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Lehman Brothers Holding Inc., Minutes of the Board of Directors

Lehman Brothers Holdings Inc.

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LEHMAN BROTHERS HOLDINGS INC.

**Minutes of the Board of Directors
September 14, 2008**

The Board of Directors of Lehman Brothers Holdings Inc. (the "Corporation" or collectively with its subsidiaries, the "Firm") convened in person (as indicated below) in the Board Room, 745 Seventh Avenue, on September 14, 2008, at 5:00 p.m., pursuant to written notice, the meeting (the "Meeting") having been postponed during the day pending the outcome of discussions between management and the Government.

PRESENT - BOARD MEMBERS

Mr. Michael L. Ainslie
Mr. John F. Akers
Mr. Roger S. Berlind
Mr. Thomas H. Cruikshank (*via conference call*)
Ms. Marsha Johnson Evans
Mr. Richard S. Fuld, Jr.
Sir Christopher Gent (*via conference call*)
Mr. Jerry A. Grundhofer (*via conference call*)
Mr. Roland A. Hernandez
Mr. Henry Kaufman
Mr. John D. Macomber

ALSO PRESENT BY INVITATION

Mr. Ian T. Lowitt (*after the Meeting reconvenes*)
Mr. Herbert H. McDade III (*after the Meeting reconvenes*)
Mr. Thomas A. Russo
Mr. Jeffrey A. Welikson
Mr. Andrew J. Levander (Dechert LLP)
Mr. Stephen Dannhauser (Weil Gotshal & Manges) (*after the Meeting reconvenes*)
Ms. Lori Fife (Weil Gotshal & Manges) (*after the Meeting reconvenes*)
Mr. Harvey Miller (Weil Gotshal & Manges) (*after the Meeting reconvenes*)
Mr. Thomas Roberts (Weil Gotshal & Manges) (*after the Meeting reconvenes*)

Mr. Russo presented an update to the Board of Directors (the "Board") on the status of discussions between the Corporation, the Government and potential investors in, or acquirers of, the Corporation. Mr. Russo reported that management had believed the Firm had reached a deal with Barclays, conditional upon arranging third party financing for the spin-off or sale of commercial real estate and approval by the U.K. Financial Services Authority (the "FSA"); however, while management had understood that the

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FSA had indicated that it would approve this transaction, the FSA said that it would not grant Barclays the needed exemption from certain capital rules.

Mr. Russo reported that the discussions with Bank of America regarding its acquisition of the Corporation were not successful and that it appeared they were instead in discussions to acquire Merrill Lynch.

Mr. Russo reported that the Firm had a liquidity problem, with much of its liquidity tied up at clearing banks (primarily JPMorgan Chase Bank), and explained that the Firm had maintained constant communications with the Federal Reserve Bank of New York (the "Fed"). Mr. Russo described the Fed's emergency order allowing non-investment grade securities to be used as collateral at the Fed window and the Firm's need for the Fed to accept a broader range of collateral, but that the Fed's position is that the expanded window would only apply to tri-party repos of securities. Mr. Russo reported that members of management and counsel were in meetings at the Fed discussing the need for an expanded window and the consequences should the Fed not approve of an expanded window. Mr. Russo then reported that the Fed told management that it preferred that Lehman Brothers Inc. ("LBI") be wound down in an orderly fashion.

Mr. Russo reported that a failure to fund Lehman Brothers (International) Europe ("LBIE") would obligate the LBIE directors to initiate administration proceedings under UK insolvency laws, which would trigger cross-defaults to the Firm's swaps book. Mr. Russo described these cross-defaults as representing a massive systemic risk that may require the Corporation and certain subsidiaries to seek protection under Chapter 11. The Board discussed the use of the Fed window to fund LBIE and it was explained that despite the efforts of management to convince the Fed on this point, should the Fed not change its position on the use of the expanded window, the Board of Directors of LBIE would have to initiate the UK administration process.

Mr. Russo reported that the Firm has a bid for the Investment Management Division ("IMD") of the business that would raise cash and realize current value before a potential depreciation in the value of IMD.

Mr. Russo reported that the meeting of financial institutions assembled at the Fed had ended without agreement to provide assistance to the Firm.

Mr. Russo reported that the Corporation had hired bankruptcy counsel, who, along with members of management, were participating in discussions with the Fed simultaneously with the conduct of the Meeting. The Board discussed the concept of an orderly liquidation and the serious market consequences if the Fed did not change its position. The Board discussed the possibility of a bankruptcy filing and its attendant implications. Mr. Russo indicated that management was not making any recommendation at this time regarding bankruptcy, due to a lack of pertinent facts regarding liquidity, and indicated that the Board would be reconvened to approve a bankruptcy filing if necessary. The Board further discussed the impact on the market of a

Chapter 11 filing by the Corporation. The Board discussed the presentation made to the Fed.

The Meeting adjourned at 6:10 p.m. with the plan to reconvene at 7:30 p.m. The Meeting reconvened at 7:55 p.m. and the following discussion took place:

Mr. Russo reported that the Fed had expressed its desire that the Board approve a Chapter 11 filing as soon as possible so that the information could be disseminated to the markets.

Mr. Russo reported that LBIE had been informed that LBI did not have the capacity to provide it with funding. As a consequence, Mr. Russo reported that LBIE would be insolvent and commence U.K. administration proceedings. Mr. Russo also reported that the Corporation could sell the London broker dealer.

The Board discussed Barclays' interest in the London broker dealer and the LBIE administration process. The Board was advised that an administrator would be running LBIE shortly.

The Board also discussed its fiduciary duties, and Dechert discussed the Board's duties to the Corporation and its residual claimants. Mr. Russo reported that the Firm's derivatives would be in default once the Corporation files under Chapter 11. Mr. Russo stated that the principal subsidiaries of the Corporation that are parties to derivatives rely on the Corporation's guaranty for operations and explained that the guaranty would probably eliminate the possibility of any shareholder recovery. Mr. Russo further explained that debtholders, depending on their place in the structure, may not be paid.

Mr. McDade and Mr. Steve Dannhauser, Mr. Harvey Miller, Ms. Lori Rife, and Mr. Thomas Roberts of Weil, Gotshal & Manges ("Weil") joined the Meeting, having returned from the meeting at the Fed. Mr. McDade reported to the Board on the meeting with the Fed, which included discussions regarding:

- (a) whether the Corporation would file for bankruptcy;
- (b) the specifics of a facility the Fed would provide for an unwind of the Firm's tri-party agreements, the Fed agreeing to take out counterparties against qualified collateral;
- (c) the need to operate LBI, in respect of which the Fed will provide funding for one month of up to \$500 million against qualified collateral;
- (d) the Fed's desire that the Firm find a DIP lender for the U.S. broker dealer;
- (e) the Firm's emphasis to the Fed that 2.5 million derivative contracts will default when the Corporation files under Chapter 11 and the related market impact;
- (f) the Fed's direct and authoritative statements that they wanted the Corporation to file under Chapter 11 that evening.

Weil confirmed Mr. McDade's report to the Board on the meeting with the Fed and indicated that the Fed did not offer assistance as to how to finance the Corporation. The Board, management, and Weil discussed further the meeting with the Fed, means of accomplishing a wind-down, financing the Firm during a wind-down, the effects of the derivatives defaults and the resulting need for Chapter 11 protection as a result of the related guarantees.

The Board discussed whether a filing under Chapter 11 was necessary that evening as desired by the Fed. Weil advised that it was likely the Corporation would ultimately have to file for protection under Chapter 11. The Board discussed further the timing and effects of a bankruptcy filing, including:

- (a) that a portion of the derivatives will default even in the absence of a bankruptcy filing, which could result in a run on the bank at the Corporation, ultimately necessitating a bankruptcy filing;
- (b) the liquidity position of the Corporation and the ability to fund its operations; and
- (c) the availability of assets to sell to fund operations and the benefits of Bankruptcy Court approval to facilitate that process.

In addition, Weil discussed fiduciary duties in an insolvent or possibly insolvent entity, as well as bankruptcy and the filing process.

Mr. Ian T. Lowitt joined the Meeting and discussed the cash position at the Corporation. Mr. Lowitt reported that cash and collateral were being tied up by the Firm's clearing banks, with Chase holding approximately \$17 billion of collateral (half in collateral and half in cash). Mr. Lowitt emphasized the critical nature of securing the return of that cash and collateral from Chase. Mr. Lowitt reported that cash had drained very quickly over the last three days of the previous week and that Chase had demanded an additional \$5 billion of collateral on Friday.

Mr. Christopher Cox, Chairman of the U.S. Securities and Exchange Commission (the "SEC"), and Mr. Thomas Baxter, General Counsel of the New York Federal Reserve Bank, asked to address the Board by telephone. Mr. Cox joined the Meeting by conference call along with Mr. Brian Cartwright, General Counsel of the SEC, Mr. Baxter, and Mr. Alan Beller of Cleary Gottlieb, representing the Fed and the SEC. Mr. Cox said that he understood the difficulty of the Board's position, but emphasized the judgment of U.S. and international regulators that a decision must be made quickly because of the markets. In response to the Board's questions regarding the necessity and implications of a bankruptcy filing, the Representatives of the SEC and the Fed caucused off-line and then responded that this was a decision to be taken by the Board, that they did not wish to discuss the pros and cons of this decision, rather their purpose was to emphasize that a decision needed to be made soon. Mr. Beller stated that the view of the regulators as to the appropriateness of a bankruptcy filing was expressed at the meeting.

with the Fed that afternoon, but that the callers did not want to influence the Board's exercise of its fiduciary duties.

In response to a question as to whether the offer of assistance to the broker dealer was dependent on the Corporation filing for bankruptcy, Mr. Baxter indicated that such assistance was not dependent on a bankruptcy filing. Messrs. Cox, Baxter, Cartwright and Beller then ended the call.

The Board discussed the advantages and disadvantages of a bankruptcy filing, including:

- (a) a delay in the filing might allow time to better plan and prepare the Corporation to operate under a Chapter 11 filing, to prepare a more complete filing that included an offer to buy IMD, and additional time to seek DIP financing (it was noted that DIP financing could be obtained after the filing and that timing of the IMD sale was unclear);
- (b) the potential difficulty in meeting all payment obligations the next day;
- (c) the difficulties which may be encountered in selling IMD and LBI outside of bankruptcy and the potential advantages of a filing to the clarity of the sale process;
- (d) the possibility that a buyer may also buy the derivatives obligations;
- (e) the possibility that a filing may facilitate a more orderly unwind of the book;
- (f) the clear preference of the Federal government that the Corporation file for bankruptcy that evening;
- (g) the ultimate inevitability of a bankruptcy filing under the circumstances;
- (h) whether a substantial amount of the cash pledged with JPMorgan Chase could be recovered before filing a Chapter 11 case;
- (i) the fact that the Fed will not sufficiently finance the Corporation; and
- (j) the potential goodwill that may be generated by a filing.

Management was excused and the non-management directors, Dechert and Weil met in executive session.

Messrs. Fuld, Russo and Welikson were called back into the meeting. After discussion, upon motion duly made and seconded, it was unanimously

RESOLVED, that in the judgment of the Board, it is desirable and in the best interests of Lehman Brothers Holdings Inc. (the "Company"), its creditors, employees, and other interested parties that a petition be filed by the Company seeking relief under the provisions of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

RESOLVED, that each of the Chief Executive Officer, the Chief Financial Officer, the Chief Legal Officer, and the Chief Operating Officer (each such officer or designee being an "Authorized Person" and all being the "Authorized Persons") are hereby authorized, empowered and directed, in the name, and on behalf of the Company, to execute and verify petitions and amendments thereto under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case") and to cause the same to be filed in the United States Bankruptcy Court for the Southern District of New York at such time or in such other jurisdiction as such Authorized Person executing the same shall determine.

RESOLVED, that the law firm of Weil, Gotshal & Manges LLP is hereby engaged as attorney for the Company under a general retainer in the Chapter 11 Case, subject to any requisite bankruptcy court approval.

RESOLVED, that each Authorized Person, and such other officers of the Company as the Authorized Persons shall from time to time designate, and any employees or agents (including counsel) designated by or directed by any such officers, be, and each hereby is, authorized, empowered and directed, in the name and on behalf of the Company, to execute and file all petitions, schedules, motions, lists, applications, pleadings and other papers, and to take and perform any and all further acts and deeds which he or she deems necessary, proper or desirable in connection with the Chapter 11 Case, with a view to the successful prosecution of such case.

RESOLVED, that each Authorized Person, and such other officers of the Company as the Authorized Persons shall from time to time designate, be, and each hereby is, authorized, empowered and directed, in the name and on behalf of the Company, to engage and retain all assistance by legal counsel, accountants, financial advisors, restructuring advisors, and other professionals in connection with the Chapter 11 Case, with a view to the successful prosecution of such case.

RESOLVED, that each Authorized Person, and such other officers of the Company as the Authorized Persons shall from time to time designate, and any employees or agents (including counsel) designated by or directed by any such officers, be, and each hereby is, authorized, empowered and directed, in the name and on behalf of the Company, to cause the Company to enter into, execute deliver, certify, file and/or record, and perform such agreements, instruments, motions, affidavits, applications for approvals or ruling of governmental or regulatory authorities, certificates or other documents, and to take such other action as in the judgment of such person shall be or become necessary, proper, and desirable to effectuate a successful reorganization of the business of the Company.

RESOLVED, that in connection with the Chapter 11 Case, each Authorized Person, and such other officers of the Company as the Authorized Persons shall from time to time designate, be, and each hereby is, authorized and empowered on behalf of and in the name of the Company, to negotiate, execute, deliver, and perform or cause the performance of any notes, guarantees, security agreements, other agreements, consents, certificates or instruments as such person considers necessary, appropriate, desirable, or advisable to effectuate borrowings or other financial arrangements, such determination to be evidenced by such execution or taking of such action.

RESOLVED, each Authorized Person, and such other officers of the Company as the Authorized Persons shall from time to time designate, be, and each hereby is, authorized, empowered and directed, in the name and on behalf of the Company, and any such actions heretofore taken by any of them are hereby ratified, confirmed and approved in all respects: (i) to negotiate, execute, deliver and/or file any and all of the agreements, documents and instruments referenced herein, and such other agreements, documents and instruments and assignments thereof as may be required or as such officers deem appropriate or advisable, or to cause the negotiation, execution and delivery thereof, in the name and on behalf of the Company, as the case may be, in such form and substance as such officers may approve, together with such changes and amendments to any of the terms and conditions thereof as such officers may approve, with the execution and delivery thereof on behalf of the Company by or at the direction of such officers to constitute evidence of such approval, (ii) to negotiate, execute, deliver and/or file, in the name and on behalf of the Company, any and all agreements, documents, certificates, consents, filings, and applications relating to the resolutions adopted and matters ratified or approved herein and the transactions contemplated thereby, and amendments and supplements to any of the foregoing, and to take such other action as may be required or as such officers deem appropriate or advisable in connection therewith, and (iii) to do such other things as may be required, or as may in their judgment be appropriate or advisable, in order to effectuate fully the resolutions adopted and matters ratified or approved herein and the consummation of the transactions contemplated hereby.

RESOLVED, that any and all past actions heretofore taken by officers of the Company in the name and on behalf of the Company in furtherance of any or all of the preceding resolutions be, and the same hereby are, ratified, confirmed, and approved.

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

Respectfully submitted,

Jeffrey A. Wellison

Jeffrey A. Wellison
Secretary of the Meeting