

## Lehman Brothers - update April 2010

### Introduction

Meteor continues to work on behalf of investors with lawyers in various jurisdictions to advise on legal matters surrounding the insolvency of Lehman and the ongoing administration of the Lehman estate. In previous updates we have mentioned the great difficulty confronting the Administrators (or their equivalents) in reconciling the inter-company positions at the time when Lehman Brothers Holdings Inc ("LBHI") applied for Chapter 11 Bankruptcy Protection on 15 September 2008.

The underlying investments ("the Securities") in respect of our Lehman affected Plans were issued by either Lehman Brothers Treasury Co. B.V., ("LBT") based in the Netherlands or Lehman Brothers Securities N.V ("LBS") based in the Dutch Antilles. In both cases, the guarantor of the obligations of LBT and LBS to meet the payments due from the Securities was LBHI. The money raised by LBS and LBT through the issue of the Securities was lent to LBHI. Both LBS and LBT had previously identified their respective main assets as being intercompany balances due to them from LBHI. On the collapse of Lehman Brothers much of the essential group infrastructure was lost, making communication between the former Lehman entities difficult; this is compounded by the fact that each former Lehman company is subject to the insolvency laws of the jurisdiction in which they are situated and these differ from country to country.

Despite these difficulties there has been a good amount of progress but it is still not possible to give any concrete picture of when any distributions might be made from the Lehman estate or what the level of those payments might be.

### Progress of Claims to LBHI

As previously reported, an order by the US Bankruptcy Court on 2 July 2009 set out the bar dates (the deadline for filing claims) and the process for making claims against LBHI. Claims in respect of the Securities we hold on your behalf and issued by LBS and LBT needed to be filed under the arrangements set out in The Securities Programs Bar Date. The list of securities to which this bar date applied was published on 17 July 2009 and all of the Securities issued to us by LBS and LBT are included on the list. The bar date for the filing of such claims was set as 2 November 2009 and differed to the more widely reported bar date of 22 September 2009 which applied to most other types of claim.

We announced previously that we would be filing claims in New York and can report that the claims were filed on 23 October 2009 in respect of all the LBS and LBT Securities held by Meteor. A copy of the submitted claim can be viewed under the "Claims" tab on the website [www.chapter11.epiqsystems.com](http://www.chapter11.epiqsystems.com)

On 18 November 2009, LBHI and 22 affiliated chapter 11 debtors (collectively, "the Debtors") issued a presentation "The State of the Estate", the Executive Summary of which highlighted that, although progress was being made and the claims picture was becoming more focused following the passing of the various bar dates, the key challenges were "the resolution of intercompany issues and the sheer volume of legal issues that may need to be addressed". The other 22 entities constituting the Debtors alongside LBHI are essentially the other US based entities in Chapter 11 proceedings.

At that time over 64,000 claims had been received with a face value in excess of US\$820 billion and the Debtors had started the process of rectifying errors made in claims and clearing up duplicated claims but that "intercompany derivative and intercompany claims remained an open issue"

On 15 March 2010 the Debtors filed a joint plan for reorganisation ("the Plan") with the United States Bankruptcy Court for the Southern District of New York as they are required to do by Chapter 11 of the Bankruptcy Code. The Court extended until 14 April 2010 the time within which the Debtors may file a disclosure statement regarding the Plan. A disclosure statement is used to solicit acceptance of the Plan only once it has been approved by the Bankruptcy Court after notice and a hearing.

In the interim LBHI made a submission to the US Securities and Exchange Commission (“SEC”) giving a broad outline of the Plan and its aims. They stated that the objective of the Plan is to attempt to evaluate the claims of various claimants to arrive at a fair and equitable conclusion for each whilst minimising the need for expensive and lengthy litigation which would be likely to be detrimental to the ultimate recoveries paid to holders of valid claims.

## **The LBHI Plan**

On 14 April 2010 the Debtors submitted the draft Disclosure Document to the Court for approval. The Court now has to adjudicate on whether the Disclosure Document provides adequate information concerning the affairs of the Debtors to enable the holder of a claim or interest to make an informed judgment about the Plan to be able to determine if they are in favour of the Plan. The Disclosure Document, with any possible amendments, will then be sent to all those with accepted claims to vote on the Plan, a ballot paper will be sent with the Disclosure Document.

For the purposes of the Plan, LBHI creditors have been classified into classes. The Claims in respect of all classes are “impaired” under the US Bankruptcy Code. The term “impaired” means that a claimants rights will be altered by the Plan, in essence their rights will be changed from those that existed before the Chapter 11 proceedings to the rights provided under the Plan. In order for the plan to be accepted at least one class of creditors must vote in favour of the Plan. In order for the Plan to be accepted by any Class the Plan must be favoured by holders at least two thirds of the amount (in US dollars) and by more than half of the creditors in that class who have submitted votes within the time allowed. The failure of a creditor to vote will not be counted as a vote either for or in rejection of the Plan.

Meteor is currently taking legal advice on its legal capacity to vote as well as investigating the rights of Planholders to vote on the Plan.

LBHI claims have been split into nine classes (claims against the other 22 Debtors are classified into 110 classes, 5 in respect of each of the other Debtors). Our claim, on behalf of our Planholders, is based on guarantees provided by LBHI in respect of the securities issued by LBS or LBT. Such claims have been classified as Third-Party Guarantee Claims under Class 7. Class 7 has been further subdivided into 18 classes – 7A to 7R indicating which issuing Lehman entity the claim relates to. LBT is Class 7I and LBS is Class 7L.

If one or more classes do not vote in favour of the Plan, the Court may still allow the Plan to proceed if it is satisfied that

- (i) the Plan is feasible and
- (ii) in the best interests of stockholders and
- (iii) does not discriminate unfairly against the class or classes that have rejected the Plan and is fair and equitable to those creditors.

As one class of creditors (Class 5) as well as those with equity interests in the Debtors will not be receiving a distribution under the terms of the Plan they are automatically deemed to have rejected the Plan and the Court will therefore need to apply the tests above to those classes of creditors as well as any other classes that may reject the Plan.

The Court will decide in a Confirmation Hearing whether the Plan is to be implemented. The date of the Hearing will be stated in the Disclosure Document but we will not know the date until after the acceptance of the Disclosure Document.

If the Plan is not accepted, the Debtors may provide an alternative Plan which is likely to involve the consolidation of the Debtors’ estates and this alternative was originally considered by them. It is their belief that such consolidation was likely to lead to lengthy and complex litigation and was more likely to lead to an extension of the Chapter 11 proceedings compared to an acceptance of the Plan. LBHI think this would be more costly on the Lehman estate and would ultimately be to the detriment of creditors. The Chapter 11 proceeding essentially “protect” the affected company to allow them to organise their affairs; included in this protection is a period of exclusivity in which only the company in Chapter 11 can submit a Plan for consideration. This exclusivity would come to an end if the Plan is not confirmed and is likely to lead to any number alternative plan proposals which

the Debtors believe would be subject to litigation and would again increase costs to the estate as well as prolonging the Chapter 11 proceedings.

If no Plan is confirmed liquidation is likely to be processed under Chapter 7 of the US Bankruptcy Code under the auspices of a trustee. The Debtors believe that this would necessarily require the appointment of a series of professionals – lawyers, accountants etc to an extent that would diminish the assets of the estate and more likely to lead to the distressed sale of assets at lower values than would be obtained by what they view as the “orderly liquidation” outlined in the Plan

### **How much will be paid in respect of claims**

The Disclosure Document does provide estimated recoveries in respect of each class. The figures are, however, based on such a multitude of assumptions and it would be inappropriate for Meteor to apply the calculations to project an estimated return to Planholders. It is also important to remember that the information in the Plan relates to the amount recoverable from LBHI. LBS and LBT have also filed claims against LBHI in respect of their intercompany positions. Any recovery they make from LBHI would also become of benefit to those, like Meteor, who have claims against LBS and/or LBT. It also appears likely that LBHI may make a series of distributions as the assets of the estate are liquidated.

At the time of writing neither LBS nor LBT have commented on the Plan and as outlined below neither has requested the submission of formal claims under the bankruptcy laws of their respective jurisdictions.

It therefore remains difficult to assess what the return will be to our customers or the timing of any such distributions

### **The Cross Border Insolvency Protocol**

On 26 May 2009 a Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies (the "Protocol") was published in order to facilitate the co-ordination between those appointed to deal with the insolvency of different Lehman entities around the world (“the Official Representatives”). Both the Bankruptcy Trustees of LBT (“the LBT Trustees”) and those of LBS (“the LBS Trustees”) as well LBHI are signatories to the Protocol.

A report on the activities of the Official Representatives of the companies involved in the Protocol signatories has been published in respect of the period to 15 January 2010 and indicates the good progress they have made in establishing certain frameworks in which the Official Representative can work together. In particular there has been significant progress on the reconciliation of intercompany derivative trades between the participating bodies.

### **Other developments**

There have been a small number of other recent developments.

On 12 March 2010 the LBT Trustees published their 5th public report, such reports are required by Dutch bankruptcy laws and cover quarterly periods; the fifth report covers the period up to the end of February 2010. Previous reports had echoed the comments of LBHI regarding the complexity of the Lehman situation and, in particular the ability to share and exchange information in a constructive way.

The Protocol mentioned above has assisted in this process. One area where LBT had, in previous public reports, expressed frustration was their inability to obtain information from Lehman Brothers International Europe (“LBIE”). LBIE carried out a number of important administrative roles on behalf of LBT and other Lehman entities but is not a signatory to the Protocol. LBIE’s Administrators, PwC, have difficulties in supplying the accounting information required by LBT because it is intermingled with data of other Lehman entities.

LBIE is entering into bilateral agreements with the signatories of the Protocol. The Official Representatives of the signatories to the Protocol are drafting a letter to LBIE whereby all those who sign the letter will not object if their mingled data is provided to another of the signatories. LBT hope that such developments will assist them in acquiring further information.

Much of the fifth report concentrates on the basis of the calculations to be used to determine the value of claims and confirms that before a definitive methodology can be published further discussions with creditors will be required and that as LBHI will also need to assess the value of claims issued in respect of the LBHI guarantees, LBT will need to discuss the valuation process in more detail with LBHI.

The report concludes by stating that “The winding-up of the bankruptcy of LBT largely depends on the completion of the Chapter 11 proceedings of LBHI” and as such the Trustees did not anticipate that a request to the Supervisory Judge in Amsterdam to set a date for the Claims Filing Date or the Claims Admission Meeting. Meteor has previously notified the LBT Trustees of our interest and will be notified by the LBT Trustees when formal claims are required to be made to the Dutch authorities.

A copy of the fifth and all previous public notices as well as other useful information, including the report on the activities of the Official Representatives under the Protocol can be located on the website [www.lehmanbrotherstresury.com](http://www.lehmanbrotherstresury.com)

On 14 April 2010, the LBS Trustees issued their fourth public report covering the period to 2 April 2010.

The latest report confirms the LBS Trustees are signatories to the Protocol and that they have made proofs of claim to LBHI under the Chapter 11 proceedings of LBHI. The report also looks at the difficulties associated with the valuation of potential claims and concluded “...the winding-up of the bankruptcy of LBS largely depends on the completion of the Chapter 11 proceedings of LBHI”.

The Trustees also confirmed that no dates had been set for a claims filing date nor a date for the claims admission meeting. Meteor has previously notified the LBS Trustees of our interest and will be notified by the LBS Trustees when formal claims are required to be made to the authorities in the Dutch Antilles.

A copy of the fourth and previous public reports as well as a report on the activities under the protocol can be found on the website [www.ekvandoorne.com/bankruptcy-lehman-brothers-securities](http://www.ekvandoorne.com/bankruptcy-lehman-brothers-securities)

Following a report to the Court by examiner Anton Valukas, there has been a great deal of media coverage concerning certain accounting practices employed by Lehman Brothers in the period before they filed for Chapter 11 bankruptcy protection. The practices the so called “Repo 105” agreements - allowed them to disguise the full extent of their indebtedness. The bank’s auditors, Ernst & Young, have been criticised in this respect as have legal firm Linklaters who provided advice on the legality of the repo 105 transactions. It has been suggested in some quarters that this could lead to legal action by creditors against the auditors and legal advisers. We will continue monitoring this situation.

LBHI are currently involved in legal proceedings against Barclays Capital in an effort to claim \$11 billion relating to aspects of the deal through which Barclays Capital acquired certain parts of Lehman Brothers in September 2008. We are unable to comment on the merits of the LBHI claim but it would obviously be good news for creditors if LBHI was able to recover any amounts but any recovery needs to be viewed in the context of the amounts claimed by creditors of LBHI.

We will continue to monitor the situations at LBHI, LBS and LBT and to take such actions as required to maximise the potential distributions from the Lehman estate to Planholders. We will update customers of further developments and inform them of any actions they may be required to take in relation to the claims process.

**This note has been prepared on the basis of information supplied to and available to Meteor up to 26 April 2010. It is intended as a communication of information and should not be construed as advice.**