jr., June 25, 2009, at p. 18. See Section III.A.6 of the Report, which discusses the consortium in greater detail.

³¹⁴ Examiner's Interview of James P. Seery, Jr., November 12, 2009, at pp. 1-2.

³¹⁵ *Id.* at p. 2.

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.*

came to a halt when word circulated that the Government had told Lehman that Lehman would need to file bankruptcy that evening.³¹⁹

3. Sunday Meetings at the FRBNY

By the early afternoon of Sunday, September 14, 2008, Miller learned that discussions were not going well for Lehman at the FRBNY.³²⁰ Miller, and other Weil attorneys, Dannhauser, Thomas A. Roberts and Lori Fife went to the FRBNY to represent Lehman.³²¹ On the way to the FRBNY meeting, Roberts received a call from another Weil attorney saying that Citi had been told that Lehman was being liquidated and requesting that Weil Gotshal represent Citi.³²²

4. The FRBNY Expanded the PDCF Window

On September 14, 2008, the FRBNY issued a press release that stated that “[t]he collateral eligible to be pledged at the Primary Dealer Credit Facility (“PDCF”) has been broadened to closely match the types of collateral that can be pledged in the tri-party repo systems of the two major clearing banks.”³²³ Lehman soon learned that it was not eligible to use the window to continue its normal operations.³²⁴ The FRBNY limited the collateral LBI could use for overnight financing to collateral that was in LBI’s box at

³¹⁹ Examiner’s Interview of James P. Seery, Jr., Nov. 12, 2009, at p. 2; Examiner’s Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 12-13; Examiner’s Interview of Harvey R. Miller, Apr. 23, 2009, at pp. 7-8; Examiner’s Interview of Scott Alvarez, Nov. 12, 2009, at p. 8.

³²⁰ Examiner’s Interview of Harvey R. Miller, Apr. 23, 2009, at p. 7.

³²¹ *Id.*

³²² *Id.*

³²³ FRBNY, Press Release (Sept. 14, 2008), *available at* <http://www.federalreserve.gov/newsevents/press/monetary/20080914a.htm> (last visited Jan. 24, 2010).

³²⁴ Examiner’s Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 13.

JPMorgan as of Friday, September 12, 2008.³²⁵ That restriction was referred to as the “Friday criteri[on].”³²⁶

In addition, the FRBNY imposed larger haircuts on LBI’s PDCF borrowing than it did on other investment banks.³²⁷ The haircuts imposed on LBI’s PDCF borrowing were larger than under Lehman’s pre-bankruptcy triparty borrowing.³²⁸

In connection with Lehman’s preparations to file the LBHI chapter 11 petition, the FRBNY, acting as a lender of last resort, advised Lehman that it would provide up

³²⁵ Examiner’s Interview of Robert Azerad, Apr. 20, 2009, at p. 5; Examiner’s Interview of Christopher Burke, July 7, 2009, at p. 3. An experimental allocation by Lehman to the PDCF on Monday morning showed at least \$72 billion of eligible Lehman securities being swept into the PDCF system; *see* e-mail from John Palchynsky, Lehman, to Craig L. Jones, Lehman, *et al.* (Sept. 15, 2008) [LBEX-DOCID 076981]. *See also* Lehman, PDCF Schedule of Eligible Securities (Sept. 14, 2008) [LBEX-DOCID 405695].

³²⁶ Examiner’s Interview of Robert Azerad, Apr. 20 2009, at p. 5; Examiner’s Interview of Christopher Burke, July 7, 2009, at p. 3. According to Azerad, this restriction prevented Lehman from posting the range of collateral to the PDCF that other firms were allowed to post after September 15, 2008. Examiner’s Interview of Robert Azerad, Apr. 20 2009, at p. 5; *see also* e-mail from Timothy Lyons, Lehman, to Ian T. Lowitt, Lehman (Sept. 14, 2008) [LBEX-DOCID 070210] (stating “the fed is letting the other eighteen broker dealers fund a much broader range of collateral than us”).

³²⁷ Examiner’s Interview of Christopher Burke, July 7, 2009, at p. 3. *See also* e-mail from Ricardo S. Chiavenato, JPMorgan, to Christopher D. Carlin, JPMorgan, *et al.* (Sept. 15, 2008) [JPM-2004 0055329]. *Accord* Examiner’s Interview of Robert Azerad, Apr. 20, 2009, at p. 5. According to Azerad, the FRBNY imposed the wider haircuts on Lehman because the FRBNY was not willing to take any losses in its overnight financing of Lehman. *Id.*

³²⁸ *See* e-mail from George V. VanSchaick, Lehman, to John Feraca, Lehman, *et al.* (Sept. 15, 2008) [LBEX-DOCID 077028] (discussing the larger haircuts imposed by the FRBNY on Lehman’s PDCF borrowing); e-mail from Robert Azerad, Lehman, to Susan McLaughlin, Lehman, *et al.* (Sept. 15, 2008) [LBEX-DOCID 457643] (explaining the PDCF haircuts would “result in a \$4 billion drain in liquidity . . .”). *See also* Lehman, PDCF Schedule of Eligible Securities (Sept. 14, 2008) [LBEX-DOCID 405695] (detailing the PDCF haircuts applied to Lehman for the various categories of accepted securities); e-mail from Ricardo S. Chiavenato, JPMorgan, to Christopher D. Carlin, JPMorgan, *et al.* (Sept. 15, 2008) [JPM-2004 0055329]. *But see* e-mail from Sindy Aprigliano, Lehman, to Paolo R. Tonucci, Lehman, *et al.* (Sept. 15, 2008) [LBEX-DOCID 068353] (stating the haircut impact from using the PDCF would decrease to \$2 billion).

to two weeks of overnight secured financing through the PDCF³²⁹ to allow LBI to accomplish an orderly liquidation.³³⁰

5. The FRBNY Directed Lehman to File for Bankruptcy

Fuld told the Examiner that on Sunday afternoon, Erik R. Sirri, head of the SEC's CSE program, called Fuld and asked him to "promise [Sirri] one thing," which was that Lehman would not file for bankruptcy protection.³³¹ Not long after that conversation with Sirri, McDade called Fuld from the meeting at the FRBNY to tell him that "the Fed has just mandated that we file for bankruptcy."³³² At the FRBNY, Baxter said that Lehman needed to file by midnight that night.³³³ Miller responded to Baxter's statement by asking why and objecting that the filing could not happen by midnight.³³⁴ Miller said that a Lehman bankruptcy would "bring great destabilization in the market," "bring trading to a halt," and result in financial "Armageddon."³³⁵ The Government representatives' reply was that the issue had been decided and there were cars available to take the Lehman people back to their offices.³³⁶

³²⁹ According to Christopher Burke, the PDCF was created in March 2008 to permit investment banks to obtain financing from the Fed: (a) on an overnight basis; and (b) using a broader range of collateral than was eligible under Open Market Operations ("OMO") and Term Securities Lending Facility ("TSLF"). Examiner's Interview of Christopher Burke, July 7, 2009, at p. 3.

³³⁰ Examiner's Interview of Shari D. Leventhal, Apr. 30, 2009, at pp. 4-5. Some Fed employees thought the Fed was risking too much exposure with the two week funding timeframe. *Id.* at 5.

³³¹ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 12.

³³² *Id.*

³³³ Examiner's Interview of Harvey R. Miller, Apr. 23, 2009, at p. 7.

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.* at p. 8.

E. Lehman Suggested a Sale in Bankruptcy to Barclays

At about 6:00 p.m. on Sunday, September 14, Shapiro went to McDade's office to "make sure [McDade] understood that" Lehman could sell itself to Barclays in bankruptcy.³³⁷

Shapiro recommended to McDade that they see whether Barclays would be willing to purchase Lehman, in whole or in part, through a sale under Section 363 of the Bankruptcy Code.³³⁸ McDade called Diamond to discuss the idea.³³⁹ Barclays was interested and suggested that Lehman have a team ready to meet with Barclays' team early Monday morning.³⁴⁰

F. The September 14, 2008 Board Meeting

Lehman's management scheduled a Board meeting for noon on Sunday, September 14, 2008, but delayed the meeting until 5:00 p.m. in light of the FRBNY meetings.³⁴¹ The Board meeting re-convened at 7:50 p.m.³⁴² As the Board was meeting,

³³⁷ Transcript of deposition testimony of Mark J. Shapiro, *In re Lehman Brothers Holdings Inc.*, No. 08-13555 (Bankr. S.D.N.Y., Aug. 7, 2009), at p. 16. Shapiro had not been involved in the previous negotiations between Lehman and Barclays; he had been preparing for a possible bankruptcy filing. *Id.* at pp. 14-15.

³³⁸ *Id.* at p. 18. Section 363 of the Bankruptcy Code, among other things, authorizes a debtor to sell estate property outside the ordinary course of business. 11 U.S.C. § 363 (2006).

³³⁹ Transcript of deposition testimony of Mark J. Shapiro, *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y., Aug. 7, 2009), at pp. 16-17; Transcript of deposition testimony of Herbert H. McDade, III, *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y., Sept. 2, 2009), at p. 6; Transcript of deposition testimony of Richard Ricci, *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y., Sept. 8, 2009), at pp. 18-19; Transcript of deposition testimony of Jerry Del Missier, *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y., Sept. 1, 2009), at pp. 42-43.

³⁴⁰ Transcript of deposition testimony of Mark J. Shapiro, *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y., Aug. 7, 2009), at p. 20.

³⁴¹ Examiner's Interview of Richard S. Fuld, Jr., Apr. 28, 2009, at p. 9.

Cox, Baxter and other Government representatives called and asked to address the Board.³⁴³ Baxter said the call was arranged at the request of Paulson and Geithner.³⁴⁴ Paulson said he urged Cox to call Lehman because Cox was having a hard time actually communicating the decision by the Government that Lehman's bankruptcy was the appropriate course.³⁴⁵

The Government representatives on the call included SEC general counsel Brian Cartwright and Allen Beller of Cleary, Gottlieb, who was representing the Treasury Department.³⁴⁶ According to Baxter, the purpose of the call was to emphasize that a bankruptcy filing by LBHI "made sense" but that the ultimate decision was for the Board.³⁴⁷ Baxter told the Examiner that he made the point "that opening on Monday was not an option because of the chaos in the markets."³⁴⁸

The Board's initial reaction to the Government's call suggesting that Lehman declare bankruptcy was "anger."³⁴⁹ The Board discussed the advantages and

³⁴² Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 14, 2008), at p. 5 [LBEX-AM 003932].

³⁴³ *Id.*

³⁴⁴ Examiner's Interview of Thomas C. Baxter, Jr., May 20, 2009, at p. 11.

³⁴⁵ Examiner's Interview of Henry M. Paulson, Jr., June 25, 2009, at p. 21.

³⁴⁶ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 14, 2008) [LBEX-AM 003932].

³⁴⁷ Examiner's Interview of Thomas C. Baxter, Jr., May 20, 2009, at p. 11.

³⁴⁸ Examiner's Interview of Henry M. Paulson, Jr., June 25, 2009, at p. 21.

³⁴⁹ Examiner's Interview of John F. Akers, Apr. 22, 2009 at p. 13; Examiner's Interview of Jerry A. Grundhofer, Sept. 16, 2009, at p. 16.

disadvantages of a bankruptcy filing.³⁵⁰ It also discussed whether a delay in filing would allow time to plan and prepare Lehman to operate under Chapter 11 and prepare a more complete filing.³⁵¹ Miller, who was then Lehman's lead bankruptcy counsel, told the Examiner that he did not think the rushed filing had an adverse impact on the estate.³⁵² The Board felt at the time that one important consideration was the anticipated difficulty in meeting payment obligations on Monday.³⁵³ The Board questioned whether a substantial amount of the collateral pledged to JPMorgan could be recovered prior to filing.³⁵⁴ The Board also noted the Government's clear preference that Lehman file that night, the FRBNY's unwillingness to provide sufficient financing for Lehman and the ultimate inevitability of a bankruptcy filing under the circumstances.³⁵⁵ Lehman director Henry Kaufman was a proponent of "calling the Government's bluff" and opening on Monday,³⁵⁶ but ultimately the Board concluded that filing for bankruptcy immediately was the appropriate course of action.³⁵⁷

³⁵⁰ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 14, 2008), at p. 4 [LBEX-AM 003932].

³⁵¹ *Id.*

³⁵² Examiner's Interview of Harvey R. Miller, Apr. 23, 2009, at p. 9.

³⁵³ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 14, 2008), at p. 5 [LBEX-AM 003932].

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ Examiner's Interview of Henry Kaufman, Sept. 2, 2009, at p. 19.

³⁵⁷ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 14, 2008), at p. 5 [LBEX-AM 003932].

XI. SEPTEMBER 15, 2008

In the early hours of Monday, September 15, 2008, Weil Gotshal began filing for bankruptcy.³⁵⁸ Later that morning, after some confusion, JPMorgan agreed to continue clearing for Lehman.³⁵⁹ During the course of the day, Lehman renewed discussions with Barclays regarding a Section 363 sale in Lehman's bankruptcy case.³⁶⁰

A. Lehman Filed for Bankruptcy Protection

After discussion, upon a duly made and seconded motion, the Board unanimously resolved to file for bankruptcy protection under Chapter 11 of the Bankruptcy Code.³⁶¹ Weil Gotshal filed around 1:30 a.m. on Monday, September 15, 2008.³⁶²

B. JPMorgan's Clearing Activities

Over Sunday night and into Monday morning, JPMorgan became concerned about Lehman's requests for JPMorgan to release Lehman collateral.³⁶³ JPMorgan used the Lehman collateral to secure non-intraday risk and JPMorgan's extension of intraday

³⁵⁸ Examiner's Interview of Harvey R. Miller, Apr. 23, 2009, at p. 9.

³⁵⁹ E-mail from Jane Buyers-Russo, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 15, 2008) [JPM-2004 0055008].

³⁶⁰ Transcript of deposition testimony of Herbert H. McDade, III, *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y., Sept. 2, 2009) at p. 16; *see also* Transcript of deposition testimony of Michael Klein, *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y. Sept. 12, 2009), at pp. 38-39.

³⁶¹ Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 14, 2008) [LBEX-AM 003936].

³⁶² Examiner's Interview of Harvey R. Miller, Apr. 23, 2009, at p. 9.

³⁶³ *See* e-mail from Barry L. Zubrow, JPMorgan, to Heidi Miller, JPMorgan, *et al.* (Sept. 15, 2008) [JPM-2004 0029745]. *See* Section III.C.6 of the Report which discusses JPMorgan's confusion over what trades to settle for Lehman on September 15, 2008 in greater detail.

credit to Lehman. JPMorgan was unwilling to release Lehman collateral if such action would leave JPMorgan under-collateralized. On that Monday morning, however, JPMorgan e-mails suggest that JPMorgan held excess Lehman collateral, and, according to those e-mails, JPMorgan denied to Lehman that JPMorgan held any such excess Lehman collateral.³⁶⁴ By 8:50 a.m. on Monday morning, Lehman's triparty borrowing was unwound.³⁶⁵ By mid-morning on Monday, the confusion was resolved, and JPMorgan clarified its position that "JPM [would] continue to act as the operating bank for [LBI] which include[d] being settlement bank for the various exchanges and the fed wire" but limited its aggregate exposure to \$1 billion.³⁶⁶

C. The FRBNY's Limitation on Acceptable Collateral

On September 15, 2008, the FRBNY confirmed that assets priced by Lehman were acceptable for the PDCF.³⁶⁷ Following Lehman's bankruptcy, Lehman relied on the PDCF for approximately \$30 billion in overnight financing it needed to repay its

³⁶⁴ See e-mail from Heidi Miller, JPMorgan, to Jamie L. Dimon, JPMorgan, *et al.* (Sept. 15, 2008) [JPM-2004 0054402-03] ("All we need to talk this morning about the calls Leh[man] has been making about having us return a portion of our excess collateral to [LBHI]. We have taken the position that the[re] is no excess but they have not yet accepted that. We should make sure our statements are consistent since I am sure you will soon get called as well").

³⁶⁵ See e-mail from Ed Corral, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 15, 2008) [JPM-2004 0054618].

³⁶⁶ E-mail from Jane Buyers-Russo, JPMorgan, to Barry L. Zubrow, JPMorgan, *et al.* (Sept. 15, 2008) [JPM-2004 0055008].

³⁶⁷ See e-mail from John N. Palchynsky, Lehman, to George V. VanSchaick, Lehman, *et al.* (Sept. 15, 2008) [LBEX-DOCID 118677] (stating JPMorgan had received oral confirmation from the Fed that Lehman priced assets were acceptable for the PDCF). See also e-mail from Ed Corral, JPMorgan, to Marco Brandimarte, JPMorgan (Sept. 15, 2008) [JPM-2004 0054468] (stating he believed the Fed had agreed to permit seller priced securities in the PDCF).

clearing banks.³⁶⁸ In addition to Lehman's PDCF borrowing, Lehman also funded its operations after the bankruptcy filing through two additional FRBNY programs, the Open Market Operations ("OMO") and the Term Securities Lending Facility ("TSLF"),³⁶⁹ and tri-party term repos that had not yet expired.³⁷⁰ The FRBNY's overnight financing of LBI began Monday evening, September 15, with Lehman borrowing approximately \$28 billion via the PDCF,³⁷¹ and continued through Thursday morning, September 18, 2008.³⁷²

D. Negotiations Between Lehman and Barclays

Post-bankruptcy negotiations between Barclays and Lehman began with a telephone call early Monday morning between McDade, McGee and Shafir, Lehman's

³⁶⁸ See e-mail from David Weisbrod, JPMorgan, to Jamie L. Dimon, JPMorgan, *et al.* (Sept. 15, 2008) [JPM-2004 0080146] (listing Lehman's triparty repo borrowing at \$51 billion (\$28 billion from the PDCF, \$2 billion from Barclays, and \$21 billion from other investors) for Monday). *Accord* Alvarez & Marsal, Summary of Meeting with James Hraska on 10/08/08 (Oct. 8, 2008), at pp. 1-4 (listing the FRBNY's funding of Lehman (via the PDCF, OMO, and TSLF) for the week following the LBHI petition).

³⁶⁹ Examiner's Interview of Christopher Burke, July 7, 2009, at p. 4; Alvarez & Marsal, Summary of Meeting with James W. Hraska on 10/08/08 (Oct. 8, 2008), at pp. 1-4.

³⁷⁰ See e-mail from David A. Weisbrod, JPMorgan, to Jamie L. Dimon, JPMorgan, *et al.* (Sept. 15, 2008) [JPM-2004 0080146] (listing \$21 billion in "mainly term repos" as part of LBI's triparty borrowing for September 15).

³⁷¹ See e-mail from Ed Corral, JPMorgan, to William Walsh, JPMorgan, *et al.* (Sept. 15, 2008) [JPM-2004 0031195] (notifying the Fed that the Lehman assets used in LBI's \$28 billion PDCF repo on Monday night satisfied the Friday criterion). Earlier on Monday, Lehman estimated that it would borrow up to \$35 billion through the PDCF on Monday night. See e-mail from Sindy Aprigliano, Lehman, to Robert Azerad, Lehman (Sept. 15, 2008) [LBEX-DOCID 1071653] (providing Feraca's PDCF estimate of \$27 billion plus a buffer of \$8 billion); e-mail from Robert Azerad, Lehman, to Susan McLaughlin, Lehman, *et al.* (Sept. 15, 2008) [LBEX-DOCID 071550] (estimating \$34 billion of PDCF borrowing); e-mail from Paolo R. Tonucci, Lehman, to Susan McLaughlin, Lehman, *et al.* (Sept. 15, 2008) [LBEX-DOCID 071550] (estimating \$28.3 billion for the collateral value of the PDCF borrowing).

³⁷² Examiner's Interview of Robert Azerad, Apr. 20, 2009, at p. 5.

Global Head of Mergers and Acquisitions, for Lehman, and Diamond, Christian del Messier and Michael Klein for Barclays.³⁷³

During that call, Diamond expressed concern about whether Barclays would be buying an intact business, given the media reports about Lehman employees leaving the headquarters building in droves.³⁷⁴ The Lehman executives responded that they were confident that, if the deal was done quickly enough, they could keep a large part of the business together and deliver it to Barclays.³⁷⁵ .

³⁷³ Transcript of deposition testimony of Herbert H. McDade, III, *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y., Sept. 2, 2009), at p. 16; *see also* Transcript of deposition testimony of Michael Klein, *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y., Sept. 12, 2009), at pp. 38-39.

³⁷⁴ Transcript of deposition testimony of Herbert H. McDade, III, *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y., Sept. 2, 2009), at p. 17.

³⁷⁵ *Id.* See Section III.C.6.c of the Report, which discusses post-bankruptcy negotiations in greater detail.

APPENDIX 16: VALUATION- RESIDENTIAL WHOLE LOANS

Appendix 16 provides Lehman’s detailed pricing data regarding residential whole loans (“RWL”) and the Intex output used to calculate the Examiner’s model prices for RWL discussed in the Report at Sections III.A.2.g. This analysis was prepared by Duff & Phelps, the Examiner’s financial advisor.

Minimum, Maximum and Weighted Average of Desk Prices for Lehman’s U.S. RWL Portfolio as of May 31, 2008¹

Type/Category	Number of Loans	Balance (US\$million)	Minimum Desk Price	Maximum Desk Price	Weighted Average Desk Price
Performing					
FHA/VA	1,999	154.0	88.4	102.5	99.9
High LTV	129	24.5	99.1	105.5	100.3
Home Express	12	1.3	0.7	105.0	95.7
Neg Am	594	228.5	60.1	95.6	93.8
Prime Fixed	2,532	456.0	0.7	104.1	84.1
Prime Hybrid Arms	4,188	1,229.7	0.1	110.9	93.3
Reverse Mortgages	4,104	618.1	93.7	104.2	99.2
Scratch & Dent	1,724	157.7	0.5	99.9	44.3
Subprime	2,052	87.5	1.4	101.0	55.4
Subprime 2nds	15,434	656.4	1.4	106.7	74.3
Non Performing					
FHA/VA	1,389	111.9	94.1	102.6	98.5
High LTV	2	0.1	100.0	101.6	100.7
Home Express	2	0.2	95.4	100.7	99.8
Neg Am	49	15.3	60.1	103.2	75.2
Prime Fixed	215	38.7	59.3	102.3	69.1
Prime Hybrid Arms	430	130.5	0.1	105.4	82.1
Scratch & Dent	2,361	225.0	0.5	74.4	42.8
Subprime	1,361	77.9	27.9	100.0	48.4
Subprime 2nds	6,357	229.0	0.6	94.6	50.3
Total	44,934	4,442.3	0.1	110.9	76.7

¹ Lehman, “New 05-30-08 WL Testing.xls,” tab “WL Testing Summary” [LBEX-BARFID 0006698].

**Minimum, Maximum and Weighted Average of Desk Prices for Lehman's RWL
Portfolio as of August 31, 2008²**

Type/Category	Number of Loans	Balance (US\$million)	Minimum Desk Price	Maximum Desk Price	Weighted Average Desk Price
Performing					
FHA/VA	492	46.6	80.7	102.1	95.7
High LTV	77	15.2	99.1	106.7	101.8
Home Express	11	0.9	0.7	106.0	68.6
Neg Am	534	159.8	57.4	92.6	72.5
Prime Fixed	1,584	253.4	44.4	101.9	69.3
Prime Hybrid Arms	2,098	402.2	46.0	107.5	61.4
Reverse Mortgages	4,267	648.3	92.6	104.6	97.5
Scratch & Dent	1,182	90.1	0.0	65.2	40.8
Subprime	1,880	56.6	1.4	101.0	41.0
Subprime 2nds	14,226	382.9	0.0	64.2	47.2
Intl. Resort Home	28	7.7	99.4	100.6	99.5
Lending					
Non-Performing					
FHA/VA	923	70.8	80.7	101.3	98.8
High LTV	2	0.1	100.0	101.5	100.6
Home Express	2	0.2	94.9	96.7	95.2
Neg Am	95	27.9	57.4	92.5	70.2
Prime Fixed	432	72.0	44.4	103.5	70.3
Prime Hybrid Arms	1,380	261.2	46.0	105.5	62.7
Scratch & Dent	1,680	141.3	0.0	65.2	40.4
Subprime	1,052	52.3	0.3	100.0	37.5
Subprime 2nds	5,652	114.4	0.0	61.8	30.0
Total	37,597	2,804.0	0.0	107.5	60.3

² Lehman, "08-29-08 WL population testing.xls" [LBEX-LL 1875677].

**Desk-to-Product Control Price Variances in Lehman's U.S. RWL Portfolio as of
May 31, 2008³**

Performing	Desk Price	Market Value - Desk (\$)	PC Price	Market Value - PC (\$)	Variance (\$)	Variance %
FHA/VA	99.9	153,964,556	99.0	152,540,383	(1,424,173)	-0.9%
High LTV	100.3	24,487,002	89.0	21,720,084	(2,766,917)	-11.3%
Home Express	95.7	1,275,622	89.0	1,185,935	(89,687)	-7.0%
Neg Am	93.8	228,541,687	89.0	216,775,393	(11,766,294)	-5.1%
PRIME FIXED	84.1	456,043,313	89.0	482,532,457	26,489,144	5.8%
Prime Hybrid Arms	93.3	1,229,652,468	89.0	1,172,384,322	(57,268,146)	-4.7%
Reverse Mortgages	99.2	618,084,216	100.8	628,328,194	10,243,978	1.7%
Scratch & Dent	44.3	157,878,116	49.3	175,701,281	17,823,165	11.3%
Subprime	55.4	87,350,807	65.0	102,526,712	15,175,905	17.4%
Subprime 2nds	74.3	656,402,926	65.0	574,144,389	(82,258,537)	-12.5%
Non-Performing						
FHA/VA	98.5	111,916,289	99.0	112,479,608	563,319	0.5%
High LTV	100.7	135,053	49.3	66,141	(68,913)	-51.0%
Home Express	99.8	230,976	49.3	114,138	(116,838)	-50.6%
Neg Am	75.2	15,301,109	49.3	10,034,945	(5,266,164)	-34.4%
PRIME FIXED	69.1	38,688,490	49.3	27,621,373	(11,067,117)	-28.6%
Prime Hybrid Arms	82.1	130,492,841	49.3	78,393,892	(52,098,949)	-39.9%
Scratch & Dent	42.9	227,731,674	49.3	261,713,325	33,981,651	14.9%
Subprime	48.2	75,111,235	49.3	76,803,363	1,692,128	2.3%
Subprime 2nds	50.3	229,009,341	49.3	224,429,685	(4,579,656)	-2.0%
Total		4,442,297,721		4,319,495,620	(122,802,101)	-2.8%

³ Lehman, "Pricing Package May 08.xls" [LBEX-BARFID 0006591].

**Desk-to-Product Control Price Variances in Lehman's U.S. RWL Portfolio as of
August 31, 2008⁴**

Performing	Desk Price	Market Value – Desk (\$)	PC Price	Market Value - PC (\$)	Variance (\$)	Variance %
FHA/VA	95.7	46,571,730	95.7	46,571,730	(0)	0.0%
High LTV	101.8	15,204,055	66.3	9,900,523	(5,303,531)	-34.9%
Home Express	68.6	859,853	66.3	831,320	(28,533)	-3.3%
Neg Am	72.5	159,819,347	66.3	146,180,221	(13,639,126)	-8.5%
PRIME FIXED	69.3	253,393,137	66.3	242,443,574	(10,949,564)	-4.3%
Prime Hybrid Arms	61.4	402,167,481	66.3	434,037,761	31,870,280	7.9%
Reverse Mortgages	97.5	648,314,615	97.5	648,314,615	0	0.0%
Scratch & Dent	40.8	90,142,670	50.3	110,944,103	20,801,433	23.1%
Subprime	41.0	56,627,784	50.3	69,323,442	12,695,658	22.4%
Subprime 2nds	47.2	382,920,071	50.3	407,452,063	24,531,992	6.4%
International Resort Home Lending	99.5	7,689,612	80.0	6,180,318	(1,509,294)	-19.6%
Non-Performing						
FHA/VA	98.8	70,835,419	95.7	68,641,782	(2,193,637)	-3.1%
High LTV	100.6	134,795	50.3	67,319	(67,475)	-50.1%
Home Express	95.2	220,374	50.3	116,337	(104,036)	-47.2%
Neg Am	70.2	27,894,489	50.3	19,974,080	(7,920,409)	-28.4%
PRIME FIXED	70.3	71,987,226	50.3	51,463,603	(20,523,623)	-28.5%
Prime Hybrid Arms	62.7	261,247,198	50.3	209,464,944	(51,782,254)	-19.8%
Scratch & Dent	40.4	141,278,269	50.3	175,891,345	34,613,076	24.5%
Subprime	37.5	52,251,513	50.3	70,073,927	17,822,414	34.1%
Subprime 2nds	30.0	114,441,227	30.0	114,388,799	(52,428)	0.0%
Total		2,804,000,865		2,832,261,807	28,260,942	1.0%

⁴ Lehman, "Pricing Package Aug 08.xls," tab "Whole Loans" [LBEX-BARFID 0006669].

Desk-to-Examiner Price Variances in Lehman's U.S. RWL Portfolio as of May 31, 2008

A total of \$4.4 billion of U.S. RWL assets were tested by Lehman's Product Control group and the Examiner's financial advisor. While there were some significant variances, the Examiner's financial advisor found Lehman's valuation to be in aggregate within a range of reasonableness. The following table contains the loan types where the Examiner's financial advisor had a significant variance with Lehman marks.

Loan Type	LEH mark	Examiner's mark	LEH MTM (\$)	Examiner MTM (\$)	Difference (\$)
Prime-Hybrid ARMs	93.3	81.1	1,229,652,468	1,067,660,105	161,992,363
Prime-Fixed	84.1	80.1	456,043,313	434,279,212	21,764,102
Subprime	55.4	55.4	87,350,807	87,384,305	-33,498
Subprime 2nds	74.3	55.4	656,402,926	489,347,679	167,055,247
Scratch & Dent	44.3	55.4	157,878,116	197,441,196	-39,563,080
Alt A	93.8	67.6	228,541,687	164,530,088	64,011,599
Total			2,815,869,318	2,440,642,584	375,226,733

Total Market Value of tested population	\$4.4 Billion
Total Variance of tested population	\$375,226,733

The Examiner's financial advisor's marks are the average of the prices for the two respective deals from each category per the table below:

LOAN TYPE	REPRESENTATIVE DEALS	PRICE
Prime – Hybrid ARMs	SARM 2008 – 02	80.0
	SARM 2007-09	82.1
	Average	81.1
Prime - Fixed	LMT 2006-03	79.0
	LMT 2006-04	81.2
	Average	80.1
Sub Prime	SASCO 2007-BC4	54.7
	SASCO 2007-BNC1	56.1
	Average	55.4
Alt A	Lehman XS Trust 07-10H	66.5
	Lehman XS Trust 2007 – 17H	68.6
	Average	67.6

As discussed in the Report at Section III.A.2.g.4.f, the assumptions used in estimating the prices for each tranche of the representative deal are as follows:

Product Type	Prepayment Rate	Default Rate	Loss Severity (1st/2nd Lien)	Resulting Losses	Yield
Prime	15%	5%	50% / 100%	High single digits	10%
Alt-A	10%	10%	50% / 100%	High teens – Low 20s	15%
Subprime	5%	15%	50% / 100%	Mid 30s	20%

The output for each of the deals was run through Intex, and the weightings used

to estimate the price from each deal are provided below.

Prime Hybrid Arms (Deal 1): SARM 2008-02

Tranche	Cusip	Type	Coupon	Float Formula	Original Rating:	Current Rating:	Original	Current	Weight	Price
					Moody's/S&P/Fitch/Dom	Moody's/S&P/Fitch/Dom	Balance	Balance		
							(1000s)	(1000s)		
A1	86365BAA1	SEN_SPR_FLT	4.2219	LIBOR_1MO + 1.75	NA/AAA/NA/AAA		129,668	120,966	70.0%	87.4
A21	86365BAC7	SEN_SPR_WAC	6.4217		NA/AAA/NA/AAA		14,761	13,456	8.0%	92.2
A22	86365BAD5	SEN_SPR_WAC	6.4217		NA/AAA/NA/AAA		4,689	4,689	2.5%	73.9
A31	86365BAE3	SEN_SUP_WAC	6.4217		NA/AAA/NA/AAA		14,058	12,815	7.6%	92.2
A32	86365BAF0	SEN_SUP_WAC	6.4217		NA/AAA/NA/AAA		4,466	4,466	2.4%	55.2
R	86365BAP8	SEN_WAC	6.4217		NA/AAA/NA/AAA		-	-	0.0%	99.3
A1X	86365BAB9	SEN_WAC_IO	2.1999		NA/AAA/NA/AAA		129,668	120,966	0.0%	2.3
B1	86365BAL7	JUN_WAC	6.4217		NA/AA/NA/AA		6,668	6,666	3.6%	24.6
B2	86365BAM5	JUN_WAC	6.4217		NA/A/NA/A		3,150	3,149	1.7%	13.7
B3	86365BAN3	JUN_WAC	6.4217		NA/BBB/NA/BBB		2,222	2,221	1.2%	8.9
B4	86365BAQ6	JUN_WAC_NO	6.4217				2,131	2,130	1.2%	5.3
B5	86365BAR4	JUN_WAC_NO	6.4217				1,759	1,758	0.9%	2.3
B6	86365BAS2	JUN_WAC_NO	6.4217				1,668	1,667	0.9%	0.0
A2	86365BAG8	SEN_SPR_WAC	6.4217		NA/AAA/NA/AAA		19,450	18,145	0.0%	87.8
A3	86365BAH6	SEN_SUP_WAC	6.4217		NA/AAA/NA/AAA		18,524	17,281	0.0%	83.3
A4	86365BAJ2	SEN_SPR_WAC	6.4217		NA/AAA/NA/AAA		28,819	26,270	0.0%	92.2
A5	86365BAK9	SEN_SPR_WAC	6.4217		NA/AAA/NA/AAA		9,155	9,155	0.0%	64.8
AP	86365BAT0	JUN_PEN_NO	0				185,240	173,983	0.0%	0.0

FINAL PRICE 80.0

Prime Hybrid Arms (Deal 2): SARM 2007-09

Tranche	CUSIP	Type	Coupon	Original Rating:	Current Rating:	Original	Current	Weight	Price	
				Moody's/S&P/Fitch	Moody's/S&P/Fitch	Balance	Balance			
							(1000s)	(1000s)		
1A1	86364JAA5	SEN_SPR_FLT	6	NA/AAA/AAA	NA/NA/A	155,395	136,370	29.2%	88.4	
1A2	86364JAB3	SEN_SUP_FLT	6	NA/AAA/AAA	NA/NA/BB	17,266	15,152	3.2%	88.4	
1AX	86364JAC1	SEN_FLT_IO	0.5	NA/AAA/AAA	NA/NA/AAA	172,661	151,522	0.0%	1.1	
M1	86364JAG2	MEZ_WAC	6.6435	NA/AA+/AA+	NA/NA/B	4,963	4,963	0.9%	62.9	
M2	86364JAH0	MEZ_WAC	6.6435	NA/AA+/AA	NA/NA/B	2,481	2,481	0.5%	33.1	
M3	86364JAJ6	MEZ_WAC	6.6435	NA/AA/AA-	NA/NA/CCC	1,432	1,432	0.3%	25.4	
M4	86364JAK3	MEZ_WAC	6.6435	NA/AA-/A	NA/NA/CC	2,577	2,577	0.5%	18.9	
M5	86364JAL1	MEZ_WAC	6.6435	NA/A/A-	NA/NA/CC	955	955	0.2%	13.9	
M6	86364JAM9	MEZ_WAC	6.6435	NA/A-/BBB	NA/NA/CC	1,240	1,240	0.2%	11.1	
M7	86364JAN7	JUN_WAC	6.6435	NA/BBB-/BBB-	NA/NA/C	1,145	1,145	0.2%	8.3	
X	SARVW7PX0	JUN_OC_NO	0			190,891	169,751	0.0%	0.0	
2A1	86364JAD9	SEN_SPR_WAC	5.9962	NA/AAA/AAA	NA/NA/AA	290,870	263,562	54.7%	87.3	
2A2	86364JAE7	SEN_SUP_WAC	6.4928	NA/AAA/AAA	NA/NA/BB	32,319	29,285	6.1%	71.1	
2AX	86364JAF4	SEN_FLT_IO	0.4966	NA/AAA/AAA	NA/NA/AAA	290,870	263,562	0.0%	1.2	
RII	86364JAS6	SEN_WAC_NO	6.4928	NA/AAA/AAA	NA/NA/AAA	-	-	0.0%	0.0	
2B1	86364JAP2	JUN_WAC	6.4928	NA/AA/NA		11,714	11,682	2.2%	13.0	
2B2	86364JAQ0	JUN_WAC	6.4928	NA/A/NA		2,756	2,748	0.5%	5.7	
2B3	86364JAR8	JUN_WAC	6.4928	NA/BBB/NA		1,378	1,374	0.3%	3.8	
2B4	86364JAT4	JUN_WAC_NO	6.4928			1,722	1,717	0.3%	2.4	
2B5	86364JAU1	JUN_WAC_NO	6.4928			1,722	1,717	0.3%	1.0	
2B6	86364JAV9	JUN_WAC_NO	6.4928			2,070	1,501	0.4%	0.0	
1AP	86364JAW7	JUN_PEN_NO	0		NA/NA/AAA	190,891	169,751	0.0%	0.0	
2AP	86364JAX5	JUN_PEN_NO	0		NA/NA/AAA	344,551	313,587	0.0%	0.0	
C	SARLEKMX0	NPR_NPR_NO	0			-	-	0.0%	0.0	

FINAL PRICE 82.1

Prime Fixed (Deal 1): LMT 2006-03

Tranche	CUSIP	Type	Coupon	Float Formula	Original Rating: Moody's/S&P/Fitch	Current Rating: Moody's/S&P/Fitch	Original Balance (1000s)	Current Balance (1000s)	Weight	Price
AP	52520CAU9	SEN_CPT_XRS_PO	0		Aaa/AAA/AAA	Aaa/NA/A	343	337	0.1%	67.8
AX	52520CAV7	SEN_CPT_NTL_IO_WAC_IO	6		Aaa/AAA/AAA		190	146	0.0%	18.3
2A1	52520CAS4	SEN_FLT	2.8219	LIBOR_1MO + 0.35	Aaa/AAA/AAA	A1/NA/A	123,201	87,698	23.5%	81.8
2A2	52520CAT2	SEN_INV_IO	4.6781	7.15 - LIBOR_1MO	Aaa/AAA/AAA	A1/NA/AAA	123,201	87,698	0.0%	9.5
R	52520CBB0	SEN_RES_FIX	7.5		Aaa/AAA/AAA	Aaa/NA/AAA	-	-	0.0%	0.0
1A1	52520CAD7	SEN_SPR_NAS_FIX	6		Aaa/AAA/AAA	Aaa/NA/AAA	26,956	26,956	5.1%	77.2
1A2	52520CAE5	SEN_PAC_FIX	6		Aaa/AAA/AAA	Aa2/NA/A	20,000	17,153	3.8%	86.9
1A3	52520CAF2	SEN_PAC_FIX	6		Aaa/AAA/AAA	Aa2/NA/A	11,145	6,145	2.1%	93.5
1A4	52520CAG0	SEN_FIX	6		Aaa/AAA/AAA	Aa2/NA/A	92,679	68,357	17.7%	89.6
1A5	52520CAH8	SEN_FIX	6		Aaa/AAA/AAA	Aa2/NA/A	3,862	3,862	0.7%	72.0
1A6	52520CAJ4	SEN_TAC_FLT_AD	3.0719	LIBOR_1MO + 0.60	Aaa/AAA/AAA	Aa2/NA/A	30,000	22,775	5.7%	83.8
1A7	52520CAK1	SEN_INV_IO	2.9281	5.40 - LIBOR_1MO	Aaa/AAA/AAA	Aa2/NA/AAA	30,000	22,775	0.0%	3.6
1A8	52520CAL9	SEN_FLT	3.0719	LIBOR_1MO + 0.60	Aaa/AAA/AAA	Aa2/NA/A	50,000	37,403	9.5%	85.5
1A9	52520CAM7	SEN_INV_IO	2.9281	5.40 - LIBOR_1MO	Aaa/AAA/AAA	Aa2/NA/AAA	50,000	37,403	0.0%	3.5
1A10	52520CAN5	SEN_SPR_PAC_FIX	6		Aaa/AAA/AAA	Aaa/NA/AAA	24,316	20,152	4.6%	91.0
1A11	52520CAP0	SEN_FIX_Z_CMP	6		Aaa/AAA/AAA	Aa2/NA/A	5,930	3,751	1.1%	64.8
1A12	52520CAQ8	SEN_SPR_PAC_FIX	6		Aaa/AAA/AAA	Aaa/NA/AAA	3,112	3,112	0.6%	75.2
1A13	52520CAR6	SEN_SUP_NAS_FIX	6		Aa1/AAA/AAA	Aa3/NA/A	4,400	4,400	0.8%	56.6
3A1	52520CAA3	SEN_SPR_FLT	2.8219	LIBOR_1MO + 0.35	Aaa/AAA/AAA	Aaa/NA/AAA	85,000	62,526	16.2%	82.5
3A2	52520CAB1	SEN_FLT	2.8219	LIBOR_1MO + 0.35	Aaa/AAA/AAA	Aa3/NA/A	6,808	5,008	1.3%	72.7
3A3	52520CAC9	SEN_FLT_IO	4.6781	7.15 - LIBOR_1MO	Aaa/AAA/AAA	Aaa/NA/AAA	91,808	67,534	0.0%	9.4
M	52520CAW5	JUN_WAC	6.6403		Aa2/AA+/AA+	Ba3/NA/B	12,573	12,409	2.4%	23.5
B1	52520CAX3	JUN_WAC	6.6403		NR/NR/AA	NR/NA/CCC	8,382	8,273	1.6%	12.8
B2	52520CAY1	JUN_WAC	6.6403		NR/NR/A	NR/NA/CC	4,977	4,912	0.9%	7.0
B3	52520CAZ8	JUN_WAC	6.6403		NR/NR/BBB	NR/NA/C	3,929	3,878	0.7%	3.5
B4	52520CBA2	JUN_WAC	6.6403		NR/NR/BBB-	NR/NA/C	786	776	0.2%	1.6
B5	52520CBC8	JUN_WAC_NO	6.6403			NR/NA/C	1,834	1,810	0.4%	0.7
B6	52520CBD6	JUN_WAC_NO	6.6403			NR/NA/C	1,834	1,814	0.4%	0.0
B7	52520CBE4	JUN_WAC_NO	6.6403			NR/NA/NA	1,833	194	0.3%	0.0

FINAL PRICE 79.0

Prime Fixed (Deal 2): LMT 2006-04

Tranche	CUSIP	Type	Coupon	Float Formula	Original Rating: Moody's/S&P/Fitch	Current Rating: Moody's/S&P/Fitch	Original Balance (1000s)	Current Balance (1000s)	Weight	Price
AP1	52520RAK8	SEN_XRS_PO	0		Aaa/AAA/AAA	Aaa/NA/A	1,390	1,246	0.3%	67.4
AX1	52520RAM4	SEN_WAC_IO	6		Aaa/AAA/AAA	Aaa/NA/AAA	505	-	0.0%	6.6
AP2	52520RAL6	SEN_XRS_PO	0		NA/AAA/AAA	NR/NA/AA	172	102	0.0%	73.1
AX2	52520RAN2	SEN_WAC_IO	6		NA/AAA/AAA	NR/NA/AAA	600	359	0.0%	0.0
1A1	52520RAA0	SEN_NAS_FIX	6		Aaa/AAA/AAA	Aaa/NA/A	8,824	8,678	2.0%	77.0
1A2	52520RAB8	SEN_FLT	3.0719	LIBOR_1MO + 0.60	Aaa/AAA/AAA	Aaa/NA/A	50,000	38,411	11.4%	84.2
1A3	52520RAC6	SEN_INV_IO	2.9281	5.40 - LIBOR_1MO	Aaa/AAA/AAA	Aaa/NA/AAA	50,000	38,411	0.0%	3.6
1A4	52520RAD4	SEN_FIX	6		Aaa/AAA/AAA	Aaa/NA/A	28,481	22,800	6.5%	85.6
2A1	52520RAE2	SEN_FLT	2.8719	LIBOR_1MO + 0.40	Aaa/AAA/AAA	Aaa/NA/A	88,640	66,009	20.2%	81.5
2A2	52520RAF9	SEN_INV_IO	4.6281	7.10 - LIBOR_1MO	Aaa/AAA/AAA	Aaa/NA/AAA	88,640	66,009	0.0%	10.2
1B1	52520RAP7	JUN_WAC	6.7284		NA/NA/AA	NR/NA/CCC	6,354	6,263	1.4%	18.1
1B2	52520RAQ5	JUN_WAC	6.7284		NA/NA/A	NR/NA/CC	1,991	1,962	0.5%	7.6
1B3	52520RAR3	JUN_WAC	6.7284		NA/NA/BBB	NR/NA/C	1,517	1,495	0.3%	4.2
1B4	52520RAW2	JUN_WAC_NO	6.7284			NR/NA/C	1,043	1,028	0.2%	1.8
1B5	52520RAX0	JUN_WAC_NO	6.7284			NR/NA/C	759	708	0.2%	0.1
1B6	52520RAY8	JUN_WAC_NO	6.7284			NR/NA/NA	664	-	0.2%	0.0
R	52520RAV4	SEN_FIX_RES	5		NA/AAA/AAA	NR/NA/AAA	-	-	0.0%	0.0
3A1	52520RAG7	SEN_FIX	5		NA/AAA/AAA	NR/NA/AA	43,050	31,193	9.8%	83.4
4A1	52520RAH5	SEN_FIX	6		NA/AAA/AAA	NR/NA/AA	133,430	93,738	30.4%	85.9
5A1	52520RAJ1	SEN_FIX	6.5		NA/AAA/AAA	NR/NA/AA	66,337	40,446	15.1%	87.1
2B1	52520RAS1	JUN_WAC	5.9556		NA/NA/AA	NR/NA/B	3,872	3,508	0.9%	10.9
2B2	52520RAT9	JUN_WAC	5.9556		NA/NA/A	NR/NA/CCC	999	905	0.2%	4.9
2B3	52520RAU6	JUN_WAC	5.9556		NA/NA/BBB	NR/NA/CC	624	565	0.1%	3.0
2B4	52520RAZ5	JUN_WAC_NO	5.9556			NR/NA/C	499	452	0.1%	1.7
2B5	52520RBA9	JUN_WAC_NO	5.9556			NR/NA/C	375	340	0.1%	0.7
2B6	52520RBB7	JUN_WAC_NO	5.9556			NR/NA/NA	375	211	0.1%	0.0
X	LMT2EAMC0	JUN_RES_NO	0				50,000	29,717	0.0%	0.0

FINAL PRICE 81.2

Alt-A (Deal 1): LXS 2007-10H

Tranche	CUSIP	Type	Coupon	Float Formula	Original	Current	Original Balance (1000s)	Current Balance (1000s)	Weight	Price
					Moody's/S&P/Fitch	Moody's/S&P/Fitch				
IAIO	525237AF0	SEN_INV_IO	3.7781	6.25 - LIBOR_1MO	Aaa/AAA/NA	Baa1/NA/NA	657,339	567,516	0.0%	5.3
IA11	525237BF9	SEN_SPR_FLT	2.5919	LIBOR_1MO + 0.12	Aaa/AAA/NA	Baa1/NA/NA	370,108	291,347	38.4%	82.5
IA12	525237BG7	SEN_SPR_FLT	2.5619	LIBOR_1MO + 0.09	Aaa/AAA/NA	Baa1/NA/NA	10,000	7,872	1.0%	82.5
IA2	525237AB9	SEN_SPR_FLT	2.6919	LIBOR_1MO + 0.22	Aaa/AAA/NA	Baa2/NA/NA	142,759	142,759	14.8%	57.6
IA3	525237AC7	SEN_SPR_FLT	2.7519	LIBOR_1MO + 0.28	Aaa/AAA/NA	Baa2/NA/NA	68,738	68,738	7.1%	43.0
IA41	525237BH5	SEN_SUP_FLT	2.6719	LIBOR_1MO + 0.20	Aaa/AAA/NA	Baa1/NA/NA	56,034	48,419	5.8%	70.7
IA42	525237BJ1	SEN_SUP_FLT	2.7919	LIBOR_1MO + 0.32	Aaa/AAA/NA	Caa2/NA/NA	9,700	8,382	1.0%	70.8
IM1	525237AG8	MEZ_FLT	2.9219	LIBOR_1MO + 0.45	Aa1/AA+/NA	Ca/NA/NA	24,161	24,161	2.5%	24.6
IM2	525237AH6	MEZ_FLT	3.0219	LIBOR_1MO + 0.55	Aa2/AA/NA	Ca/NA/NA	13,039	13,039	1.4%	16.7
IM3	525237AJ2	MEZ_FLT	3.2219	LIBOR_1MO + 0.75	Aa3/AA/NA	C/NA/NA	8,053	8,053	0.8%	13.4
IM4	525237AK9	MEZ_FLT	3.4719	LIBOR_1MO + 1.00	A1/AA-/NA	C/NA/NA	7,286	7,286	0.8%	11.8
IM5	525237AL7	MEZ_FLT	3.7219	LIBOR_1MO + 1.25	A2/A+/NA	C/NA/NA	7,670	7,670	0.8%	10.1
IM6	525237AM5	MEZ_FLT	4.2219	LIBOR_1MO + 1.75	A3/A/NA	C/NA/NA	6,136	6,136	0.6%	9.2
IM7	525237AN3	MEZ_FLT	4.4719	LIBOR_1MO + 2.00	Baa1/A-/NA	C/NA/NA	6,519	6,519	0.7%	7.9
IM8	525237AP8	MEZ_FLT	4.4719	LIBOR_1MO + 2.00	Baa2/BBB+/NA	C/NA/NA	4,985	4,985	0.5%	6.5
IM9	525237AQ6	JUN_FLT	4.4719	LIBOR_1MO + 2.00	Baa3/BBB/NA	C/NA/NA	4,985	4,985	0.5%	5.4
IX	LXSHPCJU0	JUN_OC_RES_NO	0				767,024	664,338	0.0%	0.0
IP	LXS4J0QT0	JUN_PEN_NO	0				767,024	664,338	0.0%	0.3
IIAIO	525237AV5	SEN_INV_IO	4.5281	7.00 - LIBOR_1MO	Aaa/AAA/NA	Aaa/NA/NA	156,082	106,497	0.0%	6.9
IIA1	525237AR4	SEN_SPR_FLT	2.6319	LIBOR_1MO + 0.16	Aaa/AAA/NA	Aaa/NA/NA	92,263	62,953	9.6%	75.0
IIA2	525237AS2	SEN_SPR_FIX_CAP	7.5		Aaa/AAA/NA	Aaa/NA/NA	34,000	23,199	3.5%	82.8
IIA3	525237AT0	SEN_SPR_SUP_FLT	2.7719	LIBOR_1MO + 0.30	Aaa/AAA/NA	Aaa/NA/NA	44,811	30,575	4.6%	75.3
IIA4	525237AU7	SEN_SUP_FLT	2.9219	LIBOR_1MO + 0.45	Aaa/AAA/NA	Aa2/NA/NA	19,008	12,969	2.0%	75.7
IIM1	525237AW3	MEZ_FLT	3.1219	LIBOR_1MO + 0.65	Aa1/AA+/NA	Baa1/NA/NA	5,394	5,394	0.6%	48.9
IIM2	525237AX1	MEZ_FLT	3.1719	LIBOR_1MO + 0.70	Aa2/AA+/NA	Ba3/NA/NA	4,820	4,820	0.5%	46.6
IIM3	525237AY9	MEZ_FLT	3.3219	LIBOR_1MO + 0.85	Aa3/AA+/NA	B3/NA/NA	2,869	2,869	0.3%	45.3
IIM4	525237AZ6	MEZ_FLT	3.3719	LIBOR_1MO + 0.90	NA/AA/NA	NR/NA/NA	7,805	7,805	0.8%	38.2
IIM5	525237BA0	MEZ_FLT	3.7219	LIBOR_1MO + 1.25	NA/AA-/NA	NR/NA/NA	1,951	1,951	0.2%	25.4
IIM6	525237BB8	MEZ_FLT	4.2219	LIBOR_1MO + 1.75	NA/A/NA	NR/NA/NA	4,591	4,591	0.5%	20.6
IIM7	525237BC6	MEZ_FLT	4.2219	LIBOR_1MO + 1.75	NA/A-/NA	NR/NA/NA	1,492	1,492	0.2%	15.1
IIM8	525237BD4	MEZ_FLT	4.2219	LIBOR_1MO + 1.75	NA/BBB/NA	NR/NA/NA	3,443	3,443	0.4%	11.3
IIM9	525237BE2	JUN_FLT	4.2219	LIBOR_1MO + 1.75	NA/BBB-/NA	NR/NA/NA	1,721	1,721	0.2%	7.6
IIX	LXSXOP780	JUN_OC_RES_NO	0				229,570	167,707	0.0%	
IIP	LXSJ845G0	JUN_PEN_NO	0				229,570	167,707	0.0%	
ILTR	LXSU0AD20	NPR_NPR_NO	0				-	-	0.0%	
IILTR	LXSFMRAE0	NPR_NPR_NO	0				-	-	0.0%	
IR	LXS4O3BG0	NPR_NPR_NO	0				-	-	0.0%	
IIR	LXSGSF430	NPR_NPR_NO	0				-	-	0.0%	
IA12_FEE	LXSSKP0D0	SEN_FEE	0.07				10,000	7,872	0.0%	
IA41_FEE	LXSISE040	SEN_FEE	0.13				56,034	48,419	0.0%	
IIA1_FEE	LXSHBD460	SEN_FEE	0.08				92,263	62,953	0.0%	

FINAL PRICE 66.5

Alt-A (Deal 2): LXS 2007-17H

Tranche	CUSIP	Type	Coupon	Float Formula	Original Rating: Moody's/S&P/Fitch	Current Rating: Moody's/S&P/Fitch	Original Balance (1000s)	Current Balance (1000s)	Weight	Price
A1	52525PAA9	SEN_FLT	3.2719	LIBOR_1MO + 0.80	Aaa/AAA/AAA	Aa3/NA/AAA	527,987	441,178	78.5%	77.5
AIO	52525PAC5	SEN_IO	1.75		Aaa/AAA/AAA	Aaa/NA/AAA	527,987	441,178	0.0%	3.3
M0	52525PAP6	MEZ_FLT	3.5719	LIBOR_1MO + 1.10	NA/AAA/AAA	NR/NA/AAA	45,761	45,761	6.8%	51.1
M1	52525PAD3	MEZ_FLT	3.7219	LIBOR_1MO + 1.25	NA/AA+/AA+	NR/NA/A	44,703	44,703	6.6%	40.7
M2	52525PAE1	MEZ_FLT	3.9719	LIBOR_1MO + 1.50	NA/AA/AA+	NR/NA/BBB	17,600	17,600	2.6%	25.4
M3	52525PAF8	MEZ_FLT	4.2219	LIBOR_1MO + 1.75	NA/AA-/AA	NR/NA/BB	6,687	6,687	1.0%	21.6
M4	52525PAG6	MEZ_FLT	4.4719	LIBOR_1MO + 2.00	NA/A+/AA-	NR/NA/BB	8,095	8,095	1.2%	19.7
M5	52525PAH4	MEZ_FLT	4.4719	LIBOR_1MO + 2.00	NA/A/A+	NR/NA/BB	6,687	6,687	1.0%	16.9
M6	52525PAJ0	MEZ_FLT	4.4719	LIBOR_1MO + 2.00	NA/A-/A	NR/NA/BB	5,631	5,631	0.8%	14.6
M7	52525PAK7	MEZ_FLT	4.4719	LIBOR_1MO + 2.00	NA/BBB+/A-	NR/NA/B	5,631	5,631	0.8%	12.7
M8	52525PAL5	JUN_FLT	4.4719	LIBOR_1MO + 2.00	NA/BBB/BBB+	NR/NA/B	4,218	4,218	0.6%	11.0
X	LXSOPD5O0	JUN_OC_NPR_NPR_NO	0				703,985	616,647	0.0%	
LTR	LXSJYKLN1	JUN_RES_NO	0				703,985	616,647	0.0%	
R	LXSFL0D80	JUN_RES_NO	0				703,985	616,647	0.0%	
P	LXSXOXQB0	JUN_PEN_NO	0				703,985	616,647	0.0%	

FINAL PRICE 68.6

Subprime (Deal 1): SASCO 2007-BC4

Tranche	Cusip	Type	Coupon	Float Formula	Original Rating: Moody's/S&P/Fitch/Dom	Current Rating: Moody's/S&P/Fitch/Dom	Original Balance (1000s)	Current Balance (1000s)	Weight	Price
A1	86365DAA7	SEN_FLT	3.0225	LIBOR_1MO + 0.63	Aaa/AAA/NA/AAA	Aaa/NA/NA/NA	427,894	401,951	33.4%	69.9
A2	86365DAB5	SEN_FLT	2.8925	LIBOR_1MO + 0.50	NA/AAA/NA/AAA		20,765	20,765	1.6%	36.8
A3	86365DAC3	SEN_FLT	2.6425	LIBOR_1MO + 0.25	Aaa/AAA/NA/AAA	Aaa/NA/NA/NA	273,418	249,062	21.4%	82.3
A4	86365DAD1	SEN_FLT	2.8925	LIBOR_1MO + 0.50	NA/AAA/NA/AAA		210,126	210,126	16.4%	50.7
M1	86365DAH2	MEZ_FLT	2.8925	LIBOR_1MO + 0.50	NA/AA+/NA/AA (high)		71,255	71,255	5.6%	31.8
M2	86365DAN9	MEZ_FLT	2.8925	LIBOR_1MO + 0.50	NA/AA/NA/AA		54,259	54,259	4.2%	24.6
M3	86365DAP4	MEZ_FLT	2.8925	LIBOR_1MO + 0.50	NA/AA-/NA/AA (low)		25,495	25,495	2.0%	20.0
M4	86365DAQ2	MEZ_FLT	2.8925	LIBOR_1MO + 0.50	NA/A+/NA/A (high)		25,495	25,495	2.0%	17.5
M5	86365DAR0	MEZ_FLT	2.8925	LIBOR_1MO + 0.50	NA/A/NA/A		26,149	26,149	2.0%	15.1
M6	86365DAS8	MEZ_FLT	2.8925	LIBOR_1MO + 0.50	NA/A-/NA/A (low)		21,573	21,573	1.7%	13.1
M7	86365DAT6	MEZ_FIX_CAP	5		NA/BBB+/NA/BBB (high)		17,650	17,650	1.4%	12.8
M8	86365DAU3	MEZ_FIX_CAP	5		NA/BBB/NA/BBB		15,689	15,689	1.2%	11.6
M9	86365DAV1	MEZ_FIX_CAP	5		NA/BBB-/NA/BBB (low)		15,689	15,689	1.2%	10.3
B1	86365DAY5	MEZ_FIX_CAP	5		NR/NR/NA/NR		20,919	20,919	1.6%	8.4
B2	86365DAZ2	MEZ_FIX_CAP	5		NR/NR/NA/NR		16,343	16,343	1.3%	6.7
B3	86365DBA6	JUN_FIX_CAP	5		NR/NR/NA/NR		36,608	36,608	2.9%	4.2
X	86365DBL2	JUN_OC_NO	0				1,307,438	1,257,139		
P	86365DBM0	JUN_PEN_NO	0				1,307,438	1,257,139		
R	86365DAX7	NPR_NPR_NO	0				-	-		
LTR	86365DBN8	NPR_NPR_NO	0				-	-		

FINAL PRICE 54.7

Subprime (Deal 2): SASCO 2007-BNC1

Tranche	Cusip	Type	Coupon	Float Formula	Original Rating: Moody's/S&P/Fitch	Current Rating: Moody's/S&P/Fitch	Original Balance (1000s)	Current Balance (1000s)	Weight	Price
A1	86364XAA4	SEN_FLT	2.6125	LIBOR_1MO + 0.22	NA/AAA/AAA	NA/NA/AAA	210,174	192,999	29.2%	70.1
A2	86364XAB2	SEN_FLT	3.4925	LIBOR_1MO + 1.10	NA/AAA/AAA	NA/NA/AAA	275,052	258,869	38.2%	71.3
A3	86364XAC0	SEN_FLT	3.8925	LIBOR_1MO + 1.50	NA/AAA/AAA	NA/NA/AAA	31,948	31,948	4.4%	40.0
A4	86364XAD8	SEN_FLT	3.8925	LIBOR_1MO + 1.50	NA/AAA/AAA	NA/NA/AAA	24,412	24,412	3.4%	40.8
M1	86364XAE6	MEZ_FLT	4.3925	LIBOR_1MO + 2.00	NA/AA+/AA+	NA/NA/AA+	18,289	18,289	2.5%	37.2
M2	86364XAF3	MEZ_FLT	4.3925	LIBOR_1MO + 2.00	NA/AA/AA	NA/NA/AA	18,289	18,289	2.5%	33.1
M3	86364XAG1	MEZ_FLT	4.3925	LIBOR_1MO + 2.00	NA/AA-/AA-	NA/NA/AA-	32,099	32,099	4.5%	27.5
M4	86364XAH9	MEZ_FLT	4.3925	LIBOR_1MO + 2.00	NA/A+/A+	NA/NA/A+	11,571	11,571	1.6%	23.3
M5	86364XAJ5	MEZ_FLT	4.3925	LIBOR_1MO + 2.00	NA/A/A	NA/NA/A	13,064	13,064	1.8%	20.9
M6	86364XAK2	MEZ_FLT	4.3925	LIBOR_1MO + 2.00	NA/A-/A-	NA/NA/A-	9,704	9,704	1.3%	18.8
M7	86364XAL0	MEZ_FLT	4.3925	LIBOR_1MO + 2.00	NA/BBB+/BBB+	NA/NA/BBB+	7,838	7,838	1.1%	17.2
M8	86364XAM8	MEZ_FLT	4.3925	LIBOR_1MO + 2.00	NA/BBB/BBB	NA/NA/BBB	10,078	10,078	1.4%	15.5
M9	86364XAN6	MEZ_FLT	4.3925	LIBOR_1MO + 2.00	NA/BBB-/BBB-	NA/NA/BBB-	7,838	7,838	1.1%	13.9
B1	86364XAP1	MEZ_FLT_NO	4.3925	LIBOR_1MO + 2.00		NA/NA/BB+	10,078	10,078	1.4%	12.3
B2	86364XAQ9	MEZ_FLT_NO	4.3925	LIBOR_1MO + 2.00		NA/NA/BB	11,197	11,197	1.6%	10.3
B3	86364XAR7	JUN_FLT_NO	3.8925	LIBOR_1MO + 1.50			27,620	27,620	3.8%	6.3
LTR	SASJ22TP0	NPR_NPR_NO	0				-	-	0.0%	
R	SASXS1LQ0	NPR_NPR_NO	0				-	-	0.0%	
X	SASEPCBJ0	JUN_OC_NO	0				746,500	713,142	0.0%	
P	SASN5U9M1	JUN_PEN_NO	0				746,500	713,142	0.0%	

FINAL PRICE 56.1

**Desk-to-Examiner Price Variances in Lehman's U.S. RWL Portfolio
as of August 31, 2008**

A total of \$2.8 billion of third quarter U.S. RWL assets were tested by Lehman's Product Control group and the Examiner's financial advisor. While there were some significant variances, the Examiner's financial advisor again found Lehman's valuation to be in aggregate within a range of reasonableness. The following table contains the loan types where the Examiner's financial advisor had a significant variance with Lehman marks.

Loan Type	LEH mark	Examiner's mark	LEH MTM (\$)	Examiner MTM (\$)	Difference (\$)
Prime-Hybrid ARMs	61.4	81.0	402,167,481	530,192,409	-128,024,928
Prime-Fixed	69.3	79.9	253,393,137	291,948,716	-38,555,579
Sub Prime	41.0	55.6	56,627,784	76,704,146	-20,076,363
Subprime 2nds	47.2	55.6	382,920,071	450,832,532	-67,912,460
Scratch & Dent	40.8	55.6	90,142,670	122,756,062	-32,613,393
Alt A	72.5	67.4	159,819,347	148,472,899	11,346,449
Total			1,345,070,490	1,620,906,764	-275,836,274

Total Market Value of tested population	\$2.8 Billion
Total Variance of tested population	\$(275,836,274)

The Examiner's financial advisor's marks are the average of the prices for the two respective deals from each category per the table below:

LOAN TYPE	REPRESENTATIVE DEALS	PRICE
Prime – Hybrid ARMs	SARM 2008 – 02	80.2
	SARM 2007-09	82.0
	Average	81.1
Prime - Fixed	LMT 2006-03	78.7
	LMT 2006-04	81.2
	Average	79.9
Sub Prime	SASCO 2007-BC4	55.0
	SASCO 2007-BNC1	56.2
	Average	55.6
Alt A	Lehman XS Trust 07-10H	65.9
	Lehman XS Trust 2007 – 17H	68.8
	Average	67.4

As discussed in the Report at Section III.A.2.g.4.f, the following are the assumptions used in estimating the prices for each tranche of the representative deal.

Product Type	Prepayment Rate	Default Rate	Loss Severity (1 st /2 nd Lien)	Resulting Losses	Yield
Prime	15%	5%	50% / 100%	High single digits	10%
Alt-A	10%	10%	50% / 100%	High teens – Low 20s	15%
Subprime	4%	17%	50% / 100%	Mid - High 30s	20%

The output for each of the deals was run through Intex, and the weightings used to estimate the price from each deal are provided below.

Prime Hybrid Arms (Deal 1): SARM 2008-02

Tranche	Cusip	Type	Coupon	Float Formula	Original Rating: Moody's/S&P/Fitch/Dom	Current Rating: Moody's/S&P/Fitch/Dom	Original Balance (1000s)	Current Balance (1000s)	Weighting	Price
A1	86365BAA1	SEN_SPR_FLT	4.2219	LIBOR_1MO + 1.75	NA/AAA/NA/AAA		129,668	120,966	70.0%	86.9
A21	86365BAC7	SEN_SPR_WAC	6.4217		NA/AAA/NA/AAA		14,761	13,456	8.0%	92.4
A22	86365BAD5	SEN_SPR_WAC	6.4217		NA/AAA/NA/AAA		4,689	4,689	2.5%	76.0
A31	86365BAE3	SEN_SUP_WAC	6.4217		NA/AAA/NA/AAA		14,058	12,815	7.6%	92.4
A32	86365BAF0	SEN_SUP_WAC	6.4217		NA/AAA/NA/AAA		4,466	4,466	2.4%	64.4
R	86365BAP8	SEN_WAC	6.4217		NA/AAA/NA/AAA		-	-	0.0%	0.0
A1X	86365BAB9	SEN_WAC_IO	2.1999		NA/AAA/NA/AAA		129,668	120,966	0.0%	2.6
B1	86365BAL7	JUN_WAC	6.4217		NA/AA/NA/AA		6,668	6,666	3.6%	27.7
B2	86365BAM5	JUN_WAC	6.4217		NA/A/NA/A		3,150	3,149	1.7%	15.6
B3	86365BAN3	JUN_WAC	6.4217		NA/BBB/NA/BBB		2,222	2,221	1.2%	10.5
B4	86365BAQ6	JUN_WAC_NO	6.4217				2,131	2,130	1.2%	6.8
B5	86365BAR4	JUN_WAC_NO	6.4217				1,759	1,758	0.9%	3.6
B6	86365BAS2	JUN_WAC_NO	6.4217				1,668	1,667	0.9%	1.0
A2	86365BAG8	SEN_SPR_WAC	6.4217		NA/AAA/NA/AAA		19,450	18,145	0.0%	88.2
A3	86365BAH6	SEN_SUP_WAC	6.4217		NA/AAA/NA/AAA		18,524	17,281	0.0%	85.2
A4	86365BAJ2	SEN_SPR_WAC	6.4217		NA/AAA/NA/AAA		28,819	26,270	0.0%	92.4
A5	86365BAK9	SEN_SPR_WAC	6.4217		NA/AAA/NA/AAA		9,155	9,155	0.0%	70.3
AP	86365BAT0	JUN_PEN_NO	0				185,240	173,983	0.0%	0.0

FINAL PRICE 80.2

Prime Hybrid Arms (Deal 2): SARM 2007-09

Tranche	CUSIP	Type	Coupon	Original Rating: Moody's/S&P/Fitch	Current Rating: Moody's/S&P/Fitch	Original Balance (1000s)	Current Balance (1000s)	Weight	Price
1A1	86364JAA5	SEN_SPR_FLT	6	NA/AAA/AAA	NA/NA/A	155,395	136,370	29.2%	88.3
1A2	86364JAB3	SEN_SUP_FLT	6	NA/AAA/AAA	NA/NA/BB	17,266	15,152	3.2%	88.3
1AX	86364JAC1	SEN_FLT_IO	0.5	NA/AAA/AAA	NA/NA/AAA	172,661	151,522	0.0%	1.1
M1	86364JAG2	MEZ_WAC	6.6435	NA/AA+/AA+	NA/NA/B	4,963	4,963	0.9%	65.4
M2	86364JAH0	MEZ_WAC	6.6435	NA/AA+/AA	NA/NA/B	2,481	2,481	0.5%	34.8
M3	86364JAJ6	MEZ_WAC	6.6435	NA/AA/AA-	NA/NA/CCC	1,432	1,432	0.3%	26.5
M4	86364JAK3	MEZ_WAC	6.6435	NA/AA-/A	NA/NA/CC	2,577	2,577	0.5%	19.9
M5	86364JAL1	MEZ_WAC	6.6435	NA/A/A-	NA/NA/CC	955	955	0.2%	14.6
M6	86364JAM9	MEZ_WAC	6.6435	NA/A-/BBB	NA/NA/CC	1,240	1,240	0.2%	11.7
M7	86364JAN7	JUN_WAC	6.6435	NA/BBB-/BBB-	NA/NA/C	1,145	1,145	0.2%	8.8
X	SARVW7PX0	JUN_OC_NO	0			190,891	169,751	0.0%	0.0
2A1	86364JAD9	SEN_SPR_WAC	5.9962	NA/AAA/AAA	NA/NA/AA	290,870	263,562	54.7%	87.1
2A2	86364JAE7	SEN_SUP_WAC	6.4928	NA/AAA/AAA	NA/NA/BB	32,319	29,285	6.1%	71.0
2AX	86364JAF4	SEN_FLT_IO	0.4966	NA/AAA/AAA	NA/NA/AAA	290,870	263,562	0.0%	1.1
R11	86364JAS6	SEN_WAC_NO	6.4928	NA/AAA/AAA	NA/NA/AAA	-	-	0.0%	0.0
2B1	86364JAP2	JUN_WAC	6.4928	NA/AA/NA		11,714	11,682	2.2%	13.7
2B2	86364JAO0	JUN_WAC	6.4928	NA/A/NA		2,756	2,748	0.5%	6.4
2B3	86364JAR8	JUN_WAC	6.4928	NA/BBB/NA		1,378	1,374	0.3%	4.5
2B4	86364JAT4	JUN_WAC_NO	6.4928			1,722	1,717	0.3%	3.2
2B5	86364JAU1	JUN_WAC_NO	6.4928			1,722	1,717	0.3%	1.7
2B6	86364JAV9	JUN_WAC_NO	6.4928			2,070	1,501	0.4%	0.4
1AP	86364JAW7	JUN_PEN_NO	0		NA/NA/AAA	190,891	169,751	0.0%	0.0
2AP	86364JAX5	JUN_PEN_NO	0		NA/NA/AAA	344,551	313,587	0.0%	0.0
C	SARLEKMX0	NPR_NPR_NO	0			-	-	0.0%	0.0

FINAL PRICE 82.0

Prime Fixed (Deal 1): LMT 2006-03

Tranche	CUSIP	Type	Coupon	Float Formula	Original Rating: Moody's/S&P/Fitch	Current Rating: Moody's/S&P/Fitch	Original Balance (1000s)	Current Balance (1000s)	Weight	Price
AP	52520CAU9	SEN_CPT_XRS_PO	0		Aaa/AAA/AAA	Aaa/NA/A	343	336	0.1%	68.4
AX	52520CAV7	SEN_CPT_NTL_IO_WAC_IO	6		Aaa/AAA/AAA		190	145	0.0%	18.3
2A1	52520CAS4	SEN_FLT	2.8219	LIBOR_1MO + 0.35	Aaa/AAA/AAA	A1/NA/A	123,201	85,287	23.5%	81.2
2A2	52520CAT2	SEN_INV_IO	4.6781	7.15 - LIBOR_1MO	Aaa/AAA/AAA	A1/NA/AAA	123,201	85,287	0.0%	10.0
R	52520CBB0	SEN_RES_FIX	7.5		Aaa/AAA/AAA	Aaa/NA/AAA	-	-	0.0%	0.0
1A1	52520CAD7	SEN_SPR_NAS_FIX	6		Aaa/AAA/AAA	Aaa/NA/AAA	26,956	26,956	5.1%	77.7
1A2	52520CAE5	SEN_PAC_FIX	6		Aaa/AAA/AAA	Aa2/NA/A	20,000	16,448	3.8%	87.2
1A3	52520CAF2	SEN_PAC_FIX	6		Aaa/AAA/AAA	Aa2/NA/A	11,145	6,102	2.1%	92.5
1A4	52520CAG0	SEN_FIX	6		Aaa/AAA/AAA	Aa2/NA/A	92,679	66,039	17.7%	89.6
1A5	52520CAH8	SEN_FIX	6		Aaa/AAA/AAA	Aa2/NA/A	3,862	3,862	0.7%	72.2
1A6	52520CAJ4	SEN_TAC_FLT_AD	3.0719	LIBOR_1MO + 0.60	Aaa/AAA/AAA	Aa2/NA/A	30,000	22,382	5.7%	83.1
1A7	52520CAK1	SEN_INV_IO	2.9281	5.40 - LIBOR_1MO	Aaa/AAA/AAA	Aa2/NA/AAA	30,000	22,382	0.0%	4.2
1A8	52520CAL9	SEN_FLT	3.0719	LIBOR_1MO + 0.60	Aaa/AAA/AAA	Aa2/NA/A	50,000	36,203	9.5%	85.1
1A9	52520CAM7	SEN_INV_IO	2.9281	5.40 - LIBOR_1MO	Aaa/AAA/AAA	Aa2/NA/AAA	50,000	36,203	0.0%	4.0
1A10	52520CAN5	SEN_SPR_PAC_FIX	6		Aaa/AAA/AAA	Aaa/NA/AAA	24,316	19,195	4.6%	91.4
1A11	52520CAP0	SEN_FIX_Z_CMP	6		Aaa/AAA/AAA	Aa2/NA/A	5,930	3,808	1.1%	65.1
1A12	52520CAQ8	SEN_SPR_PAC_FIX	6		Aaa/AAA/AAA	Aaa/NA/AAA	3,112	3,112	0.6%	75.4
1A13	52520CAR6	SEN_SUP_NAS_FIX	6		Aa1/AAA/AAA	Aa3/NA/A	4,400	4,400	0.8%	57.3
3A1	52520CAA3	SEN_SPR_FLT	2.8219	LIBOR_1MO + 0.35	Aaa/AAA/AAA	Aaa/NA/AAA	85,000	60,605	16.2%	81.9
3A2	52520CAB1	SEN_FLT	2.8219	LIBOR_1MO + 0.35	Aaa/AAA/AAA	Aa3/NA/A	6,808	4,854	1.3%	71.9
3A3	52520CAC9	SEN_FLT_IO	4.6781	7.15 - LIBOR_1MO	Aaa/AAA/AAA	Aaa/NA/AAA	91,808	65,459	0.0%	10.0
M	52520CAW5	JUN_WAC	6.6403		Aa2/AA+/AA+	Ba3/NA/B	12,573	12,386	2.4%	23.7
B1	52520CAX3	JUN_WAC	6.6403		NR/NR/AA	NR/NA/CCC	8,382	8,257	1.6%	13.0
B2	52520CAY1	JUN_WAC	6.6403		NR/NR/A	NR/NA/CC	4,977	4,903	0.9%	7.2
B3	52520CAZ8	JUN_WAC	6.6403		NR/NR/BBB	NR/NA/C	3,929	3,870	0.7%	3.7
B4	52520CBA2	JUN_WAC	6.6403		NR/NR/BBB-	NR/NA/C	786	774	0.2%	1.7
B5	52520CBC8	JUN_WAC_NO	6.6403			NR/NA/C	1,834	1,810	0.4%	1.3
B6	52520CBD6	JUN_WAC_NO	6.6403			NR/NA/C	1,834	798	0.4%	0.0
B7	52520CBE4	JUN_WAC_NO	6.6403			NR/NA/NA	1,833	-	0.3%	0.0

FINAL PRICE 78.7

Prime Fixed (Deal 2): LMT 2006-04

Tranche	CUSIP	Type	Coupon	Float Formula	Original Rating: Moody's/S&P/Fitch	Current Rating: Moody's/S&P/Fitch	Original Balance (1000s)	Current Balance (1000s)	Weight	Price
AP1	52520RAK8	SEN_XRS_PO	0		Aaa/AAA/AAA	Aaa/NA/A	1,390	1,246	0.3%	68.2
AX1	52520RAM4	SEN_WAC_IO	6		Aaa/AAA/AAA	Aaa/NA/AAA	505	-	0.0%	0.0
AP2	52520RAL6	SEN_XRS_PO	0		NA/AAA/AAA	NR/NA/AA	172	102	0.0%	75.2
AX2	52520RAN2	SEN_WAC_IO	6		NA/AAA/AAA	NR/NA/AAA	600	359	0.0%	0.0
1A1	52520RAA0	SEN_NAS_FIX	6		Aaa/AAA/AAA	Aaa/NA/A	8,824	8,678	2.0%	77.3
1A2	52520RAB8	SEN_FLT	3.0719	LIBOR_1MO + 0.60	Aaa/AAA/AAA	Aaa/NA/A	50,000	38,411	11.4%	83.8
1A3	52520RAC6	SEN_INV_IO	2.9281	5.40 - LIBOR_1MO	Aaa/AAA/AAA	Aaa/NA/AAA	50,000	38,411	0.0%	4.1
1A4	52520RAD4	SEN_FIX	6		Aaa/AAA/AAA	Aaa/NA/A	28,481	22,800	6.5%	85.6
2A1	52520RAE2	SEN_FLT	2.8719	LIBOR_1MO + 0.40	Aaa/AAA/AAA	Aaa/NA/A	88,640	66,009	20.2%	80.9
2A2	52520RAF9	SEN_INV_IO	4.6281	7.10 - LIBOR_1MO	Aaa/AAA/AAA	Aaa/NA/AAA	88,640	66,009	0.0%	10.6
1B1	52520RAP7	JUN_WAC	6.7284		NA/NA/AA	NR/NA/CCC	6,354	6,263	1.4%	18.2
1B2	52520RAQ5	JUN_WAC	6.7284		NA/NA/A	NR/NA/CC	1,991	1,962	0.5%	7.7
1B3	52520RAR3	JUN_WAC	6.7284		NA/NA/BBB	NR/NA/C	1,517	1,495	0.3%	4.2
1B4	52520RAW2	JUN_WAC_NO	6.7284			NR/NA/C	1,043	1,028	0.2%	1.9
1B5	52520RAX0	JUN_WAC_NO	6.7284			NR/NA/C	759	708	0.2%	0.3
1B6	52520RAY8	JUN_WAC_NO	6.7284			NR/NA/NA	664	-	0.2%	0.0
R	52520RAV4	SEN_FIX_RES	5		NA/AAA/AAA	NR/NA/AAA	-	-	0.0%	0.0
3A1	52520RAG7	SEN_FIX	5		NA/AAA/AAA	NR/NA/AA	43,050	31,193	9.8%	83.6
4A1	52520RAH5	SEN_FIX	6		NA/AAA/AAA	NR/NA/AA	133,430	93,738	30.4%	86.1
5A1	52520RAJ1	SEN_FIX	6.5		NA/AAA/AAA	NR/NA/AA	66,337	40,446	15.1%	87.3
2B1	52520RAS1	JUN_WAC	5.9556		NA/NA/AA	NR/NA/B	3,872	3,508	0.9%	11.5
2B2	52520RAT9	JUN_WAC	5.9556		NA/NA/A	NR/NA/CCC	999	905	0.2%	5.3
2B3	52520RAU6	JUN_WAC	5.9556		NA/NA/BBB	NR/NA/CC	624	565	0.1%	3.4
2B4	52520RAZ5	JUN_WAC_NO	5.9556			NR/NA/C	499	452	0.1%	2.0
2B5	52520RBA9	JUN_WAC_NO	5.9556			NR/NA/C	375	340	0.1%	1.0
2B6	52520RBB7	JUN_WAC_NO	5.9556			NR/NA/NA	375	211	0.1%	0.5
X	LMT2EAMC0	JUN_RES_NO	0				50,000	29,717	0.0%	0.0

FINAL PRICE 81.2

Alt-A (Deal 1): LXS 2007-10H

Tranche	CUSIP	Type	Coupon	Float Formula	Original Rating: Moody's/S&P/Fitch	Current Rating: Moody's/S&P/Fitch	Original Balance (1000s)	Current Balance (1000s)	Weight	Price
IAIO	525237AF0	SEN_INV_IO	3.7781	6.25 - LIBOR_1M	Aaa/AAA/NA	Baa1/NA/NA	657,339	567,516	0.0%	5.5
IA11	525237BF9	SEN_SPR_FLT	2.5919	LIBOR_1MO + 0.	Aaa/AAA/NA	Baa1/NA/NA	370,108	291,347	38.4%	82.6
IA12	525237BG7	SEN_SPR_FLT	2.5619	LIBOR_1MO + 0.	Aaa/AAA/NA	Baa1/NA/NA	10,000	7,872	1.0%	82.5
IA2	525237AB9	SEN_SPR_FLT	2.6919	LIBOR_1MO + 0.	Aaa/AAA/NA	Baa2/NA/NA	142,759	142,759	14.8%	57.0
IA3	525237AC7	SEN_SPR_FLT	2.7519	LIBOR_1MO + 0.	Aaa/AAA/NA	Baa2/NA/NA	68,738	68,738	7.1%	41.0
IA41	525237BH5	SEN_SUP_FLT	2.6719	LIBOR_1MO + 0.	Aaa/AAA/NA	Baa1/NA/NA	56,034	48,419	5.8%	70.2
IA42	525237BJ1	SEN_SUP_FLT	2.7919	LIBOR_1MO + 0.	Aaa/AAA/NA	Caa2/NA/NA	9,700	8,382	1.0%	69.4
IM1	525237AG8	MEZ_FLT	2.9219	LIBOR_1MO + 0.	Aa1/AA+/NA	Ca/NA/NA	24,161	24,161	2.5%	20.8
IM2	525237AH6	MEZ_FLT	3.0219	LIBOR_1MO + 0.	Aa2/AA/NA	Ca/NA/NA	13,039	13,039	1.4%	13.2
IM3	525237AJ2	MEZ_FLT	3.2219	LIBOR_1MO + 0.	Aa3/AA/NA	C/NA/NA	8,053	8,053	0.8%	10.4
IM4	525237AK9	MEZ_FLT	3.4719	LIBOR_1MO + 1.	A1/AA-/NA	C/NA/NA	7,286	7,286	0.8%	8.8
IM5	525237AL7	MEZ_FLT	3.7219	LIBOR_1MO + 1.	A2/A+/NA	C/NA/NA	7,670	7,670	0.8%	7.5
IM6	525237AM5	MEZ_FLT	4.2219	LIBOR_1MO + 1.	A3/A/NA	C/NA/NA	6,136	6,136	0.6%	6.6
IM7	525237AN3	MEZ_FLT	4.4719	LIBOR_1MO + 2.	Baa1/A-/NA	C/NA/NA	6,519	6,519	0.7%	5.5
IM8	525237AP8	MEZ_FLT	4.4719	LIBOR_1MO + 2.	Baa2/BBB+/NA	C/NA/NA	4,985	4,985	0.5%	4.2
IM9	525237AQ6	JUN_FLT	4.4719	LIBOR_1MO + 2.	Baa3/BBB/NA	C/NA/NA	4,985	4,985	0.5%	3.2
IX	LXSHPCJU0	JUN_OC_RES_NO	0				767,024	664,338	0.0%	0.0
IP	LXS4J0QT0	JUN_PEN_NO	0				767,024	664,338	0.0%	0.2
IIAIO	525237AV5	SEN_INV_IO	4.5281	7.00 - LIBOR_1M	Aaa/AAA/NA	Aaa/NA/NA	156,082	106,497	0.0%	7.2
IIA1	525237AR4	SEN_SPR_FLT	2.6319	LIBOR_1MO + 0.	Aaa/AAA/NA	Aaa/NA/NA	92,263	62,953	9.6%	74.9
IIA2	525237AS2	SEN_SPR_FIX_CAP	7.5		Aaa/AAA/NA	Aaa/NA/NA	34,000	23,199	3.5%	83.0
IIA3	525237AT0	SEN_SPR_SUP_FL1	2.7719	LIBOR_1MO + 0.	Aaa/AAA/NA	Aaa/NA/NA	44,811	30,575	4.6%	75.2
IIA4	525237AU7	SEN_SUP_FLT	2.9219	LIBOR_1MO + 0.	Aaa/AAA/NA	Aa2/NA/NA	19,008	12,969	2.0%	75.6
IIM1	525237AW3	MEZ_FLT	3.1219	LIBOR_1MO + 0.	Aa1/AA+/NA	Baa1/NA/NA	5,394	5,394	0.6%	48.6
IIM2	525237AX1	MEZ_FLT	3.1719	LIBOR_1MO + 0.	Aa2/AA+/NA	Ba3/NA/NA	4,820	4,820	0.5%	46.1
IIM3	525237AY9	MEZ_FLT	3.3219	LIBOR_1MO + 0.	Aa3/AA+/NA	B3/NA/NA	2,869	2,869	0.3%	44.7
IIM4	525237AZ6	MEZ_FLT	3.3719	LIBOR_1MO + 0.	NA/AA/NA	NR/NA/NA	7,805	7,805	0.8%	38.0
IIM5	525237BA0	MEZ_FLT	3.7219	LIBOR_1MO + 1.	NA/AA-/NA	NR/NA/NA	1,951	1,951	0.2%	24.4
IIM6	525237BB8	MEZ_FLT	4.2219	LIBOR_1MO + 1.	NA/A/NA	NR/NA/NA	4,591	4,591	0.5%	19.1
IIM7	525237BC6	MEZ_FLT	4.2219	LIBOR_1MO + 1.	NA/A-/NA	NR/NA/NA	1,492	1,492	0.2%	13.4
IIM8	525237BD4	MEZ_FLT	4.2219	LIBOR_1MO + 1.	NA/BBB/NA	NR/NA/NA	3,443	3,443	0.4%	9.5
IIM9	525237BE2	JUN_FLT	4.2219	LIBOR_1MO + 1.	NA/BBB-/NA	NR/NA/NA	1,721	1,721	0.2%	5.9
IIX	LXSXOP780	JUN_OC_RES_NO	0				229,570	167,707	0.0%	
IIP	LXSJ845G0	JUN_PEN_NO	0				229,570	167,707	0.0%	
ILTR	LXSU0AD20	NPR_NPR_NO	0				-	-	0.0%	
IILTR	LXSFMRAE0	NPR_NPR_NO	0				-	-	0.0%	
IR	LXS4O3BG0	NPR_NPR_NO	0				-	-	0.0%	
IIR	LXSGSF430	NPR_NPR_NO	0				-	-	0.0%	
IA12_FEE	LXSSKP0D0	SEN_FEE	0.07				10,000	7,872	0.0%	
IA41_FEE	LXSISE040	SEN_FEE	0.13				56,034	48,419	0.0%	
IIA1_FEE	LXSHBD460	SEN_FEE	0.08				92,263	62,953	0.0%	

FINAL PRICE  65.9

Alt-A (Deal 2): LXS 2007-17H

Tranche	CUSIP	Type	Coupon	Float Formula	Original Rating: Moody's/S&P/Fitch	Current Rating: Moody's/S&P/Fitch	Original Balance (1000s)	Current Balance (1000s)	Weight	Price
A1	52525PAA9	SEN_FLT	3.2719	LIBOR_1MO + 0.80	Aaa/AAA/AAA	Aa3/NA/AAA	527,987	441,178	78.5%	77.6
AIO	52525PAC5	SEN_IO	1.75		Aaa/AAA/AAA	Aaa/NA/AAA	527,987	441,178	0.0%	3.2
M0	52525PAP6	MEZ_FLT	3.5719	LIBOR_1MO + 1.10	NA/AAA/AAA	NR/NA/AAA	45,761	45,761	6.8%	51.1
M1	52525PAD3	MEZ_FLT	3.7219	LIBOR_1MO + 1.25	NA/AA+/AA+	NR/NA/A	44,703	44,703	6.6%	42.0
M2	52525PAE1	MEZ_FLT	3.9719	LIBOR_1MO + 1.50	NA/AA/AA+	NR/NA/BBB	17,600	17,600	2.6%	26.6
M3	52525PAF8	MEZ_FLT	4.2219	LIBOR_1MO + 1.75	NA/AA-/AA	NR/NA/BB	6,687	6,687	1.0%	22.5
M4	52525PAG6	MEZ_FLT	4.4719	LIBOR_1MO + 2.00	NA/A+/AA-	NR/NA/BB	8,095	8,095	1.2%	20.5
M5	52525PAH4	MEZ_FLT	4.4719	LIBOR_1MO + 2.00	NA/A/A+	NR/NA/BB	6,687	6,687	1.0%	17.7
M6	52525PAJ0	MEZ_FLT	4.4719	LIBOR_1MO + 2.00	NA/A-/A	NR/NA/BB	5,631	5,631	0.8%	15.3
M7	52525PAK7	MEZ_FLT	4.4719	LIBOR_1MO + 2.00	NA/BBB+/A-	NR/NA/B	5,631	5,631	0.8%	13.3
M8	52525PAL5	JUN_FLT	4.4719	LIBOR_1MO + 2.00	NA/BBB/BBB+	NR/NA/B	4,218	4,218	0.6%	11.5
X	LXSOPD5O0	JUN_OC_NPR_NPR_NO	0				703,985	616,647	0.0%	
LTR	LXSJYKLN1	JUN_RES_NO	0				703,985	616,647	0.0%	
R	LXSFL0D80	JUN_RES_NO	0				703,985	616,647	0.0%	
P	LXSXOXQB0	JUN_PEN_NO	0				703,985	616,647	0.0%	

FINAL PRICE 68.8

Subprime (Deal 1): SASCO 2007-BC4

Tranche	Cusip	Type	Coupon	Float Formula	Original Rating: Moody's/S&P/Fitch/Dom	Current Rating: Moody's/S&P/Fitch/Dom	Original Balance (1000s)	Current Balance (1000s)	Weight	Price
A1	86365DAA7	SEN_FLT	3.1019	LIBOR_1MO + 0.63	Aaa/AAA/NA/AAA	Aaa/NA/NA/NA	427,894	386,687	33.4%	70.1
A2	86365DAB5	SEN_FLT	2.9719	LIBOR_1MO + 0.50	NA/AAA/NA/AAA	NR/NA/NA/NA	20,765	20,765	1.6%	37.1
A3	86365DAC3	SEN_FLT	2.7219	LIBOR_1MO + 0.25	Aaa/AAA/NA/AAA	Aaa/NA/NA/NA	273,418	240,227	21.4%	82.6
A4	86365DAD1	SEN_FLT	2.9719	LIBOR_1MO + 0.50	NA/AAA/NA/AAA	NR/NA/NA/NA	210,126	210,126	16.4%	50.9
M1	86365DAH2	MEZ_FLT	2.9719	LIBOR_1MO + 0.50	NA/AA+/NA/AA (high)	NR/NA/NA/NA	71,255	71,255	5.6%	31.9
M2	86365DAN9	MEZ_FLT	2.9719	LIBOR_1MO + 0.50	NA/AA/NA/AA	NR/NA/NA/NA	54,259	54,259	4.2%	25.1
M3	86365DAP4	MEZ_FLT	2.9719	LIBOR_1MO + 0.50	NA/AA-/NA/AA (low)	NR/NA/NA/NA	25,495	25,495	2.0%	20.1
M4	86365DAQ2	MEZ_FLT	2.9719	LIBOR_1MO + 0.50	NA/A+/NA/A (high)	NR/NA/NA/NA	25,495	25,495	2.0%	17.5
M5	86365DAR0	MEZ_FLT	2.9719	LIBOR_1MO + 0.50	NA/A/NA/A	NR/NA/NA/NA	26,149	26,149	2.0%	15.1
M6	86365DAS8	MEZ_FLT	2.9719	LIBOR_1MO + 0.50	NA/A-/NA/A (low)	NR/NA/NA/NA	21,573	21,573	1.7%	12.9
M7	86365DAT6	MEZ_FIX_CAP	5		NA/BBB+/NA/BBB (high)	NR/NA/NA/NA	17,650	17,650	1.4%	12.9
M8	86365DAU3	MEZ_FIX_CAP	5		NA/BBB/NA/BBB	NR/NA/NA/NA	15,689	15,689	1.2%	11.5
M9	86365DAV1	MEZ_FIX_CAP	5		NA/BBB-/NA/BBB (low)	NR/NA/NA/NA	15,689	15,689	1.2%	10.2
B1	86365DAY5	MEZ_FIX_CAP	5		NR/NR/NA/NR	NR/NA/NA/NA	20,919	20,919	1.6%	8.6
B2	86365DAZ2	MEZ_FIX_CAP	5		NR/NR/NA/NR	NR/NA/NA/NA	16,343	16,343	1.3%	6.8
B3	86365DBA6	JUN_FIX_CAP	5		NR/NR/NA/NR	NR/NA/NA/NA	36,608	36,608	2.9%	4.3
X	86365DBL2	JUN_OC_NO	0			NR/NA/NA/NA	1,307,438	1,233,040		
P	86365DBM0	JUN_PEN_NO	0			NR/NA/NA/NA	1,307,438	1,233,040		
R	86365DAX7	NPR_NPR_NO	0			NR/NA/NA/NA	-	-		
LTR	86365DBN8	NPR_NPR_NO	0			NR/NA/NA/NA	-	-		

FINAL PRICE 55.0

APPENDIX 17: REPO 105

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Appendix 17 to the Repo 105 Report provides additional details with respect to: Lehman's internal Repo 105 Accounting Policy, which is reprinted in its entirety; the types of securities Lehman utilized in Repo 105 transactions; the documentation for Repo 105 transactions and the intercompany repo between United States-based Lehman entities and LBIE; the Linklaters true sale opinion letter, which is reprinted in its entirety; and a list of LBHI Consolidated Balance Sheets reporting the Repo 105 usage on a particular date. The Appendix also contains the *curriculum vitae* of Dr. Gary Holstrum, whom the Examiner consulted in connection with the Examiner's investigation of Ernst & Young.

I. APPENDIX TO REPO 105 REPORT

A. Lehman's Repo 105 Accounting Policy Manual

Lehman's Repo 105 and Repo 108 Accounting Policy is set out below in its entirety:¹

Repo 105 and Repo 108

A repurchase agreement (a repo) is an agreement under which we sell securities to a counterparty for cash with a simultaneous agreement to repurchase the same or equivalent securities at a specific price at a later date. A reverse repurchase agreement (a reverse repo) is an agreement under which we purchase securities from a counterparty with cash and simultaneously enter into an agreement to resell the same

¹ Lehman Brothers Holdings Inc., Accounting Policy Manual for Repo 105 and Repo 108 (Sept. 9, 2006) [LBEX-DOCID 3213290].

or equivalent securities at a specific price at a later date. In general, repurchase and reverse repurchase agreements are used by counterparties to obtain or invest short-term funds and are considered secured financing transactions. (Dr. Cash, Cr. Repo Liability) and a reverse repo is recorded as a lending (Dr. Reverse Repo Asset, Cr. Cash).

However, there are circumstances under which a repo should be re-characterized from a secured financing transaction to a sale of inventory and a forward to repurchase securities, provided certain criteria in SFAS 140 are met. This policy addresses such situations. The concepts discussed in this policy also apply to reverse repurchase agreements re-characterized from investing transactions to inventory repurchase transactions. However, because we generally do not engage in these transactions, the remainder of this policy addresses only the accounting for repo transactions re-characterized from secured financing transactions to sales of inventory and forward agreements to repurchase.

Overview

Repo 105 and Repo 108 transactions refer to repos with a counterparty in which we sell securities valued at a minimum of 105% (for fixed income securities) or 108% (for equity securities) of the cash received. That is, we sell fixed income securities with a fair value of at least \$105 in exchange for \$100 of cash for Repo 105, and equity securities with a fair value of at least \$108 in exchange for \$100 of cash for Repo 108.

(Note that we allow Repo 108 to be done at \$107 of fair value but we still refer to these transactions as Repo 108.)

Repo 105 and Repo 108 contracts typically are executed by Lehman Brothers International (Europe) (“LBIE”) because true sale opinions can be obtained under English law. We generally cannot obtain a true sale opinion under U.S. law.

For a repo to be re-characterized from a secured financing transaction to a sale of inventory, all the following SFAS criteria must be met:

- The transaction is a true sale at law (SFAS 140.9a).
- The transferee has the ability to pledge or exchange the transferred assets (SFAS 140.9b). and
- The transferor is considered to relinquish control of the securities transferred (SFAS 140.9c).

True sale opinion

This policy addresses repo transactions executed in the U.K. under a Global Master Repurchase Agreement (“GMRA”) provided the counterparty resides in a jurisdiction covered under English law. Repos generally cannot be treated as sales in the United States because lawyers cannot provide a true sale opinion under U.S. law. See “Securitizations-adequacy of legal opinions” in this Accounting Policy Manual for more information about the requirements for legal opinions.

The U.K. law firm of Linklaters has issued us true sale opinions covering Repo 105 and Repo 108 transactions documented under a GMRA under English law. (Linklaters also has issued true sale opinions for securities lending transactions

documented under Overseas Securities Lending Agreements, Global Master Securities Lending Agreements, and Master Gilt Edged Stock Lending Agreements. However, all our current Repo 105 and Repo 108 transactions are documented under a GMRA.) For Repo 108, voting rights with respect to the transferred equity securities must be transferred to the repo counterparty for Linklaters to provide us with a true sale opinion.

Ability to pledge or exchange the transferred assets

The transferee must have the ability to pledge or exchange the transferred assets free of any contractual conditions imposed by us and/or operational constraints. This ability to pledge or exchange must be a legal right and an operational capability. For transactions involving third-party custodians such as in tri-party arrangements, the counterparty's re-use or re-hypothecation options in Tri-party Services Agreement must be executed to ensure the transferee has the legal right to pledge or exchange the transferred assets. Practical operational constraints must be removed to enable the transferee to pledge or exchange the transferred assets. An example of a practical operational constraint is re-transferring assets that are not considered readily obtainable in the marketplace. If such assets are used in the repo and the transferee pledges to or exchanges the assets with a third party, the transferee may be unable to re-deliver the same (or substantially the same) assets to the transferor because of the difficulty of obtaining such assets. As a result, the transferee would be operationally constrained

from pledging or exchanging the assets. Ordinarily, for an asset to be readily obtainable, a market must exist where the assets are either traded on a formal exchange or are considered liquid and trade in a market where price quotations either are published or are obtainable through another verifiable source.

Relinquish control of the transferred assets

Re-characterization of a repo from a secured financing transaction to a sale of inventory and a forward to repurchase assets is allowed only if we can demonstrate we have relinquished control of the transferred assets. We retain control over a transferred asset if we are assured of the ability to repurchase or redeem the transferred asset, even in the event of default by the transferee. Our right to repurchase the transferred asset is assured only if it is protected by obtaining collateral (*i.e.*, cash) sufficient to fund substantially all of the cost of purchasing the same or substantially the same replacement assets during the term of the contract. If we can fund substantially all of the cost of purchasing the same or substantially the same replacement assets, we are viewed as having the means to replace the assets, even if the transferee defaults, and we are considered not to have relinquished control of the assets. For purposes of this requirement, we have retained control of the transferred assets if a fixed income security is margined at less than 105% of the cash received or an equity security is margined at less than 107% of the cash received.

Transfers in which we transfer fixed income securities valued at a minimum of 105% of the cash received and equity securities valued at a minimum of 107% of the cash received are considered to be sales with a forward agreement to repurchase the securities rather than secured financing transactions. The assets transferred (i.e., sold) should be valued and margined frequently for changes in the market price of the assets to ensure the assets transferred equal or exceed 105% (or 107%) of the cash received. When both the foregoing criteria are met, the assets transferred are removed from our balance sheet and an asset under a derivative contract is recorded to reflect that we will repurchase, under a forward contract, the transferred assets.

Example entries

The following entries are recorded when a repo meets the criteria for re-characterization from a secured financing transaction to a sale of inventory and a forward agreement to repurchase assets. Assume a repo of \$100 and we pledge \$105 of fixed income collateral.

At the original sale date, our systems assume repos are secured financings so the entry before re-characterization is:

Dr. Cash	\$100	
		Cr. Repo
		\$100

The re-characterization entry is:

Dr. Repo	\$100	
Dr. Long inventory-derivative	\$5	
		Cr. Inventory
		\$105

We have an asset under a derivative contract because we are required to repurchase under a forward contract \$105 worth of securities for payment of only \$100.

At the repurchase date, the following entries are made (assuming frequent margining, where X is the value of the margin):

Dr. Inventory	\$105+X	
		Dr. Cash
		100+X
		Cr. Long inventory-derivative
		5

B. Types of Securities Used in Repo 105 Transactions

Lehman's Repo 105 Accounting Policy required that the assets used in a Repo 105 transaction "be readily obtainable," meaning that "a market must exist where the assets are either traded on a formal exchange or are considered liquid and trade in a market where price quotations either are published or are obtainable through another verifiable source."² The "true sale" opinion letter for Repo 105 transactions that Lehman received from the Linklaters law firm, conditioned its opinion on the assumption that "the Purchased Securities consist of liquid securities, so that the Buyer could easily dispose of the Purchased Securities and acquire equivalent securities if it wished."³

For the vast majority of Repo 105 transactions, Lehman used relatively liquid securities, but there were certain exceptions.⁴ Three fields of data listed in the Lehman GFS balance sheet files are potential indicators of the relative liquidity of securities Lehman used in Repo 105 transactions: (1) security type, (2) credit rating, and (3) SFAS 157 pricing input level.⁵ The Examiner analyzed data from Lehman GFS balance sheet

² Lehman Brothers Holdings Inc., Accounting Policy Manual for Repo 105 and Repo 108 (Sept. 9, 2006), at p. 2 [LBEX-DOCID 3213290].

³ Letter from Linklaters, to Lehman Brothers International (Europe), re: Repurchase Transactions under a Global Master Repurchase Agreement (May 31, 2006), at p. 2 [LBEX-LBIE 000001]; *see also* e-mail from Thomas Siegmund, Lehman, to Kaushik Amin, Lehman (May 2, 2008) [LBEX-DOCID 601783] ("[I]nternal accounting set rules on what paper can be 105'ed [I]n the past, we had to use the most liquid paper. . . . [T]he true sale opinion is linked to liquidity and quality of paper – the lower liquidity and quality, the deeper the discount would have to be...and consequently the more expensive the exercise.").

⁴ Duff & Phelps, Repo 105 Security Liquidity Analysis (Oct. 21, 2009), at p. 1.

⁵ *Id.* at 1.

documents dated November 30, 2007 (fiscal year 2007), February 29, 2008 (first quarter 2008), and May 30, 2008 (second quarter 2008). The analysis shows that for the most part, Lehman complied with its policy of using only readily obtainable securities.⁶

Most securities Lehman used in Repo 105 transactions were “governmental” in nature, implying a certain level of liquidity.⁷ While representing a relatively small percentage of Lehman’s total Repo 105 assets/securities, at times the nominal amount of non-“governmental” securities Lehman used in Repo 105 transactions was quite large. For example, as of February 29, 2008 (the end of Lehman’s first quarter 2008), Lehman utilized over \$1 billion of highly structured securities, *i.e.*, CLOs and CDOs, private RMBS, CMBS and asset-backed securities, in Repo 105 transactions.⁸ In the market environment that existed for Lehman in early 2008, these structured securities were likely relatively illiquid as indicated by declines in origination volumes, wider bid-offer spreads, and higher margin requirements.⁹

⁶ *Id.* at 1-2.

⁷ This security type includes, but is not limited to, governments, treasuries, and agencies. Agencies included Federal Home Loan Mortgage Corporation (“Freddie Mac”), Federal National Mortgage Association (“Fannie Mae”), and Federal Home Loan Bank System securities. *See* e-mail from Michael McGarvey, Lehman, to Jeff Michaels, Lehman, *et al.* (May 22, 2008) [LBEX-DOCID 482311] (transmitting list [LBEX-DOCID 472396] of available collateral for Repo 105 transactions, including Freddie Mac and Fannie Mae). By late summer 2008, however, Freddie Mac was no longer used for Repo 105 transactions due to counterparty demands. *See* e-mail from Marc Silverberg, Lehman, to Chaz Gothard, Lehman, *et al.* (Aug. 7, 2008) [LBHI_SEC07940_1742976] (stating that Freddie Mac has been removed from a Repo 105 counterparty’s list because it is “no longer acceptable collateral to post for 105”).

⁸ Duff & Phelps, Repo 105 Security Liquidity Analysis (Oct. 21, 2009), at p. 1.

⁹ *Id.* at 4.

Lehman used the following volumes of non-“government” securities in Repo 105 transactions:¹⁰

- November 30, 2007: \$4.8 billion (out of a total of \$29.9 billion in Repo 105 transactions), or 16% of the total Repo 105 volume;
- February 29, 2008: \$4.8 billion (out of a total of \$41.8 billion in Repo 105 transactions), or 11% of the total Repo 105 volume; and
- May 30, 2008: \$4.2 billion (out of a total of \$44.5 billion in Repo 105 transactions), or 9% of the total Repo 105 volume.

¹⁰ *Id.* at 3. Note that the figures listed immediately below and in the succeeding chart report only the volumes of Repo 105 transactions that Lehman engaged in at quarter-end for the reported period. The figures do not include the volume of Repo 108 transactions that Lehman undertook at the quarter-end periods.

Repo 105 Usage - by Security Type¹

(\$ in Millions, # Actual) Security Type	Nov. 30, 2007			Feb. 29, 2008			May. 30, 2008			Aug. 27, 2008 ²		
	Usage	% of Use.	# of Sec.	Usage	% of Use.	# of Sec.	Usage	% of Use.	# of Sec.	Usage	% of Use.	# of Sec.
Governments	\$ 15,519	52%	447	\$ 21,402	51%	421	\$ 27,357	61%	372	\$ 11,208	63%	212
Treasuries	1,778	6%	18	5,508	13%	62	6,533	15%	84	2,658	15%	44
Agency	7,828	26%	96	10,121	24%	123	6,340	14%	61	38	0%	2
Sovereigns - Eurobonds	28	0%	26	65	0%	13	74	0%	19	26	0%	6
Canadian	-	-%	-	-	-%	-	64	0%	3	70	0%	3
Total Governmental	\$ 25,153	84%	587	\$ 37,096	89%	619	\$ 40,367	91%	539	\$ 14,000	78%	267
Corporate	3,430	11%	449	3,319	8%	384	3,234	7%	383	2,968	17%	386
CMO Agencies ³	809	3%	80	937	2%	109	346	1%	25	230	1%	19
Asset Backs ⁴	76	0%	13	99	0%	9	240	1%	21	84	0%	9
Corporate - Non G7	109	0%	58	117	0%	53	96	0%	45	25	0%	24
Equity	44	0%	57	16	0%	3	87	0%	5	156	1%	13
Money Markets	2	0%	1	18	0%	2	54	0%	3	42	0%	4
Private Label ⁵	25	0%	3	24	0%	3	32	0%	2	14	0%	3
Convertibles	157	1%	7	144	0%	2	9	0%	2	-	-	-
Lehman Paper	0	0%	1	0	0%	1	3	0%	1	11	0%	2
Fund Units	-	-%	-	0	0%	1	1	0%	1	0	0%	1
Sovereigns - Locals	-	-%	-	-	-%	-	-	-%	-	317	2%	2
Strips	-	-%	-	73	0%	2	-	-%	-	-	-%	-
Wholeloan ⁶	-	-%	-	-	-%	-	-	-%	8	-	-%	1
Other ⁶	-	-%	-	-	-%	-	-	-%	-	-	-%	2
Blank ⁷	110	0%	8	-	-%	-	67	0%	1	-	-%	-
Total Repo 105 Usage⁸	\$ 29,916	100%	1,264	\$ 41,844	100%	1,188	\$ 44,536	100%	1,036	\$ 17,847	100%	733

1. The GFS balance sheet field "Asset Category 1" was used to assign asset categories to the Repo 105 securities. A combination of the Account number, Product number and a number of other identifiers such as Division, Account Name and BPM Levels were used to identify the Repo 105 security on the GFS balance sheet, in order to ascertain an asset category from the GFS balance sheet.

2. The "Benefit Split" field in the Repo 105 spreadsheet for August 27, 2008 was found to match the "Asset Category 1" field on the GFS balance sheet for Aug 29, 2008 (with the exception of one security with a Repo 105 usage of ~\$4.6MM). Therefore, we used the "Benefit Split" field to identify the security type for all Repo 105 securities, including ones that were missing from the August 29, 2008 GFS balance sheet.

The total Repo 105 Usage for August 27, 2008, of \$17.847 billion does not agree to the Total Repo 105 Usage presented in the summary information of \$22.067 billion. This is because the summary information contains a manual addition of \$4.220 billion dollars to the formulas calculating the "MTS America" and "ITS Asia" Repo 105 usage. There is no underlying support within the security detail Repo 105 Usage data for these additions, and we were therefore unable to include those amounts in our analysis.

3. "CMO Agency" category included securities whose Bloomberg types were CDO, CLO, Non-Agency MBS, CMBS and Credit linked notes. This categorization was a misnomer.

4. The "Asset Backs" category included securities whose Bloomberg types were CDO, CLO, MBS and other ABS.

5. The "Private Label" category includes Private Label MBS and CMBS securities.

6. The "Whole loan" and "Other" categories include entries in the May and August of 2008 in the Repo 105 inventory (see "# of Sec." columns), however they had a \$0 Repo usage listed. This causes these buckets to show a positive count despite showing no Repo 105 usage.

7. "Blank" refers to securities that did not have an Asset Category 1 type in the GFS balance sheet.

8. Due to rounding differences, the Total Repo 105 Usage may not equal to the sum of the components above.

Sources: November 30, 2007: LBEX-DOICD 3219746; February 29, 2008: LBEX-DOICD 3219760; May 30, 2008: LBEX-DOICD 2078195; August 27, 2008: LBEX-DOICD 3361504. GFS balance sheets for: November

The vast majority of securities Lehman utilized in Repo 105 transactions were investment grade, with all but a few of the securities falling within the A to AAA range.

In addition, the majority of Lehman's Repo 105 securities fit within Level 1 under SFAS

157's "Fair Value Level" GAAP-required reporting categories.¹¹ On November 30, 2007, 71% of Lehman's Repo 105 securities were Level 1.¹² On February 29, 2008, 82% of Lehman's Repo 105 securities were Level 1.¹³ On May 30, 2008, 86% of Lehman's Repo 105 securities were Level 1.¹⁴ For any quarter-ending period, the remainder of assets Lehman used in Repo 105 transactions consisted primarily of Level 2 securities; the evidence indicates that Lehman used few Level 3 assets for Repo 105 transactions. Nevertheless, on May 30, 2008, for example, Lehman used nineteen Level 3 securities in \$153 million of Repo 105 transactions.¹⁵

¹¹ The valuation of Level 1 assets under SFAS 157 requires the use of directly observable inputs, *i.e.*, quoted prices in active markets for identical assets or liabilities accessible on the valuation date. The valuation of Level 2 assets requires the use of directly or indirectly observable prices in active markets for similar assets or liabilities, quoted prices for identical or similar items in markets that are not active and inputs other than quoted prices such as yield curves, credit risks, and volatilities. And the valuation of Level 3 assets requires the use of unobservable inputs that reflect management's own assumptions about the assumptions that market participants would make.

¹² Duff & Phelps, Repo 105 Security Liquidity Analysis (Oct. 21, 2009), at p. 6.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

Repo 105 Usage - by Credit Rating¹

(\$ in Millions, # Actual) Credit Rating	Nov. 30, 2007			Feb. 29, 2008			May. 30, 2008			Aug. 27, 2008 ²		
	Usage	% of Use.	# of Sec.	Usage	% of Use.	# of Sec.	Usage	% of Use.	# of Sec.	Usage	% of Use.	# of Sec.
AAA	\$ 18,989	63%	581	\$ 30,113	72%	652	\$ 31,258	70%	497	\$ 10,269	58%	276
AA	5,871	20%	220	6,453	15%	190	5,135	12%	167	2,118	12%	131
A	3,123	10%	209	2,961	7%	170	4,592	10%	157	3,988	22%	105
Total A-Range	\$ 27,984	94%	1,010	\$ 39,526	94%	1,012	\$ 40,985	92%	821	\$ 16,375	92%	512
BBB	749	3%	121	943	2%	94	586	1%	113	271	2%	77
Total Investment Grade	\$ 28,732	96%	1,131	\$ 40,470	97%	1,106	\$ 41,571	93%	934	\$ 16,645	93%	589
BB	77	0%	14	45	0%	11	67	0%	18	48	0%	18
B	32	0%	8	0	0%	4	50	0%	20	48	0%	23
CCC	-	-%	-	-	-%	-	47	0%	7	55	0%	7
C	-	-%	-	-	-%	-	15	0%	1	-	-%	-
NR	2	0%	2	2	0%	1	70	0%	1	82	0%	5
Missing ³	-	-%	-	-	-%	-	-	-%	-	140	1%	21
Blank ⁴	1,073	4%	109	1,328	3%	66	2,717	6%	55	829	5%	70
Total Repo 105 Usage⁵	\$ 29,916	100%	1,264	\$ 41,844	100%	1,188	\$ 44,536	100%	1,036	\$ 17,847	100%	733

1. The GFS balance sheet field "Standard and Poor Rating" was used to assign credit ratings to the Repo 105 securities. A combination of the Account number, Product number and a number of other identifiers such as Division, Account Name and BPM Levels were used to identify the Repo 105 security on the GFS balance sheet, in order to ascertain a credit rating from the GFS balance sheet.

Intermediate ratings (e.g. BBB+, BBB-, etc.) are grouped into the BBB rating category.

If securities did not have an S&P rating, but did have a Moody's rating, the Moody's rating was translated into the corresponding S&P rating, and was aggregated into the data. This was the case for 91 securities (totaling \$1,016,149,209) as of November 30, 2007; 81 securities (totaling \$1,002,564,495) as of February 29, 2008; 77 securities (totaling \$1,368,098,094) as of May 30, 2008; and 59 securities (totaling \$556,476,516) as of August 27, 2008. No Fitch Ratings' information was available.

2. A GFS balance sheet for August 27, 2008 was not available. As a result, we used the August 29, 2008 GFS balance sheet to infer a Credit Rating, assuming that it would not have changed during the two day period. As a result, there is a higher percentage of 'Missing' securities, please see footnote 3 for further discussion.

The total Repo 105 Usage for August 27, 2008, of \$17.847 billion does not agree to the Total Repo 105 Usage presented in the summary information of \$22.067 billion. This is because the summary information contains a manual addition of \$4.220 billion dollars to the formulas calculating the "MTS America" and "ITS Asia" Repo 105 usage. There is no underlying support within the security detail Repo 105 Usage data for these additions, and we were therefore unable to include those amounts in our analysis.

3. "Missing" refers to all entries that could not be identified in the GFS balance sheet. This occurred only as of August 27, 2008 because of the two day gap between the GFS balance sheet used, and the Repo 105 usage data. We have access only to month-end GFS balance sheet information.
4. "Blank" refers to securities that did not have a Credit Rating entry in the GFS balance sheet. Upon manual examination of the securities with blank credit ratings as of May 30, 2008, we identified U.S. Treasury Inflation Index Notes, Japanese and German Treasuries, and U.S. Agencies.
5. Due to rounding differences, the Total Repo 105 Usage may not equal to the sum of the components above.

Sources: November 30, 2007: LBEX-DOICD 3219746; February 29, 2008: LBEX-DOICD 3219760; May 30, 2008: LBEX-DOICD 2078195; August 27, 2008: LBEX-DOICD 3361504. GFS balance sheets for: November 30, 2007, February 29, 2008, May 30, 2008, and August 31, 2008

Repo 105 Usage - by FAS 157 Fair Value Level¹

Fair Value Level	Nov. 30, 2007			Feb. 29, 2008			May. 30, 2008			Aug. 27, 2008 ²		
	Usage	% of Use.	# of Sec.	Usage	% of Use.	# of Sec.	Usage	% of Use.	# of Sec.	Usage	% of Use.	# of Sec.
1	\$ 21,132	71%	435	\$ 34,115	82%	454	\$ 38,349	86%	430	\$ 12,834	72%	221
2	8,673	29%	821	8,076	19%	725	5,967	13%	586	4,358	24%	479
3	5	0%	3	5	0%	2	153	0%	19	515	3%	12
Missing ³	-	-%	-	-	-%	-	-	-%	-	140	1%	21
Blank ⁴	105	0%	5	(352)	(1%)	7	67	0%	1	-	-%	-
Total Repo 105 Usage⁵	\$ 29,916	100%	1,264	\$ 41,844	100%	1,188	\$ 44,536	100%	1,036	\$ 17,847	100%	733

1. Valuation of **Level 1 assets** require the use of directly observable inputs, i.e. quoted prices in active markets for identical assets or liabilities accessible on the valuation date. Such prices are not adjusted for any effects of the reporting entity holding a large share of the overall trading volume.

Valuation of **Level 2 assets** require the use of directly or indirectly observable prices in active markets for similar assets or liabilities, quoted prices for identical or similar items in markets that are not active, and inputs other than quoted prices such as yield curves, credit risks and volatilities. Such prices are not adjusted for any effects of the reporting entity holding a large share of the overall trading volume.

Valuation of **Level 3 assets** require the use unobservable inputs that reflect management's own assumptions about the assumptions that market participants would make.

The GFS balance sheet field "Fair Value Level" was used to assign FAS Levels to the Repo 105 securities. A combination of the Account number, Product number and a number of other identifiers such as Division, Account Name and BPM Levels were used to identify the Repo 105 security on the GFS balance sheet, in order to ascertain a FAS 157 Level from the GFS balance sheet.

There were several Repo 105 securities which contained more than one entry in the GFS balance sheet, such that one of them would have a blank Fair Value Level, with all other descriptions equal, except for the balances. We assumed that Fair Value Levels would be consistent for the same products, and assigned the Fair Value Level of the non-blank entries. There were also an immaterial number of entries of Repo 105 securities which contained more than one entry in the GFS balance sheet, and had conflicting FAS levels for the same product. In these cases, we attempted to find the most appropriate FAS level by comparing the security with past and future GFS balance sheets.

2. A GFS balance sheet for August 27, 2008 was not available. As a result, we used the August 29, 2008 GFS balance sheet to infer a FAS 157 level, assuming that it would not have changed during the two day period. As a result, there is a higher percentage of 'Missing' securities, please see footnote 3 for further discussion.

The total Repo 105 Usage for August 27, 2008, of \$17.847 billion does not agree to the Total Repo 105 Usage presented in the summary information of \$22.067 billion. This is because the summary information contains a manual addition of \$4.220 billion dollars to the formulas calculating the "MTS America" and "ITS Asia" Repo 105 usage. There is no underlying support within the security detail Repo 105 Usage data for these additions, and we were therefore unable to include those amounts in our analysis.

3. "Missing" refers to all entries that could not be identified in the GFS balance sheet. This occurred only as of August 27, 2008 because of the two day gap between the GFS balance sheet used, and the Repo 105 usage data.

4. "Blank" refers to securities that did not have a Fair Value Level in the GFS balance sheet. As of February 29, 2008 there were 6 securities with a total Repo 105 Usage of \$0, which had a Fair Value Level of 'C', which we have classified in the count as Blank.

5. Due to rounding differences, the Total Repo 105 Usage may not equal to the sum of the components above.

Sources: November 30, 2007: LBEX-DOICD 3219746; February 29, 2008: LBEX-DOCID 3219760; May 30, 2008: LBEX-DOCID 2078195; August 27, 2008: LBEX-DOOD 3361504. GFS balance sheets for: November 30, 2007, February 29, 2008, May 30, 2008, and August 31

C. Repo 105 Contracts

Lehman's internal Accounting Policy for Repo 105 transactions, the Linklaters letter, and the July 2006 Global Balance Sheet Overview of Repo 105/108 PowerPoint presentation referred to the Global Master Repurchase Agreement.¹⁶ Lehman acquired legal opinions from Linklaters covering other forms of contracts – namely, OSLA (Overseas Securities Lending Agreement), GESLA (Master Gilt Edged Stock Lending Agreement) and GMSLA (Global Master Securities Lending Agreement) – but these were never used.¹⁷

Instead, Lehman undertook all Repo 105 transactions pursuant to a “GMRA” or Global Master Repurchase Agreement, published by PSA and the International Securities Market Association, used for international repo agreements, and governed by English law (subject to modification by the parties).¹⁸ Lehman also engaged in non-

¹⁶ Lehman Brothers Holdings Inc., Accounting Policy Manual, Repo 105 and Repo 108 (Sept. 9, 2006), at p. 1 [LBEX-DOCID 3213310] (“This policy addresses repo transactions executed in the U.K. under a Global Master Repurchase Agreement (‘GMRA’) provided the counterparty resides in a jurisdiction covered under English law. . . . The U.K. law firm of Linklaters has issued us true sale opinions covering Repo 105 and Repo 108 transactions documented under a GMRA under English law.”); Lehman, Global Balance Sheet Overview of Repo 105 (FID)/108 (Equities) (July 2006), at p. 1 [LBEX-WGM 748489] (“A repo under a Global Master Repurchase Agreement [GMRA] is a ‘true sale’”); *id.* at 3 (stating legal opinion in place for GMRA); Letter from Linklaters, to Lehman Brothers International (Europe), re: Repurchase Transactions under a Global Master Repurchase Agreement (May 31, 2006), at p. 1 [LBEX-LBIE 000001 - 000009] (“You have asked us to review the Global Master Repurchase Agreement (‘GMRA’) that you intend to use for repos or reverse repos and buy/sell backs of securities and financial instruments (‘Securities’) with various counterparties.”).

¹⁷ Lehman Brothers Holdings Inc., Accounting Policy Manual, Repo 105 and Repo 108 (Sept. 9, 2006), at p. 1 [LBEX-DOCID 3213310]; Lehman, Global Balance Sheet Overview of Repo 105 (FID)/108 (Equities) (July 2006), at p. 3 [LBEX-WGM 748489].

¹⁸ See Securities Industry and Financial Markets Association, Supplemental Guidance Notes (June 1997), at p. 1, available at http://www.sifma.net/agrees/master_repo_supp_gn.pdf (“The GMRA has been developed as the standard agreement for international transactions in non-U.S. markets.”). The MRA,

Repo 105 repo transactions pursuant to the “MRA” or Master Repurchase Agreement, published by the Bond Market Association, used in the United States for domestic repo agreements, and governed by the laws of the State of New York.¹⁹ In addition to the differing choice of law provisions, the MRA and GMRA diverge with respect to: (1) remedies in the event of default; (2) agency provisions; (3) certain market-based provisions; (4) the regulatory status of certain United States counterparties, addressed by the MRA; and (5) United Kingdom gilt repo market, Australian, and Belgian Annexes available for the GMRA.²⁰

Relying upon internal, Lehman-generated lists of “confirmed” Repo 105 trades for certain quarter-end periods in 2007 and 2008,²¹ the Examiner requested the production of: (1) any contracts or agreements covering the intercompany repo piece of Repo 105 trades (*e.g.*, a transfer of securities from United States-based Lehman entities to LBIE), if the trade included an intercompany transfer of assets; and (2) the contracts or agreements covering LBIE’s transfer of the Repo 105 securities to third-party counterparties.

however, makes available an Annex III for International Transactions, governed by New York law, which may be an alternative to the GMRA where U.S. counterparties already have an MRA in place between them but would like to transact in foreign securities. *See id.*

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ Lehman, Repo 105 Collateral Test (Feb. 29, 2008) [LBEX-DOCID 609016] (attached to e-mail from Kieran Higgins, Lehman, to Kaushik Amin, Lehman (Apr. 8, 2008) [LBEX-DOCID 738567]); Lehman, MTS Repo Collateral with Counterparty (May 30, 2008) [LBEX-DOCID 3237604] (attached to e-mail from Ying-Yi Chen, Lehman, to Marc Silverberg, Lehman, *et al.* (Jun 6, 2008) [LBEX-DOCID 3234714]).

In addition to the contracts between LBIE and third parties, the Examiner also obtained two repurchase agreements that covered the intercompany repo transactions between LBI, a United States-based Lehman entity involved in Repo 105 transactions, and LBIE relating to the “confirmed” Repo 105 trades referenced in the Lehman-produced documents.

The first of the intercompany repo contracts was a GMRA between LBIE and LBI, dated November 1, 1996.²² Although the GMRA standard form contract was governed by and construed in accordance with the laws of England,²³ the Annex amended the controlling law to New York:

[E]xcept that all the terms and phrases which are used in this Agreement and which expressly refer to statutory provisions of the United States of America or any state thereof shall be governed by and construed in accordance with the federal laws of the United States of America and the laws of the State of New York.²⁴

The Annex also modifies the GMRA to cover “U.S. Treasury instruments and other securities that are cleared primarily through a clearance facility in the United States.”²⁵ The Annex memorializes the intent of the parties “that each Transaction is a ‘repurchase agreement’ as that term is defined in Section 101 of Title 11 of the United States Code . . . and a ‘securities contract’ as that term is defined in Section 741 of Title

²² Global Master Repurchase Agreement (Version 1 Gross Paying Securities) (Nov. 11, 1996) [LBEX-AM 333461].

²³ *Id.* ¶ 17.

²⁴ Annex 1 to Global Master Repurchase Agreement, Part 1, Supplemental Terms or Conditions (Nov. 1, 1996), ¶ 4 [LBEX-AM 333461].

²⁵ *Id.*

11 of the United States Code, as amended.”²⁶ The Annex also provides: “It is understood that either party’s right to liquidate Securities delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Paragraph 10 hereof, is a contractual right to liquidate such Transaction as described in Section 555 and 559 of Title 11 of the United States Code, as amended.”²⁷

The second intercompany repo agreement, between LBI and LBCPI on one hand and LBIE on the other, was a MRA dated October 6, 1998 and governed by New York law.²⁸

²⁶ *Id.*

²⁷ *Id.*

²⁸ Master Repurchase Agreement (September 1996 Version) (Oct. 6, 1998), at ¶ 16 [LBEX-AM 333493].

D. Linklaters Letter²⁹

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Lehman Brothers International (Europe)
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("Lehman Brothers")

31 May 2006

Dear Sirs

Repurchase Transactions under a Global Master Repurchase Agreement

1 Introduction

- 1.1 You have asked us to review the Global Master Repurchase Agreement ("GMRA") that you intend to use for repos or reverse repos and buy/sell backs of securities and financial instruments ("Securities") with various counterparties. References to the GMRA in this opinion are to both the 1995

²⁹ Letter from Linklaters, to Lehman Brothers International (Europe), re: Repurchase Transactions under a Global Master Repurchase Agreement (May 31, 2006) [LBEX-LBIE 000001]. Lehman's internal Repo 105/108 Accounting Policy and an internal PowerPoint presentation referenced several iterations of the Linklaters opinion letter and witnesses state that Lehman refreshed the Linklaters letter on more than one occasion. See Lehman, Global Balance Sheet Overview of Repo 105 (FID)/108 (Equities) (July 2006), at p. 3 [LBEX-WGM 748489] (stating that true sale opinion letter for GMRA was first obtained in May 2001, updated in September 2004, and further updated in May 2006); Lehman Brothers Holdings Inc., Accounting Policy Manual Repo 105 and Repo 108 (Sept. 9, 2006), at p. 1 [LBEX-DOCID 3213293] (stating that Linklaters has issued opinions under a GMRA); see also Examiner's Interview of Anuraj Bismal, Sept. 16, 2009, at p. 8 (stating that Edward Grieb refreshed the Linklaters letter). Though Lehman refreshed the letter several times, the Examiner has been able to locate only one version of the Linklaters letter, dated May 31, 2006.

version and the 2000 version of the GMRA: the analysis in relation to each of them is the same.

- 1.2 For the purposes of this opinion, we have examined a copy of the GMRA but no other documents. Terms defined in the GMRA have the same meanings in this opinion.
- 1.3 Under the GMRA, the parties thereto may enter into transactions for Securities ("**Transactions**") in which one party, as Seller, agrees to sell Securities (the "**Purchased Securities**") to the other party as Buyer, against the payment of a price (the "**Purchase Price**") for the Purchased Securities to Seller.
- 1.4 At the same time, the parties enter into an agreement under which Buyer will sell to Seller Securities equivalent to the Purchased Securities (the "**Equivalent Securities**") at a certain date or on demand against payment of a price (the "**Repurchase Price**") by Seller to Buyer.
- 1.5 The purpose of this opinion is to advise you about whether the transfer of the Purchased Securities to the Buyer for the Purchase Price may, under English law, be classified as a sale involving the disposition of the Seller's entire proprietary interest in the Purchased Securities, as opposed to a charge.
- 1.6 This opinion is limited to English law as applied by the English courts and is given on the basis that it will be governed by and construed in accordance with English law.
- 1.7 For the purpose of this opinion we have assumed that:
 - (a) there are no provisions of foreign law which would affect this opinion;
 - (b) the GMRA and each of the Transactions is within the capacity and powers of each of the parties to it, will be validly executed and delivered by those parties and is valid, binding and enforceable under English law;
 - (c) at the time of each Transaction each of the assets comprising the Purchased Securities are beneficially owned by Seller at the time of its transfer to Buyer; and
 - (d) the Purchased Securities consist of liquid securities, so that the Buyer could easily dispose of the Purchased Securities and acquire equivalent securities if it wished.

2 Reclassification of the transaction

2.1 General

Generally speaking, the English courts recognise both the freedom of the owner of an asset to transfer his interest in that asset to another person and the freedom of the parties to a contract to determine the nature of the interest that is to be transferred. Whether a contract involves the sale of the owner's entire interest in the asset or the transfer of some lesser interest, such as a charge, is primarily determined by construing the terms of the contract.

In determining whether a person has entered into a contract involving the sale of an asset, the courts will look at the substance of the transaction: the terminology used by the parties to the transaction is not necessarily conclusive. Furthermore, if a series of transactions with respect to the same asset are entered into at the same time, it is the substance of the overall arrangements which is important. For example, an arrangement between two parties may purport to involve a sale but on its true analysis actually amount to a charge. Whether this is the case will depend on whether the legal nature of what has been agreed has the characteristics which the law recognises as those of a sale or those of a charge.

In the present case, we understand that the Purchased Securities will be transferred to Buyer pursuant to the GMRA. Usually the courts look only to the documentation pursuant to which assets have been transferred to determine whether the parties intended such a transfer to be a sale (albeit that such documentation may be construed in the light of any relevant background material). Accordingly, provided that the documentation recording the transfer of the Purchased Securities to Buyer is consistent with the parties' intentions that Seller should have disposed of its entire proprietary interest in the Purchased Securities to the Buyer, that would, in our opinion, evidence a sale rather than a charge. However, a court would look at the overall arrangements to determine whether a transfer should be classified as a sale or as a charge where it is alleged either that the terms of the documentation by which the assets were transferred had been supplemented or modified by provisions in other documentation or else that the sale documentation was a "sham" (see paragraph 2.5 below).

Consequently, it is necessary to consider, with respect to any Transaction, whether the arrangements for Buyer to transfer to Seller or its agent Equivalent Securities against the payment of the Repurchase Price by Seller (less any dividends, interest or other distributions of any kind paid in respect of the Purchased Securities ("**Income**")) then payable and unpaid by Buyer to

Seller), would mean that the arrangements pursuant to which the Purchased Securities were transferred to Buyer would be construed as a charge. If so, Seller would retain a proprietary interest in the Purchased Securities and would not have effected a sale of them. It is also necessary to consider whether the Buyer's agreement to transfer any Income to Seller indicates that Seller has not disposed of its entire proprietary interest in the Purchased Securities.

2.2 The distinction between a sale and a charge

In our opinion, one of the essential characteristics of a sale of an asset is that the seller intends to transfer outright to the buyer his entire proprietary interest in the asset. Conversely, one of the essential characteristics of a charge is that, despite any transfer of assets between the parties, they intend the person creating the charge to retain a proprietary interest in the property which is the subject of the charge, so that on the discharge of his obligations he is entitled to the return of that property from the chargee. In other words, the chargor has not transferred outright to the chargee his entire proprietary interest in the assets transferred but has retained such an interest as allows him to demand the return of those assets on the discharge of his obligations.

Assets may be transferred to a transferee under an arrangement whereby such assets will or may be transferred by the transferee at a later date back to the transferor. However, if, in such a situation, the transferor is merely entitled to the delivery of *equivalent assets* (such as securities of the same series and nominal value) rather than the very assets that were originally delivered, this is, in our opinion, inconsistent with the existence of a charge because the transferor does not intend to retain a proprietary interest in the assets originally delivered. The only exception to this is where the transferee is to hold the assets on a fungible basis, together with other property of the same type, and the intention is to return a proportionate share of the pool of property that is held in this way. In the present case, however, there is no evidence of any such intention in the GMRA. The mere fact that the securities which are to be delivered have the same CUSIP numbers as the ones that the transferee originally received would not prevent them from being regarded as equivalent assets rather than the very assets that were originally delivered.

2.3 The effect of the transfer of Equivalent Securities

2.3.1 Transfer to Seller of equivalent assets and the option of cash settlement in the event of redemption of the Purchased Securities

Paragraph 3(f) of the GMRA provides that Buyer shall transfer Equivalent Securities to Seller (i.e., Securities which are equivalent to, and not necessarily the same as, the Securities comprising the Purchased Securities, or, if and to the extent that the Purchased Securities have been redeemed, by paying a cash sum equivalent to the proceeds of the redemption). Moreover, Buyer is not required to hold the Purchased Securities separately from its own assets and nothing in the GMRA expressly restricts Buyer's right to deal with the Purchased Securities. This makes it clear that the parties do not intend Seller to have the right to require the return of the particular Purchased Securities transferred to Buyer in any Transaction or, therefore, to retain any proprietary interest in the Purchased Securities. In our opinion, therefore, and subject to the points made below, the transfer of Purchased Securities under any Transaction would be construed as a sale rather than a charge.

2.3.2 Substitution

Paragraph 8 of the GMRA states that, if Seller requests and Buyer so agrees, a Transaction may be varied by the transfer by Buyer to Seller of Securities equivalent to the Purchased Securities (or of such of the Purchased Securities as shall be agreed) in exchange for the transfer by Seller to Buyer of other Securities of such amount and description as shall be agreed ("**New Purchased Securities**").

In our opinion, the variation of any Transaction by Seller transferring the New Purchased Securities to Buyer in return for Securities equivalent to the Purchased Securities does not affect the analysis that the original transfer of Purchased Securities would be construed as involving a sale rather than a charge. Again, Seller's right is to Equivalent Securities not the Purchased Securities. Likewise, provided that Seller's transfer of New Purchased Securities to Buyer under paragraph 8 of the GMRA is, and is intended to be, subject to the same arrangements applying to the purchase of the Purchased Securities under the GMRA, we believe that such transfer would also be regarded as involving a sale of the New Purchased Securities by Seller rather than a charge. This is not affected simply because the

consideration received by Seller in return for making that transfer may be itself the transfer of Equivalent Securities by Buyer.

2.3.3 Margin Payments

With respect to any transaction under the GMRA, at any time from the date of the purchase of the Purchased Securities (the "**Purchase Date**") to the date of the purchase of the Equivalent Securities (the "**Repurchase Date**") (or, if later, the date of the delivery of the Equivalent Securities to Seller or the date of the termination of the Transaction), each party is entitled to calculate its exposure under that Transaction (the "**Transaction Exposure**"). The Transaction Exposure is the difference between (i) the Repurchase Price multiplied by the applicable Margin Ratio (subject to recalculation where the Transaction relates to Securities of more than one description to which different Margin Ratios apply) and (ii) the Market Value of Equivalent Securities at such time. Buyer will have a Transaction Exposure if the value of (i) is greater than the value of (ii) and Seller will have a Transaction Exposure if the value of (ii) is greater than the value of (i).

Paragraph 4 of the GMRA provides that if at any time a party has a Net Exposure in respect of the other party, it may by notice require the other party to make a transfer to it of an aggregate amount or value at least equal to that Net Exposure (a "**Margin Transfer**"). There will be a Net Exposure if the aggregate of all of the first party's Transaction Exposures (plus any unpaid Income Payments due to it but less the amount of Net Margin provided to it) exceeds the aggregate of all the other party's Transaction Exposures (plus any unpaid Income Payments due to it but less the amount of Net Margin provided to it).

Subject to paragraph 4(d), when a party has a Net Exposure and requires the other party to pay a Margin Transfer to it, the Margin Transfer may be satisfied by the payment (or repayment) of Cash Margin or the delivery of Margin Securities (or Equivalent Margin Securities). Because the above arrangements do not give Seller any right to the Purchased Securities, they do not affect our opinion that the transfer of the Purchased Securities under any Transaction would be construed as involving a sale rather than a charge.

Paragraph 4 of the GMRA, however, further provides that Net Exposure may be eliminated by the repricing of Transactions or the adjustment of Transactions, or a combination of these methods.

If a Transaction is *repriced*, the Original Transaction is terminated and the parties enter into a new Transaction (the “**Repriced Transaction**”). Purchased Securities under the Repriced Transaction are Securities equivalent to the Purchased Securities under the Original Transaction. The obligations of the parties with respect to the delivery of Purchased Securities and the payment of the Purchase Price under the Repriced Transaction are set off against their obligations with respect to the delivery of Equivalent Securities and the payment of the Repurchase Price under the Original Transaction and, accordingly, only a net cash sum is paid by one party to the other.

If a Transaction is *adjusted*, the Original Transaction is terminated and the parties enter into a new Transaction (the “**Replacement Transaction**”), under which the Purchased Securities are Securities agreed between the parties, the Market Value of which is substantially equal to the Repurchase Price under the Original Transaction. The other terms of the Replacement Transaction are as agreed between the parties. Assuming that under the Replacement Transaction the parties agree that Buyer shall transfer Equivalent Securities against payment of the Repurchase Price as per the provisions of GMRA, we would restate our opinion in paragraph 2.3.1 above.

Accordingly, we do not believe that these provisions affect our conclusion that the transfer of the Purchased Securities under the Original Transaction would be construed as involving a sale rather than a charge.

2.4 The effect of the arrangements regarding Income

Paragraph 5 of the GMRA provides that Buyer will pay to Seller an amount equal to any Income which is paid in respect of the Purchased Securities in the specified period. In certain circumstances, a transfer of assets coupled with the retention of the right to receive the income on the assets could be construed as involving the retention of a proprietary interest in or relating to the assets, i.e. a transfer of title subject to the reservation that the rights to income are to be held on trust for the transferor. Alternatively, an

undertaking to pay income on the assets could be construed as involving an implied restriction on the transferee's freedom to deal with the assets.

In the present case, however, paragraph 5 of the GMRA makes it clear that Buyer's obligation in this respect is simply an obligation to pay an amount which is equivalent to any Income paid in respect of the Purchased Securities (there being, under the GMRA, no obligation to hold such Income in a separate account or any other indication that a trust over it and/or the right to receive it is intended).

As a result, we do not think that the arrangements regarding the payment of any amounts equivalent to Income to Seller would be construed as involving the retention by Seller of a proprietary interest in the Purchased Securities. Accordingly, they do not affect the conclusion that, in our opinion, the transfer of the Purchased Securities to Buyer would be construed as involving a sale rather than a charge.

2.5 The effect of the arrangements regarding voting

The GMRA contains no provisions regarding voting rights. Accordingly, any voting rights attached to the Purchased Securities the record date for which is after they are transferred to the Buyer will pass to the Buyer. This is consistent with our conclusion that the transfer would be construed as involving a sale rather than a charge.

The position is slightly different under the Equities Annex to the GMRA (2000 version) (the "**Equities Annex**"), which contains certain supplementary terms and conditions for transactions in equities. Paragraph 4(b) of the Equities Annex provides that, where voting rights fall to be exercised in relation to any Purchased Securities which are equities and in respect of which Equivalent Securities have not been transferred, the Buyer shall use its best endeavours to arrange for voting rights of that kind to be exercised in relation to the relevant number of securities of that kind in accordance with the Seller's instructions.

If a provision entitling the Seller to direct how the votes attached to the Purchased Securities must be exercised were construed as imposing an obligation on the Buyer to continue to hold the Purchased Securities, such a provision might call into question whether the Seller had agreed to transfer its entire proprietary interest in the Purchased Securities to the Buyer. The courts might conclude that the substance of the arrangements in such a case was that the Buyer had agreed to hold the Purchased Securities during the term of the transaction and, notwithstanding the references to Equivalent

Securities, the true agreement was that the Buyer had agreed to redeliver the Purchased Securities on the termination of the transaction. This might, in turn, lead to the conclusion that the arrangements were intended to involve no more than a charge granted by the Seller over the Purchased Securities in favour of the Buyer. Alternatively, the GMRA might be construed as imposing a trust over the voting rights in favour of the Seller.

Paragraph 4(b) of the Equities Annex, however, provides that the Seller's right to give instructions regarding the exercise of voting rights applies only if the Buyer is holding the Purchased Securities. The Equities Annex cannot, therefore, be construed as imposing an express or implied obligation on the Buyer to continue to hold the Purchased Securities, or as constituting a trust over the voting rights in favour of the Seller. Accordingly, this does not affect our conclusion that the GMRA involves a sale of the Purchased Securities, even if they include equities and the Equities Annex is used.

2.6 Sham transactions

In coming to the conclusions set out in this opinion, we have assumed that the GMRA accurately reflects the agreement between the parties. If it is merely a "sham", i.e. the common intention of the parties is not to create the legal rights and obligations which the GMRA has the appearance of creating, then extrinsic evidence may be adduced to enable the courts to discover what was actually agreed. For example, if the parties' common intention is that the Buyer will not transfer Equivalent Securities on the Repurchase Date, but this provision has been included to make the transfer of the Purchased Securities by Seller look like it involves a sale, the courts will ignore such provision in determining whether the transfer actually did involve a sale or not.

Similarly, if the parties subsequently enter into an agreement (orally, in writing or by conduct) which is inconsistent with the GMRA, the courts may decide that they have agreed to vary the terms of the GMRA. We have therefore assumed that no such agreement has been or will be entered into.

3 Transfer of ownership

The steps that are required to be taken to transfer assets from one person to another are determined by reference to the laws of the jurisdiction in which the assets are regarded in law as being situated (the *lex situs* of the assets). Hence, even if, as a matter of English law, Seller would be regarded as having sold the Purchased Securities to Buyer (i.e. as having *agreed* to transfer its entire proprietary interest in the Purchased Securities to Buyer), whether Seller's entire proprietary interest has in fact been transferred pursuant to the GMRA is a

matter for the *lex situs* of the Purchased Securities. In other words, the mere entry into of the GMRA (or any Transactions under it) will not be sufficient to transfer title to the Purchased Securities. The Purchased Securities must actually be transferred pursuant to the GMRA. The steps that need to be taken to achieve this will be a matter for the *lex situs*. Where title to the Purchased Securities is evidenced by entries in a register or account maintained by or on behalf of an intermediary and Regulation 19 of the Financial Collateral Arrangements (No.2) Regulations 2003 applies, this will be the law of the country in which the account is maintained.

Furthermore the nature of Buyer's interest in the Purchased Securities will depend on the nature of the assets constituting the Purchased Securities and the way in which such are held by Buyer. In other words, that interest may not be a proprietary interest. For example, if as provided by paragraph 6(a) of the GMRA, delivery of the Purchased Securities takes place by book entry transfer through Euroclear, Clearstream or an agreed securities clearing system, this may not involve the transfer of a proprietary interest in any securities held in such system but merely an adjustment to the contractual (or other) obligations between the system (or its operator) and the person through which the Purchased Securities are held by Buyer in the system (ie the asset in question could be contractual rights in respect of the Purchased Securities, rather than the Purchased Securities themselves). However, in each case, provided that Seller transfers to Buyer all the rights and interests it may have in or in relation to the Purchased Securities, retaining no enforceable interests, and intending to transfer its entire proprietary interest, then in our opinion, the transfer would properly be considered a sale as opposed to a charge.

4 The creation of a fresh proprietary interest

Even if the arrangements between Seller and Buyer for the transfer of the Purchased Securities would be construed as a sale and, hence, an agreement to transfer Seller's entire proprietary interest in the Purchased Securities, it also needs to be considered whether, in respect of any Transaction, the obligation of Buyer to transfer Equivalent Securities to Seller on the Repurchase Date gives Seller a fresh proprietary interest in the Equivalent Securities.

4.1 The effect of the obligation to deliver Equivalent Securities

Under English law, where a person has a contractual right to require the delivery of an asset and the courts would be prepared to grant a decree of specific performance to enforce the delivery obligation, he is treated as having the beneficial ownership of that asset. Accordingly, where the *lex*

situs of the Securities constituting the Equivalent Securities is English law, then if Seller could obtain such a decree in respect of Buyer's obligations to transfer Equivalent Securities, Seller would be the beneficial owner of the Equivalent Securities and Buyer would hold the Equivalent Securities on trust for it.

An order of specific performance is a discretionary remedy and whether it will be given in any case will, therefore, depend on the circumstances. Generally, the courts will order specific performance where a failure to perform cannot be adequately compensated for by an award of damages, but not otherwise. The courts have previously taken the view that where a person owns assets which are not readily available (i.e. where their equivalent cannot be readily obtained from another source), damages may not be an adequate remedy for a breach of an obligation he has accepted to transfer them, and this will justify an order of specific performance. However, a court will not usually order specific performance of an obligation to transfer an asset where the obligee may fulfill his obligations to a counterparty either by transferring the asset or by doing something else.

Whether Seller has, as a result of Buyer's obligation to transfer Equivalent Securities, a proprietary interest in the Equivalent Securities, will depend on the liquidity of the Securities which comprise the Equivalent Securities. If the Securities are readily available in the market, specific performance would not, in our opinion, be available and so this obligation of Buyer would not give Seller a proprietary interest in the Equivalent Securities. On the other hand, if the Equivalent Securities are very illiquid, so that there is only a very limited market for them, following the Repurchase Date, a decree of specific performance probably could be obtained by Seller to enforce Buyer's obligations. At least at that stage, therefore, Seller probably would have a proprietary interest in the assets. In the present case we have assumed that, in respect of any transaction, all the Securities comprising the Equivalent Securities are liquid. The issue therefore would only arise if this were to cease to be the case prior to the Repurchase Date.

4.2 The effect of the agreement to pay Income to Seller and vote in accordance with its instructions

It might be argued that Buyer's agreement in paragraph 5 of the GMRA to pay to Seller any Income which is paid in respect of the Purchased

Securities could be construed as involving an assignment of, or a declaration of trust over, Buyer's rights to that Income. Similarly, it might be argued that the arrangements in the Equities Annex regarding the exercise of voting rights could be construed as involving an assignment of, or a declaration of trust over, the voting rights attached to the Purchased Securities. However, for the same reasons that we do not consider that this agreement would be construed as the *reservation* of a proprietary interest in respect of the Purchased Securities (see paragraphs 2.4 and 2.5 above), we do not believe that it would be construed as the creation of a fresh proprietary interest over them, whether in respect of Income or voting rights.

5 Conclusion

Subject to the qualifications set out in this opinion, in respect of each Transaction, following the transfer by Seller to Buyer of the Purchased Securities, in our opinion, Seller will have disposed of its entire proprietary interest in the Purchased Securities by way of sale.

6 Reliance on this opinion

This opinion is addressed to you solely for your benefit in connection with the issue of the Notes. It is not to be transmitted to anyone else, nor is it to be relied upon by anyone else or for any other purpose or quoted or referred to in any public document or filed with anyone without our express consent. However, a copy of this opinion may be provided by Lehman Brothers to its auditors for the purpose of preparing the firm's balance sheets. We accept no responsibility or legal liability to any person other than the addressees specified above in relation to the contents of this opinion.

Yours faithfully

/s/ Linklaters

Linklaters

1. Section 2.4 of the Linklaters Letter

Repo 105 transactions allowed Lehman to maintain its level of earning assets while reducing the size of its balance sheet.³⁰ The outright sale of securities inventory followed by a corresponding pay-off of liabilities with the sale proceeds also would have reduced the size of Lehman's balance sheet. However, in contrast to Repo 105 transactions, an outright sale would have removed the net earnings associated with those securities sold.³¹ While Lehman removed the securities inventory used in Repo 105 transactions from its balance sheet for accounting purposes, Lehman continued to earn income on the securities throughout the term of the Repo 105 transaction.³²

The Linklaters letter made clear that in the transactions contemplated under the letter, income (*i.e.*, coupon payments) received during the term of the repo by the buyer would be paid or otherwise credited to Lehman's account.³³ For support, the Linklaters

³⁰ Duff & Phelps, Repo 105 Question for Examiner's Report (Nov. 30, 2009), at p. 1.

³¹ *Id.* at 2.

³² *Id.* at 2.

³³ Letter from Linklaters, to Lehman Brothers International (Europe), re: Repurchase Transactions under a Global Master Repurchase Agreement (May 31, 2006), § 2.4 [LBEX-LBIE 000001]. The Linklaters letter interprets the GMRA provision guaranteeing that the repo borrower continues to receive the income from the transferred securities as evidence that the repo borrower does *not* continue to have a proprietary interest in the securities. *Id.* The Linklaters letter acknowledged the counter-argument, namely that the repo borrower holds a proprietary interest in the transferred securities:

In certain circumstances, a transfer of assets coupled with the retention of the right to receive the income on the assets could be construed as involving the retention of a proprietary interest in or relating to the assets.

Id. Linklaters, however, read Paragraph 5's wording that the repo lender is obligated to pay the repo borrower "an amount equal to the amount paid by the issuer" as only an obligation to pay an amount

letter referred to Paragraph 5 of the Global Master Repurchase Agreements Lehman used for Repo 105 transactions.³⁴ Specifically, Paragraph 5(i) provided that “where the Term of a particular Transaction extends over an Income Payment Date in respect of any Securities subject to that Transaction, Buyer [*i.e.*, the repo lender] shall on the date such Income is paid by the issuer transfer to or credit to the account of Seller [*i.e.*, the repo borrower] an amount equal to (and in the same currency as) the amount paid by the issuer.”³⁵ Typically, ordinary repo transactions would also have this feature – the ability to receive coupon payments during the term of the repo.³⁶ This feature therefore does not explain why Lehman would undertake a Repo 105 transaction, instead of an ordinary repo transaction.

Thus, for example, assuming Lehman owned a security with a 4.0% yield, funded by a liability that cost 2.5%, Lehman’s net earnings on that position would have

equivalent to the income on the securities, rather than the income itself, because the GMRA did not require that the income be held in a separate account or trust. *Id.*

³⁴ Securities Industry and Financial Markets Association, Standard Forms, Global Master Repurchase Agreement (1995) ¶ 5 Income Payments, [“GMRA 1995 Version”], *available at*: <http://www.sifma.org/services/stdforms/globalmasterrepurchase.html>; Securities Industry and Financial Markets Association, Standard Forms, Global Master Repurchase Agreement (2000) ¶ 5 Income Payments, [“GMRA 2000 Version”], *available at*: <http://www.sifma.org/services/stdforms/globalmasterrepurchase.html>.

³⁵ See GMRA 1995 Version, ¶ 5 Income Payments; GMRA 2000 Version, ¶ 5 Income Payments.

³⁶ Compare GMRA 1995 Version, ¶ 5 Income Payments; GMRA 2000 Version, ¶ 5 Income Payments *with* Securities Industry and Financial Market Association, Standard Forms, Master Repurchase Agreement (1996) ¶ 5, *available at*: <http://www.sifma.org/services/stdforms/MRA/html>. See also Master Repurchase Agreement (1996 version); see also Master Repurchase Agreement Guidance Notes (Sept. 1996 Version), at p. 4, *available at* http://www.sifma.org/services/stdforms/pdf/master_repurchase_gn.pdf (“As amended, the Paragraph confirms that Seller is entitled to receive from Buyer an amount equal to all payments or distributions of Income made on or in respect of the Purchased Securities to the full extent it would be so entitled if the Purchased Securities had not been sold to Buyer (except insofar as Seller may have otherwise received them).”).

been 1.5%.³⁷ In a Repo 105 transaction, although the securities were removed from Lehman's balance sheet, Lehman continued to earn the 1.5% net spread.³⁸ In an outright sale, by contrast, Lehman would have earned \$0 (zero) on the securities sold – and would have had no cost on the corresponding liability extinguished – over the period in which the securities remained sold.³⁹ In other words, in an outright sale Lehman would have lost all the net earnings associated with the securities position.⁴⁰ As such, even if the cost of Repo 105 transactions was greater than that of ordinary borrowings it paid off with the Repo 105 proceeds, Lehman would have had an incentive to use Repo 105 transactions instead because the benefit to Lehman was two-fold: reduction in balance sheet while allowing Lehman to earn income.⁴¹

To take another example, if a borrowing under a Repo 105 transaction cost 2.65% (15 basis points more than the borrowing in the previous example), Lehman would have had net earnings of 1.35% on the Repo 105 securities (4.0% security yield, minus 2.65% Repo 105 borrowing cost).⁴² Even though the 1.35% is lower than the net earnings of 1.5% (earnings on securities funded by cheaper ordinary borrowings) from earlier in this example, in contrast to the *outright sale* of securities, every dollar of net earnings

³⁷ Duff & Phelps, Repo 105 Question for Examiner's Report (Nov. 30, 2009), at p. 2.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ To be clear, this two-fold incentive for Repo 105 is relative to an outright sale. Like Repo 105 transactions, Lehman typically continued to earn income on securities transferred in ordinary repo transactions.

⁴² Duff & Phelps, Repo 105 Question for Examiner's Report (Nov. 30, 2009), at p. 2.

from a Repo 105-funded security transaction would have resulted in incremental income for Lehman.⁴³

Other potential reasons for Lehman's reliance on Repo 105 transactions as opposed to outright sales are less compelling. For example, the bid/offer spread may have precluded the use of an ordinary sale followed by an ordinary purchase to achieve the balance sheet reduction at quarter-end.⁴⁴ Over the course of many months and quarter-ends, the transaction costs on numerous sales and purchases would erode the net income earned on these security positions.⁴⁵ Ed Grieb, Lehman's former Global Financial Controller, explained that Repo 105 transactions were preferable to outright sales because it provided Lehman with "the assurance of getting the securities back in the future . . . at a set price instead of having to go in the marketplace and buy them."⁴⁶ However, given the generally liquid nature of the primarily "governmental" securities used in Repo 105 transactions, bid/offer spreads would have been relatively small and likely not a determining factor in any decision to use, or not use, the sale of these securities to manage Lehman's balance sheet.⁴⁷

⁴³ *Id.* at 1.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Examiner's Interview of Edward Grieb, Oct. 2, 2008, at 11.

⁴⁷ Duff & Phelps, Repo 105 Question for Examiner's Report (Nov. 30, 2009), at p. 1.

E. Lehman Brothers Global Consolidated Balance Sheets

The Examiner collected archived Lehman Brothers Global Consolidated Balance Sheets (“GCBS documents”) illustrating the trend of quarter-end spikes in Repo 105 usage followed by intra-quarter dips. Quarter-end dates are highlighted in yellow.

Date	Production Number	Total Repo 105
Aug 31, 2007 (Press Release)	LBEX-DOCID 3237230	\$36.407 billion
Sept 28, 2007 (Draft)	LBEX-DOCID 2705059	\$24.406 billion
Oct 30, 2007 (Draft)	LBEX-DOCID 2705943	\$20.072 billion
Oct 31, 2007 (Draft)	LBEX-DOCID 2705943	\$29.936 billion
Nov 29, 2007 (Final)	LBEX-DOCID 4342450	\$31.512 billion
Nov 30, 2007 (Final)	LBEX-DOCID 3439086	\$38.634 billion
Jan 29, 2008	LBEX-DOCID 3363236	\$28.884 billion
Feb 13, 2008	LBEX-DOCID 1697794	\$23.602 billion
Feb 15, 2008	LBEX-DOCID 3215625	\$24.217 billion
Feb 19, 2008	LBEX-DOCID 3215625	\$25.124 billion
Feb 22, 2008	LBEX-DOCID 3363289	\$31.029 billion
Feb 28, 2008 (Press Release)	LBEX-DOCID 4517138	\$40.003 billion
Feb 29, 2008 (Press Release) ⁴⁸	LBEX-DOCID 579841	\$49.102 billion
Mar 12, 2008	LBEX-DOCID 022302	\$26.685 billion
Mar 13, 2008	LBEX-DOCID 765323	\$26.212 billion
Mar 14, 2008	LBEX-DOCID 3438624	\$12.750 billion
Mar 27, 2008	LBEX-DOCID 3363367	\$22.104 billion
Mar 28, 2008	LBEX-DOCID 3363367	\$24.597 billion
Apr 3, 2008	LBEX-DOCID 3438756	\$21.835 billion
Apr 4, 2008	LBEX-DOCID 3438756	\$18.653 billion
Apr 11, 2008	LBEX-DOCID 766086	\$20.260 billion
Apr 14, 2008	LBEX-DOCID 766086	\$19.546 billion
Apr 18, 2008	LBEX-DOCID 1961054	\$19.785 billion
Apr 21, 2008	LBEX-DOCID 766088	\$21.907 billion
Apr 21, 2008	LBEX-DOCID 1961054	\$21.907 billion
Apr 25, 2008	LBEX-DOCID 3237475	\$23.154 billion

⁴⁸ “Press release” version appears to reflect the reported numbers for net balance sheet. These were not publicly released documents, however.

Apr 28, 2008	LBEX-DOCID 766092	\$24.077 billion
Apr 29, 2008	LBEX-DOCID 1337858	\$24.899 billion
Apr 30, 2008 (Draft)	LBEX-DOCID 394333	\$24.709 billion
May 5, 2008	LBEX-DOCID 1961083	\$23.141 billion
May 6, 2008	LBEX-DOCID 766102	\$24.388 billion
May 12, 2008	LBEX-DOCID 766107	\$25.550 billion
May 13, 2008	LBEX-DOCID 766107	\$25.282 billion
May 27, 2008	LBEX-DOCID 3237577	\$39.237 billion
May 28, 2008	LBEX-DOCID 766924	\$43.112 billion
May 29, 2008	LBEX-DOCID 766925	\$46.820 billion
May 30, 2008 (Final)	LBEX-DOCID 1427836	\$50.383 billion
Jul 14, 2008	LBEX-DOCID 3363529	\$17.315 billion
Jul 15, 2008	LBEX-DOCID 3363529	\$16.828 billion
Jul 21, 2008	LBEX-DOCID 3363538	\$15.528 billion
Jul 22, 2008	LBEX-DOCID 3363538	\$17.099 billion
Jul 23, 2008	LBEX-DOCID 3363541	\$14.786 billion
Jul 28, 2008	LBEX-DOCID 3363542	\$14.596 billion
Jul 29, 2008	LBEX-DOCID 3363542	\$14.548 billion
Aug 13, 2008	LBEX-DOCID 084891	\$17.405 billion
Aug 14, 2008	LBEX-DOCID 084891	\$18.274 billion
Aug 15, 2008	LBEX-DOCID 1742024	\$19.436 billion
Aug 18, 2008	LBEX-DOCID 2927703	\$19.712 billion
Aug 19, 2008	LBEX-DOCID 861240	\$19.589 billion
Aug 20, 2008	LBEX-DOCID 2927705	\$19.887 billion
Aug 21, 2008	LBEX-DOCID 1742028	\$20.819 billion
Aug 22, 2008	LBEX-DOCID 1742028	\$20.101 billion
Aug 25, 2008	LBEX-DOCID 1742029	\$22.476 billion
Aug 26, 2008	LBEX-DOCID 861234	\$23.971 billion
Aug 27, 2008	LBEX-DOCID 861244	\$24.601 billion
Aug 28, 2008	LBEX-DOCID 1427770	\$26.954 billion
Aug 29, 2008 (Final)	LBEX-DOCID 2808606	\$26.383 billion

F. Expert Curriculum Vitae

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VITAE

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- EDUCATION:** Ph.D., College of Business, University of Iowa. Concentration: Accounting.
Supplemental Areas: Organizational Behavior, Economics, and Statistics.
BA, University of Iowa. Major: History
- PROFESSIONAL CERTIFICATION:** CPA--Florida
- RECENT AWARD:** Received 2009 Distinguished Service in Auditing Award from Auditing Section of American Accounting Association ([click here](#))
- PROFESSIONAL AND TEACHING EXPERIENCE: (Most recent first)**
- Consultant, Oscher Consulting, Tampa, FL (Auditing and Financial Reporting Issues) (2008-present)
 - Board of Directors and Audit Committee for the University of South Florida Physicians Group (USFPG) of the USF College of Medicine, University Medical Services Association (UMSA), and USF Medical Services Support Corporation (MSSC) (Current member—since January 2009)

- Professor, USF School of Accountancy (1989-2004), Director (1989-94), Ph.D. Program Coordinator (94-98)
- Visiting Professor, University of Amsterdam, Netherlands, Fall 1998.
- KPMG Peat Marwick Professor of Accounting, University of Central Florida (1986-89)
- Professor of Accounting, University of Southern California (1983-86)
- Partner, Auditing Services, Deloitte Haskins & Sells (Now Deloitte & Touche), New York (5 years). Deloitte responsibilities are summarized below.
- Associate Professor of Accounting, University of Florida.
- Assistant Professor of Accounting, University of Texas at Austin.
- Graduate Teaching Assistant and Administrative Assistant to the Director of the MBA Program, University of Iowa.
- Loan Officer, Bank of America, Los Angeles, and First National Bank, Iowa City, Iowa.

DESCRIPTION OF WORK AT THE PCAOB (2003 to January 2009):

- Activities related to being PCAOB Associate Chief Auditor and Director of Research included drafting and reviewing materials related to potential auditing and related professional practice standards of the PCAOB; identifying and summarizing the implications of existing research for potential standards; reviewing and commenting on summaries of results of PCAOB inspections; and presenting and discussing professional, regulatory, research and other issues related to the potential standards with the Board, the PCAOB's Standing Advisory Group, and other external parties. Significant accomplishments included keeping auditing researchers, educators, and practitioners informed of PCAOB standards-setting activities through a series of 11 "PCAOB Update" articles in *The Auditor's Report*; coordinating the planning and conduct of four PCAOB Symposiums for leading auditing professors, PCAOB personnel, and selected other regulators and standards-setters; and working with leaders of the Auditing Section of the American Accounting Association (AAA) to establish the PCAOB Research Synthesis Program (described later).
- **PCAOB Symposiums**
Chairman of the Planning Group for a series of four PCAOB Symposiums (November 2004, February 2006, April 2007, and April 2008. Also a member of the Planning Group for the 2009 PCAOB Symposium). Worked on developing and securing approval for the proposal for the first Symposium in 2004 and for each of the next three symposia. At each of the initial four Symposiums, approximately 40 auditing researchers and educators and 35 representatives from the PCAOB, along with representatives of the SEC, FASB, and GAO participated in presentations and discussions of key issues of mutual interest to the PCAOB and the academic community. The Symposium Planning Group consisted of four representatives of the PCAOB and four representatives of the Auditing Section of the AAA. At each Symposium, the emphasis was not only on discussion of key issues but also on developing action plans for addressing the issues. For example, discussion initiated at the first PCAOB Symposium in 2004 led to working with Auditing Section leaders to establish the Research Synthesis Program.

- **Auditing Section's PCAOB Research Synthesis Program**

As PCAOB Associate Chief Auditor and Director of Research, I worked with leaders of the Auditing Section of the American Accounting Association to establish nine teams of researchers dedicated to synthesizing existing research related to each of nine high priority PCAOB standards-setting projects. All nine Research Synthesis Teams completed their projects, submitted them to the PCAOB for input related to establishing new standards, and published the results of their projects in recognized peer-reviewed academic journals. The research issues for each of the projects were standards-setting policy issues identified in briefing papers prepared by staff of the PCAOB Office of Chief Auditor for the Standing Advisory Group and placed on the PCAOB website. The completed research synthesis reports were used by the Office of Chief Auditor staff and others at the PCAOB in preparing materials related to each of the standards-setting projects. The nine research synthesis projects addressed the following PCAOB projects:

- Audit Confirmations
- Audit Firm Quality Control
- Audit Reporting Model
- Auditor Risk Assessments
- Communications with Audit Committees
- Engagement Quality Review
- Auditing Fair Value Measurements
- Financial Fraud
- Related Party Transactions.

- **Presentations**

Presentations while at the PCAOB included presentations at various academic and auditing practice conferences between 2003 and 2008 on PCAOB activities, the significance of research input to PCAOB standards-setting, and the educational implications of the mission of the PCAOB. These conferences included annual meetings of the American Accounting Association, Mid-Year Meetings of the AAA Auditing Section, university conferences and state society of CPA conferences, PCAOB Small Business Forums, and various auditing research symposiums.

TEACHING EMPHASIS:

- Contemporary Issues in Auditing, Assurance Services, Financial Reporting, Audit Committees, Corporate Governance and International Business Reporting

RESEARCH EMPHASIS:

- Evaluating Audit Quality and Compliance with PCAOB and Professional Standards
- Corporate Governance, Audit Committees, Reliability of Business Reporting
- New Technology and the Role of Auditing, Attest, and Assurance Services in a Global Marketplace
- Educational Issues Related to Information Technology, International Accounting, Auditing and Assurance
- Audit and Assurance Judgment Processes--Models and Experiments Regarding Audit/Assurance Judgments.
- Establishing, Interpreting, and Implementing Audit, Attest, Assurance and Ethical Standards.
- Designing and Testing Audit/Assurance Decision Aids, Decision Support Systems, Expert Systems

PROFESSIONAL LEADERSHIP POSITIONS (Between 1996 and 2006):

- Appointed the United States representative to the International Accounting Education Standards Board (IAESB) [formerly the International Federation of Accountants (IFAC) Education Committee] (January 1998 – October 2003).
 - IAESB liaison with the International Auditing and Assurance Standards Board (IAASB)
 - IAESB liaison with professional accounting associations in the following countries:
 - Japan, Bahamas, Barbados, Jamaica, Trinidad & Tobago
 - Co-Chair of task force to develop the first International Standard on Continuing Professional Education for Accountants (IES No.7)
 - Co-Chair of project on Assuring Quality Control in Internet Education and Distributive Learning in International Accounting Education
- AICPA Pre-Certification Education Executive Committee, ex-officio member and liaison with the IAESB (1998-2003).
- Member of the Consultative Advisory Group for the International Accounting Education Standards Board (IAESB) (representing the PCAOB and the United States) (2004-06).
- Member, Editorial and Advisory Committee, project on *The IMPACT OF GLOBALISATION ON ACCOUNTANCY EDUCATION* (2000-2003). This was a three-year research project headed by Mr. Gert Karreman of the Netherlands, former member of the IFAC Education Committee and head of education for Royal NIVRA, the Netherlands professional accounting association. It is a study of similarities and differences in accounting education internationally and of the impact globalization on the education process. Study was completed and presented at the World Congress of Accounting Educators and Researchers in Hong Kong in November 2002. The study was subsequently published and distributed worldwide in late 2002
- Chair, *Future Audit, Attestation and Assurance Services Task Force*, Auditing Section of the American Accounting Association (AAA) (1994-97).
- Member, *Future Audit Services Subcommittee*, AICPA Special Committee on Assurance Services (1995-97).
- Member, *Relations with Educators Committee*, FICPA (1995-2000). Committee Chair (1996-97).
- Member, *Program Committee*, American Accounting Association Annual Meeting (1997).

AUDITING STANDARDS BOARD APPOINTMENTS (Primarily between 1988 and 1992):

- Appointed to the *Auditing Standards Board* for four annual terms (January 1988 to January 1992). The ASB establishes generally accepted auditing standards (*Statements on Auditing Standards—SAS*), attestation standards (*Statements on Standards for Attestation Engagements—SSAE*), and standards for accounting firm quality control (*Statements on Quality Control Standards—SQCS*).
- Also appointed to the following task forces of the *Auditing Standards Board*:
 - * *Audit Issues Task Force*—Planned ASB agenda.
 - * *Audit Sampling Task Force* (Developed the current AICPA Audit Guide for Audit Sampling)
 - * *Audit Confirmations Task Force*
 - * *Use of Work of Other Auditors Task Force*
 - * *Reporting on Internal Control Task Force*
 - * *Auditing Accounting Estimates Task Force*
 - * *ASB Projects Task Force*
 - * *Clients with Conflicting Interests Task Force*
- Member of Planning Group for the *Auditing Standards Board Expectation Gap Roundtable* (1992). One of four coordinators and editors of papers for the Roundtable, which was held in May, 1992, in

Charleston, SC. The papers presented at the Roundtable were published by the AICPA in 1993 for use in graduate seminars in auditing.

OTHER PROFESSIONAL LEADERSHIP POSITIONS (1985-1996):

- Member of the *Faculty Advisory Group* for the “Excellence in Audit Education” Program of Coopers and Lybrand (1986-95). This was an international program of materials and support for audit education funded by the Coopers and Lybrand Foundation, working through the Auditing Section of the AAA. Coordinator for the initial Auditing Faculty Symposium in May, 1987, to introduce Program to auditing professors at major schools nationally and internationally.
- *AICPA Council*, the senior policy-forming body of the American Institute of CPAs (1992-95).
- *Board of Governors* of the Florida Institute of CPAs (FICPA) (1993-95).
- Member, *Communications Task Force*, FICPA (1994-96).
- *Continuing Education Committee*, FICPA (1994-95).
- *Accounting Accreditation Committee* of the American Assembly of Collegiate Schools of Business (AACSB) for three years (1992-95). This Committee makes decisions on which undergraduate, masters, and doctoral accounting programs in the United States will be accredited
- *Auditing Standards Committee*, Auditing Section of the American Accounting Association (1991-94).
- Chair, (statewide) *Committee on Accounting Principles and Auditing Standards*, Florida Institute of CPAs for three years (1989-92). This committee represents the accounting profession in Florida in providing input to the Financial Accounting Standards Board (FASB) and the Auditing Standards Board (ASB) and responding to exposure drafts of proposed accounting and auditing standards.
- President, Auditing Section of the American Accounting Association (AAA) (1985-86).
- Member, *Committee on Communications in Accounting Curriculum*, Federation of Schools of Accountancy (1989-90).
- Chair, *Auditing Section Nominating Committee* (1987).
- *Strategic Planning Task Force*, Auditing Section (1987-88).
- Chair, *Peat Marwick Seminars Committee* of the AAA (1986-87).
- *AAA Council*, Elected Member (1985-87).
- *Professional Accounting Council*, University of Iowa (1985-87).
- *Nominating Committee*, American Accounting Association (1986).

EARLIER NATIONAL LEADERSHIP POSITIONS:

- Advisor to a member of the *Auditing Standards Board*.
- Worked with the chairpersons of other ASB task forces to help develop the concepts and portions of drafts for the following *Statements on Auditing Standards (SAS)*:
 1. “Reporting on Internal Accounting Control,” SAS No. 30.
 2. “Audit Sampling,” SAS No. 39.
 3. “Materiality and Audit Risk,” SAS No. 47.
- Vice-President of the Auditing Section of the American Accounting Association (AAA) (1984-85).
- *Wildman Medal Committee* (AAA), to select most significant contribution to accounting literature.
- AACSB Visitation Team for accreditation of accounting programs at Pennsylvania State University.
- *Advisory Board*, Robert M. Trueblood Seminars (3 years). Represented the AAA in meetings with the Touche Ross Foundation to plan a series of seminars for accounting professors. These annual seminars have attracted about 90 faculty per year throughout the nation and have continued to the present time.
- *Committee on Education*, AAA (3 years).
- Chair, *Committee on Professorial Continuing Education*, AAA.
- *Task Force on Continuing Education*, AAA.

- *AICPA Curriculum Development Task Force.*

PROFESSIONAL DEVELOPMENT TEACHING EXPERIENCE:

Development and presentation of seminars on new audit, attest, and assurance service standards, emerging information technology, and professional and political developments. Presented to various accounting firms (1987-present). Development and presentation of numerous staff-development courses offered for Deloitte staff at various levels (5 years); numerous management development courses on a variety of accounting, auditing, information systems, and control topics for non-accountant managers; and numerous CPE courses for the Florida Institute of CPAs and various accounting firms.

PRIMARY RESPONSIBILITIES AS AUDIT PARTNER AT DELOITTE:

Activities and responsibilities as an auditing services partner for Deloitte included developing and communicating the firm's auditing policies and techniques, working with the Auditing Standards Board and other groups in the establishment of professional standards, conducting auditing research projects, producing written materials and videotapes for staff development, coordinating the firm's national AuditSCOPE Seminars for educators, and maintaining the firm's relations with educators and researchers. Also worked in the New York Practice Office as an audit partner on engagements for several large, multinational clients. Also worked in Dallas office on audits of small and medium-size firms.

EDITORIAL EXPERIENCE:

- Editorial Board, Auditing: A Journal of Practice and Theory (1987-94). Continued as an ad hoc reviewer.
- Editorial Board, Advances in Accounting (1984-1986).
- Editorial Board Member, The Accounting Review (3 years).
- Contributing Editor, The Journal of Accountancy, (3 years).
- Ad hoc reviewer of auditing research manuscripts for several other journals.
- Various other editorial review committees for articles and books.
- Reviewer for numerous candidates for promotion to Associate and Full Professor at various US universities.

CONSULTING, EXPERT WITNESS AND OTHER LITIGATION SUPPORT EXPERIENCE:

- Litigation Support (Expert Witness), Board of Accountancy, State of Florida, Office of the Attorney General, American Express case.
- Litigation Support (Expert Witness), Cases involving Florida Accounting Firms.
- Litigation Support (Expert Witness), Case involving Coopers and Lybrand and PharMor.
- Consultant on Financial Reporting and Internal Control for SEC-reporting company in Miami.
- Litigation Support (Expert Witness), Case involving Ernst & Young.
- Litigation Support (Expert Witness), Enforcement Division of the SEC
- Consultant, Litigation Support on auditing and accounting issues for Orlando area firms.
- Expert Witness, ESM Government Securities/Grant Thornton Litigation.
- Consultant, Litigation Support re: auditing/accounting issues for three Los Angeles area firms.
- Touche Ross & Co., New York, Consultant and Principal Researcher on auditing research projects for the audit research staff.
- Coopers and Lybrand, New York, Consultant and Principal Researcher on a research project concerning the evaluation of materiality of internal accounting control weaknesses.
- Consultant to several small & medium-size accounting firms on various auditing issues.

- Office of the Attorney General, State of Florida, Consultant on questions of audit evidence.
- Florida Board of Accountancy, Assisted in the development of the Continuing Professional Education Examination.

MOST SIGNIFICANT HONORS AND AWARDS:

- Distinguished Service in Auditing Award, American Accounting Association Auditing Section (January 2009)
- Named “Florida Outstanding Educator” by the Florida Institute of CPAs (June 1991).
- Received the American Accounting Association’s “Innovation in Accounting Education Award” (August 1991) for work with the Faculty Advisory Group, “Excellence in Audit Education” Program, sponsored by Coopers and Lybrand (now Price Waterhouse Coopers).

PUBLICATIONS:

PUBLICATION SUMMARY: Publications include (1) articles in refereed journals including the *Journal of Accounting Research*, *The Accounting Review*, *The Journal of Accountancy*, *Auditing: A Journal of Practice and Theory*, *Issues in Accounting Education*, *The Internal Auditor*, *Management Accounting*, *Abacus*, *Advances in Accounting*, and various other journals; (2) articles in professional journals; (3) published research monographs; (4) various published continuing professional education manuals; (5) published book reviews and discussant’s comments; (6) research papers published in conference proceedings; (7) published cases for auditing education, and (8) a series of 13 “PCAOB Standards-Setting Update” articles published in *The Auditor’s Report* since 2005.

JOURNAL ARTICLES

1. Series of 13 “PCAOB Standards Update” articles for *The Auditor’s Report*, published by the Auditing Section of the American Accounting Association (published between July 2005 and February 2009). (with Douglas Carmichael, Chief Auditor until 2005; Tom Ray, Chief Auditor since 2005; and Greg Scates, Deputy Chief Auditor). (The most recent article and hyperlinks to earlier articles are available at <http://aaahq.org/audit/Pubs/Audrep/09winter/item13.htm>.)
2. “New Assurance Service Opportunities for Information Systems Auditors,” *IS Audit & Control Journal* (Vol. IV, June 1999) (with James Hunton and Cynthia Frownfelter-Lohrke).
3. “The Internet and Distance Learning In Accounting Education: A Hypertext-Linked Exploration of the Topic.” Published on the International Accounting Education Standards Board (IAESB) web site, November 1998. Because this research paper had extensive hyperlinks to numerous Web sites that are relevant to the topic, the IFAC Education Committee decided to have this paper, which deals with issues of quality assessment and quality assurance in Internet education, published on its Web site. IFAC encouraged all accounting associations that are member bodies of IFAC in over 100 countries worldwide to make the paper known and used by its educators and practitioners. It has been translated into several languages and was used as the basis for development of official international accounting education guidance on the topic by the IAESB. (with Joseph Lloyd-Jones of the University of Ottawa, Canada).
4. “Assessing the Impact of the Internet and Distance Learning in International Accounting Education,” *International Federation of Accountants* (IFAC) Quarterly, January 1999.

5. "New Forms of Assurance Service for New Forms of Information: The Global Challenge for Accounting Educators," *The International Journal of Accounting* (forthcoming Vol. 33, No. 3, 1998) (with James Hunton).
6. "The Role of Information Systems Auditors in WebTrustSM Assurance," *IS Audit & Control Journal* (Vol. IV, 1998) (with James Hunton).
7. "New Assurance Services: The Global Challenge for Accounting Educators," *International Federation of Accountants* (IFAC) Quarterly, January 1998.
8. "Control Environment Condition and the Interaction Between Control Risk, Account Type, and Management's Assertions" (Co-authored with Ron Marden and Sandra Schneider). *Auditing: A Journal of Practice and Theory* (Spring 1997).
9. "Information Systems Auditors Play a Critical Role in Shaping Future Assurance Services," *IS Audit & Control Journal* (Vol. III, 1997). (with James Hunton).
10. "Using Professional Judgment in Control Environment Evaluations: An Instructional Case" (Co-authored with Ron Marden and Sandra Schneider), *Issues in Accounting Education*, (Fall 1996).
11. "ASB Approves Five New Statements and an Exposure Draft," *The Auditors' Report*, Winter, 1992.
12. "ASB Moves Forward on Several Projects--Seeks Research Input on Expectations Gap Issues," *The Auditors' Report*, Fall, 1991.
13. "Auditing Standards Board Works on a Broad Agenda to Improve Audit Practice," *CPA Today*, November, 1991.
14. "The Auditor's Responsibility for Fraud and Illegal Acts--The 1991 ASB Agenda," *CPA Today*, July, 1991.
15. "ASB Seeks Greater Research Input," *The Auditors' Report*, Summer, 1991.
16. "ASB Actions Concerning Fraud," *The Auditors' Report*, Winter, 1991.
17. "New Guidance for Assessing Internal Control and Using the Work of Internal Auditors," *CPA Today*, July, 1990.
18. "ASB Topics of Importance to Educators and Researchers," *The Auditors' Report*, Summer, 1990.
19. "Information Systems in the Year 2000," *The Internal Auditor*, January-February, 1990. (Co-authored with Theodore J. Mock and Robert N. West).
20. "The Impact of the Control Risk Audit Guide," *CPA Today*, January, 1990.
21. "Internal Control and Internal Audit Issues Top ASB Agenda," *The Auditors' Report*, Winter, 1990.

22. "The New ASB Planning Structure and Emerging Standards," *The Auditors' Report*, Fall, 1989.
23. "The New Control Risk Audit Guide and Other ASB Guidance," *The Auditors' Report*, Summer, 1989.
24. "The Revised Financial Institution Confirmation Process and the New Standard Bank Confirmation Form," *CPA Today*, July, 1989.
25. "Auditing Standards Board Deliberations," *CPA Today*, April, 1989.
26. "Auditing Standards Board Update," *The Auditors' Report*, Winter, 1989.
27. "Critical Internal Control Issues: Their Impact on Auditors of Private and Public Entities," *CPA Today*, Jan., 1989.
28. "ASB Actions on Internal Control, Confirmations, and 'Expectation Gap' Issues," *The Auditors' Report*, Fall, 1988.
29. "ASB in Transition," *The Auditors' Report*, Summer, 1988.
30. "ASB Update," *The Auditors' Report*, Winter, 1988.
31. "Sources of Error and Inconsistency in Audit Judgment," *Advances in Accounting* (1987).
32. "Audit Judgment and Evidence Evaluation," (co-authored with Theodore J. Mock), *Auditing: A Journal of Practice and Theory* (Fall, 1985).
33. "Long-Range Planning and Control of Growth," (co-authored with Frank Daroca and W. Thomas Lin) *Journal of Accountancy* (December, 1984), pp. 118-134.
34. "A Review and Integration of Empirical Research on Materiality," (co-authored with William F. Messier, Jr.), *Auditing: A Journal of Practice and Theory* (Fall, 1982), pp. 45-63.
35. "Audit Judgment Research," *The Auditors' Report* (Fall, 1981).
36. "Reporting on Internal Accounting Control," (co-authored with Kenneth W. Stringer), an article in *Annual Accounting Review* (Volume 2, 1980), Harwood Academic Publishers, pp. 143-56. This article focuses on reporting issues, not study or evaluation issues.
37. "Studying, Evaluating and Reporting on Internal Accounting Control," (with Kenneth W. Stringer), *The Accounting Forum* (Volume 50, No. 1, May, 1980), pp. 1-13. This article centers on the study and evaluation of internal accounting control, with only a brief discussion of reporting issues.
38. "Internal Accounting Control: The Deloitte Approach," (co-authored with Kenneth W. Stringer), *Director's Monthly* (Jan.-Feb., 1980). This article discusses the specific approach developed by Deloitte, which employs a network analysis of internal control functions based on decision trees

and decision tables. The co-authors participated heavily in this development, which was directed by Mr. Stringer.

39. "Internal Audits of Production Control Adaptiveness," (co-authored with William Collins) *The Internal Auditor*.
40. "The Effect of Budget Adaptiveness and Tightness on Managerial Decision Behavior," *Journal of Accounting Research*.

PUBLISHED MONOGRAPHS AND BOOKS AND MATERIALS

1. Co-authored the draft of the first international standard on continuing professional development for professional accountants, published as International Accounting Education Standard No. 7 ([IES 7: Continuing Professional Development: A Program of Lifelong Learning and Continuing Development of Professional Competence](#)) (co-authored the draft and co-chaired the standard project with Steve Glover of the Canadian Institute of Chartered Accountants). (Initially issued in 2003. Subsequently revised by the IAESB in 2008).
2. "Auditor Independence: Beyond the Rules"—the Independence Education Program (IEP) (2000-2001). Participated in the authoring and development of written scenarios, a video case, a CD-ROM and a written "Faculty Toolkit" on auditor independence. These materials were the basis for four nationwide webcasts (at approximately 30 locations each) for practitioners and a separate nationwide webcast for educators. Co-anchored all the webcasts with Dan Guy (former VP of Auditing at the AICPA). All materials were published and distributed to all members of the Auditing Section of the AAA as part of the IEP and are now available to all accounting educators through the AAA. Participated in the development of the following materials:
 - "Auditor Independence Scenarios"—Developed a series of published scenarios including teaching notes with Arnie Wright (Boston University) and Dan Guy.
 - "Beekman Office Supply—An Auditor Independence Video Case"—reviewed and edited the initial story line and subsequent video script for the case on auditor independence judgment (initially drafted by Robert Sack, former Chief Accountant of the Enforcement Division of the SEC).
 - "Auditor Independence—CD-ROM and Faculty Tool Kit"—worked with a team on the Independence Education Program (IEP) to develop materials and produce a CD-ROM disk for auditing and accounting educators. The CDs were distributed to all members of the Auditing Section of the AAA and to other educators and educational groups, with suggestions and instructions on how the videos, case, scenarios, PowerPoint slides and other support materials could be used in the classroom or as outside references for various courses.
3. *Quality Issues For Internet and Distributed Learning in Accounting Education*. Lead author (with Joseph Lloyd-Jones) for this official IFAC Education Committee Discussion Paper, which was published and distributed as a monograph by the International Federation of Accountants (IFAC) to over 140 member accounting institutes in over 100 countries worldwide in January 2000.

4. “Dermaceutics Inc.; Risk Assessment and Planning,” Author of this chapter in a monograph, Excellence in Audit Education, published as an American Accounting Association educational monograph and distributed to all members of the Auditing Section of the AAA for use in auditing courses, AAA (1992). Remaining chapters in the monograph were primarily authored by other members of the Faculty Advisory Group for the Excellence in Audit Education Project. Provided input to the overall project and monograph as a Faculty Advisory Group member.
5. Dermaceutics Inc.: Risk Assessment and Planning (Group Project), (Video Tape, Cases, and Computer Database), (Participated as a part of the Faculty Advisory Group and Coopers & Lybrand personnel to plan and produce the materials), Coopers & Lybrand Foundation (1990).
6. The Impact of Technology on Auditing: Moving Into the 21st Century, (with Ted Mock and Robert N. West) (a research monograph), Institute of Internal Auditors Research Foundation (1988).
7. CableCo Chronicles: A Portrait of an Audit (Group Project), (Video Tape and Cases), (Participated as a part of the Faculty Advisory Group and Coopers & Lybrand personnel to plan and produce the materials), Coopers & Lybrand Foundation (1988).
8. Compilation and Review Tools, a manual and a set of integrated computer software programs, published by Shepard’s McGraw-Hill (1988).
9. Disclosure Criteria and Segment Reporting, (coedited with Russell M. Barefield), University of Florida Press.
10. Operational Audits of Production Control, (co-authored with William Collins), research monograph, Institute of Internal Auditors.
11. New Accounting and Auditing Pronouncements: Analysis and Cases, (co-authored with Charles McDonald and William Collins), a continuing education manual published by the Florida Institute of CPAs.
12. Review of Existing Accounting and Auditing Pronouncements: Analysis and Cases, (co-authored with Charles McDonald and William Collins), a continuing education manual published by the FICPA.
13. Activities and Resources of The Galveston Bay. A research monograph on the social, ecological, and economic benefits of pollution control in the Galveston Bay. Published by the Bureau of Business Research, The University of Texas.

PUBLISHED RESEARCH IN PROCEEDINGS OF SCHOLARLY MEETINGS

1. “Comments on Borthik’s ‘Analysis of Design from a Community of Practice Dialog: Negotiating the Meaning of Auditing Information System Development’.” Discussion comments published in the Proceedings of the University of Waterloo Symposium on Research on Information Systems Assurance. Discussion comments presented on October 31, 1999. Proceedings published in early 2000.

2. "Competence and Quality Assurance in Accounting Education: Global Issues from a U.S. Perspective," in *Foundations of Globalization in Higher Education in the Professions*, Proceedings of the Annual Conference of the Center for Quality Assurance in International Education, (1998).
3. "The Need for Professional Guidance on Decision Aids in Auditing," Proceedings of the University of Southern California Audit Judgment Symposium, (February, 1991).
4. "Innovative Approaches to Integrating Oral and Written Communication into the Accounting Curriculum," a presentation published in the Proceedings of the 1989 Annual Meeting of the Federation of Schools of Accountancy (published in 1990).
5. "The Impact of Emerging Information Technology on Audit Evidence," (with Theodore J. Mock and Robert N. West), Auditing Symposium VIII, University of Kansas (1986).
6. "The Fifth-Year Auditing Curriculum," Proceedings: Annual Meeting the Federation of Schools of Accountancy (December, 1986).
7. "The Auditor Expectations Gap: Research Issues and Opportunities," Proceedings of the University of Alabama Research Convocation (November, 1986).
8. "Expert Systems in Auditing: A Synopsis of Research Issues," Proceedings of the Audit Judgment Symposium on Expert Systems, University of Southern California (February, 1986).
9. "AUDBASE: The USC Auditing Research Database," Abstracts of the American Accounting Association's Annual Meeting (August, 1985). This was one of six research papers selected by referees from over 40 papers submitted through national competition for presentation at the national meeting. The presentation included a discussion of the paper and a live microcomputer demonstration of the database developed by the author at USC.
10. "Megatrends, Microcomputers, and Auditing Education," Mary Ball Washington Forum Series in Accounting Education (The University of West Florida, November, 1983), pp. 34-52.
11. "Audit Risk Model: A Framework for Current Practice and Future Research," (co-authored with James L. Kirtland), Symposium on Auditing Research V, (1982) University of Illinois.
12. "Improving Auditor Judgment Through Decision Modeling and Computer Assistance," research paper abstracted in Proceedings of the American Accounting Association Annual Meeting (1981).
13. "Reactive Bias in the Measurement of Internal Control Compliance," (co-authored with Bart H. Ward), Proceedings of the Southeast Region AAA Meeting.
14. "Suggestions for Behavioral Accounting Research Designs," (co-authored with Lewis F. Davidson), Proceedings of the Southwest Region AAA Meeting.
15. "Sources of Error in the Evaluation of Internal Control," (co-authored with Bart H. Ward), Proceedings of the Southwest Region AAA Meeting.

PUBLISHED CRITIQUES, BOOK REVIEWS, ETC.

1. "Comments on 'Analysis of Design from a Community of Practice Dialogue: Negotiating the Meaning of Auditing Information System Development'," published in *Journal of Information Systems*, supplement 2000.
2. "Discussion of 'Multi-Location Audits'," critique comments on a research paper authored by Robert Allen and James Loebbecke, presented at the University of Illinois Auditing Research Symposium, September 1994. Discussion comments included in published conference proceedings.
3. "Comments on 'Reports on the Application of Accounting Principles - A Review of SAS 50'," Proceedings of the University of Kansas Auditing Symposium (1988).
4. "Comments on 'The Case for the Structured Audit Approach'," Proceedings of the University of Kansas Auditing Symposium (1984).
5. "Review of Robert Ashton's Human Information Processing in Accounting, Studies in Accounting Research #17," Auditing: A Journal of Practice and Theory (Fall, 1983).
6. "Comments on 'Human Information Processing Research in Auditing: A Review and Synthesis'," Proceedings of the University of Kansas Symposium on Auditing Problems (1982), pp. 84-88.
7. "Comments on 'Heuristics and Biases: Some Implications for Probabilistic Inference in Auditing'," Symposium on Auditing Research IV, (1980) University of Illinois.

PUBLISHED AUDITING EDUCATION CASES:

1. "Using Professional Judgment in Control Environment Evaluations: An Instructional Case" (Co-authored with Ron Marden and Sandra Schneider), *Issues in Accounting Education*, (Fall 1996). (also listed above).
2. Dermaceutics Inc.: Risk Assessment and Planning, (Video, Six Cases, and Computer Database). (Participated in the development of the cases and other materials in the "Excellence in Audit Education" program as a member of the program Faculty Advisory Group. Materials were sponsored and distributed by the Coopers & Lybrand Foundation and have been used in over 250 schools in the U.S. and internationally.

RESEARCH PAPERS AND PRESENTATIONS AT VARIOUS RESEARCH CONFERENCES:

1. Distinguished Service in Auditing Award acceptance speech at the 2009 Mid-Year Meeting of the American Accounting Association Auditing Section.
2. Approximately 30 presentations on PCAOB standards and operations made while Associate Chief Auditor and Director of Research (or a consultant) for the PCAOB (between July 2003 and present)

3. "Proposed International Education Standards: The Impact on Global Accounting Education and Development," presented at the AAA International Accounting Section Mid-Year Meeting, February 2003.
4. "E-Learning and Teaching: Lessons Learned & Future Prospects," presented at the World Congress of Accounting Educators, International Association of Accounting Educators and Researchers (IAAER), Hong Kong, November 15, 2002.
5. "Globalization of Accounting Education: The Changing Global Market and IFAC and AICPA Initiatives," presented at the Emerging Issues in International Accounting Conference, Niagara University, Niagara Falls, New York, August 3, 2001.
6. "Research on Changing the Competencies Required for New Assurance Services," paper accepted for presentation at the Annual Meeting of the European Accounting Association, Bordeaux, France, May 1999 (with Professor Eddy Vaassen, University of Amsterdam, and Carol Schelleman, Maastricht University).
7. "The Demand for Assurance on Electronic Commerce," research paper accepted for presentation at the Annual Meeting of the European Accounting Association, Bordeaux, France, May 1999 (with Professor Philip Wallage, University of Amsterdam).
8. "Research Opportunities Related to Assurance Services" a paper presented at the Copenhagen School of Business, November 1998.
9. "Dimensions of Auditor Judgments: The Relationship Between The Control Environment and Financial Statement Assertions." (with S. Schneider, C. Comunale, T. Benford, M. Barnes and R. Marden). Selected for presentation at the Symposium for Research on Internal Control, Auditing and Assurance Services. University of Amsterdam. November 1998.
10. "Research On Competencies Required For Future Providers Of Assurance For Business Entities," (with E. Vaassen and C. Schelleman). Selected for presentation at the Symposium for Research on Internal Control, Auditing and Assurance Services. University of Amsterdam. November 1998.
11. "Web Assurance: A Strategic Alliance." (with P. Wallage, A. Noeteberg, J. van der Kloet and A. Mendendorn). 1998. Working paper. Anton Dreesmann Institute for InfoPreneurship. University of Amsterdam. Presented at the Symposium for Research on Internal Control, Auditing and Assurance Services. University of Amsterdam. November 1998.
12. "The Internet and Distance Learning In Accounting Education: Opportunities and Challenges." (with J. Lloyd-Jones.) Working paper. University of South Florida and the International Federation of Accountants (IFAC) Education Committee. Presented at the Symposium for Research on Internal Control, Auditing and Assurance Services. University of Amsterdam. November 1998.
13. "Competence and Quality Assurance in Accounting Education: Global Issues from a U.S. Perspective," *Foundations of Globalization in Higher Education in the Professions*, Annual Conference of the Center for Quality Assurance in International Education, Washington, DC, May 1998.

14. "The Impact of Financial and Nonfinancial Performance Indicators on Auditors' Analytical Review Judgments." (with Sandra Schneider, Christie Comunale, Tanya Benford, and Monica Barnes). Presented at the Annual Meeting of the American Accounting Association, August 1998.
15. "New Forms of Assurance Services for New Forms of Information: The Global Challenge for Accounting Educators." (with James Hunton), selected for presentation at the Eighth World Congress of Accounting Educators in October 1997 in Paris.
16. "Dimensions Of Auditor Judgments Regarding The Relationship Between The Control Environment And Financial Statement Assertions." (with Sandra. Schneider, Christie Comunale, Tanya Benford, Monica Barnes, G. E. Campbell, and R. E. Marden). Presented at the Annual Meeting of the American Accounting Association, August 1997.
17. "Comparing Students' and Auditors' Judgments about the Control Environment: Bridging The Experience Gap," presented at the Northeast Regional Meeting of the AAA, New York City, April 20, 1996 (with S. L. Schneider, R. E. Marden, G. E. Campbell, M. Barnes, and C. Comunale).
18. "Using Multi-Dimensional Scaling in Analyzing Auditors' Evaluations of the Control Environment," presented at the Annual Meeting of the Society for Judgment and Decision Making, November 1995 (with S. L. Schneider, R. E. Marden, G. E. Campbell, M. Barnes, and C. Comunale).
19. "The Effect Of Experience And Expertise On The Auditor's Evaluation Of The Control Environment: Implications For Education, Training, And The Development Of Decision Aids," presented at the Southeast Regional Meeting of the AAA, April 1995 (with R. Marden, S. Schneider, and G. Campbell).
20. "The Effect Of Audit Experience On Professional Skepticism: A Management Fraud Scenario," presented at the mid-year meeting of the Auditing Section of the AAA, January 1995 (with S. Bhattacharya and K. Hooks).
21. "A Case Demonstration of Framing in an Auditor-Client Interview." Presented at the Teaching Forum of the Annual Meeting of the Society for Judgment and Decision Making, St. Louis, Mo., November 1994 (with S. L. Schneider, R. E. Marden and G. E. Campbell).
22. "CORE: A Generic Coding Scheme For Analyzing The Content Of Expert Interviews." Presented at the Annual Meeting of the Society for Judgment and Decision Making, St. Louis, Mo., November 1994 (with S. L. Schneider, R. E. Marden and G. E. Campbell).
23. "The Impact of The Control Environment in Financial Institutions: Learning From The Experts." Presented at the 1994 Annual Meeting of the American Accounting Association, August 12, 1994, New York City, New York (with S. L. Schneider, R. E. Marden and G. E. Campbell).
24. Marden, R., G. Holstrum, and S. Schneider. 1994. "The Effects of Framing on Auditor Evaluation of the Control Environment, Audit Risk Factors, and Client Assertions." Presented at the American Accounting Association Southeast Regional Meeting in Louisville, KY, April, 1994.

25. "Framing Effects and Audit Decision Making: Control Environment Evaluation." at the annual meeting of the Society of Judgment and Decision-Making (November 1993) (with S. L. Schneider and R. E. Marden).
26. "Methods of Integrating New Research and Standards on Internal Control into the Accounting Curriculum," at the national Auditing Education Conference co-sponsored by Price Waterhouse and the Auditing Section of the American Accounting Association, in Oxnard, California (February 1994).
27. "Future Directions for Auditing Research that would Influence Audit Practice," a presentation at the University of Southern California Audit Judgment Symposium, February, 1992.
28. "Excellence in Audit Education Part II--Introducing the New Video Simulation and Microcomputer Database Cases for Dermaceutics, Inc." a presentation of new materials at the National Symposium for the Coopers and Lybrand Excellence in Audit Education Program, New York City, June 27-28, 1990. (Attended by invited faculty throughout the US and Canada). Also made two regional presentations regarding Dermaceutics and this project in April 1991 (in Philadelphia for Northeast US universities and in Atlanta for Southeast US universities).
29. "Using the New Audit Guide on Internal Control in the Auditing Classroom," a three-hour session presented jointly with Dr. Ray Whittington, Director of Auditing Research for the AICPA, at the annual meeting of the American Accounting Association (August 1990).
30. Moderated a panel, "Implementing the Recommendations of the Accounting Education Change Commission," Southeast Regional Meeting of the American Accounting Association, April, 1990.
31. Discussion Comments on Paul Casper's "Empirical Research on Confirmation of Accounts Receivable," The Auditing Judgment Symposium, University of Southern California, February 20, 1989.
32. "Future Auditing Research Agenda: A Standard-Setting Perspective," presented at the University of Illinois Auditing Research Symposium (October, 1988).
33. "An Emerging Taxonomy of Audit Evidence," co-authored with Ted Mock and presented by Dr. Mock at The University of Queensland, Brisbane, Australia (July, 1988), and The University of Otago, Dunedin, New Zealand (June, 1988).
34. "Auditing in the First Decade of the 21st Century," co-authored with Ted Mock and presented by Dr. Mock to the Norwegian Society of Accountants, Oslo, Norway (November, 1987).
35. "Bayesian Dimensions of Expert Systems in Auditing," (with Ted Mock and Paul Watkins) presented at the Bayesian Research Conference, Social Science Research Institute, USC (February, 1986).
36. "An Auditing Research System," a paper presented at the Western Region AAA Meeting (May, 1985).

37. "Components of the Audit Evidence Evaluation Process," at the Symposium on Audit Judgment and Evidence Evaluation, University of Southern California (February, 1985).
38. "Auditors Make Cascaded Inferences--Sure They Do," (co-authored and presented jointly with Theodore J. Mock) at the Bayesian Research Conference, Social Science Research Institute, USC (February, 1985).
39. "AUDBASE: An Auditing Research Microcomputer Database," a paper and microcomputer demonstration of the database of auditing research literature developed by the author (consisting of over 1700 references), The Accounting Research Forum at USC (February, 1985).
40. "Sources of Error and Inconsistency in Auditor Judgment," a working paper presented at The Accounting Research Forum at USC (October, 1984).
41. "Auditor Judgment Training Programs of Big-8 Accounting Firms," a paper presented at the Annual Meeting of the American Institute for Decision Sciences (November, 1983).
42. "The Materiality Concept in Accounting and Auditing," Accounting Research Workshops at the University of Arizona, Arizona State University, and San Diego State University (February and March, 1982).
43. "Audit Judgments Under Uncertainty," Accounting Research Workshops at Indiana University (April, 1980) and the University of Southern California (January, 1981).
44. "The Design and Implementation of an Auditing Research System," Mid-Atlantic Region AAA Meeting (April, 1980).
45. "AUDITSCOPE: The Deloitte Haskins and Sells Audit Approach," a paper presented at several universities, one national AUDITSCOPE Seminar, and several regional AUDITSCOPE Seminars.
46. Presented several other papers and talks on various auditing research and practice issues at different national and regional AuditSCOPE Seminars (1980-84).
47. "Audit Judgment Research Opportunities and Issues: A Practitioner's View," Symposium on Audit Judgment, University of Southern California (February, 1983).
48. "The Future Environment for Auditing Education and Research," keynote address, Iowa Conference of Accounting Educators (October, 1982).
49. "Discussion Comments on William R. Kinney's paper, 'Regression Analysis in Auditing: A Comparison of Alternative Investigation Rules,'" University of North Carolina Audit Risk Conference (May, 1982).
50. "Audit Judgment Workshop," Creighton University (a one-day workshop for auditing researchers and practitioners presented jointly with Jack Krogstad, Robert Ashton, and Robert Hylas) (May, 1982).
51. "The Creative Annual Report," Beta Alpha Psi Awards Banquet, San Diego State University (March, 1982).

52. "Computer-Assisted Audit Judgments," Research Seminar Presentation, University of Nebraska Visiting Scholar Program (April, 1981).
53. "Issues and Answers For Reporting on Internal Accounting Control," Western Region AAA Meeting (May, 1980).
54. "Bridging the Gap Between Academic and Professional Research in Auditing," Northeast Region AAA Meeting (April, 1980).
55. "Recent Developments Concerning Reporting on Internal Control," Southwest Region AAA Meeting (March, 1980).

PRESENTATIONS TO PROFESSIONAL ORGANIZATIONS:

1. Made presentations or was an invited participant in various IFAC International Accounting Seminars between 1998 and 2003 in Paris, France; Istanbul, Turkey; Mumbai, India; Helsinki, Finland; Amsterdam, Netherlands; London, England; Bahrain; Sydney, Australia; Budapest, Hungary; New York City; Beijing and Hong Kong, China; and Capetown, South Africa.
2. "Responding to the Crisis in Confidence: Top 10 Impacts on Future Auditing and Corporate Governance," presented at the USF Beta Alpha Psi Accounting Conference, November 22, 2002.
3. "Internet, Multimedia and Distance Learning in Accounting Education," presented at the Seminar for Directors of Education of Member Bodies of IFAC, held in conjunction with the World Congress of Accounting Educators, Hong Kong, November 16, 2002. (Seminar was hosted by the Hong Kong Office of the Australian Institute of Certified Public Accountants and attended by about 50 Directors of Education throughout the world.)
4. "New Framework of International Standards for Accounting, Auditing and Accounting Education: Impact on the U.S.," presented at the USF/FICPA Accounting Conference, October 2002.
5. "Enron—Lessons for the Accounting Profession," presented to the West Coast Chapter of the FICPA, April 25, 2002 (with Professor Celina Jozsi).
6. "Auditor Independence: The Challenge for Accounting Educators," at the Southeast AAA Meeting in Tampa, April 27, 2001 (with Professor Kay Tatum of the University of Miami).
7. "Auditor Independence—New Rules and Critical Judgments," for the USF/FICPA Accounting Conference, October 19, 2001.
8. "Auditor Independence: Lessons Learned After All the Pain," for the Tampa Office of PriceWaterhouseCoopers, November 15, 2001.
9. "Independence: Judgments Beyond the Rules," two-hour CPE session for the West Coast Chapter of the FICPA, November 14, 2000.

10. "The Critical Role of Auditor Independence—Current Problems and Proposed Solutions," for the USF/Beta Alpha Psi Accounting Conference, November 17, 2000.
11. Co-anchored a series of webcasts on "Auditor Independence—Beyond the Rules" —(Co-anchored with Dan Guy, former VP of Auditing of the AICPA) nationwide webcasts of "Independence: Beyond the Rules," produced by the Independence Education Program. Webcasts and related materials were funded by PriceWaterhouseCoopers and were reviewed and guided by an advisory committee appointed by the SEC.
 - Webcasts for Practitioners—Four separate webcasts for practitioners (3 hours each) were produced in June and July of 2000.
 - Webcast for Educators—Co-anchored a separate 3-hour national webcast (with Dan Guy) covering materials specifically adapted for university educators, delivered on October 27, 2000.
12. "Internet Education and Distance Learning: Paradigm Shift or Serious Threat," Presented at the National Association of State Boards of Accountancy (NASBA) CPE Conference in New Orleans, February 28, 2000.
13. "The Proposed NASBA/AICPA Framework for CPE," made presentation as a panelist on the Forum on the Proposed New CPE Framework," at NASBA's Fifth Annual CPE Conference, February 29, 2000.
14. "New Assurance Services: Impact for Accountants in the European Community," Presented at the Danish Professional Accounting Conference, jointly sponsored by the Copenhagen School of Business and the Danish Institute of Chartered Accountants, November 1998, Copenhagen, Denmark.
15. "New Assurance Services: Where Will They All Lead?" CPE Conference Sponsored by Gregory, Sharer & Stuart, June 1998.
16. "Assurance Services Update: Moving Into the 21st Century," USF Accounting Circle Conference, May 1998.
17. "So You Think the Internet Can be Secure!" The SunTrust/Fowler White Accounting Education Extravaganza for University Accounting Scholarships, May 1998.
18. "Continuing Professional Education in Emerging Assurance Services: How Should It Be Encouraged and Recognized by the Florida Board of Accountancy?" Invited presentation to the Continuing Professional Education Committee of the Florida Board of Accountancy, April 1998.
19. "Internet Security and Electronic Commerce," USF Beta Alpha Psi Accounting Conference, November 21, 1997.
20. "WebTrust: A New Assurance Service for Electronic Commerce," FICPA/Florida Gulf Coast University Accounting Conference, November 18, 1997.

21. "Assurance Services for Electronic Commerce," USF Accounting Circle Conference, May 22, 1997.
22. "Assurance Services in the 21st Century," USF/FICPA Accounting Conference, November 1996.
23. "Emerging Audit and Assurance Services," West Coast Chapter, FICPA, Tampa, October 1996.
24. "A Look at Audit and Assurance Services in the 21st Century," Sun Coast Chapter, FICPA, September 1996"New Developments for Future Audit, Attest, and Assurance Services," annual meeting of the FICPA, Puerto Rico, June 1996.
25. "Emerging Assurance Services," Coopers & Lybrand Accounting Seminar, June 1996, Tampa.
26. "The Future of Current Audit Services in the Year 2000," *Perspectives on Assurance Services Symposium*. Naples, Florida, April 1996.
27. Future Assurance Services," a 3 1/2-hour panel presentation, *The CPA Journal Symposium on Future Assurance Services*. Made presentation and participated in an invited panel that included the Chair of the AICPA Special Committee on Assurance Services, the Chief Accountant of the SEC, the Vice-Chair/Chair-Elect of the AICPA, and representatives of other constituencies, New York City, January 5, 1996. Excerpts of speech on new assurance services printed in article, "Future Assurance Services," in *The CPA Journal*, April 1996.
28. "The Retreat of the Traditional Audit and the Emergence of New Assurance Services," Palm Beach Chapter, FICPA, September 1995.
29. "Building A Framework For Future Assurance Services--And New Auditing Standards," annual meeting of the FICPA, San Francisco, June 1995.
30. "Emerging Auditing and Assurance Services," USF Accounting Circle Conference, May 1995.
31. "Critical Factors in Evaluating The Control Environment." USF/FICPA Accounting Conference, December 1994 (with S. L. Schneider, R. E. Marden and G. E. Campbell).
32. "New Framework for Financial Reporting, Auditing, and Assurance Services," West Coast Chapter, FICPA, November 1994.
33. "The Descent of Traditional Audit Services and the Rise of New Assurance Services," Gulf Coast Chapter, FICPA, October 1994.
34. "The Sante Fe Conference Proposals for Revising the Framework for Financial Reporting and Audit Assurance Services," USF Accounting Circle Conference, May 1994.
35. "Financial Statements and Auditing in the Courtroom," presented seminar for courtroom judges in Florida, program sponsored by the AICPA, May 1994.
36. "Auditing In a Distressed Economy," Sun Coast chapter, FICPA, January 1993.

37. "Meeting Expanding User Demands for Audit/Assurance Services," USF Accounting Circle Conference, June 1993.
38. "New Auditing Standards for Expanding User Demands," IMA Accounting Conference, June 1993.
39. "New Information Wave Crashes Over the Auditing Profession," Central Florida Chapter, FICPA, June 1993.
40. "Needed: New Approaches to Auditing and Assurance," West Coast Chapter, FICPA, October 1993.
41. "New Initiatives in Audit, Attest, and Assurance," USF/FICPA Accounting Conference, December 1993.
42. "New Responsibilities for Auditors for Detecting Fraud and Illegal Acts," West Coast Chapter, FICPA, February 1992.
43. "Is the Auditing Expectations Gap Narrowing or Widening?" Southwest Florida Chapter, FICPA, April 1992.
44. "Controlling Audit Risk in Audits of Small Businesses," Florida Keys Conference, FICPA, May 1992.
45. "Dilemmas Facing the Auditing Profession," Suncoast Chapter, FICPA, St. Petersburg, May 1992.
46. "Assessing the Future of the Auditing Profession," Annual Meeting, FICPA, Quebec City, Canada, June 1992.
47. "Lessons Auditors Ignore at Their Own Risk," Annual Meeting, FICPA, Quebec City, Canada, June 1992.
48. "Emerging Auditing Problems and Issues," FICPA Accounting/Auditing Conference, Destin, FL, June 1992.
49. "Recent Auditing Standards--1992," USF Accounting Circle Conference, June 1992.
50. "New Standards for Controlling Audit Risk," FICPA Accounting Show, Orlando, September 1992.
51. "Auditing in a Distressed Economy," USF/FICPA Accounting Conference, December 1992.

RESEARCH APPOINTMENTS, PROJECTS, GRANTS AND COORDINATION EFFORTS:

- **Independence Education Project (IEP)**—(See description above)
Funded by PriceWaterhouseCoopers—Guided by an advisory committee appointed by the SEC.
- **National Science Foundation Grant**

“Auditor Judgments about the Control Environment of Financial Institutions,” (co-researcher with Dr. Sandra Schneider, Professor of Cognitive Psychology at USF, and assisted by Ron Marden, Christi Comunale, and Tanya Benford, doctoral students in Accounting and two doctoral students in cognitive psychology at USF). Initial three-year project concerning auditor cognitive processes and judgments about the internal control environment of financial institutions; extended for a fourth year (1993-97)

○ **Institute of Internal Auditors Research Foundation Grant**

“The Impact of Technology on Auditing--Moving into the 21st Century,” (co-researcher with Theodore J. Mock). Phase I of the research project on “Audit Evidence in the Year 2000” (1984-85) was funded by the Institute of Internal Auditors and completed in August, 1985. An additional grant was received from the Institute of Internal Auditors Research Foundation to fund Phase II, which was completed in the Spring of 1987 and published in 1988. This research was designed (1) to predict--through a Delphi study of information technology experts--the most important developments in information technology in the next fifteen years, (2) to analyze the impact of these developments on future audit evidence, and (3) to develop alternative scenarios of the nature of the audit process and alternative strategies for auditors to adapt to the predicted changes.

○ **Peat Marwick Foundation “Research Opportunities in Auditing” Grant**

“Auditing Research Database.” Director and principal researcher for a project to develop a microcomputer database of recent auditing research. Funding provided by the Research Opportunities in Auditing program of the Peat, Marwick, Mitchell Foundation, including a grant to the researcher for the initial development of the database by the researcher plus a three-year continuing grant to the School of Accounting at USC to maintain and update the database (1984-87).

○ **USC Audit Judgment Symposia Grant**

Worked with Professor Ted Mock in developing proposals to secure four separate grants from the Deloitte Haskins and Sells Foundation to fund the first four USC Audit Judgment Symposia (1983-86) and in planning and conducting the international Symposia programs. These Symposia were presented jointly by the Center for Accounting Research and the Social Science Research Institute, both of USC. The USC Audit Judgment Symposium was merged with the Maastricht Audit Research Symposium to form the International Symposium on Auditing Research, which is now co-hosted by USC, the University of Limburg, the Nanyang Technological University, and the University of New South Wales.

○ **Institute of Internal Auditors Research Foundation Grant**

“Operational Audits of Production Control,” (Co-researcher with Dr. William Collins). A research project and monograph funded and published by the Institute of Internal Auditors Research Foundation.

○ **Texas Water Quality Board Grant**

“Valuing the Resources of the Galveston Bay.” Project Director and Principal Researcher for a study of the Economic and Societal Resources of the Galveston Bay. Research study was funded by the Texas Water Quality Board and the research report monograph was published by the Bureau of Business Research, University of Texas, Austin.

COORDINATION OF PROFESSIONAL AND RESEARCH CONFERENCES:

- Coordinator and Co-Editor, *Auditing Standards Board Expectations Gap Roundtable*, in May 1992 in Charleston, SC. This Roundtable conference was jointly sponsored by the Big Six Accounting Firms and included discussion papers based on joint research by leading auditing researchers and practitioners on the impact of the expectation gap SASs and continuing expectation gap issues. The Roundtable included a variety of individuals who have a major influence on establishing auditing standards and overseeing their proper implementation. Conference proceedings, *The Auditing Expectations Gap: Issues and Opportunities*, was published in 1993.
- As Chairman of the Accounting Principles and Auditing Standards Committee of the FICPA, helped coordinate the FICPA Accounting and Auditing Conference, Destin, Florida (1992).
- Helped plan the USF Accounting Circle Conferences (1992-98).
- Co-chairman, "Symposium on Audit Judgment and Expert Systems in Auditing," University of Southern California, (Feb., 1986) and "Symposium on Audit Judgment and Evidence Evaluation," University of Southern California (Feb., 1985).
- AUDITSCOPE SEMINARS--Program Coordinator and presenter for four international and four regional seminars. The AUDITSCOPE Seminars were sponsored by Deloitte for auditing researchers and faculty nationally and internationally. Topics varied from seminar to seminar to reflect new audit approaches developed by Deloitte to meet changes in statistical methodology, information technology, and auditing standards.

CURRENT PROFESSIONAL MEMBERSHIPS:

- American Accounting Association (AAA), including the following sections
 - Auditing
 - International
 - Information Systems
- American Institute of CPAs (AICPA)
- Florida Institute of CPAs (FICPA)

LEISURE ACTIVITIES:

- Distance bicycling, running, & roller-blading
- Boating

APPENDIX 18: SUMMARY OF LEHMAN COLLATERAL AT JPMORGAN

Appendix 18 summarizes collateral posted by Lehman at JPMorgan from June 2008 through September 2008 in response to JPMorgan’s margin requirements and collateral requests, which are discussed in detail at Report Section III.A.5.b. The chart neither lists every collateral movement nor tracks every individual security, but summarizes significant collateral posts, transfers and returns. Collateral transfers and returns are indicated by italicized text.

Date	Collateral	Summary
June 19, 2008	SASCO Freedom Spruce Pine Fenway	Lehman posted these assets with a face value of approximately \$5.7 billion to LCD, an LBI clearance account, ¹ based on Lehman’s agreement to post \$5 billion at JPMorgan to address JPMorgan’s new margin requirement.
July 2, 2008	Kingfisher HD Supply	Lehman posted these assets with a face value of approximately \$1.44 billion to LCD, an LBI clearance account.
July 25, 2008	Verano	Lehman posted this asset with a face value of roughly \$1.35 billion to LCD, an LBI clearance account.

¹ According to JPMorgan, LCD is an LBI account. JPMorgan First Written Responses, at p. 7; JPMorgan Second Written Responses, at p. 5; *see also* Spreadsheet [JPM-EXAMINER00006151] (spreadsheet showing LCD as part of DG92, an LBI dealer group). Alvarez & Marsal, however, “underst[ood] JPMorgan referred to the LCD account in a way that suggests it was a LCPI account.” Alvarez & Marsal, Responses to Questions for Alvarez & Marsal/Weil, Gotshal & Manges (Dec. 7, 2009), at p. 1.

Date	Collateral	Summary
July 2008	Golden Gate Loan FNG Delta Topco Cayman Partners Riopelle Broadway	Lehman posted these assets in LCP, an LCPI clearance account.
July 2, 2008 - August 8, 2008	Freedom Pine Spruce Verano SASCO HD Supply Fenway	Lehman posted these assets to LCD, an LBI clearance account. In many instances, however, one CUSIP of the same security was being removed from LCD on or about the same date as the new CUSIP was being deposited.
<i>August 8, 2008</i>	<i>Spruce Freedom Pine Kingfisher Verano</i>	<i>Lehman moved these assets with a Lehman-stated value of roughly \$5.9 billion from LCD, an LBI clearance account, to LCE, an LBHI clearance account. Around this time, Gifford Fong priced Freedom, Pine and Spruce at approximately \$2 billion total, approximately \$1.5 billion less than Lehman's stated value.</i>
<i>August 11, 2008</i>	<i>Fenway</i>	<i>Lehman moved this asset with a face value of roughly \$2 billion from LCD, an LBI clearance account, to LCE, an LBHI clearance account.</i>
<i>August 15, 2008</i>	<i>Freedom Fenway</i>	<i>Lehman removed Freedom (Lehman-stated value of roughly \$1.42 billion) from LCE. Lehman increased the face value of its Fenway pledge to \$3 billion.</i>

Date	Collateral	Summary
<i>September 2, 2008</i>	<i>Kingfisher</i>	<i>Lehman transferred this asset with a face value of roughly \$960 million from LCE, an LBHI clearance account, to LCD, an LBI clearance account. Around this time, Gifford Fong priced the CLOs that remained in LCE (Spruce, Pine, and Verano) at approximately \$1.75 billion, compared to Lehman's stated value of approximately \$3.25 billion.</i>
September 9, 2008	Cash	Lehman posted \$1 billion cash in response to JPMorgan's September 9 collateral request for \$5 billion (of which Lehman agreed to post \$3 billion immediately).
September 9, 2008	Money Market Funds	Lehman posted approximately \$1.7 billion in money market funds in response to JPMorgan's September 9 collateral request.
September 10, 2008	Cash	Lehman posted \$300 million cash in response to JPMorgan's September 9 collateral request for \$5 billion (of which Lehman agreed to post \$3 billion immediately).
September 10, 2008	Corporate bonds	Lehman provided JPMorgan corporate bonds with a Lehman-stated value of approximately \$1.6 billion to value and possibly to substitute for some of the cash collateral Lehman posted in response to JPMorgan's September 9 collateral request.
September 11, 2008	Cash	Lehman posted \$600 million cash related to JPMorgan's September 9 collateral request.
<i>September 11, 2008</i>	<i>Corporate bonds</i>	<i>JPMorgan returned approximately \$500 million of corporate bonds posted by Lehman.</i>

Date	Collateral	Summary
September 12, 2008	Cash	Lehman posted \$5 billion cash in response to JPMorgan's September 11 collateral request for \$5 billion cash.
<i>September 12, 2008</i>	<i>Corporate bonds</i>	<i>JPMorgan returned the remaining corporate bonds (approximately \$1 billion) to Lehman.</i>
<i>September 12, 2008</i>	<i>Pine</i>	<i>JPMorgan released \$1 billion (Lehman-stated value) of Pine CLO to Lehman.</i>

APPENDIX 19: LEHMAN'S DEALINGS WITH BANK OF AMERICA

This appendix discusses the current litigation between Lehman and Bank of America ("BofA"). At the time of this writing, Lehman and BofA are before the Court in an adversary proceeding. The pending dispute stems from BofA's November 10, 2008 setoff of approximately \$509 million from various LBHI accounts.¹ Specifically, BofA set off the funds against debts it claims Lehman Brothers Special Financing incurred through derivative and swap agreements with BofA.²

Out of deference to the Court and to avoid interfering with active litigation, the Examiner has limited his investigation of this claim and does not reach conclusions about the relative merits of the parties' positions. However, the \$500 million collateral deposit and the related negotiations of the three-day notice provision in the 2008 Security Agreement are significant to the Examiner's investigation of Lehman's liquidity pool, discussed in more detail in the Liquidity Pool Section (Section III.A.5.i) of this Report.

¹ Joint Stipulation of Undisputed Facts, at ¶ 44, Docket No. 74, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Dec. 7, 2009).

² *Id.* at ¶ 45.

I. LEHMAN FAILED TO SETTLE A \$650 MILLION OVERDRAFT; BOFA DEMANDED INTRADAY PROTECTION

At the time of the bankruptcy, BofA had provided clearing and other financial services to Lehman for at least 16 years.³ In connection with its clearing services, BofA provided unsecured, intraday credit to cover overdrafts.⁴ In this vein, BofA required that Lehman clear any overdrafts by the end of each business day to prevent intraday credit from ripening into overnight credit.⁵

According to BofA, deteriorating market conditions in early 2008 prompted BofA to reevaluate its business relationships with broker-dealers and other financial institutions that used substantial overdraft credit.⁶ BofA began to monitor formally or, in some instances, to require cash deposits from certain clients after many incurred large overdrafts at the end of the second quarter of 2008.⁷

On July 25, 2008, Lehman failed to settle a \$650 million overdraft before the end of the day (as required).⁸ According to Lehman, the failure arose from a payment error

³ *Id.* at ¶ 7.

⁴ *Id.* at ¶¶ 7-8.

⁵ *Id.* at ¶ 8.

⁶ Rule 7056-1(b) Statement of Undisputed Material Facts in Support of Bank of America's Motion for Summary Judgment, at ¶ 39, Docket No. 50, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Sept. 14, 2009).

⁷ *Id.* at ¶ 43; *see also* Transcript of deposition testimony of Marisa Harney, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753, Bankr. S.D.N.Y., July. 14, 2009, at pp. 50-53 (discussing efforts in the summer of 2008 to reduce intraday exposure to broker-dealers because of large overdrafts).

⁸ Joint Stipulation of Undisputed Facts, at ¶ 9, Docket No. 74, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Dec. 7, 2009).

by one of its clients.⁹ According to BofA, Lehman could not settle the overdraft because it arose from a segregated client account, which precluded Lehman from clearing the overdraft with its own funds.¹⁰ The overdraft ripened into overnight credit, which Lehman settled on July 28, 2008, the next business day.¹¹

On August 14, 2008, BofA informed Lehman that Lehman would need to place a \$650 million deposit with BofA “soon,” to retain its overdraft credit.¹² James Dever, BofA’s relationship manager for Lehman, and Dever’s boss, William White, relayed this information on behalf of BofA to Tonucci.¹³

On August 20, 2008, Dever contacted Tonucci again and informed him that BofA would reduce Lehman’s intraday credit limit to zero if Lehman did not place an even larger deposit - \$1 billion - with BofA by August 25, 2008.¹⁴ The greater figure

⁹ Statement of Undisputed Material Facts in Support of Defendants Lehman Brothers Holdings Inc. and Lehman Brothers Special Financing and Counterclaim-Plaintiff Lehman Brothers Holdings Inc.’s Motion for Summary Judgment, at ¶ 7, Docket No. 52, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Sept. 14, 2009).

¹⁰ Rule 7056-1(b) Statement of Undisputed Material Facts in Support of Bank of America’s Motion for Summary Judgment, at ¶ 47, Docket No. 50, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Sept. 14, 2009). Lehman does not dispute that it informed BofA it could not commingle funds and attributes this to its understanding of FSA regulations. Response to Bank of America’s Statement of Undisputed Material Facts, at ¶ 47, Docket No. 61, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Oct. 14, 2009).

¹¹ Joint Stipulation of Undisputed Facts, at ¶ 11, Docket No. 74, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Dec. 7, 2009).

¹² *Id.* at ¶ 13.

¹³ *Id.*

¹⁴ *Id.* at ¶ 14.

represented BofA's decision to require a deposit sufficient to cover Lehman's largest daily overdraft limits.¹⁵

II. LEHMAN AND BOFA NEGOTIATED THE TERMS OF A SECURITY AGREEMENT

On the evening of August 21, 2008, BofA sent Lehman a document titled "Security Agreement" and a document titled "Customer Agreement."¹⁶ These agreements provided for BofA's right to set off against the deposit sought by BofA to collateralize the intraday credit provided to Lehman. Lehman and BofA exchanged six drafts before executing the Security Agreement on August 25. The parties' Joint Stipulation of Undisputed Facts provides a draft-by-draft exposition of the negotiations over the terms of the agreements.¹⁷ These negotiations are the subject of ongoing litigation.

However, one of the terms arising from these negotiations has broader significance for this Report. During the course of negotiations, BofA proposed a provision that allowed Lehman to remove assets from the deposit account with advance notice of three business days.¹⁸

¹⁵ Bank of America's Local Bankruptcy Rule 7056-1(c) Response to Lehman Brothers' Statement of Undisputed Facts and Counterstatement of Facts in Opposition to Lehman Brothers' Motion for Summary Judgment, at p. 17, Docket No. 60, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Oct. 19, 2009).

¹⁶ Joint Stipulation of Undisputed Facts, at ¶ 15, Docket No. 74, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Dec. 7, 2009).

¹⁷ *Id.* at ¶¶ 15-33.

¹⁸ *Id.* at ¶ 24.

III. THE MINIMUM COLLATERAL VALUE AND THE THREE-DAY PROVISION

BofA's initial draft of the Security Agreement set the "minimum required collateral value" at \$1 billion.¹⁹ The agreement provided that if BofA ever determined that the value of the assets in the deposit account had fallen below \$1 billion, BofA could demand that Lehman immediately deposit the difference.²⁰ Unless Lehman was in default, BofA would release any funds in excess of \$1 billion to Lehman upon request²¹ (the \$1 billion figure was reduced to \$500 million in subsequent drafts).²²

On August 22, in Lehman's initial reply, Lehman struck out most of the collateral provision, including the amount of the minimum required deposit.²³ Lehman counter-proposed that it place collateral with BofA which Lehman could remove at any time without BofA's consent, but left the value amount of the collateral blank.²⁴

On August 22, in BofA's second draft, BofA reinserted the requirement that Lehman provide collateral of \$1 billion in a deposit account, but BofA also inserted a provision that allowed Lehman to remove assets from the deposit account with advance notice of three business days.²⁵

¹⁹ *Id.* at ¶ 16.

²⁰ *Id.*

²¹ *Id.*

²² *See id.* at ¶ 34.

²³ *Id.* at ¶ 22.

²⁴ *Id.*

²⁵ *Id.* at ¶ 24.

IV. THE DEPOSIT AND SETOFF

Upon execution of the Security Agreement on August 25, Lehman immediately wired \$500 million to the designated account (the “465” Account).²⁶ As planned, the funds were transferred to a Eurodollar account in the Cayman Islands the next day.²⁷ The Eurodollar account was a “time deposit” that matured on September 25, 2008.²⁸ Interest on the Eurodollar account was deposited into the 465 Account upon maturity.²⁹ According to BofA, these two accounts composed the Deposit Account referenced in and secured by the Security Agreement.³⁰

After September 25, the Eurodollar deposit matured daily and was renewed each day “until further notice.”³¹ Lehman did not attempt to access the Eurodollar deposit or the interest account.³²

According to Lehman, BofA “placed a permanent ‘hold’ on [the 465] account at its inception — the equivalent of an ‘administrative freeze’ — meaning that funds could not be taken out of the account without special authorization and [BofA’s] manual

²⁶ Joint Stipulation of Undisputed Facts, at ¶35, Docket No. 74, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Dec. 7, 2009).

²⁷ *Id.* at ¶ 36.

²⁸ *Id.* at ¶ 37.

²⁹ *Id.* at ¶ 39.

³⁰ Bank of America’s Local Bankruptcy Rule 7056-1(c) Response to Lehman Brothers’ Statement of Undisputed Facts and Counterstatement of Facts in Opposition to Lehman Brothers’ Motion for Summary Judgment, at p. 49, Docket No. 60, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Oct. 19, 2009).

³¹ Joint Stipulation of Undisputed Facts, at ¶ 40, Docket No. 74, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Dec. 7, 2009).

³² *Id.* at ¶ 42.

override of the hold.”³³ According to Lehman, the purpose of the permanent hold was to ensure that Lehman would not have “unfettered” access to the funds.³⁴

BofA “denies Lehman’s assertion that Bank of America placed a ‘permanent hold’ on the 465 Account to prevent Lehman’s removal of the cash deposit at inception” and maintains that Lehman “retained access to the cash deposit,” subject to the three-day notice provision described above.³⁵

BofA and Lehman agree that LBHI had “merely negligible overdrafts,” if any at all, on September 15 when LBHI declared bankruptcy.³⁶ On November 10, BofA notified LBHI that BofA claimed a right to set off \$1.9 billion against LBHI accounts.³⁷ Specifically, BofA claimed Lehman Brothers Special Financing owed BofA the \$1.9 billion under an ISDA agreement, which included a guarantee by LBHI.³⁸ That same day, BofA set off against approximately \$509.3 million in various LBHI accounts,

³³ Statement of Undisputed Material Facts in Support of Defendants Lehman Brothers Holdings Inc. and Lehman Brothers Special Financing and Counterclaim-Plaintiff Lehman Brothers Holdings Inc.’s Motion for Summary Judgment, at ¶ 47, Docket No. 52, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Sept. 14, 2009).

³⁴ *Id.* (quoting Transcript of deposition testimony of Evelyn Alpert, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753, Bankr. S.D.N.Y., June 12, 2009, at p. 28).

³⁵ Bank of America’s Local Bankruptcy Rule 7056-1(c) Response to Lehman Brothers’ Statement of Undisputed Facts and Counterstatement of Facts in Opposition to Lehman Brothers’ Motion for Summary Judgment, at p. 45, Docket No. 60, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Oct. 19, 2009).

³⁶ Joint Stipulation of Undisputed Facts, at ¶ 43, Docket No. 74, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Dec. 7, 2009).

³⁷ *Id.* at ¶ 44.

³⁸ *Id.*

including the entirety of the funds in the Eurodollar and 465 accounts (approximately \$501.8 million).³⁹

BofA did not seek relief from the automatic stay.⁴⁰ Lehman did not consent to the setoff.⁴¹ On November 21, 2008, Lehman demanded the return of the funds, protesting that the setoff violated the automatic stay and the terms of the Security Agreement.⁴²

On November 26, BofA commenced an adversary proceeding, seeking declaratory relief establishing that the setoff was proper under the terms of the Security Agreement, and that it either did not require relief from the automatic stay or, alternatively, that BofA was entitled to relief in order to effect the setoff.⁴³ On January 2, 2009, Lehman filed an answer and counterclaim, asserting breach of contract and violation of the automatic stay and seeking return of the funds, plus interest, costs, and fees.⁴⁴

³⁹ *Id.* at ¶ 45.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at ¶ 46.

⁴³ Adversary Complaint, at p. 2, Docket No. 1, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Nov. 26, 2008).

⁴⁴ Answer and Affirmative Defenses of Lehman Brothers Holdings Inc. and Lehman Brothers Special Financing Inc. and Counterclaims and Third-Party Complaint of Lehman Brothers Holdings Inc., at pp. 26-31, Docket No. 6, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Jan. 2, 2009) (also asserting claims for declaratory judgment that BofA must return the funds, to establish a constructive trust, and for turnover of property).

V. THE SIGNIFICANCE OF THE CLAIMS TO THE LIQUIDITY SECTION OF THIS REPORT

Some of the arguments made during the course of the adversary proceeding are relevant to the Liquidity Pool Section (Section III.A.5.i) of this Report. This appendix does not analyze the merits of the parties' claims in the adversarial proceeding, nor should this appendix be read to take a position on any facts in dispute between the parties.

Lehman and BofA dispute the nature of the Deposit Account holding the \$500 million.⁴⁵ Lehman argues that BofA did not have a common law right to setoff because the Deposit Account was a special purpose account, characterized by, among other things, restrictions on the pledgor's access.⁴⁶ According to Lehman, the three-day notice provision gave BofA "substantial control over the collateral," which was "substantially fettered."⁴⁷

In contrast, BofA argues that the Deposit Account was a general account, accessible to Lehman with only "minor" and "administrative" restrictions, and, thus,

⁴⁵ See, e.g., Bank of America's Local Bankruptcy Rule 7056-1(c) Response to Lehman Brothers' Statement of Undisputed Facts and Counterstatement of Facts in Opposition to Lehman Brothers' Motion for Summary Judgment, at pp. 48-50, Docket No. 60, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Oct. 19, 2009) (quoting and disputing Lehman's claims that the Eurodollar account was "not a bank account at all" or was at least not a general deposit account).

⁴⁶ Defendants Lehman Brothers Holdings Inc. and Lehman Brothers Special Financing And Counterclaim-Plaintiff Lehman Brothers Holdings Inc.'s Opposition to Bank of America's Motion for Summary Judgment, at pp. 37-38, Docket No. 63, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Oct. 19, 2009).

⁴⁷ *Id.* at p. 38 (internal quotations omitted).

subject to setoff absent an express waiver.⁴⁸ BofA claims to have devised the three-day proposal for Lehman's benefit and refers to the provision as "a creative solution that allowed its client to avoid a loss of liquidity."⁴⁹

Elsewhere, Lehman personnel have relied on the three-day provision for the proposition that similar deposits placed with JPMorgan were properly included in Lehman's liquidity pool.⁵⁰ Indeed, the provision was included in the agreements with JPMorgan at Lehman's behest.⁵¹

As discussed in more detail in the Liquidity Pool Section (Section III.A.5.i) of this Report, Lehman's access to the funds at JPMorgan and BofA subject to the three-day

⁴⁸ Memorandum of Law in Support of Bank of America's Motion for Summary Judgment, at pp. 42-48, Docket No. 48, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Sept. 14, 2009); see also Memorandum of Law in Opposition to Lehman Brothers' Motion for Summary Judgment and in Further Support of Bank of America's Motion for Summary Judgment, at pp. 17, 51-52, Docket No. 58, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Oct. 19, 2009).

⁴⁹ Memorandum of Law in Opposition to Lehman Brothers' Motion for Summary Judgment and in Further Support of Bank of America's Motion for Summary Judgment, at p. 6, Docket No. 58, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Oct. 19, 2009); see also Defendants Lehman Brothers Holdings Inc. and Lehman Brothers Special Financing and Counterclaim-Plaintiff Lehman Brothers Holdings Inc.'s Memorandum of Law in Reply to Bank of America's Opposition to Lehman's Motion for Summary Judgment, at pp. 29-30 & n.24, Docket No. 71, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Nov. 9, 2009) (arguing that BofA placed "significant practical limitations on Lehman's ability to withdraw the collateral" by conditioning access to overdraft credit on keeping the deposit at BofA and that "both parties believed that the withdrawal restrictions were significant").

⁵⁰ See e-mail from Mark G. Doctoroff, JPMorgan, to Jane Buyers-Russo, JPMorgan, *et al.* (Sept. 9, 2008) [JPM-2004 0032520] (discussing Fleming's desire to include a similar three-day provision in the September 9 Guaranty and Security Agreement to avoid "the public issue of [Lehman's] liquidity pool having to drop"); see also Guaranty (Sept. 9, 2008), at p. 2 [JPM-2004 0005813] (including three-day provision in September 9 Guaranty with JPMorgan); Security Agreement (Sept. 9, 2008), at p. 3 [JPM-2004 0005873] (including three-day provision in September 9 Security Agreement with JPMorgan).

⁵¹ Examiner's Interview of Donna Dellosso, Oct. 6, 2009, at p. 8; Examiner's Interview of Paul W. Hespel, Apr. 23, 2009, at pp. 5-6; Examiner's Interview of Paolo R. Tonucci, Sept. 16, 2009, at p. 14 n.7. *But see* Examiner's Interview of Andrew Yeung, Mar. 13, 2009, at p. 5 (claiming that JPMorgan proposed the three-day provision); Examiner's Interview of Andrew Yeung, May 14, 2009, at p. 7 (same).

provision is material to the propriety of Lehman's inclusion of those funds in its reported liquidity pool. Tonucci stated that Lehman included the BofA deposit in Lehman's liquidity pool because the cash was accessible with three-days' notice, and Lehman had internally defined "available liquidity" to mean liquid assets available within five days.⁵²

Nevertheless, Lehman argues in the adversary proceeding that there were practical restrictions on Lehman's ability to access the deposit, in addition to the restrictions imposed by the notice itself. Specifically, "Lehman could not simply withdraw the funds upon which overdraft protection was conditioned — or at least could not do so for as long as [BofA] remained one of Lehman's key clearing banks, a role it had occupied for at least sixteen years."⁵³ "Lehman needed to maintain daylight overdraft protection, or else 'the system would grind to a halt.'"⁵⁴

Finally, BofA may have counted the \$500 million deposit in its *own* liquidity pool concurrent with Lehman counting the same deposit in its pool. In the course of a

⁵² Transcript of deposition testimony of Paolo R. Tonucci, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753, Bankr. S.D.N.Y., July 16, 2009, at pp. 18-19. However, as described in more detail in the Bank of New York Mellon Section of this Report, Lehman's International Treasurer, Carlo Pellerani, was unaware of the significance of the three-day provision, and told the Examiner that did not know of a Lehman policy that defined "available liquidity" to mean liquid assets available within five days. See Section III.A.5.f of this Report.

⁵³ Defendants Lehman Brothers Holdings Inc. and Lehman Brothers Special Financing and Counterclaim-Plaintiff Lehman Brothers Holdings Inc.'s Memorandum of Law in Reply to Bank of America's Opposition to Lehman's Motion for Summary Judgment, at pp. 29-30, Docket No. 71, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753 (Bankr. S.D.N.Y. Nov. 9, 2009).

⁵⁴ *Id.* at p. 30 (quoting Transcript of deposition testimony of Bernadette Mazzella, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753, Bankr. S.D.N.Y., July 15, 2009, at pp. 39-42).

deposition, Lehman's counsel asked Evelyn Alpert, a senior vice president at BofA, whether the \$500 million was included in BofA's "liquidity" once Lehman deposited it. Alpert responded: "Every deposit that we have is included in our liquidity."⁵⁵

⁵⁵ Transcript of deposition testimony of Evelyn Alpert, *Bank of Am., N.A. v. Lehman Bros. Holdings, Inc. (In re Lehman Bros. Holdings, Inc.)*, No. 08-01753, Bankr. S.D.N.Y., June 12, 2009, at pp. 24:24-25:11.

APPENDIX 20: KNOWLEDGE OF SENIOR LEHMAN EXECUTIVES REGARDING THE INCLUSION OF CLEARING-BANK COLLATERAL IN THE LIQUIDITY POOL

Appendix 20 describes what members of Lehman’s senior management told the Examiner they knew, or did not know, about Lehman’s inclusion of clearing-bank collateral in the firm’s liquidity pool.

A. Richard S. Fuld, Jr.

According to Fuld, it was only after September 15, 2008, through conversations with CFO Ian Lowitt, that he understood the impact of JPMorgan’s collateral calls on Lehman’s liquidity.¹ Still, Fuld opined that collateral pledged on an intraday basis was properly counted in Lehman’s liquidity disclosures.² There was no “liquidity issue” in Fuld’s view because, according to Fuld, the collateral was returned daily.³ Following the bankruptcy, Fuld said he had a conversation with Lowitt, who advised him that collateral pledged intraday definitely counted toward liquidity.⁴

B. Christopher M. O’Meara

O’Meara was CRO at the time of LBHI’s bankruptcy filing on September 15, 2008. O’Meara said that Lehman’s liquidity pool consisted of short-term investments

¹ Examiner’s Interview of Richard S. Fuld, Jr., May 6, 2009, at p. 12.

² *Id.* at p. 15; Examiner’s Interview of Richard S. Fuld, Jr., Dec. 9, 2009, at p. 5 (Fuld opined that collateral pledged intraday was properly included in Lehman’s liquidity pool).

³ Examiner’s Interview of Richard S. Fuld, Jr., May 6, 2009, at p. 12.

⁴ *Id.* at p. 15.

that could be converted to cash.⁵ He did not appear to be aware that Lehman was including clearing-bank collateral in its liquidity pool prior to LBHI's bankruptcy: when asked whether certain collateral could have been included in Lehman's liquidity pool, O'Meara said he would have to "huddle with the team to understand that better."⁶ He then argued for the propriety of including pledged collateral in the liquidity pool, stating that if the collateral were only tied-up intraday, "it's still ours at the end of the day."⁷

Thus O'Meara, like Fuld, said he was not aware that Lehman was not entitled to all collateral included in the liquidity pool at the end of the day. He further stated that he was not aware that, due to the JPMorgan-Lehman Clearance Agreement and associated security documentation, Lehman accounts at JPMorgan were encumbered and that the collateral in those accounts was simultaneously included in the pool.

C. Paolo R. Tonucci

As Global Treasurer, Tonucci was familiar with the composition and definition of Lehman's liquidity pool. He stated that collateral eligible for inclusion in the pool was that which was "high grade, investment quality," which could be "monetized within five days."⁸ Tonucci stated that this was an internal Lehman policy, predating his tenure as Global Treasurer, although he could not point to a specific document

⁵ Examiner's Interview of Christopher M. O'Meara, Aug. 14, 2009, at p. 27.

⁶ *Id.*

⁷ *Id.*

⁸ Examiner's Interview of Paolo R. Tonucci, Sept. 16, 2009, at p. 16.

supporting this statement.⁹ Tonucci further stated that he did not know “how formal” the five-day standard was, or how formal standards for including assets in the liquidity pool were generally.¹⁰ Tonucci noted that liquidity was not governed by anything as specific as a GAAP standard. “Ultimately,” Tonucci said, “the CFO [Lowitt] is responsible for determining what assets belong and do not belong [in the liquidity pool].”¹¹

Tonucci listed other assets suitable for inclusion in the liquidity pool: government securities, major-listed equities, money funds with same or next-day liquidity, and reverse repurchase agreements (“reverse repos”).¹² Tonucci said that reverse repos were the “gold standard” for liquid assets eligible for inclusion in Lehman’s liquidity reserves.¹³

The Examiner asked Tonucci whether collateral transferred to Lehman’s clearing banks was properly included in Lehman’s liquidity pool, highlighting the fact that funds transferred to clearing banks to cover intraday risk such as the June 12, 2008 \$2 billion Citi deposit would not be available for Lehman’s liquidity needs during that intraday period. Tonucci responded that he “didn’t think about it that way at the time”

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* Note that Ian Lowitt said just the opposite, namely, that Tonucci was primarily responsible for the composition of the liquidity pool. Examiner’s Interview of Ian T. Lowitt, Oct. 28, 2009, at p. 24.

¹² In a reverse repo, the repo “lender” (Lehman) agrees to provide cash to its counterparty (the repo “borrower”) in exchange for a security, where the repo “borrower” agrees to buy the security back from the lender at a slightly higher price in the future (the “repurchase” obligation).

¹³ Examiner’s Interview of Paolo R. Tonucci, Sept. 16, 2009, at p. 16.

that Lehman transferred the \$2 billion to Citi.¹⁴ Tonucci elaborated: Lehman did not design its pool to cover “arbitrary” demands made by its clearing banks; rather, the liquidity pool was defined to satisfy maturing obligations over a certain period of time.¹⁵ While collateral demands may have been foreseeable in hindsight, the liquidity pool was not designed to, or represented to, cover clearing-bank demands.¹⁶

Tonucci explained that Lehman believed it could include clearing-bank collateral in the liquidity pool given that, in the case of Citi and JPMorgan, until early September, that collateral was only transferred to secure intraday exposures, and was allegedly released at the end of each day.¹⁷ Because Lehman only calculated its liquidity after the close of business, the supposedly released collateral could be counted as “liquid.” Tonucci emphasized that no firm calculates liquidity intraday, on account of the complexity of such a task.¹⁸

¹⁴ *Id.* at p. 18.

¹⁵ *Id.*

¹⁶ *Id.* Lehman described its liquidity pool as “primarily intended to cover expected cash outflows for twelve months in a stressed liquidity environment,” where those outflows consisted of, for the most part, maturing, long-term, unsecured debt coming current, and repayment of commercial paper and bank loans. Lehman Brothers Holdings Inc., Quarterly Report as of May 31, 2008 (Form 10-Q) (filed on July 10, 2008), at p. 80. Lehman further described its pool as available to fund illiquid asset classes, and cover outflows associated with certain liquidity stress scenarios. *Id.* at pp. 80-82, 84. Lehman never disclosed that its liquidity pool contained encumbered assets. When FRBNY analysts Art Angulo and Jan Voigts inferred for themselves that Lehman was including clearing-bank collateral in its liquidity pool, Angulo concluded, “[it] doesn’t feel quite right to view [the collateral] as ‘unencumbered,’” to which Voigts replied, “[a]greed.” E-mail from Jan H. Voigts, FRBNY, to Arthur G. Angulo, FRBNY (Aug. 21, 2008) [FRBNY to Exam. 033297].

¹⁷ Examiner’s Interview of Paolo R. Tonucci, Sept. 16, 2009, at p. 18.

¹⁸ *Id.* While Lehman did not know all the inflows and outflows that would ultimately transpire intraday until after the fact, Lehman did know that per its understanding with Citi and JPMorgan, it had to place a set amount of collateral with those institutions every day.

Tonucci provided another rationale for the inclusion of clearing-bank collateral in the pool: Lehman believed it could get the collateral back from the banks if it so requested.¹⁹ The Examiner is, in fact, aware of two occasions in which Citi and HSBC returned cash to Lehman; on both occasions, however, Lehman promptly replaced the funds.²⁰ Asked if Lehman had ever tested its ability to get clearing-bank collateral back from JPMorgan in the summer of 2008, Tonucci replied that Lehman had not.²¹ Nevertheless, Tonucci stated that Lehman could effect the return of intraday clearing-bank collateral. The Citi \$2 billion cash deposit, Tonucci continued, was merely placed with Citi to demonstrate “good faith,” and that there were “no restrictions on [Lehman’s] ability to get it back.”²² Further, Tonucci said he was “confident” that

¹⁹ *Id.*

²⁰ See e-mail from Michael Mauerstein, Citigroup, to Christopher M. Foskett, Citigroup (June 30, 2008) [CITI-LBHI-EXAM 00074989] (explaining that Lehman will replace the \$200 million of the Citibank deposit the next morning); e-mail from Carlo Pellerani, Lehman, to Ian T. Lowitt, Lehman, *et al.* (Aug. 28, 2008) [LBEX-AM 008853] (evidencing return of the HSBC deposit following the weekend); e-mail from Ian T. Lowitt, Lehman, to Jeremy Isaacs, Lehman (Aug. 28, 2008) [LBEX-AM 008940].

²¹ Examiner’s Interview of Paolo R. Tonucci, Sept. 16, 2009, at p. 18. The Examiner is aware, however that collateral moved out of the accounts at certain points. For example, on September 10, 2008, JPMorgan returned the “Pine” securities collateral upon Lehman’s request. See *supra* Section III.A.5.b.1.m of this Report, which discusses Lehman’s dealings with JPMorgan; see also e-mail from Edward J. Corral, JPMorgan, to Michael A. Mego, JPMorgan, *et al.* (Sept. 12, 2008) [JPM-EXAMINER00005961] (“Let the CLO go.”); e-mail from Michael A. Mego, JPMorgan, to Mark G. Doctoroff, JPMorgan, *et al.* (Sept. 12, 2008) [JPM-EXAMINER00005936] (“Lehman Brothers is looking to Release \$1 billion from the \$6.2 billion held on their LCE account.”).

²² Examiner’s Interview of Paolo R. Tonucci, Sept. 16, 2009, at p. 18. There were restrictions on Lehman’s ability to access these funds. Citi documents and witness statements show that while Citi would likely have returned the \$2 billion to Lehman if requested, Citi’s risk desk had to be notified in advance of, and approve any release of the deposit. After release of the deposit Citi would reassess whether it would continue doing “business as usual” with Lehman. Examiner’s Interview of Thomas Fontana, Aug. 19, 2008, at p. 5. Further, within Citi it was understood that Lehman’s “asking for the deposit back does have distinct impacts on clearing capacity.” E-mail from Jerry Olivo, Citigroup, to Michael Mauerstein, Citigroup, *et al.* (Aug. 29, 2008) [CITI-LBHI-EXAM 00076678].

Lehman could trade with Citi without the \$2 billion, but that it would “be more difficult” without the deposit.²³ Lehman was “always beholden to an extent on the good will of its clearing banks,” Tonucci said, but he factored in Lehman’s “long and deep” history with those clearing banks (which had not asked previously for intraday collateral) in forming his judgment that the banks would have returned the collateral.²⁴

While Tonucci assumed at the time of the collateral pledges that Lehman would be able to call back the pledges, it became apparent to him on or around September 10, 2008, that the banks would not return the collateral.²⁵ Tonucci said that within Lehman, there were no discussions about the propriety, impropriety or difficulties related to Lehman’s inclusion of the clearing-bank collateral in the pool.²⁶

In addition to the JPMorgan and Citi collateral, Tonucci recalled that collateral transfers to HSBC and Bank of America (“BofA”) were also included in the liquidity pool. Tonucci defended the inclusion of the BofA collateral on the grounds that BofA was “very peripheral” to Lehman’s funding operations and that Lehman could have moved its business to Citi.²⁷

In total, Tonucci confirmed that the following assets were included in Lehman’s liquidity pool: the \$2 billion Citi deposit; \$3 billion JPMorgan collateral pledged on

²³ Examiner’s Interview of Paolo R. Tonucci, Sept. 16, 2009, at p. 18.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at p. 19.

²⁷ *Id.*

September 9 and 10, 2008;²⁸ the \$5 billion cash collateral pledged to JPMorgan on September 12; at least “some of” the securities transferred to JPMorgan over the summer to mitigate the effects of JPMorgan’s margin requirements; the approximately \$1 billion transferred to and that remained at HSBC on September 1, 2008; and \$500 million collateral placed with BofA on August 25, 2008.²⁹ Tonucci said that he did not recognize that these pledges materially reduced Lehman’s “ability to monetize the pool” until September 12, 2008.³⁰

D. Robert Azerad

Azerad was the head of Lehman’s Asset and Liability Management division, and had an active role in managing LBHI’s liquidity pool. Azerad stated that the liquidity pool was composed of unencumbered assets that could be readily monetized.³¹ Yet, when asked about Lehman’s inclusion of intraday collateral in its liquidity pool, he defended doing so based upon the fact that liquidity was calculated at the end of each day.³²

When asked what would happen if Lehman decided to sell or pledge cash and other assets that were committed to the clearing banks on an intraday basis, Azerad acknowledged that this would amount to “open battle” with JPMorgan, which Azerad

²⁸ Tonucci was not asked about the \$600 million cash pledged to JPMorgan on September 11. *See id.* at p. 21.

²⁹ *Id.* at p. 19.

³⁰ *Id.*

³¹ Examiner’s Interview of Robert Azerad, Sept. 23, 2009, at p. 4.

³² *Id.*

thought could force Lehman into bankruptcy.³³ Still, he disagreed with altering his end-of-day conception of liquidity reporting to take this practical reality into account.³⁴ But Azerad did acknowledge that, in a sense, collateral pledged on an intraday basis was not truly “unencumbered.”³⁵ Azerad further stated that the inclusion of clearing-bank collateral was not a “black-and-white” issue for him, and that Lehman was not trying to “hide encumbrances,” but rather stick to a consistent methodology of only calculating liquidity at the end of the day.³⁶

Azerad stated that he developed the various “ability to monetize” tables³⁷ describing the relative liquidity of different portions of the liquidity pool only in the week prior to the chapter 11 filing by LBHI.³⁸ He said that assets assigned a “high” ability to monetize could be liquidated in one day, assets assigned a “mid” ability to monetize could be liquidated within five days, and assets with a “low” ability to monetize were monetizable within one to two weeks.³⁹ A table showing Lehman’s “ability to monetize” the liquidity pool as of September 10, 2008 assigns a “low” “ability to monetize” \$27 billion of the \$37 billion pool.⁴⁰

³³ *Id.* at p. 9.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *See, e.g.,* Robert Azerad, Lehman, Liquidity Pool Summary (Sept. 9, 2008) [LBHI_SEC07940_557815].

³⁸ Examiner’s Interview of Robert Azerad, Sept. 23, 2009, at p. 8.

³⁹ *Id.*

⁴⁰ Lehman, Liquidity Update (Sept. 10, 2008), at p. 4 [LBEX-WGM 725919].

E. Daniel J. Fleming

In his second interview with the Examiner, on September 24, 2009, Lehman Cash and Collateral Management head Dan Fleming said he knew Lehman wanted to structure collateral deposits with its clearing banks to maintain its ability to include the collateral in the liquidity pool.⁴¹ Fleming recounted his knowledge of the \$2 billion Citi deposit in particular: If Lehman owed no obligations to Citi at the end of the day, the deposit was freely returnable to Lehman, and could therefore be included in the liquidity pool.⁴² Fleming also recounted his understanding of the pledge of securities collateral to JPMorgan in the summer of 2008 to mitigate the effects of JPMorgan's margin requirements: while the collateral counted toward JPMorgan's NFE calculation, Lehman could theoretically take a portion of the collateral back so long as NFE remained positive.⁴³ Fleming acknowledged that Lehman included collateral in its liquidity pool, despite the fact that there would be clearing consequences if Lehman did not return the collateral to the clearing banks each morning;⁴⁴ Fleming's view was that it was appropriate to include the assets because Lehman was legally entitled to them.⁴⁵ He also noted that disclosures concerning the pool were not his responsibility.⁴⁶

⁴¹ Examiner's Interview of Daniel J. Fleming, Sept. 24, 2009, at p. 4.

⁴² *Id.* at p. 8.

⁴³ *Id.* at pp. 4-5.

⁴⁴ *Id.* at pp. 4, 8.

⁴⁵ *Id.* at p. 8.

⁴⁶ *Id.*

F. Carlo Pellerani

Pellerani served as Lehman's International Treasurer.⁴⁷ Pellerani recalled that clearing banks began demanding collateral "towards the end," and further recalled attempting to find illiquid collateral to pledge in order to satisfy those banks' intraday risk concerns.⁴⁸ Pellerani did not recall any discussions about satisfying those banks' requests by using collateral from the liquidity pool.⁴⁹ Pellerani was not aware whether Lehman included clearing-bank collateral in its liquidity pool, or structured the terms of its deposits or pledges in order to justify doing so.⁵⁰ Nor was Pellerani aware of any Lehman policy or standard to the effect that an asset was "liquid" and suitable for inclusion in the liquidity pool if it could be monetized within five days.⁵¹

Pellerani rejected the distinction between clearing-bank "deposits" and "pledges" offered by Tonucci and other Lehman witnesses. The Examiner questioned Pellerani about an e-mail exchange between himself and Cornejo in which Cornejo argued that a \$200 million deposit placed with Bank of New York ("BNYM") in order to cover exposure to Lehman, over which BNYM would have a right to set off would not be a formal "pledge" and therefore would not "affect" the liquidity pool.⁵² Pellerani said he did not see the distinction between such a deposit and a "pledge" and further

⁴⁷ Examiner's Interview of Carlo Pellerani, Jan. 13, 2010, at p. 3.

⁴⁸ *Id.* at p. 4.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at pp. 4-5.

stated that a deposit such as that described in the e-mail was not “available liquidity” and thus was not something that should have been included in the liquidity pool.⁵³ “If [BNYM] is requiring a deposit in order to perform services, it can’t be used in liquidity,” Pellerani said.⁵⁴

Presented with a hypothetical fact pattern (tracking the terms of the \$2 billion Citi deposit) where Lehman placed a deposit with a clearing bank during the day to cover risk exposures that was returned to Lehman at the end of the day, Pellerani stated that he “would find it very, very hard to become comfortable including that [hypothetical deposit] in the liquidity pool.”⁵⁵

G. Steven J. Engel

Engel was a Senior Vice President and Global Head of Funding for Lehman’s Treasury department. In that capacity, he managed the investment of assets in LBHI’s liquidity pool.⁵⁶ Engel stated that it was not appropriate to count assets in a liquidity pool that were deposited or pledged intraday with clearing banks, even if those assets were lien-free at night.⁵⁷ This was because the assets were required for day-to-day operations, and Engel could not think of a way the assets could be monetized

⁵³ *Id.* at p. 5.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Examiner’s Interview of Steven J. Engel, Oct. 30, 2009, at p. 8.

⁵⁷ *Id.* at pp. 10-11.

overnight.⁵⁸ Engel believed it would be inappropriate for Lehman to include in its liquidity pool amounts deposited or pledged to BofA, JPMorgan, Citi, and HSBC.⁵⁹ Engel said it was not reasonable for Lehman to represent that it had greater than \$40 billion in its liquidity pool on September 10, 2008 if the clearing banks would not return collateral counted in the liquidity pool.⁶⁰ Engel further explained that it was not clear that Lehman would have gone to the PDCF to fund some of the securities.⁶¹

⁵⁸ *Id.* at p. 10.

⁵⁹ *Id.*

⁶⁰ *Id.* at p. 13.

⁶¹ *Id.*

APPENDIX 21: LBHI SOLVENCY ANALYSIS

This Appendix 21 was prepared by Duff & Phelps and accompanies the Examiner's analysis of LBHI's solvency prior to the petition date, discussed in Section III.B.3.b of the Report. This Appendix also discusses the existence of option value in a firm's equity price, and describes the methodology utilized in the market-based valuation approach for determining solvency.

APPENDIX 21

To: The Examiner
From: Duff & Phelps, LLC
Subject: LBHI Solvency Analysis Appendix
Date: February 1, 2010

I. Optionality Valuation Methodology

It is important to consider the concept of optionality and the existence of option value in a firm's equity price when evaluating what the market prices indicate relative to firm solvency. Quite frequently there are insolvent firms with positive market value of equity. This occurrence is detailed below.

Optionality Overview

The value of a stock option consists of two components: intrinsic value and time value. Intrinsic value is the difference between stock price and strike price. Time value reflects the probability that a stock price will exceed the strike price at some point prior to expiration.

When the stock price is less than the strike price, an option is considered to be "out of the money." Out of the money options have zero intrinsic value. While out of the money options may appear worthless because there is no intrinsic value, they often trade at positive values. This is because of time value, which is the possibility that the stock price will become greater than the strike price before the option expires. As an out of the money call option approaches maturity, the time value of the option decreases.

One key determinant of how much time value an option has is volatility. All else being equal, greater volatility in a stock leads to higher option value.

Equity as an Option

Equity in a troubled firm, where the market value of the assets is less than the face value of the debt owed, has characteristics similar to an out of the money call option. The two primary similarities are exercisability and limited liability. Just as the value of an option is impacted by intrinsic value, time value and volatility, so too is the value of a firm's equity.

Exercisability

Equity holders in a firm are residual claim holders. That is, they have claims on the cash flows of a firm after other financial claim holders are paid. If the value of a firm's assets exceeds the value of debt owed by the firm to other financial claim holders, shareholders receive the residual value of the firm. Equity holders also have the option to liquidate a firm at any time and pay off the debt holders. Therefore, payoff to equity holders (E) at any time is given by,

$$E = A - D, \quad \text{if } A > D$$

(Or)

$$0, \quad \text{if } A \leq D$$

Where A = Market Value of Assets & D = Par Value of Debt

Equity holders will only exercise their right to liquidate the firm when the market value of the firm's assets is greater than the par value of its debt. As such, the firm's par value of debt can be viewed as the strike price for the equity holders' option. Similarly, the firm's market value of assets is similar to the price of the stock upon which the option is relying (commonly referred to as the underlying stock price). Thus, the firm's market value of equity is similar to the market value of a call option.

Limited Liability

The maximum loss for the owner of a stock option is the amount that he pays for that option. If the option expires and the underlying stock price is less than the strike price of the option, the option is worth zero, regardless of how far below the strike price the stock is. Similarly, if a firm's assets are worth less than its debt, the most an equity holder in the firm can lose is the amount that he paid for his equity.

Intrinsic Value

As discussed above, the value of a firm's equity, upon liquidation (exercise) is equal to the difference between the market value of the firm's assets and the face value of its debt. In an insolvent firm, where the value of the firm's assets is less than the face value of debt, there is zero intrinsic value (just as a stock option where the underlying price is less than the strike price has no intrinsic value). Just as out of the money options often have positive value, insolvent firms often have positive market value of equity. This is because of time value.

Time Value

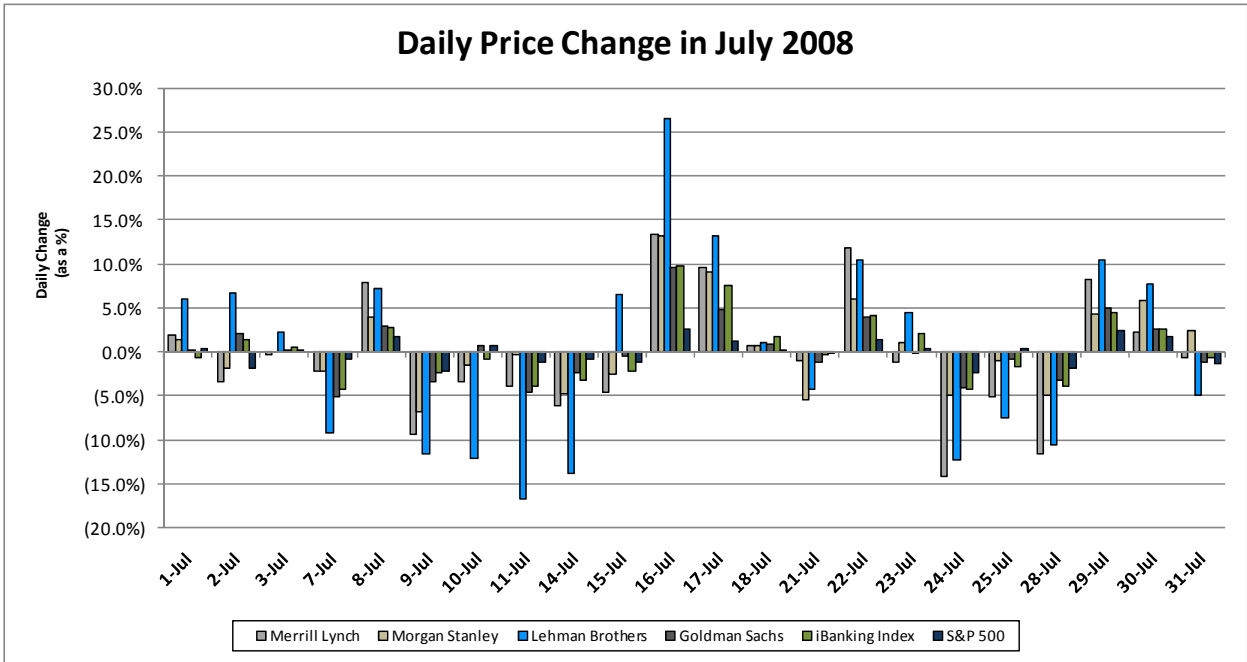
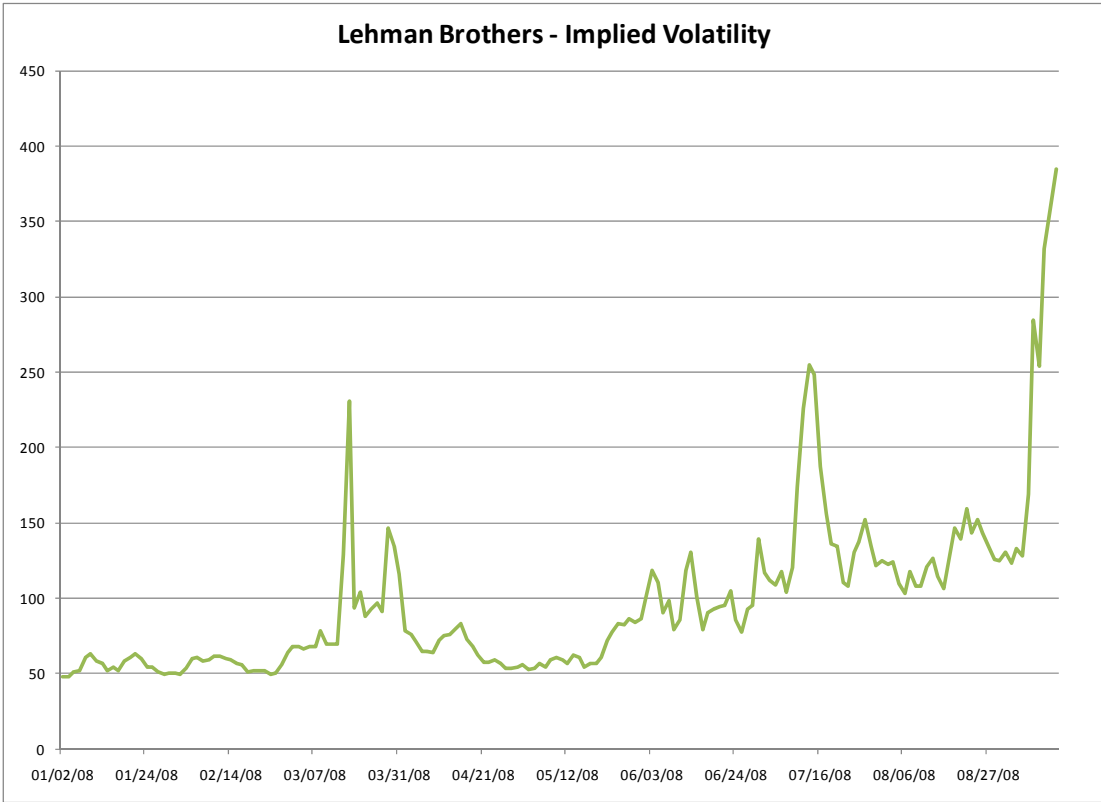
The value of a firm's assets is changing all of the time. Internal and external factors which influence the value of the firm's assets are constantly changing. Even when a firm's assets are worth less than the face value of its debt there is the possibility that those assets will gain enough value so that they are worth more than the firm's debt. This possibility is the reason that investors are often willing to pay positive values for equity in an insolvent company. The amount that these investors are willing to pay is influenced by both the amount of time that they feel the company will survive before having to file for bankruptcy and the likelihood that the asset value will grow before that time has expired. All else being equal, the longer the period prior to bankruptcy, the more an investor will be willing to pay for the firm's equity (similar to an investor being willing to pay more for a stock option with a longer duration than the same option with shorter duration). Further, the more volatile a firm's assets are, the more likely it is that they will become worth more than the firm's debt prior to bankruptcy.

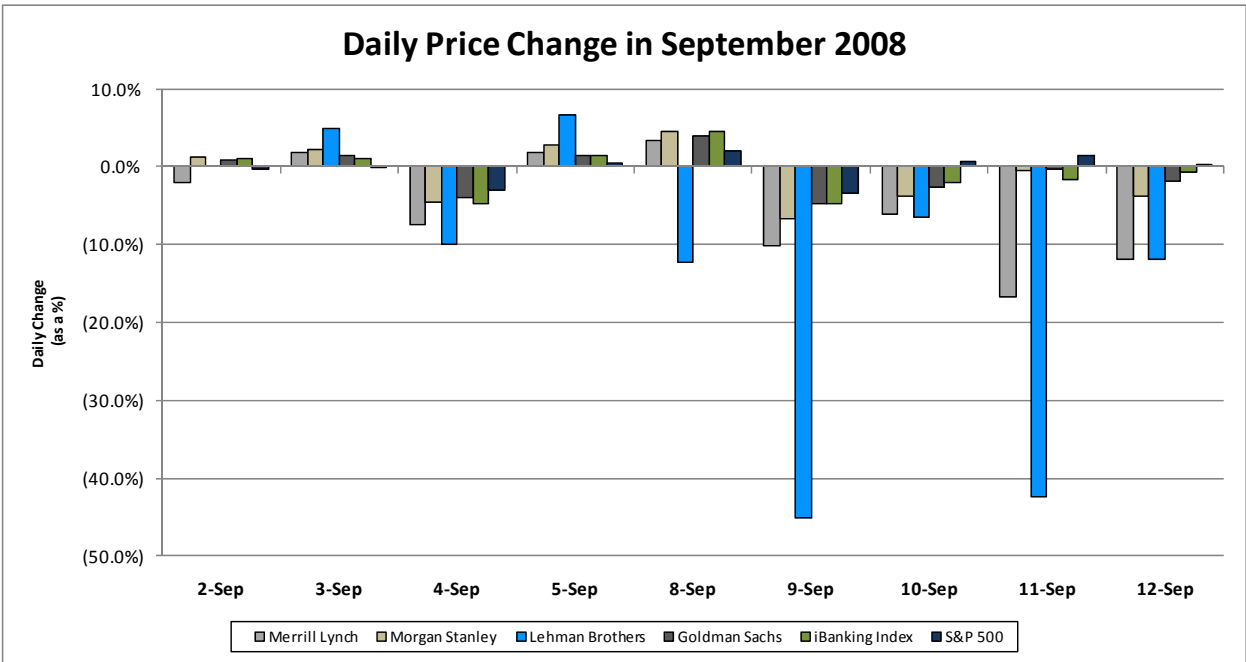
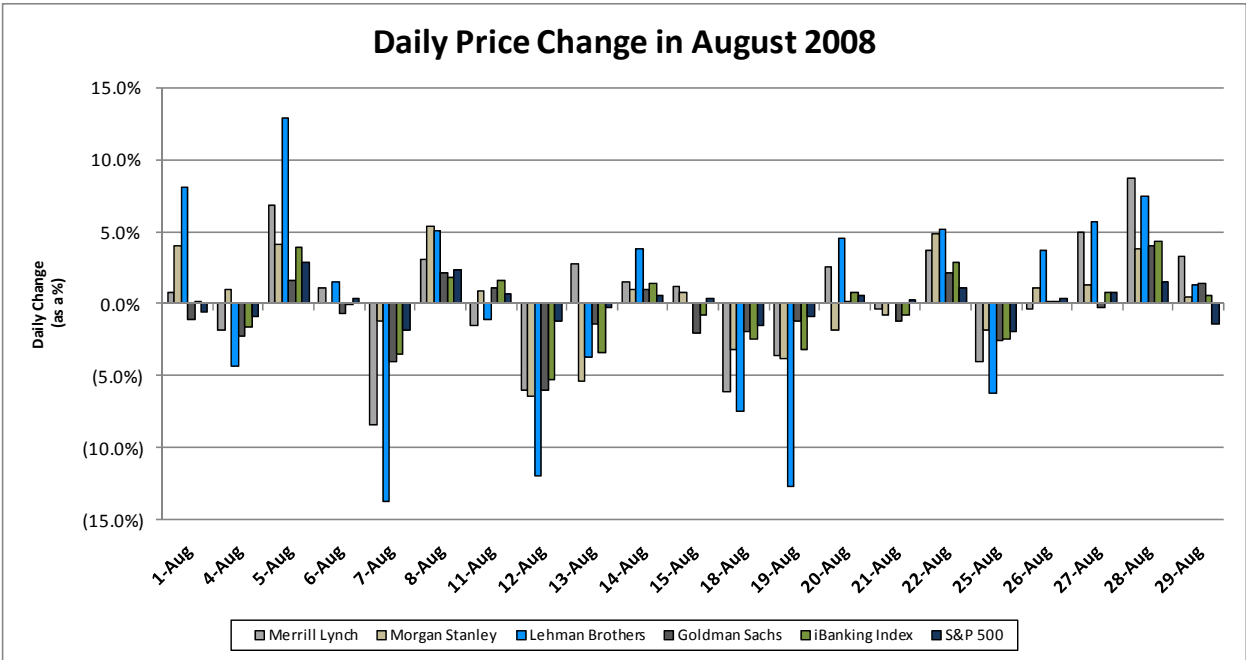
Volatility

Just as the volatility of the underlying stock is a key determinant of the time value of an option, the volatility of a firm's assets is a key determinant of the time value embedded in a firm's equity. All else being equal, greater asset volatility leads to higher stock value.

Even as the market capitalization of Lehman Brothers gradually fell, starting several months prior to Chapter 11 bankruptcy, there was very high volatility in both its stock price and bond prices. This volatility was the result of both considerable uncertainty surrounding the broader market and Lehman specific issues including liquidity concerns, uncertainty about the market values of Lehman's assets, and several rumored potential transactions. The high volatility in Lehman's stock price is depicted in the following charts. The first chart depicts Lehman's stock volatility in absolute terms, measured by implied volatility of Lehman options. The last three charts display the volatility of Lehman's stock in relative terms, exhibited by daily stock changes for Lehman and its peers.

It is clear from both sets of charts that Lehman's stock was very volatile as the firm approached its bankruptcy. The stock volatility is indicative of high volatility of Lehman's assets which is the reason that the firm's equity continued to trade at positive values right up to its bankruptcy filing.





II. Market Solvency Calculations

As described in the Report, solvency is determined by comparing the market value of assets to the face value of the debt. While accounting guidelines require companies to report the face value of debt (and in Lehman’s case, mark-to-market asset values) in

quarterly increments, firms are not required to report on a monthly or daily basis. There was, however, a fluid public market for both Lehman's equity and its debt. Duff & Phelps ("D&P") evaluated the public values of both Lehman's equity and debt to deduce an implied market value of assets on each trading day from June 1 to September 15, 2008. D&P then compared that value to the face value of all of Lehman's liabilities to determine solvency on each date.

Market Value of Assets

As discussed in the Report, this analysis began with the formula, Assets – Liabilities = Equity and rearranged it so that Assets = Equity + Liabilities. This allowed D&P to use observable market values for Lehman's equity and its debt to calculate the fair market value of its assets. The market value of both Equity and Liabilities are available through a series of calculations. For the purposes of this exercise, the extended formula is laid out as:

$$\begin{aligned} & \text{Market Value of Equity} + \text{Adj. Book Value of Preferred Equity} * \text{Preferred Equity Price} \\ & \qquad \qquad \qquad + \\ & \text{(Total Liabilities – Book Value of ST/LT Debt} + \text{Market Value of ST/LT Debt}^1) \\ & \qquad \qquad \qquad = \\ & \text{Market Value of Assets} \end{aligned}$$

1. Market Value of Equity

The market value of equity was determined by calculating the product of the total shares outstanding per Lehman's SEC filings and the closing stock price as of that date.

2. Market Value of Preferred Equity

The market value of preferred equity was determined by calculating the product of the book value of preferred equity, adjusted for additional issuances per SEC filings,² and the current market price of preferred equity. The current market price was based on

¹ Lehman's Total Liabilities included more than just Short Term/Long Term debt. This analysis assumed that the market value for this debt is equal to the par value. By subtracting the book value of Short Term/Long Term debt from and adding the market value of Short Term/Long Term debt to total liabilities, this analysis adjusted for the difference between the market and face values of those instruments.

² Preferred equity adjusted based on \$4.0 billion preferred equity issuance on April 4, 2008 and a subsequent \$2.0 billion placement on June 6, 2008 per Lehman's SEC filings.

Lehman's preferred stock issued in February 2008³ as it had high liquidity on the dates in question and was an accurate indicator of price on each date.

3. Total Liabilities

Total Liabilities were taken from Lehman's SEC filings and encompassed all outstanding liabilities on Lehman's balance sheet.

4. Book Value of Short Term Debt and Book Value of Long Term Debt

The book value of short-term debt, current portions of long-term debt and remaining long-term debt were taken from Lehman's SEC filings as of the particular date.

5. Market Value of Long Term Debt

The market value of long term debt was approximated by using a sample of five publicly traded Lehman bonds, which represented various durations of Lehman debt, as a proxy. A proxy for the market price of all Lehman long term debt was determined by calculating the weighted average (by duration) price of the five publicly traded Lehman bonds. This market price was then multiplied by the book value of Lehman's long term debt to arrive at a market price for Lehman's long term debt. The following table depicts the bonds used and their weighting.

	Weighting	Bond CUSIP	Maturity Date	Coupon
1 - 3 year Bonds	29.4%	Average of CUSIP 524908CF5 and CUSIP 52517PSC6	11/01/2009 and 1/18/2012	7.875% and 6.625%
3 - 5 year Bonds	24.7%	CUSIP 52517PSC6	1/18/2012	6.625%
5+ Senior Bonds	30.8%	CUSIP 52517PF63	4/4/2016	5.5%
5+ Subordinate Bonds	15.0%	Average of CUSIP 524908UB4 and CUSIP 524908R36	1/3/2017 and 7/19/2017	5.57% and 6.5%

³ See Lehman Brothers Holdings Inc., Free Writing Prospectus, Accession No. 1104659-8-8130 (filed on Feb. 7, 2008) (CUSIP 52520W317 Perpetual Preferred offering with 7.95% coupon).

The Lehman debt maturity distribution from SEC filings was then matched with a mixture of Lehman bonds in the market of varying maturities that have high liquidity (determined both by issuance size and by availability of prices through Bloomberg). Also factored in was the fraction of outstanding debt that was subordinated rather than senior in choosing the five public bonds.

The weighting for the long term debt was calculated based on Lehman's long term debt as of August 31, 2008⁴ as shown in the following table. Debt maturing beyond five years was broken into senior and subordinate debt.

Maturity Date	Amount (USD millions)	Maturity Date	Amount (USD millions)
11/30/2009	\$ 5,849	8/31/2012	\$ 5,767
2/28/2010	3,304	11/30/2012	3,312
5/31/2010	6,402	2/28/2013	5,136
8/31/2010	3,645	5/31/2013	1,852
11/30/2010	2,058	8/31/2013	2,617
2/28/2011	3,056	11/30/2013	1,091
5/31/2011	6,249	2/28/2014	4,189
8/31/2011	3,192	5/31/2014	1,498
11/30/2011	1,459	8/31/2014	1,439
2/29/2012	4,657		
5/31/2012	3,519	Beyond	44,349
Total			\$ 114,640

6. Market Value of Short Term Debt

The market value of Lehman's short term debt was calculated based on the average of par and the daily price of Lehman's publicly traded debt with a March 13, 2009 maturity date.⁵ Par is the value for debt with zero time to maturity and the March 13, 2009 maturity date was an appropriate price for debt maturing in six to nine months. Taking the average of the two approximates value through linear interpolation approximation over a maturation period of zero to nine months. This determined price was then multiplied by Lehman's book value of short term debt and current portions of long term debt from its SEC filings to arrive at a daily fair market value of the short term debt.

⁴ Lehman, Funding Lehman Brothers (Sept. 11, 2008) [LBEX-DOCID 008482].

⁵ See Lehman Brothers Holdings Inc., Prospectus (Form 424B2), Accession No. 1047469-4-5120 (filed on Feb. 20, 2004) (CUSIP 52517PVU2).

Solvency Par Value of Debt

When reporting debt amounts in its interim and annual financial statements, Lehman reported certain hybrid financial instruments at fair value as opposed to par value. In order to perform a solvency analysis, D&P adjusted Lehman's reported debt numbers to include the full par value of these instruments. The adjusted book value was determined by adding (1) the aggregate amount that the hybrid financial instruments exceed their fair value by⁶ to (2) the total liabilities held on Lehman's balance sheet. Using Lehman's SEC filings, the following table shows how much the face value of Lehman's hybrid financial instruments exceeded fair value.

Hybrid Financial Instruments			
<i>Amount by which Par exceeds Fair Value (USD billions)</i>			
Date	Short Term	Long Term	Cumulative Total
May 31, 2008	\$ 0.60	\$ 4.80	\$ 5.40
February 29, 2008	0.51	3.90	4.41
November 30, 2007	0.15	2.10	2.25
August 31, 2007	-	1.55	1.55

⁶ Adjusting hybrid instruments by the amount they exceed their fair value calculation brings the instruments to Par value.

APPENDIX 22: PREFERENCES AGAINST LBHI AND OTHER LEHMAN ENTITIES

This Appendix 22 was prepared by Duff & Phelps and details potential preferences against LBHI and other Lehman entities, which are discussed in Sections III.B.3.e and III.B.3.f of the Report.

APPENDIX 22

To: The Examiner
From: Duff & Phelps, LLC
Subject: Insider Preferences Against LBHI and Other Lehman Entities
Date: February 1, 2010

Preferences Against LBHI¹

[Bullet Three of Examiner Order]

I. METHODOLOGY

Bullet three of the Examiner Order directs the Examiner to investigate potential preference payments that were made by LBHI Affiliates to LBHI. Summarized below is the methodology undertaken by Duff & Phelps, LLC (“Duff & Phelps”) to identify such potential preferences. It is not the purpose of this Appendix to address the merits of the legal issues pertaining to preferences and the defenses thereto. Nevertheless, such issues have played a significant role in the methodologies utilized, assumptions made, models constructed, and the overall scope of the work performed.

¹ The following are the Lehman systems (along with Lehman’s description of these systems) that were relied upon in the analysis herein: DBS Global General Ledger (“DBS”) (*see* DBS Global General Ledger Overview powerpoint presentation [LBEX-LL 766023]); Mainframe Trading System (“MTS”) (*see* Lehman Live description of MTS [LBEX-LL 3396037]); Accounts Positions and Balances (“APB”) (*see* Lehman Live description of APB [LBEX-LL 3396042]); Treasury Workstation (“TWS”) (*see* Lehman Live description of TWS [LBEX-LL 2228241]); Global SmartSteam Reconciliation (“GSSR”) (*see* Lehman Live description of GSSR [LBEX-LL 3396041]); and Global Cash and Collateral Management system (“GCCM”) (*see* Lehman Live description of GCCM [LBEX-LL 3356455]).

A. Relevant Entities and Relationships

There is a finite population of potential intercompany relationships from which potential preferences may be found – there are sixteen LBHI-LBHI Affiliate relationships.² As it is a requirement under any preference analysis that the debtor be insolvent when a transfer is made,³ the primary focus was on those LBHI Affiliates that were found to be insolvent or nearly insolvent as of May 31, 2008. As discussed in other sections of the Report, this subset of LBHI Affiliates consists of: Lehman Brothers Commodity Services Inc. (“LBCS”); Lehman Brothers Special Financing Inc. (“LBSF”); Lehman Commercial Paper Inc. (“LCPI”); and the aviation entities – CES Aviation LLC, CES Aviation V LLC, and CES Aviation IX LLC. The aviation entities were disregarded because they were relatively insignificant when compared to the other potentially insolvent LBHI Affiliates.

² “LBHI Affiliate” is defined in the Examiner Order as “LBCC or any other entity that currently is an LBHI chapter 11 debtor subsidiary or affiliate.” Examiner Order, at p. 3 (bullet one). The sixteen LBHI Affiliates are: LB 745 LLC; PAMI Statler Arms LLC; Lehman Brothers Commodity Services Inc.; Lehman Brothers Special Financing Inc.; Lehman Brothers OTC Derivatives Inc.; Lehman Brothers Derivative Products Inc.; Lehman Commercial Paper Inc.; Lehman Brothers Commercial Corporation; Lehman Brothers Financial Products Inc.; Lehman Scottish Finance L.P.; CES Aviation LLC; CES Aviation V LLC; CES Aviation IX LLC; East Dover Limited; Luxembourg Residential Properties Loan Finance S.a.r.l.; and BNC Mortgage LLC. Six debtor entities – LB Rose Ranch LLC, Structured Asset Securities Corporation, LB 2080 Kalakaua Owners LLC, Merit LLC, LB Somerset LLC, and LB Preferred Somerset LLC – are excluded because their petition dates came after January 16, 2009, the date of the Examiner Order. Two other debtor entities, Fondo de Inversión Multimercado Crédito Privado Navigator Inversión No Exterior and Lehman Brothers Finance SA, are excluded because their chapter 11 cases were dismissed. Order Dismissing the Bankruptcy Case of Fondo de Inversión Multimercado Crédito Privado Navigator Inversión No Exterior, Docket No. 2918, *In re Lehman Bros. Holdings, Inc.*, No. 08-13555 (Bankr. S.D.N.Y. Feb. 24, 2009); and Order Dismissing Chapter 11 Case of Lehman Brothers Finance AG a/k/a Lehman Brothers Finance SA (Case No. 08-13887 (JMP)) and Granting Related Relief, Docket No. 3076, *In re Lehman Bros. Holdings, Inc.*, No. 08-13555 (Bankr. S.D.N.Y. Mar. 12, 2009).

³ 11 U.S.C. § 547(b).

B. Relevant Time Period

Duff & Phelps recognizes that the relevant preference period for intercompany transfers, as is the case with any preferential transfers to insiders, extends back one year from the LBHI Affiliate's bankruptcy filing. Nonetheless, May 31, 2008 was selected as the cut-off date for identification because of the significant cost of interrogating Lehman's complex source systems.

The time period analyzed for each of the relevant LBHI Affiliates therefore consists of the approximate four-month period from June 1, 2008 through each LBHI Affiliate's bankruptcy filing. LBCS and LBSF filed for bankruptcy on October 3, 2008; LCPI filed on October 5, 2008.⁴ This period of time between June 1, 2008 and the dates of the respective entities' bankruptcy filings is referred to throughout this Appendix as the "Defined Preference Period."

In the preference analyses discussed below, only data through September 30, 2008 has been reviewed and incorporated. Minimal activity in GCCM, and no journal entries at all, were observed in the first three days in October leading up to LBCS's and LBSF's bankruptcy filings (or five days in the case of LCPI, although, as discussed below, no potential preferences or new value are calculated for LCPI). Additionally, Duff & Phelps has observed that no "funding" activity – which, as discussed below, is

⁴ LBCS Voluntary Petition, Docket No. 1, *In re Lehman Brothers Commodity Services Inc.*, No. 08-13885 (Bankr. S.D.N.Y. Oct. 3, 2008); LBSF Voluntary Petition, Docket No. 1, *In re Lehman Brothers Special Financing Inc.*, No. 08-13888 (Bankr. S.D.N.Y. Oct. 3, 2008); LCPI Voluntary Petition, Docket No. 1, *In re Lehman Commercial Paper Inc.*, No. 08-13900 (Bankr. S.D.N.Y. Oct. 5, 2008).

the primary source for identifying preferences – was recorded in GCCM after September 12, 2008. For that reason, not incorporating data associated with these three days should not materially impact the preference analysis discussed herein.

C. Intercompany Accounts

For each relevant entity, the methodology of identifying potential preferences first focused on identifying all intercompany accounts between LBHI and the relevant LBHI Affiliate. For these purposes, intercompany account liabilities were considered to be debt and not equity investments.

Each Lehman entity used an identical intercompany account numbering scheme to represent specific types of accounts. Although the account number alone is not indicative of the entity holding that account, it is indicative, from the last four digits, of the Lehman counterparty. For example, each affiliate has an intercompany account bearing the number 1262000099. The last four digits (0099) indicate that this is an account with LBHI, because that is LBHI's legal entity code. Each Lehman entity had its own legal entity code. Branches of Lehman entities also had their own legal entity codes. LBCS, LBSF and LCPI each had multiple accounts with LBHI, each ending in 0099, as well as additional accounts with LBHI (UK), LBHI's London branch, which ended in 0911.

The table below lists the intercompany account prefixes, along with their descriptions as set forth in Ernst & Young workpapers, which have been identified in connection with some or all of the three LBHI Affiliates at issue:⁵

Account Prefix	Description
12620	Intercompany
11084/21084	Intercompany Derivatives
11520/21020	Repos/Reverse Repos – I/C
12520	Intercompany Securities Related
21335	Loan v. Cash - Intercompany
12480/26050	Interest Receivable/Payable – Intercompany

The 1262000099 account is the intercompany account through which all of the affiliates’ funding for LBCS, LBSF and LCPI with LBHI flowed.⁶ In all cases, this account is by far the most active intercompany account. The other intercompany accounts with LBHI appear to have been established for other specific purposes. Some of the purposes are described in the table above. The activity reflected in the general ledger in these other accounts tends to be relatively minor, often reflecting accounting entries on only the first and last day of each month.

All of these intercompany accounts at issue begin with either a “1” or a “2.” This methodology is consistent with common accounting practice of using account numbers beginning with “1” for asset accounts and account numbers beginning with “2” for liabilities.⁷ Lehman entities would use a single account number to represent a certain

⁵ Ernst & Young Walkthrough Template, Nov. 30, 2007, pp. 6-7 [EY-SEC-LBHI-CORP-GAMX-07-033383].

⁶ Examiner’s Interview of Ada Shek, Nov. 24, 2009, at p. 8.

⁷ E.g., DBS Global General Ledger Overview powerpoint presentation, Slide 14 [LBEX-LL 766023].

type of obligation between the entities, whether the account carried a debit or a credit balance. Thus, the account using the 12620 prefix, while an asset account, would often carry a credit balance, which, in substance, is a liability. The debit or credit balance would simply reflect whether LBHI was indebted to its affiliate or vice versa, but the same account number may be used in either instance. This was always the case with the “12620” intercompany account for LBCS, LBSF and LCPI.

D. Branch Accounts

LBHI had a London branch, often referred to in Lehman’s computer systems as LBHI (UK), which had a Legal Entity Code of 0911. Many affiliates had one or multiple accounts ending in 0911. LBHI (UK) maintained its own set of accounts, but LBHI consolidated these branch accounts in what appears to be an automatic computer script at each month end for purposes of reporting.

Some affiliates had their own branches. Such was the case with LCPI, which had a London branch, and LBCS, which had a European branch and a Canadian branch. Like LBHI, these affiliates consolidated their own branch accounts into their own accounts bearing the same number at each month-end for reporting purposes. However, LBSF, LBCS and LCPI did not consolidate their own separate intercompany accounts with LBHI and LBHI (UK). In other words, if the main entity and its own branch each carried an intercompany account 1262000099, these would be consolidated at month end. If, however, the main entity (or its branch) carried separate but

comparable accounts with both LBHI (*e.g.*, 1262000099) and LBHI (UK) (*e.g.*, 1262000911), these accounts would not be consolidated.

From June through September 2008, the value of each intercompany account between each of the three relevant LBHI Affiliates, on the one hand, and LBHI, on the other hand, including those held by the branches of each entity, is set forth in the attached Exhibit 1 (LBCS), Exhibit 2 (LBSF) and Exhibit 3 (LCPI).⁸ As the month-end account data for each entity consolidates the comparable accounts held by its branches, the branch accounts at each month end were effectively “unconsolidated,” and each account was set forth separately. On the right side of the table are the balances reported by LBCS, LBSF, LCPI and LBHI in their most current bankruptcy schedules.

E. Lehman’s Cash Management System

Lehman’s cash management system was in a state of transition over several years prior to the bankruptcy filings.⁹ Prior to that time, Lehman’s infrastructure for cash management was decentralized and fragmented, with many systems and bank accounts, causing difficulty in managing cash and liquidity.¹⁰ Lehman then began to create a better system to manage real-world cash and funding activity.¹¹ Lehman’s Global Cash and Collateral Management system (“GCCM”) was the embodiment of this

⁸ These Exhibits were compiled from data extracted from DBS. *See* Debtor entity balance sheets.xlsx [LBEX-LL 3638796 to LBEX-LL 3638799]; and selected Branch's 091F 091J 0929 branch account detail.xlsx [LBEX-LL 3642894 to LBEX-LL 3643132].

⁹ Examiner’s Interview of Daniel J. Fleming, Dec. 17, 2009, at p. 3.

¹⁰ *Id.*

¹¹ *Id.*

revamped system.¹² The benefits sought with this system included ring-fencing activity (which permitted the Treasury Group to isolate and/or categorize certain activity by business group or product line), streamlined reconciliations, lower costs, and increased efficiency and optimization.¹³ In GCCM, data was reported instantaneously, and the Treasury Group was thus able to monitor cash on a real-time basis.¹⁴

Lehman's goal with its revamped system was to achieve an in-house banking system similar to the Federal Reserve, where the various affiliates would transact business through bank accounts held by a parent entity, such as LBHI, with all transfers between and among them being merely virtual, involving in-house accounts.¹⁵ Lehman created "funding trees" for this purpose, whereby affiliates were grouped within the banking structure.¹⁶ Transfers or settlements among entities within the same tree would not involve the movement of real-world cash but rather debits or credits to the entities' in-house accounts, which eventually flowed up to the general ledger.¹⁷ If the entities were within the same tree, the transfer of real-world cash was unnecessary, because all of the money would "wash" into the same location.¹⁸ Only transfers among entities in

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.* at 3-4.

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4.

¹⁸ *Id.*

different trees would involve a movement of real-world cash.¹⁹ Lehman had four funding trees per currency.²⁰

If this system had been implemented perfectly, there would have been one real-world bank account per currency, per tree.²¹ In practice, however, there were various operational difficulties associated with closing some accounts, prompting Lehman to maintain multiple real-world bank accounts.²² In particular, some high-volume bank accounts were kept intact to alleviate the concerns associated with customers being accustomed to paying into these accounts and then having to switch to a new means of payment.²³ In some instances, virtual accounts were designed to avoid having to change payment instructions for these numerous clients, and these real-world bank accounts were converted to “no-credit accounts.”²⁴ If money was paid to a no-credit account, the bank automatically moved the money to a different bank account.²⁵

GCCM was never fully deployed.²⁶ While it was fully implemented in Europe, in the United States it was still in the process of being deployed on a system-by-system basis (not a legal entity basis) at the time of the bankruptcy filings.²⁷ Lehman was still

¹⁹ *Id.*

²⁰ *Id.* at 3.

²¹ *Id.* at 4.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

several years away from achieving its goal of having a fully-integrated cash management system in the United States.²⁸ GCCM was never deployed in Asia.²⁹

The Treasury Group's function regarding Lehman's cash was to centralize all cash at the parent level and invest these funds overnight.³⁰ Accordingly, Lehman aimed to "sweep" all of the cash from the various real-world bank accounts, leaving the accounts with a zero balance at the end of each day.³¹

F. Identification of Potential Preferences

1. Categories of Potential Preferences

Identifying potential preferences presented many challenges, particularly due to difficulties in understanding the cash flows between LBHI and its affiliates. Lehman used many different computer systems for many different purposes. Duff & Phelps was granted access to only some of these systems, and this access was often limited. Some of the computer systems, particularly GCCM, cite to various sources for the data presented. Despite extensive efforts to adequately understand these source systems, obtaining sufficient detail behind particular transactions in order to gain a complete understanding of how and why they impacted intercompany accounts was a challenge.

Nevertheless, following are the categories of potential preference payments made by LBHI Affiliates to LBHI that Duff & Phelps has identified:

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 2.

³¹ *Id.*

a) Funding Transactions in GCCM

The transfers that have been specifically identified as potential preferences are those identified as “funding” transactions. These funding transactions reflected either 1) funds that were remitted from LBHI to the affiliates for use in their operations, for example to settle trades with their own customers, or 2) excess funds at the end of the day that were then “swept” by LBHI for centralized banking, which could be used for other purposes.³²

These funding transactions can be tracked in GCCM, but not all Lehman entities were funded through this system. In GCCM, these cash transactions were manually recorded with the designation of “FUNDING” in the “Source” field, although this was actually not a “source” but rather a function entered by Treasury personnel.³³ For LBCS and LBSF, GCCM was the means of identifying funding transactions, although for LCPI it was not. Funding transactions involving cash sweeps from the affiliates tended to occur towards the end of the day. Sometimes, there were no funding transactions in any given business day, but in most days LBCS and LBSF had at least one funding transaction per day.³⁴

Consistent with Lehman’s goal to remove the need to move cash, many transactions recorded in GCCM merely affect virtual, or in-house, accounts. “Funding”

³² *Id.*

³³ *E.g.*, Memo from Erin Fairweather, Duff & Phelps, to File re: Discussion with Jay Chan, Lehman, Dec. 11, 2009, at p. 3.

³⁴ *See* Exhibits 4 & 13.

transactions, on the other hand, involve the movement of real-world cash. These cash movements can be verified through GSSR, the means by which Lehman reconciled its recorded cash transactions with bank statements.³⁵ GSSR, also known as SmartStream, was an automatic reconciliation of accounts relating to Cash, Securities and transactions.³⁶

“Funding” is a clear concept in Lehman’s cash management system. However, Lehman’s other GCCM-related activity that impacted the intercompany accounts might also be considered a variant of funding.³⁷ If, for example, LBHI settled trading activity for an affiliate, rather than remitting the cash to the affiliate in question, LBHI may simply retain the cash, and the affiliate would simply reduce its intercompany account with LBHI.³⁸ This is tantamount to the affiliate receiving the funds into its own bank account and then having LBHI sweep it at the end of the day, which would clearly be entered into GCCM as a funding transaction.³⁹ Similarly, if one affiliate settles a trade

³⁵ GSSR-GCCM comparison Database 2009-11-04 v1.xlsb [LBEX-AM 340340 to LBEX-AM 345848].

³⁶ Lehman Live description of GSSR [LBEX-LL 3396041].

³⁷ Duff & Phelps obtained from Barclays a custom GCCM intercompany database containing many “fields” that are not observable through normal front-end user interface in GCCM. This custom database allowed Duff & Phelps to observe more information regarding each transaction and thus potential preferences. This database is limited to March 1, 2008 through September 15, 2008, and is further limited to transactions identified as “Intercompany” transactions in the “Journal Type” field. *See* GCCM Intercompany Reports [LBEX-LL 2415581 to LBEX-LL 2603022]. Duff & Phelps was informed that acquiring a complete “back-end” GCCM database without the “Intercompany” limitation would result in an enormous database that would be burdensome and time-consuming to run and to acquire from Barclays. Nevertheless, Duff & Phelps understands that this limitation is reasonable, given that all potential preferential transfers would likely have been recorded as “Intercompany” transactions, as they would affect an intercompany account.

³⁸ Examiner’s Interview of Daniel J. Fleming, Dec. 17, 2009, at p. 5.

³⁹ *Id.*

for another affiliate, again, rather than having the cash remitted to the trading affiliate, the cash may be swept by LBHI, and the trading affiliate would debit its intercompany account with LBHI. The form of the transactions could effectively be considered a type of funding.

Because of uncertainty in the facts surrounding each transaction, all GCCM activity that affects the intercompany account, and which is *not* identified with the source code of “funding,” has been labeled as “quasi-funding” for the purposes of this Appendix. Duff & Phelps has run different models, some of which reflect this intercompany activity as a potential preference, while others disregard it as such. These models are discussed below.

b) Funding Transactions in MTS

GCCM was not the only system through which LBHI Affiliates were funded by LBHI. Funding could also be accomplished through MTS, Lehman’s U.S.-based trading platform for fixed-income securities.⁴⁰ LCPI was funded through MTS by means of purported repo transactions involving certain “Trust Receipts,” which apparently were dummy securities referred to as “Trust 89” and “Trust 86,” the details of which are discussed in greater detail below.⁴¹ There were actually very many Trust Receipts

⁴⁰ *Id.* at 6-7.

⁴¹ *Id.*; Trust 86.xlsx [LBEX-LL 3627748 to LBEX-LL 3627927]; Trust86 6-1-2007 to 10-3-2008.xlsx [LBEX-LL 3627928 to LBEX-LL 3628124]; Trust89.xlsx [LBEX-LL 3628125 to LBEX-LL 3628755]; Trust89 FY 2006 to 2008.xlsx [LBEX-LL 3628756 to LBEX-LL 3631626]; Trust89 round2.xlsx [LBEX-LL 3631627 to LBEX-LL 3632411]; Trust86 12-2007 to 9-2008.xlsx [LBEX-LL 3636692 to LBEX-LL 3636873]; Trust86 Trust89 2007 06 01 2008 10 03.xls [LBEX-LL 3658168 to LBEX-LL 3668279].

involving the Lehman entities, which served different purposes.⁴² Trust 89 and Trust 86 transactions were entered into extensively between LCPI and LBHI during the Defined Preference Period.⁴³ Through searches of Lehman's APB system, it has been verified that neither LBCS nor LBSF was involved in any Trust 89 or Trust 86 transactions, either with LBHI or any other Lehman entity.

Technically, these transactions were recorded in MTS as repos and reverse-repos.⁴⁴ However, these funding transactions were recorded by use of the designations Trust 89 and Trust 86. Although the Trust 89 and Trust 86 designations were recorded in Lehman's MTS system as the "CUSIP" and the MTS Security ID (field labeled "MTS SEC ID") for these purported trades, in reality these transactions were essentially funding. Within MTS, the product description (labeled "PR DSC") for Trust 89 states "UNSECURED INTERCOMPANY FINANCING." The necessity to book this activity as purported trades was merely a software limitation in MTS, and Daniel Fleming stated that these transactions were not real repos.⁴⁵

Although Trust 89 and Trust 86 transactions both appear to constitute unsecured lending between entities, Duff & Phelps has had difficulty gaining a full understanding of their respective purposes. The MTS data associated with these Trust 89 transactions references "FUNDING" as the Security Definition Type (field labeled "SEC DEF TY").

⁴² Examiner's Interview of Daniel J. Fleming, Dec. 17, 2009, at p. 6, n. 2.

⁴³ See Exhibits 22 & 24.

⁴⁴ Examiner's Interview of Daniel J. Fleming, Dec. 17, 2009, at p. 6.

⁴⁵ *Id.*

Daniel Fleming has advised that Trust 89 was used for occasions where the LCPI Chase account had excess cash at the end of the day, that the cash was moved to LBI's Chase account on an overnight basis, and that the trade was unwound the next day, with money being sent back with interest.⁴⁶ Duff & Phelps observed in MTS the Trust 89 transactions between LBI and LCPI, but also observed Trust 89 transactions between LCPI and numerous other entities identified in Exhibit 26.⁴⁷

Trust 86 transactions had a much more limited set of trading entities and counterparties. All Trust 86 transactions observed in MTS were between LCPI, LBHI and LBI.⁴⁸ Daniel Fleming advised that Trust 86 transactions also involved PAMI, ALI and LCC, but no such relationships have been observed in MTS with these entities.⁴⁹ Trust 89 transactions refer to "FUNDING" as the Security Definition Type, whereas the Trust 86 transactions instead refer to "HIC" (Held in Custody) in that field.

Duff & Phelps requested additional clarity regarding these Trust Receipts, including their purpose, but no additional information has been provided. A more detailed description of the particular Trust 89 and Trust 86 transactions entered into between LCPI and LBHI is set forth below, in the section pertaining to the preference analysis for LCPI.

⁴⁶ *Id.* at 6-7.

⁴⁷ See Exhibit 26 and discussion *infra*.

⁴⁸ LCPI's Trust 86 transactions during the Defined Preference Period were only with LBHI. See Exhibit 26.

⁴⁹ Examiner's Interview of Daniel J. Fleming, Dec. 17, 2009, at p. 7. Fleming may have been confusing Trust 86 with Trust 89 transactions in this regard.

G. Calculation of Preferences, Net of New Value

1. Preliminary Consideration Regarding Antecedent Debt

Because a required element of any preference analysis is that the payment be made for or on account of an antecedent (pre-existing) debt,⁵⁰ the balance of these intercompany accounts is very significant. Duff & Phelps has assumed that the relevant LBHI Affiliate has an antecedent debt if, from the LBHI Affiliate's perspective, this intercompany account has a credit balance.

LBCS, LBSF and LCPI were all indebted to LBHI. A listing of the intercompany account balances between each of these three entities, on the one hand, and LBHI, on the other hand, is set forth in the attached Exhibits 1-3. The combined balances on all intercompany accounts with LBHI carried a credit balance from the affiliates' perspective. Of note, the affiliates' 1262000099 accounts also carried credit balances.

2. Categories of Potential Preferences and New Value

To identify potential preferences, it is necessary to first review Lehman's general ledger activity, as reflected in Lehman's DBS data, as well as its cash transactions recorded in GCCM. To calculate the value of the preferences for LBCS and LBSF, net of new value provided by LBHI, Duff & Phelps started by determining the entire daily net debit and credit activity for the relevant intercompany account(s), as set forth in DBS.⁵¹

⁵⁰ 11 U.S.C. § 547(b).

⁵¹ 0C11 intercompany version 2.xlsx [LBEX-LL 3638527 to LBEX-LL 3638795]; 0059 1262000099 Acct.xlsx [LBEX-LL 3637590 to LBEX-LL 3637745]; 0059 1262000911 Acct.xlsx [LBEX-LL 3637746 to LBEX-LL 3638526].

The selection of relevant accounts is discussed below. Daily DBS activity is categorized into five groups: 1) Up-Funding; 2) Down-Funding; 3) Net Quasi Up-Funding; 4) Net Quasi Down-Funding; and 5) Other.

Up-Funding and Down-Funding consist of the “funding” transactions identified in GCCM on that particular day. All such “funding” transactions flowing from the affiliate to LBHI for the day are summed and placed in the Up-Funding column, and all “funding” transactions flowing from LBHI to the affiliate are summed and placed in the Down-Funding column. Separating these into two columns is necessary because of assumptions discussed below regarding the timing of these payments.

Net Quasi Up-Funding and Net Quasi Down-Funding consist of the net GCCM-related activity that flows into the relevant account, with the exclusion of those sourced to the “funding” function and set forth in the Up-Funding and Down-Funding categories. Because, under Lehman’s cash management system, all such GCCM-related intercompany activity could potentially be classified as relating to funding, these transactions are separated from those specifically designated as such but are nevertheless called “quasi-funding” for use in a separate analysis discussed below. All quasi-funding activity for each day is netted to a single amount. If this net amount is an up-flow from the affiliate to LBHI it is placed in the Net Quasi Up-Funding column, and if it the net amount is a down-flow from LBHI to the affiliate it is placed in the Net Quasi Down-Funding column. Thus, unlike the “funding” amounts discussed in the

preceding paragraph, there cannot be an entry in both columns for any given day. Altering this assumption can dramatically change the results.

The fifth column, denoted merely as “Other,” consists of all other DBS-related activity affecting the relevant accounts for each day. To undertake a complete preference analysis based on this account activity, it would be necessary to research each of these entries, which are difficult to discern based on their descriptions, and the source systems associated with these entries were not readily available. Nevertheless, Duff & Phelps has observed that the vast majority of these journal entries are credits to the relevant accounts, meaning they caused the antecedent debt to become larger; thus, there are very few potential preferences that could possibly be discerned from a detailed review of these entries. In light of the costs and benefits associated with undertaking this review and analysis, in particular the minimal risk of missing a potential preference, Duff & Phelps has not undertaken a thorough review of the nature of the transactions behind these journal entries.⁵²

⁵² There is one adjustment made to the data. Both the 1262000099 account and the 1262000911 account contained certain journal entries on the first day of each month that were for the purpose of reversing entries made the previous day, *i.e.* the last day of the previous month. This is an accounting method commonly seen in Lehman’s books and records. Certain activity is only entered once per month, at the end of the month, but rather than simply making an adjustment to this particular item at the end of the following month to update the balance of this item, Lehman instead would reverse the entry entirely on the first day of the month, thus removing it from the books entirely, and then re-recording this same item on the books and records in its full, new amount at the end of that month. This accounting methodology has no impact on the month-end account balances but does, however, result in an inaccurate account balance when viewed on an intra-month basis. It also skews the preference, net of new value, analysis, because the very large credit in the “Other” column represents potential new value, while the offsetting debit entry is ignored entirely. This effect on the running balance of preferences, net of new value, could be material. An adjustment to the “Other” data has therefore been made for purposes of the preference

3. Construction of Preference/New Value Models

With the account activity separated into the categories described above, Duff & Phelps has constructed three separate preference/new value analyses for the relevant accounts discussed below. These analyses are based on certain assumptions related to the transactions affecting the account. In any analysis, all Up-Funding activity, representing flows of cash from the affiliate to LBHI, is classified as a potential preference. Downward cash movements and other extensions of credit by LBHI constitute potential new value, although the different categories of credit activity considered vary, depending on the model.

Timing Assumptions. Because preferences can only be reduced by new value given by the creditor *after* the date of the preferential transfer, the order of the transfers is significant in a preference/new value analysis. A critical assumption in these models is that all Up-Funding activity occurred *after* all other activity for the day, meaning that it could not be reduced by any new value given by LBHI on that same day. All other account activity, including Down-Funding, is assumed to have occurred throughout the day. Accordingly, there are no additional assumptions made with regard to the timing of any other payments.

analysis alone, whereby these particular entries are merely *adjusted* to their new balances at the end of each month, rather than being reversed entirely on the first day of the month and then re-recorded entirely at the new amount at the end of each month. Although this adjustment is made to the preference calculation, it is not reflected in the “Other” column reported in each of the attached Exhibits.

Model No. 1. With the foregoing data and assumptions, Duff & Phelps has built three separate preference/new value models for LBCS and LBSF and calculated a running daily balance of the potential preferences net of new value under each model during the Defined Preference Period. The first model looks solely to Up-Funding and Down-Funding activity, with Up-Funding being the potential preference and Down-Funding being potential new value, and ignored all other activity. This analysis assesses the preference picture based on cash funding alone. In each of the preference/new value spreadsheets attached hereto as Exhibits 4-6 and 13-15, this preference/new value analysis is set forth in Column I. For any given day, the existing preference, net of new value, balance in Column I (*i.e.* the balance at the end of the previous day) is netted against the Down-Funding, constituting potential new value, for the present day. This new value will reduce the preference balance but not below zero. Any excess new value from Down-Funding is thus disregarded and is not carried forward and applied subsequently. After that netting produces a revised temporary preference balance (which is not reflected in the spreadsheets, as this is just an interim balance before the end of the day), the Up-Funding for the present day is applied, based on the notion that this Up-Funding occurs later in the day. This will increase the updated balance by the amount of the Up-Funding for the day, as that amount is all potential preference and is not reduced in any way, as this is assumed to be the last activity of the day. That addition will produce the revised potential preference, net of

new value, balance as of the end of that day, which is reflected in Column I for the given day.

Model No. 2. Second, Duff & Phelps considered only Up-Funding as the potential preference, with *all* credit activity, whether it is Down-Funding, Net Quasi Down-Funding or in the “Other” category, as potential new value. This analysis is in Column J of the aforementioned exhibits. This calculation is similar to that set forth in the previous paragraph but with material modifications. In this scenario, the preference, net of new value, balance at the end of the previous day is first netted with *all* credit activity for the present day, resulting in a revised (and necessarily reduced) temporary balance, again with the limitation that this balance cannot be reduced below zero. After this netting, the Up-Funding for the present day, which is considered to be the only potential preference for the day, is added to this temporary balance, resulting in the new potential preference, net of new value, balance at the end of the day. This revised balance is reflected in Column J for the given day.

Model No. 3. Third, Duff & Phelps considered Up-Funding *and* Quasi Up-Funding as potential preferences, with credit activity from all three categories as potential new value. This analysis, set forth in Column K in the attached exhibits, ignores only the net debit activity associated with the “Other” column. This calculation is similar to that set forth in Column J, with one material modification. The inclusion of Quasi Up-Funding as a preference may potentially increase the preference balance, but

it is not simply added to the Up-Funding for the day. Instead, the preference balance at the end of the previous day is netted with both the credit activity for the day *and* the Net Quasi Up-Funding for the day, as this Net Quasi Up-Funding arises out of Lehman's daily operations throughout the day, unlike Up-Funding, which occurs at the end of the day. This netting is applied to produce a revised temporary preference balance. Unlike the previous models, in this scenario this revised temporary balance can be higher than the beginning balance, if the Net Quasi Up-Funding is greater than the other credit activity for the day. Then, the Up-Funding is added to this temporary balance, resulting in the new potential preference, net of new value, calculation for the day. This revised balance is reflected in Column K for the given day.

4. Selecting the Relevant Intercompany Accounts

The three models of preferences, net of new value, will change based on which account(s) are selected for review. For LBCS and LBSF, Duff & Phelps ran the three models discussed above based on three different sets of account data: 1) the 1262000099 account; 2) the 1262000911 account; and 3) a combination of these two intercompany accounts.

Analysis of LBCS's and LBSF's 1262000099 accounts by themselves is instructive, because these are the accounts that were impacted by all of the GCCM "Funding" activity. Based on GCCM, there were no cash sweeps (or any other "funding" activity associated with these affiliates) by LBHI (UK), making an analysis based solely on those

entities' 1262000911 account alone less compelling. The combined approach would appear to be the most informative, as this would not only reflect all funding between the affiliates and LBHI but also other extensions of credit associated with the entities' trading activity, regardless of whether it arose out of a relationship between the affiliate and LBHI's London branch.

Duff & Phelps also considered undertaking a similar analysis with respect to the other intercompany accounts between the relevant debtors and LBHI/LBHI (UK), *i.e.* those with prefixes other than 12620. After reviewing the activity in those accounts, Duff & Phelps ruled out the need to include them in the analysis. First, those accounts often reflected little to no activity throughout the Defined Preference Period. Second, based on this review, it was not apparent that these journal entries reflected any actual transfers or extensions of credit that may constitute potential preferences or new value.

H. Analysis of Prior Course of Dealing with LBHI

Finally, Duff & Phelps analyzed LBCS's and LBSF's course of dealing with LBHI. This analysis was limited to the actual transactions between these parties, without consideration of industry practices among similar businesses. In doing so, Duff & Phelps looked back to the parties' "funding" and "quasi-funding" activities throughout the entire time period that such transactions were reported in GCCM, and noted

patterns in this activity.⁵³ This analysis is contained in various exhibits attached hereto, as discussed below.

II. PREFERENCE ANALYSIS FOR LBCS, LBSF AND LCPI

A. LBCS

1. Funding Activity and New Value

All potential preferential transfers made from LBCS to LBHI were identified through GCCM, Lehman's cash management system. First, the set of "Funding" transactions beginning on June 1, 2008 was identified from GCCM.⁵⁴ As these transactions consisted of actual cash transfers, they were also verified through GSSR, which contained relevant bank statement data.⁵⁵

Throughout the Defined Preference Period, there were significant "funding" cash flows between LBCS and LBHI, although the number of "funding" transactions per day

⁵³ LBCS's and LBSF's "funding" transactions for purposes of this ordinary course analysis were extracted from a separate custom intercompany report Duff & Phelps obtained from Barclays. This report was limited to "funding" transactions but with no restrictions as to the dates. See GCCM Funding transactions NEW.xls [LBEX-LL 3396885 to LBEX-LL 3406582]. Analysis of "quasi-funding" required subtracting the "funding" data from all GCCM-related journal entries for each entity. That data was extracted from DBS. See LBCS (0C11) GL Detail for GCCM entries for ordinary course.xlsx [LBEX-LL 3655400 to LBEX-LL 3655965]; LBSF (0059) GL Detail for GCCM entries for ordinary course 1-13-10.xlsx [LBEX-LL 3655966 to LBEX-LL 3658167].

⁵⁴ Rather than using the usual front-end interface of GCCM, Duff & Phelps relied upon the custom intercompany report obtained from Barclays for this purpose. See *supra* n. 38. Although this report was only run through September 15, 2008, Duff & Phelps observed through the front-end user interface that there were no "Funding" transactions after September 12, 2008.

⁵⁵ Unfortunately, GSSR data was available only for the period beginning July 3, 2008. See GSSR-GCCM comparison Database 2009-11-04 v1.xlsx [LBEX-AM 340340 to LBEX-AM 345848]. Nevertheless, for that time period, every LBCS funding payment recorded in GCCM was reconciled to the bank statements. Funding activity recorded prior to July 3, 2008 could not be reconciled, but given that there was a 100% match between the payments recorded in GCCM and reconciled through GSSR for the majority of the time period at issue, Duff & Phelps found GCCM reliable as reflecting actual funding payments.

was only between one and seven per day. Of these, between zero and five transactions per day were Up-Funding transfers. At least one cash sweep occurred nearly every day, with the total dollar amount per day ranging widely, up to approximately \$215 million.

As discussed above, limiting the universe of potential preferences to cash flows identified in GCCM by the source code of “funding” is complicated by Lehman’s cash management system. One could conclude that potentially all debits to an affiliate’s 1262000099 and 1262000911 accounts flowing through GCCM are potential preferences, despite the fact that Lehman’s cash management system involved the use of many in-house/virtual accounts, and transfers of funds often did not involve the movement of real-world cash from one bank to another. For that reason, all debits flowing through GCCM, other than those labeled as “funding” in the source system column, were categorized as “quasi-funding” and considered in the alternative preference/new value analyses below.

The balances of potential preferences, net of new value, under the methodologies undertaken herein through September 30, 2008 are set forth the table below.⁵⁶

⁵⁶ The time period of this preference analysis does not include October 1-3, 2008. Although GCCM data was available, DBS data was not available when this analysis was undertaken. Therefore, it was decided not to include GCCM data for October 2008 because the analysis would have been incomplete as DBS information was a critical part of the analysis. The following is the GCCM-related activity for October:

LBCS
Preference, Net of New Value, Balances (\$)
September 30, 2008

Exhibit	Account	Up-Funding Preference Net of Down-Funding New Value	Up-Funding Preference Net of Down-Funding, Net Quasi Funding and Other Activity New Value	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value
4	1262000099	642,515,617	164,921,169	740,079,308
5	1262000911	0	0	0
6	Combined	642,515,617	14,919,678	633,128,085

These analyses are set forth in their entirety in the attached Exhibits 4-6. The following observations are apparent from the table above and the corresponding exhibits:

- Only the analyses related to intercompany account no. 1262000099, and for the combined accounts, produce a potential preference balance. Analysis of account 1262000911 alone does not yield any meaningful results, as there was no Up-Funding tied to that account.
- With respect to account 1262000911, the Quasi Funding activity was usually in the downward direction, meaning that any potential preferences from Net Quasi Up-Funding was subsequently netted by new value in the following days, ultimately leaving zero balances under all three approaches.
- The preference balances for the combined accounts approach is not simply the sum of the balances for the two individual account approaches. This is because, when the account activity is combined, excess new value from one account may be used to reduce a preference balance associated with another account. For that reason, the preference balance from the combined

Date	GCCM Activity
October 1, 2008	(168,341.79)
October 2, 2008	(183,763.72)
October 3, 2008	(538,912.63)

approach will be lower than the sum of the balances under the two other approaches.

- For this particular entity, consideration of the Net Quasi Up-Funding as a potential preference has a significant effect on the preference balance. As seen in Exhibits 6, there is Net Quasi Up-Funding on 33 days throughout the Defined Preference Period, with the amount exceeding \$100 million on six of those days. This activity had the effect of significantly increasing the preference balance throughout the Defined Preference Period.

The daily movement of these combined account balances based on DBS data is set forth in Exhibit 7. The daily movement of the potential preferences, net of new value, based on this methodology is attached as Exhibit 8.

2. Prior Course of Dealing with LBHI

LBCS's pattern of Up-Funding and Down-Funding with LBHI is set forth in the attached Exhibits 9-11, while LBCS's quasi-funding activity is illustrated in Exhibit 12.⁵⁷ LBCS's total funding activity from April 5, 2007, when LBCS's funding transactions were first recorded in GCCM, through September 12, 2008, are broken down by dollar amount per month (Exhibit 9) and number of "funding" transactions per month (Exhibit 10). Each of these exhibits separates Up-Funding activity from Down-Funding activity. Exhibit 11 illustrates the average funding transaction amount per month.

Throughout the entire period under examination, there was not a consistent pattern as to the direction of the "funding" activity. There was a significant amount of Up-Funding and Down-Funding activity every month, in terms of both dollar amount

⁵⁷ The data for this analysis was extracted from GCCM and from DBS. See GCCM Funding transactions NEW.xls [LBEX-LL 3396885 to LBEX-LL 3406582]; LBCS (0C11) GL Detail for GCCM entries for ordinary course.xlsx [LBEX-LL 3655400 to LBEX-LL 3655965].

and number of transactions. As shown in Exhibit 9, the monthly funding activity, expressed in dollar amount, sometimes resulted in a net Up-Funding, while in other months there was a net Down-Funding. This pattern, or lack thereof, continued during the Defined Preference Period. In June and September 2008 there was net Down-Funding, but in July and August 2008 there was net Up-Funding. In this regard, there was no noticeable difference between the “funding” activity before and during the Defined Preference Period.

Overall, the extent of “funding” activity increased in the months during and immediately before the Defined Preference Period; however, this increased activity was in both directions and generally cancelled each other out. Exhibit 8 demonstrates that the number of “funding” transactions during May through August 2008 was approximately double the activity of some earlier months reviewed. Nevertheless, as noted above, the total net dollar amount involved in all of these transactions did not materially change. Exhibit 11 further shows that the average transaction amount did not materially change during the Defined Preference Period, and in the months where there was Up-Funding, the average amount was noticeably smaller than previous months.

LBCS’s quasi-funding activity, as shown in Exhibit 12, shows a greater disparity in the level of activity beginning in March 2008. Prior to that time, the monthly amount of quasi-funding activity was a fraction of what it became in March and the months

thereafter. In particular, the Up-Funding more than doubled in May 2008 and remained at or above this level through August 2008. Because quasi-funding is based on GCCM activity, which was implemented over a period of time and was still not fully implemented even at the time of LBCS's bankruptcy, it is possible that the quasi-funding did not actually increase but would appear that it did due to greater activity being recorded in GCCM. Duff & Phelps has not investigated whether this is what happened.

B. LBSF

1. Funding Activity and New Value

LBSF similarly had significant "funding" activity with LBHI throughout the relevant period. As with LBCS, the set of "funding" transactions beginning on June 1, 2008 were identified in GCCM and then reconciled with GSSR.⁵⁸ Throughout the Defined Preference Period, the number of "funding" transactions per day was between one and twelve per day. Of these, between zero and seven transactions per day were

⁵⁸ As was the case with LBCS, GSSR data relating to LBSF was available only for the period beginning July 3, 2008. See GSSR-GCCM comparison Database 2009-11-04 v1.xlsb [LBEX-AM 340340 to LBEX-AM 345848]. Nevertheless, for LBSF, every funding payment except for three – two of which were on September 12, 2008, the business day before LBHI's bankruptcy filing, and another in the amount of only \$125 – could be traced to GSSR. These three payments were removed from the analysis. Funding activity recorded prior to July 3, 2008 could not be reconciled, but given that, for LBCS, there was a 100% match between the payments recorded in GCCM and reconciled through GSSR for the majority of the time period at issue, and that, for LBSF, there was a near 100% match, with all discrepancies being either insignificant or likely related to the impending bankruptcy filings and/or the condition of the entities at that late time, GCCM was found to be a reliable means for identifying actual "funding" payments for the portion of time GSSR data was not available.

Up-Funding transfers. At least one such cash sweep occurred nearly every day, with the total dollar amount per day ranging widely, up to approximately \$948 million.

Based on this data and other data derived from DBS, the same analysis undertaken above with respect to LBCS was constructed using LBSF data. The balances of potential preferences, net of new value, under the methodologies undertaken herein are set forth in the table below:⁵⁹

LBSF
Preference, Net of New Value, Balances (\$)
September 30, 2008

Exhibit	Account	Up-Funding Preference Net of Down-Funding New Value	Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value
13	1262000099	3,773,000,144	682,009,859	2,407,243,419
14	1262000911	0	0	152,044,747
15	Combined	3,773,000,144	635,860,994	718,049,945

⁵⁹ As with LBCS, the time period of this preference analysis does not include October 1-3, 2008. Although GCCM data was available, DBS data was not available when this analysis was undertaken. Therefore, it was decided not to include GCCM data for October 2008 because the analysis would have been incomplete as DBS information was a critical part of the analysis. The following is the GCCM-related activity for October:

Date	GCCM Activity
October 1, 2008	(1,670,144.10)
October 2, 2008	(1,823,147.39)
October 3, 2008	(5,349,424.17)

These analyses are set forth in their entirety in the attached Exhibits 13-15. The following observations, some of which are identical to those noted with respect to LBCS, are apparent from the table above and the corresponding exhibits:

- LBSF's Up-Funding and Down-Funding were both substantial. Overall, the Down-Funding of \$21.7 billion during the Defined Preference Period exceeded the Up-Funding of \$19.4 billion during the same time. Nevertheless, nearly half of this Down-Funding occurred in June 2008. Thereafter, the Up-Funding exceeded the Down-Funding. The timing of these payments resulted in a potential preference balance of nearly \$3.8 billion based on funding alone.
- Only the analyses related to intercompany account no. 1262000099, and for the combined accounts, produce a potential preference balance under the first two approaches. Analysis of account 1262000911 alone produces a potential preference balance only if Quasi Up-Funding is considered to be a potential preference, and even in that case only to the extent of \$152 million.
- With respect to account 1262000911, the Quasi Funding activity in the downward direction on approximately half of the days, although the total Quasi Down-Funding of \$20.8 billion throughout the Defined Preference Period was more than twice the \$10.1 billion in Quasi Up-Funding. Nevertheless, under the approach that includes Quasi Up-Funding as a potential preference, there was still a potential preference balance at September 30, 2008. This was due to the increasing Quasi Up-Funding toward the end of the Defined Preference Period, which totaled \$1.6 billion on and after August 29, 2008.
- Consideration of the Net Quasi Up-Funding as a potential preference has an effect on the preference balance based on analysis of either account individually or when combined; however, only where the activity is based on the 1262000099 account alone is that effect relatively significant. In that case, the potential preference balance is increased from \$682 million to over \$2.4 billion.
- The preference balances for the combined accounts approach is not simply the sum of the balances for the two individual account approaches. When the activity of the accounts is combined, excess new value from one account may be used to reduce a preference balance associated with another account.

For that reason, the preference balance from the combined approach will be lower than the sum of the balances under the two other approaches. In this case, that effect was significant. Potential new value from the 1262000911 account, arising out of more than \$10 billion of net Quasi Down-Funding during the Defined Preference Period, substantially reduced the potential preference balance from \$4.2 billion, based on the 1262000099 account alone, down to \$718 million, under the combined approach.

The daily movement of these combined account balances based on DBS data is set forth in Exhibit 16. The daily movement of the potential preferences, net of new value, based on this methodology is attached as Exhibit 17.

2. Prior Course of Dealing with LBHI

LBSF's pattern of Up-Funding and Down-Funding with LBHI is set forth in the attached Exhibits 18-20, while LBSF's quasi-funding activity is illustrated in Exhibit 21.⁶⁰ LBSF's total funding activity from June 9, 2006, when LBSF's funding transactions were first recorded in GCCM, through September 12, 2008, are broken down by dollar amount per month (Exhibit 18) and number of "funding" transactions per month (Exhibit 19). Each of these exhibits separates Up-Funding activity from Down-Funding activity. Exhibit 20 illustrates the average funding transaction amount per month.

Throughout the entire period under examination, as with LBCS, there was not a consistent pattern as to the direction of LBSF's "funding" activity. As shown in Exhibit 13, the monthly funding activity, expressed in dollar amount, sometimes resulted in a

⁶⁰ The data for this analysis was extracted from GCCM and from DBS. See GCCM Funding transactions NEW.xls [LBEX-LL 3396885 to LBEX-LL 3406582]; LBSF (0059) GL Detail for GCCM entries for ordinary course 1-13-10.xlsx [LBEX-LL 3655966 to LBEX-LL 3658167].

net Up-Funding, while in other months there was a net Down-Funding, and no pattern is evident, including during the Defined Preference Period. Also similar to LBCS, in June and September 2008 there was net Down-Funding, but in July and August 2008 there was net Up-Funding. In this regard, there was no noticeable difference between the “funding” activity before and during the Defined Preference Period.

Like LBCS, the monthly funding activity for LBSF, both in terms of dollar amount and number of transactions, increased over time, but for LBSF this trend began significantly earlier, in mid-2007, and the total monthly funding amount actually decreased in July and August as compared to the previous eleven months. Moreover, Up-Funding as compared to Down-Funding also did not noticeably change at any point during the Defined Preference Period. Only in August was there a somewhat noticeable decline in Down-Funding, but the Up-Funding in that month remained at a relatively modest level for this entity – lower than most months in the previous year. Exhibit 15 further shows that the average funding transaction amount did not materially change during the Defined Preference Period, and in the months where there was Up-Funding, the average transaction amount was relatively small.

Unlike LBCS, LBSF’s quasi-funding activity during the Defined Preference Period was consistent with that of the previous year and a half, as shown in Exhibit 21. Neither the Quasi Up-Funding nor the Quasi Down-Funding reflected unusual levels of

activity during the Defined Preference Period, as compared with the prior months under examination.

C. LCPI

1. Funding Activity and New Value

LCPI was funded through MTS, because its primary bank account was tied to that system.⁶¹ As discussed above, these transactions were not real repos and contained no actual security.⁶² Through searches of Lehman's APB system, which contains all trading data contained in MTS, TMS (Lehman's U.S.-based system for equity transactions involving LBI, which acted as the registered broker-dealer), ITS (international system for non-U.S. trades of both fixed-income and equity transactions), GL1 (U.K.-based system for stock and loan transactions) and CDY (commodities and foreign exchange transactions, also known as RISC), all "Trust 89" and "Trust 86" transactions involving LCPI and LBHI beginning from June 1, 2007 have been identified. Duff & Phelps's observations are as follows:

a) "Trust 89"

Trust 89 transactions were generally recorded, from LCPI's perspective, as a repo. (From LBHI's perspective, these same transactions were recorded as reverse-repos.) These transactions purportedly consisted of two legs – a "sell" and then a

⁶¹ Examiner's Interview of Daniel J. Fleming, Dec. 17, 2009, at p. 7.

⁶² See *supra* discussion accompanying n. 46.

“buy.” Through the “sell,” LCPI would receive funds from LBHI; through the “buy,” LCPI would remit funds back to LBHI.

The Trust 89 transactions observed between LCPI and LBHI during the Defined Preference Period are listed in Exhibit 22. These transactions generally fall into two categories. One set of Trust 89s was in the range of \$168 million to \$330 million. When entering into these particular repos with LBHI, LCPI would also enter into reverse repos with Bankhaus for the same amounts and on the same dates and terms. This class of Trust 89s generally stayed open for approximately one week before being replaced with another identical or very similar repo that would open on the same day that the previous repo would close. The entities would book both the “sell” and “buy” legs at the same time, with the “sell” to settle that same day and the “buy” to always settle on December 31, 2014. Then, several days or a week later, the entities would replace the “buy” leg with a new “buy” leg, with identical terms as the former except that the settlement date would be altered to the present date. With that position closed, the entities would enter into a new Trust 89 repo on the same day, again with the “buy” booked to settle on December 31, 2014. The pattern would continue in that manner. Through this mechanism, there was always an open repo at the end of any given date. The amount for the new repo was usually identical to the previous; occasionally, it would be in a different amount. Because these repos were opened for approximately one week, only eighteen such transactions were recorded during the Defined Preference

Period. The amount of the open position changed only twice. The open position was \$300 million as of June 1, 2008, increasing to \$330 million on August 12, 2008, and decreasing to \$168 million on August 26, 2008. The final such transaction was booked on September 12, 2008, but only the “sell” leg settled. The “buy” leg remained outstanding at the time of its bankruptcy filing.

The more significant set of Trust 89 transactions, in terms of both size and number of transactions, is between LCPI and the Lehman Capital Division of LBHI.⁶³ Throughout the relevant time period, the amount of these transactions ranged up to approximately \$3 billion. These particular repos appear to have been set up initially without a close date, but then the “buy” leg would be replaced typically after only one business day, to settle on that same date. On August 8, 2008, these repos changed to being reverse repos from LCPI’s perspective.

Exhibit 23 demonstrates LCPI’s daily outstanding positions associated with its Trust 89, along with its Trust 86, transactions with LBHI beginning June 1, 2007, thus covering a full year prior to the Defined Preference Period as well. The peak of LCPI’s Trust 89 outstanding positions during this period, in the amount of \$3.2 billion, was actually the starting point, June 1, 2008. The following day, this outstanding amount

⁶³ The MTS data made reference to “LB Holdings/LCD” and “Lehman Capital, Division of.” This last description, listed as the counterparty to certain trades with LCPI, appears to be a truncation of a longer name. These descriptions refer to “Lehman Capital Division,” which is a division of LBHI. See Email from Inessa Grinn, Barclays to Cole Morgan, Duff & Phelps, *et al.*, Jan. 5, 2010. Accordingly, the Trust 89 transactions involving LCPI and this entity are included in the LCPI/LBHI analysis.

fell immediately to \$1.1 billion and remained below \$2 billion thereafter. On August 8, LCPI's position with respect to LBHI changed dramatically when it began entering into reverse repos with LBHI instead of repos, suggesting that LCPI's Trust 89 repo position as to LBHI was completely wiped out. Ultimately, LCPI had a Trust 89 reverse repo position with respect to LBHI at the time of LBHI's bankruptcy filing, in the amount of nearly \$5.2 billion.

Duff & Phelps has not been able to identify any movements of cash associated with Trust 89 transactions. No Trust 89 transactions were located in TWS.⁶⁴ It is believed that the cash transfers were made through Lehman's FPS system, which was tied to MTS in some manner.⁶⁵ FPS is a system to which Duff & Phelps has not been provided access.

b) "Trust 86"

LCPI's Trust 86 transactions with LBHI throughout the Defined Preference Period are listed in Exhibit 24. These transactions operated similarly to the Trust 89 transactions but with some differences. First, the transactions were typically in substantially larger amounts, with most being between \$12 billion and \$16 billion. Some were substantially smaller, however, ranging from mere hundreds of millions of

⁶⁴ Duff & Phelps was given very limited access to the live version of TWS. Accordingly, Duff & Phelps could only search for transactions by TWS Reference ID number, which was only helpful in the rare instances where that number was already known. Subsequently, Barclays provided Duff & Phelps with an Excel report downloaded from TWS, allowing for greater search capabilities. See DP_Data.xlsx [LBEX-BAR 000438 to LBEX-BAR 001101]. The TWS searches discussed in this Appendix with regard to Trust 89 and Trust 86 transactions are based on searches of this report.

⁶⁵ Examiner's Interview of Daniel J. Fleming, Dec. 17, 2009, at p. 6.

dollars to approximately \$1.2 billion, but these appear to be supplemental transactions. Second, most of the Trust 86 transactions were booked to settle, and did settle, within one business day. However, a subset of these transactions was booked in a more “open” manner, such that the transactions were booked to close on December 31, 2008 (*i.e.* the “buy” leg of the repo was scheduled to settle on that date), and then approximately two weeks later, Lehman would replace the “buy” leg with one that would settle on that date instead. Overall, there were 148 Trust 86 transactions that were opened and/or settled during the Defined Preference Period. Of these, three such transactions, totaling approximately \$3.4 billion, remained open when LBHI and LCPI filed for bankruptcy.

With limited exception, all of the Trust 86 transactions that were booked to open and close within one business day have been located in TWS; however, none of the Trust 86 transactions that were initially booked to settle on December 31, 2008, and then re-booked approximately two weeks later to settle at that point instead, has been found in TWS. It is unclear how those particular Trust 86 transactions are different from the others, and why, on a categorical basis, one set can be found in TWS while the other set cannot.

LCPI’s daily outstanding position to LBHI associated with Trust 86 is set forth in the attached Exhibit 23. LCPI’s total outstanding Trust 86 position as to LBHI gradually increased from June 1 to August 14, 2008, when it reached a peak of \$22.9 billion. On

September 12, 2008, this total open position was \$18.7 billion, after entering into a new transaction with a notional amount of \$15.3 billion. Although this last Trust 86 transaction was closed out according to its terms on September 15, 2008 and was not followed with another, Duff & Phelps has seen no evidence that the sum of \$15.3 billion was ever remitted back to LBHI (as would normally be the case with a real repo). Duff & Phelps has been informed that these transactions would close out automatically in MTS, regardless of whether funds were actually transferred, and that the funds transfer still had to be manually authorized by the Treasury Department.⁶⁶ It is therefore likely that LCPI's final Trust 86 open position with respect to LBHI, on the dates of LBHI's and LCPI's bankruptcy filings, remained at \$18.7 billion, despite the fact that this final Trust 86 transaction settled.

Duff & Phelps has had limited success tracing funds transfers related to these particular Trust 86 transactions. For all Trust 86 payments that have been identified, the transfers were between an LCPI account at Citibank, no. 40615659, and an LBHI account at Citibank, no. 40615202. Using the TWS Reference IDs associated with the Trust 86s that were found in TWS, as discussed above, Duff & Phelps was able to trace some of these transactions into GCCM and ultimately to GSSR, confirming the payment with bank statement data. The dollar amount reflected in the GCCM record does not correlate with the notional amount of the purported trade, as referenced in the TWS

⁶⁶ *Id.* at 7.

record. Duff & Phelps understands that data would flow from TWS into GCCM and would be captured in a “pre-settlement” function, where the transaction was netted with other transactions.⁶⁷ Ultimately, payments were made in “net” amounts of those transactions. Duff & Phelps has, in fact, observed payments reflected in GCCM and GSSR that equate to the “net” amounts of the notional amounts of the “repos” closed and opened on that particular day, factoring in the interest paid on the Trust 86 “repo” closing out on that day. For example, on September 12, 2008, when one Trust 86 in the amount of \$16.15 billion was closed, and another in the amount of \$15.277 billion was opened, a cash payment, as reflected in both GCCM and GSSR, was made in the amount of \$874,060,404.51.⁶⁸ When the interest on the \$16.15 billion Trust 86, which amounts to \$1,060,404.51 as stated in the TWS record,⁶⁹ is included in this netting, the cash payment reconciles perfectly with these transactions.

Duff & Phelps undertook the same analysis for other Trust 86 transactions, focusing on the month prior to September 12, 2008, but was able to reconcile the transactions with GCCM and GSSR records in only limited instances. One problem noted is Lehman’s apparent reluctance to make cash transfers in excess of \$1 billion (although, at times, such transfers were made), resulting in some transfers being split

⁶⁷ Examiner’s Interview of Daniel J. Fleming, Dec. 17, 2009, at p. 7.

⁶⁸ GCCM Records for TWS Ref ID 185955H [LBEX-LL 2408921 to LBEX-LL 2408925]; TWS Records for TWS Ref ID 185955H [LBEX-LL 3406736 to LBEX-LL 3406739]; TWS Records for TWS Ref ID 186007H [LBEX-LL 3406743 to LBEX-LL 3406746]; GSSR-GCCM comparison Database 2009-11-04 v1.xlsx [LBEX-AM 340340 to LBEX-AM 345848].

⁶⁹ TWS Records for TWS Ref ID 185955H [LBEX-LL 3406736 to LBEX-LL 3406739].

between multiple cash payments, making it more difficult to trace the cash transactions. For example, on August 29, 2008, the net change in certain Trust 86 open positions was \$1.116 billion, and Duff & Phelps was able to locate two payments in the amounts of \$900 million and \$104,065,215.63, which, when the recorded interest of \$1,065,215.63, related to the positions being closed on that date, is included in the netting, reconciles perfectly.⁷⁰ Duff & Phelps obtained a download of data from the “pre-settlement” function in GCCM, which Duff & Phelps understands requires a significant effort in linking recorded transactions to specific payments but potentially could allow additional cash payments arising out of these transactions to be traced.⁷¹

c) Other

The Examiner has considered whether funds arising out of capital infusions and remitted to LBHI from LCPI or on LCPI’s behalf may constitute a preference. Accordingly, as described in the Examiner’s Report, Duff & Phelps has identified all transfers of \$900 million on August 28 and 29, 2008. Those payments are set forth in Exhibit 25.⁷²

⁷⁰ GCCM Records for TWS Ref ID 185327H [LBEX-LL 2408886 to LBEX-LL 2408895]. This was the result of two Trust 86 transactions in the amounts of \$16.155 million and \$450 million (a reverse repo) closing on August 29, 2008 and another Trust 86 transaction in the amount of \$14.702 million opening on August 29, 2008. TWS Records for TWS Ref ID 185327H [LBEX-LL 3406666 to LBEX-LL 3406669]; TWS Records for TWS Ref ID 185358H [LBEX-LL 3406670 to LBEX-LL 3406673]; TWS Records for TWS Ref ID 185395H [LBEX-LL 3406674 to LBEX-LL 3406677].

⁷¹ MikePreSettlement2.xlsx [LBEX-LL 3356611 to LBEX-LL 3357411].

⁷² Various GCCM Records [LBEX-LL 3396835 to LBEX-LL 3396884]; TWS Records for TWS Ref ID 185225H [LBEX-LL 3406662 to LBEX-LL 3406665]; TWS Records for TWS Ref ID 185212H [LBEX-LL 3406658 to LBEX-LL 3406661]; TWS Records for TWS Ref ID 185327H [LBEX-LL 3406666 to LBEX-LL

2. Prior Course of Dealing with LBHI

Trust 86 and Trust 89 transactions with LBHI were not new transactions for LCPI during the Defined Preference Period. To the contrary, both types of transactions had been entered into by LCPI and LBHI for at least a year prior to this time frame, although Duff & Phelps did not investigate the length of time in which these parties had been engaging in them. Exhibit 23 illustrates the combined Trust 86 and Trust 89 outstanding positions between LBHI and LCPI beginning June 1, 2007 – a full year prior to the Defined Preference Period.

3406669]; TWS Records for TWS Ref ID 185358H [LBEX-LL 3406670 to LBEX-LL 3406673]; TWS Records for TWS Ref ID 185395H [LBEX-LL 3406674 to LBEX-LL 3406677].

Preferences Against Other Lehman Entities

[Bullet Four of Examiner Order]⁷³

I. Methodology

Bullet four of the Examiner Order directs the Examiner to investigate potential preference payments that were made by LBHI Affiliates to other Lehman entities. Summarized below is the methodology undertaken to identify such potential preferences.

A. Relevant Entities and Relationships

As with bullet three of the Examiner Order, Duff & Phelps has focused on preferential transfers from only three debtors: LBCS, LBSF and LCPI. However, unlike bullet three, there is a much larger population of potential intercompany relationships. Each of the three relevant LBHI Affiliates did not maintain an intercompany relationship with every single Lehman entity, but the list of intercompany accounts for each of the relevant LBHI Affiliates is extensive.

B. Relevant Time Period

As discussed above with respect to bullet three of the Examiner Order, the time period analyzed consists of the approximately four-month period from June 1 to the date of the bankruptcy filing for each of the relevant LBHI Affiliates, which is October 3,

⁷³ The following are the Lehman systems (along with Lehman's description of these systems) that were relied upon in the analysis herein: DBS (*see* DBS Global General Ledger Overview powerpoint presentation [LBEX-LL 766023]); MTS (*see* Lehman Live description of MTS [LBEX-LL 3396037]); APB (*see* Lehman Live description of APB [LBEX-LL 3396042]); TWS (*see* Lehman Live description of TWS [LBEX-LL 2228241]); GSSR (*see* Lehman Live description of GSSR [LBEX-LL 3396041]); and GCCM (*see* Lehman Live description of GCCM [LBEX-LL 3356455]).

2008 for LBCS and LBSF, and October 5, 2008 for LCPI. This is referred to as the “Defined Preference Period.” The problems discussed above, with respect to the data from September and October 2008, exist here as well.

C. Identification of Potential Preferences

Daniel Fleming stated in an interview that Lehman Affiliates did not “fund” each other.⁷⁴ Despite these statements, Duff & Phelps searched for potential preferences under three approaches: 1) review of DBS data related to certain intercompany accounts; 2) searches in GCCM; and 3) searches in Lehman’s MTS trading system for Trust Receipts involving LBCS, LBSF and LCPI. The results of these approaches are discussed below.

II. Preference Analysis for the LBHI Affiliates

1. DBS Approach

Several analyses to identify potential preferences were undertaken. First, Duff & Phelps investigated general ledger activity of certain intercompany accounts for transactions that may constitute potential preferences. This was done through examination of Lehman’s DBS data. Because of the very large number of intercompany relationships, it was decided that Duff & Phelps would search for potential preferences by first examining the intercompany accounts and their month-end balances and then investigating the account activity in months where there were swings in the month-end

⁷⁴ Examiner’s Interview of Daniel J. Fleming, Dec. 17, 2009, at p. 2.

balances of at least \$100 million. Duff & Phelps limited the review to those intercompany accounts of LBCS, LBSF and LCPI that had credit balances (implying an antecedent debt owed by these entities to other affiliates) and where the month-end balance reflected a net debit change of at least \$100 million from one month to the next. This task did not produce meaningful results for several reasons. The journal entries themselves were not descriptive enough to gain an understanding of the underlying transactions, necessitating a much more detailed investigation of the accounting personnel who recorded the entries and possibly of operational personnel who could explain the transactions themselves.⁷⁵ Such a lengthy and arduous procedure, coupled with the unavailability of many Lehman personnel who would be needed to describe the underlying transactions, rendered this approach completely ineffective, and Duff & Phelps abandoned such efforts.

2. GCCM “Funding” Data

Second, Duff & Phelps looked to GCCM for potential funding activities; however, Duff & Phelps was unable to identify any potential preferences through that approach either. Searches in GCCM during the Defined Preference Period have not revealed any “funding” activity between affiliates. As seen above with respect to bullet three of the Examiner Order, Lehman’s practice was to have LBHI fund the affiliates

⁷⁵ In addition, many of the journal entries were merely source feeds from trading systems, and the detail of those transactions would need to be investigated through those trading systems themselves, which in itself would be a difficult task given the amount of data available through those means and the fact that customers were recorded by code rather than name.

through a concentrated cash management system.⁷⁶ Accordingly, it is likely that there were no intercompany preferences from affiliate to affiliate, based on the analytical framework adopted under the analysis described above in the analysis of bullet three of the Examiner Order.⁷⁷

3. Trust Receipts in MTS

Finally, Duff & Phelps looked for potential preferences in Lehman's trading systems. As discussed at length above, Lehman's MTS system was a means by which some of the Lehman entities recorded funding transactions. MTS was the system in which Lehman recorded Trust 86, Trust 89 and other similar Trust Receipts.⁷⁸ These Trust transactions were structured in the form of repos, but the Trust Receipts did not constitute actual security for these purported trades and appeared to be related to funding.⁷⁹ Nevertheless, Duff & Phelps has had difficulty ascertaining the purpose of these various Trust Receipts, as well as the manner in which they were transacted, in particular the movement of cash, which could be significant to a preference analysis.

Searches of MTS data have verified that LBCS and LBSF did not enter into any Trust 86, Trust 89 or other such Trust trades with any affiliates. Each did, however,

⁷⁶ Examiner's Interview of Daniel J. Fleming, Dec. 17, 2009, at pp. 2-4.

⁷⁷ GCCM does reflect intercompany transactions between affiliates sourced to other systems, as ASAP, LOANIQ and TWS. As discussed above with respect to bullet three of the Examiner Order, all such intercompany transactions in GCCM that were not identified as "Funding" were classified as "Quasi Funding." Potentially, GCCM does reflect such quasi funding activities between affiliates, but due to its uncertain nature, Duff & Phelps did not quantify such activity.

⁷⁸ Examiner's Interview of Daniel J. Fleming, Dec. 17, 2009, at pp. 6-7. The data relating to Trust 89 and Trust 86 transactions was extracted from APB and MTS. *See supra* n. 42.

⁷⁹ *Id.*; *see also* discussion *supra* accompanying nn. 41-50.

enter into one type of Trust Receipt, with one counterparty each, during the Defined Preference Period.⁸⁰ LBCS entered into at least one Trust 71 transaction with Champion Energy Marketing. The “Security Description” provided by Barclays for Trust 71 is “WHOLE LOAN FUNDING.”⁸¹ LBSF entered into at least one Trust 24 transaction with 7th Avenue, Inc. The “Security Description” provided by Barclays for Trust 24 is “GIC DEAL (T),”⁸² which is unknown to Duff & Phelps. The details of these transactions, including number of transactions and the dollar amount, have not been investigated.

LCPI, on the other hand, entered into extensive Trust Receipt activity, as illustrated in part by the discussions of Trust 89 and Trust 86 above. A list of all the Trust Receipts entered into by LCPI, along with the counterparties by Trust Receipt, is attached hereto as Exhibit 26. Other than Trust 86 and Trust 89 activity, little is known about the details of these Trust Receipt transactions, including the number of transactions and dollar amount. These Trust Receipts have not been investigated.

⁸⁰ The data relating to these additional Trust Receipts was extracted from MTS. *See* Various Trusts 71-29-24-61-32-15-01 6-1-2007 to 10-3-2008.xlsx [LBEX-LL 3637043 to LBEX-LL 3637589].

⁸¹ Email from Richard Policke, Barclays to Christopher McShea, Duff & Phelps, et al., Dec. 22, 2009.

⁸² *Id.*

Exhibit 1

LBCS/LBHI Unconsolidated Intercompany Accounts

General Ledger (2008)						Bankruptcy Schedules
LBCS Accounts with LBHI	September	August	July	June	May	Filed by LBCS (10/3/08)
1108400099	\$661,678,601	\$650,708,731	\$674,946,307	\$680,880,382	\$658,230,038	Receivables IC Derivative Receivable \$661,678,601
1252000099	(\$5,942,519)	(\$5,942,519)	(\$5,930,199)	(\$5,917,865)	(\$5,906,336)	
1262000099 (less 91J consol.)	(\$1,826,164,488)	(\$1,918,839,335)	(\$2,196,053,511)	(\$2,581,509,957)	(\$1,954,416,309)	Payables IC Securities Rec/Pay (\$5,942,519) IC Receivable/Payable (\$2,530,783,976)
1262000099 (on 91J books)	\$2,754,725	\$2,713,391	\$2,766,820	\$2,674,846	\$2,536,915	
1262000099 (consolidated)	(\$1,823,409,763)	(\$1,916,125,944)	(\$2,193,286,691)	(\$2,578,835,111)	(\$1,951,879,394)	
1262000911 (less 91F & 91J consol.)	(\$589,999,146)	(\$554,791,606)	(\$574,643,073)	(\$529,026,461)	(\$277,565,308)	Total (\$1,875,047,894)
1262000911 (on 91F books)	(\$115,023,578)	(\$100,987,265)	(\$75,196,399)	(\$37,536,573)	(\$11,990,560)	
1262000911 (on 91J books)	(\$24,096)	(\$22,587)	(\$26,189)	(\$27,958)	(\$31,039)	
1262000911 (consolidated)	(\$705,046,820)	(\$655,801,458)	(\$649,865,660)	(\$566,590,993)	(\$289,586,906)	
2108400099	\$0	\$0	\$0	\$0	\$0	
Total	(\$1,872,720,501)	(\$1,927,161,190)	(\$2,174,136,243)	(\$2,470,463,587)	(\$1,589,142,598)	
LBHI Accounts with LBCS	September	August	July	June	May	Filed by LBHI (9/15/08)
1108400C11	(\$687,947,347)	(\$687,947,347)	(\$688,749,307)	(\$681,643,656)	(\$681,643,656)	Receivables IC Receivable \$2,600,024,927 IC Securities Related Rec \$5,948,013
1252000C11	\$5,942,519	\$5,942,519	\$5,930,199	\$5,917,865	\$5,906,336	
1262000C11 (less 0911 consol.)	\$1,893,866,337	\$1,918,839,335	\$2,196,053,512	\$2,581,509,957	\$1,954,416,310	Payables IC Receivable/Payable (\$70,719,579) IC Derivative Receivable (\$661,678,601)
1262000C11 (on 0911 books)	\$589,999,146	\$554,791,606	\$574,643,072	\$529,026,461	\$277,565,308	
1262000C11 (consolidated)	\$2,483,865,483	\$2,473,630,941	\$2,770,696,584	\$3,110,536,418	\$2,231,981,618	
2108400C11	\$2,693,637	\$37,238,619	\$13,802,999	\$763,274	\$23,413,618	
126200091F (less 0911 consol.)	(\$0)	(\$0)	\$0	(\$0)	\$0	Total \$1,873,574,760
126200091F (on 911 books)	\$115,023,578	\$100,987,265	\$75,196,399	\$37,536,573	\$11,990,560	
126200091F (consolidated)	\$115,023,578	\$100,987,265	\$75,196,399	\$37,536,573	\$11,990,560	
126200091J (less 0911 consol.)	(\$2,754,725)	(\$2,713,391)	(\$2,766,820)	(\$2,674,846)	(\$2,536,916)	
126200091J (on 911 books)	\$24,096	\$22,587	\$26,189	\$27,958	\$31,039	
126200091J (consolidated)	(\$2,730,629)	(\$2,690,804)	(\$2,740,631)	(\$2,646,888)	(\$2,505,877)	
Total	\$1,916,847,241	\$1,927,161,193	\$2,174,136,243	\$2,470,463,586	\$1,589,142,599	

Source: DBS, Bankruptcy Schedules on Docket

Exhibit 2

LBSF/LBHI Unconsolidated Intercompany Accounts

General Ledger (2008)						Bankruptcy Schedules
LBSF Accounts with LBHI	September	August	July	June	May	Filed by LBSF (filed 10/3/08)
1108400099	\$0	\$20,759,318	\$27,318,396	\$5,756,250	\$5,455,477	
1108400911	\$0	(\$1)	(\$1)	(\$1)	\$0	Receivables
1248000099	(\$1)	(\$1)	(\$1)	(\$1)	(\$1)	IC Receivable/Payable \$62,702
1262000099	(\$21,268,958,908)	(\$18,949,155,149)	(\$21,769,075,724)	(\$17,482,474,364)	(\$14,203,956,270)	Payables
1262000911	\$5,434,216,675	\$7,637,882,268	\$10,072,069,120	\$6,445,150,644	\$6,649,188,359	IC Receivable/Payable (\$15,834,742,233)
2108400099	(\$2,315,325,527)	(\$1,924,829,842)	(\$1,293,516,353)	(\$1,438,708,425)	(\$1,322,492,094)	IC Derivative Payable (\$3,647,239,958)
2108400911	(\$1,331,914,431)	(\$2,506,956,657)	(\$3,365,848,023)	(\$3,352,905,200)	(\$3,249,311,265)	IC Derivative Payable (\$19,427,460)
2605000099	\$0	\$0	\$25,912	(\$14,517)	(\$58,445)	
Total	(\$19,481,982,192)	(\$15,722,300,064)	(\$16,329,026,674)	(\$15,823,195,614)	(\$12,121,174,239)	Total (\$19,501,346,949)
LBHI Accounts with LBSF	September	August	July	June	May	Filed by LBHI (9/15/08)
1108400059	\$7,750,181	\$4,463,896,162	\$4,631,211,906	\$4,787,413,647	\$4,565,717,752	
1248000059	\$62,414	\$11,183	\$30,231	\$19,356	\$8,522	Receivables
1262000059 (less 0911 consol.)	\$21,833,233,283	\$18,949,155,585	\$21,769,076,183	\$17,482,474,827	\$14,203,956,725	IC Derivative Receivable \$1,544,848,639
1262000059 (on 0911 books)	(\$5,332,592,384)	(\$7,637,882,704)	(\$10,072,069,579)	(\$6,445,151,107)	(\$6,649,188,814)	IC Derivative Receivable \$1,762,019,805
1262000059 (consolidated)	\$16,500,640,899	\$11,311,272,881	\$11,697,006,604	\$11,037,323,720	\$7,554,767,911	IC Interest Receivable \$10,759
2108400059	\$0	(\$72,632,710)	(\$1,714,286)	(\$1,750,000)	(\$1,785,714)	IC Receivable/Payable \$15,636,933,675
						Payables
						IC Receivable/Payable (\$663,650,372)
						IC Derivative Payable (\$212,921,833)
Total	\$16,508,453,494	\$15,702,547,516	\$16,326,534,455	\$15,823,006,723	\$12,118,708,471	Total \$18,067,240,673

Source: DBS, Bankruptcy Schedules on Docket

Exhibit 3

LCPI/LBHI Unconsolidated Intercompany Accounts

General Ledger (2008)						Bankruptcy Schedules	
LCPI Accounts with LBHI	September	August	July	June	May	Filed by LCPI (filed 10/3/08)	
1152000099	\$5,562,372,836	\$13,475,662,417	\$12,961,090,983	\$13,586,824,049	\$16,068,460,333		
1248000099	(\$32,047,687)	(\$32,047,687)	(\$36,903,335)	(\$141,971,156)	(\$163,844,991)		
1252000099	\$35,079,826	\$35,079,826	\$94,882,719	\$94,685,366	\$94,500,908		
1262000099 (less 0929 consol.)	(\$17,507,972,596)	(\$16,891,518,089)	(\$23,318,582,990)	(\$25,292,279,000)	(\$26,924,913,655)		
1262000099 (on 0929 books)	(\$100,042,515)	(\$100,042,846)	(\$85,534,778)	(\$85,357,142)	(\$85,190,671)		
1262000099 (consolidated)	(\$17,608,015,111)	(\$16,991,560,935)	(\$23,404,117,768)	(\$25,377,636,142)	(\$27,010,104,326)		
1262000911 (less 0929 consol.)	(\$1,544,515,652)	(\$1,717,106,259)	(\$1,793,424,997)	(\$1,966,090,145)	(\$1,832,681,866)		
1262000911 (on 0929 books)	(\$2,441,889,011)	(\$2,513,079,421)	(\$3,130,904,807)	(\$3,558,953,399)	(\$6,327,084,445)		
1262000911 (consolidated)	(\$3,986,404,663)	(\$4,230,185,680)	(\$4,924,329,804)	(\$5,525,043,544)	(\$8,159,766,311)		
2102000099	\$0	(\$3,484,875,317)	(\$6,498,733,922)	(\$3,349,571,030)	(\$3,379,112,030)		
2605000099	(\$7,474,802)	(\$6,655,391)	(\$2,028,578)	(\$9,570,468)	(\$9,674,150)		
Total	(\$16,036,489,601)	(\$11,234,582,767)	(\$21,810,139,705)	(\$20,722,282,925)	(\$22,559,540,567)	Total	(\$15,845,922,162)
LBHI Accounts with LCPI	September	August	July	June	May	Filed by LBHI (9/15/08)	
1152000045	\$3,483,008,087	\$3,484,854,287	\$6,498,712,722	\$3,349,550,000	\$3,379,091,000		
1209000045	\$10,327,629,903	\$0	\$0	\$0	\$0		
1248000045	\$2,616,876	\$38,750,550	\$38,994,049	\$151,605,178	\$166,361,369		
1252000045	(\$35,079,826)	(\$35,079,826)	(\$94,882,719)	(\$94,685,366)	(\$94,500,908)		
1262000045 (less 0911 consol.)	\$13,805,887,584	\$16,891,518,088	\$23,318,582,991	\$25,292,279,000	\$26,924,913,655		
1262000045 (on 0911 books)	\$1,538,707,915	\$1,717,106,259	\$1,793,424,997	\$1,966,090,145	\$1,832,681,866		
1262000045 (consolidated)	\$15,344,595,499	\$18,608,624,347	\$25,112,007,988	\$27,258,369,145	\$28,757,595,521		
2102000045	(\$79,958,675)	(\$13,475,662,415)	(\$12,961,090,984)	(\$13,586,824,048)	(\$16,068,460,333)		
2209000045	(\$23,255,894,971)						
2605000045	(\$2,333)	(\$16,479)	(\$14,389)				
1262000929 (less 0911 consol.)	\$100,042,515	\$100,042,846	\$85,534,778	\$85,357,142			
1262000929 (on 0911 books)	\$2,441,889,011	\$2,513,079,421	\$3,130,904,807	\$3,558,953,399			
1262000929 (consolidated)	\$2,541,931,527	\$2,613,122,267	\$3,216,439,585	\$3,644,310,541	\$6,412,275,115		
Total	\$8,328,846,087	\$11,234,592,731	\$21,810,166,252	\$20,722,325,450	\$22,552,361,764	Total	\$11,723,317,048

Source: DBS, Bankruptcy Schedules on Docket

Exhibit 4

LBCS Preference/New Value Analysis
Account 1262000099

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
June 1, 2008	(1,951,879,394)	-	-	-	-	(2,536,915)	(1,954,416,309)	-	-	-
June 2, 2008	(1,954,416,309)	88,000,000	(42,200,000)	-	(8,213,791)	(28,037)	(1,916,858,137)	88,000,000	88,000,000	88,000,000
June 3, 2008	(1,916,858,137)	4,800,000	(20,000,000)	-	(64,762,295)	-	(28,177)	72,800,000	8,009,528	8,009,528
June 4, 2008	(1,996,848,608)	31,900,000	(60,000,000)	4,939	-	(28,077)	(2,024,971,746)	44,700,000	31,900,000	31,900,000
June 5, 2008	(2,024,971,746)	1,849,548	(36,000,000)	-	(94,193)	(27,905)	(2,059,244,297)	10,549,548	1,849,548	1,849,548
June 6, 2008	(2,059,244,297)	45,663,920	(2,168,619)	-	(5,720,396)	(82,916)	(2,021,552,307)	54,044,850	45,663,920	45,663,920
June 9, 2008	(2,021,552,307)	43,000,000	(45,228,076)	-	(2,181,438)	(27,289)	(2,025,989,110)	51,816,773	43,000,000	43,000,000
June 10, 2008	(2,025,989,110)	52,745,607	(52,040,000)	-	(4,353,854)	(27,160)	(2,029,664,517)	52,745,607	52,745,607	52,745,607
June 11, 2008	(2,029,664,517)	8,778,137	(14,200,000)	-	(4,006,505)	(85,235)	(2,039,178,120)	47,323,744	43,232,004	43,232,004
June 12, 2008	(2,039,178,120)	-	(65,311,785)	2,294	-	(26,816)	(2,104,514,426)	-	-	-
June 13, 2008	(2,104,514,426)	48,000,000	(95,000,000)	-	(5,133,504)	(80,060)	(2,156,727,991)	48,000,000	48,000,000	48,000,000
June 16, 2008	(2,156,727,991)	126,766,821	-	-	(15,413,766)	(26,648)	(2,045,401,584)	174,766,821	159,326,407	159,326,407
June 17, 2008	(2,045,401,584)	21,904	(115,038,207)	-	(1,369,738)	(26,665)	(2,161,814,290)	59,750,519	42,913,702	42,913,702
June 18, 2008	(2,161,814,290)	58,390,935	-	-	(1,968,594)	(26,739)	(2,105,418,686)	118,141,454	99,309,305	99,309,305
June 19, 2008	(2,105,418,686)	2,368,920	(21,710,216)	-	(2,011,134)	(26,697)	(2,126,797,813)	98,800,158	77,930,178	77,930,178
June 20, 2008	(2,126,797,813)	15,413,290	(410,167,531)	-	(498,339)	(80,183)	(2,522,130,576)	15,413,290	15,413,290	15,413,290
June 23, 2008	(2,522,130,576)	94,695,989	-	93,209,143	-	(26,704)	(2,334,252,148)	110,109,278	110,082,575	203,291,718
June 24, 2008	(2,334,252,148)	88,924,915	(96,279,977)	-	(28,591,949)	(31,321)	(2,370,230,481)	102,754,216	88,924,915	167,313,385
June 25, 2008	(2,370,230,481)	12,909,772	(135,490,589)	-	(244,072)	(31,338)	(2,493,086,707)	12,909,772	12,909,772	44,457,158
June 26, 2008	(2,493,086,707)	76,438,746	(52,000,000)	352,371	-	(157,812)	(2,468,453,402)	76,438,746	76,438,746	76,438,746
June 27, 2008	(2,468,453,402)	47,515,744	-	815,484	-	(93,374)	(2,420,215,549)	123,954,490	123,861,116	124,676,600
June 30, 2008	(2,420,215,549)	4,714,958	(83,000,000)	30,588	-	(80,365,108)	(2,578,835,111)	45,669,448	4,714,958	4,714,958
July 1, 2008	(2,578,835,111)	63,238,172	-	4,812,318	-	(2,703,526)	(2,513,488,146)	108,907,621	67,924,451	72,736,769
July 2, 2008	(2,513,488,146)	13,000,000	(140,000,000)	79,192,992	-	(28,537)	(2,561,323,690)	13,000,000	13,000,000	24,901,224
July 3, 2008	(2,561,323,690)	56,540,689	(29,879,182)	-	(220,033)	(114,314)	(2,534,996,531)	56,540,689	56,540,689	56,540,689
July 4, 2008	(2,534,996,531)	-	-	-	(457,309)	-	(2,535,453,840)	56,540,689	56,083,380	56,083,380
July 7, 2008	(2,535,453,840)	3,310,200	(81,730,149)	-	(976,658)	(28,561)	(2,614,879,008)	3,310,200	3,310,200	3,310,200
July 8, 2008	(2,614,879,008)	61,569,577	(36,000,000)	578,023	-	(28,476)	(2,588,759,884)	61,569,577	61,569,577	61,569,577
July 9, 2008	(2,588,759,884)	22,413,480	-	-	(31,591)	(28,463)	(2,566,406,458)	83,983,057	83,923,003	83,923,003
July 10, 2008	(2,566,406,458)	169,986,955	-	-	(16,963,400)	(28,392)	(2,413,411,295)	253,970,012	236,918,166	236,918,166
July 11, 2008	(2,413,411,295)	63,834,842	-	-	(5,749,612)	(84,878)	(2,355,410,943)	317,804,854	294,918,518	294,918,518
July 14, 2008	(2,355,410,943)	49,800,000	-	-	(10,237,482)	(86,487)	(2,315,934,912)	367,604,854	334,394,549	334,394,549
July 15, 2008	(2,315,934,912)	89,821,881	-	-	(25,466,657)	(28,039)	(2,251,627,727)	457,426,735	398,701,734	398,701,734
July 16, 2008	(2,251,627,727)	30,490,342	-	-	(56,892,790)	(27,968)	(2,278,058,143)	487,917,077	372,271,318	372,271,318
July 17, 2008	(2,278,058,143)	28,070,000	(19,744,996)	649,380	-	(27,941)	(2,269,111,699)	496,242,080	380,568,381	381,217,762
July 18, 2008	(2,269,111,699)	49,085,502	-	49,761	-	(83,566)	(2,220,060,001)	545,327,583	429,570,318	430,269,460
July 21, 2008	(2,220,060,001)	186,924,580	(329,000,000)	-	(100,450,806)	(27,861)	(2,462,614,088)	403,252,163	187,016,232	187,715,373

Source: DBS, GCCM

Exhibit 4

LBCS Preference/New Value Analysis
Account 126200099

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
July 22, 2008	(2,462,614,088)	29,386,338	-	662,290	-	(27,623)	(2,432,593,083)	432,638,501	216,374,947	217,736,378
July 23, 2008	(2,432,593,083)	126,100,000	-	76,853,705	-	(27,530)	(2,229,666,908)	558,738,501	342,447,417	420,662,553
July 24, 2008	(2,229,666,908)	133,444,170	(11,020)	-	(8,716,834)	(27,532)	(2,104,978,123)	692,171,651	467,136,202	545,351,338
July 25, 2008	(2,104,978,123)	10,026,783	(90,160,000)	-	(2,692,781)	(83,495)	(2,187,887,616)	612,038,435	384,226,709	462,441,845
July 28, 2008	(2,187,887,616)	68,200,000	(3,700,000)	-	(46,237)	(154,365)	(2,123,588,219)	676,538,435	448,526,106	526,741,242
July 29, 2008	(2,123,588,219)	20,494,000	(101,096,260)	-	(50,018,266)	(27,810)	(2,254,236,555)	595,936,174	317,877,770	396,092,906
July 30, 2008	(2,254,236,555)	737,668	(11,000,000)	-	(717,526)	(28,270)	(2,265,244,684)	585,673,842	306,869,641	385,084,777
July 31, 2008	(2,265,244,684)	21,508,000	(15,122,854)	107,582,631	-	(42,009,783)	(2,193,286,690)	592,058,988	268,570,158	454,367,925
August 1, 2008	(2,193,286,690)	6,079,444	(6,517,143)	2,375,731	-	(2,852,581)	(2,194,201,240)	591,621,288	268,046,697	456,220,195
August 4, 2008	(2,194,201,240)	33,472,674	(63,727,983)	101,439,652	-	(28,353)	(2,123,045,249)	561,365,980	237,763,036	527,376,186
August 5, 2008	(2,123,045,249)	-	(34,624,157)	-	(246,714)	(28,107)	(2,157,944,227)	526,741,823	202,864,058	492,477,208
August 6, 2008	(2,157,944,227)	15,372,575	(36,108,968)	-	(932,754)	(28,073)	(2,179,641,446)	506,005,430	181,166,839	470,779,989
August 7, 2008	(2,179,641,446)	43,725,767	(30,000,000)	-	(5,382,253)	(28,140)	(2,171,326,072)	519,731,197	189,482,213	479,095,363
August 8, 2008	(2,171,326,072)	124,591,430	(1,676,919)	-	(24,938,567)	(84,076)	(2,073,434,204)	642,645,708	287,374,081	576,987,231
August 11, 2008	(2,073,434,204)	310,000	(59,345,549)	-	(213,506)	(28,133)	(2,132,711,392)	583,610,159	228,096,892	517,710,043
August 12, 2008	(2,132,711,392)	69,591,598	(1,024,598)	-	(1,276,768)	(28,062)	(2,065,449,222)	652,177,158	295,359,062	584,972,213
August 13, 2008	(2,065,449,222)	-	-	-	(511,066)	(86,311)	(2,066,046,599)	652,177,158	294,761,685	584,374,836
August 14, 2008	(2,066,046,599)	214,786,196	(375,992)	-	(94,664)	(27,949)	(1,851,759,009)	866,587,362	509,049,276	798,662,426
August 15, 2008	(1,851,759,009)	-	(30,300,000)	88,306	-	(83,963)	(1,882,054,665)	836,287,362	478,665,313	768,366,770
August 18, 2008	(1,882,054,665)	1,455,610	(99,747,484)	2,373,615	-	(27,964)	(1,978,000,889)	737,995,488	380,345,475	672,420,546
August 19, 2008	(1,978,000,889)	23,612,384	-	-	(122,095)	(27,951)	(1,954,538,551)	761,607,872	403,807,813	695,882,884
August 20, 2008	(1,954,538,551)	50,640,391	(57,902,110)	6,917,312	-	(27,953)	(1,954,910,911)	754,346,153	396,518,140	695,510,523
August 21, 2008	(1,954,910,911)	5,429,732	(43,180,742)	113,061,661	-	51,538	(1,879,548,723)	716,595,143	358,767,130	770,821,174
August 22, 2008	(1,879,548,723)	142,501,495	-	-	(81,037,271)	(209,750)	(1,818,294,249)	859,096,638	420,021,604	832,075,648
August 25, 2008	(1,818,294,249)	82,657,003	(85,000,000)	-	(25,530,686)	(28,145)	(1,846,196,077)	856,753,641	392,119,776	804,173,820
August 26, 2008	(1,846,196,077)	6,048,404	(46,000,000)	4,681,114	-	(28,190)	(1,881,494,749)	816,802,045	352,139,990	768,875,148
August 27, 2008	(1,881,494,749)	9,845,520	(76,275,365)	-	(398,478)	(28,192)	(1,948,351,265)	750,372,199	285,283,474	702,018,633
August 28, 2008	(1,948,351,265)	25,632,523	(11,300,000)	24,643,803	-	(28,311)	(1,909,403,249)	764,704,722	299,587,686	740,966,648
August 29, 2008	(1,909,403,249)	7,974,297	(57,687,486)	23,637,941	-	24,999	(1,935,453,498)	714,991,533	249,874,497	714,891,400
August 31, 2008	(1,935,453,498)	-	-	180,118	-	19,147,437	(1,916,125,943)	714,991,533	249,874,497	715,071,518
September 1, 2008	(1,916,125,943)	-	-	-	(106,157)	(2,713,391)	(1,918,945,491)	714,991,533	249,768,340	714,965,361
September 2, 2008	(1,918,945,491)	30,531,403	-	-	(707,446)	(28,072)	(1,889,149,606)	745,522,936	279,564,225	744,761,246
September 3, 2008	(1,889,149,606)	37,347,280	-	1,453,505	-	(27,943)	(1,850,376,764)	782,870,216	316,883,562	783,534,088
September 4, 2008	(1,850,376,764)	121,800,000	-	108,037,602	-	(27,930)	(1,620,567,092)	904,670,216	438,655,632	1,013,343,760
September 5, 2008	(1,620,567,092)	4,817,772	(22,298,218)	-	(2,014,734)	(83,665)	(1,640,145,937)	887,189,770	419,076,787	993,764,915
September 8, 2008	(1,640,145,937)	16,500,000	(25,000,000)	-	(788,554)	(27,763)	(1,649,462,254)	878,689,770	409,760,470	984,448,598

Source: DBS, GCCM

Exhibit 4

LBCS Preference/New Value Analysis
Account 1262000099

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
September 9, 2008	(1,649,462,254)	19,407,434	(45,393,248)	-	(4,833,354)	(27,728)	(1,680,309,149)	852,703,956	378,913,574	953,601,703
September 10, 2008	(1,680,309,149)	12,070,831	(102,600,000)	470,011	-	(27,591)	(1,770,395,898)	762,174,787	288,356,814	863,514,954
September 11, 2008	(1,770,395,898)	-	(84,859,170)	-	(330,212)	(27,462)	(1,855,612,741)	677,315,617	203,139,971	778,298,111
September 12, 2008	(1,855,612,741)	6,800,000	(41,600,000)	-	(154,582)	(82,215)	(1,890,649,539)	642,515,617	168,103,174	743,261,313
September 15, 2008	(1,890,649,539)	-	-	-	(99,682)	(27,367)	(1,890,776,587)	642,515,617	167,976,125	743,134,265
September 16, 2008	(1,890,776,587)	-	-	-	(101,011)	(27,325)	(1,890,904,923)	642,515,617	167,847,790	743,005,929
September 17, 2008	(1,890,904,923)	-	-	-	(107,655)	(78,632)	(1,891,091,210)	642,515,617	167,661,503	742,819,642
September 18, 2008	(1,891,091,210)	-	-	-	(167,295)	(45,255)	(1,891,303,760)	642,515,617	167,448,953	742,607,092
September 19, 2008	(1,891,303,760)	-	-	-	(501,939)	(135,780)	(1,891,941,479)	642,515,617	166,811,234	741,969,373
September 22, 2008	(1,891,941,479)	-	-	-	(167,367)	(45,275)	(1,892,154,121)	642,515,617	166,598,592	741,756,731
September 23, 2008	(1,892,154,121)	-	-	-	(167,385)	(45,280)	(1,892,366,785)	642,515,617	166,385,927	741,544,067
September 24, 2008	(1,892,366,785)	-	-	-	(167,403)	(45,284)	(1,892,579,473)	642,515,617	166,173,240	741,331,379
September 25, 2008	(1,892,579,473)	-	-	-	(166,071)	(44,924)	(1,892,790,468)	642,515,617	165,962,245	741,120,384
September 26, 2008	(1,892,790,468)	-	-	-	(510,419)	(138,074)	(1,893,438,960)	642,515,617	165,313,752	740,471,892
September 29, 2008	(1,893,438,960)	-	-	-	(172,897)	(46,771)	(1,893,658,628)	642,515,617	165,094,085	740,252,224
September 30, 2008	(1,893,658,628)	-	-	-	(172,916)	70,421,782	(1,823,409,762)	642,515,617	164,921,169	740,079,308

LEGEND

<u>Column</u>	<u>Description</u>
A	Date on which transactions were recorded per DBS.
B	Daily beginning balance of liability owed to LBHI for account 1262000099 per DBS.
C	Total daily cash funding from LBCS to LBHI, as recorded in GCCM, relating to LBHI clearing bank accounts of real world cash (assumed to occur at end of day).
D	Total daily cash funding from LBHI to LBCS, as recorded in GCCM.
E	Net of all intercompany activity recorded in GCCM except for "funding," if this net activity results in a reduction of LBCS's intercompany liability to LBHI.
F	Net of all intercompany activity recorded in GCCM except for "funding," if this net activity results in an increase to LBCS's intercompany liability to LBHI.
G	Net of all journal entries affecting these intercompany accounts, other than those that are sourced to GCCM.
H	Daily ending balance of LBCS's liability to LBHI for account 1262000099 per DBS.
I	Cumulative balance of potential preferences based on Up-Funding (C), net of new value based on Down-Funding (D). New value from Down-Funding is applied first, because Up-Funding is assumed to occur at the end of the day.
J	Cumulative balance of potential preferences based on Up-Funding (C), net of new value based on Down-Funding (D), Net Quasi Down-Funding (F), and "Other" activity (G) where net "Other" activity is a credit. Adjustments were made to certain beginning- and end-of-month "Other" journal entries for purposes of this balance. Potential new value from Columns (D), (F) and (G) are netted and applied first, as they are assumed to occur throughout the day. The potential preference from Up-Funding (C) is assumed to occur at the end of the day.
K	Cumulative balance of potential preferences based on Up-Funding (C) and Net Quasi Up-Funding (E), net of new value based on Down-Funding (D), Net Quasi Down-Funding (F), and "Other" activity (G) where net "Other" activity is a credit. Adjustments were made to certain beginning- and end-of-month "Other" journal entries for purposes of this balance. The potential preference from Net Quasi Up-Funding (E) is netted with all potential new value from Columns (D), (F) and (G) and applied together, as they are assumed to occur throughout the day. The potential preference from Up-Funding (C) is applied last, as it is assumed to occur at the end of the day.

Source: DBS, GCCM

Exhibit 5

LBCS Preference/New Value Analysis
Account 1262000911

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
June 1, 2008	(289,586,906)	-	-	-	-	12,023,771	(277,563,135)	-	-	-
June 2, 2008	(277,563,135)	-	-	-	(125,359)	-	(277,688,495)	-	-	-
June 3, 2008	(277,688,495)	-	-	-	(214,281,153)	-	(491,969,648)	-	-	-
June 4, 2008	(491,969,648)	-	-	215,599,530	-	-	(276,370,117)	-	-	215,599,530
June 5, 2008	(276,370,117)	-	-	-	(31,816)	-	(276,401,933)	-	-	215,567,714
June 6, 2008	(276,401,933)	-	-	10,516,075	-	-	(265,885,859)	-	-	226,083,789
June 9, 2008	(265,885,859)	-	-	17,832,346	-	-	(248,053,513)	-	-	243,916,135
June 10, 2008	(248,053,513)	-	-	8,809,879	-	-	(239,243,634)	-	-	252,726,014
June 11, 2008	(239,243,634)	-	-	16,190,894	-	-	(223,052,739)	-	-	268,916,908
June 12, 2008	(223,052,739)	-	-	-	(24,266)	-	(223,077,006)	-	-	268,892,642
June 13, 2008	(223,077,006)	-	-	853,737	-	-	(222,223,269)	-	-	269,746,379
June 16, 2008	(222,223,269)	-	-	281,390	-	-	(221,941,879)	-	-	270,027,769
June 17, 2008	(221,941,879)	-	-	15,816,293	-	14,519	(206,111,067)	-	-	285,844,062
June 18, 2008	(206,111,067)	-	-	-	(36,278)	-	(206,147,344)	-	-	285,807,784
June 19, 2008	(206,147,344)	-	-	-	(23,487)	-	(206,170,831)	-	-	285,784,297
June 20, 2008	(206,170,831)	-	-	3,781,674	-	-	(202,389,157)	-	-	289,565,971
June 23, 2008	(202,389,157)	-	-	-	(293,155,772)	-	(495,544,929)	-	-	-
June 24, 2008	(495,544,929)	-	-	8,060,949	-	-	(487,483,980)	-	-	8,060,949
June 25, 2008	(487,483,980)	-	-	-	(21,178,136)	-	(508,662,116)	-	-	-
June 26, 2008	(508,662,116)	-	-	19,842,480	-	-	(488,819,636)	-	-	19,842,480
June 27, 2008	(488,819,636)	-	-	-	(723,536)	-	(489,543,172)	-	-	19,118,944
June 30, 2008	(489,543,172)	-	-	-	(38,531,355)	(38,516,463)	(566,590,991)	-	-	-
July 1, 2008	(566,590,991)	-	-	-	(65,356)	37,598,866	(529,057,481)	-	-	-
July 2, 2008	(529,057,481)	-	-	38,772,466	-	-	(490,285,016)	-	-	38,772,466
July 3, 2008	(490,285,016)	-	-	1,808,305	-	-	(488,476,710)	-	-	40,580,771
July 4, 2008	(488,476,710)	-	-	7,906,186	-	-	(480,570,525)	-	-	48,486,957
July 7, 2008	(480,570,525)	-	-	-	(62,362)	-	(480,632,887)	-	-	48,424,594
July 8, 2008	(480,632,887)	-	-	-	(2,017,969)	-	(482,650,856)	-	-	46,406,625
July 9, 2008	(482,650,856)	-	-	-	(16,186,910)	-	(498,837,766)	-	-	30,219,715
July 10, 2008	(498,837,766)	-	-	-	(1,250,223)	-	(500,087,989)	-	-	28,969,492
July 11, 2008	(500,087,989)	-	-	-	(355,711)	-	(500,443,700)	-	-	28,613,781
July 14, 2008	(500,443,700)	-	-	-	(57,444)	-	(500,501,144)	-	-	28,556,337
July 15, 2008	(500,501,144)	-	-	-	(7,418)	7,074	(500,501,489)	-	-	28,548,919
July 16, 2008	(500,501,489)	-	-	-	(191,365)	-	(500,692,854)	-	-	28,357,554
July 17, 2008	(500,692,854)	-	-	-	(143,833)	-	(500,836,687)	-	-	28,213,721
July 18, 2008	(500,836,687)	-	-	-	(238,432)	-	(501,075,119)	-	-	27,975,289
July 21, 2008	(501,075,119)	-	-	-	(62,843,677)	-	(563,918,796)	-	-	-

Source: DBS, GCCM

Exhibit 5

LBCS Preference/New Value Analysis
Account 1262000911

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
July 22, 2008	(563,918,796)	-	-	-	(11,748,720)	-	(575,667,516)	-	-	-
July 23, 2008	(575,667,516)	-	-	-	(3,041,874)	-	(578,709,390)	-	-	-
July 24, 2008	(578,709,390)	-	-	-	(17,881,253)	-	(596,590,644)	-	-	-
July 25, 2008	(596,590,644)	-	-	-	(6,016,265)	-	(602,606,909)	-	-	-
July 28, 2008	(602,606,909)	-	-	13,971,427	-	-	(588,635,482)	-	-	13,971,427
July 29, 2008	(588,635,482)	-	-	5,398,232	-	-	(583,237,250)	-	-	19,369,659
July 30, 2008	(583,237,250)	-	-	7,109,491	-	-	(576,127,759)	-	-	26,479,149
July 31, 2008	(576,127,759)	-	-	-	(801,343)	(72,936,557)	(649,865,659)	-	-	-
August 1, 2008	(649,865,659)	-	-	-	(223,370)	75,224,666	(574,864,364)	-	-	-
August 4, 2008	(574,864,364)	-	-	-	(180,068)	-	(575,044,432)	-	-	-
August 5, 2008	(575,044,432)	-	-	-	(480,076)	-	(575,524,508)	-	-	-
August 6, 2008	(575,524,508)	-	-	-	(73,130)	-	(575,597,638)	-	-	-
August 7, 2008	(575,597,638)	-	-	9,836,949	-	-	(565,760,689)	-	-	9,836,949
August 8, 2008	(565,760,689)	-	-	-	(208,080)	-	(565,968,769)	-	-	9,628,869
August 11, 2008	(565,968,769)	-	-	832,281	-	-	(565,136,488)	-	-	10,461,150
August 12, 2008	(565,136,488)	-	-	-	(13,572,364)	-	(578,708,853)	-	-	-
August 13, 2008	(578,708,853)	-	-	-	(21,239,528)	-	(599,948,381)	-	-	-
August 14, 2008	(599,948,381)	-	-	-	(240,455)	-	(600,188,836)	-	-	-
August 15, 2008	(600,188,836)	-	-	-	(216,800)	-	(600,405,636)	-	-	-
August 18, 2008	(600,405,636)	-	-	8,826,987	-	6,727	(591,571,923)	-	-	8,826,987
August 19, 2008	(591,571,923)	-	-	649,249	-	-	(590,922,674)	-	-	9,476,236
August 20, 2008	(590,922,674)	-	-	-	(70,954)	-	(590,993,628)	-	-	9,405,282
August 21, 2008	(590,993,628)	-	-	-	(70,609)	-	(591,064,236)	-	-	9,334,673
August 22, 2008	(591,064,236)	-	-	-	(735,224)	-	(591,799,461)	-	-	8,599,449
August 25, 2008	(591,799,461)	-	-	-	(1,979,737)	-	(593,779,198)	-	-	6,619,712
August 26, 2008	(593,779,198)	-	-	143,632	-	-	(593,635,566)	-	-	6,763,344
August 27, 2008	(593,635,566)	-	-	-	(280,160)	-	(593,915,726)	-	-	6,483,183
August 28, 2008	(593,915,726)	-	-	-	(576,706)	-	(594,492,432)	-	-	5,906,477
August 29, 2008	(594,492,432)	-	-	9,382,572	-	30,163,957	(554,945,904)	-	-	15,289,049
August 31, 2008	(554,945,904)	-	-	-	-	(100,855,553)	(655,801,457)	-	-	-
September 1, 2008	(655,801,457)	-	-	-	(68,814)	101,011,951	(554,858,320)	-	-	15,220,235
September 2, 2008	(554,858,320)	-	-	-	(22,311,744)	-	(577,170,065)	-	-	-
September 3, 2008	(577,170,065)	-	-	-	(900,237)	-	(578,070,301)	-	-	-
September 4, 2008	(578,070,301)	-	-	4,925,427	-	-	(573,144,875)	-	-	4,925,427
September 5, 2008	(573,144,875)	-	-	-	(128,149)	-	(573,273,024)	-	-	4,797,278
September 8, 2008	(573,273,024)	-	-	-	(46,919)	-	(573,319,943)	-	-	4,750,959

Source: DBS, GCCM

Exhibit 5

LBCS Preference/New Value Analysis
Account 1262000911

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
September 9, 2008	(573,319,943)	-	-	-	(544,385)		(573,864,328)	-	-	4,205,974
September 10, 2008	(573,864,328)	-	-	1,168,770	-		(572,695,558)	-	-	5,374,743
September 11, 2008	(572,695,558)	-	-	-	(65,304)		(572,760,862)	-	-	5,309,439
September 12, 2008	(572,760,862)	-	-	-	(18,379,428)		(591,140,291)	-	-	-
September 15, 2008	(591,140,291)	-	-	-	(205,184)		(591,345,474)	-	-	-
September 16, 2008	(591,345,474)	-	-	-	(319,677)		(591,665,152)	-	-	-
September 17, 2008	(591,665,152)	-	-	-	(73,850)		(591,739,001)	-	-	-
September 18, 2008	(591,739,001)	-	-	-	(89,219)		(591,828,221)	-	-	-
September 19, 2008	(591,828,221)	-	-	-	(270,225)		(592,098,446)	-	-	-
September 22, 2008	(592,098,446)	-	-	-	(90,974)		(592,189,420)	-	-	-
September 23, 2008	(592,189,420)	-	-	-	(91,775)		(592,281,195)	-	-	-
September 24, 2008	(592,281,195)	-	-	-	(92,164)		(592,373,359)	-	-	-
September 25, 2008	(592,373,359)	-	-	-	(74,947)		(592,448,306)	-	-	-
September 26, 2008	(592,448,306)	-	-	-	(236,720)		(592,685,025)	-	-	-
September 29, 2008	(592,685,025)	-	-	-	(82,344)		(592,767,369)	-	-	-
September 30, 2008	(592,767,369)	-	-	-	(81,098)	(112,198,351)	(705,046,819)	-	-	-

LEGEND

Column	Description
A	Date on which transactions were recorded per DBS.
B	Daily beginning balance of liability owed to LBHI for account 1262000911 per DBS.
C	Total daily cash funding from LBCS to LBHI, as recorded in GCCM, relating to LBHI clearing bank accounts of real world cash (assumed to occur at end of day).
D	Total daily cash funding from LBHI to LBCS, as recorded in GCCM.
E	Net of all intercompany activity recorded in GCCM except for "funding," if this net activity results in a reduction of LBCS's intercompany liability to LBHI.
F	Net of all intercompany activity recorded in GCCM except for "funding," if this net activity results in an increase to LBCS's intercompany liability to LBHI.
G	Net of all journal entries affecting these intercompany accounts, other than those that are sourced to GCCM.
H	Daily ending balance of LBCS's liability to LBHI for account 1262000911 per DBS.
I	Cumulative balance of potential preferences based on Up-Funding (C), net of new value based on Down-Funding (D). New value from Down-Funding is applied first, because Up-Funding is assumed to occur at the end of the day.
J	Cumulative balance of potential preferences based on Up-Funding (C), net of new value based on Down-Funding (D), Net Quasi Down-Funding (F), and "Other" activity (G) where net "Other" activity is a credit. Adjustments were made to certain beginning- and end-of-month "Other" journal entries for purposes of this balance. Potential new value from Columns (D), (F) and (G) are netted and applied first, as they are assumed to occur throughout the day. The potential preference from Up-Funding (C) is assumed to occur at the end of the day.
K	Cumulative balance of potential preferences based on Up-Funding (C) and Net Quasi Up-Funding (E), net of new value based on Down-Funding (D), Net Quasi Down-Funding (F), and "Other" activity (G) where net "Other" activity is a credit. Adjustments were made to certain beginning- and end-of-month "Other" journal entries for purposes of this balance. The potential preference from Net Quasi Up-Funding (E) is netted with all potential new value from Columns (D), (F) and (G) and applied together, as they are assumed to occur throughout the day. The potential preference from Up-Funding (C) is applied last, as it is assumed to occur at the end of the day.

Source: DBS, GCCM

Exhibit 6

LBCS Preference/New Value Analysis
Accounts 1262000099 & 1262000911 Combined

Effective Date	Antecedent Debt to LBHI - Beginning Balance	Up-Funding	Down-Funding	Net Quasi Up-Funding	Net Quasi Down-Funding	Other Activity	Antecedent Debt to LBHI - Ending Balance	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value	Up-Funding Preference Net of Down-Funding and Other Activity New Value	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding and Other Activity New Value
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)
June 1, 2008	(2,241,466,300)	-	-	-	-	9,486,856	(2,231,979,444)	-	-	-
June 2, 2008	(2,231,979,444)	88,000,000	(42,200,000)	-	(8,339,150)	(28,037)	(2,194,546,632)	88,000,000	88,000,000	88,000,000
June 3, 2008	(2,194,546,632)	4,800,000	(20,000,000)	-	(279,043,448)	(28,177)	(2,488,818,256)	72,800,000	4,800,000	4,800,000
June 4, 2008	(2,488,818,256)	31,900,000	(60,000,000)	215,604,470	-	(28,077)	(2,301,341,864)	44,700,000	31,900,000	192,276,393
June 5, 2008	(2,301,341,864)	1,849,548	(36,000,000)	-	(126,009)	(27,905)	(2,335,646,230)	10,549,548	1,849,548	157,972,026
June 6, 2008	(2,335,646,230)	45,663,920	(2,168,619)	4,795,678	-	(82,916)	(2,287,438,166)	54,044,850	45,663,920	206,180,091
June 9, 2008	(2,287,438,166)	43,000,000	(45,228,076)	15,650,908	-	(27,289)	(2,274,042,623)	51,816,773	43,408,555	219,575,633
June 10, 2008	(2,274,042,623)	52,745,607	(52,040,000)	4,456,025	-	(27,160)	(2,268,908,151)	52,745,607	52,745,607	224,710,106
June 11, 2008	(2,268,908,151)	8,778,137	(14,200,000)	12,184,389	-	(85,235)	(2,262,230,860)	47,323,744	47,238,509	231,387,397
June 12, 2008	(2,262,230,860)	-	(65,311,785)	-	(21,973)	(26,816)	(2,327,591,432)	-	-	166,026,824
June 13, 2008	(2,327,591,432)	48,000,000	(95,000,000)	-	(4,279,767)	(80,060)	(2,378,951,260)	48,000,000	48,000,000	114,666,996
June 16, 2008	(2,378,951,260)	126,766,821	-	-	(15,132,376)	(26,648)	(2,267,343,463)	174,766,821	159,607,797	226,274,793
June 17, 2008	(2,267,343,463)	21,904	(115,038,207)	14,446,554	-	(12,145)	(2,367,925,356)	59,750,519	44,579,349	125,692,900
June 18, 2008	(2,367,925,356)	58,390,935	-	-	(2,004,871)	(26,739)	(2,311,566,031)	118,141,454	100,938,674	182,052,225
June 19, 2008	(2,311,566,031)	2,368,920	(21,710,216)	-	(2,034,620)	(26,697)	(2,332,968,644)	98,800,158	79,536,061	160,649,612
June 20, 2008	(2,332,968,644)	15,413,290	(410,167,531)	3,283,335	-	(80,183)	(2,724,519,733)	15,413,290	15,413,290	15,413,290
June 23, 2008	(2,724,519,733)	94,695,989	-	-	(199,946,629)	(26,704)	(2,829,797,078)	110,109,278	94,695,989	94,695,989
June 24, 2008	(2,829,797,078)	88,924,915	(96,279,977)	-	(20,530,999)	(31,321)	(2,857,714,461)	102,754,216	88,924,915	88,924,915
June 25, 2008	(2,857,714,461)	12,909,772	(135,490,589)	-	(21,422,208)	(31,338)	(3,001,748,824)	12,909,772	12,909,772	12,909,772
June 26, 2008	(3,001,748,824)	76,438,746	(52,000,000)	20,194,851	-	(157,812)	(2,957,273,039)	76,438,746	76,438,746	76,438,746
June 27, 2008	(2,957,273,039)	47,515,744	-	91,948	-	(93,374)	(2,909,758,721)	123,954,490	123,861,116	123,953,063
June 30, 2008	(2,909,758,721)	4,714,958	(83,000,000)	-	(38,500,767)	(118,881,572)	(3,145,426,101)	45,669,448	4,714,958	4,714,958
July 1, 2008	(3,145,426,101)	63,238,172	-	4,746,962	-	34,895,340	(3,042,545,627)	108,907,621	67,953,131	72,700,093
July 2, 2008	(3,042,545,627)	13,000,000	(140,000,000)	117,965,458	-	(28,537)	(3,051,608,706)	13,000,000	13,000,000	63,637,014
July 3, 2008	(3,051,608,706)	56,540,689	(29,879,182)	1,588,272	-	(114,314)	(3,023,473,241)	56,540,689	56,540,689	91,772,479
July 4, 2008	(3,023,473,241)	-	-	7,448,877	-	-	(3,016,024,365)	56,540,689	56,540,689	99,221,355
July 7, 2008	(3,016,024,365)	3,310,200	(81,730,149)	-	(1,039,021)	(28,561)	(3,095,511,895)	3,310,200	3,310,200	19,733,825
July 8, 2008	(3,095,511,895)	61,569,577	(36,000,000)	-	(1,439,946)	(28,476)	(3,071,410,740)	61,569,577	61,569,577	61,569,577
July 9, 2008	(3,071,410,740)	22,413,480	-	-	(16,218,502)	(28,463)	(3,065,244,225)	83,983,057	67,736,092	67,736,092
July 10, 2008	(3,065,244,225)	169,986,955	-	-	(18,213,622)	(28,392)	(2,913,499,284)	253,970,012	219,481,033	219,481,033
July 11, 2008	(2,913,499,284)	63,834,842	-	-	(6,105,323)	(84,878)	(2,855,854,643)	317,804,854	277,125,674	277,125,674
July 14, 2008	(2,855,854,643)	49,800,000	-	-	(10,294,926)	(86,487)	(2,816,436,057)	367,604,854	316,544,260	316,544,260
July 15, 2008	(2,816,436,057)	89,821,881	-	-	(25,494,075)	(20,965)	(2,752,129,216)	457,426,735	380,851,101	380,851,101
July 16, 2008	(2,752,129,216)	30,490,342	-	-	(57,084,155)	(27,968)	(2,778,750,997)	487,917,077	354,229,320	354,229,320
July 17, 2008	(2,778,750,997)	28,070,000	(19,744,996)	505,547	-	(27,941)	(2,769,948,386)	496,242,080	362,526,383	363,031,390
July 18, 2008	(2,769,948,386)	49,085,502	-	-	(188,671)	(83,566)	(2,721,135,121)	545,327,583	411,339,649	411,845,196
July 21, 2008	(2,721,135,121)	186,924,580	(329,000,000)	-	(163,294,483)	(27,861)	(3,026,532,884)	403,252,163	186,924,580	186,924,580

Source: DBS, GCCM

Exhibit 6

LBCS Preference/New Value Analysis
Accounts 126200099 & 1262000911 Combined

Effective Date	Antecedent Debt to LBHI - Beginning Balance	Up-Funding	Down-Funding	Net Quasi Up-Funding	Net Quasi Down-Funding	Other Activity	Antecedent Debt to LBHI - Ending Balance	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value	Up-Funding Preference Net of Down-Funding and Other Activity New Value	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding and Other Activity New Value
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)
July 22, 2008	(3,026,532,884)	29,386,338	-	-	(11,086,430)	(27,623)	(3,008,260,599)	432,638,501	205,196,865	205,196,865
July 23, 2008	(3,008,260,599)	126,100,000	-	73,811,830	-	(27,530)	(2,808,376,299)	558,738,501	331,269,335	405,081,165
July 24, 2008	(2,808,376,299)	133,444,170	(11,020)	-	(26,598,087)	(27,532)	(2,701,568,767)	692,171,651	438,076,867	511,888,697
July 25, 2008	(2,701,568,767)	10,026,783	(90,160,000)	-	(8,709,046)	(83,495)	(2,790,494,525)	612,038,435	349,151,109	422,962,939
July 28, 2008	(2,790,494,525)	68,200,000	(3,700,000)	13,925,190	-	(154,365)	(2,712,223,701)	676,538,435	413,496,743	501,233,763
July 29, 2008	(2,712,223,701)	20,494,000	(101,096,260)	-	(44,620,034)	(27,810)	(2,837,473,805)	595,936,174	288,246,639	375,983,659
July 30, 2008	(2,837,473,805)	737,668	(11,000,000)	6,391,964	-	(28,270)	(2,841,372,443)	585,673,842	277,956,036	372,085,021
July 31, 2008	(2,841,372,443)	21,508,000	(15,122,854)	106,781,288	-	(114,946,341)	(2,843,152,350)	592,058,988	204,284,526	405,194,799
August 1, 2008	(2,843,152,350)	6,079,444	(6,517,143)	2,152,361	-	72,372,085	(2,769,065,604)	591,621,288	203,763,144	406,825,777
August 4, 2008	(2,769,065,604)	33,472,674	(63,727,983)	101,259,584	-	(28,353)	(2,698,089,681)	561,365,980	173,479,482	477,801,700
August 5, 2008	(2,698,089,681)	-	(34,624,157)	-	(726,790)	(28,107)	(2,733,468,735)	526,741,823	138,100,429	442,422,646
August 6, 2008	(2,733,468,735)	15,372,575	(36,108,968)	-	(1,005,884)	(28,073)	(2,755,239,084)	506,005,430	116,330,079	420,652,297
August 7, 2008	(2,755,239,084)	43,725,767	(30,000,000)	4,454,696	-	(28,140)	(2,737,086,761)	519,731,197	130,027,706	438,804,620
August 8, 2008	(2,737,086,761)	124,591,430	(1,676,919)	-	(25,146,647)	(84,076)	(2,639,402,973)	642,645,708	227,711,494	536,488,408
August 11, 2008	(2,639,402,973)	310,000	(59,345,549)	618,775	-	(28,133)	(2,697,847,881)	583,610,159	168,647,812	478,043,500
August 12, 2008	(2,697,847,881)	69,591,598	(1,024,598)	-	(14,849,132)	(28,062)	(2,644,158,075)	652,177,158	222,337,618	531,733,306
August 13, 2008	(2,644,158,075)	-	-	-	(21,750,594)	(86,311)	(2,665,994,980)	652,177,158	200,500,713	509,896,401
August 14, 2008	(2,665,994,980)	214,786,196	(375,992)	-	(335,119)	(27,949)	(2,451,947,844)	866,587,362	414,547,849	723,943,537
August 15, 2008	(2,451,947,844)	-	(30,300,000)	-	(128,494)	(83,963)	(2,482,460,301)	836,287,362	384,035,392	693,431,080
August 18, 2008	(2,482,460,301)	1,455,610	(99,747,484)	11,200,602	-	(21,237)	(2,569,572,812)	737,995,488	285,722,280	606,318,569
August 19, 2008	(2,569,572,812)	23,612,384	-	527,154	-	(27,951)	(2,545,461,224)	761,607,872	309,306,713	630,430,157
August 20, 2008	(2,545,461,224)	50,640,391	(57,902,110)	6,846,357	-	(27,953)	(2,545,904,539)	754,346,153	302,017,040	629,986,842
August 21, 2008	(2,545,904,539)	5,429,732	(43,180,742)	112,991,053	-	51,538	(2,470,612,959)	716,595,143	264,266,030	705,226,884
August 22, 2008	(2,470,612,959)	142,501,495	-	-	(81,772,495)	(209,750)	(2,410,093,710)	859,096,638	324,785,279	765,746,133
August 25, 2008	(2,410,093,710)	82,657,003	(85,000,000)	-	(27,510,423)	(28,145)	(2,439,975,274)	856,753,641	294,903,715	735,864,569
August 26, 2008	(2,439,975,274)	6,048,404	(46,000,000)	4,824,746	-	(28,190)	(2,475,130,315)	816,802,045	254,923,928	700,709,529
August 27, 2008	(2,475,130,315)	9,845,520	(76,275,365)	-	(678,638)	(28,192)	(2,542,266,991)	750,372,199	187,787,252	633,572,853
August 28, 2008	(2,542,266,991)	25,632,523	(11,300,000)	24,067,097	-	(28,311)	(2,503,895,681)	764,704,722	202,091,465	671,944,162
August 29, 2008	(2,503,895,681)	7,974,297	(57,687,486)	33,020,513	-	30,188,956	(2,490,399,402)	714,991,533	152,378,275	655,251,486
August 31, 2008	(2,490,399,402)	-	-	180,118	-	(81,708,116)	(2,571,927,400)	714,991,533	143,125,927	646,179,255
September 1, 2008	(2,571,927,400)	-	-	-	(174,971)	98,298,560	(2,473,803,812)	714,991,533	142,950,956	646,004,284
September 2, 2008	(2,473,803,812)	30,531,403	-	-	(23,019,190)	(28,072)	(2,466,319,671)	745,522,936	150,435,097	653,488,425
September 3, 2008	(2,466,319,671)	37,347,280	-	553,268	-	(27,943)	(2,428,447,065)	782,870,216	187,754,434	691,361,031
September 4, 2008	(2,428,447,065)	121,800,000	-	112,963,029	-	(27,930)	(2,193,711,966)	904,670,216	309,526,504	926,096,130
September 5, 2008	(2,193,711,966)	4,817,772	(22,298,218)	-	(2,142,883)	(83,665)	(2,213,418,960)	887,189,770	289,819,510	906,389,136
September 8, 2008	(2,213,418,960)	16,500,000	(25,000,000)	-	(835,473)	(27,763)	(2,222,782,196)	878,689,770	280,456,274	897,025,900

Source: DBS, GCCM

Exhibit 6

LBCS Preference/New Value Analysis
Accounts 126200099 & 126200911 Combined

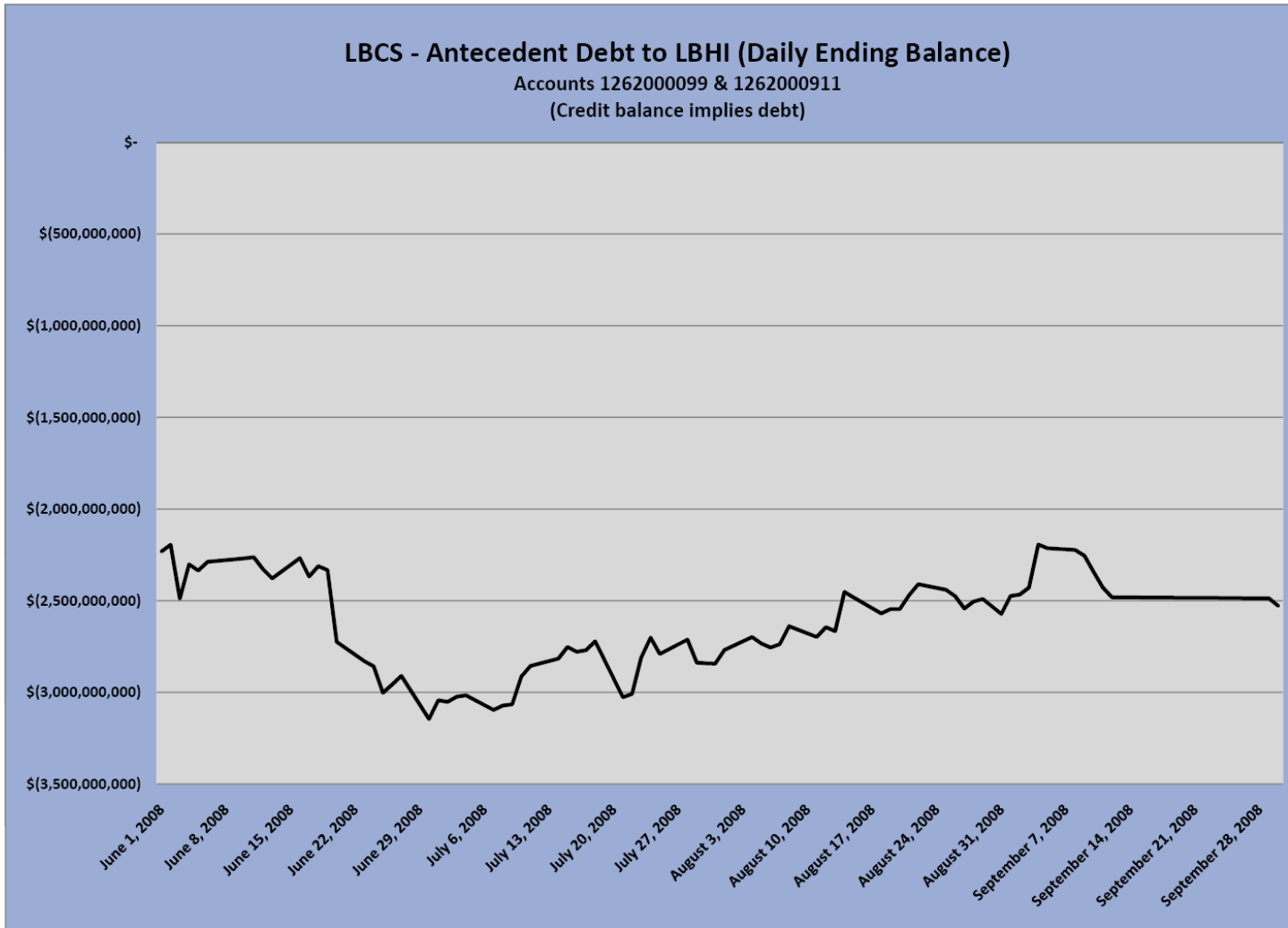
Effective Date	Antecedent Debt to LBHI - Beginning Balance	Up-Funding	Down-Funding	Net Quasi Up-Funding	Net Quasi Down-Funding	Other Activity	Antecedent Debt to LBHI - Ending Balance	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value	Up-Funding Preference Net of Down-Funding, Quasi Down-Funding, and Other Activity New Value	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Quasi Down-Funding, and Other Activity New Value
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)
September 9, 2008	(2,222,782,196)	19,407,434	(45,393,248)	-	(5,377,739)	(27,728)	(2,254,173,477)	852,703,956	249,064,993	865,634,619
September 10, 2008	(2,254,173,477)	12,070,831	(102,600,000)	1,638,781	-	(27,591)	(2,343,091,456)	762,174,787	158,508,233	776,716,640
September 11, 2008	(2,343,091,456)	-	(84,859,170)	-	(395,516)	(27,462)	(2,428,373,604)	677,315,617	73,226,086	691,434,492
September 12, 2008	(2,428,373,604)	6,800,000	(41,600,000)	-	(18,534,011)	(82,215)	(2,481,789,830)	642,515,617	19,809,860	638,018,267
September 15, 2008	(2,481,789,830)	-	-	-	(304,866)	(27,367)	(2,482,122,062)	642,515,617	19,477,628	637,686,034
September 16, 2008	(2,482,122,062)	-	-	-	(420,688)	(27,325)	(2,482,570,075)	642,515,617	19,029,615	637,238,021
September 17, 2008	(2,482,570,075)	-	-	-	(181,505)	(78,632)	(2,482,830,211)	642,515,617	18,769,479	636,977,885
September 18, 2008	(2,482,830,211)	-	-	-	(256,514)	(45,255)	(2,483,131,981)	642,515,617	18,467,709	636,676,116
September 19, 2008	(2,483,131,981)	-	-	-	(772,165)	(135,780)	(2,484,039,925)	642,515,617	17,559,765	635,768,171
September 22, 2008	(2,484,039,925)	-	-	-	(258,341)	(45,275)	(2,484,343,540)	642,515,617	17,256,149	635,464,556
September 23, 2008	(2,484,343,540)	-	-	-	(259,160)	(45,280)	(2,484,647,980)	642,515,617	16,951,710	635,160,116
September 24, 2008	(2,484,647,980)	-	-	-	(259,567)	(45,284)	(2,484,952,831)	642,515,617	16,646,858	634,855,265
September 25, 2008	(2,484,952,831)	-	-	-	(241,018)	(44,924)	(2,485,238,774)	642,515,617	16,360,916	634,569,323
September 26, 2008	(2,485,238,774)	-	-	-	(747,138)	(138,074)	(2,486,123,986)	642,515,617	15,475,704	633,684,110
September 29, 2008	(2,486,123,986)	-	-	-	(255,241)	(46,771)	(2,486,425,997)	642,515,617	15,173,692	633,382,099
September 30, 2008	(2,486,425,997)	-	-	-	(254,014)	(41,776,569)	(2,528,456,581)	642,515,617	14,919,678	633,128,085

LEGEND

<u>Column</u>	<u>Description</u>
A	Date on which transactions were recorded per DBS.
B	Daily beginning balance of liability owed to LBHI for accounts 126200099 and 126200911 per DBS.
C	Total daily cash funding from LBCS to LBHI, as recorded in GCCM, relating to LBHI clearing bank accounts of real world cash (assumed to occur at end of day).
D	Total daily cash funding from LBHI to LBCS, as recorded in GCCM.
E	Net of all intercompany activity recorded in GCCM except for "funding," if this net activity results in a reduction of LBCS's intercompany liability to LBHI.
F	Net of all intercompany activity recorded in GCCM except for "funding," if this net activity results in an increase to LBCS's intercompany liability to LBHI.
G	Net of all journal entries affecting these intercompany accounts, other than those that are sourced to GCCM.
H	Daily ending balance of LBCS's liability to LBHI for accounts 126200099 and 126200911 per DBS.
I	Cumulative balance of potential preferences based on Up-Funding (C), net of new value based on Down-Funding (D). New value from Down-Funding is applied first, because Up-Funding is assumed to occur at the end of the day.
J	Cumulative balance of potential preferences based on Up-Funding (C), net of new value based on Down-Funding (D), Net Quasi Down-Funding (F), and "Other" activity (G) where net "Other" activity is a credit. Adjustments were made to certain beginning- and end-of-month "Other" journal entries for purposes of this balance. Potential new value from Columns (D), (F) and (G) are netted and applied first, as they are assumed to occur throughout the day. The potential preference from Up-Funding (C) is assumed to occur at the end of the day.
K	Cumulative balance of potential preferences based on Up-Funding (C) and Net Quasi Up-Funding (D), net of new value based on Down-Funding (D), Net Quasi Down-Funding (F), and "Other" activity (G) where net "Other" activity is a credit. Adjustments were made to certain beginning- and end-of-month "Other" journal entries for purposes of this balance. The potential preference from Net Quasi Up-Funding (E) is netted with all potential new value from Columns (D), (F) and (G) and applied together, as they are assumed to occur throughout the day. The potential preference from Up-Funding (C) is applied last, as it is assumed to occur at the end of the day.

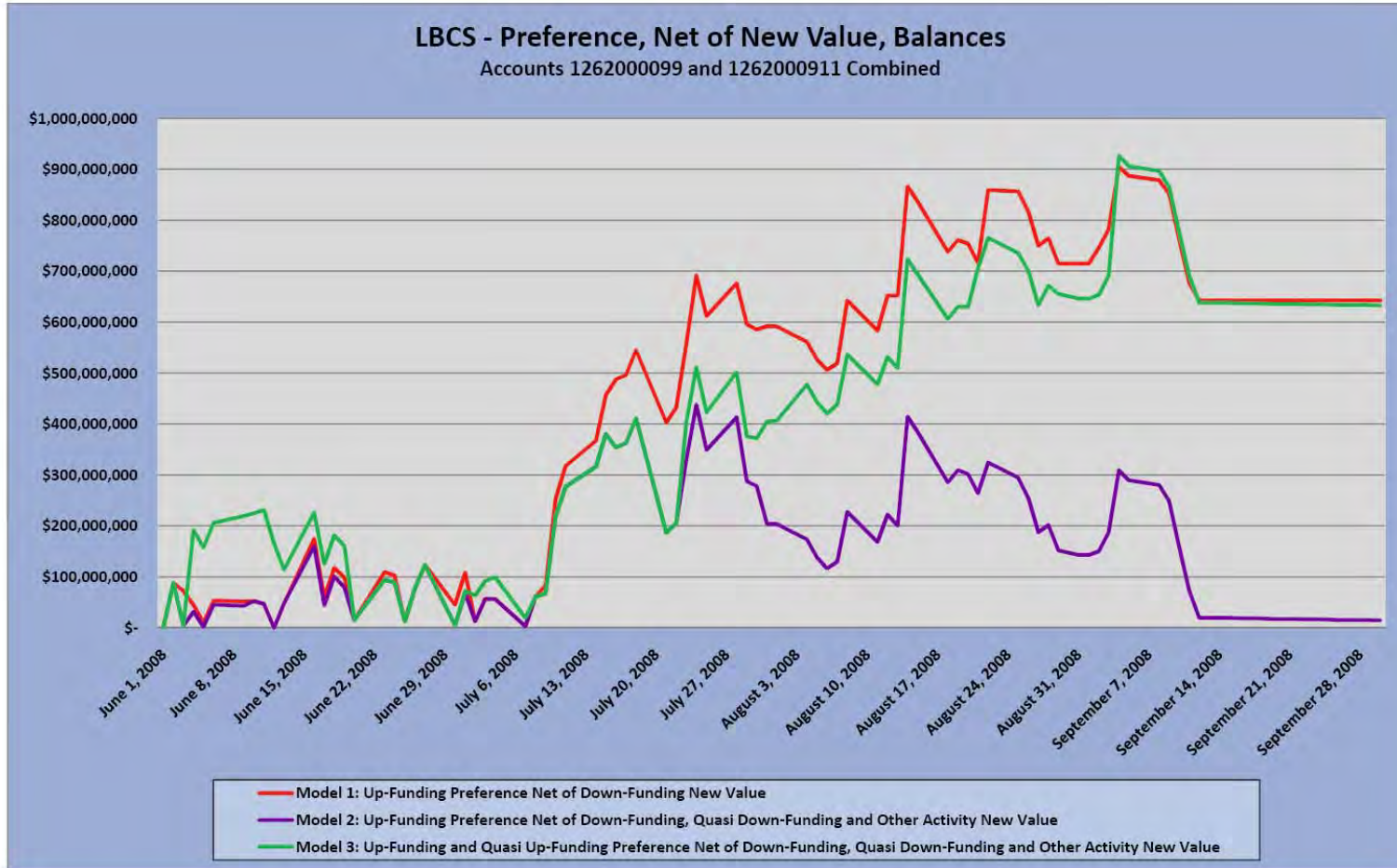
Source: DBS, GCCM

Exhibit 7



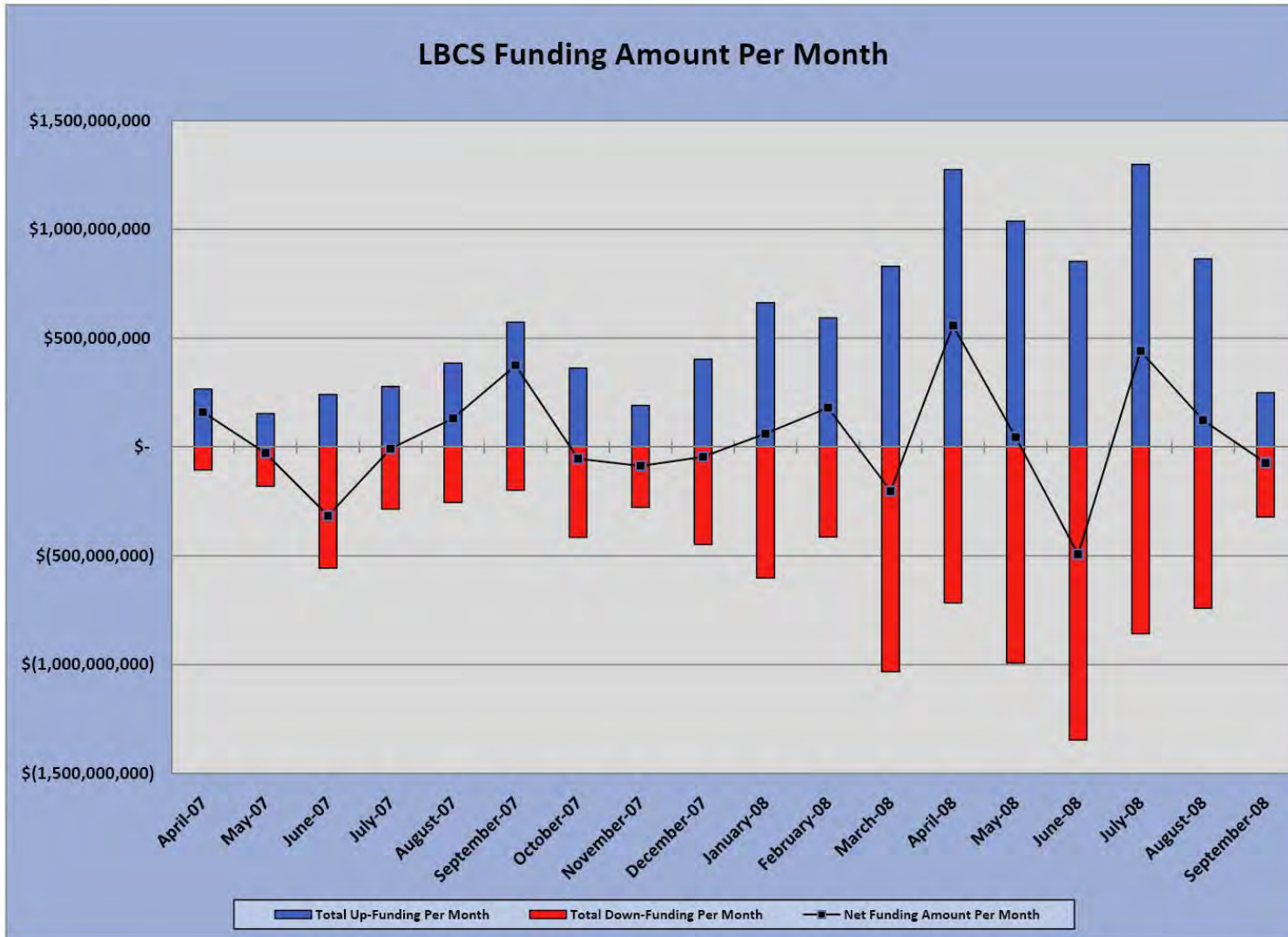
Source: DBS

Exhibit 8



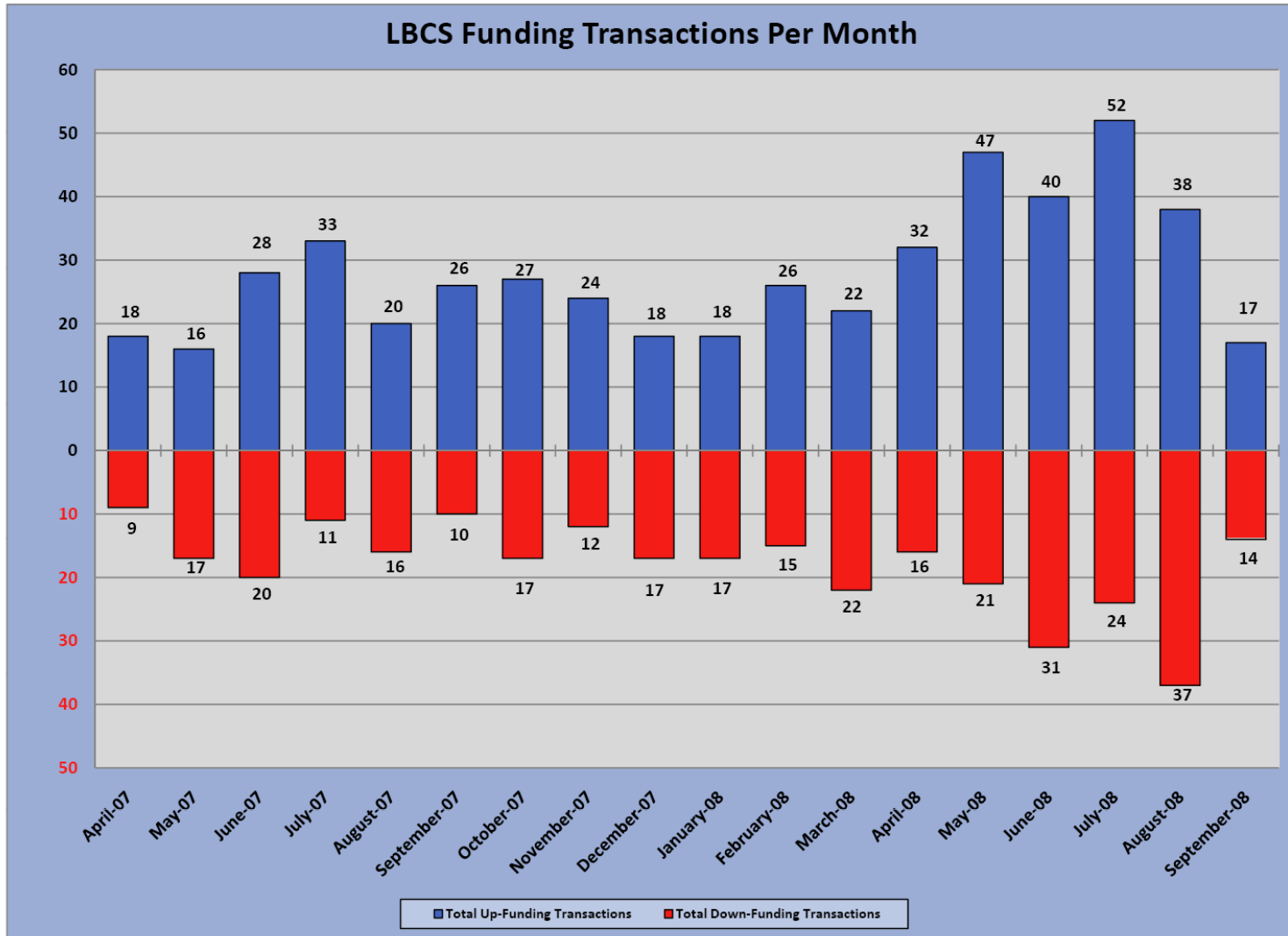
Source: DBS, GCCM

Exhibit 9



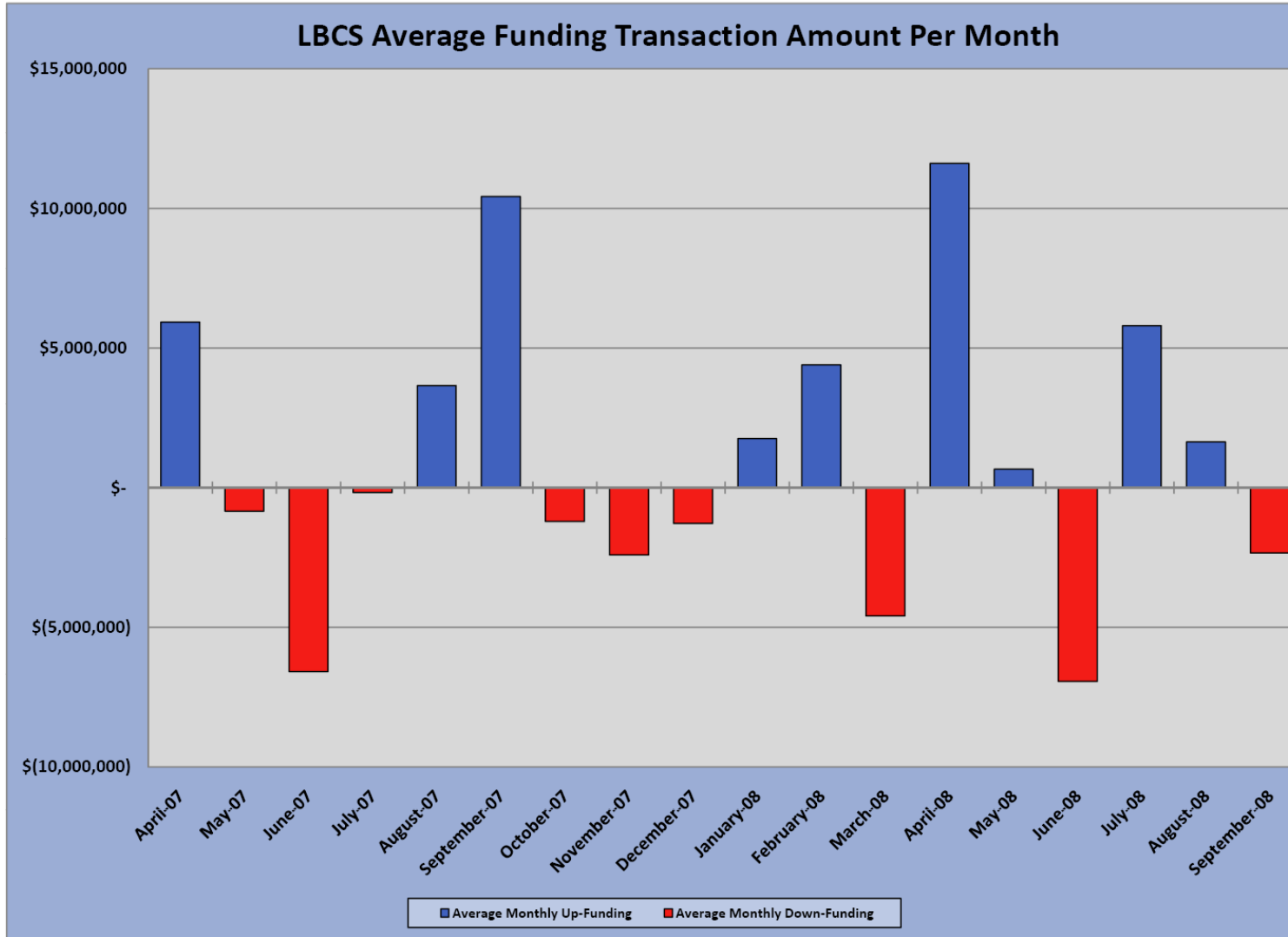
Source: GCCM

Exhibit 10



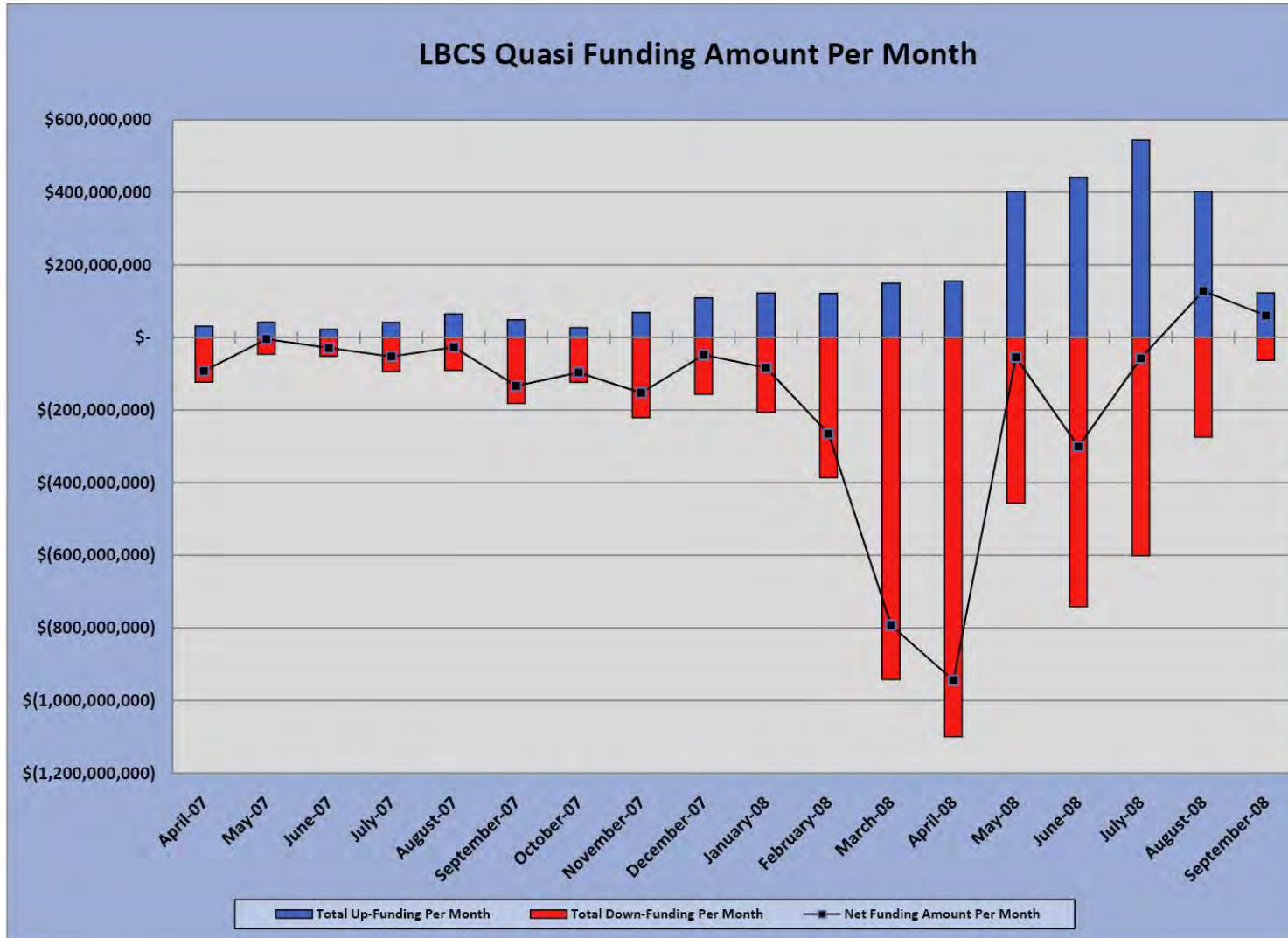
Source: GCCM

Exhibit 11



Source: GCCM

Exhibit 12



Source: DBS, GCCM

Exhibit 13

LBSF Preference/New Value Analysis
Account 1262000099

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
June 1, 2008	(14,203,956,270)	-	-	-	-	(107,359)	(14,204,063,629)	-	-	-
June 2, 2008	(14,204,063,629)	1,803,331	(818,795,797)	-	(41,816,425)	(53,022)	(15,062,925,542)	1,803,331	1,803,331	1,803,331
June 3, 2008	(15,062,925,542)	349,300,000	-	(6,900,000)	(66,691,476)	(53,286)	(14,787,270,303)	349,300,000	349,300,000	349,300,000
June 4, 2008	(14,787,270,303)	828,600,000	(143,000,000)	60,664,463	-	(53,097)	(14,041,058,937)	1,034,900,000	1,034,846,903	1,095,511,366
June 5, 2008	(14,041,058,937)	134,675,475	(570,376,000)	-	(127,441,377)	(52,772)	(14,604,253,612)	599,199,475	471,652,229	532,316,692
June 6, 2008	(14,604,253,612)	6,700,005	-	(914,892,259)	109,756,659	(127,704)	(15,402,816,910)	6,700,005	6,700,005	6,700,005
June 9, 2008	(15,402,816,910)	99,019,047	(515,507,750)	-	(6,571,804)	(21,779)	(15,825,899,195)	99,019,047	99,019,047	99,019,047
June 10, 2008	(15,825,899,195)	359,800,000	(93,346,195)	303,881,923	-	43,866	(15,255,519,602)	365,472,853	365,472,853	669,354,775
June 11, 2008	(15,255,519,602)	130,300	(1,586,400,000)	125,700,438	-	(50,873)	(16,716,139,736)	130,300	130,300	130,300
June 12, 2008	(16,716,139,736)	76,348,933	(300,000,000)	-	(1,222,434,720)	(145,941)	(18,162,371,464)	76,348,933	76,348,933	76,348,933
June 13, 2008	(18,162,371,464)	31,537,147	(504,527,147)	6,439,846	-	(121,284)	(18,629,042,902)	31,537,147	31,537,147	31,537,147
June 16, 2008	(18,629,042,902)	240,000,000	(1,286,647,955)	99,750,147	-	(50,395)	(19,575,991,105)	240,000,000	240,000,000	240,000,000
June 17, 2008	(19,575,991,105)	116,600,000	(357,721,770)	90,105,566	-	(50,426)	(19,727,057,735)	116,600,000	116,600,000	116,600,000
June 18, 2008	(19,727,057,735)	219,400,000	(551,578,775)	-	(382,710,673)	(50,567)	(20,441,997,750)	219,400,000	219,400,000	219,400,000
June 19, 2008	(20,441,997,750)	84,700,000	(821,484,991)	-	(186,730,324)	(50,487)	(21,365,563,552)	84,700,000	84,700,000	84,700,000
June 20, 2008	(21,365,563,552)	756,020,478	(4,500,000)	-	(30,860,640)	(64,123)	(20,644,967,837)	836,220,478	805,295,715	805,295,715
June 23, 2008	(20,644,967,837)	572,651,801	(852,181,438)	124,560,152	-	(50,500)	(20,799,987,822)	572,651,801	572,651,801	650,275,730
June 24, 2008	(20,799,987,822)	159,400,000	(404,760,439)	-	(52,199,725)	(71,942)	(21,097,619,928)	327,291,362	275,019,695	159,400,000
June 25, 2008	(21,097,619,928)	434,624,454	(93,623,733)	117,716,025	-	(59,264)	(20,638,962,446)	668,292,082	615,961,152	618,057,482
June 26, 2008	(20,638,962,446)	611,801,750	(125,007,030)	3,163,338	-	(1,091,156)	(20,150,095,544)	1,155,086,802	1,101,664,716	1,106,924,384
June 27, 2008	(20,150,095,544)	676,002,524	(89,065,319)	-	(96,995,849)	(147,482)	(19,660,301,670)	1,742,024,007	1,591,458,590	1,596,718,258
June 30, 2008	(19,660,301,670)	712,800,000	(26,251,000)	1,300,966,908	-	190,311,397	(17,482,474,364)	2,428,573,007	2,278,007,590	3,584,234,166
July 1, 2008	(17,482,474,364)	514,100,000	(123,907,200)	304,661,336	-	(104,779,373)	(16,892,399,601)	2,818,765,807	2,668,146,153	4,279,034,065
July 2, 2008	(16,892,399,601)	14,400,000	(481,800,000)	29,091,687	-	(53,966)	(17,330,761,880)	2,351,365,807	2,200,692,186	3,840,671,786
July 3, 2008	(17,330,761,880)	9,343,222	(118,500,000)	119,830,209	-	(231,172)	(17,320,319,623)	2,242,209,029	2,091,304,235	3,851,114,044
July 4, 2008	(17,320,319,623)	-	-	-	(2,245,671)	15,006	(17,322,550,288)	2,242,209,029	2,089,058,564	3,848,868,372
July 7, 2008	(17,322,550,288)	56,200,943	(511,400,000)	-	(52,458,053)	(5,623)	(17,830,213,022)	1,787,009,971	1,581,395,830	3,341,205,639
July 8, 2008	(17,830,213,022)	413,302,229	(81,654,229)	35,493,265	-	(53,851)	(17,463,125,608)	2,118,657,971	1,912,989,979	3,708,293,053
July 9, 2008	(17,463,125,608)	834,951,131	(507,750)	-	(357,103,217)	(53,827)	(16,985,839,272)	2,953,101,352	2,390,276,315	4,185,579,388
July 10, 2008	(16,985,839,272)	326,400,000	(23,184,216)	-	(60,945,223)	(53,694)	(16,743,622,404)	3,256,317,136	2,632,493,182	4,427,796,256
July 11, 2008	(16,743,622,404)	655,000,005	(1,596,290)	-	(126,749,411)	(142,766)	(16,217,110,866)	3,909,720,851	3,159,004,720	4,954,307,794
July 14, 2008	(16,217,110,866)	-	(433,600,000)	-	(119,642,026)	(53,241)	(16,770,406,133)	3,476,120,851	2,605,709,454	4,401,012,527
July 15, 2008	(16,770,406,133)	76,000,000	(137,195,779)	130,506,290	-	(53,025)	(16,701,148,646)	3,414,925,072	2,544,460,650	4,470,270,014
July 16, 2008	(16,701,148,646)	-	(333,091,100)	5,998,380	-	(52,891)	(17,028,294,257)	3,081,833,972	2,211,316,660	4,143,124,404
July 17, 2008	(17,028,294,257)	220,600,000	(550,399,576)	114,280,220	-	(52,839)	(17,243,866,451)	2,752,034,396	1,881,464,245	3,927,552,209
July 18, 2008	(17,243,866,451)	234,110,125	(80,000,000)	32,184,944	-	(127,274)	(17,057,698,657)	2,906,144,521	2,035,447,095	4,113,720,004
July 21, 2008	(17,057,698,657)	25,340,000	(87,336,150)	10,319,765	-	124,035	(17,109,251,006)	2,844,148,371	1,973,450,945	4,062,043,619

Source DBS, GCCM

Exhibit 13

LBSF Preference/New Value Analysis
Account 1262000099

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
July 22, 2008	(17,109,251,006)	10,800,000	(795,186,500)	209,470,792	-	(52,238)	(17,684,218,952)	2,059,761,871	1,189,012,207	3,487,075,673
July 23, 2008	(17,684,218,952)	436,800,000	(100,077,000)	81,317,294	-	(52,063)	(17,266,230,721)	2,396,484,871	1,525,683,144	3,905,063,904
July 24, 2008	(17,266,230,721)	60,900,000	(324,567,123)	87,577,780	-	(52,066)	(17,442,372,131)	2,132,817,748	1,261,963,955	3,728,922,494
July 25, 2008	(17,442,372,131)	460,300,000	(149,899,912)	-	(68,378,712)	(127,631)	(17,200,478,386)	2,443,217,836	1,503,857,700	3,970,816,239
July 28, 2008	(17,200,478,386)	320,000,000	(5,300,000)	-	(64,634,658)	(442,558)	(16,950,855,602)	2,757,917,836	1,753,480,484	4,220,439,023
July 29, 2008	(16,950,855,602)	57,970,270	(420,000,250)	-	(38,636,043)	(52,593)	(17,351,574,218)	2,395,887,856	1,352,761,868	3,819,720,407
July 30, 2008	(17,351,574,218)	399,338,260	(1,570,785)	-	(5,057,113,778)	(53,463)	(22,010,973,984)	2,793,655,331	399,338,260	399,338,260
July 31, 2008	(22,010,973,984)	386,112,284	-	-	(141,545,605)	(2,668,419)	(21,769,075,724)	3,179,767,616	640,511,384	640,511,384
August 1, 2008	(21,769,075,724)	113,300,000	(268,000)	-	(2,304,912,956)	(617,063)	(23,961,573,743)	3,292,799,616	113,300,000	113,300,000
August 4, 2008	(23,961,573,743)	70,500,000	-	-	(64,748,110)	(53,618)	(24,030,621,322)	3,288,553,766	70,500,000	70,500,000
August 5, 2008	(24,030,621,322)	407,671,743	(65,235,170)	-	(145,771,824)	(53,154)	(23,834,009,727)	3,630,990,338	407,671,743	407,671,743
August 6, 2008	(23,834,009,727)	336,600,000	(350,000,000)	-	(16,764,587)	(53,089)	(23,864,227,403)	3,617,590,338	377,454,067	377,454,067
August 7, 2008	(23,864,227,403)	89,736,433	(145,176,694)	77,361,530	-	(53,216)	(23,842,359,350)	3,562,150,077	321,960,590	399,322,120
August 8, 2008	(23,842,359,350)	188,200,000	(21,499,043)	-	(167,278,332)	(158,999)	(23,843,095,724)	3,728,851,034	321,224,216	398,585,746
August 11, 2008	(23,843,095,724)	239,916,757	(138,500,000)	990,026,069	-	(53,203)	(22,751,706,102)	3,830,267,791	422,587,769	1,489,975,368
August 12, 2008	(22,751,706,102)	509,777,225	(8,769,257)	38,393,522	-	(22,032)	(22,212,326,643)	4,331,275,759	923,573,705	2,029,354,827
August 13, 2008	(22,212,326,643)	36,200,000	(47,421,039)	55,556,869	-	(52,907)	(22,168,043,721)	4,320,054,720	912,299,759	2,073,637,749
August 14, 2008	(22,168,043,721)	203,058,988	(6,834)	-	(23,937,464)	(52,856)	(21,988,981,886)	4,523,106,874	1,091,361,594	2,252,699,584
August 15, 2008	(21,988,981,886)	500,000,000	(7,800,000)	-	(33,913,836)	5,871,628	(21,524,824,094)	5,015,306,874	1,549,647,758	2,710,985,748
August 18, 2008	(21,524,824,094)	583,802,500	(1,142,400)	-	(262,563,798)	(51,365)	(21,204,779,157)	5,597,966,974	1,869,692,695	3,031,030,685
August 19, 2008	(21,204,779,157)	71,000,000	(1,631,086)	27,727,623	-	(52,860)	(21,107,735,480)	5,667,335,888	1,939,008,749	3,128,074,362
August 20, 2008	(21,107,735,480)	16,260,549	(224,580,000)	514,945,901	-	(52,863)	(20,801,161,893)	5,459,016,437	1,730,636,435	3,434,647,949
August 21, 2008	(20,801,161,893)	947,525,000	(3,830,250)	228,710,217	-	(52,729)	(19,628,809,656)	6,402,711,187	2,674,278,456	4,607,000,186
August 22, 2008	(19,628,809,656)	96,429,881	(66,500,000)	193,500,794	-	3,480,257	(19,401,898,723)	6,432,641,068	2,704,208,337	4,830,430,861
August 25, 2008	(19,401,898,723)	97,100,000	(31,200,000)	35,496,263	-	(53,225)	(19,300,555,685)	6,498,541,068	2,770,055,112	4,931,773,900
August 26, 2008	(19,300,555,685)	44,898,884	(153,000,000)	14,074,968	-	(53,311)	(19,394,635,144)	6,390,439,952	2,661,900,684	4,837,694,441
August 27, 2008	(19,394,635,144)	598,700,000	(40,110,000)	27,539,280	-	(53,315)	(18,808,559,179)	6,949,029,952	3,220,437,370	5,423,770,406
August 28, 2008	(18,808,559,179)	23,080,000	(350,000,000)	864,397,519	-	(53,539)	(18,271,135,199)	6,622,109,952	2,893,463,831	5,961,194,386
August 29, 2008	(18,271,135,199)	136,841,031	(635,900,000)	-	(170,389,870)	(463,802)	(18,941,047,839)	6,123,050,983	2,223,551,190	5,291,281,745
August 31, 2008	(18,941,047,839)	-	-	-	-	(8,107,310)	(18,949,155,149)	6,123,050,983	2,215,443,880	5,283,174,435
September 1, 2008	(18,949,155,149)	-	-	-	(245,839)	4,925	(18,949,396,063)	6,123,050,983	2,215,198,041	5,282,928,597
September 2, 2008	(18,949,396,063)	94,358,527	(480,000,000)	27,875,780	-	(53,088)	(19,307,214,845)	5,737,409,510	1,829,503,480	4,925,109,815
September 3, 2008	(19,307,214,845)	470,600,000	(34,618,477)	-	(611,675,394)	-	(19,482,961,560)	6,173,391,034	1,653,756,765	4,749,363,100
September 4, 2008	(19,482,961,560)	396,800,000	(700,000)	16,411,506	-	(52,820)	(19,070,502,874)	6,569,491,034	2,049,803,946	5,161,821,786
September 5, 2008	(19,070,502,874)	138,800,000	(251,409,674)	16,306,027	-	(139,773)	(19,166,946,294)	6,456,881,359	1,937,054,498	5,065,378,365
September 8, 2008	(19,166,946,294)	490,000	(187,300,000)	-	(62,181,820)	(52,503)	(19,415,990,617)	6,270,071,359	1,688,010,175	4,816,334,043

Source DBS, GCCM

Exhibit 13

LBSF Preference/New Value Analysis
Account 1262000099

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up-Funding (E)	Net Quasi Down-Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding, Net and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net and Other Activity New Value (K)
September 9, 2008	(19,415,990,617)	77,600,000	(571,238,404)	243,084,352	-	(52,437)	(19,666,597,107)	5,776,432,955	1,194,319,334	4,565,727,553
September 10, 2008	(19,666,597,107)	115,000,000	(780,222,924)	465,350,568	-	(52,178)	(19,866,521,641)	5,111,210,031	529,044,231	4,365,803,018
September 11, 2008	(19,866,521,641)	110,210,113	(565,400,000)	-	(674,218,224)	(51,933)	(20,995,981,686)	4,656,020,144	110,210,113	3,236,342,974
September 12, 2008	(20,995,981,686)	707,000,000	(1,590,020,000)	74,267,430	-	(155,479)	(21,804,889,735)	3,773,000,144	707,000,000	2,427,434,925
September 15, 2008	(21,804,889,735)	-	-	4,798,636	-	(51,754)	(21,800,142,853)	3,773,000,144	706,948,246	2,432,181,807
September 16, 2008	(21,800,142,853)	-	-	-	(1,002,148)	(51,674)	(21,801,196,675)	3,773,000,144	705,894,424	2,431,127,985
September 17, 2008	(21,801,196,675)	-	-	-	(1,068,064)	(55,073)	(21,802,319,812)	3,773,000,144	704,771,287	2,430,004,848
September 18, 2008	(21,802,319,812)	-	-	-	(1,659,763)	(85,583)	(21,804,065,158)	3,773,000,144	703,025,941	2,428,259,501
September 19, 2008	(21,804,065,158)	-	-	-	(4,979,825)	(256,778)	(21,809,301,761)	3,773,000,144	697,789,338	2,423,022,899
September 22, 2008	(21,809,301,761)	-	-	-	(1,660,478)	(85,620)	(21,811,047,858)	3,773,000,144	696,043,241	2,421,276,801
September 23, 2008	(21,811,047,858)	-	-	-	(1,660,656)	(85,629)	(21,812,794,144)	3,773,000,144	694,296,955	2,419,530,516
September 24, 2008	(21,812,794,144)	-	-	-	(1,660,835)	(85,639)	(21,814,540,618)	3,773,000,144	692,550,481	2,417,784,042
September 25, 2008	(21,814,540,618)	-	-	-	(1,647,619)	(84,957)	(21,816,273,193)	3,773,000,144	690,817,906	2,416,051,466
September 26, 2008	(21,816,273,193)	-	-	-	(5,063,954)	(261,116)	(21,821,598,263)	3,773,000,144	685,492,836	2,410,726,397
September 29, 2008	(21,821,598,263)	-	-	-	(1,715,341)	(88,449)	(21,823,402,052)	3,773,000,144	683,689,046	2,408,922,607
September 30, 2008	(21,823,402,052)	-	-	-	(1,679,188)	556,122,332	(21,268,958,908)	3,773,000,144	682,009,859	2,407,243,419

LEGEND

Column	Description
A	Date on which transactions were recorded per DBS.
B	Daily beginning balance of liability owed to LBHI for account 1262000099 per DBS.
C	Total daily cash funding from LBHS to LBHI, as recorded in GCCM, relating to LBHI clearing bank accounts of real world cash (assumed to occur at end of day).
D	Total daily cash funding from LBHI to LBHS, as recorded in GCCM.
E	Net of all intercompany activity recorded in GCCM except for "funding," if this net activity results in a reduction of LBHS's intercompany liability to LBHI.
F	Net of all intercompany activity recorded in GCCM except for "funding," if this net activity results in an increase to LBHS's intercompany liability to LBHI.
G	Net of all journal entries affecting these intercompany accounts, other than those that are sourced to GCCM.
H	Daily ending balance of LBSF's liability to LBHI for account 1262000099 per DBS.
I	Cumulative balance of potential preferences based on Up-Funding (C), net of new value based on Down-Funding (D). New value from Down-Funding is applied first, because Up-Funding is assumed to occur at the end of the day.
J	Cumulative balance of potential preferences based on Up-Funding (C), net of new value based on Down-Funding (D), Net Quasi Down-Funding (F), and "Other" activity (G) where net "Other" activity is a credit. Adjustments were made to certain beginning- and end-of-month "Other" journal entries for purposes of this balance. Potential new value from Columns (D), (F) and (G) are netted and applied first, as they are assumed to occur throughout the day. The potential preference from Up-Funding (C) is assumed to occur at the end of the day.
K	Cumulative balance of potential preferences based on Up-Funding (C) and Net Quasi Up-Funding (E), net of new value based on Down-Funding (D), Net Quasi Down-Funding (F), and "Other" activity (G) where net "Other" activity is a credit. Adjustments were made to certain beginning- and end-of-month "Other" journal entries for purposes of this balance. The potential preference from Net Quasi Up-Funding (E) is netted with all potential new value from Columns (D), (F) and (G) and applied together, as they are assumed to occur throughout the day. The potential preference from Up-Funding (C) is applied last, as it is assumed to occur at the end of the day.

Source DBS, GCCM

Exhibit 14

LBSF Preference/New Value Analysis
Account 1262000911

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
June 1, 2008	6,649,188,359	-	-	-	-	4,186,174,013	10,835,362,372	-	-	-
June 2, 2008	10,835,362,372	-	-	-	(191,320,409)	-	10,644,041,963	-	-	-
June 3, 2008	10,644,041,960	-	-	-	(687,558,214)	-	9,956,483,723	-	-	-
June 4, 2008	9,956,483,723	-	-	-	(260,832,707)	-	9,695,651,004	-	-	-
June 5, 2008	9,695,651,004	-	-	75,684,769	-	-	9,771,335,761	-	-	75,684,757
June 6, 2008	9,771,335,761	-	-	770,266,237	-	-	10,541,601,961	-	-	845,950,957
June 9, 2008	10,541,601,961	-	-	430,746,990	-	-	10,972,348,938	-	-	1,276,697,935
June 10, 2008	10,972,348,938	-	-	19,011,921	-	-	10,991,360,847	-	-	1,295,709,843
June 11, 2008	10,991,360,847	-	-	-	(11,614,626)	-	10,979,746,208	-	-	1,284,095,205
June 12, 2008	10,979,746,208	-	-	-	(22,714,528)	-	10,957,031,669	-	-	1,261,380,665
June 13, 2008	10,957,031,669	-	-	-	(171,891,138)	-	10,785,140,494	-	-	1,089,489,490
June 16, 2008	10,785,140,494	-	-	-	(214,405,171)	-	10,570,735,311	-	-	875,084,307
June 17, 2008	10,570,735,311	-	-	129,449,916	-	(1,322,122)	10,698,863,105	-	-	1,003,212,102
June 18, 2008	10,698,863,105	-	-	471,790,064	-	-	11,170,653,157	-	-	1,475,002,153
June 19, 2008	11,170,653,157	-	-	633,149,910	-	2,329,547	11,806,132,614	-	-	2,108,152,063
June 20, 2008	11,806,132,614	-	-	-	(199,559,426)	(503,677)	11,606,069,511	-	-	1,908,088,960
June 23, 2008	11,606,069,511	-	-	346,067,199	-	-	11,952,136,697	-	-	2,254,156,147
June 24, 2008	11,952,136,697	-	-	103,882,053	-	(17,329)	12,056,001,421	-	-	2,358,020,871
June 25, 2008	12,056,001,421	-	-	-	(313,915,925)	-	11,742,085,483	-	-	2,044,104,932
June 26, 2008	11,742,085,483	-	-	32,865,742	-	-	11,774,951,212	-	-	2,076,970,661
June 27, 2008	11,774,951,212	-	-	-	(876,103,779)	-	10,898,847,393	-	-	1,200,866,843
June 30, 2008	10,898,847,393	-	-	-	(530,656,042)	(3,923,040,708)	6,445,150,644	-	-	670,210,801
July 1, 2008	6,445,150,644	-	-	19,889,650	-	4,025,840,358	10,490,880,652	-	-	690,098,891
July 2, 2008	10,490,880,652	-	-	-	(9,296,472)	-	10,481,584,168	-	-	680,802,407
July 3, 2008	10,481,584,168	-	-	-	(318,368,459)	-	10,163,215,697	-	-	362,433,935
July 4, 2008	10,163,215,697	-	-	-	(19,218,322)	-	10,143,997,337	-	-	343,215,576
July 7, 2008	10,143,997,337	-	-	73,509,533	-	-	10,217,506,857	-	-	416,726,096
July 8, 2008	10,217,506,857	-	-	-	(602,950,037)	-	9,614,556,808	-	-	-
July 9, 2008	9,614,556,808	-	-	404,924,088	-	-	10,019,480,883	-	-	404,924,075
July 10, 2008	10,019,480,883	-	-	126,035,183	-	-	10,145,516,053	-	-	530,959,245
July 11, 2008	10,145,516,053	-	-	-	(311,070,574)	-	9,834,445,439	-	-	219,888,632
July 14, 2008	9,834,445,439	-	-	288,740,149	-	-	10,123,185,574	-	-	508,628,767
July 15, 2008	10,123,185,574	-	-	-	(334,607,505)	(963,505)	9,787,614,565	-	-	173,057,757
July 16, 2008	9,787,614,565	-	-	-	(714,024)	-	9,786,900,527	-	-	172,343,720
July 17, 2008	9,786,900,527	-	-	-	(36,603,543)	-	9,750,296,971	-	-	135,740,164
July 18, 2008	9,750,296,971	-	-	-	(66,925,105)	(2,974)	9,683,368,892	-	-	68,812,085
July 21, 2008	9,683,368,892	-	-	364,115,410	-	-	10,047,484,289	-	-	432,927,482

Source DBS, GCCM

Exhibit 14

LBSF Preference/New Value Analysis
Account 1262000911

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
July 22, 2008	10,047,484,289	-	-	291,129,761	-	(14)	10,338,614,036	-	-	724,057,229
July 23, 2008	10,338,614,036	-	-	-	(215,852,243)	(14)	10,122,761,780	-	-	508,204,972
July 24, 2008	10,122,761,780	-	-	-	(75,903,896)	(13)	10,046,857,871	-	-	432,301,063
July 25, 2008	10,046,857,871	-	-	-	(447,560,488)	(40)	9,599,297,343	-	-	-
July 28, 2008	9,599,297,343	-	-	-	(600,921,929)	(13)	8,998,375,401	-	-	-
July 29, 2008	8,998,375,401	-	-	40,276,610	-	(13)	9,038,651,998	-	-	40,276,597
July 30, 2008	9,038,651,998	-	-	-	(72,130,875)	(13)	8,966,521,110	-	-	-
July 31, 2008	8,966,521,110	-	-	71,721,754	-	1,033,826,255	10,072,069,119	-	-	71,721,754
August 1, 2008	10,072,069,119	-	-	38,547,306	-	(1,262,788,673)	8,847,827,753	-	-	110,261,091
August 4, 2008	8,847,827,753	-	-	64,122,823	-	(14)	8,911,950,562	-	-	174,383,900
August 5, 2008	8,911,950,562	-	-	-	(160,956,566)	(1,989)	8,750,992,007	-	-	13,425,346
August 6, 2008	8,750,992,007	-	-	237,217,179	-	(14)	8,988,209,173	-	-	250,642,511
August 7, 2008	8,988,209,173	-	-	-	(221,547,341)	(14)	8,766,661,819	-	-	29,095,157
August 8, 2008	8,766,661,819	-	-	14,034,435	-	(41)	8,780,696,213	-	-	43,129,551
August 11, 2008	8,780,696,213	-	-	-	(472,086,626)	(13)	8,308,609,574	-	-	-
August 12, 2008	8,308,609,574	-	-	-	(594,634,705)	(13)	7,713,974,856	-	-	-
August 13, 2008	7,713,974,856	-	-	10,061,644	-	(13)	7,724,036,487	-	-	10,061,631
August 14, 2008	7,724,036,487	-	-	270,576,150	-	(25)	7,994,612,612	-	-	280,637,756
August 15, 2008	7,994,612,612	-	-	-	(1,051,051,048)	(39)	6,943,561,525	-	-	-
August 18, 2008	6,943,561,525	-	-	-	(413,185,193)	(9,809,984)	6,520,366,348	-	-	-
August 19, 2008	6,520,366,348	-	-	-	(166,055,261)	34,693	6,354,311,087	-	-	-
August 20, 2008	6,354,311,087	-	-	-	(151,638,607)	(13)	6,202,672,480	-	-	-
August 21, 2008	6,202,672,480	-	-	-	(585,703,851)	(13)	5,617,203,296	-	-	-
August 22, 2008	5,617,203,296	-	-	37,020,609	-	(39)	5,654,223,866	-	-	37,020,570
August 25, 2008	5,654,223,866	-	-	9,385,406	-	(13)	5,663,609,259	-	-	46,405,963
August 26, 2008	5,663,609,259	-	-	72,590,112	-	(38,230)	5,736,161,141	-	-	118,957,845
August 27, 2008	5,736,161,141	-	-	-	(174,880,917)	103,999,607	5,665,279,831	-	-	-
August 28, 2008	5,665,279,831	-	-	-	(135,396,227)	1,315,110	5,531,198,714	-	-	-
August 29, 2008	5,531,198,714	-	-	546,464,449	-	(456,673,246)	5,620,989,918	-	-	89,791,204
August 31, 2008	5,620,989,918	-	-	-	-	2,016,892,350	7,637,882,268	-	-	89,791,204
September 1, 2008	7,637,882,268	-	-	98,215,111	-	(2,091,111,927)	5,644,985,452	-	-	188,006,315
September 2, 2008	5,644,985,452	-	-	-	(44,273,593)	(13)	5,600,711,846	-	-	143,732,709
September 3, 2008	5,600,711,846	-	-	-	(312,797,236)	(13)	5,287,914,597	-	-	-
September 4, 2008	5,287,914,597	-	-	308,022,980	-	(12)	5,595,937,565	-	-	308,022,967
September 5, 2008	5,595,937,565	-	-	-	(325,088,903)	(37)	5,270,848,625	-	-	-
September 8, 2008	5,270,848,625	-	-	21,449,044	-	(12)	5,292,297,657	-	-	21,449,031

Source DBS, GCCM

Exhibit 14

LBSF Preference/New Value Analysis
Account 1262000911

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
September 9, 2008	5,292,297,657	-	-	192,150,543	-	(12)	5,484,448,187	-	-	213,599,562
September 10, 2008	5,484,448,187	-	-	356,556,105	-	(12)	5,841,004,280	-	-	570,155,655
September 11, 2008	5,841,004,280	-	-	-	(349,555,879)	(12)	5,491,448,389	-	-	220,599,764
September 12, 2008	5,491,448,389	-	-	-	(99,796,430)	(36)	5,391,651,922	-	-	120,803,297
September 15, 2008	5,391,651,922	-	-	77,390,315	-	(12)	5,469,042,225	-	-	198,193,600
September 16, 2008	5,469,042,225	-	-	-	(56,396,055)	(12)	5,412,646,157	-	-	141,797,532
September 17, 2008	5,412,646,157	-	-	677,699	-	(12)	5,413,323,844	-	-	142,475,219
September 18, 2008	5,413,323,844	-	-	719,050	-	(13)	5,414,042,881	-	-	143,194,256
September 19, 2008	5,414,042,881	-	-	2,179,550	-	-	5,416,222,431	-	-	145,373,806
September 22, 2008	5,416,222,431	-	-	734,987	-	(13)	5,416,957,405	-	-	146,108,780
September 23, 2008	5,416,957,405	-	-	746,842	-	(13)	5,417,704,235	-	-	146,855,610
September 24, 2008	5,417,704,235	-	-	749,376	-	(13)	5,418,453,598	-	-	147,604,973
September 25, 2008	5,418,453,598	-	-	735,574	-	(13)	5,419,189,159	-	-	148,340,534
September 26, 2008	5,419,189,159	-	-	2,220,348	-	(41)	5,421,409,466	-	-	150,560,841
September 29, 2008	5,421,409,466	-	-	746,752	-	(52)	5,422,156,165	-	-	151,307,540
September 30, 2008	5,422,156,165	-	-	737,207	-	11,323,302	5,434,216,674	-	-	152,044,747

LEGEND

Column	Description
A	Date on which transactions were recorded per DBS.
B	Daily beginning balance of liability owed to LBHI for account 1262000911 per DBS.
C	Total daily cash funding from LBHS to LBHI, as recorded in GCCM, relating to LBHI clearing bank accounts of real world cash (assumed to occur at end of day).
D	Total daily cash funding from LBHI to LBHS, as recorded in GCCM.
E	Net of all intercompany activity recorded in GCCM except for "funding," if this net activity results in a reduction of LBHS's intercompany liability to LBHI.
F	Net of all intercompany activity recorded in GCCM except for "funding," if this net activity results in an increase to LBHS's intercompany liability to LBHI.
G	Net of all journal entries affecting these intercompany accounts, other than those that are sourced to GCCM.
H	Daily ending balance of LBSF's liability to LBHI for account 1262000911 per DBS.
I	Cumulative balance of potential preferences based on Up-Funding (C), net of new value based on Down-Funding (D). New value from Down-Funding is applied first, because Up-Funding is assumed to occur at the end of the day.
J	Cumulative balance of potential preferences based on Up-Funding (C), net of new value based on Down-Funding (D), Net Quasi Down-Funding (F), and "Other" activity (G) where net "Other" activity is a credit. Adjustments were made to certain beginning- and end-of-month "Other" journal entries for purposes of this balance. Potential new value from Columns (D), (F) and (G) are netted and applied first, as they are assumed to occur throughout the day. The potential preference from Up-Funding (C) is assumed to occur at the end of the day.
K	Cumulative balance of potential preferences based on Up-Funding (C) and Net Quasi Up-Funding (D), net of new value based on Down-Funding (D), Net Quasi Down-Funding (F), and "Other" activity (G) where net "Other" activity is a credit. Adjustments were made to certain beginning- and end-of-month "Other" journal entries for purposes of this balance. The potential preference from Net Quasi Up-Funding (E) is netted with all potential new value from Columns (D), (F) and (G) and applied together, as they are assumed to occur throughout the day. The potential preference from Up-Funding (C) is applied last, as it is assumed to occur at the end of the day.

Source DBS, GCCM

Exhibit 15

LBSF Preference/New Value Analysis
Accounts 1262000099 & 1262000911 Combined

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding, Net and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net and Other Activity New Value (K)
June 1, 2008	(7,554,767,911)	-	-	-	-	4,186,066,654	(3,368,701,257)	-	-	-
June 2, 2008	(3,368,701,257)	1,803,331	(818,795,797)	-	(233,136,834)	(53,034)	(4,418,883,592)	1,803,331	1,803,331	1,803,331
June 3, 2008	(4,418,883,592)	349,300,000	(6,900,000)	-	(754,249,690)	(53,298)	(4,830,786,580)	349,300,000	349,300,000	349,300,000
June 4, 2008	(4,830,786,580)	828,600,000	(143,000,000)	-	(200,168,244)	(53,110)	(4,345,407,934)	1,034,900,000	834,678,646	834,678,646
June 5, 2008	(4,345,407,934)	134,675,475	(570,376,000)	-	(51,756,608)	(52,784)	(4,832,917,851)	599,199,475	347,168,729	347,168,729
June 6, 2008	(4,832,917,851)	6,700,005	(914,892,259)	880,022,896	-	(127,741)	(4,861,214,949)	6,700,005	6,700,005	318,871,631
June 9, 2008	(4,861,214,949)	99,019,047	(515,507,750)	424,175,186	-	(21,791)	(4,853,550,257)	99,019,047	99,019,047	326,536,323
June 10, 2008	(4,853,550,257)	359,800,000	(93,346,195)	322,893,843	-	43,853	(4,264,158,755)	365,472,853	365,472,853	915,883,972
June 11, 2008	(4,264,158,755)	130,300	(1,586,400,000)	114,085,812	-	(50,885)	(5,736,393,528)	130,300	130,300	130,300
June 12, 2008	(5,736,393,528)	76,348,933	(300,000,000)	-	(1,245,149,248)	(145,953)	(7,205,339,795)	76,348,933	76,348,933	76,348,933
June 13, 2008	(7,205,339,795)	31,537,147	(504,527,147)	-	(165,451,292)	(121,321)	(7,843,902,408)	31,537,147	31,537,147	31,537,147
June 16, 2008	(7,843,902,408)	240,000,000	(1,286,647,955)	-	(114,655,024)	(50,407)	(9,005,255,794)	240,000,000	240,000,000	240,000,000
June 17, 2008	(9,005,255,794)	116,600,000	(357,721,770)	219,555,483	-	(1,372,548)	(9,028,194,630)	116,600,000	116,600,000	217,061,165
June 18, 2008	(9,028,194,630)	219,400,000	(551,578,775)	89,079,391	-	(50,579)	(9,271,344,592)	219,400,000	219,400,000	219,400,000
June 19, 2008	(9,271,344,592)	84,700,000	(821,484,991)	446,419,585	-	2,279,060	(9,559,430,938)	84,700,000	84,700,000	84,700,000
June 20, 2008	(9,559,430,938)	756,020,478	(4,500,000)	-	(230,420,066)	(567,799)	(9,038,898,326)	836,220,478	756,020,478	756,020,478
June 23, 2008	(9,038,898,326)	572,651,801	(852,181,438)	470,627,351	-	(50,513)	(8,847,851,124)	572,651,801	572,651,801	947,067,679
June 24, 2008	(8,847,851,124)	159,400,000	(404,760,439)	51,682,328	-	(89,271)	(9,041,618,506)	327,291,362	327,202,091	753,300,297
June 25, 2008	(9,041,618,506)	434,624,454	(93,623,733)	-	(196,199,901)	(59,277)	(8,896,876,963)	668,292,082	471,943,634	898,041,840
June 26, 2008	(8,896,876,963)	611,801,750	(125,007,030)	36,029,080	-	(1,091,169)	(8,375,144,332)	1,155,086,802	957,647,186	1,419,774,472
June 27, 2008	(8,375,144,332)	676,002,524	(89,065,319)	-	(973,099,628)	(147,521)	(8,761,454,276)	1,742,024,007	676,002,524	1,033,464,527
June 30, 2008	(8,761,454,276)	712,800,000	(26,251,000)	770,310,867	-	(3,732,729,311)	(11,037,323,720)	2,428,573,007	1,362,551,524	2,490,324,994
July 1, 2008	(11,037,323,720)	514,100,000	(123,907,200)	324,550,987	-	3,921,060,985	(6,401,518,949)	2,818,765,807	1,752,688,525	3,205,012,383
July 2, 2008	(6,401,518,949)	14,400,000	(481,800,000)	19,795,215	-	(53,979)	(6,849,177,712)	2,351,365,807	1,285,234,546	2,757,353,619
July 3, 2008	(6,849,177,712)	9,343,222	(118,500,000)	-	(198,538,250)	(231,185)	(7,157,103,926)	2,242,209,029	977,308,333	2,449,427,405
July 4, 2008	(7,157,103,926)	-	-	-	(21,463,993)	14,968	(7,178,552,951)	2,242,209,029	955,844,340	2,427,963,412
July 7, 2008	(7,178,552,951)	56,200,943	(511,400,000)	21,051,480	-	(5,636)	(7,612,706,164)	1,787,009,971	500,639,646	1,993,810,199
July 8, 2008	(7,612,706,164)	413,302,229	(81,654,229)	-	(567,456,772)	(53,864)	(7,848,568,800)	2,118,657,971	413,302,229	1,757,947,563
July 9, 2008	(7,848,568,800)	834,951,131	(507,750)	47,820,870	-	(53,840)	(6,966,358,390)	2,953,101,352	1,247,691,769	2,640,157,973
July 10, 2008	(6,966,358,390)	326,400,000	(23,184,216)	65,089,961	-	(53,707)	(6,598,106,352)	3,256,317,136	1,550,853,846	3,008,410,011
July 11, 2008	(6,598,106,352)	655,000,005	(1,596,290)	-	(437,819,985)	(142,806)	(6,382,665,427)	3,909,720,851	1,766,294,771	3,223,850,936
July 14, 2008	(6,382,665,427)	-	(433,600,000)	169,098,123	-	(53,254)	(6,647,220,558)	3,476,120,851	1,332,641,517	2,959,295,805
July 15, 2008	(6,647,220,558)	76,000,000	(137,195,779)	-	(204,101,215)	(1,016,529)	(6,913,534,082)	3,414,925,072	1,066,327,993	2,692,982,281
July 16, 2008	(6,913,534,082)	-	(333,091,100)	5,284,357	-	(52,904)	(7,241,393,730)	3,081,833,972	733,183,989	2,365,122,633
July 17, 2008	(7,241,393,730)	220,600,000	(550,399,576)	77,676,678	-	(52,853)	(7,493,569,480)	2,752,034,396	403,331,560	2,112,946,883
July 18, 2008	(7,493,569,480)	234,110,125	(80,000,000)	-	(34,740,161)	(130,248)	(7,374,329,764)	2,906,144,521	522,571,276	2,232,186,599
July 21, 2008	(7,374,329,764)	25,340,000	(87,336,150)	374,435,175	-	124,022	(7,061,766,717)	2,844,148,371	460,575,126	2,544,625,624

Source: DBS, GCCM

Exhibit 15

LBSF Preference/New Value Analysis
Accounts 126200099 & 1262000911 Combined

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Quasi Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
July 22, 2008	(7,061,766,717)	10,800,000	(795,186,500)	500,600,553	-	(52,252)	(7,345,604,916)	2,059,761,871	10,800,000	2,260,787,425
July 23, 2008	(7,345,604,916)	436,800,000	(100,077,000)	-	(134,534,949)	(52,076)	(7,143,468,941)	2,396,484,871	436,800,000	2,462,923,400
July 24, 2008	(7,143,468,941)	60,900,000	(324,567,123)	11,673,884	-	(52,079)	(7,395,514,260)	2,132,817,748	173,080,797	2,210,878,081
July 25, 2008	(7,395,514,260)	460,300,000	(149,899,912)	-	(515,939,200)	(127,671)	(7,601,181,043)	2,443,217,836	460,300,000	2,005,211,298
July 28, 2008	(7,601,181,043)	320,000,000	(5,300,000)	-	(665,556,588)	(442,571)	(7,952,480,202)	2,757,917,836	320,000,000	1,653,912,140
July 29, 2008	(7,952,480,202)	57,970,270	(420,000,250)	1,640,567	-	(52,606)	(8,312,922,220)	2,395,887,856	57,970,270	1,293,470,121
July 30, 2008	(8,312,922,220)	399,338,260	(1,570,785)	-	(5,129,244,653)	(53,476)	(13,044,452,874)	2,793,655,331	399,338,260	399,338,260
July 31, 2008	(13,044,452,874)	386,112,284	-	-	(69,823,851)	1,031,157,836	(11,697,006,605)	3,179,767,616	715,626,693	715,626,693
August 1, 2008	(11,697,006,605)	113,300,000	(268,000)	-	(2,266,365,650)	(1,263,405,736)	(15,113,745,991)	3,292,799,616	113,300,000	113,300,000
August 4, 2008	(15,113,745,991)	70,500,000	(74,745,850)	-	(625,287)	(53,632)	(15,118,670,760)	3,288,553,766	108,375,231	108,375,231
August 5, 2008	(15,118,670,760)	407,671,743	(65,235,170)	-	(306,728,390)	(55,143)	(15,083,017,720)	3,630,990,338	407,671,743	407,671,743
August 6, 2008	(15,083,017,720)	336,600,000	(350,000,000)	220,452,593	-	(53,103)	(14,876,018,230)	3,617,590,338	394,218,640	614,671,233
August 7, 2008	(14,876,018,230)	89,736,433	(145,176,694)	-	(144,185,810)	(53,230)	(15,075,697,531)	3,562,150,077	194,539,339	414,991,932
August 8, 2008	(15,075,697,531)	188,200,000	(21,499,043)	-	(153,243,897)	(159,040)	(15,062,399,511)	3,728,851,034	207,837,359	428,289,951
August 11, 2008	(15,062,399,511)	239,916,757	(138,500,000)	517,939,443	-	(53,216)	(14,443,096,528)	3,830,267,791	309,200,899	1,047,592,935
August 12, 2008	(14,443,096,528)	509,777,225	(8,769,257)	-	(556,241,183)	(22,046)	(14,498,351,788)	4,331,275,759	509,777,225	992,337,675
August 13, 2008	(14,498,351,788)	36,200,000	(47,421,039)	65,618,513	-	(52,920)	(14,444,007,234)	4,320,054,720	498,503,266	1,046,682,228
August 14, 2008	(14,444,007,234)	203,058,988	(6,834)	246,638,686	-	(52,880)	(13,994,369,274)	4,523,106,874	701,502,540	1,496,320,188
August 15, 2008	(13,994,369,274)	500,000,000	(7,800,000)	-	(1,084,964,884)	5,871,589	(14,581,262,569)	5,015,306,874	500,000,000	903,555,304
August 18, 2008	(14,581,262,569)	583,802,500	(1,142,400)	-	(675,748,991)	(9,861,349)	(14,684,212,809)	5,597,966,974	583,802,500	800,605,064
August 19, 2008	(14,684,212,809)	71,000,000	(1,631,086)	-	(138,327,638)	(18,166)	(14,753,189,700)	5,667,335,888	514,825,610	731,628,174
August 20, 2008	(14,753,189,700)	16,260,549	(224,580,000)	363,307,293	-	(52,876)	(14,598,254,734)	5,459,016,437	306,453,282	886,563,140
August 21, 2008	(14,598,254,734)	947,525,000	(3,830,250)	-	(356,993,635)	(52,742)	(14,011,606,360)	6,402,711,187	947,525,000	1,473,211,513
August 22, 2008	(14,011,606,360)	96,429,881	(66,500,000)	230,521,403	-	3,480,218	(13,747,674,857)	6,432,641,068	977,454,881	1,733,662,798
August 25, 2008	(13,747,674,857)	97,100,000	(31,200,000)	44,881,670	-	(53,238)	(13,636,946,426)	6,498,541,068	1,043,301,643	1,844,391,229
August 26, 2008	(13,636,946,426)	44,898,884	(153,000,000)	86,665,081	-	(91,542)	(13,658,474,003)	6,390,439,952	935,108,985	1,822,863,652
August 27, 2008	(13,658,474,003)	598,700,000	(40,110,000)	-	(147,341,637)	103,946,292	(13,143,279,348)	6,949,029,952	1,346,357,348	2,234,112,015
August 28, 2008	(13,143,279,348)	23,080,000	(350,000,000)	729,001,292	-	1,261,571	(12,739,936,484)	6,622,109,952	1,019,437,348	2,636,193,307
August 29, 2008	(12,739,936,484)	136,841,031	(635,900,000)	376,074,580	-	(457,137,048)	(13,320,057,921)	6,123,050,983	136,841,031	2,056,071,870
August 31, 2008	(13,320,057,921)	-	-	-	-	2,008,785,040	(11,311,272,882)	6,123,050,983	136,841,031	2,056,071,870
September 1, 2008	(11,311,272,882)	-	-	97,969,273	-	(2,091,107,002)	(13,304,410,611)	6,123,050,983	136,841,031	2,154,041,143
September 2, 2008	(13,304,410,611)	94,358,527	(480,000,000)	-	(16,397,814)	(53,101)	(13,706,502,999)	5,737,409,510	94,358,527	1,751,948,755
September 3, 2008	(13,706,502,999)	470,600,000	(34,618,477)	-	(924,472,630)	(52,856)	(14,195,046,962)	6,173,391,034	470,600,000	1,263,404,792
September 4, 2008	(14,195,046,962)	396,800,000	(700,000)	324,434,485	-	(52,832)	(13,474,565,309)	6,569,491,034	866,647,168	1,983,886,445
September 5, 2008	(13,474,565,309)	138,800,000	(251,409,674)	-	(308,782,876)	(139,810)	(13,896,097,669)	6,456,881,359	445,114,808	1,562,354,085
September 8, 2008	(13,896,097,669)	490,000	(187,300,000)	-	(40,732,776)	(52,515)	(14,123,692,960)	6,270,071,359	217,519,517	1,334,758,794

Source: DBS, GCCM

Exhibit 15

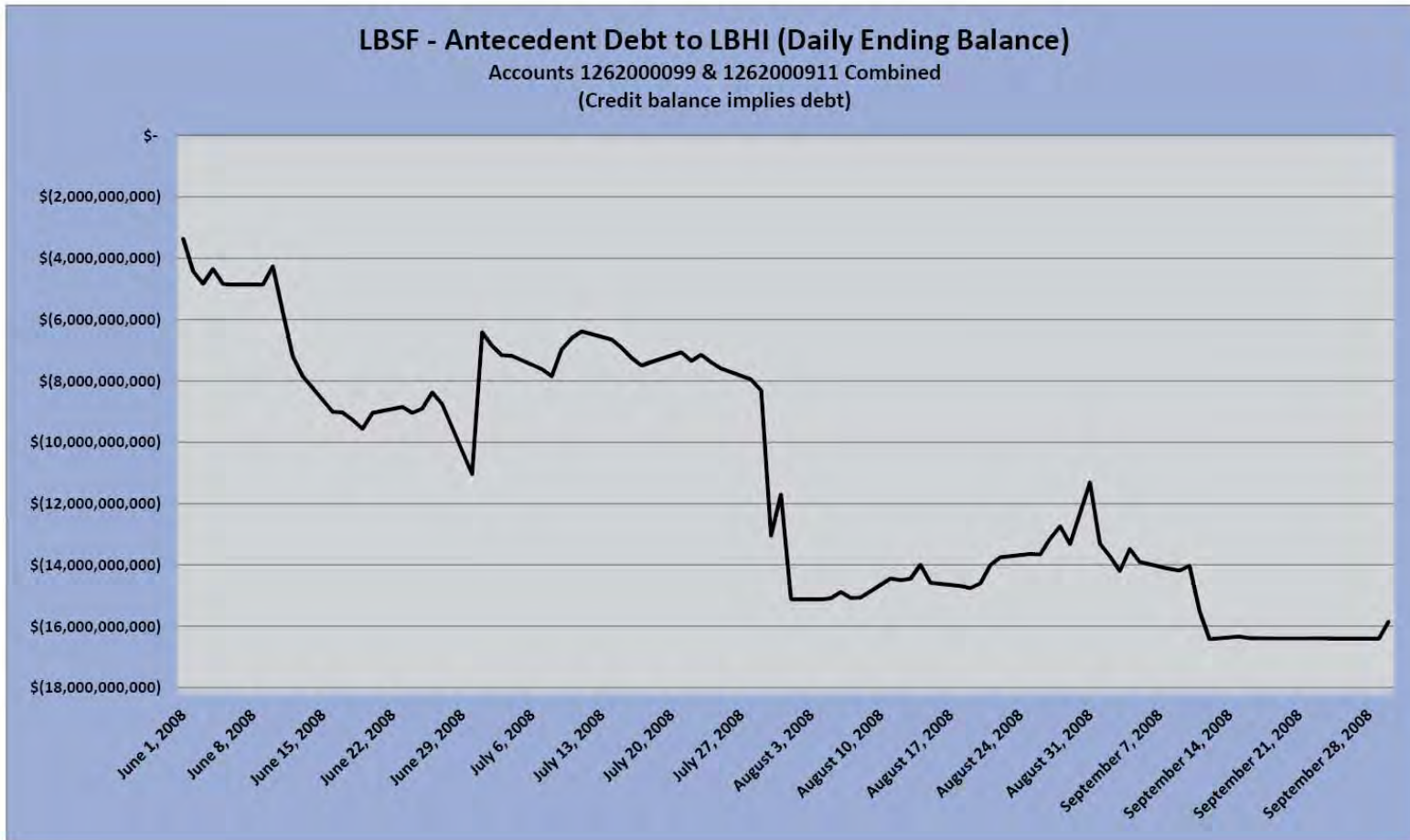
LBSF Preference/New Value Analysis
Accounts 1262000099 & 1262000911 Combined

Effective Date (A)	Antecedent Debt to LBHI - Beginning Balance (B)	Up-Funding (C)	Down-Funding (D)	Net Quasi Up- Funding (E)	Net Quasi Down- Funding (F)	Other Activity (G)	Antecedent Debt to LBHI - Ending Balance (H)	Model 1:	Model 2:	Model 3:
								Up-Funding Preference Net of Down-Funding New Value (I)	Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (J)	Up-Funding and Quasi Up-Funding Preference Net of Down-Funding, Net Quasi Down-Funding and Other Activity New Value (K)
September 9, 2008	(14,123,692,960)	77,600,000	(571,238,404)	435,234,894	-	(52,449)	(14,182,148,920)	5,776,432,955	77,600,000	1,276,302,834
September 10, 2008	(14,182,148,920)	115,000,000	(780,222,924)	821,906,674	-	(52,191)	(14,025,517,361)	5,111,210,031	115,000,000	1,432,934,393
September 11, 2008	(14,025,517,361)	110,210,113	(565,400,000)	-	(1,023,774,103)	(51,946)	(15,504,533,297)	4,656,020,144	110,210,113	110,210,113
September 12, 2008	(15,504,533,297)	707,000,000	(1,590,020,000)	-	(25,529,000)	(155,516)	(16,413,237,813)	3,773,000,144	707,000,000	707,000,000
September 15, 2008	(16,413,237,813)	-	-	82,188,951	-	(51,766)	(16,331,100,628)	3,773,000,144	706,948,234	769,137,185
September 16, 2008	(16,331,100,628)	-	-	-	(57,398,203)	(51,687)	(16,388,550,518)	3,773,000,144	649,498,344	731,687,295
September 17, 2008	(16,388,550,518)	-	-	-	(390,365)	(55,086)	(16,388,995,968)	3,773,000,144	649,052,894	731,241,845
September 18, 2008	(16,388,995,968)	-	-	-	(940,713)	(85,596)	(16,390,022,277)	3,773,000,144	648,026,584	730,215,536
September 19, 2008	(16,390,022,277)	-	-	-	(2,800,275)	(256,778)	(16,393,079,329)	3,773,000,144	644,969,532	727,158,483
September 22, 2008	(16,393,079,329)	-	-	-	(925,491)	(85,633)	(16,394,090,453)	3,773,000,144	643,958,409	726,147,360
September 23, 2008	(16,394,090,453)	-	-	-	(913,814)	(85,642)	(16,395,089,909)	3,773,000,144	642,958,953	725,147,904
September 24, 2008	(16,395,089,909)	-	-	-	(911,459)	(85,652)	(16,396,087,020)	3,773,000,144	641,961,842	724,150,793
September 25, 2008	(16,396,087,020)	-	-	-	(912,044)	(84,971)	(16,397,084,035)	3,773,000,144	640,964,827	723,153,778
September 26, 2008	(16,397,084,035)	-	-	-	(2,843,606)	(261,156)	(16,400,188,797)	3,773,000,144	637,860,065	720,049,016
September 29, 2008	(16,400,188,797)	-	-	-	(968,589)	(88,501)	(16,401,245,888)	3,773,000,144	636,802,974	718,991,925
September 30, 2008	(16,401,245,888)	-	-	-	(941,980)	567,445,634	(15,834,742,234)	3,773,000,144	635,860,994	718,049,945

LEGEND	
<u>Column</u>	<u>Description</u>
A	Date on which transactions were recorded per DBS.
B	Daily beginning balance of liability owed to LBHI for accounts 1262000099 and 1262000911 per DBS.
C	Total daily cash funding from LBCS to LBHI, as recorded in GCCM, relating to LBHI clearing bank accounts of real world cash (assumed to occur at end of day).
D	Total daily cash funding from LBHI to LBCS, as recorded in GCCM.
E	Net of all intercompany activity recorded in GCCM except for "funding," if this net activity results in a reduction of LBCS's intercompany liability to LBHI.
F	Net of all intercompany activity recorded in GCCM except for "funding," if this net activity results in an increase to LBCS's intercompany liability to LBHI.
G	Net of all journal entries affecting these intercompany accounts, other than those that are sourced to GCCM.
H	Daily ending balance of LBSF's liability to LBHI for accounts 1262000099 and 1262000911 per DBS.
I	Cumulative balance of potential preferences based on Up-Funding (C), net of new value based on Down-Funding (D). New value from Down-Funding is applied first, because Up-Funding is assumed to occur at the end of the day.
J	Cumulative balance of potential preferences based on Up-Funding (C), net of new value based on Down-Funding (D), Net Quasi Down-Funding (F), and "Other" activity (G) where net "Other" activity is a credit. Adjustments were made to certain beginning- and end-of-month "Other" journal entries for purposes of this balance. Potential new value from Columns (D), (F) and (G) are netted and applied first, as they are assumed to occur throughout the day. The potential preference from Up-Funding (C) is assumed to occur at the end of the day.
K	Cumulative balance of potential preferences based on Up-Funding (C) and Net Quasi Up-Funding (E), net of new value based on Down-Funding (D), Net Quasi Down-Funding (F), and "Other" activity (G) where net "Other" activity is a credit. Adjustments were made to certain beginning- and end-of-month "Other" journal entries for purposes of this balance. The potential preference from Net Quasi Up-Funding (E) is netted with all potential new value from Columns (D), (F) and (G) and applied together, as they are assumed to occur throughout the day. The potential preference from Up-Funding (C) is applied last, as it is assumed to occur at the end of the day.

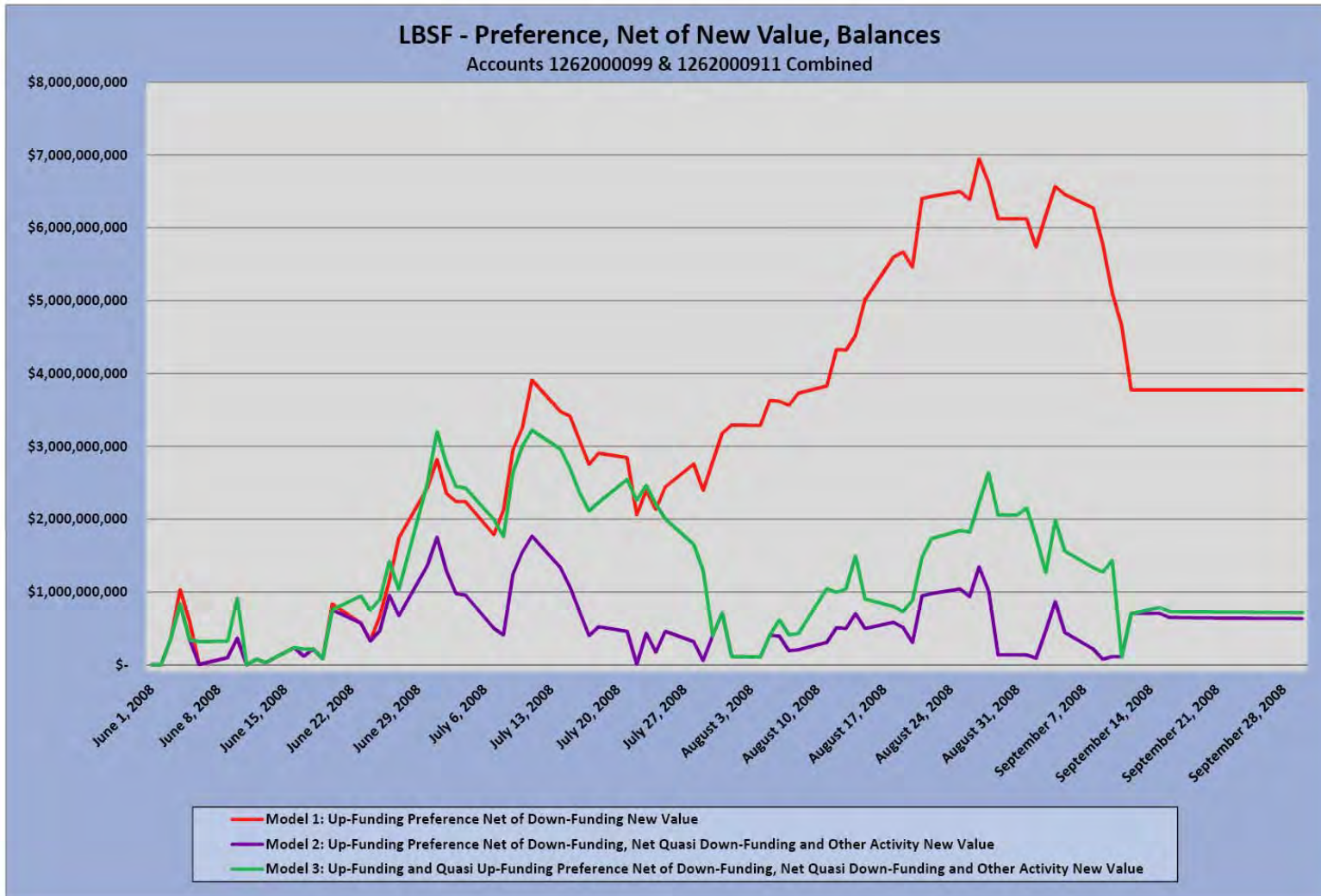
Source: DBS, GCCM

Exhibit 16



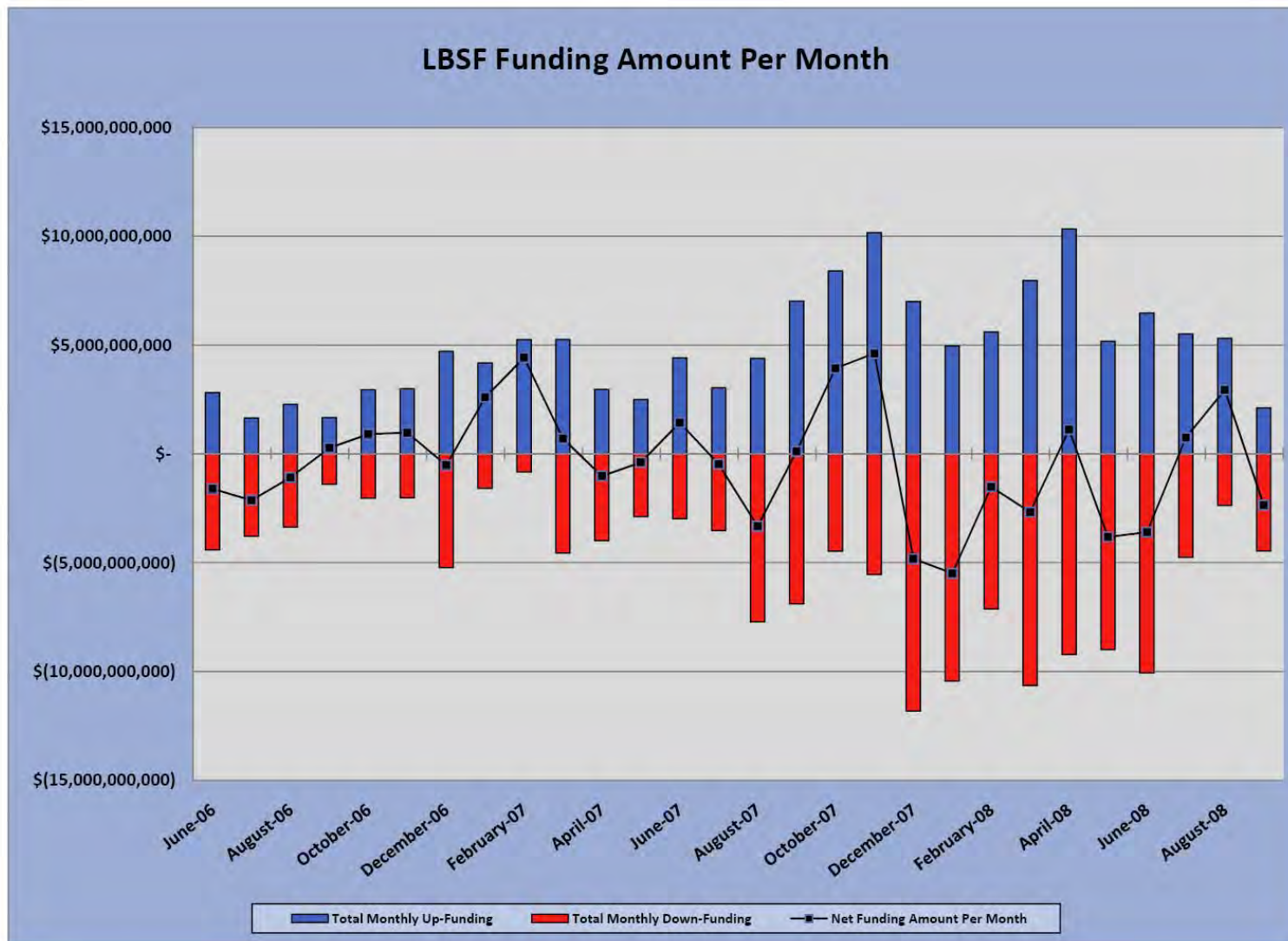
Source: DBS

Exhibit 17



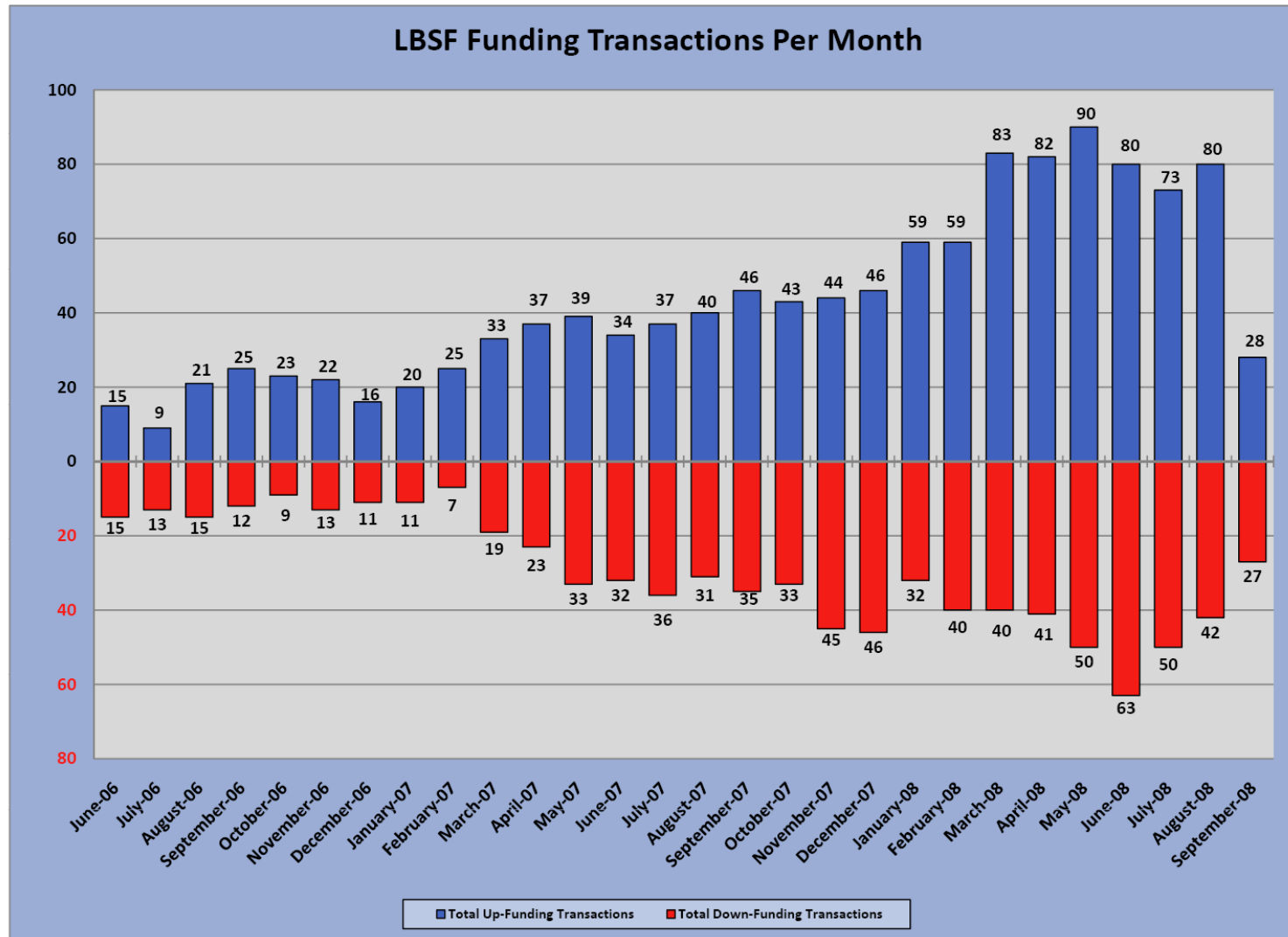
Source: DBS, GCCM

Exhibit 18



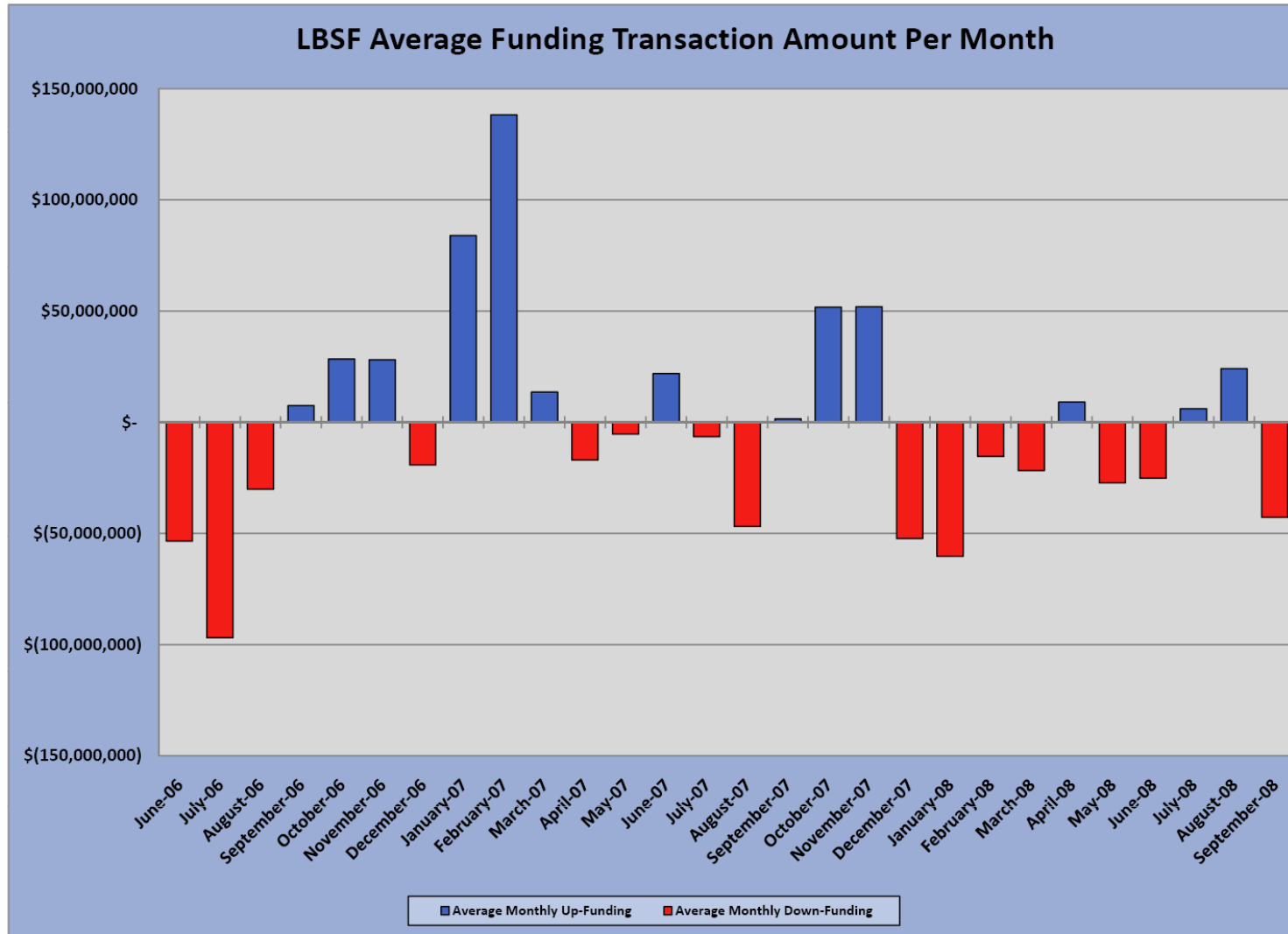
Source: GCCM

Exhibit 19



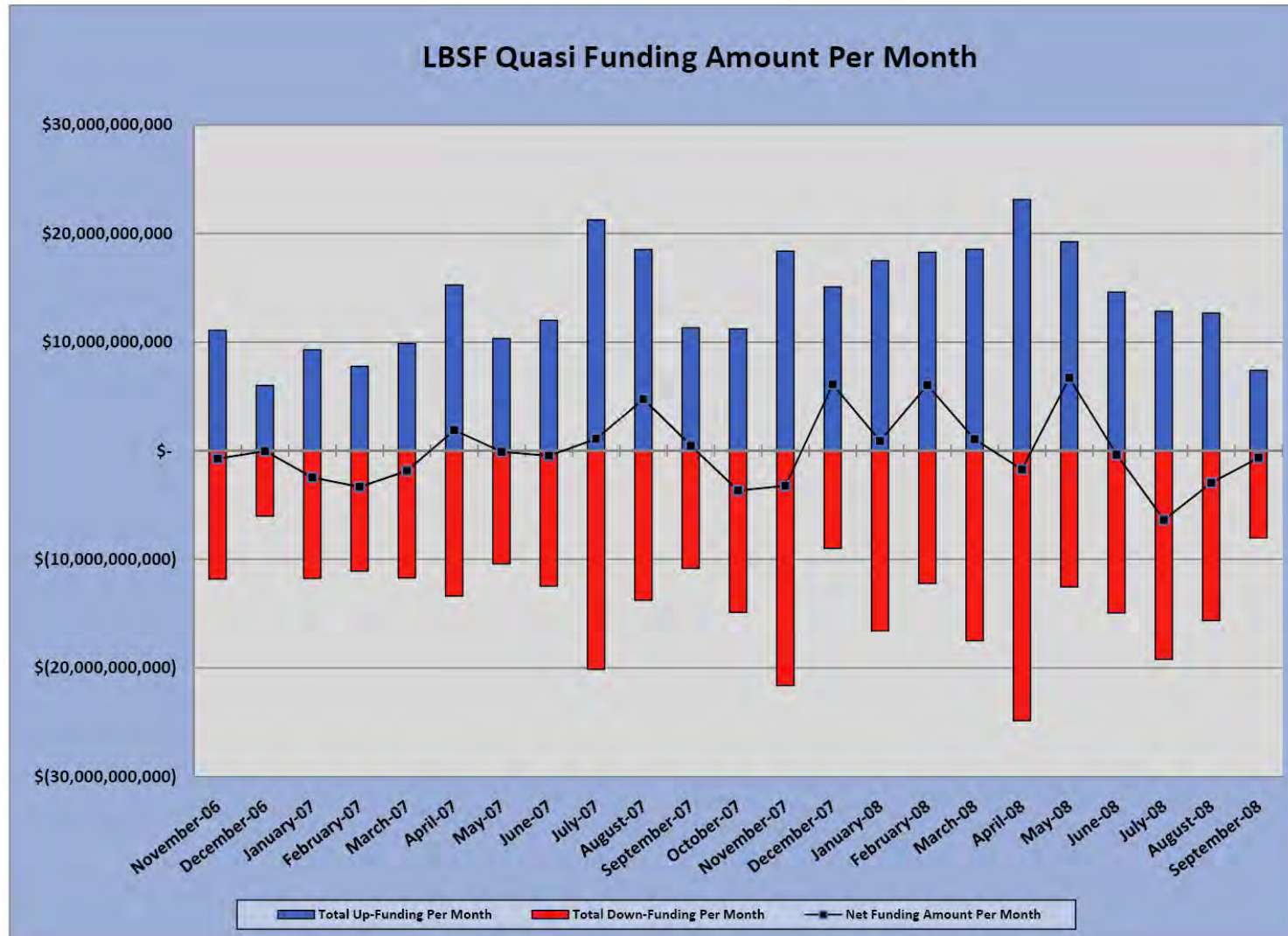
Source: GCCM

Exhibit 20



Source: GCCM

Exhibit 21



Source: DBS, GCCM

Exhibit 22

Trust 89 Transactions Involving LCPI and LBHI				
LCPI "Repos"/LBHI "Reverse Repos" Booked or Settled on or after 6/1/2008				
	Open Date	Initial Close Date	Final Close Date ¹	Amount ²
1	5/30/2008	12/31/2014	6/6/2008	300,000,000
2	5/30/2008	1/1/1900	6/2/2008	2,938,960,623
3	6/2/2008	6/2/2008	6/2/2008	841,778,872
4	6/2/2008	1/1/1900	6/3/2008	786,374,808
5	6/3/2008	1/1/1900	6/4/2008	725,793,969
6	6/4/2008	1/1/1900	6/9/2008	699,135,889
7	6/6/2008	12/31/2014	6/13/2008	300,000,000
8	6/9/2008	1/1/1900	6/10/2008	867,774,312
9	6/10/2008	1/1/1900	6/13/2008	696,023,738
10	6/13/2008	1/1/1900	6/16/2008	1,326,245,578
11	6/13/2008	12/31/2014	6/20/2008	300,000,000
12	6/16/2008	1/1/1900	6/17/2008	1,243,871,108
13	6/17/2008	1/1/1900	6/18/2008	1,338,871,108
14	6/18/2008	1/1/1900	6/19/2008	1,300,997,737
15	6/19/2008	1/1/1900	6/20/2008	1,254,929,214
16	6/20/2008	12/31/2014	6/27/2008	300,000,000
17	6/20/2008	1/1/1900	6/23/2008	1,226,011,048
18	6/23/2008	6/23/2008	6/23/2008	1,126,876,809
19	6/23/2008	1/1/1900	6/24/2008	1,112,474,049
20	6/24/2008	1/1/1900	6/25/2008	1,153,288,127
21	6/25/2008	1/1/1900	6/26/2008	1,194,322,800
22	6/26/2008	1/1/1900	6/27/2008	1,303,122,800
23	6/27/2008	12/31/2014	7/7/2008	300,000,000
24	6/27/2008	1/1/1900	6/30/2008	1,356,922,800
25	6/30/2008	6/30/2008	6/30/2008	1,221,851,478
26	6/30/2008	1/1/1900	7/1/2008	849,543,883
27	7/1/2008	1/1/1900	7/2/2008	941,719,432
28	7/2/2008	7/2/2008	7/2/2008	1,567,528,496
29	7/2/2008	1/1/1900	7/3/2008	1,555,968,034
30	7/3/2008	7/3/2008	7/3/2008	752,827,004
31	7/3/2008	1/1/1900	7/7/2008	779,496,229
32	7/7/2008	7/7/2008	7/7/2008	781,382,305
33	7/7/2008	12/31/2014	7/11/2008	300,000,000
34	7/7/2008	7/7/2008	7/7/2008	799,110,802
35	7/7/2008	1/1/1900	7/8/2008	780,554,605
36	7/8/2008	7/8/2008	7/8/2008	706,088,105
37	7/8/2008	1/1/1900	7/9/2008	702,387,291
38	7/9/2008	7/9/2008	7/9/2008	726,926,210
39	7/9/2008	1/1/1900	7/10/2008	890,771,912
40	7/10/2008	7/10/2008	7/10/2008	897,898,528
41	7/10/2008	1/1/1900	7/11/2008	869,089,633
42	7/11/2008	12/31/2014	7/18/2008	300,000,000
43	7/11/2008	7/11/2008	7/11/2008	1,015,345,387
44	7/11/2008	1/1/1900	7/14/2008	983,572,457
45	7/14/2008	1/1/1900	7/15/2008	992,449,015
46	7/15/2008	7/15/2008	7/15/2008	988,177,615
47	7/15/2008	1/1/1900	7/16/2008	1,079,438,760
48	7/16/2008	7/16/2008	7/16/2008	853,158,226

¹ "Open" trades were not settled at the time of LCPI's bankruptcy.

² Negative amounts represent reverse repos from LCPI's perspective and repos from LBHI's perspective.

Source: APB

Trust 89 Transactions Involving LCPI and LBHI				
LCPI "Repos"/LBHI "Reverse Repos" Booked or Settled on or after 6/1/2008				
Open Date	Initial Close Date	Final Close Date ¹	Amount ²	
49	7/16/2008	1/1/1900	7/17/2008	946,986,943
50	7/17/2008	7/17/2008	7/17/2008	946,427,069
51	7/17/2008	1/1/1900	7/18/2008	938,627,069
52	7/18/2008	12/31/2014	7/25/2008	300,000,000
53	7/18/2008	1/1/1900	7/21/2008	990,009,192
54	7/21/2008	1/1/1900	7/22/2008	885,080,392
55	7/22/2008	7/22/2008	7/22/2008	892,806,455
56	7/22/2008	1/1/1900	7/23/2008	866,668,780
57	7/23/2008	7/23/2008	7/23/2008	863,093,167
58	7/23/2008	1/1/1900	7/24/2008	857,928,547
59	7/24/2008	7/24/2008	7/24/2008	846,874,384
60	7/24/2008	1/1/1900	7/25/2008	908,507,257
61	7/25/2008	12/31/2014	8/1/2008	300,000,000
62	7/25/2008	7/25/2008	7/25/2008	794,253,257
63	7/25/2008	7/25/2008	7/25/2008	984,253,257
64	7/25/2008	1/1/1900	7/28/2008	967,602,385
65	7/28/2008	7/28/2008	7/28/2008	959,614,613
66	7/28/2008	1/1/1900	7/29/2008	934,859,965
67	7/29/2008	7/29/2008	7/29/2008	769,646,576
68	7/29/2008	1/1/1900	7/30/2008	861,419,771
69	7/30/2008	7/30/2008	7/30/2008	852,924,720
70	7/30/2008	1/1/1900	7/31/2008	862,624,720
71	7/31/2008	7/31/2008	7/31/2008	822,239,081
72	7/31/2008	1/1/1900	8/1/2008	785,009,777
73	8/1/2008	1/1/1900	8/4/2008	775,117,606
74	8/4/2008	8/4/2008	8/4/2008	730,781,903
75	8/4/2008	1/1/1900	8/5/2008	759,850,969
76	8/5/2008	1/1/1900	8/6/2008	771,151,369
77	8/6/2008	1/1/1900	8/7/2008	786,274,929
78	8/7/2008	8/7/2008	8/7/2008	797,951,683
79	8/7/2008	1/1/1900	8/8/2008	811,030,665
80	8/8/2008	8/8/2008	8/8/2008	(4,986,373,203)
81	8/8/2008	8/8/2008	8/8/2008	(4,961,872,983)
82	8/8/2008	1/1/1900	8/11/2008	(5,010,873,423)
83	8/11/2008	8/11/2008	8/11/2008	(7,012,570,840)
84	8/11/2008	1/1/1900	8/12/2008	(7,048,742,051)
85	8/12/2008	8/12/2008	8/12/2008	(5,221,232,175)
86	8/12/2008	1/1/1900	8/13/2008	(5,242,377,579)
87	8/13/2008	8/13/2008	8/13/2008	(5,342,801,253)
88	8/13/2008	1/1/1900	8/14/2008	(5,338,314,825)
89	8/14/2008	1/1/1900	8/15/2008	(5,269,071,543)
90	8/15/2008	8/15/2008	8/15/2008	(7,260,212,232)
91	8/15/2008	8/15/2008	8/15/2008	(5,269,071,543)
92	8/15/2008	12/31/2014	8/22/2008	330,000,000
93	8/15/2008	1/1/1900	8/18/2008	(4,667,613,289)
94	8/18/2008	8/18/2008	8/18/2008	(1,672,558,284)
95	8/18/2008	1/1/1900	8/19/2008	(2,628,597,544)
96	8/19/2008	8/19/2008	8/19/2008	(2,692,731,028)

¹"Open" trades were not settled at the time of LCPI's bankruptcy.

²Negative amounts represent reverse repos from LCPI's perspective and repos from LBHI's perspective.

Source: APB

Exhibit 22

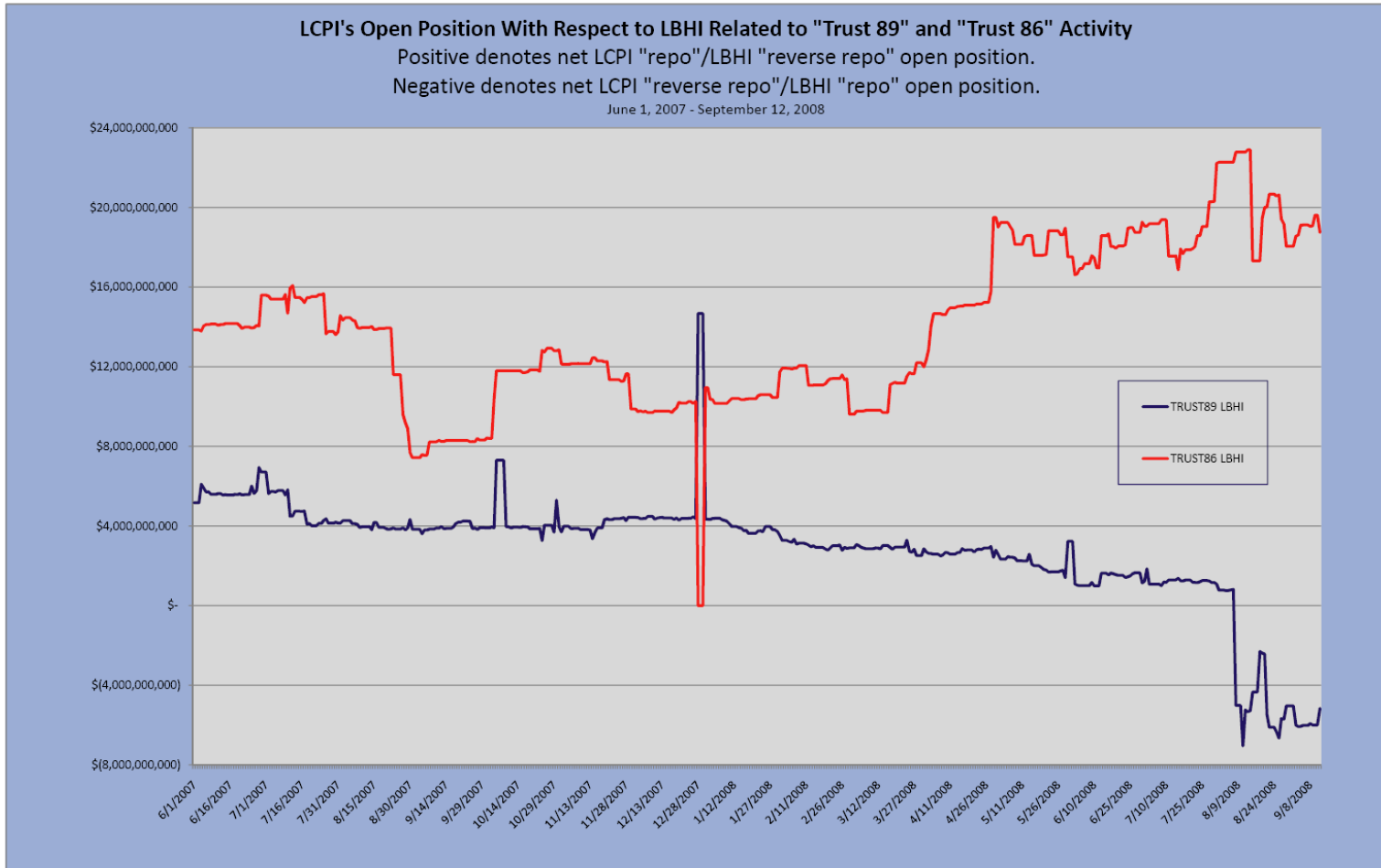
Trust 89 Transactions Involving LCPI and LBHI				
LCPI "Repos"/LBHI "Reverse Repos" Booked or Settled on or after 6/1/2008				
Open Date	Initial Close Date	Final Close Date ¹	Amount ²	
97	8/19/2008	1/1/1900	8/20/2008	(2,707,731,028)
98	8/20/2008	8/20/2008	8/20/2008	(2,729,876,604)
99	8/20/2008	1/1/1900	8/21/2008	(2,757,058,470)
100	8/21/2008	8/21/2008	8/21/2008	(5,802,876,232)
101	8/21/2008	1/1/1900	8/22/2008	(5,804,624,877)
102	8/22/2008	12/31/2014	8/26/2008	330,000,000
103	8/22/2008	1/1/1900	8/25/2008	(6,437,936,402)
104	8/25/2008	8/25/2008	8/25/2008	(6,624,338,252)
105	8/25/2008	1/1/1900	8/26/2008	(6,694,218,289)
106	8/26/2008	12/31/2014	8/29/2008	168,000,000
107	8/26/2008	8/26/2008	8/26/2008	(6,725,781,055)
108	8/26/2008	1/1/1900	8/27/2008	(6,828,065,692)
109	8/27/2008	8/27/2008	8/27/2008	(6,101,036,204)
110	8/27/2008	1/1/1900	8/28/2008	(5,846,948,325)
111	8/28/2008	8/28/2008	8/28/2008	(5,816,798,320)
112	8/28/2008	1/1/1900	8/29/2008	(5,868,398,320)
113	8/29/2008	8/29/2008	8/29/2008	(5,988,466,627)
114	8/29/2008	12/31/2014	9/5/2008	168,000,000
115	8/29/2008	1/1/1900	9/2/2008	(5,211,169,446)
116	9/2/2008	9/2/2008	9/2/2008	(5,666,529,578)
117	9/2/2008	9/2/2008	9/2/2008	(5,162,370,338)
118	9/2/2008	1/1/1900	9/3/2008	(6,170,688,818)
119	9/3/2008	9/3/2008	9/3/2008	(6,162,421,690)
120	9/3/2008	1/1/1900	9/4/2008	(6,250,264,924)
121	9/4/2008	9/4/2008	9/4/2008	(6,235,093,085)
122	9/4/2008	1/1/1900	9/5/2008	(6,231,694,923)
123	9/5/2008	12/31/2014	9/12/2008	168,000,000
124	9/5/2008	9/5/2008	9/5/2008	(6,219,066,921)
125	9/5/2008	1/1/1900	9/8/2008	(6,184,091,163)
126	9/8/2008	9/8/2008	9/8/2008	(6,127,395,787)
127	9/8/2008	1/1/1900	9/9/2008	(6,091,552,190)
128	9/9/2008	9/9/2008	9/9/2008	(6,131,247,565)
129	9/9/2008	1/1/1900	9/10/2008	(6,162,476,420)
130	9/10/2008	9/10/2008	9/10/2008	(6,179,133,514)
131	9/10/2008	1/1/1900	9/11/2008	(6,175,909,618)
132	9/11/2008	9/11/2008	9/11/2008	(6,213,494,898)
133	9/11/2008	9/11/2008	9/11/2008	(6,225,404,330)
134	9/11/2008	1/1/1900	9/12/2008	(6,165,653,753)
135	9/12/2008	12/31/2014	12/31/2014	168,000,000
136	9/12/2008	Open	Open	(5,324,640,886)

¹"Open" trades were not settled at the time of LCPI's bankruptcy.

²Negative amounts represent reverse repos from LCPI's perspective and repos from LBHI's perspective.

Source: APB

Exhibit 23



Note: On December 28, 2007, the Trust 89 open position briefly spiked, while the Trust 86 open position dropped the same amount down to zero. A Trust 86 repo in the amount of \$10.255 billion apparently was mis-labeled as Trust 89.

Source: APB

Exhibit 24

Trust 86 Trades Involving LCPI and LBHI				
LCPI "Repos"/LBHI "Reverse Repos" Booked or Settled on or after 6/1/2008				
	Open Date	Initial Close Date	Final Close Date ¹	Amount ²
1	5/30/2008	12/30/2008	6/17/2008	\$ 1,550,000,000
2	5/30/2008	6/2/2008	6/2/2008	14,443,000,000
3	5/30/2008	12/30/2008	6/9/2008	1,529,050,000
4	6/2/2008	6/3/2008	6/3/2008	13,493,000,000
5	6/2/2008	6/3/2008	6/3/2008	40,000,000
6	6/3/2008	6/4/2008	6/4/2008	13,600,000,000
7	6/4/2008	6/5/2008	6/5/2008	13,850,000,000
8	6/5/2008	6/6/2008	6/6/2008	13,850,000,000
9	6/6/2008	6/9/2008	6/9/2008	14,100,000,000
10	6/9/2008	6/10/2008	6/10/2008	14,100,000,000
11	6/9/2008	12/30/2008	6/11/2008	1,929,050,000
12	6/10/2008	12/30/2008	6/30/2008	1,050,000,000
13	6/10/2008	6/11/2008	6/11/2008	12,950,000,000
14	6/11/2008	6/11/2008	6/11/2008	1,462,000,000
15	6/11/2008	6/11/2008	6/11/2008	1,272,000,000
16	6/11/2008	6/12/2008	6/12/2008	13,100,000,000
17	6/11/2008	12/30/2008	6/17/2008	1,272,050,000
18	6/11/2008	6/12/2008	6/12/2008	12,000,000
19	6/12/2008	6/13/2008	6/13/2008	13,100,000,000
20	6/13/2008	6/16/2008	6/16/2008	14,709,000,000
21	6/16/2008	6/17/2008	6/17/2008	14,709,000,000
22	6/16/2008	6/17/2008	6/17/2008	104,000,000
23	6/17/2008	12/30/2008	6/30/2008	1,236,500,000
24	6/17/2008	12/30/2008	6/30/2008	1,063,050,000
25	6/17/2008	6/18/2008	6/18/2008	14,815,000,000
26	6/17/2008	6/18/2008	6/18/2008	(120,000,000)
27	6/18/2008	6/19/2008	6/19/2008	14,715,000,000
28	6/18/2008	6/19/2008	6/19/2008	(24,000,000)
29	6/19/2008	6/20/2008	6/20/2008	14,715,000,000
30	6/19/2008	6/20/2008	6/20/2008	(104,000,000)
31	6/20/2008	6/23/2008	6/23/2008	14,715,000,000
32	6/23/2008	6/24/2008	6/24/2008	14,665,000,000
33	6/23/2008	6/24/2008	6/24/2008	110,000,000
34	6/24/2008	6/25/2008	6/25/2008	15,610,000,000
35	6/25/2008	6/26/2008	6/26/2008	15,610,000,000
36	6/25/2008	6/26/2008	6/26/2008	44,000,000
37	6/26/2008	6/27/2008	6/27/2008	15,650,000,000
38	6/27/2008	6/30/2008	6/30/2008	15,400,000,000
39	6/30/2008	7/1/2008	7/1/2008	15,847,000,000
40	6/30/2008	7/1/2008	7/1/2008	70,000,000
41	6/30/2008	12/30/2008	7/11/2008	1,063,050,000
42	6/30/2008	12/30/2008	7/15/2008	1,236,500,000
43	6/30/2008	12/30/2008	7/11/2008	1,050,000,000
44	7/1/2008	7/2/2008	7/2/2008	15,947,000,000
45	7/1/2008	7/2/2008	7/2/2008	(215,000,000)
46	7/2/2008	7/3/2008	7/3/2008	15,837,000,000
47	7/2/2008	7/3/2008	7/3/2008	(112,000,000)
48	7/3/2008	7/7/2008	7/7/2008	15,837,000,000
49	7/7/2008	7/8/2008	7/8/2008	15,837,000,000

¹ "Open" trades were not settled at the time of LCPI's bankruptcy.

² Negative amounts represent reverse repos from LCPI's perspective and repos from LBHI's perspective.

Source: APB

Exhibit 24

Trust 86 Trades Involving LCPI and LBHI				
LCPI "Repos"/LBHI "Reverse Repos" Booked or Settled on or after 6/1/2008				
	Open Date	Initial Close Date	Final Close Date ¹	Amount ²
50	7/7/2008	7/8/2008	7/8/2008	18,000,000
51	7/8/2008	7/9/2008	7/9/2008	16,037,000,000
52	7/9/2008	7/10/2008	7/10/2008	16,037,000,000
53	7/10/2008	7/11/2008	7/11/2008	16,037,000,000
54	7/11/2008	12/30/2008	7/16/2008	84,650,000
55	7/11/2008	12/30/2008	7/31/2008	101,695,000
56	7/11/2008	7/14/2008	7/14/2008	16,037,000,000
57	7/11/2008	7/14/2008	7/14/2008	100,000,000
58	7/14/2008	7/15/2008	7/15/2008	16,150,000,000
59	7/15/2008	12/30/2008	7/21/2008	691,500,000
60	7/15/2008	7/16/2008	7/16/2008	16,150,000,000
61	7/15/2008	7/16/2008	7/16/2008	(156,000,000)
62	7/16/2008	12/30/2008	7/31/2008	1,080,650,000
63	7/16/2008	7/17/2008	7/17/2008	16,050,000,000
64	7/17/2008	7/18/2008	7/18/2008	15,950,000,000
65	7/17/2008	7/18/2008	7/18/2008	(138,000,000)
66	7/18/2008	7/21/2008	7/21/2008	15,850,000,000
67	7/18/2008	7/21/2008	7/21/2008	148,000,000
68	7/21/2008	7/22/2008	7/22/2008	15,665,000,000
69	7/21/2008	7/21/2008	7/21/2008	361,500,000
70	7/21/2008	12/30/2008	7/23/2008	1,021,500,000
71	7/21/2008	7/22/2008	7/22/2008	72,000,000
72	7/22/2008	7/23/2008	7/23/2008	15,665,000,000
73	7/22/2008	7/23/2008	7/23/2008	170,000,000
74	7/23/2008	12/30/2008	7/31/2008	1,571,500,000
75	7/23/2008	7/24/2008	7/24/2008	15,835,000,000
76	7/24/2008	7/25/2008	7/25/2008	15,835,000,000
77	7/25/2008	7/28/2008	7/28/2008	15,835,000,000
78	7/25/2008	12/30/2008	7/28/2008	450,900,000
79	7/28/2008	7/29/2008	7/29/2008	15,685,000,000
80	7/28/2008	12/30/2008	7/29/2008	1,803,500,000
81	7/28/2008	7/29/2008	7/29/2008	46,000,000
82	7/29/2008	12/30/2008	8/15/2008	1,352,600,000
83	7/29/2008	7/30/2008	7/30/2008	16,185,900,000
84	7/30/2008	7/31/2008	7/31/2008	16,185,900,000
85	7/31/2008	7/31/2008	7/31/2008	2,116,500,000
86	7/31/2008	7/31/2008	7/31/2008	1,050,000,000
87	7/31/2008	7/31/2008	7/31/2008	1,977,107,722
88	7/31/2008	12/30/2008	8/15/2008	1,050,000,000
89	7/31/2008	12/30/2008	8/15/2008	1,977,107,722
90	7/31/2008	12/30/2008	8/19/2008	2,116,500,000
91	7/31/2008	8/1/2008	8/1/2008	15,985,900,000
92	7/31/2008	8/1/2008	8/1/2008	(259,000,000)
93	8/1/2008	8/4/2008	8/4/2008	15,785,900,000
94	8/4/2008	8/5/2008	8/5/2008	15,785,900,000
95	8/5/2008	8/6/2008	8/6/2008	15,785,900,000
96	8/6/2008	8/7/2008	8/7/2008	15,785,900,000
97	8/7/2008	8/8/2008	8/8/2008	15,785,900,000
98	8/8/2008	8/11/2008	8/11/2008	16,285,000,000
99	8/11/2008	8/12/2008	8/12/2008	16,285,000,000

¹ "Open" trades were not settled at the time of LCPI's bankruptcy.

² Negative amounts represent reverse repos from LCPI's perspective and repos from LBHI's perspective.

Source: APB

Exhibit 24

Trust 86 Trades Involving LCPI and LBHI				
LCPI "Repos"/LBHI "Reverse Repos" Booked or Settled on or after 6/1/2008				
	Open Date	Initial Close Date	Final Close Date ¹	Amount ²
100	8/12/2008	8/13/2008	8/13/2008	16,285,000,000
101	8/13/2008	8/14/2008	8/14/2008	16,385,000,000
102	8/13/2008	8/14/2008	8/14/2008	19,000,000
103	8/14/2008	8/15/2008	8/15/2008	16,605,000,000
104	8/14/2008	8/15/2008	8/15/2008	(200,000,000)
105	8/15/2008	8/18/2008	8/18/2008	14,170,000,000
106	8/15/2008	8/18/2008	8/18/2008	(1,200,000,000)
107	8/15/2008	12/30/2008	8/19/2008	948,058,420
108	8/15/2008	12/30/2008	8/19/2008	1,285,151,757
109	8/18/2008	8/19/2008	8/19/2008	12,970,000,000
110	8/19/2008	12/30/2008	8/27/2008	1,862,057,638
111	8/19/2008	12/30/2008	8/29/2008	924,021,657
112	8/19/2008	12/30/2008	9/3/2008	1,285,328,304
113	8/19/2008	12/30/2008	8/29/2008	773,041,393
114	8/19/2008	8/20/2008	8/20/2008	14,621,758,730
115	8/20/2008	8/21/2008	8/21/2008	15,072,000,000
116	8/20/2008	8/21/2008	8/21/2008	85,000,000
117	8/21/2008	8/22/2008	8/22/2008	15,158,000,000
118	8/21/2008	8/22/2008	8/22/2008	39,000,000
119	8/22/2008	8/25/2008	8/25/2008	15,835,000,000
120	8/25/2008	8/26/2008	8/26/2008	15,735,000,000
121	8/26/2008	8/27/2008	8/27/2008	15,735,000,000
122	8/26/2008	8/27/2008	8/27/2008	64,000,000
123	8/27/2008	8/27/2008	8/27/2008	1,662,909,948
124	8/27/2008	12/30/2008	8/29/2008	486,705,350
125	8/27/2008	8/28/2008	8/28/2008	15,955,000,000
126	8/28/2008	8/29/2008	8/29/2008	16,155,000,000
127	8/28/2008	8/29/2008	8/29/2008	(450,000,000)
128	8/29/2008	12/30/2008	open	486,705,350
129	8/29/2008	12/30/2008	open	924,021,657
130	8/29/2008	12/30/2008	open	773,041,393
131	8/29/2008	9/2/2008	9/2/2008	14,702,000,000
132	8/29/2008	9/2/2008	9/2/2008	(113,000,000)
133	9/2/2008	9/3/2008	9/3/2008	15,072,000,000
134	9/2/2008	9/3/2008	9/3/2008	24,000,000
135	9/3/2008	12/30/2008	open	1,285,328,304
136	9/3/2008	9/4/2008	9/4/2008	15,100,000,000
137	9/3/2008	9/4/2008	9/4/2008	52,000,000
138	9/4/2008	9/5/2008	9/5/2008	15,650,000,000
139	9/5/2008	9/8/2008	9/8/2008	15,640,412,616
140	9/5/2008	9/8/2008	9/8/2008	20,587,384
141	9/8/2008	9/9/2008	9/9/2008	15,665,000,000
142	9/8/2008	9/9/2008	9/9/2008	(80,000,000)
143	9/9/2008	9/10/2008	9/10/2008	15,586,000,000
144	9/9/2008	9/10/2008	9/10/2008	40,000,000
145	9/10/2008	9/11/2008	9/11/2008	16,126,000,000
146	9/10/2008	9/11/2008	9/11/2008	16,000,000
147	9/11/2008	9/12/2008	9/12/2008	16,150,000,000
148	9/12/2008	9/15/2008	9/15/2008	15,277,000,000

¹ "Open" trades were not settled at the time of LCPI's bankruptcy.

² Negative amounts represent reverse repos from LCPI's perspective and repos from LBHI's perspective.

Source: APB

Exhibit 25

\$900 Million Payments on August 28 & 29, 2008

	GCCM ID	Date	Sender			Recipient			Notes
			Party	Bank	Account No.	Party	Bank	Account No.	
1	D00005419207	August 28, 2008	LBI	JPM Chase	66010373	LBHI	Citibank	40615202	Three separate payments all part of a \$3.343 billion transaction entered into TWS, for which the purpose is unknown. Payments were broken into three \$900 million and one \$365 million payments.
2	D00005419208	August 28, 2008	LBI	JPM Chase	66010373	LBHI	Citibank	40615202	
3	D00005419209	August 28, 2008	LBI	JPM Chase	66010373	LBHI	Citibank	40615202	
4	D00005420918	August 28, 2008	LBI	Unknown	Unknown	LBHI	Citibank	40615202	This payment is in reference to a transaction in the principal amount of \$850 million, entered into TWS on August 27 to close on August 28. GCCM records reference United Missouri Bank as the Customer's Agent Bank. The purpose of the transaction is unknown.
5	D00005421322	August 28, 2008	LBI	JPM Chase	66027098	LBI	Citibank	40615624	The purpose of this payment is unknown.
6	D00005421323	August 28, 2008	LBI	JPM Chase	66027098	LBI	Citibank	40615624	The purpose of this payment is unknown.
7	D00005421324	August 28, 2008	LBI	JPM Chase	66027098	LBI	Citibank	40615624	The purpose of this payment is unknown.
8	D00005421325	August 28, 2008	LBI	JPM Chase	66027098	LBI	Citibank	40615624	The purpose of this payment is unknown.
9	D00005438075	August 29, 2008	LBI	JPM Chase	66027098	LBI	Citibank	40615624	The purpose of this payment is unknown.
10	D00005438076	August 29, 2008	LCPI	Citibank	40615659	LBHI	Citibank	40615202	Part of a net cash settlement related to LCPI Trust 86 transactions with LBHI. LCPI entered into a Trust 86 "repo" for \$16.155 billion and a "reverse repo" for \$450 million. On 8/29, both of those positions closed, and LCPI entered into a new Trust 86 for \$14.702 million. The net amount of these transactions, factoring interest on the positions closed, amounted to a net payment of \$1,004,065,216 from LCPI to LBHI. LCPI made two payments, one for \$900 million and one for \$104,065,216, in settlement of these positions.

Source: GCCM, TWS, MTS

Exhibit 26

**Trust Receipts and Counterparties for trades in which
LCPI is either the Primary Entity or the Counterparty in MTS**

June 1, 2008 to September 30, 2008

1COR	TPWLCOMPR
FENWAY FUNDING LLC TENSOR OPPORTUNITY LTD	BARCLAYS GBL INVESTORS NA DANSKE BANK A/S LND BRANCH LEHMAN RE LTD STATE STREET GLOBAL ADVRS SWEDBANK COMMERCIAL
1CSA	TPWLRESPR
FENWAY FUNDING LLC	DANSKE BANK A/S LND BRANCH LEHMAN RE LTD SSGA FC1B WHOLE LOAN STATE STREET GLOBAL ADVRS
1RWL	TRUST39
FAR EAST NATIONAL BANK FARMERS & MERCHANTS BANK FID DMFMM/NEWBURY ST TRUST FID FCR/PHILLIPS ST TRUST: FID FICPDOM/COLCHESTER ST FID FICPMM/COLCHESTER ST FID FMMTRET/MMKT TRUST: FID ICASH/PYRAMIS INST, EMP FID MMCF/GARRISON ST TRUST: FID MMDT/MASS MUNI DEPOSITORY FID SELECT/SELECT PORT: MMKT FID SHLMM/SHELL SAV GRP TRUST: FID SPMM/HEREFORD ST TRUST: FID VIPMM/VARIABLE INS PROD RICOH CORPORATION ROWAN COMPANIES, INC	LBI - LEHMAN BROTHERS INC.
1WL	TRUST71
FIDELITY MGMT & RSCH CO	ALASKA SEABOARD PARTNERS LP
	TRUST75
	SASCO II
	TRUST86
	LBHI-LEHMAN BROTHERS HOLDINGS
	TRUST89
	LBHI-LEHMAN BROTHERS HOLDINGS LBI - LEHMAN BROTHERS INC. LEHMAN ALI INCORPORATED LEHMAN BROTHERS BANKHAUS LEHMAN CAPITAL, DIVISION OF (3) LEHMAN INVESTMENT INC (4) PROPERTY ASSET MANAGEMENT INC (5)

Source: APB

