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10-1-2010

### Thomas Baxter Follow Up From Wendy Edelberg

Wendy Edelberg

Thomas C. Baxter, Jr.

Christopher Burke

Lehman Brothers Holdings Inc.

Marco Brandimarte

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October 1, 2010

**Via Email & Mail**

Mr. Thomas Baxter  
c/o Ms. Shari Leventhal  
Senior Vice President and Assistant General Counsel  
Federal Reserve Bank of New York  
33 Liberty Street  
New York, NY 10045  
[Shari.Leventhal@ny.frb.org](mailto:Shari.Leventhal@ny.frb.org)

Phil Angelides  
*Chairman*

Hon. Bill Thomas  
*Vice Chairman*

Brooksley Born  
*Commissioner*

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*Commissioner*

Senator Bob Graham  
*Commissioner*

Keith Hennessey  
*Commissioner*

Douglas Holtz-Eakin  
*Commissioner*

Heather H. Murren, CFA  
*Commissioner*

John W. Thompson  
*Commissioner*

Peter J. Wallison  
*Commissioner*

Re: Financial Crisis Inquiry Commission Hearing on September 1, 2010

Dear Mr. Baxter:

Thank you for testifying on September 1, 2010 in front of the Financial Crisis Inquiry Commission and agreeing to provide additional assistance. Toward that end, please provide written responses to the following additional questions and any additional information by October 15, 2010.<sup>1</sup>

1. Please provide an executed copy of Chris Burke's September 14th letter clarifying Lehman's abilities to draw on the PDCF. In addition, please verify when and by whom the Burke letter was received.
2. Please reconcile differences between your testimony and the Valukas Report which states:

"The FRBNY limited the collateral LBI could use for overnight financing to the collateral that was in LBI's box at JP Morgan as of

<sup>1</sup> The answers you provide to the questions in this letter are a continuation of your testimony and under the same oath you took before testifying on September 1, 2010. Further, please be advised that according to section 1001 of Title 18 of the United States Code, "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both."

Wendy Edelberg  
*Executive Director*

1717 Pennsylvania Avenue, NW, Suite 800 • Washington, DC 20006-4614  
202.292.2799 • 202.632.1604 Fax

Friday, September 12, 2008.<sup>2</sup> That restriction was referred to as the ‘Friday criterion.’”<sup>3</sup>

3. Please provide the Federal Reserve Board’s or Federal Reserve Bank of New York’s evaluation of the potential impact of a Lehman bankruptcy on the economy and the financial system.
4. Please provide any information or views of the Federal Reserve Bank of New York or its staff concerning (1) the role of derivatives in the run on and/or failure of Lehman or (2) the impact Lehman’s failure had on the derivatives market.
5. Please report the dollar value of the shortfall of Lehman collateral relative to the collateral necessary to issue a bridge loan or other secured assistance to Lehman on September 14, 2008.

The FCIC appreciates your cooperation in providing the information requested. Please do not hesitate to contact Sarah Knaus at (202) 292-1394 or sknaus@fcic.gov if you have any questions or concerns.

Sincerely,



Wendy Edelberg  
Executive Director, Financial Crisis Inquiry Commission

cc: Phil Angelides, Chairman, Financial Crisis Inquiry Commission  
Bill Thomas, Vice Chairman, Financial Crisis Inquiry Commission

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<sup>2</sup> Valukas Report: footnote 2821 - Examiner’s Interview of Robert Azerad, Apr.20, 2009, at p.5; Examiner’s Interview of Christopher Burke, July 7, 2009, at p. 3. An experimental allocation by Lehman to the PDCF on Monday morning showed at least \$72 billion of eligible Lehman securities being swept into the PDCF system. See e mail from John N. Palchynsky, Lehman, to Craig L. Jones, Lehman et al. (Sept. 15, 2008) [LBEX DOCID 076981]; see also Lehman, PDCF Schedule of Eligible Securities (Sept. 14,2008) [LBEX DOCID 405695]

<sup>3</sup> Valukas Report: footnote 2822 - Examiner’s Interview of Robert Azerad, April 20, 2009 at p.5, Examiner’s Interview of Christopher Burke, July 7, 2009, at p3. According to Azerad, this restriction prevented Lehman from posting the range of collateral to the PDCF that other firms were allowed to post after September 15, 2008. Examiner’s interview of Robert Azerad, April 20, 2009, at p.5; see also email from Timothy Lyons, Lehman to Ian T. Lowett Lehman (Sept. 14, 2008) [LBEX DOCID 070210] (stating “the fed is letting the other eighteen broker dealers fund a much broader range of collateral than us.”)

# FEDERAL RESERVE BANK *of* NEW YORK

33 LIBERTY STREET, NEW YORK, NY 10045-0001

THOMAS C. BAXTER, JR.  
GENERAL COUNSEL AND  
EXECUTIVE VICE PRESIDENT

October 15, 2010

## VIA E-MAIL AND FEDERAL EXPRESS

Ms. Wendy Edelberg  
Executive Director  
Financial Crisis Inquiry Commission  
1717 Pennsylvania Avenue, NW  
Suite 800  
Washington, DC 20006-4614

Dear Ms. Edelberg:

Re: Financial Crisis Inquiry Commission Hearing on September 1, 2010

I write in response to your October 1, 2010 letter requesting additional information following my appearance before the Financial Crisis Inquiry Commission on September 1, 2010. I appreciate the opportunity to provide the Commission with this information, and I hope that this letter and its enclosures will be helpful.

As is referenced in your letter, during the September 1 hearing, the Commissioners questioned my fellow panelists and me on the nature of Lehman Brothers' access to the Primary Dealer Credit Facility ("PDCF") in the days immediately preceding and following the Lehman parent holding company's ("LBHI") bankruptcy filing. I will first describe the nature of that access and then, to the best of my knowledge and recollection, recount the Federal Reserve Bank of New York's communications with Lehman Brothers regarding PDCF access over the course of September 12, 2008—September 14, 2008 ("Lehman Weekend"). Finally, to the extent I have not already done so, I will address the specific questions that you posed in your October 1 letter.

### **Lehman's Access to the PDCF**

On March 16, 2008, the Board of Governors of the Federal Reserve System (the "Board") created the PDCF to offer primary dealers, such as Lehman Brothers' broker-dealer ("LBI"), overnight financing in consideration of a pledge of investment-grade debt securities. Given the increasing liquidity pressure that primary dealers faced by Lehman Weekend, the Board voted on Sunday, September 14, to expand access to the PDCF such that overnight financing could "be secured by any collateral that is accepted by JPMorgan Chase & Co. or Bank of New York tri-party repurchase agreement systems as of September 12, 2008, subject to any exclusions or modifications by the Chairman."<sup>1</sup> The purpose of this expansion was to provide a backstop to the existing tri-party financing systems. Accordingly, I understand that the FRBNY advised the dealers on Sunday, September 14 that it did not expect them to use the new guidelines to seek

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<sup>1</sup> Resolution by the Board of Governors, September 14, 2008 (FRB to LEH Examiner 001339) (Exhibit 1).

Ms. Wendy Edelberg  
October 15, 2010

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financing above and beyond what they currently financed in tri-party, but rather, should the dealers find themselves unable to finance assets that they had previously been able to finance in tri-party, the PDCF would be available to finance those assets.

LBI was offered the same access to the PDCF on September 15 as the other 16 primary dealers, with two exceptions, both of which were a product of the fact that LBI's parent would then be in bankruptcy. First, the FRBNY would apply steeper haircuts to LBI's collateral. Credit extended through the PDCF was with recourse to the borrower as well as to the pledged collateral. The steeper haircuts on LBI's collateral were taken to account for LBI's diminished creditworthiness resulting from the loss of its parent's support. Chris Burke, the Vice President of the FRBNY managing the PDCF, sent Lehman a letter dated September 14, 2008, that included these Lehman-specific haircuts.<sup>2</sup>

Second, the FRBNY asked LBI to certify that the securities that LBI pledged to the PDCF on September 15 were in fact owned by LBI as of September 12 and had not since been transferred from LBI's parent, LBHI.<sup>3</sup> This certification was an important legal risk mitigant, and was crafted in light of LBI's unique situation as a subsidiary of a bankrupt parent. Had LBHI transferred securities to LBI, so LBI could then pledge them to the PDCF, those securities could have become subject to a preference or fraudulent conveyance claim, leaving the FRBNY, and consequently the taxpayers, undersecured. The FRBNY's need to confirm that none of the collateral that it held could be subject to a superior claim in the bankruptcy court may be what Lehman personnel referred to as the "Friday criterion," as described in the Valukas Report.<sup>4</sup>

I note that the Valukas Report further states that on Sunday, September 14, "Lehman...learned that it was not eligible to use the window," i.e. the PDCF.<sup>5</sup> It is certainly true that LBHI was not then, nor ever was, eligible to borrow from the PDCF, nor was any other parent company of a broker-dealer or any non-dealer eligible to borrow from the PDCF. As I have described above, LBI, however, remained eligible to pledge the same categories of assets as the other primary dealers, and as I describe below, the LBHI board was well aware of that fact as it considered whether LBHI should file for bankruptcy.

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<sup>2</sup> Letter from Chris Burke to Marco Brandimarte and Robert Guglielmo dated September 14, 2008 (fully executed copy) (FRBNY-FCIC-General10082357-10082363) (Exhibit 2).

<sup>3</sup> Email from Susan McLaughlin to Paolo Tannuci, September 15, 2008, 9:14 p.m. (FRBNY to Exam. 044228-044231) (Exhibit 3). JPMorgan Chase, acting as the FRBNY's collateral manager for the PDCF, also confirmed "to the best of [its] knowledge" that Lehman did not pledge any LBHI collateral to the PDCF on September 15, 2008. See Valukas Report, p.1536, n.5995 (citing JPM-2004 0031195) (Exhibit 4).

<sup>4</sup> Valukas Report, p.722, n.2822.

<sup>5</sup> Valukas Report, p.722 (citing the Examiner's interview of Richard S. Fuld, Jr., April 28, 2009, at p.13).

Ms. Wendy Edelberg  
October 15, 2010

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### **Communications Between the FRBNY and Lehman Brothers**

As the Commission is aware, I, along with Securities and Exchange Commission (“SEC”) Chairman Christopher Cox and other colleagues from the SEC, joined the LBHI board meeting by telephone on Sunday, September 14, as the LBHI board deliberated on whether LBHI should file for bankruptcy. The minutes of that meeting make abundantly clear that LBHI’s directors, officers, and counsel all understood that LBI would have full access to the PDCF on Monday, September 15, as well as going forward. The minutes indicate that LBI’s access to the PDCF was in no way contingent upon LBHI filing for bankruptcy. As the minutes state unequivocally on page five:

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.<sup>6</sup>

I would also like to note for the Commission that the LBHI board minutes are extremely helpful in establishing two other important points that were raised during the September 1 hearing:

1. Lehman was insolvent.

With regard to the question whether Lehman Brothers was in sound financial condition on September 14, 2008, and had plenty of good collateral, the minutes reflect that attorneys from Weil, Gotshal & Manges LLP, LBHI’s bankruptcy counsel, advised the Lehman board that “it was likely the Corporation would ultimately have to file for protection under Chapter 11” (p. 4), and the Lehman board recognized that bankruptcy was an “ultimate inevitability” (p. 5).

2. Lehman’s decision to file for bankruptcy was its own.

The minutes also reflect that the Government representatives took pains to emphasize that the decision to file for bankruptcy was entirely the board’s own:

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.<sup>7</sup>

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<sup>6</sup> Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 14, 2008), at p. 5 (LBEX - AM 003932) (emphasis added), available at: <http://lehmanreport.jenner.com/VOLUME%202.pdf> (Exhibit 5).

<sup>7</sup> *Id.* at p. 4.

Ms. Wendy Edelberg  
October 15, 2010

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Finally, the minutes reflect the Lehman board discussing with its counsel “the advantages and disadvantages of a bankruptcy filing, including” ten considerations that had to be taken into account, such as the “potential difficulty in meeting payment obligations the next day,” “the advantages to selling LBHI’s subsidiaries as part of the bankruptcy process,” and “the possibility that a filing may facilitate a more orderly unwind of the book,” among others. (p. 5)

Returning to Lehman’s understanding of its access to the PDCF, internal FRBNY emails reflect that LBHI’s bankruptcy counsel was advised early that Sunday afternoon that Lehman’s broker-dealer would continue to have access to the PDCF.<sup>8</sup> That evening, Mr. Burke held a call with all of the primary dealers to explain the newly expanded access to the PDCF.<sup>9</sup> The FRBNY then transmitted Mr. Burke’s letter to LBI via email at 2:24 a.m., September 15, to provide formal documentation of the new PDCF asset classes and haircuts that had been discussed earlier on September 14.<sup>10</sup> I note that while Mr. Burke’s letter plainly evidences the fact that LBI continued to have access to the PDCF as of the start of business on September 15, 2008, the letter formalized and memorialized conversations that the FRBNY had with Lehman throughout that Sunday, September 14.

#### **Additional Questions Posed by the FCIC**

**1. Please provide an executed copy of Chris Burke’s September 14<sup>th</sup> letter clarifying Lehman’s abilities to draw on the PDCF. In addition, please verify when and by whom the Burke letter was received.**

As noted above, I have attached an executed copy of Mr. Burke’s September 14 letter to this letter as Exhibit 2. Exhibit 8 reflects that Mr. Burke’s letter was transmitted via email by FRBNY attorney Catherine Kung to Robert Guglielmo and another individual at Lehman at 2:24 a.m. on September 15. We have no record that this email was returned. Consequently, we believe that the email was received by Lehman at approximately the time it was sent.

**2. Please reconcile differences between your testimony and the Valukas Report which states: “The FRBNY limited the collateral LBI could use for overnight financing to the collateral that was in LBI’s box at JP Morgan as of Friday, September 12, 2008. That restriction was referred to as the ‘Friday criterion.’”**

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<sup>8</sup> “Update: We informed Weil of the expansion of the PDCF collateral and that it would not be available in the event the US BD [broker-dealer] filed bankruptcy. Weil informed us that the firm had no intention of filing the BD and was committed to working with the SEC SIPC and Fed on an orderly winddown.” Email from James P. Bergin to William Dudley, et al, September 14, 2008, 2:15p.m. (FRBNY-FCIC-General10082364) (Exhibit 6).

<sup>9</sup> Email from Chris Burke to Shari Leventhal, September 14, 2008, 11:48 p.m. (discussing earlier call with primary dealers) (FRBNY-FCIC-General10082365) (Exhibit 7).

<sup>10</sup> Email from Catherine Kung to Marco Brandimarte and Robert Guglielmo, September 15, 2008, 2:24 a.m. (FRBNY-FCIC-General10082366) (Exhibit 8).

Ms. Wendy Edelberg

October 15, 2010

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I discuss the terms of LBI's September 15 PDCF borrowing above as well as the possible meaning of the term "Friday criterion." Please let me know if you have any additional questions.

**3. Please provide the Federal Reserve Board's or Federal Reserve Bank of New York's evaluation of the potential impact of a Lehman bankruptcy on the economy and the financial system.**

I am not aware of a stand-alone analysis conducted either at the Board or at the FRBNY that purported to quantify the impact of a theoretical Lehman bankruptcy upon the economy and the financial system. The FRBNY, however, worked on understanding the potential impact of a Lehman bankruptcy upon various counterparties and financial sectors in the days and weeks leading up to LBHI's ultimate filing. We have previously produced to you documents that reflect this work, and I have attached as Exhibit 9 a list of the corresponding Bates ranges.

**4. Please provide any information or views of the Federal Reserve Bank of New York or its staff concerning (1) the role of derivatives in the run on and/or failure of Lehman or (2) the impact Lehman's failure had on the derivatives market.**

We have previously produced to you documents related to these topics, and I have attached as Exhibit 10 a list of the corresponding Bates ranges.

**5. Please report the dollar value of the shortfall of Lehman collateral relative to the collateral necessary to issue a bridge loan or other secured assistance to Lehman on September 14, 2008.**

As far as I am aware, the possibility of extending a so-called "bridge loan" to LBHI on September 14 was never seriously considered by the Federal Reserve because such a loan, as I said during the Commission's September 1, 2010 hearing, would have been a bridge to nowhere. This view was not simply my own, but rather at the time was held throughout the U.S. Government, broadly among Lehman's counterparties, and even by Lehman itself. As noted above, by September 14, 2008, LBHI's own board had concluded that bankruptcy was an "ultimate inevitability."<sup>11</sup> Of course, after LBHI filed for bankruptcy, the FRBNY did extend on September 15 an aggregate amount of credit of approximately \$60 Billion to LBI, which enabled LBI to continue in business. This extension of credit was secured by a pledge of collateral that we valued at more than \$60 Billion. To keep all of Lehman operating as a going concern, rather than only the U.S. broker dealer, would have required a vastly greater amount of credit and collateral.

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<sup>11</sup> Lehman Brothers Holdings Inc., Minutes of Meeting of Board of Directors (Sept. 14, 2008), at p. 5 (LBEX - AM 003932), available at: <http://lehmanreport.jenner.com/VOLUME%202.pdf> (Exhibit 5).



FEDERAL RESERVE BANK *of* NEW YORK

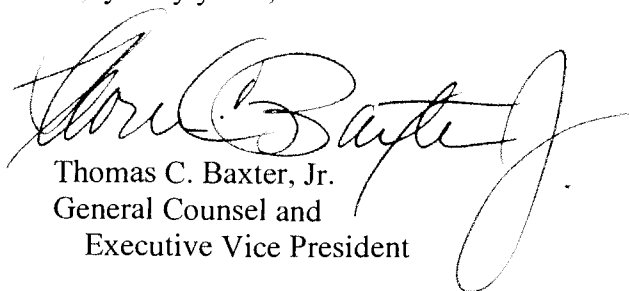
Ms. Wendy Edelberg  
October 15, 2010

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During the Commission's September 1, 2010 hearing, my colleague, Scott Alvarez, in answering a question from Commissioner Hennessey, described why such a hypothetical "bridge loan" would have been a mistake, in a manner far more eloquent than I. He said: "I think that if the Federal Reserve had lent to Lehman [meaning the parent] that Monday in a way that some people think – without adequate collateral and without other security to ensure repayment – this hearing and all other hearings would have only been about how we had wasted the taxpayers' money."<sup>12</sup> I adopt Mr. Alvarez's response here as my own.

Again, I appreciate this opportunity to provide the Commission with additional information, and please do not hesitate to contact me if you have any further questions.

Very truly yours,



Thomas C. Baxter, Jr.  
General Counsel and  
Executive Vice President

Enclosures

c: Phil Angelides, Chairman, Financial Crisis Inquiry Commission  
Bill Thomas, Vice Chairman, Financial Crisis Inquiry Commission

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<sup>12</sup> Transcript of FCIC Hearing, "Too Big to Fail: Expectations and Impact of Extraordinary Government Intervention and the role of Systemic Risk in the Financial Crisis," September 1, 2010, at p. 67.

## **Exhibit 1**

## RESOLUTION

Given the unusual and exigent circumstances and pursuant to section 13(3) of the Federal Reserve Act, on March 14, 2008, the Board authorized the Federal Reserve Bank of New York to establish a facility to extend overnight credit to primary dealers that must be secured to the satisfaction of the Reserve Bank and may be secured with a broad range of investment-grade debt securities. In light of the continued unusual and exigent circumstances, the Board modifies its prior authorization to extend credit to primary dealers to permit the credit to be secured by any collateral that is accepted by the JPMorgan Chase & Co. or Bank of New York tri-party repurchase agreement systems as of September 12, 2008, subject to any exclusions or modifications determined by the Chairman. All other conditions on the Board's initial approval of the credit facility remain unchanged.

## **Exhibit 2**

9758

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

TELEPHONE 212-720-6599  
FACSIMILE 212-720-1794

CHRISTOPHER R. BURKE  
MARKETS OFFICER

September 14, 2008

VIA EMAIL

Mr. Marco Brandimarte  
Assistant Vice President  
JPMorgan Chase Bank, N.A.  
3 Chase Metrotech Center, 5<sup>th</sup> Floor  
Brooklyn, NY 11245-0001  
marco.brandimarte@jpmorgan.com

Mr. Robert Guglielmo  
Senior Vice President  
Lehman Brothers Inc.  
Capital Markets Contracts – Legal  
1271 Avenue of the Americas, 43<sup>rd</sup> Floor  
New York, NY 10020-1300  
[rgugliel@lehman.com](mailto:rgugliel@lehman.com)

Dear Messrs. Brandimarte and Guglielmo:

Reference is hereby made to (1) the Master Open Market Agreement, dated as of October 21, 1996, as amended, supplemented or modified from time to time ("MOMA") between Lehman Brothers Inc. ("Dealer") and the Federal Reserve Bank of New York ("FRBNY"), (2) the Custodial Undertaking In Connection with Master Open Market Agreement, dated as of October 1, 1999, as amended, supplemented or modified from time to time ("MOMA Tri-Party Agreement") among Dealer, FRBNY and JPMorgan Chase Bank, N.A. (formerly, The Chase Manhattan Bank) and (3) the Legal Terms and Conditions for Primary Dealer Credit Facility, dated March 16, 2008 ("Terms and Conditions") and the related Acknowledgment and Agreement to the Terms and Conditions executed by Dealer.

As discussed with your firms, FRBNY will be amending the Schedules of Eligible Securities with respect to any Repurchase Transaction (as defined in the MOMA) undertaken by Dealer and FRBNY pursuant to the Primary Dealer Credit Facility ("PDCF") under the MOMA and the Terms and Conditions. Please find attached

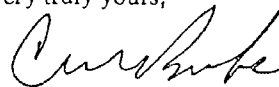
to this letter a copy of the revised Schedules of Eligible Securities that should be substituted for the Schedules of Eligible Securities to Custodial Undertaking in Connection with Master Open Market Agreement (PDCF) that currently form part of the MOMA Tri-Party Agreement. The revised Schedules attached hereto shall be effective as of the date of this letter.

Please have an authorized officer(s) acknowledge and accept this letter by executing three (3) copies of this letter, fax or email one executed copy to the attention of Catherine Kung, Federal Reserve Bank of New York, at (212) 720-6297 or [Catherine.kung@ny.frb.org](mailto:Catherine.kung@ny.frb.org), as applicable, and return the executed originals by same-day messenger to FRBNY as follows:

Attention: Catherine Kung  
Federal Reserve Bank of New York  
33 Liberty Street, 7<sup>th</sup> Floor  
New York, NY 10045

Thank you for your prompt attention to this matter.

Very truly yours,



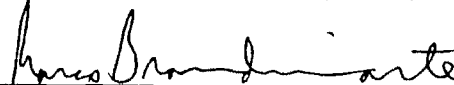
Christopher R. Burke  
Assistant Vice President

Acknowledgment and Acceptance (which may be executed in counterparts) as of September 14, 2008:

LEHMAN BROTHERS INC.

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, N.A. (formerly, THE CHASE MANHATTAN BANK)

By:   
Name:  
Title: Marco Brandimarte  
Assistant Vice President  
JPMorgan Chase Bank N.A.

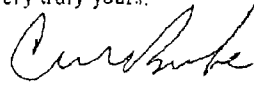
to this letter a copy of the revised Schedules of Eligible Securities that should be substituted for the Schedules of Eligible Securities to Custodial Undertaking in Connection with Master Open Market Agreement (PDCF) that currently form part of the MOMA Tri-Party Agreement. The revised Schedules attached hereto shall be effective as of the date of this letter.

Please have an authorized officer(s) acknowledge and accept this letter by executing three (3) copies of this letter, fax or email one executed copy to the attention of Catherine Kung, Federal Reserve Bank of New York, at (212) 720-6297 or [Catherine.kung@ny.frb.org](mailto:Catherine.kung@ny.frb.org), as applicable, and return the executed originals by same-day messenger to FRBNY as follows:

Attention: Catherine Kung  
Federal Reserve Bank of New York  
33 Liberty Street, 7<sup>th</sup> Floor  
New York, NY 10045

Thank you for your prompt attention to this matter.


Very truly yours,




Christopher R. Burke  
Assistant Vice President

Acknowledgment and Acceptance (which may be executed in counterparts) as of September 14, 2008:

LEHMAN BROTHERS INC.

By:   
Name: \_\_\_\_\_  
Title: Robert E. Guglielmo  
Senior Vice President

JPMORGAN CHASE BANK, N.A. (formerly, THE CHASE MANHATTAN BANK)

By:   
Name: \_\_\_\_\_  
Title: Marco Brandimarte  
Assistant Vice President  
JPMorgan Chase Bank N.A.

To Custodial Undertaking in Connection with Master Open Market Agreement (PDCF)  
Schedule of Eligible Securities

**DIRECT OBLIGATIONS OF THE U.S. TREASURY**

<u>Security Type</u>	<u>Margin Percentage</u>
Bills .....	101%
Notes and Bonds (including Inflation-Indexed Securities):	
Up to and including 3 years remaining maturity .....	101%
Greater than 3 and up to and including 5 years remaining maturity .....	102%
Greater than 5 and up to and including 10 years remaining maturity .....	102%
Greater than 10 and up to 30 years remaining maturity .....	103%
STRIPS and Private Label Treasury Backed (including Strips of Inflation Indexed Securities):	
Up to and including 3 years remaining maturity .....	101%
Greater than 3 and up to and including 5 years remaining maturity .....	102%
Greater than 5 and up to and including 10 years remaining maturity .....	103%
Greater than 10 and up to and including 20 years remaining maturity .....	104%
Greater than 20 and up to and including 30 years remaining maturity .....	106%



To Custodial Undertaking in Connection with Master Open Market Agreement (PDCF)  
Schedule of Eligible Securities

DIRECT OBLIGATIONS OF THE FOLLOWING FEDERALLY RELATED ENTITIES:

Farm Credit System Financial Assistance Corporation;  
Federal Agricultural Mortgage Corporation (Farmer Mac);  
Federal Farm Credit Banks Funding Corporation (Farm Credit System);  
Federal Home Loan Bank System;  
Federal Home Loan Mortgage Corporation (Freddie Mac);  
Federal National Mortgage Association (Fannie Mae);  
Financing Corporation (FICO);  
Resolution Funding Corporation (REFCO);  
Student Loan Marketing Association (SLMA); or  
Tennessee Valley Authority

<u>Security Type</u>	<u>Margin Percentage</u>
Discount Notes .....	101%
 <u>Fixed and Floating Rate Debentures</u>	
Up to and including 3 years remaining maturity .....	101%
Greater than 3 and up to and including 5 years remaining maturity .....	102%
Greater than 5 and up to and including 10 years remaining maturity .....	103%
Greater than 10 and up to 30.5 years remaining maturity .....	104%
 <u>Interest and Principal Strips</u>	
Up to and including 3 years remaining maturity .....	102%
Greater than 3 and up to and including 5 years remaining maturity .....	102%
Greater than 5 and up to and including 10 years remaining maturity .....	103%
Greater than 10 and up to and including 20 years remaining maturity .....	105%
Greater than 20 and up to and including 30.5 years remaining maturity .....	108%

- (1) Margin percentages apply to all existing and potential future obligations of the type indicated, regardless of current security types outstanding.
- (2) Obligations of other federally related agencies not listed above have been excluded on the basis of operational experience and/or limitations of triparty custodian.

To Custodial Undertaking in Connection with Master Open Market Agreement (PDCF)  
 Schedule of Eligible Securities

AGENCY AND PRIVATE LABEL MORTGAGE-BACKED SECURITIES  
 PASSTHROUGHS AND CMOS

<u>Security Type</u>	<u>Margin Percentage</u>
Agency Single-Family, <u>Fixed-Rate</u> Pass-through Securities (Regardless of original maturity of underlying mortgages)	
Up to and including 20 years remaining maturity .....	105%
Greater than 20 and up to and including 30 years remaining maturity .....	106%
Agency Single-Family, <u>Adjustable Rate</u> Pass-through Securities (Regardless of original maturity of underlying mortgages)	
Up to and including 20 years remaining maturity .....	105%
Greater than 20 and up to and including 30 years remaining maturity .....	106%
Agency REMICS/CMOs (all types).....	120%
Private Label Passthroughs and CMOs (all types)	
BBB-/Baa3/BBB- Rated or better (by at least 2 rating agencies).....	120%
All other.....	120%

- (1) Agency refers to securities issued and/or fully guaranteed by the Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Farmers Agricultural Mortgage Corporation or Small Business Administration.
- (2) CMOs include CMBS

To Custodial Undertaking in Connection with Master Open Market Agreement (PDCF)  
Schedule of Eligible Securities

**AUCTION RATE NOTES, MUNICIPAL SECURITIES, CORPORATE SECURITIES,  
ASSET BACKED SECURITIES (INCLUDING CDOS, CBOS, CLOS),  
INTERNATIONAL AGENCIES, MONEY MARKET INSTRUMENTS, TRUST  
RECEIPTS, WHOLE LOANS, EQUITIES AND EQUITY DERIVATIVES**

<u>Security Type</u>	<u>Margin Percentage</u>
Auction Rate Notes.....	120%
Municipal Securities.....	120%
Corporate Securities	
Medium Term Notes.....	120%
Bonds.....	120%
Asset Backed Securities	
BBB-/Baa3/BBB- Rated or better (by at least 2 rating agencies).....	120%
All other.....	120%
International Agency Securities.....	120%
Money Market Instruments	
Commercial Paper.....	120%
Bankers Acceptances.....	120%
Certificates of Deposit.....	120%
Trust Receipts.....	120%
Whole Loans.....	120%
Equities and Equity Derivatives.....	120%

### **Exhibit 3**

Highly Confidential New York Fed Information



Susan McLaughlin /NY/FRS  
09/15/2008 09:14 PM

To paolo.tonucci@lehman.com  
cc "William Walsh" <william.walsh@ny.frb.org>, Joseph  
Sommer/NY/FRS, Shari Leventhal/NY/FRS@FRS  
bcc

Subject Re: FW: Additional request for information

Hi Paolo - we are close, this is what my lawyers are suggesting - can you send this to us?

The debtor, Lehman International Holdings Inc, is not the holder of the collateral being pledged to the Federal Reserve to support an extension of credit from the PDCF. The collateral belongs to Lehman Brothers International, the broker dealer, and was owned by LBI as of the close of business Friday 9/12.

Susan McLaughlin  
Markets Group  
Federal Reserve Bank of New York  
1.212.720.1321

\*\*\*\*\*

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"Tonucci, Paolo" <paolo.tonucci@lehman.com>



"Tonucci, Paolo"  
<paolo.tonucci@lehman.com  
>  
09/15/2008 09:02 PM

To <Susan.McLaughlin@ny.frb.org>  
cc

Subject FW: Additional request for information

fyi

---

**From:** Tonucci, Paolo  
**Sent:** 15 September 2008 20:51  
**To:** Azerad, Robert; 'Susan.McLaughlin@ny.frb.org'  
**Cc:** Fleming, Dan (TSY); Lowitt, Ian T; 'jeffrey.moore@ny.frb.org'; Vecchio, Laura M; 'jan.voigts@ny.frb.org'; Feraca, John  
**Subject:** RE: Additional request for information

I am still waiting for the final numbers but my expectation is:

- the collateral was in the broker dealer
- no new collateral was moved into the broker dealer
- the Friday criteria was met

Paolo

**From:** Tonucci, Paolo  
**Sent:** 15 September 2008 18:48  
**To:** Azerad, Robert; 'Susan.McLaughlin@ny.frb.org'  
**Cc:** Fleming, Dan (TSY); Lowitt, Ian T; 'jeffrey.moore@ny.frb.org'; Vecchio, Laura M;

# Highly Confidential New York Fed Information

'jan.voigts@ny.frb.org'; Feraca, John

**Subject:** RE: Additional request for information

this is what I have (collateral value rather than pledge value) - post haircuts expect to be around \$24 bill.

CO G		MARKET VAL
TREASURY	Market >>	841,487,048.03
TSY STRIP	Market >>	600,556,720.83
AGENCY	Market >>	2,854,229,581.61
GNMA	Market >>	202,766,698.37
AGENCY REMIC	Market >>	654,726,186.28
AGENCY REMIC STRIPS	Market >>	1,435,097,187.21
CORPORATES	Market >>	5,366,995,320.43
ABS	Market >>	3,735,403,997.54
PRIVATE LABEL CMO	Market >>	1,618,822,417.00
MONEY MARKETS	Market >>	3,675,267,940.07
MUNICIPALS	Market >>	451,616,369.31
EQUITIES	Market >>	572,956,381.07
MONEY MARKET PREFERRED	Market >>	787,741,048.84
Total>>		19,197,441,896.58
<b>CO P</b>		
MUNI/CORP		6,053,024,822.93
EQU		3,060,377,276.58
<b>TOTAL</b>		<b>28,310,843,996.09</b>

**From:** Azerad, Robert

**Sent:** 15 September 2008 16:38

**To:** 'Susan.McLaughlin@ny.frb.org'

**Cc:** Fleming, Dan (TSY); Lowitt, Ian T; jeffrey.moore@ny.frb.org; Vecchio, Laura M; Tonucci, Paolo; jan.voigts@ny.frb.org; Feraca, John

**Subject:** RE: Additional request for information

Susan

Here is a rough estimate of how much we are planning to fund through the PDCF tonight (in \$ billions):

ABS + P/L	7.0
Agency MBS Strips	3.0
IG Corporates	6.1
NIG Corporates	1.8
Munis	3.2
CP	5.0
Equities	8.0 (may be revised down)

Total 34.0

This would include ~\$5 billion of positions that were in the box as of Friday night.

Highly Confidential New York Fed Information

Robert

**From:** Susan.McLaughlin@ny.frb.org [mailto:Susan.McLaughlin@ny.frb.org]  
**Sent:** Monday, September 15, 2008 4:17 PM  
**To:** Azerad, Robert  
**Cc:** Fleming, Dan (TSY); Lowitt, Ian T; jeffrey.moore@ny.frb.org; Vecchio, Laura M; Tonucci, Paolo; jan.voigts@ny.frb.org  
**Subject:** Re: Additional request for information

Thanks for the information you'd sent earlier on your box trade and DVP repo collateral. Can you please tell us asap whether you have put any of this collateral to JPMC for pledge to the PDCF? I'd like to know whether the collateralization decision that we'll be getting from JPMC shortly includes any collateral that was not in triparty this morning. Thanks.

Susan McLaughlin, VP  
Co-Head, Liquidity and Risk Management  
Markets Group  
Federal Reserve Bank of New York  
1.212.720.1321

\*\*\*\*\*

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"Azerad, Robert"  
<RAzerad@lehman.com> To <susan.mclaughlin@ny.frb.org>, <jeffrey.moore@ny.frb.org>, <Jeremy.Forster@ny.frb.org>  
cc "Vecchio, Laura M" <LVecchio@lehman.com>, "Lowitt, Ian T" <ilowitt@lehman.com>, "Tonucci,  
09/15/2008 01:50 PM Paolo" <paolo.tonucci@lehman.com>, "Fleming, Dan (TSY)" <dfl Fleming@lehman.com>  
Su Additional request for information  
bje  
ct

Please find enclosed the triparty repo trade file showing market value. File sent last night showed pledge (principal) value. We estimate that the new PDCF haircuts that we received this morning will result in a \$4 billion drain of liquidity for the repo trades maturing today (average haircut goes from 4% to 9%).

Call me with any questions.

Regards,

<<PDCF\_Eligibility\_Triparty\_LBI\_as of 091208\_Market Value.xls>>

Highly Confidential New York Fed Information

> Robert Azerad  
> Global Head of ALM  
> Lehman Brothers  
> Phone : (212) 320-7385; Fax: (646) 758 4235  
> Email : razerad@lehman.com  
>

-----  
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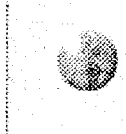
-----  
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## **Exhibit 4**



**Ed Corral** To: william.walsh@ny.frb.org  
cc: David A. Weisbrod/JPMCHASE@JPMCHASE, Jane Buyers-  
Russo/JPMCHASE@JPMCHASE, Robert T. Collieran/JPMCHASE@JPMCHASE, Robert  
09/15/2008 M Macallister/JPMCHASE@JPMCHASE  
09:02 PM Subject: Lehman PDCF Repo

Per your request:

- The assets in Lehman's 9/15/2008 PDCF repo of \$28 billion are of comparable type to the assets that were in Lehman's tri-party book on 9/12/2008
- The assets were all pledged by Lehman Brothers Inc. (the broker dealer).
- To the best of our knowledge, there are not any Lehman Brothers Holding Inc. securities collateralizing this PDCF Repo

Ed Corral.

**Exhibit 5**

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

LBEX-AM 003932

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. Lon Fife, 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. Welikson*

Jeffrey A. Welikson  
Secretary of the Meeting

## **Exhibit 6**



Bankruptcy

James P Bergin to: William.Dudley, Christine.Cumming, Thomas  
Baxter, Jonathan Polk, Gerard Dages, Joyce  
Hansen, HaeRan Kim

09/14/2008 02:15 PM

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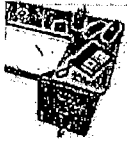
Update: We informed Weil of the expansion of the PDCF collateral and that it would not be available in the event the US BD filed bankruptcy. Weil informed us that the firm had no intention of filing the BD and was committed to working with the SEC SIPC and Fed on an orderly winddown.

-----  
Sent from my BlackBerry Wireless Handheld

Confidential


FRBNY-FCIC-  
General0082364

**Exhibit 7**



Chris Burke /NY/FRS  
09/14/2008 11:48 PM

To Shari Leventhal/NY/FRS@FRS  
cc  
bcc  
Subject Fw: Dealer call

History:  This message has been replied to.

Sorry I missed this. I had 23 minutes to put the call together. I did send Mike up to get Legal representation, so we had HaeRan, Catherine and Jim B and were well represented.

Hope you were being productive somewhere else . . .

Chris Burke  
Assistant Vice President  
Domestic Money Markets  
Federal Reserve Bank of New York  
Visit us at [www.NewYorkFed.org](http://www.NewYorkFed.org)  
(646) or (212) 720-6599

----- Forwarded by Chris Burke/NY/FRS on 09/14/2008 11:44 PM -----

Michael Schetzel /NY/FRS

09/14/2008 08:45 PM

To "Chris Burke" <Chris.Burke@ny.frb.org>  
cc  
Subject Fw: Dealer call

This is the ny fed att for the dealer call  
Shari Leventhal

----- Original Message -----

**From:** Shari Leventhal  
**Sent:** 09/14/2008 08:40 PM EDT  
**To:** Michael Schetzel  
**Subject:** Dealer call

Hi Michael,

Please include me when you send out the dial in info for the dealer call.

Thanks,  
Shari

**Exhibit 8**



**Fw: Revised PDCF Schedules of Eligible Securities**

Catherine Kung to: Marco.Brandimarte, rgugliel

09/15/2008 02:24 AM

Cc: Chris Burke, haeran.kim, William Walsh, Jeffrey Moore, joyce.hansen, Ilboron,  
Susan McLaughlin

---

Dear Marco and Robert,

Per Chris Burke's request, please find attached the cover letter for the revised Schedules of Eligible Securities for the Primary Dealer Credit Facility (PDCF) along with the revised Schedules as applied only to Lehman Brothers Inc. As stated in the letter, please have an authorized officer(s) acknowledge the letter by executing three (3) copies of the letter, fax or email one executed copy to my attention as soon as possible and return the executed originals to me by same-day messenger. I will send you a complete executed original when I receive everyone's original signature. Thank you.



Letter.pdf

Regards,  
Catherine Kung  
Federal Reserve Bank of New York  
33 Liberty Street, 7th Floor  
New York, NY 10045  
Phone: (212) 720-8606  
Fax: (212) 720-6297  
catherine.kung@ny.frb.org

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK, N.Y. 10045-0001

TELEPHONE 212-720-6599  
FACSIMILE 212-720-1794

CHRISTOPHER R. BURKE  
MARKETS OFFICER

September 14, 2008

VIA EMAIL

Mr. Marco Brandimarte  
Assistant Vice President  
JPMorgan Chase Bank, N.A.  
3 Chase Metrotech Center, 5<sup>th</sup> Floor  
Brooklyn, NY 11245-0001  
marco.brandimarte@jpmorgan.com

Mr. Robert Guglielmo  
Senior Vice President  
Lehman Brothers Inc.  
Capital Markets Contracts – Legal  
1271 Avenue of the Americas, 43<sup>rd</sup> Floor  
New York, NY 10020-1300  
rgugliel@lehman.com

Dear Messrs. Brandimarte and Guglielmo:

Reference is hereby made to (1) the Master Open Market Agreement, dated as of October 21, 1996, as amended, supplemented or modified from time to time (“MOMA”) between Lehman Brothers Inc. (“Dealer”) and the Federal Reserve Bank of New York (“FRBNY”), (2) the Custodial Undertaking In Connection with Master Open Market Agreement, dated as of October 1, 1999, as amended, supplemented or modified from time to time (“MOMA Tri-Party Agreement”) among Dealer, FRBNY and JPMorgan Chase Bank, N.A. (formerly, The Chase Manhattan Bank) and (3) the Legal Terms and Conditions for Primary Dealer Credit Facility, dated March 16, 2008 (“Terms and Conditions”) and the related Acknowledgment and Agreement to the Terms and Conditions executed by Dealer.

As discussed with your firms, FRBNY will be amending the Schedules of Eligible Securities with respect to any Repurchase Transaction (as defined in the MOMA) undertaken by Dealer and FRBNY pursuant to the Primary Dealer Credit Facility (“PDCF”) under the MOMA and the Terms and Conditions. Please find attached

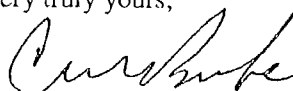
to this letter a copy of the revised Schedules of Eligible Securities that should be substituted for the Schedules of Eligible Securities to Custodial Undertaking in Connection with Master Open Market Agreement (PDCF) that currently form part of the MOMA Tri-Party Agreement. The revised Schedules attached hereto shall be effective as of the date of this letter.

Please have an authorized officer(s) acknowledge and accept this letter by executing three (3) copies of this letter, fax or email one executed copy to the attention of Catherine Kung, Federal Reserve Bank of New York, at (212) 720-6297 or [Catherine.kung@ny.frb.org](mailto:Catherine.kung@ny.frb.org), as applicable, and return the executed originals by same-day messenger to FRBNY as follows:

Attention: Catherine Kung  
Federal Reserve Bank of New York  
33 Liberty Street, 7<sup>th</sup> Floor  
New York, NY 10045

Thank you for your prompt attention to this matter.

Very truly yours,



Christopher R. Burke  
Assistant Vice President

Acknowledgment and Acceptance (which may be executed in counterparts) as of September 14, 2008:

LEHMAN BROTHERS INC.

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, N.A. (formerly, THE CHASE MANHATTAN BANK)

By: \_\_\_\_\_  
Name:  
Title:

To Custodial Undertaking in Connection with Master Open Market Agreement (PDCF)  
Schedule of Eligible Securities

**DIRECT OBLIGATIONS OF THE U.S. TREASURY**

<u>Security Type</u>	<u>Margin Percentage</u>
Bills .....	101%
Notes and Bonds (including Inflation-Indexed Securities):	
Up to and including 3 years remaining maturity .....	101%
Greater than 3 and up to and including 5 years remaining maturity .....	102%
Greater than 5 and up to and including 10 years remaining maturity .....	102%
Greater than 10 and up to 30 years remaining maturity .....	103%
STRIPS and Private Label Treasury Backed (including Strips of Inflation Indexed Securities):	
Up to and including 3 years remaining maturity .....	101%
Greater than 3 and up to and including 5 years remaining maturity .....	102%
Greater than 5 and up to and including 10 years remaining maturity .....	103%
Greater than 10 and up to and including 20 years remaining maturity .....	104%
Greater than 20 and up to and including 30 years remaining maturity .....	106%

To Custodial Undertaking in Connection with Master Open Market Agreement (PDCF)  
 Schedule of Eligible Securities

**DIRECT OBLIGATIONS OF THE FOLLOWING FEDERALLY RELATED ENTITIES:**

Farm Credit System Financial Assistance Corporation;  
 Federal Agricultural Mortgage Corporation (Farmer Mac);  
 Federal Farm Credit Banks Funding Corporation (Farm Credit System);  
 Federal Home Loan Bank System;  
 Federal Home Loan Mortgage Corporation (Freddie Mac);  
 Federal National Mortgage Association (Fannie Mae);  
 Financing Corporation (FICO);  
 Resolution Funding Corporation (REFCO);  
 Student Loan Marketing Association (SLMA); or  
 Tennessee Valley Authority

<u>Security Type</u>	<u>Margin Percentage</u>
Discount Notes .....	101%
 <u>Fixed and Floating Rate Debentures</u>	
Up to and including 3 years remaining maturity .....	101%
Greater than 3 and up to and including 5 years remaining maturity .....	102%
Greater than 5 and up to and including 10 years remaining maturity .....	103%
Greater than 10 and up to 30.5 years remaining maturity .....	104%
 <u>Interest and Principal Strips</u>	
Up to and including 3 years remaining maturity .....	102%
Greater than 3 and up to and including 5 years remaining maturity .....	102%
Greater than 5 and up to and including 10 years remaining maturity .....	103%
Greater than 10 and up to and including 20 years remaining maturity .....	105%
Greater than 20 and up to and including 30.5 years remaining maturity .....	108%

- (1) Margin percentages apply to all existing and potential future obligations of the type indicated, regardless of current security types outstanding.
- (2) Obligations of other federally related agencies not listed above have been excluded on the basis of operational experience and/or limitations of triparty custodian.

To Custodial Undertaking in Connection with Master Open Market Agreement (PDCF)  
 Schedule of Eligible Securities

AGENCY AND PRIVATE LABEL MORTGAGE-BACKED SECURITIES  
 PASSTHROUGHS AND CMOS

<u>Security Type</u>	<u>Margin Percentage</u>
Agency Single-Family, <u>Fixed-Rate</u> Pass-through Securities (Regardless of original maturity of underlying mortgages)	
Up to and including 20 years remaining maturity .....	105%
Greater than 20 and up to and including 30 years remaining maturity .....	106%
Agency Single-Family, <u>Adjustable Rate</u> Pass-through Securities (Regardless of original maturity of underlying mortgages)	
Up to and including 20 years remaining maturity .....	105%
Greater than 20 and up to and including 30 years remaining maturity .....	106%
Agency REMICS/CMOs (all types).....	120%
Private Label Passthroughs and CMOs (all types)	
BBB-/Baa3/BBB- Rated or better (by at least 2 rating agencies).....	120%
All other.....	120%

- (1) Agency refers to securities issued and/or fully guaranteed by the Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Farmers Agricultural Mortgage Corporation or Small Business Administration.
- (2) CMOs include CMBS

To Custodial Undertaking in Connection with Master Open Market Agreement (PDCF)  
 Schedule of Eligible Securities

**AUCTION RATE NOTES, MUNICIPAL SECURITIES, CORPORATE SECURITIES,  
 ASSET BACKED SECURITIES (INCLUDING CDOS, CBOS, CLOS),  
 INTERNATIONAL AGENCIES, MONEY MARKET INSTRUMENTS, TRUST  
 RECEIPTS, WHOLE LOANS, EQUITIES AND EQUITY DERIVATIVES**

<u>Security Type</u>	<u>Margin Percentage</u>
Auction Rate Notes.....	120%
Municipal Securities.....	120%
Corporate Securities	
Medium Term Notes.....	120%
Bonds.....	120%
Asset Backed Securities	
BBB-/Baa3/BBB- Rated or better (by at least 2 rating agencies).....	120%
All other.....	120%
International Agency Securities.....	120%
Money Market Instruments	
Commercial Paper.....	120%
Bankers Acceptances.....	120%
Certificates of Deposit.....	120%
Trust Receipts.....	120%
Whole Loans.....	120%
Equities and Equity Derivatives.....	120%

**Exhibit 9**



**Documents Responsive to October 1, 2010 FCIC Request No. 3**

FRBNY to Exam. 000254-000255
FRBNY to Exam. 000256
FRBNY to Exam. 000662-000664
FRBNY to Exam. 000665-000666
FRBNY to Exam. 000667-000669
FRBNY to Exam. 000670-000672
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FRBNY to Exam. 048062-048068
FRBNY to Exam. 048069-048073
FRBNY to Exam. 048341-048343



**Exhibit 10**

**Documents Responsive to October 1, 2010 FCIC Request No. 4**

FCIC-OTC 0000043-0000072
FCIC-OTC 0000202-0000361
FCIC-OTC 0000932-0001015
FCIC-OTC 0007269-0007277
FCIC-OTC 0009163-0009164
FCIC-OTC 0009165-0009166
FCIC-OTC 0009167-0009168
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