

**LEHMAN BROTHERS HOLDINGS INC.**

**Minutes of the Board of Directors  
November 8, 2007**

A meeting of the Board of Directors of Lehman Brothers Holdings Inc. (the "Corporation" or collectively with its subsidiaries, the "Firm") was held in the Board Room of 745 Seventh Avenue, on November 8, 2007, at 12:00 noon, pursuant to written notice.

**PRESENT - BOARD MEMBERS**

Mr. Michael L. Ainslie  
Mr. Roger S. Berlind  
Mr. Thomas H. Cruikshank  
Ms. Marsha Johnson Evans  
Mr. Richard S. Fuld, Jr.  
Sir Christopher Gent  
Mr. Roland A. Hernandez  
Mr. Henry Kaufman  
Mr. John D. Macomber

**ABSENT - BOARD MEMBERS**

Mr. John F. Akers

**ALSO PRESENT BY INVITATION**

Ms. Erin M. Callan  
Mr. Joseph M. Gregory  
Mr. Christopher M. O'Meara  
Mr. Thomas A. Russo  
Mr. Jeffrey A. Welikson

**APPROVAL OF MINUTES**

The first order of business was the approval of the Minutes of the Board of Directors meeting held on October 15, 2007. Upon motion duly made and seconded, it was unanimously

**RESOLVED**, that the Minutes of the meeting of the Board of Directors held on October 15, 2007 are hereby approved in the form

submitted at this meeting, and that a copy of such Minutes be placed in the appropriate Minute Book of the Corporation.

**REPORT OF THE NOMINATING AND CORPORATE GOVERNANCE COMMITTEE**

Ms. Evans reported on the morning's meeting of the Nominating and Corporate Governance Committee. She noted that the Committee completed its annual review of compliance with its charter and that no deficiencies were noted. Ms. Evans stated that the Committee conducted its annual self-evaluation. She also reported that the Committee received a presentation from Mr. Russo on the Firm's Operating Exposures Committee and a briefing by Mr. Russo on the stockholder proposals received by the Firm for inclusion in the 2008 proxy statement. Ms. Evans also noted that Mr. Russo would be discussing the stockholder proposals with the full Board later in the meeting. Ms. Evans stated that the Committee met with Ridgeway Partners and discussed potential director candidates. Ms. Evans then distributed information regarding director candidates to the Board of Directors and a discussion regarding such candidates ensued.

**REPORT OF THE COMPENSATION AND BENEFITS COMMITTEE**

Mr. Macomber reported on the morning's Compensation and Benefits Committee meeting. He described that the Committee reviewed and approved amendments to the Firm's Supplemental Retirement Plan and outstanding stock awards to comply with US tax code changes under Internal Revenue Code Section 409A. He also reported that the Committee is recommending that the Board of Directors approve related amendments to the Firm's equity plans. Mr. Macomber referenced materials regarding these amendments which were distributed to the Board of Directors for review in advance of the meeting and asked if the Directors had any questions regarding these materials. Mr. Macomber summarized that Section 409A governs deferred compensation and restricts when deferred compensation, including restricted stock units, may be delivered, and that the Firm is required to amend the Firm's outstanding equity awards to comply with Section 409A. Mr. Macomber also reported that, in connection with its review of award delivery terms, the Committee is recommending changes to prospective awards as well. After discussion, upon motion duly made and seconded, it was unanimously resolved that

**WHEREAS**, the Compensation and Benefits Committee (the "Committee") of the Corporation has approved and recommended to the Corporation's Board of Directors the adoption of (i) the amended and restated form of the Corporation's 2005 Stock Incentive Plan (the "2005 SIP") in the form attached hereto as Exhibit A and (ii) certain amendments to the Corporation's 1994 Management Ownership Plan, 1996 Management Ownership Plan, 1999 Neuberger Berman Inc. Long Term Incentive Plan (the "LTIP") and Employee Incentive Plan; it is therefore

**RESOLVED**, that the Board of Directors hereby adopts the amended and restated form of the 2005 SIP in the form attached hereto as Exhibit A, with such changes or alterations thereto as the officers of the Corporation may, in their sole discretion, reasonably determine are necessary or desirable to fulfill the intention of these resolutions.

**FURTHER RESOLVED**, that each of the Corporation's 1994 Management Ownership Plan, 1996 Management Ownership Plan, 1999 Neuberger Berman Inc. LTIP and Employee Incentive Plan be, and hereby is, amended to (i) provide that the defined term "Change in Control" for purposes of each such plan shall also include an event that constitutes a Change in Control under Section 2(g) of the 2005 SIP as amended and restated in the immediately preceding resolution (and in the case of the LTIP, to provide that with respect to awards granted under the LTIP after November 8, 2007, the term "Change in Control" shall be solely as defined under such Section 2(g) of the 2005 SIP) and (ii) include a new section substantially in the form attached hereto as Exhibit B regarding compliance with Section 409A of the Internal Revenue Code.

**FURTHER RESOLVED**, that the officers of the Corporation be, and they hereby are, authorized and directed to take such further action with respect to the foregoing plans and programs including, without limitation, preparing and distributing award agreements and/or statements, making adjustments for amounts due the Corporation by the award recipient, and executing such further documents and taking such further action as they may, with the advise of counsel, deem necessary or desirable to carry out the purpose and intent of the foregoing resolutions, or to comply with law; and with respect to those awards which are subject to the laws of any foreign jurisdiction, the officers of the Corporation are each hereby authorized and directed to determine the form of awards to employees who are personally residing outside the United States and to take such actions and to make such amendments including, without limitation, preparing and executing such trust instruments or other documents as they may, with the advice of counsel, deem necessary or desirable to carry out the purpose and intent of the foregoing resolutions and to achieve tax efficiency and to comply with the provisions of any relevant local law or regulations in those territories, provided such actions do not result in an incremental material cost to the Corporation.

Mr. Macomber reported that the Committee reviewed and approved the 2007 bonus pool and the year-end stock award program. He stated that the Committee approved a Firm-wide bonus pool for 2007 which, together with all other compensation and benefits expenses for 2007, does not exceed 49.8% of the Firm's net revenues. Mr. Macomber also reported that the Committee approved the terms and conditions for the year-end equity awards. He stated that the Committee estimates that awards granted for fiscal 2007 will total approximately 53 million shares, compared to 45 million shares for

fiscal 2006. Mr. Macomber reported that the Committee expects that the Firm will have a shortfall of shares for the equity award program for fiscal 2008 year-end, depending on compensation levels and stock price appreciation, and that the Committee is giving careful consideration to alternative solutions. Mr. Macomber also reported that the Committee discussed using performance restricted stock units (or some other form of equity award in place of an option award) for fiscal 2007 year-end awards to members of the Executive Committee.

#### REPORT OF THE AUDIT COMMITTEE

Mr. Cruikshank reported on the morning's Audit Committee meeting. He described that the Committee reviewed and approved the audit, audit-related, tax and other services of Ernst & Young ("E&Y") in accordance with the Committee's Pre-Approval Policy for Independent Auditor Services. Mr. Cruikshank reported that the Committee approved additional audit fees of \$250,000, bringing total audit fees for the year to \$21,950,000, compared to \$19,685,000 for fiscal 2006. He then summarized the E&Y report provided to the Committee by Mr. William Schlich of E&Y. Mr. Cruikshank reported that E&Y is on target to complete its year-end work, and that additional areas of E&Y focus given the credit cycle include leveraged loans, mortgage whole loans, mortgage related hedges, real estate, collateralized loan obligations, municipal bonds, and structured notes.

Mr. Cruikshank reported that Ms. Beth Rudofker, Global Head of Corporate Audit, gave the semi-annual report on Corporate Audit to the Committee. He reported that Corporate Audit noted no material weaknesses during the reporting period, and that Corporate Audit is spending time across risk and businesses largely as planned, with a focus in the areas of greatest risk and materiality. Mr. Cruikshank also summarized the semi-annual report on Compliance activity presented to the Committee by Mr. David DeMuro, Global Head of Compliance, and reported that the Firm's number of customer complaints and amount of regulatory fines are smaller than its competitors. Mr. Cruikshank concluded by stating that the Committee met in separate private sessions with Ms. Rudofker and Mr. DeMuro following the Committee meeting.

#### FINANCIAL UPDATE

Mr. O'Meara reviewed the Firm's financial results for the month of October and for the fiscal year to date. As part of such review, he discussed, among other things, market environment, revenues, expenses, net income, earnings per share, return on equity, pre-tax margin, and the Firm's expenses. He compared the results to monthly averages during 2007 and to budget, and he presented year-to-date performance information compared to budget and to 2006. Mr. O'Meara described the performance of the Firm by business unit and by region. Mr. O'Meara also discussed the Firm's capital position (including leverage ratios) and the increase in risk appetite usage. He provided an analysis of competitor information and discussed the results of the Firm's competitors.

Mr. O'Meara concluded by presenting a monthly financial performance trend analysis, as well as a quarterly and annual financial performance trend analysis.

#### CREDIT MARKET UPDATE

Mr. Alex Kirk, Mr. Peter Hornick, and Mr. Charles Spero, Managing Directors in the Firm's Fixed Income Division, gave a presentation to the Board of Directors regarding the Firm's exposure to asset-backed securities ("ABS") collateralized debt obligations ("CDO"). Mr. Kirk stated that there are two key reasons why the Firm has successfully navigated the difficult ABS environment of 2007: the Firm has been predominantly net short the market within ABS CDO's, and the Firm has been a smaller player in the ABS CDO market due to its business model of distributing all parts of the capital structure.

Mr. Kirk stated that the Firm's ABS CDO business is highly coordinated around risk, structuring, and distribution, and he discussed its risk management and business practices. Mr. Spero described that the Firm's ABS CDO desk became concerned in late 2006 about excessive valuations in ABS CDOs and began to position itself accordingly. He discussed the trading strategies used to minimize the Firm's ABS CDO exposure. Mr. Spero also analyzed the Firm's current ABS CDO risk position and presented an analysis of the Firm's ABS CDO risk position from June 2006 until the present.

Mr. Hornick next described the Firm's operating principles in the ABS CDO market, which included strategies to distribute, not retain, risk. He presented an analysis of 2006-2007 ABS CDO issuance by underwriter, noting that the Firm's ABS CDO issuance during this period was \$11 billion, or a 3.1 percent market share. Mr. Hornick compared the Firm's structuring practices to those of a competitor, explaining that the Firm's superior structures contributed to its distribution business model. He presented additional analysis of 2006-2007 ABS CDO issuance by underwriter, including an estimate of projected losses due to CDOs. The Board of Directors directed questions to the presenters regarding the Firm's hedging strategy in the ABS CDO market, the Firm's perspective on the models used by the ratings agencies for the ABS CDO market, the current state of the ABS CDO market, and the prospects for the ABS CDO market.

#### TAKEOVER DEFENSE UPDATE

Mr. Mark G. Shafir, Global Head of Mergers and Acquisitions, presented a Takeover Defense Update to the Board of Directors. Mr. Shafir commenced by presenting a situation review and vulnerability assessment of the takeover risk to the Firm. As part of the situation review, Mr. Shafir reviewed the Firm's performance and valuation. He described that the number and success rate of activist campaigns is on the rise due to low barriers to entry, minimal downside risk, and high returns. Mr. Shafir also reported that strategic acquisition activity in the Firm's industry has not been hostile, although pressure tactics can be applied short of a public offer. Mr. Shafir reviewed

mergers that have occurred in the industry, concluding that sector mergers have performed poorly. Mr. Shafir then assessed the Firm's vulnerability to takeover risk. He reviewed the Firm's shareholder base and structural protections. Mr. Shafir noted that shares held by employees and the RSU trust approximate 21% of the vote of the Firm's common stock.

Mr. Shafir proceeded to provide recommendations based on this analysis. He discussed that preparation is key to responding to a hostile approach, and he described that this preparation should include the following: an updated stand-alone business plan; active Board dialogue regarding the Firm's strategic plan, the current mergers and acquisitions ("M&A") environment, and structural defenses; regular industry and M&A updates with senior management on strategic alternatives, potential partners and their ability to pay, and activist developments; and an on-call takeover defense team. He stated that the Firm's goal should be to avoid unwanted attention through continued business and stock price performance, but to be prepared for an unsolicited approach. Mr. Shafir reviewed the Firm's performance and provided an analysis of certain performance metrics demonstrating that the Firm has outperformed its peers over time. He presented an analysis of the market's perspective of the Firm compared to its peers, as well as a valuation analysis of the Firm's stock.

Mr. Shafir then discussed the rise of shareholder activism. He described that the severity of shareholder tactics is increasing, and he reported that over 60% of hostile cases are successful in getting management to acquiesce to demands. Mr. Shafir discussed the factors influencing this rise in shareholder activism, including the tremendous growth of hedge funds, low barriers to entry, high sensitivity regarding corporate governance, and a lack of structural defenses to shareholder activism. He described the typical shareholder activist objectives and their implications for the Firm. Mr. Shafir then provided a recent history of shareholder activism in financial services companies. He also discussed the current ownership of the Firm.

Mr. Shafir then analyzed potential strategic suitors, the strength of the strategic rationale for each, and their ability to pay. He also discussed prior transactions in the financial services industry, noting that these transactions have had a mixed record at best, due to significant cultural differences between the parties to the transaction. Mr. Shafir then discussed the Firm's takeover defenses. He described a continuum of hostile tactics used in a strategic offer or activist campaign. Mr. Shafir discussed strategic takeover defenses and presented a comparative analysis of the Firm's strategic defenses relative to its peers. Mr. Shafir noted that the primary defense against a proxy contest is a classified Board of Directors, and he discussed the defensive implications for the Firm of not having a classified Board. As part of his discussion of the Firm's strategic defenses, Mr. Shafir also described the impact of the voting of the RSU trust. He then recommended measures that the Firm should undertake regularly to ensure that its strategic defenses are optimized. The Board of Directors directed questions to management regarding the Firm's performance, the Firm's stock, and other matters.

## AMENDMENT OF BY-LAWS

Mr. Russo referenced materials which were distributed to the Board of Directors for review in advance of the meeting and reiterated the recommendation contained in the materials that the Firm amend its By-Laws to clarify that the Corporation's stock can be represented by uncertificated shares. Mr. Russo stated that these amendments were intended to ensure the Firm's compliance with a NYSE requirement that listed securities be eligible to participate in the Direct Registration System. He discussed that this clarification is not a substantive change, since the Firm already provides investors with the ability to hold their shares in either certificated or uncertificated form. After discussion, upon motion duly made and seconded, it was unanimously resolved that:

**WHEREAS**, the Board has determined that it is advisable and in the best interests of the Corporation and its stockholders to amend the Corporation's Amended and Restated By-Laws (the "By-Laws") to ensure that the provisions thereof relating to stock certificates and uncertificated shares are consistent with the requirements of the Direct Registration System; it is therefore:

**RESOLVED**, that Section 1 and Section 4 of Article VI of the By-Laws shall be deleted and shall be replaced with the following:

**Section 1. Form of Certificate: Uncertificated Shares.** The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock may be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock in the Corporation represented by a certificate shall be entitled to have a certificate signed in the name of the Corporation (i) by the Chairman of the Board, any Vice Chairman of the Board, the President or any Vice President and (ii) by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary, representing the number of shares registered in certificate form. Except as otherwise provided by law or these By-Laws, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

**Section 4. Transfers.** Stock of the Corporation shall be transferable in the manner prescribed by law and in these By-Laws. Transfers of stock shall be made on the books of the Corporation only by the holder of record or by such person's attorney duly authorized, and upon the surrender of properly endorsed certificates for a like number of shares (or, with respect

to uncertificated shares, by delivery of duly executed instructions or in any other manner permitted by applicable law).

**FURTHER RESOLVED**, that shares of capital stock of the Corporation may be issued in uncertificated form in accordance with Section 158 of the General Corporation Law of the State of Delaware; provided that the foregoing shall not apply to shares of capital stock of the Corporation outstanding and currently represented by a certificate until such certificate is surrendered for transfer or otherwise to the Corporation.

**FURTHER RESOLVED**, that the Corporation be, and hereby is, authorized to enroll and participate in the Direct Registration System, and that the officers and agents of the Corporation, including the Corporation's transfer agent(s), be, and each of them hereby is, authorized and empowered to take all action necessary to enroll the Corporation in the Direct Registration System and, to the fullest extent permitted by law, to take any actions relating to such enrollment or in connection with the Corporation's participation in the Direct Registration System and that any and all actions of such officers and agents in connection therewith are hereby approved, adopted, ratified and confirmed.

**FURTHER RESOLVED**, that the officers of the Corporation be, and each of them hereby is, authorized, empowered and directed, for and on behalf of the Corporation, to take any and all actions, to negotiate for and enter into agreements and amendments to agreements, to perform all such acts and things, to execute, file, deliver or record in the name and on behalf of the Corporation, all such certificates, instruments, agreements or other documents, and to make all such payments as they, in their judgment, or in the judgment of any one or more of them, may deem necessary, advisable or appropriate in order to carry out the purpose and intent of, or consummate the transactions contemplated by, the foregoing resolutions and/or all of the transactions contemplated therein or thereby, the authorization therefor to be conclusively evidenced by the taking of such action or the execution and delivery of such certificates, instruments, agreements or documents.

#### UPDATE ON ANNUAL MEETING

Mr. Russo discussed the general plans for the 2008 Annual Meeting of Stockholders and noted that a further update on the Annual Meeting would be provided at the January 2008 meeting of the Board of Directors. Upon motion duly made and seconded, it was unanimously

**RESOLVED**, that the 2008 Annual Meeting of Stockholders (the "Annual Meeting") of the Corporation be held on April 15, 2008 or such other date and at such time as the Chairman shall determine; and

**FURTHER RESOLVED**, that the Annual Meeting be held in the Allan S. Kaplan Auditorium, at 745 Seventh Avenue, Concourse Level, New York, New York or such other location as the Chairman shall determine; and

**FURTHER RESOLVED**, that the Corporation hereby declares that the record date for stockholders entitled to notice of and to vote at the Annual Meeting shall be February 15, 2008 or such other date as the Chairman shall determine.

Mr. Russo discussed the three stockholder proposals received for inclusion in the Firm's 2008 proxy statement. He reported that Mrs. Evelyn Y. Davis submitted a stockholder proposal which requests a detailed description of political contributions made by the Firm, including initial publication of this information in major newspapers, followed by its disclosure in the annual report to stockholders in subsequent years. Mr. Russo reported that the Firm received this proposal from Mrs. Davis last year, and it received a 4.3% "for" vote at the Firm's 2007 Annual Meeting of Stockholders. Mr. Russo also stated that proposals regarding disclosure of political contributions averaged a 21.4% "for" vote in the 2007 proxy season.

Mr. Russo then discussed a proposal submitted by the Central Laborers' Pension, Welfare & Annuity Funds which requests that the Board of Directors prepare and provide to shareholders a report discussing the Firm's potential financial exposure as a result of the mortgage securities crisis. Mr. Russo noted that since this is a new proposal, there is no voting history. He reported that the Firm plans to request no-action relief from the SEC to permit the Firm to exclude this proposal from the proxy statement, on the basis that the proposal relates to the Firm's ordinary business operations, and that there is a good chance the Firm will be successful in its request.

Mr. Russo reported that a proposal was submitted by the Free Enterprise Action Fund which requests that the Board of Directors prepare an Environmental Sustainability Report. Mr. Russo described that the intent of the proposal is not to support environmental initiatives: he stated that the proponents dispute the finding that human emissions of greenhouse gases cause global climate change, and their proposal suggests that the Firm's climate change activities are based on erroneous information. Mr. Russo stated that the Firm believes that the SEC may require inclusion of this proposal in the proxy statement, on the basis that the proposal relates to the Firm's position on a social policy issue more than it relates to the Firm's ordinary business operations.

## LEGAL UPDATE

Mr. Russo stated that, in connection with the fiscal year-end equity award grants, the Firm is required to file a registration statement under the Securities Act of 1933 covering the additional shares of common stock available for grant under the 2005 Stock Incentive Plan. Mr. Russo referenced materials which had been distributed for review in advance of the meeting, and he described that the registration statement incorporates by reference the Firm's SEC reports under the Securities Exchange Act of 1934 and contains limited other content. Mr. Russo requested that the Directors execute the signature page for the registration statement.

Mr. Russo also provided the Board with an update on the Unocal matter and reported on a request from the New York State Attorney General regarding the Firm's transactions with another financial institution as part of an investigation into allegations that the other financial institution pressured appraisers to violate home appraiser independence laws.

## BOARD OF DIRECTORS SELF-ASSESSMENT

The Board of Directors reviewed and discussed the composite document containing the Directors' responses to the Board of Directors self-evaluation questionnaire.

## PRIVATE SESSION

Management (other than Mr. Fuld) was excused, and the Board met in private session.

There being no further business to come before the meeting, the meeting was, upon motion duly made and seconded, adjourned.

Respectfully submitted,

*Jeffrey A. Welikson*  
Jeffrey A. Welikson  
Secretary of the Meeting

## LEHMAN BROTHERS HOLDINGS INC.

## 2005 STOCK INCENTIVE PLAN

## 1) Purpose of the Plan

The purpose of the Plan is to aid the Company and its Affiliates in recruiting and retaining employees, directors and consultants and to motivate such employees, directors and consultants to exert their best efforts on behalf of the Company and its Affiliates by providing incentives through the granting of Awards. The Company expects that it will benefit from the added interest which such employees, directors and consultants will have in the welfare of the Company as a result of their proprietary interest in the Company's success.

## 2) Definitions

The following capitalized terms used in the Plan have the respective meanings set forth in this Section:

- (a) "*Act*" means The Securities Exchange Act of 1934, as amended, or any successor thereto.
- (b) "*Affiliate*" means any entity that is consolidated with the Company for financial reporting purposes or any other entity designated by the Board in which the Company or an Affiliate has a direct or indirect interest of at least twenty-five percent (25%).
- (c) "*Award*" means an Option, Stock Appreciation Right or Other Stock-Based Award granted pursuant to the Plan.
- (d) "*Award Agreement*" means the written document or documents by which each Award is evidenced.
- (e) "*Board*" means the Board of Directors of the Company.
- (f) "*Change in Control*" means, with respect to any Award granted on or prior to November 8, 2007, the occurrence of any of the following events:
  - (i) The occurrence of an event described in paragraph (ii), (iii), (iv), (v) or (vi) below involving any entity (or an affiliate thereof) which had previously commenced (within the meaning of Rule 14d-2 under the Act), without the approval of the Board, a tender offer for shares having more than 20% of the combined voting power of the Company's outstanding shares of capital stock having ordinary voting power in the election of directors of the Company (the "Voting Securities");
  - (ii) An acquisition (other than directly from the Company) of any Voting Securities by any "Person" (as the term "person" is used for purposes of Section 13(d) or 14(d) of the Act) immediately after which such Person has "Beneficial Ownership" (within the meaning of Rule 13d-3 promulgated under the Act) of 20% or more of the combined voting power of the Company's then outstanding Voting Securities; provided, however, in determining whether a Change in Control has occurred, Voting Securities which are acquired in a "Non-Control Acquisition" (as hereinafter defined) shall not constitute an acquisition which would cause a Change in Control. A "Non-Control Acquisition" shall mean an acquisition by (A) an employee benefit plan (or a trust forming a part thereof or a trustee thereof acting solely in its capacity as trustee) maintained by (I) the Company or (II) any corporation or other Person of which a majority of its voting power or its voting equity securities or equity interest is owned, directly or indirectly, by the Company (for purposes of this definition, a "Subsidiary Entity"), (B) the Company or any of its Subsidiary Entities, or (C) any Person who files in connection with such acquisition a Schedule 13D which expressly disclaims any intention to seek control of the Company and does not expressly reserve the right to seek such control; provided,

however, that any amendment to such statement of intent which either indicates an intention or reserves the right to seek control shall be deemed an "acquisition" of the securities of the Company reported in such filing as beneficially owned by such Person for purposes of this paragraph (ii);

- (iii) The individuals who, as of the Effective Date, are members of the Board (the "Incumbent Board"), ceasing for any reason to constitute at least a majority of the members of the Board; provided, however, that if the election, or nomination for election by the Company's common stockholders, of any new director was approved by a vote of at least two-thirds of the Incumbent Board, such new director shall, for purposes of this Plan, be considered as a member of the Incumbent Board; provided further, however, that no individual shall be considered a member of the Incumbent Board if such individual initially assumed office as a result of either an actual or threatened election contest or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board (in each case, a "Proxy Contest") including by reason of any agreement intended to avoid or settle any Proxy Contest; or
- (iv) A merger, consolidation, recapitalization or reorganization involving the Company, unless such merger, consolidation or reorganization is a "Non-Control Transaction"; i.e., meets each of the requirements described in subparagraphs (A), (B) and (C) below:
  - (A) the stockholders of the Company, immediately before such merger, consolidation, recapitalization or reorganization, own, directly or indirectly, immediately following such merger, consolidation, recapitalization or reorganization, at least 50% of the combined voting power of the outstanding voting securities of the Company, the corporation resulting from such merger or consolidation, recapitalization or reorganization, or any parent thereof (the "Surviving Corporation") in substantially the same proportion as their ownership of the Voting Securities immediately before such merger, consolidation, recapitalization or reorganization;
  - (B) the individuals who were members of the Incumbent Board immediately prior to the execution of the agreement providing for such merger, consolidation, recapitalization or reorganization constitute at least 50% of the members of the board of directors of the Surviving Corporation immediately following the consummation of such merger, consolidation, recapitalization or reorganization; and
  - (C) no Person other than the Company, any Subsidiary Entity, any employee benefit plan (or any trust forming a part thereof or a trustee thereof acting solely in its capacity as trustee) maintained by the Company, the Surviving Corporation, or any Subsidiary Entity, or any Person who, immediately prior to such merger, consolidation, recapitalization or reorganization had Beneficial Ownership of 20% or more of the then outstanding Voting Securities has Beneficial Ownership of 20% or more of the combined voting power of the Surviving Corporation's then outstanding voting securities immediately following the consummation of such merger, consolidation, recapitalization or reorganization;
- (v) A complete liquidation or dissolution of the Company;
- (vi) Sale or other disposition of all or substantially all of the assets of the Company to any Person (other than a transfer to a Subsidiary Entity); or
- (vii) An event that would constitute a "Change in Control" within the meaning of Section 2(g).

Notwithstanding the foregoing, a Change in Control shall not be deemed to occur solely because any Person (the "Subject Person") acquired Beneficial Ownership of more than the permitted percentage set forth in paragraph (ii) or subparagraph (iv)(A) or (C) above, as applicable, of the outstanding Voting Securities as a result of the acquisition of Voting Securities by the Company which, by reducing the number of Voting Securities outstanding, increases the proportional number of shares Beneficially Owned by the Subject Persons, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of Voting

Securities by the Company, and thereafter such Beneficial Owner acquires any additional Voting Securities which increases the percentage of the then outstanding Voting Securities Beneficially Owned by the Subject Person, then a Change in Control shall occur.

A "Hostile Change in Control" shall mean the occurrence of an event as contemplated in paragraph (i) above. A "Friendly Change in Control" shall mean any Change in Control that is not a Hostile Change in Control.

(g) "Change in Control" means, with respect to any Award granted after November 8, 2007, the occurrence of any of the following events:

(i) An acquisition (other than directly from the Company, but including any acquisition in connection with any merger, consolidation, recapitalization or reorganization involving the Company) of the Company's outstanding shares of capital stock having ordinary voting power in the election of directors ("Voting Securities") by any "Person" (as the term "person" is used for purposes of Section 13(d) or 14(d) of the Exchange Act) immediately after which such Person has "Beneficial Ownership" (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 70% or more of the combined voting power of the Company's then outstanding Voting Securities; provided, however, in determining whether a Change in Control has occurred, Voting Securities that are acquired in a "Non-Control Acquisition" (as hereinafter defined) shall not constitute an acquisition that would cause a Change in Control. A "Non-Control Acquisition" shall mean an acquisition by (A) an employee benefit plan (or a trust forming a part thereof or a trustee thereof acting solely in its capacity as trustee) maintained by (I) the Company or (II) any corporation or other Person of which a majority of its voting power or its voting equity securities or equity interest is owned, directly or indirectly, by the Company (for purposes of this definition, a "Subsidiary Entity"), (B) the Company or any of its Subsidiary Entities, or (C) any Person who files in connection with such acquisition a Schedule 13D that expressly disclaims any intention to seek control of the Company and does not expressly reserve the right to seek such control; provided, however, that any amendment to such statement of intent that either indicates an intention or reserves the right to seek control shall be deemed an "acquisition" of the securities of the Company reported in such filing as beneficially owned by such Person for purposes of this paragraph (i);

(ii) Any merger, consolidation, recapitalization or reorganization involving the Company, unless such merger, consolidation, recapitalization or reorganization is a "Non-Control Transaction"; i.e., meets each of the requirements described in subparagraphs (A), (B) and (C) below:

(A) the stockholders of the Company, immediately before such merger, consolidation, recapitalization or reorganization, own, directly or indirectly, immediately following such merger, consolidation, recapitalization or reorganization, at least 30% of the combined voting power of the outstanding voting securities of the Company, the corporation resulting from such merger, consolidation, recapitalization or reorganization, or any parent thereof (the "Surviving Corporation") in substantially the same proportion as their ownership of the Voting Securities immediately before such merger, consolidation, recapitalization or reorganization;

(B) the individuals who were members of the Board immediately prior to the execution of the agreement providing for such merger, consolidation, recapitalization or reorganization constitute at least 50% of the members of the board of directors of the Surviving Corporation immediately following the consummation of such merger, consolidation, recapitalization or reorganization; and

(C) no Person other than the Company, any Subsidiary Entity, any employee benefit plan (or any trust forming a part thereof or a trustee thereof acting solely in its capacity as trustee) maintained by the Company, the Surviving Corporation, or any Subsidiary Entity, or any Person who, immediately prior to such merger, consolidation, recapitalization or

reorganization had Beneficial Ownership of 70% or more of the then outstanding Voting Securities has Beneficial Ownership of 70% or more of the combined voting power of the Surviving Corporation's then outstanding voting securities immediately following the consummation of such merger, consolidation, recapitalization or reorganization;

- (iii) Replacement within a consecutive twelve month period of a majority of the individuals who are members of the Board with individuals ("Replacement Board Members") who do not receive endorsement by a majority of the Board before the date of the appointment or election of such Replacement Board Member; or
- (iv) Sale or other disposition (other than a transfer to a Subsidiary Entity) of all or substantially all of the assets of the Company to any Person, or any Person acquires such amount of assets in any consecutive twelve-month period ending on the most recent acquisition by such Person.

Notwithstanding the foregoing, a Change in Control shall not be deemed to occur solely because any Person (the "Subject Person") acquired Beneficial Ownership of more than the permitted percentage set forth in paragraph (i) of the outstanding Voting Securities as a result of the acquisition of Voting Securities by the Company that, by reducing the number of Voting Securities outstanding, increases the proportional number of shares Beneficially Owned by the Subject Person, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of Voting Securities by the Company, and thereafter such Subject Person acquires any additional Voting Securities which increases the percentage of the then outstanding Voting Securities Beneficially Owned by the Subject Person, then a Change in Control shall occur. In addition, notwithstanding the foregoing a Change in Control shall not be deemed to occur unless such transaction or occurrence constitutes a change in ownership or effective control within the meaning of Section 409A(a)(2)(A)(v) of the Code.

- (h) "*Code*" means the Internal Revenue Code of 1986, as amended, or any successor thereto.
- (i) "*Committee*" means the Compensation and Benefits Committee of the Board.
- (j) "*Company*" means Lehman Brothers Holdings Inc.
- (k) "*Dividend Equivalent Right*" means a dividend equivalent right granted under the Plan, which represents an unfunded and unsecured promise to pay to the Participant amounts equal to all or any portion of the regular cash dividends that would be paid on Shares covered by an Award if such shares were delivered pursuant to an Award.
- (l) "*Effective Date*" means May 1, 2005.
- (m) "*Employment*" means (i) a Participant's employment if the Participant is an employee of the Company or any of its Affiliates, (ii) a Participant's services as a consultant, if the Participant is consultant to the Company or any of its Affiliates and (iii) a Participant's services as a Non-Employee Director, if the Participant is a non-employee member of the Board; provided however that unless otherwise determined by the Committee, a change in a Participant's status from employee to non-employee (other than a director of the Company or an Affiliate) shall constitute a termination of employment hereunder. For purposes of the Plan, unless the Committee determines otherwise: (a) a transfer of a Participant's employment, without an intervening period of separation, between the Company and any Affiliate shall not be deemed a termination of employment, and (b) a Participant who is granted in writing a leave of absence shall be deemed to have remained in the employ of the Company during such leave of absence.
- (n) "*Fair Market Value*" means, on a given date, (i) if there should be a public market for the Shares on such date, the closing price of the Shares on the New York Stock Exchange, or, if the Shares are not listed or admitted on any national securities exchange, the arithmetic mean of the per Share closing bid price and per Share closing asked price on such date as quoted on the National Association of Securities Dealers Automated Quotation System (or such market in which such

prices are regularly quoted) (the "NASDAQ"), or, if no sale of Shares shall have been reported on the New York Stock Exchange or quoted on the NASDAQ on such date, then the immediately preceding date on which sales of the Shares have been so reported or quoted shall be used, and (ii) if there should not be a public market for the Shares on such date, the Fair Market Value shall be the value established by the Committee in good faith and, in the case of an ISO, in accordance with Section 422 of the Code.

- (o) "ISO" means an Option that is also an incentive stock option granted pursuant to Section 5(d).
- (p) "Non-Employee Director" means a director of the Company who is not an employee of the Company or a Subsidiary.
- (q) "Option" means (i) a non-qualified stock option or (ii) an ISO, as applicable, granted pursuant to Section 5.
- (r) "Option Price" means the purchase price per Share of an Option, as determined pursuant to Section 5(a).
- (s) "Other Stock-Based Award" means an award granted pursuant to Section 7.
- (t) "Participant" means an employee, prospective employee, director or consultant of the Company or an Affiliate who is selected by the Committee to participate in the Plan.
- (u) "Performance-Based Award" means an Other Stock-Based Award granted pursuant to Section 7(c).
- (v) "Plan" means the Lehman Brothers Holdings Inc. 2005 Stock Incentive Plan, as amended from time to time.
- (w) "Shares" means shares of common stock of the Company.
- (x) "Stock Appreciation Right" means a stock appreciation right granted pursuant to Section 6.
- (y) "Subsidiary" means a subsidiary corporation, as defined in Section 424(f) of the Code (or any successor section thereto), of the Company.

### 3) Shares Subject to the Plan

- (a) The total number of Shares that may be issued under the Plan is ninety-five (95) million, plus the number of Shares calculated as set forth in subsection (c) below, subject to adjustment as provided in Section 9. Shares of Common Stock issued under the Plan may be authorized but unissued shares or authorized and issued shares held in the Company's treasury, or any combination thereof. No participant may be granted Options, Stock Appreciation Rights or Other Stock-Based Awards covering in excess of four million Shares in any fiscal year of the Company, and the maximum number of Shares that may be subject to Awards that are ISOs is twenty (20) million, subject to adjustment as provided in Section 9.
- (b) In calculating the number of Shares remaining available for grants of Awards at any given time during the term of the Plan, the following rules shall apply:
  - (i) the number of Shares remaining for issuance shall be reduced by the number of outstanding Awards that consist of, or that are payable in Shares;
  - (ii) the number of Shares remaining for issuance shall be increased by the number of Shares withheld or tendered (by actual delivery or attestation) to pay the exercise price of an Option

and by the number of shares withheld from any grant of Awards to satisfy tax withholding obligations;

- (iii) the number of Shares remaining for issuance shall be increased by the number of Shares that have been granted, or reserved for distribution in satisfaction of Awards, that are later forfeited, or that expire or terminate or, for any other reason, are not payable or distributable under the Plan; and
  - (iv) the number of Shares remaining for issuance shall be increased by the number of Shares that have been granted in respect of Awards that are settled in cash under the Plan.
- (c) The following numbers of Shares shall be added to the ninety-five (95) million Shares expressly identified in subsection (a) above: the number of Shares that, on the date that is immediately prior to the applicable date of expiration of each of the Lehman Brothers Holdings Inc. Employee Incentive Plan and the Lehman Brothers Holdings Inc. 1996 Management Ownership Plan (each, a "Prior Plan"), are available for issuance and not otherwise subject to outstanding Awards granted under the Prior Plans, increased by the number of Shares that, as of each such applicable expiration date, were subject to Awards granted and outstanding under the Prior Plans (the "Prior Awards") but which are subsequently not payable or distributable under the Prior Awards under any of the circumstances described in paragraph (ii), (iii) or (iv) of subsection (b) above.

#### 4) Administration

- (a) The Plan shall be administered by the Committee, the members of which shall be "independent" in accordance with all applicable stock exchange or market listing requirements. The Committee may delegate its duties and powers in whole or in part to any subcommittee thereof consisting solely of at least two individuals who are intended to qualify as "non-employee directors" within the meaning of Rule 16b-3 under the Act (or any successor rule thereto) and, to the extent required by Section 162(m) of the Code (or any successor section thereto), "outside directors" within the meaning thereof. In addition, to the extent consistent with Rule 16b-3 under the Act, the Committee may delegate the authority to grant Awards under the Plan to officers or employees of the Company.
- (b) The Committee is authorized to construe, interpret, implement and administer the Plan and any Award, to establish, amend and rescind any rules and regulations relating to the Plan and each Award, and to make any other determinations that it deems necessary or desirable for the administration of the Plan or with respect to any Award. The Committee may correct any defect or supply any omission or reconcile any inconsistency in the Plan or in any Award in the manner and to the extent the Committee deems necessary or desirable. Any decision of the Committee in the construction, interpretation, implementation and administration of the Plan or any Award, as described herein, shall lie within its sole and absolute discretion and shall be final, conclusive and binding on all parties concerned (including, but not limited to, Participants and their beneficiaries or successors). The Committee shall have the full and exclusive power and authority to make, and establish the terms and conditions of, any Award to any person eligible to be a Participant, consistent with the provisions of the Plan and to amend or waive any such terms and conditions at any time (including, without limitation, accelerating or waiving any conditions on vesting), provided, however, the Committee shall not have such power and authority to accelerate or otherwise provide for the times at which Shares with respect to any Award are delivered if any Award is subject to Section 409A of the Code in a manner that would result in the imposition upon any Participant of an additional tax under Section 409A of the Code, and provided further, in the event that it is reasonably determined by the Committee that, as a result of Section 409A of the Code, a Participant is deemed to be a "specified employee" (within the meaning of Section 409A(a)(2)(B)(i) of the Code), payments and/or deliveries of Shares in respect of any Award subject to Section 409A of the Code shall not be made prior to the date which is six (6) months after the date of such Participant's separation from service from the Company and all Subsidiaries, determined in accordance with Section 409A of the Code and the regulations promulgated

thereunder. None of Committee's determinations under the Plan and under any Award Agreement need be uniform and any such determinations may be made by it selectively among persons who receive, or are eligible to receive, Awards under the Plan (whether or not such persons are similarly situated). Without limiting the foregoing, the Committee shall be entitled, among other things, to make non-uniform and selective determinations under Award Agreements, and to enter into non-uniform and selective Award Agreements, as to (i) the persons to receive Awards, (ii) the terms and provisions of Awards, (iii) whether a Participant's Employment has been terminated for purposes of the Plan and (iv) any adjustments to be made to Awards pursuant to Section 9 or otherwise.

- (c) The Committee shall require payment of any amount it may determine to be necessary to withhold for federal, state, local or other taxes or to otherwise satisfy any tax obligations due as a result of the exercise, grant, vesting of, or payment pursuant to, an Award. Unless the Committee specifies otherwise, the Participant may elect to pay a portion or all of such withholding or other taxes by (i) delivery, in cash or by check, (ii) delivery in Shares or (iii) having Shares withheld by the Company with a market value equal to the minimum statutory withholding rate from any Shares that would have otherwise been received by the Participant.
  - (d) Deliveries of Shares may be rounded to avoid fractional shares. In addition, the Company may pay cash in lieu of fractional shares.
- 5) Terms and Conditions of Options

Options granted under the Plan shall be, as determined by the Committee, non-qualified or ISOs for federal income tax purposes, as evidenced by the related Award agreements, and shall be subject to the foregoing and the following terms and conditions and to such other terms and conditions, not inconsistent therewith, as the Committee shall determine:

- (a) *Option Price.* The Option Price per Share shall be determined by the Committee, but shall not be less than 100% of the Fair Market Value of the Shares on the date an Option is granted.
- (b) *Exercisability.* Options granted under the Plan shall be exercisable at such time and upon such terms and conditions as may be determined by the Committee, but in no event shall an Option be exercisable more than ten years after the date it is granted.
- (c) *Exercise of Options.* Except as otherwise provided in the Plan or in an Award Agreement, an Option may be exercised for all, or from time to time any part, of the Shares for which it is then exercisable. For purposes of this Section 5, the exercise date of an Option shall be the date a notice of exercise is received by the Company, together with provision for payment of the full purchase price in accordance with this subsection (c). The Option Price for the Shares as to which an Option is exercised shall be paid to the Company, at the election of the Committee, pursuant to one or more of the following methods: (i) in cash; (ii) in Shares having a market value equal to the aggregate Option Price for the Shares being purchased and satisfying such other requirements as may be imposed by the Committee; provided, that such Shares have been held by the Participant for no less than six months (or such other period as established from time to time by the Committee in order to avoid adverse accounting treatment applying generally accepted accounting principles); (iii) partly in cash and partly in such Shares; (iv) if there is a public market for the Shares at such time, through the delivery of irrevocable instructions to a broker to sell Shares obtained upon the exercise of the Option and to deliver promptly to the Company an amount out of the proceeds of such Sale equal to the aggregate Option Price for the Shares being purchased or (v) by such other means as the Committee deems appropriate. No Participant shall have any rights to dividends or other rights of a stockholder with respect to Shares subject to an Option, and shall not otherwise be entitled to delivery of any Shares (or cash or other property in lieu thereof) underlying any such Option, until the Participant has given written notice of exercise of the Option, paid in full for such Shares and, if applicable, has satisfied any other conditions imposed by the Committee pursuant to the Plan, and such Shares have been issued hereunder.

- (d) *ISOs.* The Committee may grant Options under the Plan that are intended to be ISOs. Such ISOs shall comply with the requirements of Section 422 of the Code (or any successor section thereto). No ISO may be granted to any Participant who, at the time of such grant, owns more than ten percent of the total combined voting power of all classes of stock of the Company or of any Subsidiary, unless (i) the Option Price for such ISO is at least 110% of the Fair Market Value of a Share on the date the ISO is granted and (ii) the date on which such ISO terminates is a date not later than the day preceding the fifth anniversary of the date on which the ISO is granted. Any Participant who disposes of Shares acquired upon the exercise of an ISO either (i) within two years after the date of grant of such ISO or (ii) within one year after the transfer of such Shares to the Participant, shall notify the Company immediately of such disposition and of the amount realized upon such disposition. All Options granted under the Plan are intended to be nonqualified stock options, unless the applicable Award Agreement expressly states that the Option is intended to be an ISO. If an Option is intended to be an ISO, and if for any reason such Option (or portion thereof) shall not qualify as an ISO, then, to the extent of such nonqualification, such Option (or portion thereof) shall be regarded as a nonqualified stock option granted under the Plan, provided that such Option (or portion thereof) otherwise complies with the Plan's requirements relating to nonqualified stock options. In no event shall any member of the Committee, the Company or any of its Affiliates (or their respective employees, officers or directors) have any liability to any Participant (or any other Person) due to the failure of an Option to qualify for any reason as an ISO.
- (e) *Attestation.* Wherever in this Plan or any agreement evidencing an Award a Participant is permitted to pay the exercise price of an Option or withholding taxes relating to the exercise of an Option or delivery of Shares pursuant to an Award by delivering Shares, the Participant may, subject to procedures satisfactory to the Committee, satisfy such delivery requirement by presenting proof of beneficial ownership of such Shares, in which case the Company shall treat the Option as exercised without further payment and shall withhold such number of Shares from the Shares acquired by the exercise of the Option or pursuant to the other Award.
- (f) *Section 409A Restrictions on Option Awards.* Options shall only be granted to employees, independent contractors or Non-Employee Directors providing direct services to any corporation in a chain of corporations or other entities in which each corporation or other entity, starting with the Company, has a controlling interest in another corporation or other entity in the chain, ending with the corporation or other entity for which the service provider provides direct services on the date of grant of the Option. For this purpose, the term controlling interest has the same meaning as provided in Treas. Reg. Section 1.414(c)-2(b)(2)(i) of the Code, provided that the language "at least 50 percent" is used instead of "at least 80 percent" each place it appears in Treas. Reg. Section 1.414(c)-2(b)(2)(i). In addition, where the use of such stock with respect to the grant of an option to such service provider is based upon legitimate business criteria, the term controlling interest has the same meaning as provided in Treas. Reg. Section 1.414(c)-2(b)(2)(i), provided that the language "at least 20 percent" is used instead of "at least 80 percent" each place it appears in Treas. Reg. Section 1.414(c)-2(b)(2)(i). For purposes of determining ownership of an interest in an organization, the rules of Treas. Reg. Section 1.414(c)-3 and 1.414(c)-4 of the Code apply.

6) **Terms and Conditions of Stock Appreciation Rights**

- (a) *Grants.* The Committee may grant (i) a Stock Appreciation Right independent of an Option or (ii) a Stock Appreciation Right in connection with an Option, or a portion thereof. A Stock Appreciation Right granted pursuant to clause (ii) of the preceding sentence (A) may be granted at the time the related Option is granted or at any time prior to the exercise or cancellation of the related Option. (B) shall cover the same number of Shares covered by an Option (or such lesser number of Shares as the Committee may determine) and (C) shall be subject to the same terms and conditions as such Option except for such additional limitations as are contemplated by this Section 6 (or such additional limitations as may be included in an Award agreement).

- (b) *Terms.* The exercise price per Share of a Stock Appreciation Right shall be an amount determined by the Committee but in no event shall such amount be less than the Fair Market Value of a Share on the date the Stock Appreciation Right is granted; provided, however, that notwithstanding the foregoing in the case of a Stock Appreciation Right granted in conjunction with an Option, or a portion thereof, the exercise price may not be less than the Option Price of the related Option. Each Stock Appreciation Right granted independent of an Option shall entitle a Participant upon exercise to an amount, in cash and/or Shares, equal to (i) the excess of (A) the market value on the exercise date of one Share over (B) the exercise price per Share, times (ii) the number of Shares covered by the Stock Appreciation Right. Each Stock Appreciation Right granted in conjunction with an Option, or a portion thereof, shall entitle a Participant to surrender to the Company the unexercised Option, or any portion thereof, and to receive from the Company in exchange therefor an amount equal to (i) the excess of (A) the market value on the exercise date of one Share over (B) the Option Price per Share, times (ii) the number of Shares covered by the Option, or portion thereof, which is surrendered. Payment shall be made in Shares or in cash, or partly in Shares and partly in cash (any such Shares valued at such market value), as shall be determined by the Committee. Stock Appreciation Rights may be exercised from time to time upon actual receipt by the Company of written notice of exercise stating the number of Shares with respect to which the Stock Appreciation Right is being exercised. The date a notice of exercise is received by the Company shall be the exercise date. No fractional Shares will be issued in payment for Stock Appreciation Rights, but instead cash will be paid for a fraction or, if the Committee should so determine, the number of Shares will be rounded downward to the next whole Share.
- (c) *Limitations.* The Committee may impose, in its discretion, such conditions upon the exercisability or transferability of Stock Appreciation Rights as it may deem fit.
- (d) *Section 409A Restrictions on Stock Appreciation Right Awards.* Stock Appreciation Rights shall only be granted to employees, independent contractors or Non-Employee Directors providing direct services to any corporation in a chain of corporations or other entities in which each corporation or other entity, starting with the Company, has a controlling interest in another corporation or other entity in the chain, ending with the corporation or other entity for which the service provider provides direct services on the date of grant of the Stock Appreciation Right. For this purpose, the term controlling interest has the same meaning as provided in Treas. Reg. Section 1.414(c)-2(b)(2)(i) of the Code, provided that the language "at least 50 percent" is used instead of "at least 80 percent" each place it appears in Treas. Reg. Section 1.414(c)-2(b)(2)(i). In addition, where the use of such stock with respect to the grant of a Stock Appreciation Right to such service provider is based upon legitimate business criteria, the term controlling interest has the same meaning as provided in Treas. Reg. Section 1.414(c)-2(b)(2)(i), provided that the language "at least 20 percent" is used instead of "at least 80 percent" each place it appears in Treas. Reg. Section 1.414(c)-2(b)(2)(i). For purposes of determining ownership of an interest in an organization, the rules of Treas. Reg. Section 1.414(c)-3 and 1.414(c)-4 of the Code apply.

## 7) Other Stock-Based Awards

- (a) The Committee, in its sole discretion, may grant or sell Awards of Shares and Awards that are valued in whole or in part by reference to, or otherwise based on the Fair Market Value of, Shares (all such Awards being referred to herein as "Other Stock-Based Awards"). Other Stock-Based Awards shall be in such form, and be subject to such terms and conditions, as the Committee shall determine, including without limitation, the following forms: (i) the right to purchase Shares, (ii) Shares subject to restrictions on transfer until the completion of a specified period of service, the occurrence of an event or the attainment of performance objectives, each as specified by the Committee, and (iii) Shares issuable upon the completion of a specified period of service, the occurrence of an event or the attainment of performance objectives, each as specified by the Committee. Other Stock-Based Awards may be granted alone or in addition to any other Awards made under the Plan. All references in the preceding sentence to "specified period of service," in the case of Other Stock-Based Awards which (i) are not in lieu of cash compensation to employees generally, (ii) are not paid to recruit a new employee in an amount of less than 5% of the total

awards available for grant under the Plan or (iii) are not subject to the attainment of performance objectives, shall provide that vesting, restrictions on transfer or some other comparable restriction which incents continued performance of the Participant, will be for a period of not less than three years (although vesting or lapsing may occur in tranches over the three years), unless there is a Change in Control or the Participant retires, becomes disabled or dies. Subject to the provisions of the Plan, the Committee shall have sole and absolute discretion to determine to whom and when such Other Stock-Based Awards will be made, the number of shares of Common Stock to be awarded under (or otherwise related to) such Other Stock-Based Awards and all other terms and conditions of such Awards. The Committee shall determine whether Other Stock-Based Awards shall be settled in cash, Common Stock or a combination of cash and Common Stock.

- (b) With respect to any restricted stock units granted under the Plan, the obligations of the Company or any Subsidiary are limited solely to the delivery of Shares (or, at the discretion of the Committee, cash in lieu thereof to the extent necessary to comply with applicable law, regulation or other local practice, as determined by the Committee) on the date when such Shares are due to be delivered under each Award Agreement. The Company or any Subsidiary may deliver cash to Participants for dividends paid to a holder of shares of Common Stock, for fractional shares or for any amounts payable in cash upon the occurrence of a Change in Control.
- (c) The Committee may establish performance objectives that must be attained in order for the Company to make payments pursuant to Other Stock-Based Awards. The performance objectives for Awards will be based upon one or more of the following criteria: (i) before-tax income and/or net income; (ii) earnings per share; (iii) book value per share; (iv) stock price; (v) return on equity; (vi) expense management; (vii) return on investment; (viii) improvements in capitalization; (ix) profitability of an identifiable business unit or product; (x) profit margins; (xi) budget comparisons; (xii) total return to Stockholders; (xiii) net revenue; and (xiv) economic value added. The foregoing criteria may relate to the Company, one or more of its Subsidiaries or one or more of its divisions or units, or any combination of the foregoing, and may be applied on an absolute basis and/or be relative to one or more peer group companies or indices, or any combination thereof, as the Committee shall determine. In addition, to the degree consistent with Section 162(m) of the Code (or any successor section thereto), the performance goals may be calculated without regard to extraordinary items. The Committee shall determine whether, with respect to a performance period, the applicable performance goals have been met with respect to a given Participant and, if they have, shall so certify and ascertain the amount of the applicable Performance-Based Award. No Performance-Based Awards will be paid for such performance period until such certification is made by the Committee. The amount of the Performance-Based Award actually paid to a given Participant may be less than the amount determined by the applicable performance goal formula, at the discretion of the Committee. The amount of the Performance-Based Award determined by the Committee for a performance period shall be paid to the Participant at such time as determined by the Committee in its sole discretion after the end of such performance period; provided, however, that a Participant may, if and to the extent permitted by the Committee and consistent with the provisions of Sections 162(m) and 409A of the Code, elect to defer payment of a Performance-Based Award. The maximum amount of Other Stock-Based Awards that may be granted during a fiscal year of the Company to any Participant shall be (x) with respect to Other Stock-Based Awards that are denominated or payable in Shares, four million Shares, and (y) with respect to Other Stock-Based Awards that are not denominated or payable in Shares, \$50 million.
- (d) The Committee may grant Participants Dividend Equivalent Rights with respect to any Common Stock subject to any Award. The Committee shall specify at the time of grant of any Dividend Equivalent Right whether dividends shall be paid at the time dividends in respect of Common Stock are paid to other shareholders or accumulated and paid out at the time payment is called for under the Awards to which the Dividend Equivalent Right relates. Other Stock-Based Awards may, at the discretion of the Committee, provide the Participant with dividends or dividend equivalents and voting rights prior to either vesting or earnout.

8) **Unfunded Status of Plan; No Rights as a Shareholder.**

The Plan is intended to constitute an "unfunded" plan for long-term incentive compensation. With respect to any payments not yet made to a Participant, including any Participant-optionee, by the Company, nothing herein contained shall give any Participant any rights that are greater than those of a general creditor of the Company. In its sole discretion, the Committee may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver Shares or payments in lieu thereof or with respect to Options, Stock Appreciation Rights and Other Stock-Based Awards under the Plan; provided, however, that the existence of such trusts or other arrangements is consistent with the unfunded status of the Plan. Except as otherwise provided in a Participant's Award Agreement, no Participant (or other person having rights pursuant to an Award) shall have any of the rights of a shareholder of the Company with respect to Shares subject to an Award until the delivery of such Shares. Except as otherwise provided in Section 9, no adjustments shall be made for dividends or distributions on (whether ordinary or extraordinary, and whether in cash, Shares, other securities or other property), or other events relating to, Shares subject to an Award for which the record date is prior to the date such Shares are delivered.

9) **Adjustments Upon Certain Events**

Notwithstanding any other provisions in the Plan to the contrary, the following provisions shall apply to all Awards granted under the Plan:

- (a) *Generally.* In the event of any change in the outstanding Shares after the Effective Date by reason of any Share dividend or split, reorganization, recapitalization, merger, consolidation, spin-off, combination or transaction or exchange of Shares or other corporate exchange, or any distribution to shareholders of Shares other than regular cash dividends, or any transaction similar to the foregoing, the Committee in its sole discretion and without liability to any person may make such substitution or adjustment, if any, as it deems to be equitable, as to (i) the number or kind of Shares or other securities issued or reserved for issuance pursuant to the Plan or pursuant to outstanding Awards, (ii) the maximum number of Shares for which Awards may be granted during a fiscal year of the Company to any Participant, (iii) the Option Price or exercise price of any Stock Appreciation Right and/or (iv) any other affected terms of such Awards.
- (b) *Change in Control.* If a Change in Control occurs after the Effective Date, at any time before such Change in Control the Committee may, but shall not be obligated to, (i) accelerate, vest or cause the restrictions to lapse with respect to, all or any portion of an Award, (ii) cancel Awards for fair value (as determined in the sole discretion of the Committee) which, in the case of Options and Stock Appreciation Rights, may equal the excess, if any, of value of the consideration to be paid in the Change in Control transaction to holders of the same number of Shares subject to such Options or Stock Appreciation Rights (or, if no consideration is paid in any such transaction, the Fair Market Value of the Shares subject to such Options or Stock Appreciation Rights) over the aggregate exercise price of such Options or Stock Appreciation Rights, (iii) provide for the issuance of substitute Awards that will substantially preserve the otherwise applicable terms of any affected Awards previously granted hereunder as determined by the Committee in its sole discretion or (iv) provide that for a period of at least 30 days prior to the Change in Control, such Options shall be exercisable as to all shares subject thereto and that upon the occurrence of the Change in Control, such Options shall terminate and be of no further force and effect; provided in any such case the Committee shall not have such power and authority to accelerate the times at which Shares with respect to any Award are delivered if any Award is subject to Section 409A of the Code in a manner that would result in the imposition upon any Participant of an additional tax under Section 409A of the Code.

10) **No Right to Employment or Awards**

The granting of an Award under the Plan shall impose no obligation on the Company or any Affiliate to continue the Employment of a Participant and shall not lessen or affect the Company's or

Subsidiary's right to terminate the Employment of such Participant. No Participant or other Person shall have any claim to be granted any Award, and there is no obligation for uniformity of treatment of Participants, or holders or beneficiaries of Awards. The terms and conditions of Awards and the Committee's determinations and interpretations with respect thereto need not be the same with respect to each Participant (whether or not such Participants are similarly situated).

**11) Successors and Assigns**

The Plan and any Award Agreement shall be binding on all successors and assigns of the Company and a Participant, including without limitation, the estate of such Participant and the executor, administrator or trustee of such estate, or any receiver or trustee in bankruptcy or representative of the Participant's creditors.

**12) Transferability of Awards**

Unless otherwise determined by the Committee or as otherwise set forth in any Award Agreement, an Award shall not be sold, transferred, assigned, pledged, hypothecated or otherwise disposed of by the Participant otherwise than by will or by the laws of descent and distribution. An Award exercisable after the death of a Participant may be exercised by the legatees, personal representatives or distributees of the Participant. Any sale, transfer, assignment, pledge, hypothecation or other disposition in violation of the provisions of this Section 12 shall be void.

**13) Amendments or Termination**

The Board may amend or terminate the Plan, but no amendment or termination shall be made, (a) without the approval of the shareholders of the Company, if such action would (i) (except as is provided in Section 9), increase the total number of Shares reserved for the purposes of the Plan or increase the maximum number of Shares that may be issued hereunder, or the maximum number of Shares for which Awards may be granted to any Participant, (ii) change the class of persons eligible to be Participants; or (iii) extend the date after which Awards cannot be granted under the Plan; or (b) without the consent of a Participant, if such action would diminish any of the rights of the Participant under any Award theretofore granted to such Participant under the Plan; provided, however, that the Committee may amend the Plan and/or any outstanding Awards in such manner as it deems necessary to permit the Plan and/or any outstanding Awards to satisfy applicable requirements of the Code or other applicable laws.

**14) Treatment of Awards**

Absent express provisions to the contrary, an Award under this Plan shall not be deemed compensation for purposes of computing benefits or contributions under any retirement plan of the Company or its Affiliates and shall not affect any benefits under any other benefit plan of any kind now or subsequently in effect under which the availability or amount of benefits is related to level of compensation. This Plan is not a "Pension Plan" or "Welfare Plan" under the Employee Retirement Income Security Act of 1974, as amended.

**15) Choice of Law**

The Plan shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflicts of laws.

**16) Effectiveness of the Plan**

The Plan shall be effective as of the Effective Date and shall terminate immediately prior to the tenth anniversary of the Effective Date, subject to earlier termination by the Board pursuant to Section 13.

Exhibit B

Equity Plan Section 409A General Provision

409A Savings Clause Rider

Notwithstanding other provisions of the Plan or any Award agreements thereunder, no Award shall be granted, deferred, accelerated, extended, paid out or modified under this Plan in a manner that would result in the imposition of an additional tax under Section 409A of the Code upon a Participant. In the event that it is reasonably determined by the Committee that, as a result of Section 409A of the Code, payments or deliveries of shares in respect of any Award under the Plan may not be made at the time contemplated by the terms of the Plan or the relevant Award agreement, as the case may be, without causing the Participant holding such Award to be subject to taxation under Section 409A of the Code, the Company will make such payment or delivery of shares on the first day that would not result in the Participant incurring any tax liability under Section 409A of the Code. In the case of a Participant who is a "specified employee" (within the meaning of Section 409A(a)(2)(B)(i) of the Code), payments and/or deliveries of shares in respect of any Award subject to Section 409A of the Code that are linked to the date of the Participant's separation from service shall not be made prior to the date which is six (6) months after the date of such Participant's separation from service from the Company and its affiliates, determined in accordance with Section 409A of the Code and the regulations promulgated thereunder. The Company shall use commercially reasonable efforts to implement the provisions of this Section [ ] in good faith, provided that neither the Company, the Committee nor any of the Company's employees, directors or representatives shall have any liability to Participants with respect to this Section [ ].<sup>1</sup>

---

<sup>1</sup> Insert: 18 for EIP, 12.15 for LHP, 18 for 1996 MOP and 19 for 1994 MOP.