

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

125 Broad Street
New York, NY 10004-2498

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.
FRANKFURT • LONDON • PARIS
BEIJING • HONG KONG • TOKYO
MELBOURNE • SYDNEY

August 19, 2008

Mr. John White, Director
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: FOIA Confidential Treatment Request of Lehman Brothers Holdings Inc.

Dear John:

On behalf of Lehman Brothers Holdings Inc., and in accordance with Rule 83 of the Rules of Practice of the Commission (17 C.F.R. § 200.83), I request confidential treatment of the enclosed document, pages 1-12, dated August 19, 2008 (the "Confidential Material"). Please promptly inform the undersigned of any request for the Confidential Material made pursuant to the Freedom of Information Act or otherwise so that the undersigned may substantiate the foregoing request for confidential treatment in accordance with Rule 83.

The Confidential Material constitutes privileged or confidential trade secrets or commercial or financial information, and is therefore entitled to confidential treatment under Rule 80(b)(4) of the Rules of Practice of the Commission (17 C.F.R. § 200.80(b)(4)). The Confidential Material has not previously been disclosed or made available to the public.

Pursuant to Rule 83, a copy of this request (but not the Confidential Information) is also being delivered to the Commission's Office of Freedom of Information Act and Privacy Operations.

NY125TG:34845.2

EY-LE-LBHI-KEYPERS 3670025
CONFIDENTIAL

Mr. John White

-2-

Any questions or notifications with respect to this request for confidential treatment should be directed to Mr. Thomas Russo, Vice Chairman and Chief Legal Officer, Lehman Brothers Holdings Inc., 745 Seventh Avenue, New York NY 10019-6801, at (212) 526-0475.

Very truly yours,



John T. Bostelman

(Enclosure)

cc (without enclosure) Office of Freedom of Information and Privacy Act Operations
Securities and Exchange Commission
Operations Center
6432 General Green Way
Alexandria, Virginia 22312-2413

cc: Mr. Thomas Russo
(Lehman Brothers Holdings Inc.)

NY125TG:34845.2

EY-LE-LBHI-KEYPERS 3670026
CONFIDENTIAL

Spinco

PROPOSED TERM SHEET

- Transaction:** Transfer of real estate-related assets by NYSE-listed public company X to a newly organized entity (“Spinco”), and pro rata distribution of common equity of Spinco to X’s shareholders.
- Spinco:** A corporation, limited partnership or LLC (to be decided). The principal purpose of Spinco, as set forth in its organizational documents, is to manage its assets over time in a manner to maximize Spinco’s shareholder value, which is currently expected to be a 5-10 year process. Any new assets acquired would only be to maximize value of Spinco’s existing assets. Spinco will have its own independent board of directors and management, and may utilize the services of an outside management firm or firms. X will not be involved in management of Spinco, which after the spin off will not be controlled by X. A Restricted Stock Units Trust now holds about 14% of X’s outstanding shares for the benefit of X’s employees with vested RSUs. Provision may be made for Spinco shares distributed in respect of those X shares, and possibly in respect of an additional 5-10% of X’s outstanding shares relating to unvested RSUs, to be held for the benefit of X’s employees. Application will be made to list Spinco’s shares on the NYSE.

Initial balance sheet (tentative):

- Assets:** \$25-30 billion in commercial real estate assets (exceeding 2,000 geographically diversified positions), of which approximately
- 2/3 is senior real estate loans (majority performing; some in restructuring; some nonperforming) and commercial mortgage-backed securities
 - 1/3 is mezzanine debt and equity positions, which will be split relatively evenly between mezzanine and equity interests

On the transfer date, assets of Spinco’s balance sheet will be reflected at fair value. Assets will not be transferred if third party consents are not available or if assets are sold before transfer. Related assets and liabilities, such as those relating to deferred taxes, may also be transferred. As a result of GAAP consolidation of certain entities, total assets on Spinco’s balance sheet will be approximately \$10 billion higher than the \$25-30 billion noted above.

Concentration: No single asset will represent more than 20% of total assets based on above tentative asset size. Only one asset has been identified as representing over 10%. This asset is not an operating real estate position and is not subject to the requirements of Reg. S-X Rule 3-14.

Liabilities: Debt in amount equal to 70-75% of total assets. It remains to be decided whether that debt will be issued in multiple classes of seniority. Initially all debt will be owned by X, on terms consistent with market rates for seller financing. Possibly (TBD) a small portion, in the form of mezzanine debt, will be owned by third parties.

Equity: 25-30% of total assets.

SEC Filings: Form 10 by Spinco (§12(b) registration). Spinco will seek SEC staff review on a confidential basis. The initial submission will include financial statements and forecasts, but will not include an audit report. Spinco will seek staff comments on non-financial portion of Form 10 prior to completion of audit work on financial statements.

**Financial
Statements/
Information:**

Form 10:

- Audited opening balance sheet at fair value.
- Form 10 will include 3 years of forecasts, without auditors' report, prepared in accordance with AICPA standards for preparation of prospective financial information and Item 10(b) of Reg. S-K.
- X will seek a formal waiver from the financial statement requirements for operating real estate assets required by Reg. S-X Rule 3-14 if the thresholds of that rule are exceeded. The formal waiver will be submitted in connection with the initial Form 10 filing, but X will proceed now with the expectation that the thresholds will not be met or that it will obtain the exemption. Spinco's total consolidated assets are expected to be \$35-40 billion, including up to approximately \$17 billion of consolidated operating real estate assets, which would represent approximately 42% of total consolidated assets of approximately \$40 billion and approximately 24% on a net balance sheet at risk basis, calculated as \$7 billion investment in operating real estate assets divided by \$30 billion of total assets less third party debt and equity in consolidated operating real estate assets. The largest consolidated real estate asset is \$3.2 billion (or approximately

\$0.6 billion excluding third party debt and equity), making it 8% of total assets and 2% of total assets less third party debt and equity. There are only three other consolidated operating real estate assets in excess of \$1 billion, for a total of \$4.7 billion (or approximately \$1.3 billion in the aggregate excluding third party debt and equity). These three assets each represent less than 5% of total consolidated assets and less than 2% of total assets less third party debt and equity. X 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. Further, historical financial statements for the four largest consolidated operating real estate assets are not readily available. In addition, because Spinco's opening balance sheet will be at fair value, historical financial statements for these assets are not considered relevant or meaningful. This conclusion is further supported by Spinco's proposal to present additional information regarding operating real estate assets. Specifically, Spinco will furnish tabular data for operating real estate assets with the following information on an aggregated basis for each operating real estate asset (or group of substantially similar operating real estate assets): type of property, occupancy percentage, geographic location, square footage, acquisition cost, indebtedness and property level cash flows.

Future financial reporting:

- Audited annual financial statements for post-commencement periods (1-year in 1st 10-K, 2 years in 2nd 10-K, 3 years in 3rd 10-K). Justification letter for Spinco not using fair value accounting is being separately furnished but is to be considered with this term sheet.
- Unaudited quarterly condensed financial statements (no prior year comparison in 10-Qs for 1st year).
- Financial forecasts will not be updated.

Other: To the extent required, Spinco's Form 10 and future financial reports will comply with SAB 71 (audited financial statements or condensed financial information for certain investments).

Basis for approach to financials:

There is no predecessor entity and the assets being transferred to Spinco are not otherwise a "business" for financial reporting purposes. The assets have never been treated as a separate business or smaller cohesive unit by X. By analogy to Reg. S-X Rule 11-01(d), (a) the revenue-producing nature of the assets in Spinco will be different than when owned by X, in that they will be managed to maximize long-term

value for Spinco shareholders (no new originations or syndication of new assets and longer realization time horizons given the lower turnover rate of the portfolio), and not to address broader and more short-term X issues, as is currently the case, and (b) the following attributes, to the extent relevant, will generally not remain with Spinco after the transaction:

- Physical facilities – These are limited to management office space. None will be transferred; office space may be leased from X at market rates.
- Employee base – Certain employees of X will transfer to Spinco; however, their job functions will be restricted to activities necessary to manage the assets transferred from X or activities necessary to operate Spinco as a public company.
- Market distribution system – None; no originations or syndications of new assets.
- Sales force – Spinco will not have an origination sales force.
- Customer base – No new originations or syndications of new assets.
- Operating rights – No new originations or syndications of new assets. Existing information systems and administration infrastructure will be transferred to the extent necessary to support the management of the assets.
- Production techniques – No new originations or syndications of new assets.
- Trade names – Spinco will not use X's name.

For the above reasons, preparation of audited historical financial statements would also not be meaningful to investors and could even be potentially misleading. It could also delay the transaction beyond a practical time horizon. X will submit a formal letter with analysis supporting the “not a business” conclusion in connection with the initial Form 10 filing, but will proceed now in expectation that the SEC staff will not object to X's conclusion that the transferred assets do not constitute a business.

Non-financial disclosures:

Form 10

In general, to the extent relevant to Spinco and the proposed transaction and the requirements of Form 10, the disclosures in the Prospectus, dated June 23, 1993, of Kearny Street Real Estate Company, L.P. (registration statement on Form S-11) about its business will be used as a guide. The “Business” section of the Form 10 would include (i) an overall description of the assets and the transaction, (ii) a description and operating data about the most significant individual positions, and (iii) several tables of selected operating and financial data concerning various attributes of the portfolio, which will be modeled on those in

Kearny Street (Tables 1-11 & 14 as to all assets; Tables 12 & 13 as to equity positions only, because of absence of rights to obtain underlying data for loan positions).

Within those tables, selected operating and financial data will be sub-categorized by asset type, including separating disclosure for mortgage loans, commercial mortgage-backed securities, mezzanine indebtedness and equity positions, in each case on an aggregate basis. The Form 10 would also include (either as a component of the tables described above or separately) disclosure responsive to certain applicable items of Guide 3 (Statistical Disclosure for Bank Holding Companies) and Regulation AB (Asset-Backed Securities). We would expect that the Guide 3 information would include Item III (Loan Portfolio) as of the latest balance sheet date and Item IV (Summary of Loan Loss Experience) with information relating to changes to be shown in subsequent filings. We would expect that the Regulation AB information would be presented for mortgage and mezzanine loans on an aggregated basis and would include information from the applicable sections of Item 1111(b) (Pool Assets - Pool Characteristics) and Item 1111(c) (Pool Assets - Delinquency and Loss Information). Specifically, the sections of Item 1111(b) that we believe to be applicable are (1) through (5), (7), (9), (10) and (14). In responding to Item 1111(b)(9), we do not expect that there would be any mortgage loans constituting 10% or more of the asset pool.

Future 10-Ks

The Business section in future 10-Ks is expected generally to reflect the same tabular data as the Form 10, updated as appropriate to reflect developments in the business.

Spinco

PROPOSED TERM SHEET

Transaction: Transfer of real estate-related assets by NYSE-listed public company X to a newly organized entity ("Spinco"), and pro rata distribution of common equity of Spinco to X's shareholders.

Spinco: A corporation, limited partnership or LLC (to be decided). The principal purpose of Spinco, as set forth in its organizational documents, is to manage its assets over time in a manner to maximize Spinco's shareholder value, which is currently expected to be a 5-10 year process. Any new assets acquired would only be to maximize value of Spinco's existing assets. Spinco will have its own independent board of directors and management, and may utilize the services of an outside management firm or firms. X will not be involved in management of Spinco, which after the spin off will not be controlled by X. A Restricted Stock Units Trust now holds about 14% of X's outstanding shares for the benefit of X's employees, and provision with vested RSUs. Provision may be made for Spinco shares distributed in respect of those X shares, and possibly in respect of an additional 5-10% of X's outstanding shares relating to unvested RSUs, to be held for the benefit of those X's employees. Application will be made to list Spinco's shares on the NYSE.

Initial balance sheet (tentative):

- Assets:** \$25-30 billion in commercial real estate assets (exceeding 2,000 geographically diversified positions), of which approximately
- 2/3 is senior real estate loans (majority performing; some in restructuring; some nonperforming) and commercial mortgage-backed securities
 - 1/3 is mezzanine debt and equity positions, which will be split relatively evenly between mezzanine and equity interests

On the transfer date, assets ~~on~~of Spinco's balance sheet will be reflected at fair value. Assets will not be transferred if third party consents are not available or if assets are sold before transfer. Related assets and liabilities, such as those relating to deferred taxes, may also be transferred. As a result of GAAP consolidation of certain entities, total assets on Spinco's balance sheet will be approximately \$10 billion higher than the \$25-30 billion noted above.

Concentration: No single asset will represent more than 20% of total assets based on above tentative asset size. Only one asset has been identified as representing over 10%. This asset is not an operating real estate position and is not subject to the requirements of Reg. S-X Rule 3-14.

- Liabilities:** Debt in amount equal to 70-75% of total assets. It remains to be decided whether that debt will be issued in multiple classes of seniority. Initially all debt will be owned by X, on terms consistent with market rates for seller financing. Possibly (TBD) a small portion, in the form of mezzanine debt, will be owned by third parties.

- Equity:** 25-30% of total assets.

SEC Filings: Form 10 by Spinco (§12(b) registration). ~~Will Spinco will~~ seek SEC staff review on a confidential basis. The initial submission will include financial statements and forecasts, but will not include an audit report. Spinco will seek staff comments on non-financial portion of Form 10 prior to completion of audit work by outside auditors on financial statements.

**Financial
Statements/
Information:**

Form 10:

- Audited opening balance sheet at fair value.
- Form 10 will include 3 years of forecasts, without auditors' report, prepared in accordance with AICPA standards for preparation of prospective financial information and Item 10(b) of Reg. S-K.
- ~~To be discussed: Extent to which Form 10 will include outside auditors reports on the forecasts~~ X will seek a formal waiver from the financial statement requirements for operating real estate assets required by Reg. S-X Rule 3-14 if the thresholds of that rule are exceeded. The formal waiver will be submitted in connection with the initial Form 10 filing, but X will proceed now with the expectation that the thresholds will not be met or that it will obtain the exemption. Spinco's total consolidated assets are expected to be \$35-40 billion, including up to approximately \$17 billion of consolidated operating real estate assets, which would represent approximately 42% of total consolidated assets of approximately \$40 billion and approximately 24% on a net balance sheet at risk basis, calculated as \$7 billion investment in operating real estate assets divided by \$30 billion of total assets less third party debt and equity in consolidated operating real estate assets. The largest consolidated real estate asset is \$3.2 billion (or approximately \$0.6 billion excluding third party debt and equity), making it 8% of total assets and 2% of total assets less third party debt and equity. There are only three other consolidated operating real estate assets in excess of \$1 billion, for a total of \$4.7 billion (or approximately \$1.3 billion in the aggregate excluding third party debt and equity). These three assets each represent less than 5% of total consolidated assets and less than 2% of total assets less third party debt and equity. X 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. Further, historical financial statements for the four largest consolidated operating real estate assets are not readily available. In addition, because Spinco's opening balance sheet will be at fair value, historical financial statements for these assets are not considered relevant or meaningful. This conclusion is further supported by Spinco's proposal to present additional information regarding operating real estate assets. Specifically, Spinco will furnish tabular data for operating real estate assets with the following information on an aggregated basis for each operating real estate asset (or group of substantially similar operating real estate assets): type of property, occupancy percentage,

geographic location, square footage, acquisition cost, indebtedness and property level cash flows.

Future financial reporting:

- Audited annual financial statements for post-commencement periods (1-year in 1st 10-K, 2 years in 2nd 10-K, 3 years in 3rd 10-K). Justification letter for Spinco not using fair value accounting is being separately furnished but is to be considered with this term sheet.
- Unaudited quarterly condensed financial statements (no prior year comparison in 10-Qs for 1st year).
- Financial forecasts will not be updated.

Other: To the extent required, ~~X~~Spinco's Form 10 and future financial reports will comply with SAB 71 (audited financial statements or condensed financial information for certain investments).

Basis for approach to financials:

There is no predecessor entity and the assets being transferred to Spinco are not otherwise a “business” for financial reporting purposes. The assets have never been treated as a separate business or smaller cohesive unit by X. By analogy to Reg. S-X Rule 11-01(d), (a) the revenue-producing nature of the assets in Spinco will be different than when owned by X, in that they will be managed to maximize long-term value for Spinco shareholders (no new originations or syndication of new assets and longer realization time horizons given the lower turnover rate of the portfolio), and not to address broader and more short-term X issues, as is currently the case, and (b) the following attributes, to the extent relevant, will generally not remain with Spinco after the transaction:

- Physical facilities – These are limited to management office space. None will be transferred; office space may be leased from X at market rates.
- Employee base – Certain employees of X will transfer to Spinco; however, their job functions will be restricted to activities necessary to manage the assets transferred from X or activities necessary to operate Spinco as a public company.
- Market distribution system – None; no originations or syndications of new assets.
- Sales force – Spinco will not have an origination sales force.
- Customer base – No new originations or syndications of new assets.
- Operating rights – No new originations or syndications of new assets. Existing information systems and administration infrastructure will be transferred to the extent necessary to support the management of the assets.
- Production techniques – No new originations or syndications of new assets.
- Trade names – Spinco will not use X’s name.

For the above reasons, preparation of audited historical financial statements would also not be meaningful to investors and could even be potentially misleading. It could also delay the transaction beyond a practical time horizon. X will submit a formal letter with analysis supporting the “not a business” conclusion in connection with the initial Form 10 filing, but will proceed now in expectation that the SEC staff will not object to X’s conclusion that the transferred assets do not constitute a business.

**Non-financial
disclosures in
Form 10:**

Form 10

In general, to the extent relevant to Spinco and the proposed transaction and the requirements of Form 10, the disclosures in the Prospectus, dated June 23, 1993, of Kearny Street Real Estate Company, L.P. (registration statement on Form S-11) about its business will be used as a guide. The "Business" section of the Form 10 would include (i) an overall description of the assets and the transaction, (ii) a description and operating data about the most significant individual positions, and (iii) several tables of selected operating and financial data concerning various attributes of the portfolio, which will be modeled on those in Kearny Street (Tables 1-11 & 14 as to all assets; Tables 12 & 13 as to equity positions only, because of absence of rights to obtain underlying data for loan positions).

Within those tables, selected operating and financial data will be sub-categorized by asset type, including separating disclosure for mortgage loans, commercial mortgage-backed securities, mezzanine indebtedness and equity positions, in each case on an aggregate basis. The Form 10 would also include (either as a component of the tables described above or separately) disclosure responsive to certain applicable items of Guide 3 (Statistical Disclosure for Bank Holding Companies) and Regulation AB (Asset-Backed Securities). We would expect that the Guide 3 information would include Item III (Loan Portfolio) as of the latest balance sheet date and Item IV (Summary of Loan Loss Experience) with information relating to changes to be shown in subsequent filings. We would expect that the Regulation AB information would be presented for mortgage and mezzanine loans on an aggregated basis and would include information from the applicable sections of Item 1111(b) (Pool Assets - Pool Characteristics) and Item 1111(c) (Pool Assets - Delinquency and Loss Information). Specifically, the sections of Item 1111(b) that we believe to be applicable are (1) through (5), (7), (9), (10) and (14). In responding to Item 1111(b)(9), we do not expect that there would be any mortgage loans constituting 10% or more of the asset pool.

Future 10-Ks

The Business section in future 10-Ks is expected generally to reflect the same tabular data as the Form 10, updated as appropriate to reflect developments in the business.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 2403
RECIPIENT ADDRESS 912027729212
DESTINATION ID
ST. TIME 08/19 13:13
TIME USE 06'38
PAGES SENT 15
RESULT OK

FAX COVER PAGE

SULLIVAN & CROMWELL LLP

125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588



FAX NUMBER



VOICE NUMBER

Date: August 19, 2008

FROM: SENDER'S NUMBER(S)

John T. Bostelman (212) 558-3840

TO: COMPANY NUMBER(S)

1. John W. White Securities and Exchange Commission
202-772-9212
202-551-3110

Message: